

CITY COUNCIL AGENDA ITEM COVER MEMO

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

Meeting Type: Regular

Meeting Date: Jul 14, 2016

Action Requested By: ITS

Agenda Type: Resolution

Subject Matter:

Agreement with Oracle

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an Agreement between the City of Huntsville and Oracle for Technical 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.

Peoplesoft Support Services Agreement

Associated Cost: 0.00

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: 

Date: Jul 12, 2016

## ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: ITS

Council Meeting Date: 7/14/2016

Department Contact: Tracy Rosser

Phone # 256-427-5097

Contract or Agreement: Agreement

Document Name: Oracle Public Sector Technical Support Services Agreement

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

Account Number:

### 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>William D...</i>	7/12/16
2) Legal	<i>Mary C. Cates</i>	7/12/16
3) Finance	<i>M. Dargatzis</i>	7-12-16
4) Originating	<i>William D...</i>	7/13/16
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

**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 Oracle which said Agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Oracle Public Sector Technical Support Services Agreement between the City of Huntsville and Oracle", consisting of Seven (7) pages, and the date of July 14, 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 14th day of July, 2016.

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

**APPROVED** this 14th day of July, 2016.

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



## ORACLE PUBLIC SECTOR TECHNICAL SUPPORT SERVICES AGREEMENT

This Oracle Public Sector Technical Support Services Agreement (this "Agreement") is between Oracle America, Inc. ("Oracle") and the entity identified below in the signature block ("You").

### 1. DEFINITIONS

1.1 "**Agreement**" refers to this Oracle Public Sector Technical Support Services Agreement (including any amendments thereto). This Agreement governs Your use of the Technical Support Services (defined below) ordered from Oracle.

1.2 "**Hardware**" refers to the computer equipment, including components, options and spare parts.

1.3 "**Integrated Software**" refers to any software or programmable code that is (a) embedded or integrated in the Hardware and enables the functionality of the Hardware or (b) specifically provided to You by Oracle and specifically listed (i) in accompanying documentation, (ii) on an Oracle webpage or (iii) via a mechanism that facilitates installation for use with Your Hardware. Integrated Software does not include and You do not have rights to (a) code or functionality for diagnostic, maintenance, repair or technical support services; or (b) separately licensed applications, operating systems, development tools, or system management software or other code that is separately licensed by Oracle. For specific Hardware, Integrated Software includes Integrated Software Options separately ordered.

1.4 "**Operating System**" refers to the software that manages Hardware for Programs and other software.

1.5 "**Products**" refers to Programs, Hardware, Integrated Software and Operating System.

1.6 "**Programs**" refers to (a) the software owned or distributed by Oracle that You have ordered, (b) Program Documentation and (c) any Program updates acquired through technical support. Programs do not include Integrated Software or any Operating System or any software release prior to general availability (e.g., beta releases)

1.7 "**Program Documentation**" refers to the Program user manual and Program installation manuals. Program Documentation may be delivered with the Programs. You may access the documentation online at <http://oracle.com/documentation>.

1.8 "**Separate Terms**" refers to separate license terms that are specified in the Program Documentation, readmes or notice files and that apply to Separately Licensed Third Party Technology.

1.9 "**Separately Licensed Third Party Technology**" refers to third party technology that is licensed under Separate Terms and not under the terms of this Agreement.

1.10 "**Technical Support Services**" refers to technical support services which You have ordered in accordance with this Agreement.

1.11 "**You**" and "**Your**" refers to the entity that has executed these General Terms.

### 2. AGREEMENT TERM

Orders may be placed under this Agreement for five years from the Effective Date (indicated below in Section 18).

### 3. TECHNICAL SUPPORT

3.1 If ordered, annual Technical Support Services (including first year and all subsequent years) for Programs is provided under Oracle's Software Technical Support Policies in effect at the time the Technical Support Services are provided. You agree to cooperate with Oracle and provide the access, resources, materials, personnel, information and consents that Oracle may require in order to perform the Technical Support Services. The

Oracle Software Technical Support Policies are incorporated in this Agreement and are subject to change at Oracle's discretion; however, Oracle policy changes will not result in a material reduction in the level of Technical Support Services provided for supported Programs during the period for which fees for Technical Support Services have been paid. You should review the policies prior to entering into the order for the applicable Technical Support Services. You may access the current version of the Oracle Software Technical Support policies at <http://oracle.com/contracts>. If You decide to purchase Technical Support Services for any Program license within a license set, You are required to purchase Technical Support Services at the same level for all licenses within that license set. You may desupport a subset of licenses in a license set only if You agree to terminate that subset of licenses. The technical support fees for the remaining licenses will be priced in accordance with the technical support policies in effect at the time of termination. Oracle's license set definition is available in the current technical support policies. If You decide not to purchase technical support, You may not update any unsupported Program licenses with new versions of the Program.

3.2 If ordered, annual Technical Support Services (including first year and all subsequent years) for Hardware is provided under Oracle's Hardware and Systems Support Policies in effect at the time the Technical Support Services are provided. You agree to cooperate with Oracle and provide the access, resources, materials, personnel, information, and consents that Oracle may require in order to perform the Technical Support Services. The Oracle Hardware and Systems Support Policies are incorporated in this Agreement and are subject to change at Oracle's discretion; however, Oracle will not materially reduce the level of Technical Support Services provided during the period for which fees for Technical Support Services have been paid. You should review the policies prior to entering into the order for Technical Support Services. You may access the current version of the Oracle Hardware and Systems Support Policies at <http://oracle.com/contracts>.

3.3 The Technical Support Services start date set forth in Your order shall serve as the commencement date of the Technical Support Services and the Technical Support Services ordered will be provided through the end date specified in Your order for the applicable Programs and/or Hardware.

#### 4. OWNERSHIP

Oracle or its licensors retain all ownership and intellectual property rights to the Programs, Operating System, Integrated Software and anything developed or delivered under this Agreement.

#### 5. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

5.1 Oracle warrants that the Technical Support Services ordered and provided under this Agreement will be provided in a professional manner consistent with industry standards. You must notify Oracle of any Technical Support Service warranty deficiencies within 90 days from performance of the deficient Technical Support Services.

**5.2 FOR ANY BREACH OF THE ABOVE WARRANTY, YOUR EXCLUSIVE REMEDY AND ORACLE'S ENTIRE LIABILITY SHALL BE REPERFORMANCE OF THE DEFICIENT TECHNICAL SUPPORT SERVICES; OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE DEFICIENT TECHNICAL SUPPORT SERVICES AND RECOVER THE FEES YOU PAID TO ORACLE FOR THE DEFICIENT TECHNICAL SUPPORT SERVICES.**

**5.3 TO THE EXTENT NOT PROHIBITED BY LAW, THIS WARRANTY IS EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

#### 6. INDEMNIFICATION

6.1 To the extent not prohibited by law and subject to sections 6.5, 6.6 and 6.7 below, if a third party makes a claim against either You or Oracle ("Recipient" which may refer to You or Oracle depending upon which party received the Material), that any information, design, specification, instruction, software, data, hardware, or material (collectively, "Material") furnished by either You or Oracle ("Provider" which may refer to You or Oracle depending on which party provided the Material) and used by the Recipient infringes the third party's intellectual property rights, the Provider, at the Provider's sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

- a. notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);

- b. gives the Provider sole control of the defense and any settlement negotiations, to the extent permitted by law; and
- c. gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.

6.2 If the Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any fees the Recipient may have paid to the other party for it and, if Oracle is the Provider of an infringing Program, any unused, prepaid technical support fees You have paid to Oracle for the license of the infringing Program, if any. If such return materially affects Oracle's ability to meet its obligations under the relevant order, then Oracle may, at its option and upon 30 days prior written notice, terminate the order.

6.3 Notwithstanding the provisions of section 6.2 and with respect to hardware only, if the Provider believes or it is determined that the hardware (or portion thereof) may have violated a third party's intellectual property rights, the Provider may choose to either replace or modify the hardware (or portion thereof) to be non-infringing (while substantially preserving its utility or functionality) or obtain a right to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may remove the applicable hardware (or portion thereof) and refund the net book value and, if Oracle is the Provider of infringing Hardware, any unused, prepaid technical support fees You have paid to Oracle for the Hardware, if any.

6.4 In the event that the Material is Separately Licensed Third Party Technology and the associated Separate Terms do not allow termination of the license, in lieu of ending the license for the Material, Oracle may end the license for, and require return of, the Program associated with that Separately Licensed Third Party Technology and shall refund any Program license fees You may have paid to Oracle for the Program.

6.5 Provided You are a current subscriber to Oracle Technical Support Services for the Operating System (e.g., Oracle Premier Support for Systems, Oracle Premier Support for Operating Systems or Oracle Linux Premier Support), then for the period of time for which You were a subscriber to the applicable Oracle Technical Support Services (a) the phrase "Material" above in section 6.1 shall include the Operating System and the Integrated Software and any Integrated Software Options that You have licensed and (b) the phrase "Program(s)" in this section 6 is replaced by the phrase "Program(s) or the Operating System or Integrated Software or Integrated Software Options (as applicable)" (i.e., Oracle will not indemnify You for Your use of the Operating System and/or Integrated Software and/or Integrated Software Options when You were not a subscriber to the applicable Oracle Technical Support Services). Notwithstanding the foregoing, with respect solely to the Linux operating system, Oracle will not indemnify You for Materials that are not part of the Oracle Linux covered files as defined at <http://www.oracle.com/us/support/library/enterprise-linux-indemnification-069347.pdf>.

6.6 The Provider will not indemnify the Recipient if the Recipient alters Material or uses it outside the scope of use identified in the Provider's user documentation or if the Recipient uses a version of Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of Material which was provided to the Recipient, or if the Recipient continues to use the applicable Material after the end of the license to use that Material. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by the Provider. Oracle will not indemnify You for any portion of an infringement claim that is based upon the combination of any Material with any products or services not provided by Oracle. Solely with respect to Separately Licensed Third Party Technology that is part of or is required to use a Program and that is used: (a) in unmodified form; (b) as part of or as required to use a Program; and (c) in accordance with the license grant for the relevant Program and all other terms and conditions of this Agreement, Oracle will indemnify You for infringement claims for Separately Licensed Third Party Technology to the same extent as Oracle is required to provide infringement indemnification for the Program under the terms of this Agreement. Oracle will not indemnify You for infringement caused by Your actions against any third party if the Program(s) as delivered to You and used in accordance with the terms of this Agreement would not otherwise infringe any third party intellectual property rights. Oracle will not indemnify You for any intellectual property infringement claim(s) known to You at the time license rights are obtained.

6.7 This section provides the parties' exclusive remedy for any infringement claims or damages.

## 7. TERMINATION

7.1 If either of us breaches a material term of this Agreement and fails to correct the breach within 30 days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate this Agreement. If Oracle terminates this Agreement as specified in the preceding sentence, You must pay within 30 days all amounts which have accrued prior to such termination, as well as all sums remaining unpaid for Technical Support Services received under this Agreement plus related taxes and expenses. Except for nonpayment of fees, the non-breaching party may agree in its sole discretion to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. You agree that if You are in default under this Agreement, You may not use those Technical Support Service ordered.

7.2 You may terminate this Agreement at any time without cause by giving Oracle 30 days prior written notice of such termination. If You end this Agreement as specified in the preceding sentence, You agree You must pay within 30 days all amounts which have accrued prior to the end of this Agreement, as well as all sums remaining unpaid for Technical Support Services received under this Agreement plus applicable related taxes and expenses (if any).

7.3 If You have used a contract with Oracle or an affiliate of Oracle to pay for the fees due under an order and You are in default under that contract, You may not use the Technical Support Services that are subject to such contract.

7.4 Provisions that survive termination or expiration are those relating to limitation of liability, infringement indemnity, payment and others which by their nature are intended to survive.

## 8. FEES AND TAXES; PRICING, INVOICING AND PAYMENT OBLIGATION

8.1 All fees payable to Oracle are due within 30 days from the invoice date. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that Oracle must pay based on the Technical Support Services You ordered, except for taxes based on Oracle's income. Reimbursement of expenses related to the provision of any Technical Support Services, if any, will be addressed in the relevant order and/or statement of work for such Technical Support Services.

8.2 You understand that You may receive multiple invoices for the Technical Support Services You ordered. Invoices will be submitted to You pursuant to Oracle's Invoicing Standards Policy, which may be accessed at <http://oracle.com/contracts>.

## 9. NONDISCLOSURE

9.1 By virtue of this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). We each agree to disclose only information that is required for the performance of obligations under this Agreement. Confidential Information shall be limited information clearly identified as confidential at the time of disclosure.

9.2 A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

9.3 Subject to the applicable law, we each agree not to disclose each other's Confidential Information to any third party other than those set forth in the following sentence for a period of three years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party. We may disclose Confidential Information only to those employees or agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than under this Agreement. Nothing shall prevent either party from disclosing the terms or pricing under this Agreement or orders submitted under this Agreement in any legal proceeding arising from or in connection with this Agreement or disclosing the Confidential Information to a governmental entity as required by law. In the event You receive a valid request for Oracle's Confidential Information pursuant to applicable law, You will provide Oracle with reasonable notice of such request and give Oracle an opportunity to object to or limit any such disclosure.

## 10. ENTIRE AGREEMENT

10.1 You agree that this Agreement and the information which is incorporated into this Agreement by written reference (including reference to information contained in a URL or referenced policy), together with the applicable order, are the complete agreement for the Technical Support Services ordered by You and supersede all prior or contemporaneous agreements or representations, written or oral, regarding such Technical Support Services.

10.2 It is expressly agreed that the terms of this Agreement and any Oracle order shall supersede the terms in any purchase order, procurement internet portal or any other similar non-Oracle document and no terms included in any such purchase order, portal or other non-Oracle document shall apply to the Technical Support Services ordered. In the event of any inconsistencies between the terms of an order and this Agreement, the order shall take precedence. This Agreement and orders may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted online through the Oracle Store by authorized representatives of You and of Oracle. Any notice required under this Agreement shall be provided to the other party in writing.

## 11. LIMITATION OF LIABILITY

**NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE. ORACLE'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES YOU PAID ORACLE UNDER THE ORDER GIVING RISE TO THE LIABILITY, AND IF SUCH DAMAGES RESULT FROM YOUR USE OF TECHNICAL SUPPORT SERVICES, SUCH LIABILITY SHALL BE LIMITED TO THE FEES YOU PAID ORACLE FOR THE DEFICIENT TECHNICAL SUPPORT SERVICES GIVING RISE TO THE LIABILITY.**

## 12. EXPORT

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Technical Support Services. You agree that such export laws govern Your use of any Technical Support Services deliverables provided under this Agreement, and You agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). You agree that no data, information, Product and/or materials resulting from Technical Support Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

## 13. FORCE MAJEURE

Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; pandemic, electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export, import or other license); other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either of us may cancel unperformed Technical Support Service and affected orders upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Your obligation to pay for Technical Support Services ordered or delivered.

## 14. GOVERNING LAW AND JURISDICTION

This Agreement is governed by the laws of The State of California.

## 15. NOTICE

If You have a dispute with Oracle or if You wish to provide a notice under the Indemnification section of this Agreement, or if You become subject to insolvency or other similar legal proceedings, You will promptly send written notice to: Oracle America, Inc., 500 Oracle Parkway, Redwood City, California, United States, 94065, Attention: General Counsel, Legal Department.

## 16. ASSIGNMENT

You may not assign this Agreement or give or transfer any Technical Support Services or an interest in them to another individual or entity. If You grant a security interest in any Technical Support Services deliverables, the secured party has no right to use any Technical Support Services deliverables, and if You decide to finance Your acquisition of any Technical Support Services, You will follow Oracle's policies regarding financing which are at <http://oracle.com/contracts>. The foregoing shall not be construed to limit the rights You may otherwise have with respect to the Linux operating system, third party technology or Separately Licensed Third Party Technology licensed under open source or similar license terms.

## 17. OTHER

17.1 Oracle is an independent contractor and we agree that no partnership, joint venture, or agency relationship exists between us. We each will be responsible for paying our own employees, including employment related taxes and insurance.

17.2 If any term of this Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purpose and intent of this Agreement.

17.3 Except for actions for nonpayment or breach of Oracle's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than two years after the cause of action has accrued.

17.4 Products and Technical Support Services deliverables are not designed for or specifically intended for use in nuclear facilities or other hazardous applications. You agree that it is Your responsibility to ensure safe use of Products and Technical Support Services deliverables in such applications.

17.5 The Uniform Computer Information Transactions Act does not apply to this Agreement or orders placed under it.

17.6 You understand that Oracle's business partners, including any third party firms retained by You to provide consulting services, are independent of Oracle and are not Oracle's agents. Oracle is not liable for nor bound by any acts of any such business partner unless (i) the business partner is providing services as an Oracle subcontractor in furtherance of an order placed under this Agreement and (ii) only to the same extent as Oracle would be responsible for the performance of Oracle resources under that order.

17.7 For software (i) that is part of Programs, Operating Systems, Integrated Software or Integrated Software Options (or all four) and (ii) that You receive from Oracle in binary form and (iii) that is licensed under an open source license that gives You the right to receive the source code for that binary, You may obtain a copy of the applicable source code from <https://oss.oracle.com/sources/> or <http://www.oracle.com/goto/opensourcecode>. If the source code for such software was not provided to You with the binary, You may also receive a copy of the source code on physical media by submitting a written request pursuant to the instructions in the "Written Offer for Source Code" section of the latter website.

**18. AGREEMENT EFFECTIVE DATE**

The Effective Date of this Agreement is Jul 7, 2016. (DATE TO BE COMPLETED BY ORACLE)

<b>City of Huntsville</b>		<b>Oracle America, Inc.</b>	
<b>Signature</b>	_____	<b>Signature</b>	<u></u> <small>James Sharpe (Jul 7, 2016)</small>
<b>Name</b>	_____	<b>Name</b>	<u>James Sharpe</u>
<b>Title</b>	_____	<b>Title</b>	<u>Deal Specialist - Centralize</u>
<b>Signature Date</b>	_____	<b>Signature Date</b>	<u>Jul 7, 2016</u>