

**Professional Services Agreement
Datacron Managed Services Contract**

This Agreement is made this ____ day of __, between City of Corpus Christi ("Client"), having its principal place of business at 1201 Leopard St, Corpus Christi, TX 78401-2825 and Falcron Solutions, Inc., ("Consultant"), having its principal place of business at 11152 Westheimer Rd, #876, Houston, Texas, 77042. In consideration of the premises, covenants and conditions contained in this Agreement, and intending to be legally bound, the parties mutually agree as follows:

1. Scope of Contract

Consultant shall provide the services as described below using the minimum of 80 hours per month of database administration consulting services, as outlined in Section 4, with the goals listed below:

- a. Providing an initial assessment and recommendations of the database servers.
- b. Implementation of recommendations as approved by the Client for the database servers.
- c. Implementation of base processes for monitoring of database servers.
- d. Providing a weekly health check of each database server along with reports based on performance and utilization data.
- e. Review and analyze database servers to provide information regarding overall system architecture and need for optimization.
- f. Provide assistance in determining and resolving database server issues and problems.
- g. Assist with database issues and projects as determined by Client.

2. Term of Contract

This Agreement shall commence as of date of last signature and continue for one year. This agreement may be extended for up to two additional one-year terms, under the same terms and conditions, upon written agreement of the City Manager and Consultant.

3. Consulting Service Fees

The payment for the initial Monthly Service Fee should accompany the delivery by Client of a signed copy of this Agreement; upon receipt Consultant will commence services under this Agreement. Hours that are accumulated each month beyond the number of base hours included with the Monthly Service Fee will be invoiced along with the Monthly Service Fee at the rate indicated by the selection of the Additional Hours Rate in Section 5. Client will pay the invoices within 15 days of invoice receipt without offset. Invoices that become 30 days past due are subject to a 1.5% per month late payment charge.

4. Features and Deliverables

The following are included under this Agreement:

- a. Consultant will be available for services for a minimum set of hours per month as selected in Section 1 above.
- b. Non-emergency time will be scheduled one week in advance. Other urgent needs and emergencies will be responded to as soon as Consultant is able.
- c. Response time for non-emergency issues will be 4 business hours and to emergency issues will be 4 business hours.
- d. Consultant will provide a monthly statement that details the activities and tasks completed to fulfill the service needs of Client.
- e. Guaranteed priority Response: Consultant guarantees priority access to Client over non-service agreement customers.

5. Service Fee/Rates.

The Service Level plan selected is Silver, in which the response time will be 4 Business Hours and the availability will be 7am to 7 pm - CST. The Monthly Service Fee that is due each month for the length of the Agreement is Ten Thousand Dollars (\$10,000.00). Any additional Consulting Service hours that are accrued past the base hours provided for in the block of hours will be billed at the rate of \$110.00/hr, in minimum increments of 15 minutes (\$27.50 per 15 minute increment of additional service).

6. Confidentiality Agreement

Consultant agrees to hold and maintain as confidential any Client Confidential Information which is disclosed to it, or to which it gains access, as a result of performing services under this Agreement. As used herein, "Confidential Information" shall mean information, data or know how, received by Consultant or to which Consultant gains access, as a result of performing services under this Agreement, and which is neither in the public domain nor generally available.

7. Limitation of Liability

Consultant shall not be responsible or liable for compensatory or special damages resulting from the failure of performance under this Agreement. In the event that Client claims damages as a result of any claimed act or omission by Consultant relative to this Agreement, Client's sole and exclusive remedy shall be to seek the repayment of fees paid to Consultant, or, at Client's option, the re-performance of services. If Client deems Consultant's work to be unsatisfactory or incomplete, Client shall notify Consultant in writing within 30 days, and will give Consultant the opportunity to complete the work to a reasonably satisfactory standard within 30 days of receipt of written notice. In no event will Consultant be liable for any lost revenue, lost savings, or incidental, special or consequential damages. Consultant shall not be responsible to Client for loss of use of Client's application or systems, or for any other liabilities arising from alterations, additions, adjustments or repairs to Client's application or systems. No party shall be liable to the other for any delay or failure to perform due to causes beyond its reasonable control.

8. Indemnity

CONSULTANT AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS AND CAUSES OF ACTION OF ANY NATURE ON ACCOUNT OF DEATH, PERSONAL INJURIES, PROPERTY LOSS OR DAMAGE OR ANY OTHER KIND OF DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT. CONSULTANT MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL REASONABLY SATISFACTORY TO INDEMNITEES AND PAY ALL CHARGES OF ATTORNEY AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING FROM ANY OF SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONSULTANT UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR SOONER TERMINATION OF THIS AGREEMENT.

9. Data Security/Protection

Consultant agrees that it will protect the Client's data according to commercially acceptable standards and no less rigorously than it protects its own confidential information, but in no case less than reasonable care based on the laws of the state of Texas. Consultant shall develop, implement, maintain and use appropriate administrative, technical and physical security measures which may include but not be limited to encryption techniques, to preserve the confidentiality, integrity and availability of all such Client Data. Any additional state or regulatory requirements that need to be adhered to by the Consultant in reference to the security and protection of Client data, should be provided in writing before contract acceptance and approval is given.

10. Ownership of Work Product

In connection with performance of services to Client, Consultant may write, design, develop, implement and deliver to Client certain work product, which may include, but shall not be limited to, computer software (code), documentation, and related material. This work product shall become and remain the sole and exclusive property of Consultant. Without limiting the foregoing, Consultant shall be freely entitled to (and to authorize others to) use, duplicate, publish, disseminate, communicate, market, license, sell or otherwise employ or derive benefits from any Consultant property for its own use or other's benefit, without restriction or payment of any kind except as otherwise specified hereunder. Consultant hereby grants license to Client to internally reuse or redistribute code created by the Consultant under this Agreement, but only under the condition that Client clearly describe code ownership and redistribution rights using the BSD License (see <http://www.opensource.org/licenses/bsd-license.php>). Any code that Consultant provides to the Client that is expressly provided in the public domain shall be acknowledged as such in the code, and will remain in the public

domain. Work product created exclusively by Client in conjunction within this Agreement, as well as all Client data, shall remain the property of Client.

11. Validity of Provision

If any provision of this Agreement is held to be void, illegal, unenforceable, or in conflict with any law of a controlling government agency, the validity of the remaining portions and/or provisions of this Agreement shall not be affected thereby.

12. Amendment

This Agreement may be amended only by written agreement between the parties that expressly amends, terminates, or supersedes this Agreement.

13. Non-solicitation

Falcron Solutions, Inc. invests considerable time and expense in recruiting and training its workers in order to ensure that Falcron Solutions, Inc's clients receive the highest level of service. In order to protect Falcron Solutions' investment in its workers, Falcron Solutions, Inc. requires that unless otherwise agreed upon in writing by Falcron Solutions, Inc., during the term of this Agreement and for the 12 month period following its termination, Client shall not directly or indirectly solicit, offer employment, employ or retain as a consultant any employee or Former Employee, consultant or former consultant of Falcron Solutions, Inc.

14. Expenses

No additional expenses such as travel, software or hardware will be necessary for this engagement based on resource location. Should additional resources be required for the Datacron service and travel is requested, an additional addendum to the contract can be added to specifically address that need.

15. Miscellaneous Provisions

- a. Notices - Any notice given in connection with the Agreement shall be in writing and sent to the address specified by each party. Unless otherwise changed in writing, the notices shall be addressed to the contacts for the parties. The contact for the City is the Director of Municipal Information Systems. The contact for Falcron Solutions, Inc. is its CEO.
- b. Assignment - Neither party may assign this Agreement in whole or in part without the prior written consent of the other.
- c. Appendices - N/A
- d. Entire Agreement - This Agreement and its appendices, as listed in the Appendix section above, is the sole agreement between Consultant and Client with respect to this project and the subject matter hereof, and supersedes all prior agreements and understandings of the parties with respect to the subject matter hereto, either oral or written. All of the terms and provisions of this Agreement shall be binding upon the respective successors and assigns of the parties hereto. This Agreement may not be amended or modified and no provision may be waived, except in writing and signed by both parties as contained in provisions herein.
- e. Consultant shall provide insurance in accordance with attached Exhibit.
- f. Consultant shall complete the attached Disclosure of Interest form.

- g. All parties recognize that the continuation of any contract after the close of any fiscal year of Client, which fiscal year ends on July 31 of each year, shall be subject to appropriations and budget approval providing for covering such contract item as an expenditure in said budget. Client does not represent that the budget item for this agreement will be actually adopted, said determination being within the sole discretion of the City Council at the time of adoption of such budget. Should Client's annual budget not provide funding for this agreement, then this agreement shall terminate upon thirty (30) days advance written notice to Consultant.

16. Acceptance

In witness whereof, the parties have caused this Agreement to be executed by their duly authorized representatives.

CLIENT: CITY OF CORPUS CHRISTI, TEXAS

By: _____
Authorized Signature

Date: _____

Print Name

Title: _____

CONSULTANT

Falcron Solutions, Inc.

By:  _____
Authorized Signature

Date: 7/25/2013

David Horn
Print Name

Title: CEO

EXHIBIT

INSURANCE REQUIREMENTS

I. CONSULTANT’S LIABILITY INSURANCE

- A. Consultant must not commence work under this agreement until all insurance required has been obtained and such insurance has been approved by the City. Consultant must not allow any subcontractor to commence work until all similar insurance required of any subcontractor has been obtained.

- B. Consultant must furnish to the City’s Risk Manager, 2 copies of Certificates of Insurance with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City’s Risk Manager. The City must be named as an additional insured on the General liability policy, and a waiver of subrogation is required on all applicable policies.

| TYPE OF INSURANCE | MINIMUM INSURANCE COVERAGE |
|--|--|
| 30-written day notice of cancellation, required on all certificates or by applicable policy endorsements | Bodily Injury and Property Damage Per occurrence - aggregate |
| Commercial General Liability including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury | \$1,000,000 Per Occurrence \$2,000,000 Aggregate |
| PROFESSIONAL LIABILITY | \$1,000,000 Per Claim – Aggregate If claims made, policy needs 24-month extension period post-termination or expiration date. |
| WORKERS’ COMPENSATION All States Endorsement if Consultant is not Domiciled in Texas. | Which Complies With The Texas Workers’ Compensation Act And Paragraph II Of This Exhibit. |
| EMPLOYER’S LIABILITY | \$500,000/\$500,000/\$500,000 |

- C. In the event of accidents of any kind related to this lease agreement, Consultant must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

II. ADDITIONAL REQUIREMENTS

- A. Applicable for paid employees, Consultant must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in an amount sufficient to assure that all workers' compensation obligations incurred by the Consultant will be promptly met.
- B. Consultant's financial integrity is of interest to the City; therefore, subject to Consultants right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
- C. The City shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Manager
P.O. Box 9277
Corpus Christi, TX 78469-9277

- D. **Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
- Name the City and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and

- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- E. Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- F. In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractor's performance of the work covered under this agreement.
- H. It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this agreement.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

2013 Insurance Requirements
MIS Department
Oracle Database Support
4/2/2013 ds Risk Management



Disclosure of Interest Form

SUPPLIER NUMBER TO BE ASSIGNED BY CITY PURCHASING DIVISION

CITY OF CORPUS CHRISTI DISCLOSURE OF INTEREST

All persons or firms seeking to do business with the City must provide the following information. Every question must be answered. If the question is not applicable, answer with "NA". See reverse side for definitions.

COMPANY NAME: FALCRO SOLUTIONS

P. O. BOX: 876

STREET: 11152 Westheimer Rd CITY: Houston ZIP: 77441

FIRM IS: 1. Corporation (X) 2. Partnership () 3. Sole Owner () 4. Association () 5. Other ()

DISCLOSURE QUESTIONS

If additional space is necessary, please use the reverse side of this page or attach separate sheet.

1. State the names of each "employee" of the City of Corpus Christi having an "interest" in the above named "firm."

Name Job Title and City Department (if known) N/A

2. State the names of each Council Member of the City of Corpus Christi having a "substantial interest" in the above named "firm."

Name Title N/A

3. State the names of each "board member" of the City of Corpus Christi having a "substantial interest" in the above named "firm."

Name Board, Commission, or Committee N/A

4. State the names of each employee or officer of a "consultant" for the City of Corpus Christi who worked on any matter related to the subject of this contract and has an "interest" in the above named "firm."

Consultant

N/A

CERTIFICATE

I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested; and that supplemental statements will be promptly submitted to the City of Corpus Christi, Texas as changes occur.

Certifying Person: DAVID HORN Title: CEO
(Type or Print)

Signature of Certifying Person:  Date: 7/25/2013

DEFINITIONS

- a. "Board member." A member of any board, commission, or committee appointed by the City Council of the City of Corpus Christi, Texas.
- b. "Employee." Any person employed by the City of Corpus Christi, Texas either on a full or part-time basis, but not as an independent contractor.
- c. "Firm." Any entity operated for economic gain, whether professional, industrial or commercial, and whether established to produce or deal with a product or service, including but not limited to, entities operated in the form of sole proprietorship, as self-employed person, partnership, corporation, joint stock company, joint venture, receivership or trust, and entities which for purposes of taxation are treated as non-profit organizations.
- d. "Interest." Any direct or indirect pecuniary or material benefit in a contract or transaction other than:
 - (1) An interest which is shared by and available to all other persons similarly situated; or
 - (2) A remote or incidental interest which would not increase or decrease materially due to the action of the city or is less than two hundred dollars (\$200.00) in value; or
 - (3) An interest of a subcontractor which has no direct contractual relationship with the city, is receiving fair and reasonable compensation, and is not operating as a subterfuge to circumvent the code of ethics; or
 - (4) An interest in real property acquired by the city which could otherwise be accomplished only through eminent domain provided that the property must be acquired for a public purpose and just compensation must be paid under the Texas Constitution after obtaining an independent appraisal.
- e. "Substantial Interest" Any interest which has a value of five thousand dollars (\$5,000.00) or more or represents ten (10) per cent or more of a person's gross income during the most recent calendar year.
- f. "Consultant." Any person or firm, such as engineers and architects, hired by the City of Corpus Christi for the purpose of professional consultation and recommendation.