

PROFESSIONAL SERVICE AGREEMENT NO. 2190

IT Consulting Services

THIS **IT Consulting Services Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and Peter Collins ("Contractor"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Contractor has agreed to provide IT Consulting Services.

NOW, THEREFORE, City and Contractor agree as follows:

1. **Scope.** Contractor will provide IT Consulting Services ("Services") in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.
2. **Term.** This Agreement is for eight months, with performance commencing upon the date of issuance of a notice to proceed from the Contract Administrator or Purchasing Division. The parties may mutually extend the term of this Agreement for up to zero additional zero-month periods ("Option Period(s)"), provided, the parties do so in writing and prior to the expiration of the original term or the then-current Option Period. The City's extension authorization must be executed by the City Manager or designee.
3. **Compensation and Payment.** This Agreement is for an amount not to exceed \$160,000.00, subject to approved extensions and changes. Payment will be made for Services completed and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. Any amount not expended during the initial term or any option period may, at the City's discretion, be allocated for use in the next option period.

Invoices will be mailed to the following address with a copy provided to the Contract Administrator:

City of Corpus Christi
Attn: Accounts Payable
P.O. Box 9277
Corpus Christi, Texas 78469-9277

4. **Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Name: Keith Selman
Department: Interim City Manager
Phone: 361-826-3898
Email: KeithSe@cctexas.com

5. **Insurance; Bonds.**

(A) Before performance can begin under this Agreement, the Contractor must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the COI must state that the City will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in Attachment C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.

(B) In the event that a payment bond, a performance bond, or both, are required of the Contractor to be provided to the City under this Agreement before performance can commence, the terms, conditions, and amounts required in the bonds and appropriate surety information are as included in the RFB/RFP or as may be added to Attachment C, and such content is incorporated here in this Agreement by reference as if each bond's terms, conditions, and amounts were fully set out here in its entirety.

6. **Standard of Care.** Contractor warrants that all Services will be performed in accordance with the standard of care used by similarly situated contractors performing similar services.
7. **Non-Appropriation.** The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.

8. Independent Contractor; Release.

(A) In performing this Agreement, both the City and Contractor shall act in an individual capacity and not as agents, representatives, employees, employers, partners, joint venturers, or associates of one another. Contractor shall perform all professional services as an independent contractor and shall furnish such Services in his own manner and method, and under no circumstance or condition shall an employee, agent, or representative of either party be considered or construed to be an employee, agent, or representative of the other party.

(B) As an independent contractor, no workers' compensation insurance shall be obtained by City covering the Contractor and employees of the Contractor. The Contractor shall comply with any and all workers' compensation laws pertaining to the Contractor and employees of the Contractor.

(C) The Contractor acknowledges, understands, and agrees that, as a non-employee of the City, he is not entitled to participate in any of the City's employee benefit programs nor are his spouse or any dependents entitled to participate.

(D) The Contractor further acknowledges, understands, and agrees that he will perform the Services on City property, away from City property, or a mix of both, as may be agreed upon by the City's Project Manager and the Contractor from time to time. For the purposes of performing Services on City property and with City equipment and in lieu of the Contractor's having workers' compensation coverage, the Contractor agrees to execute the Release of Liability and Covenant Not to Sue, which is attached to this Agreement as **Attachment E** and the contents of which, as a completed instrument, is incorporated by reference into this Agreement as if fully set out in this document.

(D) **Subcontractors.** Contractor may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Contractor must obtain prior written approval from the Contract Administrator unless the subcontractors were named in the bid or proposal or in an Attachment to this Agreement, as applicable. In using subcontractors, the Contractor is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Contractor. All requirements set forth as part of this Agreement, including the necessity of providing a COI in advance to the City, are applicable to all subcontractors and their employees to the same extent as if the Contractor and its employees had performed the work. The City may, at the City's sole discretion, choose not to accept Services performed by a subcontractor that was not approved in accordance with this paragraph.

(E) **Amendments.** This Agreement may be amended or modified only in writing executed by authorized representatives of both parties.

- (F) **Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
- (G) **Taxes.** The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other applicable taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.
- (H) **Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi
Attn: Keith Selman
Title: Interim City Manager
Address: 1201 Leopard St., Corpus Christi, Texas 78401
Phone: 361-826-3898
Fax: N/A

IF TO CONTRACTOR:

Peter Collins
Attn: Peter Collins
Title: N/A
Address: 344 Clifford St, Corpus Christi, Texas 78404
Phone: 218-242-9642
Fax: N/A

- (I) **CONTRACTOR SHALL FULLY 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 WHATEVER NATURE, CHARACTER, OR DESCRIPTION ON ACCOUNT OF PERSONAL INJURIES, PROPERTY LOSS, OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR 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 A BREACH OF THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT BY THE CONTRACTOR OR RESULTS FROM THE NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF THE CONTRACTOR OR ITS EMPLOYEES OR AGENTS. CONTRACTOR MUST, AT ITS OWN EXPENSE,**

INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING OR RESULTING FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

(J) Termination.

(A) The City Manager may terminate this Agreement for Contractor's failure to perform the work specified in this Agreement or to keep any required insurance policies in force during the entire term of this Agreement. The Contract Administrator must give the Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

(B) Alternatively, the City Manager may terminate this Agreement for convenience upon 30 days advance written notice to the Contractor. The City Manager may also terminate this Agreement upon 24 hours written notice to the Contractor for failure to pay or provide proof of payment of taxes as set out in this Agreement.

(K) Assignment. No assignment of this Agreement by the Contractor, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.

(L) Severability. Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.

(M) Order of Precedence. In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:

- a. this Agreement (excluding attachments and exhibits);
- b. its attachments;

- (N) **Certificate of Interested Parties.** Contractor agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement if required by said statute.
- (O) **Verification Regarding Israel.** In accordance with Chapter 2270, Texas Government Code, the City may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this Agreement on behalf of the Contractor verifies that the company does not boycott Israel and will not boycott Israel during the term of this Agreement.
- (P) **Governing Law.** This Agreement is subject to all federal, State, and local laws, rules, and regulations. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.
- (Q) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties

(SIGNATURE PAGE FOLLOWS)

CONTRACTOR

Signature: _____

Printed Name: _____

Title: _____

Date: _____

CITY OF CORPUS CHRISTI

Kim Baker

Assistant Director of Finance – Purchasing Division

Date: _____

APPROVED AS TO LEGAL FORM:

Assistant City Attorney

Date

Attached and Incorporated by Reference:

Attachment A: Scope of Work

Attachment B: Bid/Pricing Schedule

Attachment C: Insurance and Bond Requirements

Attachment D: Warranty Requirements

Attachment E: Release of Liability and Covenant Not to Sue

Attachment A – Scope of Work

Contact Information:

Peter Collins

Email: pec2525@mac.com or peterc@cctexas.com

Phone: 218-242-9642 or 361.826.3135

Background:

The Infor Enterprise System was at a point of collapse prior to the arrival of Peter Collins on October 4, 2018. There were a number of critical issues that had to be corrected immediately in order to triage the system to a point of fragile stability. These critical issues were related to technology, vendors, internal support, preventative maintenance, hardware, work flow, lack of documentation, want of staff training, and issues in public perception. These issues are winding down but still must be completely resolved in order to stabilize the Infor Enterprise System. Departments affected include: IT, Financial Services (Utility Billing, Treasury, Accounting, Payroll, Accounts Payable); Development Services; Human Resources; Utilities (Water, Wastewater, and Gas), Solid Waste, and Streets.

In January 2019, the Contractor was named Interim Director of IT. The scope of work, therefore, will not only consist of a Project Recovery Phase as it relates to the Infor Enterprise System but also will include operational duties associated with managing the City's IT department.

A. Scope of work for Project Recovery Phase:

1. The Project Recovery Phase will result in corrective action to make key changes that are crucial to the stability of the Infor Enterprise System. The overriding purpose of this phase is to identify and correct current critical issues. The goal is to stabilize and focus the system to a position that is being used to its designed purpose and remove the instability that currently exists.
2. During the Project Recovery Phase the Contractor will provide structure to regain control of the project and provide closure to unresolved issues. At the conclusion of the Project Recovery Phase, the Infor Enterprise System will be in a firm state to support the City as an enterprise solution. Staff will be trained relevant to their tasks and position. System failure should not become a possibility unless the changes made are not adhered to by City staff. Staff will be trained relevant to their tasks and position.

3. In the Project Recovery Phase, the Contractor will take the following assessments and corrective actions (not all-inclusive):
 - Work flow issues
 - IT skill set to support the Infor Enterprise System
 - Identification of training needs for IT staff to support the Infor Enterprise System
 - Creation of standard operating procedures (SOPs) for all integrated systems
 - Development of training programs
 - Creation of reports
 - Creation of supporting documents for users and IT staff
 - Creation of support documents for all integrated systems
 - Identification of mission-critical systems
 - Assessment of the need for hardware upgrades
 - Development of early warning reports that detect issues with the entire Infor Enterprise System so staff can address issues proactively and aid in preventing system shutdown.
4. In the Project Recovery Phase, the Contractor will all address issues at Development Services including but not limited to the following:
 - CDR Portal
 - Retraining staff on Infor
 - Bentley testing, training and Go Live
 - Mobile inspections testing, training and Go Live
5. Contractor will facilitate the migration of the Lawson products to the “multi-cloud” in order to be on Infor’s current system.

B. IT Operational Duties:

1. Oversee daily operations of the City’s IT Department and take correction action as needed.
2. Address and correct prior procurement deficiencies
3. Address Human Resource needs
4. Manage the department’s budget
5. Prepare the Fiscal Year 2019-2020 departmental budget
6. Address network upgrades
7. Address phone system enhancements
8. Address physical security and cyber security
9. Create a city-wide security policy

10. Provide support for the Criminal Justice Information System (CJIS) audit being conducted on the Corpus Christi Police Department
11. Oversee Public Safety radio replacement
12. Address DCU upgrades
13. Address enterprise applications

C. Deliverables:

1. The Contractor will provide monthly, written progress reports to the City Manager and verbal reports to the City Council at every City Council meeting.
2. The City's Lawson products will be migrated in the most current version to the "multi-cloud".
3. Contractor will put in place "best practices" for managing an IT Department.

D. Assistance:

The City will provide office, access to core team, staff and vendors. The Contractor will report to the City Manager.

E. Estimated Time:

The Contractor will complete the work eight months or less.

Attachment B – Schedule of Pricing

Compensation:

The Contractor will be compensated at a fixed price of \$20,000 per month for a total amount not to exceed \$160,000.

Attachment C – Insurance Requirements

Section 5 Insurance; Bonds. is hereby void as no insurance is required for this agreement.

Attachment D – Warranty

Section 8 Warranty. Subsection (A) and (B) is hereby void as there are no products required for this agreement.

Attachment E – Release of Liability

RELEASE OF LIABILITY AND COVENANT NOT TO SUE

STATE OF TEXAS §

COUNTY OF NUECES §

This release of liability and covenant not to sue (the "Release") is executed on the date indicated below and is entered into for the purpose of releasing the City of Corpus Christi and its officers, officials, employees, representatives, agents, and volunteers (collectively, the "City") from any and all liability whatsoever arising out of, caused by, or in any way connected with, either proximately or remotely, wholly or in part, participation by Peter Collins in providing consulting services to the City, which is the subject of the attached contractual agreement ("Agreement") between Peter Collins and the City.

I, Peter Collins, in exchange for the City allowing me to forego the condition of providing a workers' compensation insurance policy as a requirement of the Agreement, do hereby voluntarily enter into the following covenants:

1. I acknowledge that I, individually, employ no other employees or workers other than myself. I covenant that I will not enter into an employer-employee relationship with any individual or individuals during the term of the Agreement. I acknowledge that the capacity in which I will be participating in the Agreement is that of an independent contractor and not as an employee or agent of the City. I further understand that, as an independent contractor, I will receive no worker's compensation benefits, health benefits, disability benefits, nor other insurance benefits which might be available to full-time employees of the City and that, as an independent contractor, I am fully responsible for incurring the cost of and paying for any medical services that I may require during the term of the Agreement.
2. I understand that I will participate in this Agreement at my own risk and hereby release, waive, and in all ways relinquish any and all present and future claims against the City which I, my heirs, successors, assigns, or any other person or entity (as used hereinafter collectively, "I") may assert, have, or acquire as a result of any injury, death, property damage, or loss whatsoever to myself or my property arising out of, resulting from, or in any way connected with my participation in the Agreement between myself and the City.
3. I hereby so release, waive, and relinquish any and all such claims, and I further covenant not to claim against or sue the City for any such claim, loss, damage, or expense regardless of whether the same may arise or result from or be caused by any negligence or gross negligence of the City.
4. I acknowledge and understand that there may be risks involved in participating in the

Agreement. I voluntarily and knowingly assume any and all such risks and will rely solely on myself and not the City in determining what those risks are.

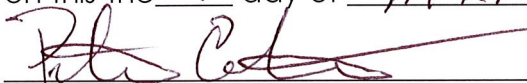
5. I acknowledge that my services under the Agreement may occur on real property located in the city of Corpus Christi, Nueces County, Texas, and that may be owned, leased, controlled, or managed by the City. Further, I acknowledge that my services under the Agreement may be performed with tools, equipment, and other personal property owned, leased, controlled, or managed by the City. By execution of this Release, it is my express intention to completely absolve the City of all potential liability caused by, arising out of, or incident to my performance of services on City real property and that may be performed with tools, equipment, or other personal property of the City.

6. I desire and agree that this Release shall apply to any and all activities during or in any way connected with my participation in the Agreement and my performance thereunder.

7. I agree that this Release shall be governed by and enforceable under the laws of the State of Texas. Venue shall lie in Nueces County, Texas.

8. I hereby acknowledge that I have carefully read the foregoing Release of Liability and Covenant Not to Sue and, intending to be legally bound, accept each of its terms.

EXECUTED IN DUPLICATE, each of which is considered to be an original instrument, on this the 1 day of APRIL, 2019 PEC



Peter Collins

STATE OF TEXAS §
COUNTY OF NUECES §

My name is Peter Edward Collins, my
(First) (Middle) (Last)

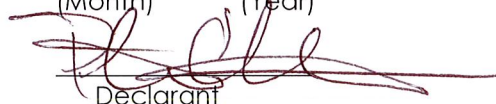
date of birth is 5/29/58, and my address is

150 SINCLAIR CORPUS CHRISTI TX 78411
(Street) (City) (State) (Zip Code)

and United States of America
(Country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Nueces County, State of Texas, on the 1 day of APRIL, 2019
(Month) (Year)


Declarant