

**SERVICE AGREEMENT
PROPERTY INSURANCE COVERAGES**

Service Agreement No. _____

THIS Property Insurance Coverages Agreement ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City"), acting by and through its City Manager or his designee ("City Manager"), and American Financial Insurance Services, Inc., doing business as Borden Insurance, and McGriff, Seibels & Williams of Texas, Inc. (collectively, the latter two entities referred to as the "Contractor"), and is made effective for all intents and purposes upon execution by the City Manager.

WHEREAS Contractor has proposed to provide **PROPERTY INSURANCE COVERAGES** in response to **Request for Proposals Event No. 20**;

WHEREAS the City has determined Contractor to be the lowest responsible proposer;

NOW, THEREFORE, Contractor and City agree as follows:

1. **Services.** Contractor will provide **PROPERTY INSURANCE COVERAGES** in accordance with **Request for Proposals Event No. 20** ("Services"), which request for proposal and all related specifications and clarifications, if any, are attached to this Agreement and incorporated by reference into this Agreement as **Exhibit "A"** as if set out fully herein in their entirety. Contractor's proposal to provide the Services is attached to this Agreement and incorporated by reference into this Agreement as **Exhibit "B"** as if set out fully herein in its entirety.
2. **Term.** The term of this Agreement is **one year**, commencing on May 4, 2015, so long as the Agreement has been executed by the City Manager prior to or on the commencement date. This Agreement includes an option to extend for up to four additional one-year periods subject to the written approval of the Contractor and the City Manager. Written approval to exercise an option may be by letter agreement and must include the applicable property rates and the premium amount to be paid for the applicable one-year period.
3. **Payment.** Contractor shall be paid a total of \$2,752,388 for Services provided pursuant to this Agreement and, in accordance with instructions provided by the Contractor, payment will be made and issued to McGriff, Seibels & Williams of Texas, Inc. Exercise of the first option to extend this Agreement must be at the same property rates as the initial term, and the premiums to be paid by the City will be based on the then-current market price conditions, as agreed to by the parties in advance of exercising the first option and in full compliance with State procurement laws regarding the permissible ceilings for price increases. Exercise of any of the remaining options is subject to the same State procurement laws, with the property rates and the premium amount subject to advance negotiation by the parties.
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. All of the Contractor's notices and communications regarding this Agreement must be directed to the contract administrator, who is the **Risk Manager** ("Contract Administrator").

5. Independent Contractor; Joint and Several Liability.

A. Contractor, jointly represented by Borden Insurance and McGriff, Seibels & Williams, will provide the Services required by this Agreement as independent contractors and will furnish such Services each in its own manner and method, and under no circumstances or conditions may any employee, agent, or representative of the Contractor, or of either of them individually, be considered an employee of the City.

B. Borden Insurance and McGriff, Seibels & Williams, by entering into this Agreement with the City, each independently and voluntarily promise to be and will be held by the City to be jointly and severally liable for the performance of all aspects of the Services to be provided under this Agreement. Each separate promisor, by execution of this Agreement, acknowledges that it is liable for the whole performance of Services jointly assumed. In the event of a default under this Agreement, the City may elect to demand performance or recover from either Borden Insurance or McGriff, Seibels & Williams and, if recovery in particular is sought, the City may bring a separate action against either party or against both parties with respect to such liability, and the City may recover from either party the full amount of any collective liability under this Agreement.

6. Insurance. Before Services can begin under this Agreement, the Contractor's insurance company must deliver to the Contract Administrator a certificate of insurance ("Certificate"), containing the coverages stated in Exhibit A, as proof of the required insurance coverages. Additionally, the Certificate must state that the **Risk Manager** will be given at least thirty (30) days' advance notice by certified mail of cancellation, material change in the coverages, 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 15 days of the City Manager's written request to the Contractor.

7. Assignment. No assignment of this Agreement nor any right or interest held by the Contractor under this Agreement is effective unless the City Manager first gives written consent to such assignment in advance. The performance of this Agreement by the Contractor is the essence of this Agreement, and the City's decision to withhold consent to such an assignment is within the sole discretion of the City Manager on any ground whatsoever.

8. Fiscal Year. All parties recognize that the continuation of any contract after the close of any fiscal year of the City, which fiscal year ends each September 30th, is subject to budget approval and appropriations providing for such contract item as an expenditure in the annual fiscal budget. The City does not represent that a budget item for this Agreement will be actually adopted, as that determination is within the sole discretion of the City Council at the time of adoption of each fiscal budget.

9. Waiver. No waiver by either party of any breach of any term or condition of this Agreement or its exhibits waives any subsequent breach of the same.

10. Compliance with Laws; Venue. This Agreement is subject to all applicable federal, State and local laws, rules, and regulations. All duties of the parties will be performed in Corpus Christi, Texas. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and the forum and venue for such disputes is the appropriate district or county court in and for Nueces County, Texas.

11. Subcontractors. The 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 **Risk Manager**. 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 are applicable to all subcontractors and their employees to the same extent as if the Contractor and its employees had performed the Services.

12. **Amendments.** This Agreement may be amended only in writing and signed by persons authorized to execute such instruments by each party.

13. **Termination.**

A. The City Manager may terminate this Agreement for the Contractor's failure to perform the Services specified in this Agreement and its exhibits. 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 stated in the notice, the City Manager may terminate this Agreement immediately thereafter.

B. Failure to keep all insurance policies in force for the entire term of the Agreement constitutes a material breach and is grounds for termination. Upon the Contract Administrator's receipt of the required notice of any change in coverage, the Contract Administrator will provide the Contractor with written notice of same and give the Contractor a reasonable opportunity to cure. If the Contractor fails to cure within the specified cure period, the City may terminate the Agreement immediately thereafter.

C. Alternatively, the City may terminate this Agreement, with or without cause, upon twenty (20) days' advance written notice to the Contractor. However, the City may terminate this Agreement upon twenty-four (24) hours' advance written notice to the Contractor for the Contractor's failure to pay any required taxes or to provide proof of payment of taxes as set out in this Agreement.

14. **Taxes.** The Contractor covenants to pay all payroll taxes, Medicare taxes, FICA taxes, unemployment taxes, and all other taxes in accordance with Circular E, "Employer's Tax Guide", Publication 15, as it may be amended, and applicable federal and State laws. Upon request, the City Manager shall be provided proof of payment of these taxes by the Contractor within fifteen (15) days of such request.

15. **Notice.** Notice must be given by personal delivery, facsimile (fax), or by certified mail, postage prepaid and return receipt requested, and is deemed received on the date hand-delivered or faxed, with proof of accepted transmission, and on the third day after deposit in the U.S. mail if sent by certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi
Attention: Risk Manager
P. O. Box 9277
Corpus Christi, Texas 78469-9277
Fax # 361-826-3697

IF TO CONTRACTOR:

Contractor	<u>Borden Insurance</u>
Contact Person:	<u>MICHAEL SWANTNER</u>
Address:	<u>P.O. BOX 1066.</u>
City, State, ZIP	<u>CORPUS CHRISTI, TX. 78403-1066</u>
Fax #:	<u>361 693 1766 = DIRECT FAX</u>
	<u>361 693 1766 = DIRECT PHONE</u>

and

IF TO CONTRACTOR:

Contractor McGriff, Seibels & Williams of Texas, Inc.
Contact Person: Johnny Fontenot
Address: 5080 Spectrum Drive, Suite 900E
City, State, ZIP Addison TX 75001
Fax #: 469/232-2101

16. **Month-to-Month Extension.** If the City has not completed the procurement process and awarded a new agreement upon expiration of the original contract term or any extension period, the Contractor shall continue to provide the Services under this Agreement at the most current price, in accordance with the terms and conditions of this Agreement, on a month-to-month basis not to exceed six months. Any month-to-month provision of Services by the Contractor automatically terminates on the effective date of a new contract.

17. **Severability.** Each provision of this Agreement is severable and if, for any reason, any such provision or any part thereof is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or 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 thereof had been omitted.

18. INDEMNIFICATION. CONTRACTOR SHALL 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 WHATSOEVER ON ACCOUNT OF DEATH, PERSONAL INJURIES, PROPERTY LOSS OR DAMAGE, OR ANY OTHER KIND OF LOSS OR DAMAGE, AND 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 THE SERVICES REQUIRED UNDER THIS AGREEMENT, REGARDLESS OF WHETHER THE INJURIES, DEATH, OR DAMAGES OR LOSS ARE CAUSED OR ARE CLAIMED TO BE CAUSED BY THE CONCURRENT OR CONTRIBUTORY NEGLIGENCE OF INDEMNITEES, BUT NOT IF BY THE SOLE NEGLIGENCE OF INDEMNITEES UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR GROUP. CONTRACTOR MUST, AT ITS SOLE EXPENSE, INVESTIGATE ALL NOTICES, CLAIMS, AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL REASONABLY SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS

SECTION SURVIVES THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

19. **Precedence of Documents.** In the event of a conflict in the documents comprising this Agreement, the parties agree that first precedence must be given to this fully executed contract; second precedence must be given to any amendment of this Agreement, including the written exercise of any option; third precedence must be given to Exhibit A, including any questions, answers, and issued addenda; and fourth precedence must be given to Exhibit B, including as Contractor may have clarified such proposal in writing.

Contractor: Borden Insurance

Signature: Michael Swantner
Printed Name: MICHAEL SWANTNER
Title: VICE PRESIDENT

Date: 04/02/2015

Contractor: McGriff, Seibels & Williams

Signature: JL FT
Printed Name: Johnny Fontenot
Title: Executive Vice President

Date: 4-2-15

CITY OF CORPUS CHRISTI

Signature: _____
Printed Name: Gabriel Maldonado
Title: Interim Procurement Manager

Date: _____

Incorporated by Reference:

Exhibit A: Request for Proposal Event No. 20 (Available and attached upon request)

Exhibit B: Contractor's Proposal (Available and attached upon request)