

# CONTRACT

## **Service Agreement for the purchase of software license, installation and maintenance support of ActiveG software**

Service Agreement No. \_\_\_\_\_

THIS **service agreement for the purchase of software license, installation and maintenance support of ActiveG software** (this "Agreement") is entered into by and between **ActiveG, LLC**, (the "Contractor") and the City of Corpus Christi, a Texas home-rule municipal corporation (the "City"), by and through its duly authorized City Manager or his designee ("City Manager"), effective for all purposes upon execution by the City Manager.

WHEREAS Contractor has proposed to provide **software license, installation and maintenance support of ActiveG software** in accordance with its proposal dated June 14, 2014;

WHEREAS the City has determined Contractor to be well qualified to perform proposed services;

NOW, THEREFORE, Contractor and City enter into this Agreement and agree as follows:

1. **Services.** Contractor will provide **software license**, and perform **installation and maintenance support of ActiveG software** in accordance with **its proposal dated June 14, 2014** ("Exhibit A"). Exhibit A is attached to this Agreement, the terms of which are incorporated by reference as if set out herein in their entirety. The total not to exceed price to be paid to the Contractor for the services is **\$177,000.00**.

2. **Term.** This Agreement commences on the date signed by the last signatory hereto and continues for 6 months thereafter.

3. **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 or communications regarding this Agreement must be directed to the Contract Administrator, who is the IT Program Coordinator of MIS.

4. **Independent Contractor.** Contractor will perform the services hereunder as an independent contractor and will furnish such services in its own manner and method, and under no circumstances or conditions may any agent, servant or employee of the Contractor be considered an employee of the City.

5. **Insurance.** Before activities can begin under this Agreement, the Contractor's insurance company(ies) must deliver a Certificate of Insurance, as proof of the required insurance coverages to the Contract Administrator. The types of insurance and coverage limits required under this Agreement are as shown in Exhibit B, which exhibit is attached to this Agreement and the terms of which are incorporated by reference as if set out herein in their entirety. Additionally, the Certificate must state that the IT Program Coordinator of MIS will be given at least thirty (30) days 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.

6. **Assignment.** No assignment of this Agreement or any right or interest therein by the Contractor is effective unless the City first gives its written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement and the City's right to withhold consent to such assignment is within the sole discretion of the City on any ground whatsoever.

7. **Fiscal Year.** All parties recognize that the continuation of any contract after the close of any fiscal year of the City (the City's fiscal year ends on September 30<sup>th</sup>), is subject to appropriations and budget approval providing for covering such contract item as an expenditure in said budget. The City does not represent that said budget item will be actually adopted as that determination is within the sole discretion of the City Council at the time of adoption of each budget.

8. **Waiver.** No waiver of any breach of any term or condition of this Agreement, or the Contractor's proposal waives any subsequent breach of the same.

9. **Compliance with Laws.** This Agreement is subject to all Federal laws and laws of the State of Texas. All duties of the parties will be performed in the City of Corpus Christi, Texas. The applicable law for any legal disputes arising out of this Agreement is the law of Texas and such form and venue for such disputes is the appropriate district, county or justice court in and for Nueces County, Texas.

10. **Subcontractors.** The Contractor may use its named subcontractor in connection with the work performed under this Agreement. When using any additional subcontractors, however, the Contractor must obtain prior written approval from the IT Program Coordinator of MIS. 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.

11. **Amendments.** This Agreement may be amended only by written Agreement duly authorized by the parties hereto and signed by the parties.

12. **Termination.** The City Manager may terminate this Agreement for Contractor's failure to perform the services specified in accordance with **its proposal dated June 14, 2014**. Failure to keep all insurance policies in force for the entire term of this Agreement is grounds for termination. 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.

Alternatively, the City may terminate this Agreement upon twenty (20) days written notice to the Contractor. However, the City may terminate this Agreement on twenty-four (24) hours written notice to the Contractor for failure to pay or provide proof of payment of taxes as set out herein.

13. **Taxes.** The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other related taxes according to Circular E Employer's Tax Guide, Publication 15, as it may be amended. Upon his request, the City Manager shall be provided proof

of payment of these taxes within fifteen (15) days of such request. Failure to pay or provide proof of payment is grounds for the City Manager to immediately terminate this Agreement.

14. **Drug Policy.** The Contractor must adopt a Drug Free Workplace and drug testing policy.

15. **Violence Policy.** The Contractor must adopt a Violence in the Workplace and related hiring policy.

16. **Notice.** Notice may be given by fax, hand delivery or certified mail, postage prepaid, and is received on the day faxed or hand-delivered and on the third day after deposit if sent certified mail. Notice shall be sent as follows:

IF TO CITY:  
City of Corpus Christi  
Attention: **Director of Information Systems**  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277  
Fax No.: (361) 826-3735  
E-mail: MichaelAr@cctexas.com

IF TO CONTRACTOR:

Contractor ActiveG, LLC  
Contact Person: Andrew Stewart  
Address: 1411 E University Dr  
City, State, Zip: Mesa, Arizona, USA 85203  
Phone No.: 480-610-0839  
E-Mail: andy.stewart@activeG.com

17. **Month-to-Month Extension.** If the City has not completed the procurement process and awarded a new Agreement upon expiration of the original contract period or any extension period, the Contractor shall continue to provide goods/services under this Agreement, at the most current price under the terms of this Agreement or extension, on a month-to-month basis, not to exceed six months. This Agreement automatically expires on the effective date of a new contract.

18. **Severability.** Each provision of the Agreement shall be considered to be 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.

19. **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 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 CONTRACT OR THE PERFORMANCE OF THIS CONTRACT, REGARDLESS OF WHETHER THE INJURIES, DEATH OR DAMAGES ARE CAUSED OR ARE CLAIMED TO BE CAUSED BY THE CONCURRENT OR CONTRIBUTING NEGLIGENCE OF INDEMNITEES, BUT NOT BY THE SOLE NEGLIGENCE OF INDEMNITEES UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR GROUP. 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 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 CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR SOONER TERMINATION OF THIS AGREEMENT.**

SIGNED this 26 day of June, 2014.

Contractor ActiveG, LLC



Digitally signed by Andy Stewart  
DN: cn=Andy Stewart, o=activeG, ou,  
email=andy.stewart@activeg.com, c=US  
Date: 2014.06.26 08:58:27 -0700'

Andrew Stewart

Title: Manging Partner

CITY OF CORPUS CHRISTI

\_\_\_\_\_  
Christela Morales  
Procurement Manager

Exhibit A: ActiveG proposal dated June 14, 2014

Exhibit B: Insurance Requirements

CITY OF CORPUS CHRISTI  
PURCHASING DIVISION

SERVICE AGREEMENT

EXHIBIT A: Contractor's proposal is available upon request.

EXHIBIT B: Insurance Requirements are available upon request.