

**SERVICE AGREEMENT FOR
RFP #56-0-2016/JM, Access Control Continuing Service Contract for Repairs and Replacements
(Re-Bid)**

THIS AGREEMENT, made this 31st day of, AUG 2016, by and between the City of Palm Bay, 120 Malabar Road, SE, Palm Bay, FL 32907, a Florida municipal corporation and political subdivision of the State of Florida, hereinafter referred to as City and SecurPoint Corporation (FEI/EIN Number 27-1725245), 1814 Sarno Road, Melbourne, Florida, 32935, hereinafter referred to as "Contractor", for the term specified herein, with the City having the option to extend this Agreement for an additional period of time, upon mutual agreement of the parties, therefore, for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

WITNESSETH:

I. DOCUMENTS

The following documents are hereby incorporated into and made part of this agreement.

- (i) Specifications and Contract Documents prepared by the City of Palm Bay, "Access Control Continuing Service Contract for Repairs and Replacements (Re-Bid)" RFP #56-0-2016/JM (Exhibit A).
- (ii) Proposal for the City of Palm Bay prepared by Contractor dated May 18, 2016, (Exhibit B).

All exhibits may also be collectively referred to as the "Documents". In the event of any conflict between the Documents or any ambiguity or missing specifications or instruction, the following priority is established:

- A. Specific direction from the City Manager (or designee).
- B. This Agreement dated AUG 31, 2016 and any attachments.
- C. Exhibit A
- D. Exhibit B

II. SCOPE

The Contractor is to perform the Work under the general direction of the City as defined in the Request for Proposal and amendments, if any, the Request for Proposal and any amendments thereto being attached hereto as Exhibit "A" (CITY's Request for Proposal documents), incorporated by reference herein and made a part thereof as fully as if herein set forth.

Unless otherwise specified herein, the Contractor is to furnish all materials, tools, equipment, manpower, and consumables to complete the Work.

By signing this Agreement, the Contractor represents that it has thoroughly inspected the work site (as described in the Documents) and the weather, soil and water conditions that may affect it,

and has thoroughly reviewed the documents incorporated into this Agreement by reference and that it accepts the work and the conditions under which the work is to be performed.

III. TERM OF AGREEMENT

The period of this Agreement shall be for twelve (12) months, beginning on August 15, 2016 and ending on August 14, 2017. This Agreement may, by mutual written assent of the parties, be extended for four (4) additional twelve (12) month periods or portions thereof, up to a cumulative total of sixty (60) months.

IV. COMPENSATION

The Contractor agrees to provide the services and materials as specified in its proposal to the City at the cost specified in said proposal as follows:

Percentage of Mark-Up for Parts	1 %
STANDARD Hourly Rate – Monday through Friday, 7:00 am – 5:30 pm	\$ 85.00
OVERTIME Onsite Hourly Rate – Monday through Friday, 5:30 pm – 7:00 am	\$ 95.00
OVERTIME Onsite Hourly Rate – Saturday and Sunday and holidays observed by the City	\$ 95.00
OVERTIME Remote Hourly Rate – via Telephone or Network Service, on Monday through Friday from 5:30 pm to 7:00 am, and on Saturday and Sunday and holidays observed by the City	\$ 0

and amendments, if any, the proposal and any amendments thereto being attached hereto as Exhibit "B", incorporated by reference herein and made a part hereof as fully as if herein set forth.

The amount as specified in Exhibit "B" may be increased or decreased by the City under this Agreement, through the issuance of a written Addendum.

Any prices specified in this Agreement or Addendum thereto, will remain firm for the term of this Agreement or Addendum period.

V. PAYMENT

Upon acceptance of work by using department of the City, employees and others, the City shall make payment to the Contractor in accordance with the Local Government Prompt Payment Act, Chapter 218, Florida Statutes.

The City reserves the right, with justification, to partially pay any invoice submitted by the Contractor when requested to do so by the using City department. All invoices shall be directed to the Accounts Payable Section, City of Palm Bay, 120 Malabar Road, SE, Palm Bay, FL 32907.

NOTE: ALL INVOICES MUST CLEARLY INDICATE THE CITY PURCHASE ORDER NUMBER.

VI. GENERAL CONDITIONS**A. Patents**

The Contractor shall pay all royalties and assume all costs arising from the use of, including but not limited to, any invention, design, process, materials, equipment, product or device in performance of the Work, which is the subject of patent rights or copyrights. For other good and valuable consideration, Contractor shall, at its own expense, hold harmless and defend the City, and all persons and entities defined as the "City" elsewhere in this Agreement (hereinafter and through the Agreement as "City"), against any claim, suit or proceeding brought against the City which is based upon a claim, whether rightful or otherwise, that the Work, or any part thereof, furnished under this Agreement, constitutes an infringement of any patent or copyright of the United States or any other country. The Contractor shall pay all damages and costs awarded against and/or assessed or paid by the City and acknowledges other and additional good and valuable consideration for this provision. This provision is supplemental to the following Section B.

B. Indemnification

For other and additional good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Contractor, including but not limited to the Contractor's officers, officials, employees, representatives, agents, contractors officers, etc., subcontractors and their officers, etc. (hereinafter Contractor) hereby agrees to indemnify, hold harmless and defend the City of Palm Bay, including but not limited to it's officers, agents, subcontractors, officers, officials, representatives, volunteers, employees and all those others acting on the City's behalf (hereinafter City) against any and all liability, loss, cost, damages, expenses, claims or actions of whatever type or nature, including but not limited to attorney and expert fees and suit cost, for trials and appeals, that the City may pay, sustain, or incur arising wholly or in part due to any negligent or deliberate act, error or omission of Contractor in the execution, performance or non-performance or failure to adequately perform Contractor's obligation pursuant to this Agreement.

Nothing contained in this Agreement is in any manner intended either to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28 Florida Statutes, or to extend the City's liability beyond the limits established in said Section 768.28. No claim or award against the City shall include attorney's fees, investigative costs, extended damages, expert fees, suit costs or pre-judgment interest.

In addition, Contractor shall indemnify, defend and hold harmless City against all liability, costs, expense, expert witnesses' fees, attorney's fees, claims, losses or damages that

the City may incur arising from the following:

- (1) A violation by Contractor of any applicable federal, state or local law, rule or regulation including, without limitation, performance conditions in this Agreement;
- (2) Any penalty or fine incurred by or assessed against City to the extent caused by any act of the Contractor;
- (3) Any injury, illness, disease, death or other harms suffered or incurred by any employee of Contractor, resulting from the failure of Contractor to comply with applicable health and safety procedures, regardless of whether or not the entity involved has adopted OSHA or EPA safety and health protocols and procedures;
- (4) Any patent or copyright infringement by Contractor;
- (5) Any lien or other claim by contractor inconsistent with this Agreement;
- (6) Any obligation of City resulting from Contractor's errors, omissions or breach of obligation.

C. Environmental Health and Safety

Contractor shall place the highest priority on health and safety and shall maintain a safe working environment during performance of the Work. Contractor shall comply, and shall secure compliance with all applicable environmental, health, safety and security laws and regulations, and performance conditions in this Agreement. Compliance with such requirements shall represent the minimum standard required of Contractor. Contractor shall be responsible for examining all federal, state and local requirements and determine whether additional or more stringent environmental, health, safety and security provisions are required for the Work. Contractor agrees to utilize protective devices as required by applicable laws, regulations, and any industry or Contractor's health and safety plans and regulations, and to pay the costs and expenses thereof, and warrants that all such persons shall be fit and qualified to carry out the Work.

Nothing contained in this Agreement shall affect Contractor's status as an independent contractor. Contractor shall ensure that the provisions of this Agreement are made binding on all persons or entities who perform on Contractor's behalf. A violation of this provision shall be considered to be a material and substantial breach of this Agreement.

D. Termination

The City reserves the right to terminate this contract without cause by giving thirty (30) days prior notice to the contractor in writing of the intention to terminate or with cause if at any time the contractor fails to fulfill or abide by any of the terms or conditions specified.

Failure of the Contractor to comply with any of the provisions of this Agreement shall be considered a material breach of Agreement and shall be cause for immediate termination of the Agreement at the discretion of the City.

In the event sufficient budgeted funds are not available for a new fiscal period, the City shall notify the contractor of such occurrence and Agreement shall terminate on the last day of current fiscal period without penalty or expense to the City.

In addition to all other legal remedies available to the City, City reserves the right to terminate and obtain from another source, any items which have not been delivered within the period of time stated in the proposal, or if no such time is stated, within a reasonable period of time from the date of order as determined by the City.

E. Warranty

The Contractor warrants that the Work including, but not limited to the equipment, materials and employees provided shall conform to professional standards of care and practice in effect at the time the Work is performed, shall be of the highest quality and be free from all faults, defects or errors. Whenever required by the specifications of the Request for Proposal, the Contractor warrants that all equipment and materials provided shall be new. If the Contractor is notified in writing of a fault, deficiency or error in the equipment, materials, Work or criminal records of employees provided within ten (10) days from the discovery of any fault, deficiency or error of the Work, the Contractor shall, at the City's option, either: 1) re-perform such portions of the Work to correct such fault, defect or error, at no additional cost to the City, or 2) refund to the City, any amounts paid by the City that are attributable to such portions of the faulty, defective or erroneous Work, including the costs for re-performance of the work provided by other Contractors.

ALL EQUIPMENT AND MATERIALS PROVIDED AND USED BY THE CONTRACTOR SHALL BE MERCHANTABLE AND BE FIT FOR THE PURPOSE INTENDED.

THE CONTRACTOR SHALL BE LIABLE FOR SECONDARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE RESULTING FROM ANY WORK PERFORMED UNDER THIS AGREEMENT.

F. Time of Completion

The parties understand and agree that time is of the essence in the performance of this Agreement. Neither the Contractor nor the City shall be liable for any loss or damage resulting from any delay or failure to perform its contractual obligations within the time specified due to but not limited to acts of God, any force majeure, actions or regulations by any governmental entity or representative, strikes or other labor trouble, fire, natural or man-made disasters, or any other causes, contingencies or circumstances not subject

to either the Contractor's or City's control, that prevent or hinder the performance of the Contractor's or City's contractual obligations. Any such causes of delay, even though existing on the date of the Agreement or on the date of the start of Work, shall extend the time of the Contractor's or City's performance by the length of the delays occasioned thereby, including delays reasonably incident to the resumption of normal Work schedules. However, under such circumstances as described herein, the City may at its discretion, cancel this Agreement at its sole discretion for the convenience of the City and the Contractor shall only be entitled to compensation for all work satisfactorily performed and the limitation of damages provision contained in Section VII - LIMITATION OF LIABILITY shall apply.

G. Liquidated Damages

Parties agree that damages are difficult to determine but the following liquidated damages are agreed to be a reasonable cost for any delays: If the Contractor shall neglect, fail or refuse to complete the Work within the time specified, or any proper extension thereof granted by the City, then the Contractor hereby agrees, as part consideration for awarding the Agreement, to pay the City the sum of One-Hundred Dollars (\$100.00), for each and every calendar day that the Contractor shall be in default after the time stipulated in the Agreement for completing the Work. The Contractor and City acknowledge and agree that said sum is not a penalty but liquidated damages for breach of contract.

The City and Contractor agree that the damages that will be incurred by the City as a result of Contractor's delay in meeting a completion date are of a kind difficult to accurately estimate, and the Contractor further agrees that the amount herein provided is a reasonable forecast of the damages that will actually be incurred by the City in the event of any such delay and not a penalty.

For other and additional good and valuable consideration the receipt of which is hereby acknowledged by the parties hereto, the Contractor covenants and agrees that in the event of any delay of construction and notwithstanding the reason for the delay or who caused the delay or whether it was caused by the City, that there will be no entitlement to Contractor to or for any direct or indirect office financial damages, expenses, impacts or losses for extended corporate or office overhead impacts, extended project overhead impacts, project support services, extended support services impacts, inadequate drainage system impacts, unsuitable subsurface conditions impacts, non-cooperation of Contractor's, subcontractors or any independent, non-affiliated contractors impacts for other contractors' conduct or failure to perform, or by whatever other label or legal label, concept or theory, or any business damages, or business losses, or financial impacts of whatever type or nature, and Contractor hereby waives any right to make any such claim

or claims. This provision will have no application or effect when construction delays are anticipated and agreed upon by both the City and the Contractor.

H. Insurance Requirements:

The Contractor, and its subcontractors, subconsultants, assignees and suppliers, at its own expense, shall keep in force and at all times maintain during the term of this Agreement:

a. **Commercial General Liability:** The contractor shall provide minimum limits of \$1,000,000.00 each occurrence, \$1,000,000.00 annual aggregate combined single limit for bodily injury and property damage liability. This shall include premises/operations, independent contractors, products, completed operations, broad form property damage, personal and advertising injury, and contractual liability, specifically confirming and insuring the indemnification and hold harmless clause of the contract. This policy of insurance shall be considered primary to and not contributing to any insurance maintained by the City of Palm Bay and shall name the City of Palm Bay as an additional insured. The policy of insurance shall be written on an "occurrence" basis and form.

b. **Automobile Liability:** Contractor shall provide minimum limits of liability of \$1,000,000.00 each accident, combined single limit for bodily injury and property damage. This shall include coverage for:

- Owned Automobiles
- Hired Automobiles
- Non-Owned Automobiles

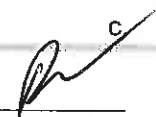
Workers' Compensation Coverage:

Full and complete Workers' Compensation Coverage, including coverage for Employer's Liability, as required by State of Florida law, shall be provided.

Insurance Certificates:

The City of Palm Bay is to be specifically included on all certificates of insurance (with exception to Workers Compensation) as an additional insured. All certificates must be received prior to commencement of service/work. In the event the insurance coverage expires prior to the completion of this contract, a renewal certificate shall be issued thirty - (30) days prior to said expiration date. The certificate shall provide a thirty - (30) day notification clause in the event of cancellation or modification to the policy.

The Contractor shall declare any self-insured retention or deductible amount in excess of \$5,000 for any policy. The City reserves the right to reject any self-insured retention or deductible in excess of \$5,000.


Initial Here

c

f.

All insurance carriers shall be rated (A) or better by the most recently published A.M. Best Rating Guide. Unless otherwise specified, it shall be the responsibility of the contractor to insure that all subcontractors comply with the insurance requirements set forth in this Agreement. The City may request a copy of the insurance policy according to the nature of the project. City reserves the right to accept or reject the insurance carrier.

Contractor shall obtain insurance on an "occurrence" basis if such insurance is available at commercially reasonable premium costs. Any insurance on a "claim made" basis shall be maintained for at least three (3) years after acceptance of the Work.

I. Acceptance

The City will be deemed to have accepted the Work after the Purchasing Agent is notified by the appropriate City department(s) of its satisfaction that the work for their respective department(s) is completed.

J. Correction of Work

The Contractor shall promptly correct all Work rejected by the City for failing to conform to this Agreement. The Contractor shall bear all costs of correcting such rejected Work.

K. Right to Audit Records

The City reserves the right to audit the records of the Contractor related to this Agreement at any reasonable time during the prosecution of the work included herein. The Contractor agrees to provide copies of any records necessary to substantiate payment requests to the City as may be requested by the City, solely at the cost of reproduction.

L. Public Records

The City is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records law. Specifically, the Contractor shall:

- a. Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform this service.
- b. Provide the public agency with access to public records at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
- c. Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and
- d. Meet all requirements for retaining public records and transfers to the City, at no cost, all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential

and exempt. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

The failure of the Contractor to comply with the provisions set forth in this section shall constitute a material breach of Agreement and shall be cause for immediate termination of the Agreement.

If the contractor has questions regarding the application of Chapter 119, Florida Statutes, to the contractor's duty to provide public records relating to this contract, contact the custodian of public records at the City of Palm Bay Purchasing and Contracts Division, 120 Malabar Road, SE, Palm Bay, Florida, 32907, 321-952-3424, purchasing@pbfl.org.

M. Time is of the Essence

The parties agree that time is of the essence in the completion of the Work called for under this Agreement. By executing this Agreement, Contractor affirms that it believes the schedule to be reasonable; provided, however, the parties acknowledge that the schedule might be modified as the City directs.

The Contractor agrees that all Work shall be prosecuted regularly, diligently, and uninterrupted at such a rate of progress that will ensure full completion thereof within the time specified.

N. Information

All information, including but not limited to data, documents, plans, and specifications furnished to or developed for the City by the Contractor or its employees, pursuant to this Agreement, excluding previously copywritten materials, shall be the sole property of the City and all rights therein are reserved by the City, except that the Contractor may disclose any such information to its corporate affiliates and their agents.

N. Extra Work

The City, without invalidating this Agreement, may order changes in the Work within the general scope of this Agreement consisting of additions, deletions, or other revisions, the Agreement price and time being adjusted accordingly. All such changes in the Work shall be authorized by written Addenda to this Agreement, and shall be executed under the applicable conditions of the Agreement.

If the Contractor plans to make a claim for an increase in the Agreement price or an extension in the Agreement Schedule/Term, written notice shall first given to the City within ten (10) calendar days after the occurrence of the event giving rise to such a claim.

To the City: Purchasing Agent
City of Palm Bay
120 Malabar Road, SE
Palm Bay, FL 32907

With a copy to: City Manager
City of Palm Bay
120 Malabar Road, SE
Palm Bay, FL 32907

T. No Liens

Contractor acknowledges that Contractor or any other person directly or indirectly acting for or through Contractor are legally unable to file a mechanic's or construction lien against the real property on which the work is performed or any part thereof or against any personal property or improvements thereon or make a claim against any monies due or to become due from the City to Contractor for or on account of any work, labor, services, material, equipment, or other items furnished in connection with the Work or any change order, Contractor agrees to inform all subcontractors of such inability and further agrees to satisfy, remove, or discharge any liens or claims that may be filed at its own expense by bond, payment, or otherwise within twenty (20) days of the filing thereof or from receipt of written notice from the City.

Additionally, until such time as such lien or claim is satisfied, removed or discharged by Contractor, all monies due to Contractor or that become due to Contractor before the lien or claim is satisfied, removed or otherwise discharged shall be held by City as security for the satisfaction, removal and discharge of such lien and any expense that may be incurred while obtaining such. If Contractor shall fail to do so, City shall have the right, in addition to all other rights and remedies provided by this Agreement or by law, to satisfy, remove, or discharge such lien or claim by whatever means City chooses at the entire and sole cost and expense of Contractor which costs and expenses shall, without limitation hereby, include attorney's fees, litigation costs, fees and expenses and all court costs and assessments.

VII. LIMITATION OF LIABILITY

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action arising out of this Agreement. For other and additional good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Contractor expresses its willingness to enter into this Agreement with the knowledge that the Contractor's recovery from the City to any action or claim arising from the Agreement is limited to a maximum amount of the contract value less the amount of all funds actually paid by the City to Contractor pursuant to this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any manner intended either to be a waiver of the limitation placed upon the City's


liability as set forth in Section 768.28, Florida Statutes, or to extend the City's liability beyond the limits established in said Section; and no claim or award against the City shall include attorney fees, investigative costs, expert fees, suit costs or pre-judgment interest. This section shall not prevent the City from taking corrective action against the Contractor.

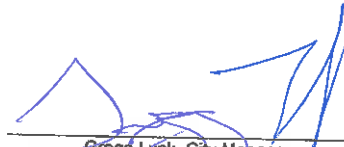
VIII. MISCELLANEOUS PROVISIONS

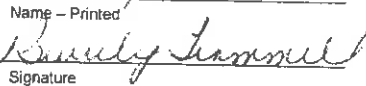
- A. The Contractor shall comply with all applicable federal, state and local laws, ordinances, rules and regulations pertaining to the performance of Work under this Agreement.
- B. The Contractor's employees are required to obtain, at no charge, from the City's Human Resources Department, a security identification badge prior to performance of its awarded contract. This law is established by the City Council through the City Ordinance Number 2007-48, Public Protection Act, as amended by City Ordinance Number 2007-96, with an effective date of November 15, 2007.
- C. No waiver, alterations, consent or modification of any of the provisions of this Agreement shall be binding unless written and signed by the City Manager.
- D. The Contractor shall procure all permits, licenses, and certificates, or federal, state and local laws, ordinances, rules, and regulations, for the proper execution and completion of the Work under this Agreement, including any approvals of plans or specifications as may be required.
- E. Award of this contract shall impose no obligation on the City to utilize the vendor for all work of this type, which may develop during the contract period. This is not an exclusive contract. The City specifically reserves the right to concurrently contract with other companies for similar work if it deems such action to be in the City's best interest. In the case of multiple-term contracts, this provision shall apply separately to each term.
- F. This Agreement shall be governed by and construed according to the laws of the State of Florida, and the rights of the parties hereto shall be construed and be subject to the laws of the State of Florida. The parties hereby waive the right to a trial by jury in any action, proceeding or counterclaim brought or filed by either of them against the other. Venue for any court action arising out of this Agreement shall be in Brevard County, Florida.
- G. The undersigned hereby certify that this Agreement is made without prior understanding, agreement or connection with any corporation, firm or person who submitted bids for the Work covered by this Agreement and is in all respects fair and without collusion or fraud. As to Contractor, the undersigned hereby warrants and certifies that he/she is authorized to enter into this Agreement and to execute it on behalf of the Contractor as the act of the said Contractor, and the City will rely upon such execution by the Contractor's representative.
- H. There are no third party beneficiaries intended to be bound by or to enforce this Agreement.
- I. This Agreement, including Exhibits "A" and "B", contains all the terms and conditions agreed upon by the parties. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the date first written above

CITY OF PALM BAY, FLORIDA

ATTEST

Terese Jones, City Clerk

By: 
Gregg Lynk, City Manager

WITNESS:
BEVERLY TRAMMELL
Name - Printed

Signature

CONTRACTOR

By: 
Signature

Brian Morgan
Name and Title

SECURITY
Name of Company

PO BOX 101052
Mailing Address

PALM BAY FL 32909
City, State, Zip

321-676-7094
Telephone Number