

Fingerprint/Palm Print Identification System

**CITY OF PORT SAINT LUCIE
CONTRACT FORM**

This CONTRACT, executed this _____ day of _____, 2004, by and between the CITY OF PORT ST. LUCIE, FLORIDA, a municipal corporation, duly organized under the laws of the State of Florida, hereinafter called "City" party of the first part, and **SPEX Forensics/JY, Inc, 3880 Park Ave, Edison, New Jersey 08820** Telephone No. (732) 494-8660, Fax No. (732)549-5125, hereinafter called "Contractor", party of the second part.

RECITALS

In consideration of the below agreements and covenants set forth herein, the parties agree as follows: for the City to purchase a Fingerprint/Palm Print Identification System per primary proposal #q011204-1.

CONTRACT SUPERVISOR

As used herein the contract supervisor shall mean Ron Schoner, at (772) 344-4050, or his designee.

SECTION I

DESCRIPTION OF SERVICES TO BE PROVIDED

The specific work that the Contractor has agreed to perform pursuant to the Bid Specifications and the bid reply made a part of this Contract is Fingerprint/Palm Print Identification System in Bid #20040018/JS as referred to therein.

SECTION II

TIME OF PERFORMANCE

Contract period shall commence March 8, 2004 and terminate March 7, 2005. Warranty period will commence upon completion of installation and training of **ALL** parts of the system. In the event all work required in the bid specifications has not been completed by the specified date, the Contractor agrees to provide work as authorized by the Contract Supervisor until all work specified in the bid specifications has been rendered.

SECTION III

COMPENSATION

The total amount to be paid by the City to the Contractor for this purchase is **\$113,395.00**, which amount is an addition to the ten-dollar (\$10.00) payment for indemnification as provided in Section V herein. Two – (2) extra days of training (on-site, same week as installation) is included in the purchase total. Additional service/maintenance/training/support will be available at \$185.00/hour with a twelve – (12) hour minimum. Following the warranty period, five – (5) additional events per year – any combination of Phone/Email/Fax/Modem at \$500.00. Payments will be disbursed full upon completion of service provided Contract #20040018 Page 1 of 9 Fingerprint/Palm Print Identification System

Supervisor approves invoice as provided in Section XII. Contractor shall invoice the City for the amount of the indemnification payment and said invoice shall accompany the signed Contracts.

The Contractor shall not be paid additional compensation for any and/or loss, or damage, arising out of the nature of the work, from the action of the elements, or from any delay or unforeseen obstruction or difficulties encountered in the performance of the work, or for any expenses incurred by or in consequence of the suspension or discontinuance of the work. The City will not pay travel expenses for installation, training, or service personnel.

Invoices for services shall be submitted once a month, by the 10th of the month, and payments shall be made within thirty - (30) days unless contractor has chosen to take advantage of the Purchasing

Card Program, which guarantees payment within several days. Payments shall be made provided the submitted invoice is accompanied by adequate supporting documentation and approved by Contract Supervisor as provided in Section XII.

No payment for projects involving improvements to real property shall be due until Contractor delivers to City a complete release of all claims arising out of the contract or receipts in full in lieu thereof, and an affidavit on his personal knowledge that the releases and receipts include labor and materials for which a lien could be filed.

All invoices and correspondence relative to this contract must contain the Purchase Order number and contract number.

SECTION IV CONFORMANCE WITH BID

It is understood that the materials and/or work required herein are in accordance with the bid made by the Contractor pursuant to the Invitation to Bid and Specifications on file in the Office of Management and Budget of the City. All documents submitted by the Contractor in relation to said bid, and all documents promulgated by the City for inviting bids are, by reference, made a part hereof as if set forth herein in full.

SECTION V INDEMNIFICATION/INSURANCE

The Contractor shall indemnify, defend, and hold harmless the City, its representatives, employees and elected and appointed officials, from and against all claims, cause, demands, legal fees, cost of action, losses, damages or other expenses occasioned by any negligent act, conduct, error or omission by the Contractor, or its agents, employees or subcontractors, in the performance of this contract. As consideration for this indemnity provision the Contractor shall be paid the sum of ten dollars (\$10.00), which will be added to the contract price, and paid prior to commencement of work.

The Contractor shall, on a primary basis and at its sole expense, agree to maintain in full force and effect at all times during the life of this contract, insurance coverage, limits, including Contract #20040018 Page 2 of 9 Fingerprint/Palm Print Identification System endorsements, as described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under the contract.

The Contractor shall agree to maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statutes Chapter 440. Coverage must include Employers' Liability with a minimum limit of \$100,000 each.

Selected Contractor shall agree to maintain Business Automobile Liability at a limit of liability not less than \$500,000 each occurrence for all owned, non-owned and hired automobiles. In the event the Contractor does not own any automobiles the Business Auto Liability requirement shall be amended allowing Contractor to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business auto Coverage form.

Commercial General Liability for public liability during the lifetime of this contract shall have minimum limits of \$1,000,000 per claim, \$2,000,000 per occurrence for Personal Injury, Bodily Injury, and Property Damage Liability. Coverage shall include Premises and/or Operations, Independent Contractors, Products and/or Complete Operations, Contractual Liability and Broad Form Property Damage Endorsements. Coverage shall not contain an exclusion or limitation endorsement for Contractual Liability or Cross Liability. Coverage for the hazards of explosion, collapse and underground property damage (XCU) must also be included when applicable to the work to be performed. All insurance policies shall be issued from a company or companies duly licensed by the State of Florida. All policies shall be on an occurrence-made basis; the City shall not accept claims-

made policies. Specific endorsements will be requested depending upon the type and scope of work to be performed.

Except as to Workers' Compensation and Employers' Liability, said Certificate(s) and policy(s) shall clearly state that coverage required by the contract has been endorsed to include the City of Port St. Lucie, a political subdivision of the State of Florida, its officers, agents and employees as Additional Insured with a CG 2026-Designated Person or Organization endorsement, or similar endorsement, to its' Commercial General Liability. The name for the Additional Insured endorsement issued by the insurer shall read "City of Port St. Lucie, political subdivision of the State of Florida, its officers, employees and agents, and Contract #20040018. The Certificate of Insurance and policy shall unequivocally provide thirty - (30) day's written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage there under. Said liability insurance must be acceptable by and approved by the City as to form and types of coverage. In the event that the statutory liability of the City is amended during the term of this agreement to exceed the above limits, the Contractor shall be required, upon thirty - (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City.

Contractor shall agree by entering into this Contract to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an Insured to enter into a pre-loss agreement to waive subrogation without an endorsement then Contractor shall agree to notify the insurer and request the policy be endorsed with a Waiver of Contract #20040018 Page 3 of 9 Fingerprint/Palm Print Identification System

Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy where a condition to the policy specifically prohibits such an endorsement, or voids coverage should Contractor enter into such an agreement on a pre-loss basis.

It shall be the responsibility of the Contractor to insure that all subcontractors comply with the same insurance requirements referenced above.

All deductible amounts shall be paid for and be the responsibility of the Contractor for any and all claims under this contract.

Selected Contractor may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, or Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. When required by the insurer, or when Umbrella or Excess Liability is written on 'Non-Follow Form,' the City shall be endorsed as an "Additional Insured."

The City, by and through its Risk Management Department, reserves the right, but not the obligation, to review and reject any insurer providing coverage.

SECTION VI

PROHIBITION AGAINST FILING OR MAINTAINING LIENS AND SUITS

Subject to the laws of the State of Florida and of the United States, neither Contractor nor any subcontractor, supplier of materials, laborer or other person shall file or maintain any

lien for labor or materials delivered in the performance of this contract against the City. The right to maintain such lien for any or all of the above parties is hereby expressly waived.

SECTION VII WORK CHANGES

The City reserves the right to order work changes in the nature of additions, deletions or modifications without invalidating the Contract, and agrees to make corresponding adjustments in the contract price and time for completion. All changes will be authorized by a written change order signed by the City Manager or his designee as representing the City. Work shall be changed and the contract price and completion time shall be modified only as set out in the written change order. Any adjustment in the contract price resulting in a credit or a charge to the City shall be determined by mutual agreement of the parties.

SECTION VIII COMPLIANCE WITH LAWS

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The Contractor shall give all notices required by and shall otherwise comply with all applicable laws, ordinances and codes and shall, at his own expense, secure and pay the fees and charges for all permits required for the performance of the contract. All materials furnished and work done are to comply with all local, state and federal laws and regulations.

SECTION IX CLEANING UP

Contractor shall, during the performance of this contract, remove and properly dispose of resulting packing materials and debris, and keep the work area reasonably clear. On completion of the work, Contractor shall remove all Contractors' equipment and all excess materials, and put the work area in a neat, clean and sanitary condition.

SECTION X NOTICE OF PERFORMANCE

When required materials have been delivered and required work performed Contractor shall submit a request for inspection in writing to the Contract Supervisor.

SECTION XI DELIVERY DOCUMENTATION

Where contract provides in whole or in part, for the sale and purchase of materials Contractor shall prepare a delivery ticket in triplicate for each shipment of material delivered to the City. The Contract Supervisor or his/her designee receiving the material shall sign the delivery ticket. One copy shall be given to the Contract Supervisor or his/her designee with the material. The Contractor shall retain one copy, and one copy shall accompany the Contractor's invoice.

SECTION XII INSPECTION AND CORRECTION OF DEFECTS

In order to determine whether the required material has been delivered or the required work performed in accordance with the terms and conditions of the contract documents, the Contract Supervisor shall make inspection as soon as practicable after receipt from the Contractor of a Notice of Performance or delivery ticket. If such inspection shows that the required material has been delivered and required work performed in accordance with terms and conditions of the contract documents and that the material and work is

entirely satisfactory, the Contract Supervisor shall approve the invoice when it is received. Thereafter the Contractor shall be entitled to payment, as described in Section III. If, on such inspection the Contract Supervisor is not satisfied, he shall as promptly as practicable inform the parties hereto of the specific respects in which his findings are not favorable. Contractor shall then be afforded an opportunity if desired by him, to correct the deficiencies so pointed out at no additional charge to the City, and otherwise on terms and conditions specified by the Contract Supervisor. Such examination, inspection, or tests made by the Contract Supervisor, at any time, shall not relieve Contractor of his responsibility to remedy any deviation, deficiency, or defect.

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SECTION XIII

ADDITIONAL REQUIREMENTS

In the event of any conflict between the terms and conditions, appearing on any purchase order issued relative to this Contract, and those contained in this Contract and the Specifications herein referenced, the terms of this Contract and Specifications herein referenced shall apply.

SECTION XIV

LICENSING

Contractor warrants that he possesses all licenses and certificates necessary to perform required work and is not in violation of any laws. Contractor warrants that his license and certificates are current and will be maintained throughout the duration of the contract.

SECTION XV

SAFETY PRECAUTIONS

Precaution shall be exercised at all times for the protection of persons, including employees, and property. The safety provisions of all applicable laws and building and construction codes shall be observed.

SECTION XVI

ASSIGNMENT

Contractor shall not delegate, sublet or subcontract any part of the work under this contract or assign any monies due him hereunder without first obtaining the written consent of the City.

SECTION XVII

TERMINATION, DELAYS AND LIQUIDATED DAMAGES

A. Termination of Contract. If the Contractor refuses or fails to deliver material as required and/or prosecute the work with such diligence as will insure its completion within the time specified in this contract, or as modified as provided in this contract, the City by written notice to the Contractor, may terminate Contractor's rights to proceed. On such termination, the City may take over the work and prosecute the same to completion, by contract or otherwise, and the Contractor and his sureties shall be liable to the City for any additional cost incurred by it in its completion of the work. The City may also in event of termination obtain undelivered materials, by contract or otherwise, and the Contractor and his sureties shall be liable to the City for any additional cost incurred for such material. Contractor and his sureties shall also be liable to the City for liquidated damages for any delay in the completion of the work as provided below. If the Contractor's right to proceed is so terminated, the City may take possession of and utilize

in completing the work such materials, tools, equipment and facilities as may be on the site of the work and necessary therefore.
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B. Liquidated Damages for Delays. If material is not provided or work is not completed within the time stipulated in this contract, including any extensions of time for excusable delays as herein provided, (it being impossible to determine the actual damages occasioned by the delay) the Contractor shall provide to the City one hundred dollars (\$100.00) as fixed, agreed and liquidated damages for each calendar day of delay until the work is completed. The Contractor and his sureties shall be liable to the City for the amount thereof.

C. Excusable Delays. The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the work or delivery of materials due to: (1) any acts of the Federal Government, including controls or restrictions or requisitioning of materials, equipment, tools or labor by reason of war, national defense or any other national emergency, (2) any adverse acts of the City, (3) causes not reasonably foreseeable by the parties at the time of the execution of the contract that are beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of another contractor in the performance of some other contract with the City, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes and weather of unusual severity such as hurricanes, tornadoes, cyclones and other extreme weather conditions, and (4) any delay of any subcontractor occasioned by any of the above mentioned causes. However, the Contractor must promptly notify the City in writing within two (2) days of official notice of scheduled delivery or scheduled work of the cause of delay. If, on the basis of the facts and the terms of this contract, the delay is properly excusable the City shall extend the time for completing the work for a period of time commensurate with the period of excusable delay.

The City may terminate this agreement with or without cause by giving the vendor/contractor thirty - (30) days notice in writing. Upon delivery of said notice and upon expiration of the thirty - (30) day period, the vendor/contractor shall discontinue all services in connection with the performance of this agreement and shall proceed to cancel promptly all existing contracts in so far as such contracts are chargeable to this agreement.

SECTION XVIII LAW AND VENUE

This agreement is to be construed as though made in and to be performed in the State of Florida and is to be governed by the laws of Florida in all respects without reference to the laws of any other state or nation. The venue of any action taken pursuant to this contract shall be in St. Lucie County, Florida.

SECTION XIX REIMBURSEMENT FOR INSPECTION

The Contractor agrees to reimburse the City for any expenditures incurred by the City in the process of testing materials supplied by the Contractor against the specifications

under which said materials were procured, if said materials prove to be defective, improperly applied, and/or

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in other manners not in compliance with specifications. Expenditures as defined herein shall include, but not be limited to, the replacement value of materials destroyed in testing, the cost paid by the City to testing laboratories and other entities utilized to provide tests, and the value of labor and materials expended by the City in the process of conducting the testing. Reimbursement of charges as specified herein shall not relieve the Contractor from other remedies provided in the contract.

SECTION XX

APPROPRIATION APPROVAL

The Contractor acknowledges that this contract is subject to approval by City Council of budget appropriation for the contract period beyond September 30th, 2004. The Contractor agrees that, in the event such appropriation is not forthcoming, this contract may be terminated by the City and that no charges, penalties or other costs shall be assessed.

SECTION XXI

RENEWAL OPTION

In the event Contractor offers in writing, prior to the termination of this contract, to provide the identical services required in this contract for the identical period of time in the subsequent calendar period and the City agrees that said services are required and that the cost is acceptable, then the City, without additional bidding or negotiation, may, with the mutual agreement of the Contractor, extend this contract for the additional term.

NOTE: Response to this option should be submitted three (3) months prior to the termination of the contract period.

SECTION XXII

ENTIRE AGREEMENT

The written terms and provisions of this contract shall supersede all prior verbal statements of any official or other representative of the City. Such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any manner whatsoever, this contract or contract documents.

IN WITNESS WHEREOF, the parties have executed this contract at Port St.

Lucie, Florida, the day and year first above written.

CITY OF PORT ST. LUCIE FLORIDA

By: _____

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City Manager

ATTEST:

By: _____

City Clerk

By: _____

Authorized Representative of SPEX Forensics/JY, Inc

State of: _____

County of: _____

Before me personally appeared:

_____)
(please print)

Please check one:

Personally known _____

Produced Identification: _____

(type of identification)

Identification No. _____

and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that _____ executed said instrument for the purposes therein expressed. (he/she)

WITNESS my hand and official seal, this _____ day of _____, 2004.

Notary Signature

Notary Public-State of _____ at Large.

My Commission Expires _____.

(seal)

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