

**SERVICE CONTRACT FOR REPAIR, REPLACEMENT & MAINTENANCE OF
LFUCG ELECTRONIC ACCESS CONTROL SYSTEM**

CONTRACT # _____

This is an Agreement entered into on ____/____/____ between Lexington-Fayette Urban County Government (hereafter LFUCG) a public entity of the Commonwealth of Kentucky ("LFUCG") and Burdine Security Group Inc ("Vendor") authorized to do business in the State of Kentucky in response to **Request for Proposal # 10-2013.**

The parties to this Agreement, in consideration of the mutual covenants and promises contained in it, and other good and valuable consideration, the adequacy and receipt of which are acknowledged, agree as follows:

Article I. TERMS

Section 1.0 1 The Vendor is an independent contractor pursuant to Kentucky law. The Vendor assumes full responsibility for completion of the services described below in accordance with Request for Proposal # 10-2013 submitted to LFUCG by Vendor, and the Vendor's response submitted to the LFUCG, the provisions of which are incorporated into this Contract by reference, as if fully restated in the contract. The term Administrator includes the LFUCG Contract Administrator or designee.

Section 1.02 The Vendor shall begin performance under the terms of this Agreement no earlier than _____ and complete performance to the satisfaction of the County no later than _____.

Section 1.03 The total costs for the Services are contained in **RFP#10-2013, SECTION VI – SUCCESSFUL PROPOSER FEE** of this contract.

Section 1.04 This Agreement *may* be renewed. The initial term of this agreement shall be for a period of three (3) years, beginning July 1, 2013 and ending June 30, 2016. If renewed, it shall be on a yearly basis for up to two (2) one (1) year annual renewals after the initial contract. Terms shall be in accordance with RFP# 10-2013. Renewal shall be at the option of the LFUCG.

Section 1.05 The performance of the LFUCG of any of its obligations under this Agreement shall be subject to and contingent upon the availability of funds appropriated by the LFUCG, the obligation of funds by the prime funding agency, or otherwise lawfully expendable for the purposes of this Agreement for the current and future periods. The LFUCG shall give notice to Vendor of the non-availability of such funds when LFUCG has knowledge of such fact. Upon receipt of such notice by Vendor, Vendor shall be entitled to payment only for those services performed and expenses incurred prior to the date notice is received.

Article II. SCOPE OF SERVICES

Section 2.01 Vendor shall provide all labor, materials, supplies, and other required items to complete all required work, as described in **RFP#10-2013, SCOPE OF SERVICES** of this contract document, the Vendor's Technical Proposal and subsequent clarifications, all of which is to be performed in strict accordance with the General Conditions, Special Conditions and specifications of RFP #10-2013.

Section 2.02 It is intended that the Vendor shall perform a majority of the work under this Contract with its own forces, and shall not delegate, subcontract or direct a third party to perform any portion of the work except with the prior written approval of and under the conditions stipulated by the County.

Article III. LFUCG'S RESPONSIBILITY

Section 3.0 1 Pursuant to Section 4.01 of this agreement, the LFUCG shall endeavor to mail the Vendor's payment within thirty (30) days after receipt of an acceptable invoice and receipt, and after inspection and acceptance of the goods, services or both, if provided in accordance with the terms and conditions of the applicable purchase order/agreement

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Article IV. UNITS OF DELIVERABLES AND INSTRUCTIONS FOR INVOICE SUBMITTAL

Section 4.01 Vendor shall submit invoices in the format shown below. Invoices must be approved by the LFUCG Administrator before being submitted for payment. The Administrator shall certify that prices for supplies and services are monitored and approved as submitted.

- (a) Adjustments shall be made at the discretion of the Administrator for additional work or reduction of work, if required, as determined by the LFUCG in advance. Work must be completed and approved by the Administrator before payment can be processed. Overtime is allowed, upon advance written approval of the Administrator, in accordance with the Fair Labor Standards Act.
- (b) All bills and invoices for fees or other compensation for services or expenses shall cite the Agreement number and shall be submitted to the Administrator in detail sufficient for a proper pre-audit and post-audit. Each bill or invoice must clearly identify the services, portion of services and expenses for which compensation is sought. Payment will be tendered only for services, or the portion of services, completed prior to the submission of the bill or invoice, or for expenses incurred prior to such submission, or both.
- (c) **INVOICES:** A total invoice shall be submitted upon the completion of the initial scope as noted in RFP#10-2013.
- (d) **OTHER:** Invoices for commodities or services not included in the initial scope shall be based on the rates noted in vendor's RFP response (**RFP#10-2013, SECTION VI – SUCCESSFUL PROPOSER FEE**) . Invoices shall be submitted in detail for a proper pre-audit and post-audit of them. Each bill or invoice must clearly identify the services, portion of services and expenses for which compensation is sought.

Article V. SPECIFIC CONDITIONS FOR THIS CONTRACT

Section 5.01 All performance of work shall be subject to inspection and approval by the Administrator or designee, as provided in RFP #10-2013. If the Vendor's performance is or becomes unsatisfactory, as reasonably determined by the Administrator, the vendor will be notified in writing.. The vendor will be given a reasonable amount of time to either correct the unsatisfactory situation or respond to the LFUCG as to why the situation is beyond control of the Vendor. The correction of unsatisfactory performance within the Vendor's control shall be at no additional cost to the LFUCG.

Section 5.02 The contract specifications may be amended from time to time, as deemed necessary by the Administrator. Changes must be approved by the LFUCG Urban County Council and signed by the Mayor.

Section 5.03 In the event of additions to or decreases in the man-hours required for routine work, as the Administrator may direct, the approved work-hours shall be increased or decreased as appropriate.

Article VI. NON-PERFORMANCE OF WORK

Section 6.0 1 The Administrator and/or his designated alternate will conduct random inspections of the facilities to determine if the Vendors services are satisfactory. The LFUCG will inform the Vendor in writing within five (5) workdays of any conditions that are considered unsatisfactory. The Vendor shall have five (5) work days to either correct the condition or explain to the LFUCG as why it can not be corrected.

Section 6.02 Routine work will be considered not to have been performed when any one of the following conditions exists:

- a) The prescribed work tasks in an area were not performed within agreed response times.
- b) Specified equipment, parts and/or materials were not used or could not satisfy and/or sustain operating requirements at the time of the performance of the work.
- c) The required P.M. tasks were not performed within the scheduled interval.
- d) The work is of such quality as to require it to be done again.

Article VII. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

Section 7.01 Vendor covenants and agrees that it, its agents and employees will comply with all municipal, county, state, and federal laws, rules, regulations, and ordinances applicable to the work to be performed

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under this Contract, and that it shall obtain all necessary permits, pay all license fees and taxes to comply therewith.

Section 7.02 If any strike, boycott, picketing, work stoppage, slow down, or other labor activity is directed against the Vendor at the Fayette County Courthouse's, which results in the curtailment or discontinuation of services performed by the Vendor, the LFUCG shall have the unrestricted right during the period of the strike, work stoppage, or slow down to cause itself or any third person or persons to perform such services of Vendor as would otherwise be provided using such equipment which is used by the Vendor, and without cost to the LFUCG. Vendor shall not be entitled to payment during the period, or during the time of war, acts of God, or natural disasters in which routine or non-routine work can not be performed.

Article VIII. SUBCONTRACTING OR ASSIGNMENT OF CONTRACT

Section 8.01 This Contract and all rights and responsibilities there under, may not be assigned by Vendor.

Section 8.02 It is intended that Vendor shall perform a majority of the work under this Contract with his own forces, and shall not delegate or subcontract or direct a third party to perform any portion of the work except with the prior written approval of, and under the conditions stipulated by LFUCG.

Article IX. EQUIPMENT, MATERIALS, AND SUPPLIES

Section 9.01 The Vendor shall furnish all supplies necessary to completely and effectively perform all work defined in this Contract.

Article X. STORAGE SPACE: Contractor shall store its supplies, materials, and equipment in storage areas designated by the Administrator. Contractor agrees to keep these areas neat and clean at all times in accordance with all applicable fire regulations.

Article XI. ACCESS

Section 11.01 Access to the buildings at the facility shall be as directed by the Administrator at the Facility. Contractor's employees may not leave their assigned work area during working hours except in case of emergency and with the approval of the Administrator or his designee.

Section 11.02 Contractors employees are not to be accompanied in their work areas on the premises by acquaintances, family members, assistants, or any other person unless said person is an authorized Contractor employee.

Article XII. EMERGENCY: The Contractor shall make reasonable accommodations to provide adequate staff for protection of life and property in the event of a disaster such as, but not limited to, hurricanes, tornadoes, floods and fires. The Contractor shall do such work as directed by the Administrator and shall keep all pertinent records of work performed. The Contractor shall be separately reimbursed by change order for all such work performed which is beyond the scope of this contract.

Article XIII. SAFETY: For all operations requiring the placing and movement of equipment, Contractor shall observe and exercise, and compel its employees to observe and exercise all necessary caution and discretion, so as to avoid injury to persons, damage to property of any and all kinds, and annoyance to or undue interference with the movement and activities of the visitors and employees of the Courts. All placement, movement, activities, operation, and performance of work will be done in a safe manner. Contractor shall abide by all OSHA safety regulations and shall have regular monthly safety meetings with all employees.

Article XIV. ALCOHOL AND NARCOTICS: The Vendor covenants and agrees that it will not bring or permit to be brought into the Facility any beer, wine, or spirits; narcotic, hallucinogenic, or dangerous drugs, nor cannabis. Vendor will take disciplinary action commensurate with the circumstances against any employee who brings onto or uses on the Facility any of these substances. The vendor will perform pre-employment drug testing on all potential applicants before they are allowed access to the Facility.

Article XV. KEY CONTROL: The Vendor shall be solely responsible for any keys to buildings or Facilities furnished to it or its employees. Should keys be lost or stolen, it will be the responsibility of the

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Vendor to notify the LFUCG within 24 hours of such finding. The LFUCG may re-key any structure at its option. Should the decision be made to re-key, this shall be charged at the full cost of re-keying to the Contractor and withheld from monies due the Contractor.

Article XVI. PERFORMANCE EVALUATION MEETINGS: The Vendor or his representative shall meet with the Administrator upon the completion of the initial phase of the contract and annually thereafter for the duration of the contract. Additional meetings shall be as often as necessary at the discretion of the Administrator. The purpose of these meetings is to resolve identified problems and issues that arise during the term of the Contract.

Article XVII. CONFLICT IN DOCUMENTS: If there is a conflict between any of the terms of this Contract and other documents referenced in this Contract, conditions stated in the RFP take precedence.

Article XVIII. CANCELLATION: Either the County or Vendor, giving **Ninety (90)** days advance written notice, may cancel this contract. The LFUCG shall be liable only for payment of services rendered, allowable expenses incurred or both, prior to the effective date of termination within the limits of the description provided in this Contract.

Article XIX. STANDARD CONDITIONS

Section 20.01 **RISK:** Each party assumes any and all risk of personal injury, death and property damage attributable to the negligent acts or omissions of that party and its officers, employees and agents. Vendor also assumes such risk with respect to the negligent acts or omissions of persons subcontracting with the Vendor or otherwise acting or engaged to act at the instance of the Vendor in furtherance of Vendor fulfilling Vendor's obligations under this agreement.

Section 20.02 **INSURANCE AND INDEMNIFICATION:** The Vendor will maintain in full force and effect the types and amounts as depicted in **RFP #10-2013**

- (1) It is understood and agreed by the parties that Contractor hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Contractor or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier (hereinafter "CONTRACTOR") under or in connection with this agreement and/or the provision of goods or services and the performance or failure to perform any work required thereby.
- (2) CONTRACTOR shall indemnify, save, hold harmless and defend the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, volunteers, and successors in interest (hereinafter "LFUCG") from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by CONTRACTOR's performance or breach of the agreement and/or the provision of goods or services provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of the CONTRACTOR; and (b) not caused solely by the active negligence or willful misconduct of LFUCG.
- (3) In the event LFUCG is alleged to be liable based upon the above, CONTRACTOR shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all reasonable attorneys' fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by LFUCG, which approval shall not be unreasonably withheld.

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- (4) These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this agreement.

FINANCIAL RESPONSIBILITY

BIDDER/CONTRACTOR understands and agrees that it shall, prior to final acceptance of its bid and the commencement of any work, demonstrate the ability to assure compliance with the above Indemnity provisions and these other risk management provisions.

INSURANCE REQUIREMENTS

YOUR ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW, AND YOU MAY NEED TO CONFER WITH YOUR INSURANCE AGENTS, BROKERS, OR CARRIERS TO DETERMINE IN ADVANCE OF SUBMISSION OF A RESPONSE THE AVAILABILITY OF THE INSURANCE COVERAGES AND ENDORSEMENTS REQUIRED HEREIN. IF YOU FAIL TO COMPLY WITH THE INSURANCE REQUIREMENTS BELOW, YOU MAY BE DISQUALIFIED FROM AWARD OF THE CONTRACT.

Required Insurance Coverage

BIDDER/CONTRACTOR shall procure and maintain for the duration of this contract the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to LFUCG in order to protect LFUCG against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONTRACTOR. The cost of such insurance shall be included in any bid:

<u>Coverage</u>	<u>Limits</u>
General Liability (Insurance Services Office Form CG 00 01)	\$1 million per occurrence, \$2 million aggregate or \$2 million combined single limit
Commercial Automobile Liability (Insurance Services Office Form CA 0001)	combined single, \$1 million per occurrence
Worker's Compensation	Statutory
Employer's Liability	\$500,000.00

The policies above shall contain the following conditions:

- a. All Certificates of Insurance forms used by the insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky (DOI). LFUCG shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy using the Kentucky DOI approved forms.
- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by LFUCG.
- c. The General Liability Policy shall include a Products and Completed Operations endorsement or Premises and Operations Liability endorsement and a Products Liability endorsement unless they are deemed not to apply by LFUCG.
- d. LFUCG shall be provided at least 30 days advance written notice via certified mail, return receipt requested, in the event any of the required policies are canceled or non-renewed.

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- e. Said coverage shall be written by insurers acceptable to LFUCG and shall be in a form acceptable to LFUCG. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.

Renewals

After insurance has been approved by LFUCG, evidence of renewal of an expiring policy must be submitted to LFUCG, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

Deductibles and Self-Insured Programs

IF YOU INTEND TO SUBMIT A SELF-INSURANCE PLAN IT MUST BE FORWARDED TO LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, DIVISION OF RISK MANAGEMENT, 200 EAST MAIN STREET, LEXINGTON, KENTUCKY 40507 NO LATER THAN A MINIMUM OF FIVE (5) WORKING DAYS PRIOR TO THE RESPONSE DATE.

Self-insurance programs, deductibles, and self-insured retentions in insurance policies are subject to separate approval by Lexington-Fayette Urban County Government's Division of Risk Management, upon review of evidence of BIDDER/CONTRACTOR's financial capacity to respond to claims. Any such programs or retentions must provide LFUCG with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance coverage. If BIDDER/CONTRACTOR satisfies any portion of the insurance requirements through deductibles, self-insurance programs, or self-insured retentions, BIDDER/CONTRACTOR agrees to provide Lexington-Fayette Urban County Government, Division of Risk Management, the following data prior to the final acceptance of bid and the commencement of any work:

- a. Latest audited financial statement, including auditor's notes.
- b. Any records of any self-insured trust fund plan or policy and related accounting statements.
- c. Actuarial funding reports or retained losses.
- d. Risk Management Manual or a description of the self-insurance and risk management program.
- e. A claim loss run summary for the previous five (5) years.
- f. Self-Insured Associations will be considered.

Safety and Loss Control

CONTRACTOR shall comply with all applicable federal, state, and local safety standards related to the performance of its works or services under this Agreement and take necessary action to protect the life, health and safety and property of all of its personnel on the job site, the public, and LFUCG.

Verification of Coverage

BIDDER/CONTRACTOR agrees to furnish LFUCG with all applicable Certificates of Insurance signed by a person authorized by the insurer to bind coverage on its behalf prior to final award, and if requested, shall provide LFUCG copies of all insurance policies, including all endorsements.

Right to Review, Audit and Inspect

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CONTRACTOR understands and agrees that LFUCG may review, audit and inspect any and all of its records and operations to insure compliance with these Insurance Requirements.

DEFAULT

BIDDER/CONTRACTOR understands and agrees that the failure to comply with any of these insurance, safety, or loss control provisions shall constitute default and that LFUCG may elect at its option any single remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging BIDDER/CONTRACTOR for any such insurance premiums purchased, or suspending or terminating the work.

Article XX. CHANGES APPROVED: Any renewals, amendments, alterations or modifications to this Contract must be signed or initialed and approved by the signatories to this Contract.

Article XXI. GOVERNING LAWS: The validity, construction and effect of this Agreement shall be governed by the laws of the Commonwealth of Kentucky. The LFUCG is entitled to the benefits of sovereign immunity, including immunities from taxation. In the event either party is required to obtain from any governmental authority any permit, license or authorization as a prerequisite to perform its obligations under this Agreement, the cost shall be borne by the party required to obtain such permit, license or authorization.

Article XXII. CONFLICT OF INTEREST: The Vendor certifies that to the best of its knowledge and belief, no individual employed by it or subcontracted by it has an immediate relation to any employee of the LFUCG who was directly or indirectly involved in the procurement of the services described in this Agreement. Violation of this section by Vendor shall be grounds for cancellation of this Agreement by the LFUCG.

Article XXIII. INDEMNIFICATION AND HOLD HARMLESS: Both the LFUCG and the Vendor agrees to indemnify and hold free and harmless, and defend each other and their officers, employees and agents, from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, which in any manner directly or indirectly may arise or are alleged to have arisen, or resulted or are alleged to have resulted from activities of every kind and nature whatsoever of either party or its officers, employees, agents and contractors, in connection with this Agreement.

Article XXIV. FORCE MAJUERE: The Vendor will not be held responsible for the costs related to repairs or responsive services that result from Acts of God, negligence or vandalism by others or other situations beyond the control of the Vendor.

1. **Article XXV. TERMINATION:** Each term and condition of this Contract is material and any breach or default by the Vendor in the performance of each such term and condition shall be a material breach or default of the entire Contract for which the LFUCG shall have the right to terminate this Contract immediately upon notice to the Vendor and without termination penalty to the LFUCG. In addition, LFUCG shall have the right to terminate this Contract in the event that funding is not appropriated in future fiscal years.

Article XXVI. RELATIONSHIP: It is understood and agreed that nothing contained in this Contract is intended, or should be construed, as creating or establishing the relationship of partners between the parties, or as constituting Vendor as the agent or representative of the LFUCG for any purpose in any manner whatsoever. Vendor is not authorized to bind the LFUCG to any contracts or other obligations. Vendor shall not expressly or impliedly represent to any party that the Vendor and LFUCG are partners or that the Vendor is the agent or representative of the LFUCG for any purpose or in any manner whatsoever.

Article XXVII. REPRESENTATIVES: The Administrator of this Contract for the LFUCG is the **Director of Facilities & Fleet Management** (or Designee). The Vendor's representative for purposes of this Contract shall be David Pugh, (or Designee).

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Article XXVIII. NON-DISCRIMINATION: It is the policy of the LFUCG that no citizen of the United States or any other person within the jurisdiction there-of shall, on the grounds of race, religion, color, sex, age, handicap, veteran status or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of the LFUCJG. The Vendor/Contractor shall abide by this same policy.

Article XXIX. CONTRACT DOCUMENTS: All documents submitted as part of Vendor's offer are incorporated into this Agreement by this reference. In case of inconsistency, between any provision in any such documents and the provisions of this Agreement, the provisions of this Agreement will govern. This Agreement and such documents embody the entire agreement of the parties and there are no other representations, promises, agreements, conditions or understandings, either oral or written between the LFUCG and Vendor other than are set forth in this Agreement. No subsequent alteration, amendment change or addition to this Agreement shall be binding upon either the LFUCG or Vendor unless reduced to writing and signed by them and by direct reference made a part of this Agreement.

IN WITNESS OF THE FOREGOING, the parties have signed this Contract effective beginning on the date first appearing above.

VENDOR

Burdine Security Group Inc
1408 W Main St
Lexington, KY 40517

By: _____
*Signature

COUNTY

Lexington-Fayette Urban County Government
200 East Main Street
Lexington, Kentucky 40507

By: _____
*Signature

As its: **Mayor**

Approved as to form and legality

By: _____

As its: _____

** By the signature of the person signing for the Vendor, such person represents that such person is authorized to bind and does bind the Vendor to this Agreement.*