

AGREEMENT

THIS Agreement is made and entered into this 8th day of July, 2008 by and between the CITY OF OVERLAND PARK, KANSAS, hereinafter referred to as "City", and Alamar Uniforms, LLC hereinafter referred to "Vendor."

WITNESSETH:

WHEREAS, the City caused to be prepared a request for proposals (hereinafter "RFP") for the goods and services herein described, and caused to be published an advertisement inviting responses to the RFP for the delivery of goods and services in accordance with the terms set forth in the RFP; and

WHEREAS, the Vendor, in response to the advertisement, submitted to the City, in the manner and at the time specified, a response to the RFP in accordance with the requirements of the RFP; and

WHEREAS, the City publicly opened, examined and canvassed the responses to the RFP and as a result of this canvass determined and declared the Vendor to be the lowest and best responsible respondent for the delivery of the specified goods and services, and duly awarded to the Vendor a Contract therefore on July 7, 2008; and

NOW, THEREFORE, in consideration of the compensation to be paid the Vendor, and of the mutual agreements herein contained, the parties hereto have agreed, and hereby agree, the City for itself and its successors, and the Vendor for itself, himself/herself or themselves, its, his/her or their successors and assigns, or its, his/her or their executors and administrators, as follows:

SECTION I – SCOPE AND CONSIDERATION

The Vendor will provide to the City's full satisfaction and in accordance with the RFP and the Vendors response to the RFP, copies of which are attached hereto and incorporated by reference herein as Exhibits A and B, respectively, the following items to the City at the following costs:

<u>ITEM NUMBER</u>	<u>DESCRIPTION</u>	<u>PRICE</u>
#8450-04	Blauer Class Act Male Long Sleeve Shirt	\$58.25
#8450W-04	Blauer Class Act Female Long Sleeve Shirt	\$58.25
#8460-04	Blauer Class Act Male Short Sleeve Shirt	\$52.50
#8460W-04	Blauer Class Act Female Short Sleeve Shirt	\$52.50
#8560-04	Blauer Class Act Male Trouser	\$61.00
#8560W-04	Blauer Class Act Female Trouser	\$61.00

On the initial order, Vendor shall deliver the order within thirty (30) days ARO. All future orders will be delivered fourteen (14) days ARO.

Vendor warrants for one (1) year that the clothing will be free of any defects or flaws provided that the manufacturers cleaning instructions on the clothing labels have been adhered to.

The Vendor will alter the waist up to 1" smaller or larger and/or the rise at no additional charge. The Vendor will provide hemming at no additional charge.

In the event of a conflict between any provisions of Exhibits A and B and this Agreement, the terms and conditions of this Agreement shall control.

SECTION II – TAXES

The City is a tax-exempt as a political subdivision under Section 4221(a) of the Internal Revenue Code and K.S.A. 79-3606 (a). Vendor shall remove any taxes from the billing. Vendor is responsible for payment of any and all federal, state and local taxes.

SECTION III – RISK OF LOSS, SHIPMENT, PACKAGING

Title to and risk of loss and damage to equipment prior to the time of its receipt and acceptance by the City is upon Vendor. The City has no obligation to accept damaged shipments and reserves the right to return, at Vendor's expense, damaged merchandise even though the damage was not apparent or discovered until after receipt of such damaged equipment. All items shall be properly packaged, packed, labeled and identified in accordance with commercial standards acceptable to the trade and in compliance with ICC and other federal and state regulations. Packing slips will accompany the shipment.

SECTION IV - DISPUTE RESOLUTION

City and Vendor agree that disputes relative to any interpretation, performance, or breach of this Agreement shall first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, that no dispute will be submitted to arbitration without the parties' express written consent.

SECTION V - TERMINATION

Either party may terminate this Agreement at their convenience by giving the other party written notice. Agreement will be terminated on the first day of the month following the month in which a termination notice is received by either party.

SECTION VI - PRIOR VERBAL OR WRITTEN STATEMENTS NOT BINDING

It is understood and agreed that the written terms and provisions of this Agreement shall supersede all prior verbal and written statements of any and every official and/or other representative of the City and Vendor and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way whatsoever, the written Agreement. In the event that the City issues a purchase order, work order, invoice or similar document relating to services performed, such purchase order or similar document shall be for the City's administrative purposes only and will not supplement, supersede, modify or affect any of the terms and conditions set forth herein.

SECTION VII - INDEPENDENT CONTRACTOR STATUS

Vendor is an independent contractor and as such neither Vendor nor its personnel are agents or employees of the City.

SECTION VIII - INDEMNIFICATION

- A. **Definitions:** For purposes of indemnification requirements as set forth throughout the Agreement, the following terms shall have the meanings set forth below:
1. **"Vendor"** means and includes Vendor, all of its affiliates and subsidiaries, its Sub-Vendors and materialmen and their respective officers, directors, servants, agents and employees; and
 2. **"Loss"** means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim, whether real or spurious, for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Agreement, whether arising before or after the completion of the performance required hereunder.
- B. **The Indemnity:** For purposes of this Agreement, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Agreement, Vendor shall indemnify, defend and hold harmless the City against all losses that arise out of or relate to any negligent act or omission of Vendor. .
- C. **General Limitation:** Nothing in this section shall be deemed to impose liability on the Vendor to indemnify the City for loss when the City's negligence or other actionable fault is the sole cause of loss.

- D. **Waiver of Statutory Defenses:** With respect to the City's rights as set forth herein, the Vendor expressly waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purposes of this section.

SECTION IX - NON-DISCRIMINATION AND OTHER LAWS

A. The Vendor agrees that:

1. the Vendor shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, disability, national origin ancestry or age;
2. in all solicitations or advertisements for employees, the Vendor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
3. if the Vendor fails to comply with the manner in which the Vendor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Vendor shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;
4. if the Vendor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Vendor shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City; and
5. the Vendor shall include the provisions of subsections (A)(1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such sub-vendor or vendor.

The provisions of this section shall not apply to a contract entered into by a Vendor :

- (a) who employs fewer than four employees during the term of such contract; or
- (b) whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

B. The Vendor further agrees that the Vendor shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

SECTION X - APPLICABLE LAW, NONWAIVER

This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas. The waiver of or failure to enforce any term or condition of this Agreement shall not be construed as a waiver of any other term or condition. If any provision is held to be unenforceable by a court or other tribunal, the enforceability of the other provisions shall not be affected.

SECTION XI – AGREEMENT TERM

This Agreement shall be effective July 7, 2008, and shall continue in effect until July 7, 2009. Thereafter, this agreement shall automatically renew annually on July 7 unless either party gives the other written notice of their intent not to renew within ninety (90) days of the automatic renewal date. Either party may terminate this agreement at any time for their convenience as described in Section V, above.

SECTION XII – SUBCONTRACTORS

Vendor shall not subcontract any of the work or services required by this Agreement without the prior written approval of the City. Should Vendor request and the City agree to work being subcontracted, the Vendor shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by said sub-contractors, as Vendor is for the acts and omissions of the persons it directly employs.

SECTION XIII - INSURANCE REQUIREMENTS

A. General -

The Vendor shall secure and maintain, throughout the duration of this contract, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. The Vendor shall provide certificates of insurance and renewals thereof on forms provided by the City. The City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

B. Notice of Claim Reduction of Policy Limits -

The Vendor, upon receipt of notice of any claim in connection with the contract, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

The Vendor shall promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the contract) in excess of \$10,000.00, whether or not such impairment came about as a result of this contract.

In the event the City shall determine that the Vendor's aggregate limits of protection shall have been impaired or reduced to such extent that the City shall determine such limits inadequate for the balance of the project, the Vendor shall, upon notice from the City, promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

C. General Liability –

The Commercial General Liability insurance coverage that is provided by Vendor under this Agreement shall protect Vendor against all claims arising from its performance under this Agreement. In addition, this policy shall specifically insure the contractual liability assumed by the Vendor under Section VIII, above.

MINIMUM INSURANCE REQUIREMENTS

COMMERCIAL GENERAL LIABILITY POLICY

(Complete Certificate "Form B")

General Aggregate: \$ 500,000

Products-Completed

Operations Aggregate: \$ 500,000

Personal & Advertising

Injury: \$ 500,000

Each Occurrence: \$ 500,000

Policy must include the following conditions:

a) Broad Form Contractual/Contractually Assumed Liability

b) City as an additional insured

D. Automobile Liability –

This insurance shall protect the Vendor against claims for bodily injury and/or property damage arising from the ownership or use of all owned, hired and/or non-owned vehicles and must include protection for either:

(1) Any Auto

OR

(2) All Owned Autos;

Hired Autos; and

Non-Owned Autos.

Limits of liability protection required are the SAME as the limits for the Commercial General Liability section. Policy shall insure the contractual liability assumed by the vendor.

E. Workers' Compensation and Employer's Liability -

This insurance shall protect the Vendor against all claims under applicable state Workers' Compensation laws. The Vendor shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a Workers' Compensation law. The policy shall include "all states" insurance, and the liability limits shall not be less than the following:

<u>Workers' Compensation:</u>	Statutory
<u>Employer's Liability:</u>	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

F. Professional Liability -

This insurance shall protect vendor against all wrongful acts arising out of the professional services provided to the City. Limits shall be no less than \$500,000 each wrongful act/\$500,000 annual aggregate.

G. Industry Ratings -

The City will only accept coverage from an insurance carrier who offers proof that it:

- (1) Is licensed to do business in the State of Kansas;
- (2) Carries a Best's policy holder rating of A- or better; and
- (3) Carries at least a Class X financial rating.

OR

Is a company mutually agreed upon by the City and Vendor.

SECTION XIV – ADJUSTMENT TO CONTRACT TERMS

Changes to the terms of this Agreement may be made only in writing and must be approved by the City and the Vendor . Should a decision be made to amend the terms of this Agreement, the City and the Vendor must mutually agree in writing to the amended terms.

SECTION XV - SEVERABILITY CLAUSE.

Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

SECTION XVI – CASH BASIS

Notwithstanding anything contained in the Agreement to the contrary, it is understood and agreed by the parties hereto that City is obligated only to pay periodic payments or monthly installments under the Agreement as may lawfully be made from funds budgeted and appropriated for such purpose during the City's then current budget Year (i.e. January 1 to December 31) or from funds made available from any lawfully operated, revenue producing source. Should City fail to budget, appropriate or otherwise make available funds for payments due under the Agreement in any budget year, the Agreement shall be deemed terminated on the last day of the then current budget year for which appropriations were received without penalty or expense to the City of any kind whatsoever, except as to the portions of the recurring charges herein agreed upon for which funds have appropriated and budgeted or are otherwise made available. City agrees to notify Vendor of such termination, which shall not constitute a default under the Agreement, as least sixty (60) days prior to the end of the City's then current budget year. This paragraph shall not be construed so as to permit City to terminate the Agreement in order to acquire any other functionally similar product or service or to allocate funds directly or indirectly to perform essentially the same application for which the product or service under the agreement is intended.

SECTION XVII - PROHIBITION AGAINST CONTINGENT FEES

Vendor warrants that it has not employed or retained any person, firm, or corporation, other than a bona fide employee working solely for Contractor, to solicit or secure the awarding of this Agreement based upon an arrangement that the person, firm or corporation would receive any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award of this Agreement For the breach or violation of the foregoing provision, the City shall have the right to terminate the Agreement without liability and, at its discretion to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

SECTION XVIII - EXECUTION OF CONTRACT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officials on the day and year first above written.

CITY OF OVERLAND PARK, KANSAS

Mayor Carl Gerlach

Attest

APPROVED AS TO FORM:

Tammy M. Owens
Senior Assistant City Attorney

Alamar Uniforms

Steve Zalkin, President

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

BE IT REMEMBERED, that on this ___ day of _____, 20___, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, President of _____, LLC, a limited liability company duly organized and existing under and by virtue of the laws of _____; who is personally known to me to be the President and who is personally known to me to be the same person who executed as such officer the within instrument on behalf of said limited liability company, and such person duly acknowledged the execution of the same to be the act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

MY APPOINTMENT EXPIRES:
