

Notice to Bidders: The successful Bidder must execute the Agreement as set forth below within ten days of being awarded the contract.

**AGREEMENT BETWEEN CITY OF OVERLAND PARK, KANSAS AND VENDOR
FOR THE PURCHASE OF
SAFARILAND POLICE DUTY BELT and RELATED ACCESSORIES**

THIS AGREEMENT is made and entered into this _____ day of _____, 2005, by and between the City of Overland Park, Kansas, hereinafter the "City," and _____, hereinafter the "Vendor";

WITNESSETH:

WHEREAS, the City has caused to be prepared, in accordance with the law, Bidding Documents, for the goods and services herein described, and has caused to be published, in the manner and for the time required by law, an advertisement inviting sealed bids for furnishing materials, labor, tools, equipment and transportation necessary for, and in connection with, the delivery of goods and services in accordance with the terms of the Contract Documents; and

WHEREAS, the Vendor, in response to the advertisement, has submitted to the City, in the manner and at the time specified, a sealed Bid in accordance with the requirements of the Bidding Documents; and

WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined and canvassed the Bids submitted, and as a result of this canvass has, in accordance with the law, determined and declared the Vendor to be the lowest and best responsible bidder for the delivery of the specified goods and services, and has duly awarded to the Vendor a Contract therefore upon the terms and conditions set forth in the Contract Documents as defined herein and for the sum or sums named in the Bid, a copy of which is attached hereto.

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:

ARTICLE 1.

DEFINITIONS

Whenever any word or expression defined herein, or pronoun used in its stead, occurs in this Agreement, it shall have and is mutually understood to have the meaning herein given.

1. **"Agreement"** shall mean this Agreement and the Bidding and Contract Documents and any attachments to those documents to include Exhibits. The terms "Agreement," "Bidding Documents," and "Contract Documents" are used interchangeably in these documents and reference to one shall be reference to all of the documents.
2. **"Bid"** shall mean the offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the work or services to be performed and the goods or products to be delivered (the City reserves the right to reject any and all bids).
3. **"Bidder"** shall mean any individual, partnership, corporation, association or other entity submitting a bid for the work.
4. **"Bidding Documents"** shall mean all documents related to a Bidder's submitting a Bid, including, but not limited to, the advertisement for bids, if applicable, Notice and Invitation to Bid, Instructions to bidders, the Bid form, plans and specifications, the Agreement and any other forms and Documents included in the Bid Document Package, including any addenda issued prior to receipt of bids. The Bidding Documents shall be incorporated by reference into this Agreement and the Contract Documents and shall be considered as fully a part of this Agreement and the Contract Documents as if repeated verbatim herein. The Bid Documents are attached hereto as Exhibit "A." The terms "Agreement," "Bidding Documents," and "Contract Documents" are used interchangeably in these documents and reference to one shall be reference to all of the documents.
5. **"City"** shall mean the City of Overland Park, Kansas.
6. **"Contract"** shall mean the work/project awarded to the bidder that submitted the lowest and best bid for the goods and services described in the Bidding Documents.
7. **"Contract Documents"** shall mean the Bidding Documents and this Agreement. The terms "Agreement," "Bidding Documents," and "Contract Documents" are used interchangeably in these documents and reference to one shall be reference to all of the documents.
8. **"Vendor"** shall mean the bidder awarded the Contract for the performance of the work or services and/or delivery of goods and products that is the subject of the Bidding Documents, together with its duly authorized agents or legal representatives.

ARTICLE 2.

VENDOR'S PERFORMANCE

The Vendor will, furnish Safariland Police Duty Belts and Related Accessories for use by the City of Overland Park, Kansas Police Department, all in strict accordance with the specifications, terms and conditions set forth in the Bidding Documents and to the entire satisfaction of the City,

and in accordance with the laws of the City, the State of Kansas and the United States of America.

ARTICLE 3.

PRICE AND PAYMENT TERMS

Vendor agrees to provide Safariland Police Duty Belts and Related Accessories to the City, as described in the Bidding Documents, and in consideration, the City agrees to pay to the Vendor for the performance required by this Agreement and as specified in the Bidding Documents, and the Vendor will accept in full compensation therefor, the payment of monies at the rate set forth in the Vendor's Bid for all Safariland Police Duty Belts and Related Accessories, payment thereof to be made in cash or its equivalent and in the manner provided herein. The Unit Price set out in the Bid shall include the delivery of the Safariland Police Duty Belts and related Accessories.

The Vendor shall submit invoices for payment at the time of shipment of the Safariland Police Duty Belts and related Accessories from the manufacturer. These invoices shall be sent to the following address: Overland Park Police Department, Attention: Captain Thomas Fredrickson, 12400 Foster, Overland Park, Kansas 66213.

ARTICLE 4.

MISCELLANEOUS OBLIGATIONS OF CITY.

Designated Person. The City will designate a person to coordinate all activities with Vendor. The designated person (or a designated alternate) shall be available during all normal business hours to make decisions on behalf of the City, which shall include, but not be limited to, the approval and acceptance of all deliverable items. The designated person shall work and cooperate with Vendor, but the designated person will not be under the direction or control of Vendor and shall at no time be considered an employee or agent of Vendor.

ARTICLE 5.

MISCELLANEOUS OBLIGATIONS OF VENDOR

Designated Person. Vendor will designate a person to coordinate all activities with the City. This person (or a designated alternate) shall be available during all normal business hours.

Vendor's Prime Responsibilities. Vendor shall be responsible for delivery of the Safariland Police Duty Belts and related Accessories. Vendor will be the sole point of contact with regard to contractual matters.

ARTICLE 6.

BIDDING DOCUMENTS, CONTRACT DOCUMENTS AND AGREEMENT COMPLIMENTARY

The Bidding Documents, Contract Documents and Agreement are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the Bidding Documents, Contract Documents and Agreement is to include all labor, materials, tools, equipment and transportation necessary for the delivery of Safariland Police Duty Belts and related Accessories for City employees in accordance with the Bidding Documents, Contract Documents and Agreement. The Contract Documents supersede all previous agreements and understandings between the parties, which previous agreements and understandings are of no further force and effect. This Agreement and the Contract Documents may not be amended or modified except by a modification as herein provided.

ARTICLE 7.

VENDOR'S EMPLOYEES.

Vendor shall at all times enforce strict discipline and good order among its employees and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.

Vendor shall be responsible for compliance with all state and federal laws, if applicable, pertaining to wages, hours and benefits for workers employed to carry out the work.

ARTICLE 8.

INDEPENDENT CONTRACTOR.

The parties hereto agree that the services to be provided by Vendor are being provided strictly on a contract basis. Vendor is not and shall not be considered a part of the City and shall not be subject to the control of the City but shall be considered an independent contractor at all times.

ARTICLE 9.

INDEMNITY.

Definitions

For purposes of indemnification requirements as set forth throughout in this Agreement and Contract and Bidding Documents, the following terms shall have the meanings set forth below:

1. "The Vendor" means and includes Vendor, all of its affiliates and subsidiaries, its SubVendors and materialmen and their respective 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.

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 hereby agrees to indemnify, defend and hold harmless the City from any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Vendor, its employees, agents, SubVendors and suppliers.

It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further, notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature.

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.

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.

ARTICLE 10.

DISPUTE RESOLUTION.

City and Vendor agree that disputes relative to the services 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, however, that notwithstanding any such dispute Vendor shall proceed with the work as per the Contract Documents as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the City's express written consent.

ARTICLE 11.

TERM AND TERMINATION

Term

This Agreement shall commence upon the date it is executed, and shall continue in effect for a period of one (1) year. At the expiration of the initial one (1) year term, the City shall have the option of renewing the contract for one (1) additional year. If the City intends to exercise the option to renew the contract for an additional one (1) year term, the City shall provide notice to Vendor no later than thirty (30) days prior to the expiration of the initial term.

Right of City to Terminate Contract.

If at any time the performance of the work under this Agreement is being unnecessarily delayed, is in violation of any of the conditions or covenants of this Agreement or the specifications therefor, or is being executed in bad faith or otherwise not in accordance with the terms of said Agreement; the City may, at its option, serve written notice upon the Vendor of the violation. If the violation is not remedied within ten (10) days of the notice, the City may, at that time, notify the Vendor of its intent to terminate this Agreement, and, unless within three (3) days after the serving of such notice upon the Vendor, a satisfactory arrangement be made for the continuance thereof, this Agreement shall cease and terminate. When Vendor's services have been so terminated, such termination shall not affect any rights or remedies of City against Vendor then existing or which may later accrue. Similarly, any retention or payment of monies due Vendor shall not release Vendor from liability.

The City may terminate this Agreement for its convenience and without cause or default on the part of the Vendor by providing thirty (30) days written notice of such termination to the Vendor.

Any termination of the Agreement for alleged default by Vendor that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.

ARTICLE 12.

LAWS AND ORDINANCES.

The Vendor shall be fully familiar with all City, County, State and Federal laws, ordinances or regulations which would in any way control the actions or operations of those engaged in the performance of this Agreement or which would affect the materials supplied to or by them. It shall at all times observe and comply with all ordinances, laws and regulations and shall protect and indemnify and defend the City and the City's officers and agents against any claims or liability arising from or based on any violation of same.

ARTICLE 13.

AFFIRMATIVE ACTION/OTHER LAWS.

A. The Vendor agrees that:

1. The Vendor shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the present contract 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 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 contracting agency;
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 contracting agency; and
5. The Vendor shall include the provisions of subsections (1.) through (4.) in every subcontract or purchase order so that such provisions will be binding upon such SubVendor or vendor.

The provisions of this section shall not apply to an Agreement 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 of the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other 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.

ARTICLE 14.

FEDERAL LOBBYING ACTIVITIES.

31 USCS Section 1352 requires all subgrantees, Vendors, SubVendors and consultants who receive federal funds via the City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan or cooperative agreements.

In addition, contract applicants, recipients and subrecipients must file a form disclosing any expenditures they make for lobbying out of non-federal funds during the contract period.

Necessary forms are available from the City Clerk and must be returned to the City with other contract documents. It is the responsibility of the general Vendor to obtain executed forms from any SubVendors who fall within the provisions of the Code and to provide the City with the same.

ARTICLE 15.

TITLES, SUBHEADS AND CAPITALIZATION.

Titles and subheadings as used herein and as used in other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents. Some terms are capitalized throughout the Contract Documents, but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

ARTICLE 16.

NO WAIVER OF RIGHTS.

No waiver of any breach of the Contract Documents shall be construed to be a waiver of any other or subsequent breach.

ARTICLE 17.

SEVERABILITY.

The parties agree that should any provision of the Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason such provision(s) shall be null and void but that the remaining provisions of the Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.

ARTICLE 18.

APPLICABLE LAW.

The Contract Documents are entered into, under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas.

ARTICLE 19.

WARRANTY AND REMEDIES.

The Vendor warrants that all services provided or performed pursuant to the Contract Documents will be performed in an efficient and workmanlike manner and said services will fulfill the intended purpose of this Agreement. The Vendor, at the discretion of the City, shall repair or reimburse the City for the replacement cost specified in the Bidding Documents any uniform articles which are damaged or lost while in custody of the Vendor or the Vendor's agent.

The Vendor specifically warrants that the services will be provided in the time frame specified in the Bidding Documents. Without in anyway limiting other remedies, the City may, at its option, require that the charge for an item that was not laundered and/or repaired within the time frame specified be credited to the City.

ARTICLE 20.

INSURANCE.

The Vendor shall provide a minimum of \$1,000,000.00 product liability insurance coverage on delivered Safariland Police Duty Belts and related Accessories. Vendor shall list the City as an additional insured for losses or claims arising out of the City's use of Vendor's equipment. The insurer must be rated A:V or better by A.M. Best.

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 Documents) in excess of \$10,000.00, whether or not such impairment came about as a result of this Agreement. 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.

ARTICLE 21.

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.

ARTICLE 22.

NOTICE TO PARTIES.

All notices and demands of any kind which either party may serve upon the other party under this Agreement shall be served by personal service, or by leaving the notice or demand at the address set forth below, or by forwarding a copy thereof by first class mail, postage prepaid, or by telex or telecopier, addressed as follows:

To City: Overland Park Police Department
12400 Foster
Overland Park, Kansas 66212
ATTN: Captain Thomas Fredrickson

To Vendor:

or to such other address as may be specified from time to time by the relevant party. Service shall be deemed complete when the notice or demand is received by the party to whom it is addressed.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first written above.

City: City of Overland Park, Kansas

By: _____
Ed Eilert, Mayor

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Tammy M. Owens
Assistant City Attorney

Vendor:

By: _____

