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AN ORDINANCE 2008-09-04-0743

AUTHORIZING THE NEGOTIATION AND EXECUTION OF A TWO-YEAR CONTRACT IN AN AMOUNT UP TO $782,000.00 ANNUALLY, WITH GALLS, AN ARAMARK COMPANY LLC, TO PROVIDE UNIFORM ITEMS TO THE SAN ANTONIO FIRE DEPARTMENT FOR THE PERIOD OCTOBER 1, 2008, TO SEPTEMBER 30, 2010, WITH EXTENSION OPTIONS.

* * * * * * * * * * * *

WHEREAS, the current Collective Bargaining Agreement between the City of San Antonio and Local 624 International Association of Fire Fighters provides for a commissary system for the supply of uniforms and equipment to sworn San Antonio Fire Department personnel; and

WHEREAS, a request for proposals to provide a commissary system was issued by the City on June 2, 2008, and only one proposal was received by the deadline of July 2, 2008; and

WHEREAS, the only proposal submitted was by Galls, an Aramark Company LLC; and

WHEREAS, it is necessary to authorize City staff to negotiate and execute a two-year contract, with three one-year extensions, with Gall in amount not to exceed $782,000.00 annually; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager and her designee are hereby authorized to negotiate and execute a two-year contract, with three one-year extensions, that begins October 1, 2008, with Galls, an Aramark Company LLC, to provide a commissary system to the San Antonio Fire Department in an amount not to exceed $782,000.00 annually, so long as the terms and conditions of said contract are substantially the same as those contained in the attached contract. Should the parties be unable to negotiate and execute a contract within ninety days of the effective date of this ordinance, the authorization to execute said contract must again be obtained by City Council.

SECTION 2. Funding for this ordinance is contingent upon approval of the FY 2009 Budget for Fund 11001000 (General Fund) and Fund 51001000 (Aviation Operations), General Ledger 5201040 (Fees to Professional Contractors) in the cost centers and amounts listed below:

Amount	Cost Center	CC Text
$581,400.00	2001060001	UNIFORM COMMISSARY
$186,600.00	2005020002	COMMISSARY
$14,000.00	3302090001	FIRE & RESCUE
Total Amount: $782,000.00		

SECTION 3. Should funding be approved, payment not to exceed the budgeted amount is authorized and should be encumbered with a purchase order.

SECTION 4. The financial allocations in this ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This ordinance shall take effect immediately upon passage, provided that it is passed by eight or more affirmative votes; otherwise, this ordinance shall take effect ten days from the date of passage.

PASSED AND APPROVED this 4th **day of** September **, 2008.**

M A Y O R
PHIL HARDBERGER

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Agenda Voting Results - 6

Name:	6, 7, 9, 10, 11, 12, 13, 14, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 32A, 32B
Date:	09/04/2008
Time:	10:15:15 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the negotiation and execution of a two-year contract in an amount up to $782,000.00 annually, with Galls, an Aramark Company LLC, to provide uniform items to the San Antonio Fire Department for the period October 1, 2008 to September 30, 2010, with extension options. [Erik J. Walsh, Assistant City Manager; Charles N. Hood, Fire Chief]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Sheila D. McNeil	District 2		x			x	
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				

COMMISSARY SYSTEM

CONTRACT

STATE OF TEXAS)(

COUNTY OF BEXAR)(

This **CONTRACT** is entered into by and between the **CITY OF SAN ANTONIO** ("**CITY**"), a Texas Municipal Corporation, acting by and through its City Manager, Sheryl L. Sculley, pursuant to Ordinance No. _____, passed and approved on _____, 2008, and **Galls**, an Aramark Company LLC, 2680 Palumbo Drive, Lexington, Kentucky 40509 ("**VENDOR**"), acting by and through its President, Calvin Johnston.

I. DEFINITIONS

NEED Definitions of Platform, Embellished good, non-embellished good, out sized, special order and drop ship.

1.1 *"Apparel"* means all Uniforms and other clothing as defined herein as Attachment II, Specifications, to outfit all SAFD employees.

1.2 "Actual Cost" means actual amount paid by VENDOR as proven by original invoice and any applicable shipping costs.

1.3 *"City"* means the City of San Antonio.

1.4 *"Chapter 143 of the Local Government Code"* means Vernon's Texas Code Annotated, Local Government Code, Title 5, Matters Affecting Public Officers and Employees, Chapter 143, Municipal Civil Service.

1.5 *"Commissary System"* means a commissary program designed for the distribution of Apparel to the SAFD personnel pursuant to the terms of the Collective Bargaining Agreement between the City of San Antonio and Local 624 International Association of Fire Fighters, in effect at the time of the execution of this **CONTRACT**.

1.6 *"Cure Period"* means the period of time during which **VENDOR** must remedy certain defaults.

1.7 *"Initial term"* means October 1, 2008, through September 30, 2010.

1.8 *"Licensed Goods"* means Apparel manufactured by **VENDOR** and authorized and licensed by **CITY**.

1.9 *"Licensed Marks"* means those marks listed and shown in Attachment I, Licensed Marks, including, but not limited to, common-law rights, as well as any applications for registrations which may be filed by **CITY**, or registrations which may be issued to **CITY** covering such marks, whether state or federal.

1.10 *"Management Analyst"* means the SAFD representative designated by the Fire Chief to monitor and administer this **CONTRACT** and act as a liaison with **VENDOR**.

1.11 *"Personnel"* means any full time, permanent, paid employee who has been hired in substantial compliance with Chapter 143 of the Texas Local Government Code. Cadets are not considered "personnel" under this definition.

1.12 *"Quality"* means an acceptable level of quality to **CITY** and which is at least equal to comparable products manufactured and marketed by **VENDOR** and in conformity with the samples given to **CITY,** upon which the **CITY** relied in executing this **CONTRACT** with **VENDOR,** and the specimens of the Licensed Marks, attached hereto and incorporated herein as Attachment I, Licensed Marks.

1.13 *"SAFD"* means the San Antonio Fire Department.

1.14 *"Service Facility"* means **VENDOR**'s local facility approved by **CITY** for the Customer Service of the Commissary System.

1.15 *"Uniform Item"* means all items as listed in Attachment III, Uniforms Cost Sheet, attached hereto and incorporated herein.

1.15 "*Vendor*" means Galls, an Aramark Company LLC, 2680 Palumbo Drive, Lexington, Kentucky 40509.

II. SCOPE OF SERVICES

2.1 **VENDOR** will operate a uniform purchase program as described in this Article II. **VENDOR** will be responsible for all aspects of providing a successful program to include but not limited to the following:

- Maintain an inventory based on all requirements as set forth herein of the Uniform Items;
- Receive, process and ship individual orders;
- Perform alterations and repairs to uniform items;
- Provide embroidery, screen printing, and heat pressing services;
- Maintain transaction records by individual customer to include credit balance tracking;
- Utilize and maintain existing web based program and other existing internal resources to create specifically for SAFD an ordering and tracking platform as set forth in Section 2.5 (the "Platform"), which includes contract products, account balances & individual sizing information.

- Provide and operate a customer service facility to include sample items and trained staff; plus
- Assume responsibility for loss and damage of all items from time of shipment to customer receipt.

2.2 Customer Service Facility

Facility Requirements

2.2.1 **VENDOR** shall be responsible for providing, at their own expense, a customer service facility located within 30 miles of downtown San Antonio.

2.3 Facility Operation

2.3.1 Vendor's customer service facility will be operational on October 1, 2008. **CITY** will provide a location for the customer service facility. **VENDOR** will enter into a lease agreement with the **CITY** for a customer service facility as mutually agreed upon by both **VENDOR** and **CITY**. . Samples, as referred to in Attachment III, to be kept at the customer service facility will be limited to one complete run of sizing samples per brand for contract items with SAFD having final approval. The customer service facility will facilitate the return of any items for SAFD personnel. If approved by the designated SAFD representative, additional items may be displayed in the customer service facility. The sample uniform selections, any other uniform items added to this **CONTRACT** pursuant to the terms hereof, and any items approved by the designated SAFD representative, shall be utilized for viewing only.]

2.3.2 The customer service facility must be open for service and staffed for a minimum of five (5) days per week (Monday thru Friday) excluding twelve (12) **CITY** holidays which are approved annually by the City Council. Standard daily operating hours shall be from 9:00 a.m. to 1:00 p.m. The selected **VENDOR'S** staff shall be properly trained in order to provide all SAFD firefighters who are customers of the location with prompt and courteous service. The customer service facility will provide a separate area dedicated to SAFD personnel.

2.3.3 The facility shall maintain separate and distinct areas for the servicing of the SAFD uniformed personnel. No other individuals shall be provided service in this area. The **CITY** reserves the right to change this requirement in consultation with **VENDOR**.

2.3.4 On an emergency basis, as requested by the Fire Chief or designated representative, the customer service facility shall be opened for additional hours. **VENDOR** must provide a means such as a cell phone by which its representative may be contacted to facilitate operations in the event of an emergency.

2.4 Account Manager

VENDOR must employ an Account Manager dedicated to the SAFD account. The assigned Account Manager must have an in-depth knowledge of the **CITY'S CONTRACT** to include provisions, list of approved items as well as have access to all manufacturers providing the product. Upon request, the Account Manager or designee must be available to attend meetings to discuss **CONTRACT** or uniform issues as well as have the ability and authority to make decisions on behalf of **VENDOR**.

Additionally, the Account Manager or designee shall be responsible for all initial activities to include measurement and sizing of all authorized SAFD uniformed personnel as well as provide direct customer service regarding returns and/or alterations. Note: Measurements and sizing of all authorized SAFD uniformed personnel must be completed prior to October 1, 2008.

2.5 Inventory System and Tracking Requirements

2.5.1 System Requirements

VENDOR must provide a uniform tracking process. **VENDOR** must use a process that has proven successful by already being utilized with **VENDOR'S** current customer accounts. The process must have the capability to accurately track the following:

- Distribution of items;
- Maintain inventory control;
- Uniform repairs;
- Uniform replacements;
- Employee credit balances;
- Invoicing of items and services; and
- Shipping of uniform and/or accessory items.

2.5.2 . The ordering website must be compatible with Internet Explorer 6.0 and 7.0.

2.5.3 **VENDOR** must provide the **CITY** with a secure Uniform Resource Locator (URL) for application transactions. All transactions completed using the application (whether stand alone or web-based) must initially be updated on a daily basis to provide accurate updates of inventory availability, credit balance, etc., for each SAFD firefighter/employee user. The **CITY** reserves the right to access and audit the system at any time throughout the **CONTRACT** term.

2.5.3.1 On or before October 1, 2008, **VENDOR** will supply the following to the **CITY**:

- Electronic and hard copy of sizing form – online access to the form (part numbers and pricing)
- E-mail address and account management contact information
- Balance verification will be via e-mail or phone (Amanda or Kim)

- Sizing information will be captured and maintained in Excel
- Phone ordering – Galls will develop process to verify identity of personnel ordering items – may use ship to address

On or before January 2, 2009, **VENDOR** will have a custom San Antonio Fire Department website with the following capabilities:

- Password protected - Pin numbers for each FF's
- Sizing and balance information in customer profile (balance updated daily)
- Picture and description of each contract item
- Order process in place
- View account history and inventory availability
- Site will report order activity by date range (order history for the everyone using placing order on the site, will not be able to sort individually)
- Account Manager and support in Lexington
- Service Center in San Antonio
- Reporting will be produced from various systems and some processes will be manual

On or before October 1, 2009, **VENDOR** will have a fully functional custom San Antonio Fire Department website with the following capabilities:

- Password protected - Pin numbers for each FF's
- Sizing and balance information in customer profile (balance updated real time)
- Picture and description of each contract item
- Order process in place
- View account history and inventory availability
- System will generate shipping confirmation
- System will have the ability to produce reports by FF's, item and date range
- Account manager and support in Lexington
- Service Center in San Antonio

2.5.4 Tracking Requirements

2.5.4.1 **VENDOR** must track SAFD firefighter/employee credit balances and to provide shipment confirmation to SAFD firefighters/employees making purchases under the agreement. **VENDOR** must assume responsibility for loss and damage of all uniform items from time of shipment to customer's receipt.

2.5.4.2 The **CITY** will not be obligated to pay for any uniform item purchases that exceed the SAFD firefighter/employee $500.00 credit allowance. **VENDOR** will provide passwords for each SAFD firefighter/employee to ensure that only eligible SAFD firefighters/employees order uniform items. It shall be the

firefighter/employee's responsibility to protect all passwords or other security information provided to him or her and the firefighter/employee shall be responsible for any misuse or failure to adequately protect his or her password. The **VENDOR** will be responsible if there is a breach of security in **VENDOR's** computer system and passwords are illegally obtained. The **CITY** may disallow uniform purchases for firefighters who have failed to adequately protect the security of their passwords. **CITY** shall inform **VENDOR** immediately upon the termination of an employee's right to purchase uniform items under this **CONTRACT**.

2.5.4.3 The **VENDOR'S** tracking process must maintain information on each authorized SAFD employee including, but not limited to:

- Employee's available credit balance;
- Employee's PIN number;
- Assigned location;
- Rank; as well as
- Initial and subsequent changes in uniform size and measurement information.
- All information must be made accessible only to the specified individual ordering and the designated SAFD administrator.

2.5.4.4 Additionally, the **VENDOR** shall provide reports listing SAFD employee orders to include, but not limited to:

- List of ordered and shipped items;
- List of all returned items
- Order date and time;
- Item description and product number;
- Size;
- Quantity ordered;
- Cost per item;
- Shipment date and time;
- Shipment information to include SAFD employee name and address;
- Backorders and/or incomplete orders;
- All repairs and alterations performed for each employee
- Process time from the placement of order through shipment release;

2.5.4.5 All information set forth in this Section 2.5 pertaining to SAFD firefighter/employee transactions shall be tracked and maintained by **VENDOR** throughout the **CONTRACT** term.

2.6 Platform Use Requirements and Limitation of Warranties

2.6.1 The **CITY'S** and its employee's right to access the web based portion of the Platform shall be subject to the following terms of use:

Without limiting the foregoing, in no event may the CITY or its employees directly or indirectly:

1. Republish, post, upload, frame, retransmit, redistribute, or otherwise reproduce the Site or any Materials in any format to anyone in any way (other than the download to a personal computer that is inherent in viewing a web page);
2. access, attempt to access, or obtain any information regarding other users;
3. allow anyone else to use or access an account or password;
4. link to the Site without VENDOR'S prior written permission;
5. deep-link to any page or portion of the Site;
6. use any robot, spider or other data mining or other automatic device, program, or similar process or means to access, acquire, copy or monitor the Site, the Materials or any portion thereof, or in any way circumvent the navigational structure or presentation of the Site or any Materials;
7. breach or attempt to breach the security or authentication measures on the Site or any network or database connected to the Site;
8. collect any information related to any VENDOR products, pricing or other Material from the Site for the benefit of any other entity or person or share this information with any other person or entity;
9. decompile, reverse engineer, disassemble or otherwise reduce any software code for the Site to a human-readable form;
10. make any automated high-volume or other use of the Site for re-mailing, spamming or other purposes;
11. use the Site or Material in violation of any applicable law, rule or regulation;
12. use the Site to offer to sell or advertise any products or services;
13. submit any data, content or other material that contains a virus or other harmful component, or otherwise tampers with, impairs or damages the Site, the Materials or any connected network or database, or otherwise interferes with any person or entity's use or enjoyment of the Site.

2.6.2 The CITY'S and its employee's rights to access and use the Platform and the VENDOR'S right to conduct any sales under this contract shall cease upon the expiration or termination of this CONTRACT.

2.6.3 The terms of use set forth in section 2.6.1 shall not infer liability upon the CITY for any unauthorized use.

2.6.4 It shall be the responsibility of the VENDOR to maintain security over VENDOR's website to prevent and detect unauthorized use of the website and to ensure that password information remains secure and not vulnerable to intentional misuse by unauthorized persons.

2.6.5 In the event of any alleged violation(s) by the CITY, or its employees, of the terms of use set forth in section 2.6.1, the VENDOR shall immediately notify the CITY in writing of the alleged violation(s) and provide all evidence in support of the alleged violation to the CITY to enable the CITY an opportunity to conduct an investigation regarding the alleged violation(s).

2.7 Reporting Requirements

2.7.1 Within thirty (30) days after a request, **VENDOR** must provide the SAFD Fiscal Planning Manager or designee a report detailing at a minimum:

- Individual SAFD firefighter/employee credit balances;
- Statistics showing usage of uniform items and services;
- Inventory levels;
- Item prices;
- Repairs; and
- Up to date billing and monthly invoice summary
- All information must be made accessible only to the specified individual ordering and the designated SAFD administrator.

2.7.2 All reports as described in the agreement will be provided to the **CITY** at no additional charge.

2.8 Customer Support Requirements

2.8.1 **VENDOR** must establish a local or toll-free telephone inquiry line throughout the life of the agreement to handle program inquiries and requests for supplies during emergencies. In case of emergency, a designated employee of **VENDOR** must be available to open and operate the Customer Service Facility and must be available at all times by either cell phone or other means designated in the agreement.

2.8.2 **VENDOR** will, with assistance from SAFD, develop a standard operating manual setting out a general design and standard operating procedure, based on the functional requirements for all phases of the operation of its Customer Service Facility. The manual must include, but is not limited to, sections defining individual account tracking procedures, inventory control procedures, daily management, inspection procedures, and repair procedures. The manual shall serve as a point of reference and guide for the SAFD and **VENDOR'S** personnel to review operations requirements and functional relationships for each phase of the program. An electronic version of the manual will also be posted online for use by SAFD firefighters/employees. Standard operating

manual is due to the San Antonio Fire Department Commissary Analyst by January 1, 2009.

2.9 Repair, Replacement, and Alteration Requirements

2.9.1 **VENDOR** must provide repair and alterations at a facility, centrally located in Bexar County, within thirty (30) miles of San Antonio City Hall. Minor alterations and repairs to a uniform item of clothing must be completed within three (3) business days from the time, as reflected on a claim ticket, that a SAFD firefighter leaves the uniform item at the designated facility for alteration or repair. Minor alterations and repairs shall mean in-seam and out-seam repairs and alterations; repair of small rips and tears; button or zipper replacement; affixing stripes, patches and braids; and trim replacement or other such repairs. All other repairs must be available for pick up at the designated facility within three (3) business days.

2.10 Warranty

2.10.1 **VENDOR** warrants that for a period of one (1) year after acceptance and delivery of each uniform item, the uniform item and its component parts shall be free from defects in material and workmanship and shall perform to standard or exceed specifications set out in the agreement. If the manufacturer's warranty for any uniform item is in excess of one (1) year, then that specified warranty period shall apply to that covered uniform item. Delivery will commence upon receipt by a firefighter of an authorized uniform item. Warranty will be null and void if the end user neglects, abuses or alters the item(s), or does not follow care instructions.

VENDOR must repair, or at the **CITY'S** option, replace any defective uniform item at no additional charge. If a disagreement exists between the **CITY** and **VENDOR** as to whether a uniform item is defective, the San Antonio Fire Chief will designate a third party to determine whether the uniform item is defective. **VENDOR** shall provide and bear all costs required to meet its obligations under this warranty.

VENDOR warrants that for a period of one year after acceptance of repairs, embroidery and tailoring, that the repair, embroidery and tailoring to the uniform item or its component parts will be free from defects in material and workmanship, and that the uniform item will perform in its intended use.

2.11 Order Processing and Delivery Requirements

2.11.1 **VENDOR** must process and deliver orders within the time frames below:

Type of Item	Days to leave Facility	Days to receive order
-Non-Embellished Goods	2 business days	5 business days
-Embellished Goods	7 business days	10 business days

- Out-sized garments case by case basis case by case basis
-Special order & drop ship items 42 business days 45 days

The order processing and delivery time frame should be expressed as the time between the online submittal of an order and the time the uniform item is delivered to the firefighter who placed the order.

2.12 Inventory Changes

2.12.1 Subject to the requirements of this Section 2.12.1, the **CITY** may add, modify, substitute or delete uniform items from the list of items available for purchase as set out in this CONTRACT, upon thirty (30) days written notice to **VENDOR**. Additional uniform items may be added to the pricing schedule with price not to exceed the average of three published retail price lists for each added uniform item, as determined by the **CITY**. With respect to items that contain the SAFD logo, if the City chooses to change specifications on any such item or to substitute/delete any such, the City agrees to purchase **VENDOR'S** remaining inventory and work in process (once completed) of the items so changed, substituted and/or deleted at the contract price currently in effect under this CONTRACT.

2.13 Quality Control

2.13.1 **VENDOR** shall establish a Quality Control Program as set forth below to ensure quality of embellishment performed on uniform items by VENDOR hereunder. The program shall include:

1. Outbound audit of goods that VENDOR has embellished

2. A checklist for use in reviewing embellishment quality.

3. Inspection Reports regarding embellishment quality must be signed and include details regarding results of each inspection. Each report shall be made available to the **CITY** upon twenty-four (24) hours written request.

4. **VENDOR** shall be responsible for the quality of all embellishment work performed to ensure compliance with the quality requirements of this agreement. **VENDOR** shall be responsible for correcting all deficiencies in its embellishment operations within four business (4) days after written notification from the **CITY** that a quality issue has arisen. In advance of the written notice, the city should make every attempt possible to contact the vendor and verbally describe any non-compliance issues.

2.14 Balance of Inventory

2.14.1 **VENDOR** must purchase all remaining marked uniform items in inventory that are new, unused and free of defects in workmanship from the **CITY'S** current vendor at such current vendor's purchase price not to exceed $200,000 as verified by invoice. SAFD will provide Galls with current contract price for each item and agrees to purchase all such goods at contract prices on a FIFO (first in, first out) basis. Normal shipping charges will apply. SAFD reviewing previous sentence Marked uniform items are defined as uniform items held in inventory by the current vendor to which there is an SAFD logo affixed, including any item that is embroidered, printed, or bearing an SAFD mark. **VENDOR** may sell them at full **CONTRACT** price or discount them, on either a cash basis outside the program or through the credit balance program.

2.15 Price Schedule

2.15.1 Attachment III attached hereto contains the initial unit cost for each Uniform Item and Attachment IV contains unit cost for each type of repair. Embroidery, Screen Print and Heat Press applications are included in the price of each applicable item.

2.15.2 The **CITY** or its firefighters will not be required to order any quantity of items or repairs and alterations, but **VENDOR** will be required to provide all such items, repairs or alterations as requested.

2.15.3 SAFD firefighters will be charged the unit price for each uniform item or service set out in the agreement. The unit price shall include the item's cost to **VENDOR**, profit, insurance liability, performance bond, and all other costs associated with complying with the terms of the agreement.

2.15.4 Standard Shipping and Freight Prices for the first year shall be as per the table below. Standard Shipping and Freight Prices will be reviewed annually and agreed upon by both SAFD and Galls; provided that shipping and freight prices shall be increased/decreased annually in an amount equal to any increases/decreases in shipping and freight costs Galls can demonstrate it has incurred.

Amount of Purchases	Standard shipping cost
$0.00 - $100.00	$ 9.00
$101.00 - $250.00	$12.00
$251.00 - $500.00	$16.00

2.15.5 Expedited shipping costs will be available per published rate.

2.15.6 When any contracted uniform item is returned to **VENDOR** due to **VENDOR** error, the **VENDOR** will incur all shipping costs to ship the corrected item back

to the individual. If the SAFD employee made an error in ordering any contracted items, the shipping cost will be incurred by the employee.

2.15.7 If the **VENDOR** has a published price or special offer for the general public lower than the price listed in this Contract, **VENDOR** will offer that same price or special offer for the same time period as published.

2.16 Invoicing and Payment

2.16.1 **VENDOR** must invoice the **CITY** on a monthly basis. Invoices must be submitted by the 10th of the following month. Invoices indicating a price higher than the approved **CONTRACT** price will be corrected by the **CITY** and paid at the approved **CONTRACT** price as set forth in the agreement. **VENDOR** will be required to resubmit a corrected invoice. **VENDOR** will provide three documents/spreadsheets every month in order for the **CITY** to process payment. The first document is an invoice with the monthly grand total split out between the employee's assignment to Fire, EMS or Aviation. This invoice will be submitted to Finance for payment. The second spreadsheet required will have an itemized list of all orders processed for the month. This monthly invoice will contain the following information: PIN, First and Last name of employee, Description of item, unique item number, unit cost for each item, quantity, order total, address shipped to and the UPS tracking number. The last required spreadsheet will have all items purchased by individual, with unit cost only. This spreadsheet requires all previous listed information without order totals, addresses or UPS numbers. This spreadsheet is used to verify all contract prices through an Access database.

2.16.2 The **CITY** will make payments to **VENDOR** within thirty (30) days following receipt of a properly prepared invoice and verification that items were delivered to the SAFD firefighter/employee and submitted to the SAFD Fiscal Planning Manager. Payment is deemed to be made on the date a payment check is mailed.

2.17 Termination

2.17.1 Any remaining inventory (or work in process, once completed) of items marked with an SAFD logo that are new, unused and free of defects in workmanship shall be purchased by the **CITY** at **VENDOR'S** actual cost at the end of the term of this **CONTRACT**, unless prior to the expiration of the agreement, the **CITY** terminates the agreement. If the **CITY** terminates the agreement for, any reason it will purchase from **VENDOR**, at actual cost, any remaining inventory (or work in process, if completed within 30 days after CONTRACT expiration) of items marked with the SAFD logo that are new, unused and free from defects in workmanship. All product cost information provided to CITY by VENDOR shall be considered confidential information of VENDOR and may not be disclosed to any third party without VENDOR'S written permission.

2.18 Initial Department Wide Sizing.

2.18.1 Sizing of SAFD personnel must be 95% completed by October 1, 2008. Sizing must be done at a location approved by the City of San Antonio. Sizing will be completed during the weeks of September 8, 2008 and September 15, 2008.

2.19 Sizing.

2.19.1 Galls adding up charge language **VENDOR** shall furnish a variety of Apparel in industry standard sizes which includes, but is not limited to: even and odd waist size pants with finished lengths fit, shirt neck half sizes with even and odd sized sleeve lengths, hats in one-eighth sized increments, half and full shoe sizes in all widths, even and odd sized jackets and coats, and even sized belts. If special requests are made for sizes outside the manufacturer's normal size range longer lead times may apply. **VENDOR** shall make the standard manufacturing sizes, including, but not limited to, Outsizes, attached hereto and incorporated herein as Attachment V, Outsizes, of the Apparel to meet the needs of the SAFD, at no additional charge. Vendor shall provide female sizes when available.

2.19.2 **Newly Hired Employees**. **VENDOR** shall make available Apparel items identified in Attachment III at listed price to newly hired employees prior to entering the Fire Academy, unless otherwise identified in this **CONTRACT**. Newly hired employees are responsible for purchasing said items with their own funds and are not part of the **CITY** commissary credit system. Employees become eligible for commissary credit upon graduation from the Fire Training Academy with prorated credit amounts. City agrees to provide a list of items commonly purchased by cadets and a point of contact for selling opportunities to cadets.

2.20 Minimum Inventory Requirements.

2.20.1 Effective October 1, 2008, **VENDOR** shall provide inventory of each item of Apparel in industry standard sizes to meet the agreed upon time stated in section _2.11.1_____ for all items including, but not limited to, items to be replaced at employee's expense. Vendor will provide inventory balances at any given time to the City for all contract items with 1 week notification.

2.20.2 The turn-round time for outsized special order Uniform items, as established in Attachment V, shall be handled on a case by case basis.

2.20.3 Failure to maintain the inventory requirements or failure to provide the Apparel within the established turn-around times will be considered a default subject to the provisions of Article XII, Section 4, Termination for Cause. **CITY** furthers

reserves the right to obtain items of Apparel from other sources if **VENDOR** does not provide the minimum inventory level requirements or established turn-around times set forth in this Section.

2.21 TERM OF CONTRACT

2.21.1 After City Council approval of the contract, the agreement shall become effective beginning October 1, 2008, and terminate September 30, 2010. The City may renew the agreement at its sole discretion for up to three (3) additional one-year terms. An election by the City not to renew the agreement shall require no action or notification by the City to **VENDOR**.

2.21.2 Second and subsequent years contract prices for all apparel items, repairs, embroidery and alterations shall be reviewed and any individual price changes mutually agreed upon by both parties; provided that **VENDOR** shall be entitled to increase prices to an amount not to exceed the average percentage increase in the total Consumer Price Index for all Urban Consumers (all items less energy and food) for the twelve month period most recently ended. ~~plus two percentage points (2%).~~

2.21.3 If the agreement is renewed, the unit price will be revised based on the current PPI. Calculations will be based on multiplying the percentages of change in the index to the current year's pricing. For all items in the program the PPI commodity code WPU03810712 Men's and Boys Work Clothing will be utilized. Reference http://data.bls.gov/cgi-bin/srgate.

2.21.4 To calculate changes in the PPI, two formulas will be utilized.

1. Index Point Change

To determine the index point change, use the following formula:

Current PPI – Previous PPI = Index Point Change

2. Percent Change

To determine the percent change represented by the index, use the following formula:

Index Point Change / Previous PPI X 100 = Percent Change

2.21.5 If the agreement is renewed, the base period for the first renewal period (Previous PPI) will be March 2009 final version. Unit costs shall bear the same ratio to the PPI for March 2010 final version (Current PPI), as the stated unit cost to the base year with the dollar figures to be adjusted accordingly. If final version data is not available for the stated month, the latest available month with

final version data will be utilized. For following renewal periods, the base PPI will advance by one (1) year.

2.22 Liquidated Damages

2.22.1 If the **VENDOR** fails to have the Customer Service Facility operating by 9:00 a.m. on October 1, 2008, then the **VENDOR** may be subject to fixed and liquidated damages of one-hundred and fifty ($150.00) per day for each day late.

2.22.2 If the **VENDOR** fails in any given month to meet the delivery performance requirements 15% of the time (85% fill rate) as outlined in Section 2.11, then the **VENDOR** may be subject to fixed and liquidated damages for such month only in the amount of $300.

2.22.3 **(LANGAUGE BEING REVIEWED BY PILGRIMS)** If the **VENDOR** fails to complete alterations and repair services within the established time frames, the **VENDOR** will be subject to fixed and liquidated damages of five dollars ($5.00) per calendar day, per occurrence up to a maximum of forty dollars ($40.00) per occurrence that the **VENDOR** fails to complete the required work.

2.22.4 If the **VENDOR** fails to meet the established time frames for the website ordering system required by the agreement as stated in Section 2.5.3.1, the **VENDOR** will be subject to fixed and liquidated damages of two hundred and fifty dollars ($250.00) per day, for each day late.

2.22.5 The **VENDOR** will be subject to fixed and liquidated damages of twenty five dollars ($25.00) per hour for each hour that the computerized inventory control and tracking system fails to maintain uptime reliability rate of ninety-five percent (95%) in a given month.

2.22.6 The **VENDOR** will be subject to fixed and liquidated damages of one hundred and fifty dollars ($150.00) per day, for each day it fails to maintain the operating hours and the personnel at the customer service facility as required by the agreement.

III. GENERAL ASSURANCES

3.1 **VENDOR** covenants and agrees to perform all services described in this **CONTRACT** in a good and workmanlike manner to ensure accuracy and timeliness.

3.2 **VENDOR** agrees to have in its employ, at all times and at its own expense, a sufficient number of capable and qualified personnel to maintain and service the Commissary System. Personnel employed by **VENDOR** shall neither be employees of nor have any contractual relationship with **CITY**. **VENDOR** warrants and certifies that **VENDOR**

and any other person designated to provide service hereunder has the requisite training, license and/or certification to provide said services.

3.3 **VENDOR** agrees to assign a dedicated unit that is responsible for the task administration and work performance for this **CONTRACT**.

3.4 **VENDOR** shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State, and local taxes and fees, that are now or may hereafter be levied upon its property, or upon **VENDOR**, or upon the business conducted on its property, or upon any of **VENDOR**'s property used in connection therewith; and shall maintain in current status all Federal, State, and local licenses and permits, required for the operation of the business conducted by **VENDOR**.

IV. OWNERSHIP OF PRODUCT

4.1 **In accordance with Texas law, VENDOR acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of VENDOR pursuant to this agreement shall be the subject of any copyright or proprietary claim by VENDOR.**

4.1.1 The term "local government record" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

4.1.2 **VENDOR** acknowledges and agrees that all local government records, as described in herein, produced in the course of the work required by this Contract, will belong to and be the property of **CITY**. **VENDOR**, if awarded this **CONTRACT**, will be required to turn over to **CITY**, all such records as required by said **CONTRACT**. **VENDOR**, if awarded this **CONTRACT**, shall not, under any circumstances, release any records created during the course of performance of the **CONTRACT** to any entity without **CITY'S** written permission, unless required to do so by a Court of competent jurisdiction.

4.1.3 The parties acknowledge and agree that all data files regarding the CITY developed under this **CONTRACT** are the property of the **CITY.** The parties further acknowledge and agree that the Platform and any other systems or programs used by **VENDOR** in connection with this **CONTRACT** are the sole property of **VENDOR** and are not required to be given to the **CITY.**

4.1.4 When requested by the **CITY**, or within two months prior to the expiration or termination of the agreement, **VENDOR** must deliver to the **CITY** all data files developed under this **CONTRACT** in an accessible form at no additional cost.

4.1.5 In accordance herewith, **VENDOR**, if selected, agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

V. INTELLECTUAL PROPERTY

5.1 **VENDOR** shall pay all royalties and licensing fees. **VENDOR** shall hold the **CITY** harmless and indemnify the **CITY** from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, trademarks, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if **VENDOR** receives notice that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give written notice of such information to the **CITY**.

5.2 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, **VENDOR** will in a commercially reasonable time:

1. Either:

   a) obtain, at **VENDOR'S** sole expense, the necessary license(s) or rights that would allow the **CITY** to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,

   b) alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and

2. **VENDOR** further agrees to:

   a) assume the defense of any claim, suit, or proceeding brought against the **CITY** for infringement of any United States patent or copyright arising from the use and/or sale of the equipment under this Agreement,

   b) assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and

   c) indemnify the **CITY** against any monetary damages and/or costs awarded in such suit;

Provided that:

1. **VENDOR** is given sole and exclusive control of all negotiations relative to the claim, including the settlement thereof, but that **VENDOR** agrees to consult with the **CITY** Attorney of the **CITY** during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the **CITY**,
2. the Software or the equipment is used by the **CITY** in the form, state, or condition as delivered by **VENDOR** or as modified without the permission of **VENDOR**, so long as such modification is not the source of the infringement claim,
3. the liability claimed shall not have arisen out of the **CITY'S** negligent act or omission, and
4. the **CITY** promptly provides **VENDOR** with written notice within 15 days following the formal assertion of any claim with respect to which the **CITY** asserts that **VENDOR** assumes responsibility under this section.

VI. LICENSING

6.1 **CITY** is the owner and proprietor of various proprietary and other rights and interests in and to trade names, trademarks, and service marks ("Licensed Marks") which have acquired public recognition and goodwill appurtenant, which **VENDOR** recognizes, to said Licensed Marks, a portion of which **VENDOR** is authorized to adopt and use hereunder.

6.2 Subject to terms and conditions herein stated, **CITY** grants and **VENDOR** hereby accepts a non-exclusive, non-assignable, personal license to utilize the Licensed Marks solely on and in connection with Licensed Goods which are sold exclusively to **CITY**. **VENDOR** agrees that it will not use the Licensed Marks on any other products or sell the Licensed Goods to any third party. All use by **VENDOR** of the Licensed Marks inures to the benefit of **CITY**.

VII. INSURANCE

7.1 Prior to the commencement of any work under this Agreement, **VENDOR** shall furnish copies of all endorsements required below and an original completed Certificate(s) of Insurance to the **CITY'S** San Antonio Fire Department, which shall be clearly labeled "Uniform Program" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The **CITY** will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all endorsements required below, directly from the insurer's authorized representative to the **CITY**. The **CITY** shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the **CITY'S** Fire Department. No officer or employee, other than the **CITY'S** Risk Manager, shall have authority to waive this requirement.

7.2 The **CITY** reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by **CITY'S** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.

7.3 **VENDOR'S** financial integrity is of interest to the **CITY**; therefore, **VENDOR** shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at **VENDOR'S** sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $1,000,000/$1,000,000/$1,000,000
3. Commercial General Liability (Broad Form) Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
5. Commercial Crime Coverage	$200,000 per occurrence

7.4 **VENDOR** agrees to require, by written **CONTRACT**, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of **VENDOR** herein, and provide a certificate of insurance and that includes **VENDOR** and the **CITY** as additional insureds. **VENDOR** shall provide the **CITY** with said certificate prior to the commencement of any work by the subcontractor. This provision may be modified by **CITY'S** Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by **CITY'S** Risk Manager, which shall become a part of the **CONTRACT** for all purposes.

City of San Antonio
Attn: Fire Department
P.O. Box 839966
San Antonio, Texas 78283-3966

7.5 **VENDOR** agrees that with respect to the above required insurance, all insurance coverages are to contain the following provisions:

- Include the **CITY**, its officers, officials, employees, volunteers, and elected representatives as additional insureds by blanket endorsement where required by contract, as respects operations and activities of, or on behalf of, the named insured performed under **CONTRACT** with the **CITY**, with the exception of the workers' compensation and professional liability polices;

- Provide that the "other insurance" clause shall not apply to the City of San Antonio where the **CITY** is an additional insured;

- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the **CITY**.

- Provide thirty (30) calendar days advance written notice directly to **CITY** of any cancellation in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

7.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, **VENDOR** shall provide a replacement Certificate of Insurance and applicable blanket endorsement to **CITY**. **CITY** shall have the option to suspend **VENDOR'S** performance should there be a lapse in coverage at any time during this **CONTRACT**. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

7.7 In addition to any other remedies the **CITY** may have upon **VENDOR'S** failure to provide and maintain any insurance or the blanket policy endorsement required above to the extent and within the time herein required, the **CITY** shall have the right to order **VENDOR** to stop work hereunder, and/or withhold any payment(s) which become due to **VENDOR** hereunder until **VENDOR** demonstrates compliance with the requirements hereof.

7.8 Nothing herein contained shall be construed as limiting in any way the extent to which **VENDOR** may be held responsible for payments of damages to persons or property resulting from **VENDOR'S** or its subcontractors' performance of the work covered under this Agreement.

7.9 It is agreed that **VENDOR'S** insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

7.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

VIII. INDEMNIFICATION

8.1 **VENDOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to VENDOR'S activities under this Agreement, including any acts or omissions of VENDOR, any agent, officer, director, representative, employee, consultant or subcontractor of VENDOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT VENDOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

8.2._ The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. VENDOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or VENDOR known to VENDOR related to or arising out of VENDOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at VENDOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving VENDOR of any of its obligations under this paragraph.

IX. SUBCONTRACTING

9.1 It is **CITY's** understanding, and this **CONTRACT** is made in reliance thereon, that **VENDOR**, in the performance of services required hereunder, will use the following subcontractor:

(a) Logo Xpress (Silk Screen Printers)
(b) Aramark Uniform Services, a division of Aramark Uniform & Career Apparel, LLC (local facility assistance)

(c) [Pilgrim Dry Cleaners (local alterations)]

9.2 Any deviation from this subcontractor list, in the form of deletions, additions or substitutions, shall be approved by City Council, in writing, prior to the provision of any services by said subcontractor.

9.3 Any work or services subcontracted by **VENDOR** shall be by written **CONTRACT**, and unless specific waiver is granted in writing by **CITY**, shall be subject by its terms to each and every applicable provision of this **CONTRACT**. Compliance by subcontractor with the applicable provisions of said **CONTRACT** shall be the responsibility of **VENDOR**.

9.4 **CITY** shall in no event be obligated to any third party, including, any subcontractor of **VENDOR**, for performance of services or payment of fees.

X. CONFLICT OF INTEREST

10.1 **VENDOR** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a **CITY** officer or employee, as those terms are defined therein, from having a financial interest in any **CONTRACT** with **CITY** or any **CITY** agency such as **CITY** owned utilities. An officer or employee has a "prohibited financial interest" in a **CONTRACT** with the **CITY** or in the sale to the **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the **CONTRACT** or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY CONTRACT**, a partner or a parent or subsidiary business entity. **VENDOR** warrants and certifies that it, its officers, employees and agents are neither officers nor employees of the **CITY** or any of its agencies such as **CITY** owned utilities.

XI. INTENTIONALLY OMITTED
XI. PERFORMANCE DEPOSIT

11.1 **VENDOR** shall furnish **CITY** a performance deposit in the amount of $200,000.00 within ten (10) days from final award of this **CONTRACT**, which award is subject to City Council approval as evidence by passage of an ordinance. Failure to do so shall be an Event for Cause and will result in termination of the **CONTRACT**. The parties acknowledge and agree that it is a condition precedent to this **CONTRACT** to comply with this Section.

11.2 The performance deposit shall be in the form of a performance bond conditioned upon the faithful performance and execution of all duties and covenants required under this **CONTRACT**.

11.3 The performance deposit shall be released upon the written consent of **CITY** two (2) years from the date of expiration of this **CONTRACT** or completion of any litigation; whichever is later, provided that no Event for Cause has occurred.

11.4 The rights reserved to **CITY** with respect to the performance deposit are in addition to all other rights of **CITY**, and no action, proceeding or right with respect to the performance deposit shall affect any other right **CITY** has or may have.

XII. TERMINATION

12.1 For purposes of this **CONTRACT**, termination of this **CONTRACT** shall mean termination by expiration of the **CONTRACT** term or earlier termination pursuant to any of the provisions hereof.

12.2 **Termination without Cause.** This **CONTRACT** may be terminated by either party upon written notice in accordance with Section XX. Notice. Such notice must specify an effective date of termination, which shall be not less than one hundred eighty (180) days after the date of receipt of the notice by the other party. If the notice does not specify a date of termination, the effective date of termination shall be one hundred eighty (180) calendar days after receipt of the notice by the other party.

12.3 Defaults with Opportunity for Cure.

12.3.1 Should **VENDOR** fail to maintain minimum inventory or fail to meet the established turn-around times as required by Section 2.11, Minimum Inventory Requirement, same shall be considered a default. **CITY** shall deliver written notice of said default specifying such matter(s) in default. **VENDOR** shall have ten (10) business days after receipt of the written notice, in accordance with Section XX. Notice to cure such default. If **VENDOR** fails to cure the default within such ten-day cure period, **CITY** shall have the right, without further notice, to purchase any such Apparel item not maintained in **VENDOR**'s minimum inventory or for which **VENDOR** failed to provide within the established times from another vendor and offset the cost of said Apparel item(s) against **VENDOR**'s established future or unpaid invoice(s).

12.3.2 Should **VENDOR** fail to tailor, alter, repair or replace within the established time periods in accordance with Section 2.9.1, Tailoring, Alterations and Repair. **CITY** shall deliver written notice of said default specifying such matter(s) in default. **VENDOR** shall have ten (10) business days after receipt of the written notice, in accordance with Section XX. Notice to cure such default. If **VENDOR** fails to cure the default within such ten-day cure period, **CITY** shall have the right, without further notice, to repair, tailor, or alter any Apparel item with or from any other entity and offset the cost of said repair, tailoring, altering, or replacement against **VENDOR**'s future or unpaid invoice(s).

12.4 Termination for Cause. Upon written notice, **CITY** may terminate this **CONTRACT** upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this **CONTRACT**:

12.4.1 **VENDOR** makes or allows to be made any material misrepresentation or provides any materially misleading information in connection with this **CONTRACT**, including, but not limited to, **VENDOR**'s proposal, or any covenant, obligation, term or condition contained in this **CONTRACT**; or

12.4.2 **VENDOR** violates or fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this **CONTRACT** and such failure is not cured within 30 days after written notice to VENDOR by City detailing such failure, except those events of default for which an opportunity to cure is required in a shorter time as provided for herein.; or

12.4.3 Intentionally Omitted;

12.4.4 Intentionally Omitted;

12.4.5 **VENDOR** assigns this **CONTRACT** contrary to the terms hereof; or

12.4.6 **VENDOR** ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this **CONTRACT** shall continue); or if a receiver, trustee or liquidator is appointed for it or any substantial part of **VENDOR**'s assets or properties; or affect the goodwill appurtenant to the Licensed Marks; or

12.4.7 Intentionally Omitted.

12.4.8 **VENDOR** fails to comply in any respect with the insurance requirements set forth in this **CONTRACT**; and such failure is not cured within 30 days after written notice to VENDOR by CITY regarding such failure or

12.4.9 **VENDOR** violates any rule, regulation or law by which **VENDOR** is bound or shall be bound while and in performing the services required under this **CONTRACT** and such violation is not cured within 30 days after written notice to VENDOR by CITY regarding such violation; or

12.4.10 Intentionally Omitted

12.4.11 **VENDOR** uses the Licensed Marks in its corporate or trade name.

12.5 Termination by Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this **CONTRACT** shall automatically terminate as of the effective date of such prohibition.

12.6 Effect of Termination. Notwithstanding Section 15.3, Defaults with Opportunity for Cure, upon a decision to terminate by **CITY**, written notice of such shall be immediately provided to **VENDOR** specifying the effective date of termination, notice of which shall be given in accordance with Article XX. Notice.

12.6.1 Subject to 4.1.3, **VENDOR** shall affect an orderly transfer to **CITY** or to such person(s) or firm(s) as the **CITY** may designate, at no additional cost to **CITY**, all documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by **VENDOR** hereunder in accordance with Article XVIII. Record Retention and Accessibility of Records. Any record transfer shall be completed within sixty (60) days of the termination date and shall be completed at **VENDOR's** sole cost and expense.

12.6.2 Within sixty (60) days of the date of termination of this **CONTRACT**, **VENDOR** agrees to deliver to **CITY** all data files developed pursuant to, related to, or resulting from this **CONTRACT** in a comma delimited text file, with appropriate header information, at no additional cost to **CITY**. **CITY** shall have the right to review said information.

12.6.3 Within sixty (60) days of the effective date of termination or expiration of this **CONTRACT**, **VENDOR** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services performed or goods provided under this **CONTRACT** through the effective date of termination; however, failure by **VENDOR** to submit its claims within said sixty (60) days shall not negate any liability on the part of **CITY** unless **CITY** has been materially prejudiced by any such delay, but in no event shall **VENDOR** submit its claims any later than 180 days after the effective date of termination or expiration of this **CONTRACT**.

12.6.4 Upon the effective date of expiration or termination of this **CONTRACT**, **VENDOR** shall cease all operations of the Commissary System. Upon receipt of notice termination, **VENDOR** shall provide **CITY** within sixty (60) days of receipt of said notice, a listing of all Apparel items held by **VENDOR** for repair, tailoring, alterations, as well as a listing of all minimum inventory held by **VENDOR**. **CITY** shall, at its sole option and discretion, except as provided below, purchase said minimum inventory from **VENDOR** at the prices listed herein, except as provided below. **CITY** shall also, at its sole option and discretion, allow **VENDOR** to complete any such repairs, alteration, tailoring, or cleaning. **CITY** shall give notice to **VENDOR** of its decision regarding these issues in writing. Notwithstanding anything to the contrary provided

herein, **CITY** shall be obligated to purchase at **VENDOR** cost upon expiration or termination of this **CONTRACT**, any and all items held in inventory by **VENDOR** to which are attached a logo of **CITY**, including, but not limited to, any item on which is embroidered, printed, or attached any Licensed Mark of **CITY**. All product cost information provided to CITY by VENDOR shall be considered confidential information of VENDOR. CITY agrees to notify VENDOR of any subpoena or other request to release information designated in writing by VENDOR as confidential product cost information and to support VENDOR in claiming any privileges under law to disclosure of such information. However, it is understood that **VENDOR** will not order any Licensed Mark Apparel items after receiving notice of termination or non-renewal unless approved by **CITY**. The parties further agree that no Licensed Marks shall be attached to Apparel items after receiving notice of termination or non-renewal unless approved by **CITY**.

12.6.5 Upon expiration or termination of this **CONTRACT**, all rights granted to **VENDOR** hereunder shall cease, and **VENDOR** shall refrain from further use of the Licensed Marks or any mark or name reasonably deemed by **CITY** to be similar to the Licensed Marks in connection with the sale, distribution, or promotion of products or services. **VENDOR** shall promptly deliver to **CITY**, or destroy, all materials bearing the Licensed Marks and shall certify said delivery or destruction to **CITY**, subject to the **CITY**'s duty to purchase logoed inventory as provided in Section 15.6.4.

12.6.6 **Termination not sole remedy.** In no event shall **CITY**'s action of terminating this **CONTRACT**, whether for cause or otherwise, be deemed an election of **CITY**'s remedies, nor shall such termination limit, in any way, at law or at equity, **CITY**'s rights to seek damages from or otherwise pursue **VENDOR** for any default hereunder or other action.

XIII. INDEPENDENT CONTRACTOR

13.1 It is expressly understood and agreed by both parties hereto that **VENDOR** is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that **CITY** shall in no way be responsible therefore, and that neither party hereto has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

13.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint ventures or other similar such relationship between the parties hereto

13.3 Any and all of the employees of **VENDOR**, wherever located, while engaged in the performance of any work required by **CITY** under this **CONTRACT** shall be considered employees of **VENDOR** only and not of **CITY**. Any and all claims that may arise from

the Worker's Compensation Act or any law, rule or regulation on behalf of said employees while so engaged shall be the sole obligation and responsibility of **VENDOR**.

XIV. CONFIDENTIAL INFORMATION

14.1 **VENDOR** shall secure the confidentiality of records and information that **VENDOR** may have access to in accordance with the applicable Federal, State, and local laws and regulations. This provision shall not be construed as limiting **CITY**'s or its authorized representative's right of access to records or other information under this **CONTRACT**.

XV. RECORD RETENTION AND ACCESSIBILITY OF RECORDS

15.1 **VENDOR** and shall, during the term of this **CONTRACT**, maintain adequate books and records of all transactions in which **VENDOR** engages with **CITY**.

15.2 **VENDOR** shall properly, accurately and completely maintain all books, documents, papers, accounting records, computer records, software system, and other evidence pertaining to the services provided hereunder and shall make such materials available at its respective offices, at all reasonable times and as often as **CITY** may reasonably deem necessary, during the **CONTRACT** period for the purposes of accounting, auditing, or making copies by **CITY** and/or its authorized representatives.

15.3 Subject to Section 4.1.3, upon termination of this **CONTRACT**, **VENDOR** agrees to transfer to **CITY** at no cost to **CITY,** all documents, papers, records, charts, reports, and data produced as a result of or pertaining to the services rendered by **VENDOR** hereunder, according to the terms herein established. **VENDOR** may retain a copy of all such papers and documents as are described above.

15.4 **VENDOR** agrees to notify **CITY** immediately if a request is made by third person for information produced and/or maintained by **VENDOR** as a result of the provision of services under this **CONTRACT**. **VENDOR** shall immediately forward said request to **CITY** for response.

XVI. MONITORING PROJECT PERFORMANCE

16.1 **CITY**'s Fire Department staff will administer this **CONTRACT** and will monitor and evaluate **VENDOR** pursuant to the provisions hereof. **VENDOR** shall establish and maintain appropriate documentation to verify performance and shall submit such documentation to **CITY**'s Fire Department staff when requested, as often as reasonably deemed necessary by **CITY**, upon written notice thereof. **VENDOR** further agrees to reasonable on-site monitoring by representatives of **CITY**.

XVII. NOTICE

17.1 Unless specified otherwise, any notice required or permitted to be given under this **CONTRACT** shall be sufficient if given in writing and sent by certified mail, return receipt requested, postage prepaid to **CITY**, or to **VENDOR** at the addresses set forth below or to any other address of which written notice of change is given:

CITY

City of San Antonio
Fire Department
ATTN: Management Analyst
115 Auditorium Circle
San Antonio, TX 78205

VENDOR

Galls, an Aramark Company LLC
ATTN: Calvin Johnston, President
2680 Palumbo Drive
Lexington, Kentucky 40509

XVIII. ATTACHMENTS

18.1 **VENDOR** understands and agrees that all attachments referred to in this **CONTRACT** are intended to be and hereby are, specifically made a part of this **CONTRACT**. Said attachments are as follows:

Attachment I	Licensed Marks
Attachment II	Specifications
Attachment III	Uniform Cost Sheet
Attachment IV	Cost of Uniform Repairs
Attachment V	Outsizes/Special Orders
Exhibit A	Terms of Use

18.2 **VENDOR** understands and agrees that all such Attachments are a part of this **CONTRACT**, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by **VENDOR** as completely and fully as are the obligations, conditions, tasks, products and representations imposed by this **CONTRACT**.

XIX. GOVERNING LAW AND VENUE

19.1 Venue of any court action brought directly or indirectly by reason of this **CONTRACT** shall be in Bexar County, Texas. This **CONTRACT** shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties created hereunder are to be performed in Bexar County, Texas.

XX. COMPLIANCE WITH ALL APPLICABLE LAWS

20.1 **VENDOR** hereby agrees to provide all services required by this **CONTRACT** in compliance with all applicable Federal, State and local laws.

XXI. NON ASSIGNABILITY

21.1 Notwithstanding Section XII, Subcontracting, **VENDOR** shall not assign any interest in this **CONTRACT** to any other party without the prior written consent of **CITY**; provided that **VENDOR** may assign this contract to an affiliate without consent. Any such assignment of interest is subject to City Council approval as evidenced by passage of an ordinance. Assignment of this **CONTRACT** within City Council approval constitutes cause for immediate termination.

XXII. GENDER

22.1 Words of any gender used in this **CONTRACT** shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXIII. CAPTIONS

23.1 The captions contained in this **CONTRACT** are for convenience or reference only and shall in no way limit, enlarge or alter the terms and/or conditions of this **CONTRACT**.

XXIV. AMENDMENTS

24.1 This **CONTRACT**, together with its authorizing ordinance and its attachments, constitute the entire agreement between the parties. No amendment, modification or alteration of the terms of this **CONTRACT**, unless otherwise expressly provided for herein, shall be binding unless the same be in writing, dated subsequent to the date hereof, duly executed by the parties hereto, and subject to City Council approval as evidenced by passage of an ordinance.

XXV. NON-WAIVER

25.1 **CITY**'s granting or acceptance of extensions of time to comply with any **CONTRACT** covenant or condition will neither act as a release of **VENDOR** nor constitute a waiver of

that or any other covenant or condition required in the **CONTRACT**. Therefore, **CITY** retains the ability to exercise its rights or remedies authorized under this **CONTRACT**.

XXVI. SEVERABILITY

26.1 If any clause or provision of this **CONTRACT** is illegal, invalid or unenforceable under present or future federal, state or local laws, including, but not limited to, the City Charter, City Code or Ordinances of the City of San Antonio, Texas, then, and, in that event, it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this **CONTRACT** shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intention of the parties to this **CONTRACT** that, in lieu of each clause or provision of this **CONTRACT** that is illegal, invalid or unenforceable, there be added as part of this **CONTRACT** a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

XXVII. ENTIRE AGREEMENT

27.1 This **CONTRACT**, its attachments and its authorizing ordinance constitute the final and entire agreement between the parties hereto, superseding all verbal or written agreements, previous and/or contemporaneous agreements between the parties and relating to matters in this **CONTRACT**. No other agreements, oral or otherwise, regarding the matters of this **CONTRACT** shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereto, duly executed by the parties hereto and subject to City Council approval.

XXVIII. ACKNOWLEDGMENT AND AUTHORITY

28.1 Each of the parties hereto acknowledges that it has read this **CONTRACT**, understands its contents and has the requisite authority to execute this **CONTRACT** voluntarily.

EXECUTED and **AGREED** to on this the _____day of September, 2008.

CITY
CITY OF SAN ANTONIO

_____
Sheryl L. Sculley
City Manager

VENDOR

_____

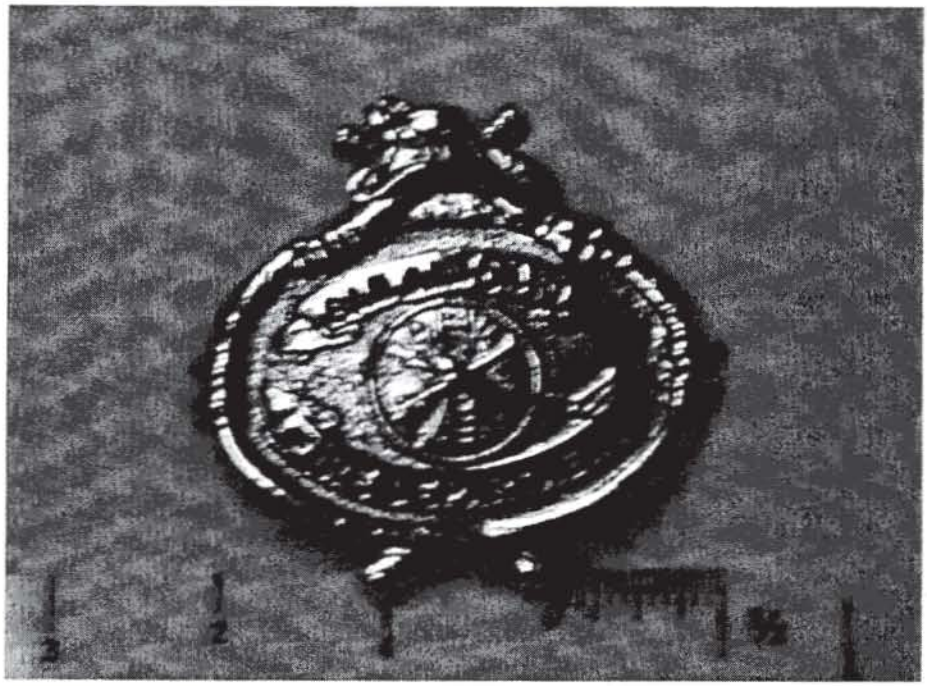
_____
(Title)
on behalf of _____,
VENDOR

Approved as to form:

_____
Michael Bernard
City Attorney

Attachment I

Licensed Marks



Attachment II

EXHIBIT A

TERMS OF USE

Protected Materials

All of the text, information, features, images, displays, content, functions, software and other materials that make up or are contained on the web site (the "Site") used to service the CITY ("Material") is VENDOR'S and its licensors' copyrighted and proprietary intellectual property. All trademarks, service marks, trade names, and trade dress appearing on the site, except for logo's belonging to the CITY, are proprietary to VENDOR and its licensors.

Limited Purpose; Rules of Conduct

13. The Site and the Material are made available for the limited purpose of allowing authorized users who are at least 18 years old to learn about VENDOR'S selection of uniform products available to the SAFD and then purchase these products from VENDOR. Any other use, duplication, distribution or other exploitation of the Site, the Materials or any portion thereof is prohibited.

We cannot and do not assure that other users are or will be complying with the foregoing rules or any other provisions of these terms of use, and disclaim any liability for harm or injury resulting from any such lack of compliance.

Submission Removal; Disclosure

VENDOR reserves the right, but disclaims any obligation or responsibility, to (a) refuse to post or remove any user submission that violates these terms of use and (b) identify any user to third parties, and/or disclose to third parties any such submission or personally identifiable information, when we believe in good faith that such identification or disclosure will either (i) facilitate compliance with laws, including, for example, compliance with a court order or subpoena, or (ii) help to enforce these terms of use and/or protect the safety or security of any person or property, including the Site. Moreover, VENDOR retains all rights to remove submissions at any time for any reason or no reason whatsoever.

CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 6
Council Meeting Date: 9/4/2008
RFCA Tracking No: R-3723

DEPARTMENT: SAFD **DEPARTMENT HEAD:** Charles N. Hood

COUNCIL DISTRICT(S) IMPACTED:
City Wide

SUBJECT:
Web Based Uniform Purchase Program

SUMMARY:
This ordinance accepts the proposal of, and authorizes the negotiation and execution of a two year contract, not to exceed $782,000.00 annually, with Galls, an Aramark Company LLC, to provide uniform items to the San Antonio Fire Department. The initial term of the contract will be from October 1, 2008 to September 30, 2010, with the option for three one-year extensions. This action will be effective immediately with the passage of eight (8) affirmative City Council votes.

BACKGROUND INFORMATION:
The Collective Bargaining Agreement with Local 624 International Association of Fire Fighters, dated October 1, 1999, established a commissary system to supply uniforms to the City of San Antonio Fire Department personnel. The current Collective Bargaining Agreement approved by City Council through Ordinance # 2007-05-31-0648 continues this requirement for a uniform commissary system.

The current uniform contract will expire on September 30, 2008. A Request for Proposals (RFP) was released for advertisement on June 2, 2008. The RFP closed on July 2, 2008. Only one RFP was submitted from Galls, an Aramark Company LLC. The Web Based Uniform Purchase Program Contract negotiations commenced on August 4, 2008.

ISSUE:
There are no issues related to this ordinance.

ALTERNATIVES:
If the City did not award this contract, a new Request for Proposal would have to be solicited. This process would take up to six months to complete and the City would not be in compliance with the current Collective Bargaining Agreement approved in 2007.

FISCAL IMPACT:
All expenditures are budgeted in General Fund and Aviation Fund for fiscal year 2008-2009; the

contract will not require additional expenditures. As the Collective Bargaining Agreement allows for a five hundred dollar credit assigned to each employee, there will be no additional fiscal impact. Amendments required to take place after September 30, 2008, are understood to be contingent upon the award of the Web Based Uniform Purchase Program contract by the City Council.

RECOMMENDATION:
Staff recommends approval of this ordinance to commence the Web Based Uniform Purchase Program contract.

ATTACHMENT(S):

File Description	File Name
Voting Results	
Ordinance/Supplemental Documents	200809040743.pdf

DEPARTMENT HEAD AUTHORIZATIONS:
Rodney Hitzfelder Deputy Fire Chief SAFD

APPROVED FOR COUNCIL CONSIDERATION:
Erik Walsh Assistant City Manager