

## **AGREEMENT FOR SERVICES**

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, by and between Marlow White, a Kansas Corporation, hereinafter referred to as "MARLOW WHITE" and the City of Overland Park, Kansas, a municipal corporation duly organized and operating under the laws of the State of Kansas, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, the Overland Park Police Department (OPPD) desires to purchase dress uniforms made to military specifications; and

WHEREAS, the OPPD has determined that MARLOW WHITE is the only local vendor to produce uniforms to military specifications; and

WHEREAS, the OPPD requested and received permission from the Governing Body of the City on the 10th day of January, 2005 to make a sole source purchase for these uniforms.

NOW, THEREFORE, in consideration of the compensation to be paid MARLOW WHITE, and of the mutual agreements herein contained, the parties hereto have agreed, and hereby agree, the City for itself and its successors, and MARLOW WHITE 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:

### **I. MARLOW WHITE'S PERFORMANCE**

- A. MARLOW WHITE will schedule and measure all commissioned officers of the Overland Park Police Department within forty-five (45) days of execution of this Agreement. Measurements will take place at MARLOW WHITE'S principle place of business at 400 Seneca Street, Leavenworth, Kansas 66048. The City will order the sizes of uniform items needed based on the measurements taken by MARLOW WHITE. If the measurements are not correct and the uniform item does not fit, the uniform item will be returned to MARLOW WHITE and the uniform item will be replaced by MARLOW WHITE in the correct size at no additional cost to the City.
- B. MARLOW WHITE will furnish at its own expense all labor, tools, equipment, materials, work and transportation required to provide the City the police uniforms and services designated, described and required by this Agreement and the specifications attached hereto and incorporated by reference herein as Exhibit A. All work to be done in a good, substantial and workmanlike manner to the entire satisfaction of the City. MARLOW WHITE agrees to sell and deliver to the City the police uniform items as ordered by the City and as described in Exhibit A. In consideration, the City agrees to pay MARLOW

WHITE for the performance required by this Agreement the payment per uniform item ordered as fully described in Section II below. In addition, the City will provide the transportation to officer's to MARLOW WHITE'S principal place of business for purposes of measuring. The City will notify MARLOW WHITE within twenty-four (24) hours to alert MARLOW WHITE that the officers will be arriving to be measured.

- C. MARLOW WHITE will produce and deliver the clothing within 90 days of the completion of the measurements of all officers. For orders made to MARLOW WHITE by City after the initial order, MARLOW WHITE will produce and deliver ordered clothing items to the City within thirty (30) days of the orders with the exception of special order items such as shoulder boards.
- D. The source of the material for the uniform items furnished by MARLOW WHITE will comply with the specifications relating thereto in Exhibit A and MARLOW WHITE will not change the source of the supply without the prior written approval of the City.
- E. MARLOW WHITE will make repairs on uniform items relating to covered warranty issues within the first year of the item's use as requested by the City at no additional cost to the City. If the uniform item cannot be repaired because of a manufacturing defect, MARLOW WHITE will replace the uniform item at no additional cost to the City. Items will be repaired or replaced and returned to City within two (2) weeks of MARLOW WHITE'S receipt of the item.
- F. MARLOW WHITE shall fill emergency orders as may become necessary and expedite delivery of same, with a maximum delivery time of two (2) weeks from the date of ordering with the exception of special order items. The determination of the Training Coordinator as to the existence of an emergency shall be final.
- G. MARLOW WHITE shall not allow any uniform components to be delivered to any person except those duly authorized by the Overland Park Police Department, and will exercise reasonable security procedures to prevent theft or unauthorized possession of such uniform components. City will provide MARLOW WHITE with a list of those individuals who are authorized by the City to accept delivery of the uniform items. Upon request of the City, MARLOW WHITE shall provide details of such security procedures. MARLOW WHITE shall immediately notify the Overland Park Police Department of any loss or unauthorized possession of any uniform components.
- H. Unless otherwise advised by the City, any notice required to be made to the City shall be made to the following:

Training Coordinator  
Overland Park Police Department  
Sanders Justice Center  
12400 Foster  
Overland Park, Kansas 66213-2629  
913-895-6000

Any notice required to be made to MARLOW WHITE shall be made to the following:

MARLOW WHITE  
Attn: Randy Abbott  
400 Seneca  
Leavenworth, KS 66048

- I. MARLOW WHITE will provide a one year warranty for manufacturing defects on all uniform items.

**II. PRICE AND PAYMENT TERMS**

- A. MARLOW WHITE will create all uniform items ordered to meet the specifications listed in Exhibit A. All required specifications will be met for the below per unit price unless it specifically stated in Exhibit A that the City will furnish some portion of the uniform item. MARLOW WHITE will accept as full compensation, the following payment per uniform item ordered as listed:

Male Dress Blue Four-Button Coat (Item 09-100-OP)	\$249.00
Dress Blue Officer Trousers (Item 60-160-OP)	\$120.00
Female Dress Blue Four-Button Coat (Item 09-352-OP)	\$249.00
Female Dress Blue Skirt (Item 09-355-OP)	\$69.00
Dress Blue Trousers without braid (Item 60-160)	\$79.00
Dress Blue Trousers with braid (Item 60-160)	\$84.00
Male or Female Coat Alterations (Item 11-900-OP)	\$20.00
Trouser or Skirt Alterations (Item 11-901-OP)	\$14.00
Field Grade Dress Blue Saucer Hat with Gold Bullion Visor (Item 05-310-OP)	\$59.00
Mylar Permagold Chin Strap (Item 55-700)	\$7.00
Male Plain White Long-Sleeved Shirt (Item 07-004)	\$19.95
Female Plain White Short-Sleeve Overblouse (Item 07-010)	\$42.00
Midnight Blue Four-in-hand Tie (Item 61-116)	\$9.95

- B. Provided this Agreement is properly executed between the parties and in effect, the payment and consideration described in this section shall be due and payable to MARLOW WHITE within thirty (30) days of receipt by City of all uniforms items and subsequent presentment of invoice by MARLOW WHITE to the City.
- C. The uniform prices listed in Section II A above shall be effective for the initial two (2) year term of this contract. Thereafter, the parties will negotiate the prices to reflect actual cost increases that MARLOW WHITE incurs in materials and/or labor.

### **III. TERM AND TERMINATION**

- A. The term of this Agreement shall be for two (2) year from its effective date. Thereafter, this Agreement will automatically renew annually unless either party gives the other thirty (30) days written notice of intent to terminate.
- B. The City may terminate this Agreement at any time the City, in its sole judgment and discretion and without default or cause deems it necessary and appropriate. If the City terminates this Agreement, the City will pay MARLOW WHITE for the uniform items it has ordered.

### **IV. AFFIRMATIVE ACTION/OTHER LAWS**

- A. MARLOW WHITE agrees that:
  - 1. MARLOW WHITE 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, MARLOW WHITE shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the commission;
  - 3. If MARLOW WHITE fails to comply with the manner in which the MARLOW WHITE reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, MARLOW WHITE shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;
  - 4. If MARLOW WHITE is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, MARLOW WHITE shall be

deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City; and

5. MARLOW WHITE shall include the provisions of subsections (1.) through (4.) in every subcontract or purchase order so that such provisions will be binding upon such Sub Vendor or vendor.
  6. The provisions of this section shall not apply to an Agreement entered into by Marlow White:
    - a. If MARLOW WHITE employs fewer than four employees during the term of such contract; or
    - b. If Marlow White's contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.
- B. MARLOW WHITE further agrees that MARLOW WHITE 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.

## V. INDEMNITY

### A. Definitions

For purposes of indemnification requirements as set forth throughout the Contract, the following terms shall have the meanings set forth below:

1. "MARLOW WHITE" means and includes MARLOW WHITE, all of its affiliates and subsidiaries, its Sub Vendors and material men 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.

B. The Indemnity

For purposes of this Agreement, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Agreement, MARLOW WHITE 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 Marlow White, its employees, agents, Sub Vendors and suppliers.

MARLOW WHITE shall defend, protect, indemnify and hold harmless the City, it's officers, agents and employees against all suits of law or in equity resulting from patent and copyright infringement concerning Marlow White's performance or products produced under the terms of the agreement.

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.

C. General Limitation

Nothing in this section shall be deemed to impose liability on MARLOW WHITE to indemnify the City for loss when the City's negligence or other actionable fault is the sole cause of loss.

D. Waiver of Statutory Defenses

With respect to the City's rights as set forth herein, MARLOW WHITE 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.

**VI. LAWS AND ORDINANCES**

MARLOW WHITE 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 Contract 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.

**VII. APPLICABLE LAW**

This Agreement is entered into under and pursuant to the laws of the State of Kansas.

**VIII. TAXES**

The City is tax exempt as a political subdivision under Section 4221(a) of the Internal Revenue Code and K.S.A. 79-3606(b). Parties agree that the City will therefore not be responsible for taxes. All taxes will be omitted from invoices to the City.

**IX. DISPUTE RESOLUTION**

City and MARLOW WHITE agree that disputes relative to the product 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 MARLOW WHITE shall proceed with the work as per this Agreement as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the City's express written consent. The City will continue to pay MARLOW WHITE for the work completed that is not the subject of the dispute as provided in section II B above. The City may withhold payment relative to the disputed item(s) until the dispute is resolved.

**X. INSURANCE**

MARLOW WHITE shall maintain and carry in force for the duration of the agreement, insurance coverage of the types and minimum liability limits as set forth below:

A. Commercial General Liability

\$500,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Minimum \$1,000,000 aggregate.

B. Worker's Compensation and Employer's Liability

1. Worker's Compensation      Statutory  
    (includes allstates endorsement)

2. Employer's Liability \$100,000 each occurrence

C. Fidelity Bond

Blanket Employee Dishonesty Coverage – not less than \$125,000 each loss

The City will only accept coverage from an insurance carrier who is licensed to do business in the State of Kansas and carries a rating by Best of not less than "A." MARLOW WHITE shall provide certificates of insurance verifying this coverage on forms acceptable to the City.

**XI. INDEPENDENT CONTRACTOR STATUS**

This Agreement is and shall be deemed an independent contract for product and/or services and Marlow White, and all persons providing services on behalf of MARLOW WHITE under this Agreement, shall be deemed independent contractors and shall not be deemed under any circumstance employees of the City.

**XII. ASSIGNMENT, TRANSFER, OR CONVENYANCE OF RIGHTS**

MARLOW WHITE will not sell, assign, or convey any of its rights in this Agreement except with written consent of the City.

**XIII. RISK OF LOSS, SHIPMENT, PACKAGING**

Title to and risk of loss and damage to uniform items prior to the time of their receipt and acceptance by the City is upon MARLOW WHITE. The City has no obligation to accept damaged shipments and reserves the right to return, at Marlow White's expense, damaged merchandise even though the damage was not apparent or discovered until after receipt of such damaged uniform items. All items shall be properly packaged, packed, labeled and identified in accordance with commercial standards acceptable to the trade and in compliance with ICC and other federal and state regulations. MARLOW WHITE shall notify the City of any late or delayed shipments.

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

City of Overland Park, Kansas:

\_\_\_\_\_  
Ed Eilert, Mayor



ATTEST:

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Marian Cook, City Clerk

APPROVED AS TO FORM:

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Tammy M. Owens  
Assistant City Attorney, II

Marlow White:

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President

ATTEST:

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Secretary

CORPORATE ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

BE IT REMEMBERED, That on this \_\_\_\_ day of \_\_\_\_\_, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_, President of Marlow White, a corporation duly organized, incorporated and existing under and by virtue of the laws of Kansas; and \_\_\_\_\_, Secretary of said corporation, who are personally known to me to be such officers and who are personally known to me to be the same persons who executed as such officers within instrument on behalf of said Corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said Corporation.

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

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_