



Master Services Agreement

This Master Services Agreement (“**Agreement**”) is entered into as of the Effective Date below and is between OFF DUTY MANAGEMENT, Inc., a Texas Corporation, with offices located at 1908 Avenue D, A100, Katy, Texas 77493 (“ODM” or “Contractor”) and the Tooele County Sheriff's Office, having its principal offices at 1960 S Main St., Tooele, UT 84074 (“Client”). ODM and Client are sometimes individually referred to herein as “Party” and collectively as the “Parties”.

“Effective Date”

 If no date is specified, the Effective Date of this Agreement is the date of the last signature below.

“Recitals”

In consideration of the reciprocal promises, covenants and agreements contained in the Agreement, and for other good and valuable consideration, which the Parties acknowledge the receipt and sufficiency of, the Parties agree to the following Terms & Conditions.

TERMS & CONDITIONS

1. Services

1.1 Statements of Work and the Services.

- (A) Except where expressly stated otherwise to the contrary, ODM shall perform, at its sole expense, the Services described in this Agreement, and any applicable Statements of Work (or schedules or other attached documents) that the Parties may execute from time to time during the term of this Agreement. As used in this Agreement, “Statement of Work” or “SOW” means a Statement of Work executed pursuant to this section 1.1, including all schedules, exhibits, and attachments thereto, as each may be amended from time to time and agreed to in writing by an authorized representative of the Parties. “Services” as used in this Agreement means, collectively, the services, deliverables, and functions to be provided by ODM under this Agreement. ODM shall provide the requisite staff, and resources necessary to provide Client with the services described in this Agreement, and any applicable Statement of Work. ODM shall provide Client with support services for the coordination, management, and provision of its personnel related to the Client's off duty uniformed officer outside employment services. ODM shall provide Client with support and administrative services specific to Vendor off duty outside employment requests and assignments that include, but are not limited to scheduling, billing, and reporting.
- (B) Each Statement of Work shall include a description of the Statement of work, schedules, rates, and other specifications and terms the Parties agree are applicable to such Statement of Work. Statements of Work shall, upon execution by authorized representatives of the Parties, be deemed incorporated into this Agreement.
- (C) **Vendor is defined as any person or entity requesting Client's off duty officer outside employment services.**

Invoicing and Payment. Client acknowledges that ODM will charge Vendors the officer's pay rate plus an administrative fee per assignment, and any applicable sales tax as specified in the applicable Statement of Work or required by law. ODM reserves the right to require Vendors to either prepay or pay by credit card for the services requested, including any applicable administrative fee, and sales tax. ODM will not agree to or sign vendor contracts nor agree to any invoicing, insurance or other requirements not outlined in this agreement. Vendor shall pay ODM's invoice(s) within thirty (30) days after the date that Vendor receives such invoice(s). A late payment charge of 1.5% per month may be imposed by ODM on all past due, undisputed balances. Where state law mandates a lower late payment charge, the late payment charge shall be lowered to the highest rate

that is legally permitted. If payment of such unpaid, past due, and undisputed amounts is not promptly received in accordance with the terms hereof, then ODM will have the option to terminate services at one or more of Vendor's facilities following ODM's provision of at least two (2) days' notice to Vendor.

- Prepayment Checks: There will be an additional 3.5% fee for all prepayments with checks.
- Credit Card Payments: For vendors paying by credit or debit card there will be an additional 3.5% fee.
- Cancellation:
 1. Once an assignment has been approved and scheduled; Vendor cancelling or reducing an assignment shall pay the full ODM administrative fees for the first 24 hours of the original assignment.
 2. Vendor cancelling or reducing an assignment within 48 hours of the start of the assignment shall pay the greater of officer hours worked or the agency minimum hours plus ODM administrative fees for the first 24 hours of the original assignment.

2. Term and Termination

2.1 This Agreement is valid for a term of two years from the date of the most recent signature, unless terminated in accordance with the terms of this Agreement. "Term" in this Agreement includes the aforementioned period in addition to any applicable renewal.

2.2 Renewals. With the mutual written consent of the Parties, the Term of this Agreement may be renewed up to a maximum of two (2), one (1) year periods. Any renewal under this subsection 2.2, will be a continuation of the same terms and conditions as set forth in this Agreement, and any applicable addendums.

2.3 Termination.

(A) Either party may terminate this Agreement for convenience and without cause, at any time, by giving the other party, thirty (30) days advance written notice designating the date of termination. Any notice required or permitted under this Agreement shall be sent in accordance with Section 8 of this Agreement.

(B) Each party may terminate this Agreement, if the other party materially breaches its obligations under this Agreement and fails to cure such breach within thirty (30) days following receipt of written notice of such breach from the other party.

(C) It is the intent of the Parties that, where allowed by law, they be placed in their respective positions immediately before their entry into this Agreement in the event of a termination or expiration of this Agreement.

2.4 Permits and Licenses. ODM shall, at ODM's expense, obtain and maintain all necessary permits, licenses and government approvals needed to perform its obligations under this Agreement.

2.5 Business Name. ODM shall conduct business under its own name. ODM shall not use the Client's name, nor the name of Client's Affiliates, in providing the Services.

2.6 Contractor's Judgment. ODM shall determine the specific time and manner in which the Services are performed pursuant to this Agreement, and the resources that are used to perform such Services. Client shall have no authority to direct the day-to-day operations of ODM or ODM's employees. Client retains authority to direct its officers' behavior when working off-duty for a private entity.

3. Relationship

3.1 Client and ODM agree that neither party has the authority to bind or make any commitment on behalf of the other, nor are any of either party's employees entitled to any employment rights or benefits of the other party.

3.2 Nothing herein shall be deemed or construed to create a joint venture, partnership, agency, or employer/employee relationship for any purpose.

3.3 Client is interested in the end results to be achieved by this Agreement, and ODM shall have full power and authority to select the means, manner, mode and methods of performing the Services hereunder, subject to compliance with performance and quality control standards mutually agreed to.

3.4 ODM shall be solely responsible for paying the wages or other compensation of its Staff and all related withholding taxes, workers' compensation insurance and other obligations pertaining to its Staff.

4. Confidential Information

4.1 Definition of Confidential Information. All information disclosed by either Client or ODM as a “**Disclosing Party**” to the other party as a “**Receiving Party**” or otherwise learned by the Receiving Party in connection with performance of the Services here under (“Confidential Information”) shall be treated by Receiving Party as confidential information of the Disclosing Party. The Confidential Information includes, but is not limited to, personal, consumer, vendor, Client, or employee information; business plans, marketing information, cost estimates, forecasts, bid and proposal data, or financial data; or formulae, products, processes, procedures, programs, inventions, systems, or designs of the Disclosing Party.

4.2 Ownership and Use. The Receiving Party acknowledges that all Confidential Information remains the property of Disclosing Party. Receiving Party agrees not to use any Confidential Information for any purpose except pursuant to this Agreement. The Receiving Party shall keep all Confidential Information in confidence and shall not disclose any Confidential Information to any third party. The Receiving Party shall not use any Confidential Information for any purpose other than pursuant to this Agreement. Such obligations do not apply to information which 1) is or hereafter becomes generally known, or 2) is hereafter furnished to the Receiving Party by a third party without restriction on disclosure, or 3) subject to the Texas Public Information Act as provided by Texas Government Code 552.

4.3 Protection. ODM will implement and maintain safeguards for Confidential Information sufficient to (1) ensure the security and confidentiality of the Confidential Information, (2) protect against anticipated threats or hazards to the security or integrity of such Confidential Information, and (3) protect against unauthorized access to or use of such Confidential Information. ODM has established and will follow procedures for all employees with access to Confidential Information to protect the privacy of such information. At a minimum: (i) ODM shall not transmit Confidential Information across unsecured communication channels or wireless LANs, and shall ensure that all Confidential Information, whether in transmission or storage is secured against unauthorized access and/or distribution through encryption, authentication and robust access, distribution and replication controls; (ii) ODM shall implement security assessment tools to monitor the system resources and security controls; (iii) ODM shall implement and maintain detective and intrusion response and recovery plans for monitoring potential unauthorized access to its systems, and shall maintain regularly updated anti-virus and spyware software on all computers (laptops, desktops, servers, etc.) connected to its network; (iv) ODM shall implement and maintain security alert mechanisms to generate alerts on attempted breaches and attacks that could compromise the integrity of Confidential Information.

4.4 Security. ODM will notify Client as soon as possible in the event it believes, or has reason to believe, that either a loss of Confidential Information or security breach has occurred and will provide assistance in identifying appropriate information relating to the breach.

4.5 Return. Within five days following the earlier of (i) the request of the Disclosing Party, or (ii) the expiration or termination of this Agreement, Receiving Party shall return to the Disclosing Party or destroy all Confidential Information and all related documents and materials. Such Confidential Information must be destroyed by modifying, shredding, erasing or otherwise making the information unreadable or undecipherable.

4.6 Injunctive Relief. The parties acknowledge that the Disclosing Party may not have an adequate remedy at law in the event of any breach or threatened breach of this Agreement pertaining to the Confidential Information and intellectual property, and that the Disclosing Party or its vendors or suppliers may suffer irreparable injury as a result. In the event of any such breach or threatened breach, the Receiving Party hereby consents to the granting of injunctive relief without the posting by the Disclosing Party of any bond or other security.

5. Trademarks and Intellectual Property

5.1 Neither party may use the other party's name, logo, trade or service marks, or similar indicia (each a “Trademark”) without the other party's prior written consent. Except as expressly stated herein, each party retains all right, title, and interest in and to its intellectual property.

5.2 ODM is, and shall be, the sole and exclusive owner of all right, title and interest in and to all intellectual property developed and/or deployed in the performance of the Services, including any methods, systems, plans, software (including the OfficerTRAK software), tools, and equipment.

5.3 The performance of the Services may require Client to make use of ODM's proprietary technology, such as, but not limited to OfficerTRAK software, the use of which requires the acknowledgement and agreement to the terms and conditions thereof. Client acknowledges and agrees that failure to comply with the terms of use thereof constitutes a breach of Client's obligations hereunder.

6. Warranties

- 6.1 ODM warrants that all Services provided hereunder shall be performed in accordance with generally accepted standards for the industry to which such Services relate. If any Service or work product does not meet the warranties set forth above, ODM will do everything necessary, without charge, to bring the Services or work product, as applicable, into compliance with such warranties in a timely manner. Client acknowledges that the furnishing of the Services provided for herein by ODM does not guarantee protection against all contingencies.
- 6.2 ODM warrants that it will perform and provide the Services in compliance with all policies and procedures of Client as may be provided from time to time by Client, and all laws, rules and regulations applicable to the Services and/or Contractor in its performance and delivery of the Services.

7. Insurance

ODM, at its own cost and expense, will maintain the following insurance throughout the term of this Agreement with an insurance carrier which is at least rated "A-" or "VII" by A.M. Best (or equivalent, if not rated by A.M Best):

General Liability	\$2,000,000 Each Occurrence/\$3,000,000 Aggregate
Employer's Liability	\$1,000,000 per occurrence

A combination of primary and excess/umbrella liability policies will be acceptable to meet the limits specifically required hereunder.

All certificates of insurance shall name Client as additional insured with respect to general liability coverage and shall require that Client be provided with at least thirty (30) days advance written notice of cancellation. General Liability insurance shall cover claims for bodily injury, death, personal injury, and property damage occurring during performance of the Services. ODM shall provide certificates of insurance to Client prior to the Agreement Effective Date, and thereafter upon the renewal of all policies to be maintained hereunder.

8. General Provisions

- 8.1 Notices. Legal Notices under this Agreement shall be in writing. Notices may be served by certified mail, postage paid with return receipt requested; by private courier, prepaid; by facsimile, or other telecommunication device capable of transmitting or creating a written record; or personally. Mailed notices shall be deemed delivered three (3) days after mailing, properly addressed. Couriered notices shall be deemed delivered on the date that the courier represents that delivery will occur. Telecommunicated notices shall be deemed delivered when receipt is either confirmed by confirming transmission equipment or acknowledged by the addressee or its office. Personal delivery shall be effective when accomplished. Unless a party changes its address by giving notice to the other party as provided herein, notices shall be delivered to the parties as follows:

If to ODM, to Principal Place of Business: 1908 Ave D, A100, Katy, Texas 77493; and

If to Client, to: 1960 South Main Street, Tooele, Utah 84074

Attn: Tooele County Sheriff Paul Wimmer

8.2 Assignment and Delegation

- (a) No Assignment or Delegation. Client may not assign any of its rights nor may Client delegate any performance under this Agreement, except with the prior written consent of ODM. Any assignment of Client's rights or delegation of Client's duties are prohibited under this subsection, whether they are voluntary or involuntary, by subcontract, agency, merger, consolidation, dissolution, operation of law, change of control, or any other manner.
- (b) Ramifications of Purported Assignment or Delegation. Without limiting any other remedy ODM may have against Client for such purported assignment, any purported assignment of rights or delegation of performance in violation of this section is void.
- (c) Successors and Assigns. This Agreement binds and benefits the parties and their respective permitted successors and assigns.
- 8.3 Governing Law/Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, Third Judicial District Tooele County without giving effect to principles of conflicts of law thereof.

Further, the parties expressly consent to the exclusive jurisdiction and venue in the applicable Division of the United States District Court where the defendant Party is located, or the Texas District Courts in the county in which the defendant Party is located, and if located in more than one county, in the county in which the principal offices of the defendant Party are located, and all applicable appellate courts. Accordingly, any action or proceeding brought by either party which is based on, or derives from, this Agreement will be brought in such courts.

- 8.4 Attorneys' Fees and Court Costs. If any suit or action arising out of or related to this Agreement is brought by any party, the prevailing party shall be entitled to apply to the courts for the recovery of any direct and reasonable the costs and fees (including without limitation direct and reasonable attorney fees, the fees and costs of experts and consultants,) incurred by such party in such suit or action, including without limitation any post-trial or appellate proceeding.
- 8.5 Limitation of Liability. To the extent permitted by law, neither party will be liable to the other or any third party for lost profits, incidental, consequential, punitive, special, exemplary, or indirect damages of any kind, even if such party has been advised of such damages in advance or such damages were foreseeable.
- 8.6 Entire Agreement. This Agreement (including, without limitation, all applicable schedules and attachments referenced in and attached to this Agreement) constitutes the final, complete and exclusive statement of the agreement between the parties with respect to the subject matter hereof and cannot be altered, amended, or modified except in writing signed by an authorized representative of each party.
- 8.7 Headings. The section headings in this Agreement are included for convenience only; they do not give full notice of the terms of any portion of this Agreement and are not relevant to the interpretation of any provision of this Agreement.
- 8.8 Survival. The following provisions shall survive expiration or termination of the Agreement: Trademarks and Intellectual Property, Confidentiality, Warranties, Limitation of Liability, Insurance, and any other provisions that by their nature are intended to survive expiration or termination of this Agreement.
- 8.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which is deemed an original, but all of which together shall constitute one and the same instrument. Further, each party agrees to accept telefax signature pages as originals.
- 8.10 Severability. In the event that any provision contained in this Agreement is held to be unenforceable by a court of competent jurisdiction, the validity, legality, or enforceability of the remainder of this Agreement shall in no way be affected or impaired thereby.
- 8.11 Employment Contracts. Any responsibility and/or liability with regard to any employment contract between Client and any law enforcement personnel assigned to a Vendor work-site shall be the exclusive responsibility and/or liability of Client and ODM shall not be a party to any such agreement. ODM will have neither responsibility nor liability in connection with or arising out of any such employment contract except to provide reporting data in conformity with information provided by Client. With respect to any employment contract between Client and any law enforcement personnel assigned to a Vendor work-site, Client shall be acting solely on its own volition and responsibility with regard to all aspects of any such contract, including but not limited to its negotiation, compliance, implementation, renewal, enforcement, and termination.
- 8.12 Authority. This Agreement shall be valid and enforceable only upon signature by an authorized person with authority to execute this Agreement in behalf of ODM. Any individual signing this Agreement on behalf of Client represents, warrants, and guarantees that he or she has full authority to do so. Each party represents that it has the power and actual authority to enter into this Agreement and to be bound by the conditions and terms contained herein.
- 8.13 Waiver. No delay or omission by a party in exercising any right or remedy under this Agreement shall operate to impair such right or remedy or be construed as a waiver thereof.
- 8.14 Force Majeure. Neither party shall be liable to the other party in any manner whatsoever if it is unable to perform any of its obligations under this Agreement due to any cause beyond its reasonable control including but not limited to acts of God, war or national emergency, pandemic, riots, civil commotion, terrorism, fire, explosion, flood, epidemic, acts of Government, highway authorities, telecommunications network operators or other competent authorities or interruption of, or inability in obtaining, supplies or services from third parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written below.

Off Duty Management, Inc:

By: Sherry Rowley

Printed Name: Sherry Rowley

Title: President, Off Duty Management

Date: 6/18/2020

Tooele County:

By: Paul Wimmer

Printed Name: Paul Wimmer

Title: Sheriff

Date: 6/17/2020

EXHIBIT A STATEMENT OF WORK

June 3, 2020

Scope of Service

Off Duty Management (ODM) will manage all external customer requests for off duty officer outside employment services as of Go Live date. ODM will manage the following for the agency:

- Scheduling
- Provide weekly reporting on actual officer hours worked
- Invoicing/Collections

Policies/Procedures

- ODM will comply with all applicable agency orders, rules, and policies.
- ODM will coordinate with agency should there be any questions with a customer or assignment.
- Agency will modify existing off duty policies to incorporate ODM management and administration.

Rates and Fees

- ODM will provide Tooele County SO weekly reporting on actual hours worked by the officers and total weekly hours worked for the agency.
- ODM will pay the Tooele County weekly for total off-duty hours worked by officers from Tooele County SO at the established rate of \$53.50. One cumulative sum will then be distributed to the city to process all officer pay and city administration fees accordingly.
- Tooele County SO will pay their officers internally every two weeks. The city will maintain the responsibility to calculate and pay officers according to internal payroll standards for off-duty work at a rate of time and half their current officer salary.

Off-Duty Rates

Type	Hourly Rate	Notes
Regular	\$53.50	
Traffic	\$53.50	
Supervisor	\$53.50	
Holiday*	\$53.50	
Emergency**	\$53.50	

Vehicle Fees

- No vehicle fees will be charged.

Vendor Fees

- Off-duty officer's rate plus \$6.50 admin fee to Off Duty Management.
- Vendor's billable rate is \$60/hour for any off-duty jobs

Scheduling

Assignment Selection

- Assignments will be pushed out to officers via OfficerTRAK to their mobile devices once received and approved.
- Officers will select and work shifts first come, first serve standard.

Min and max per shift work

- 2 hours minimum per request.
- Officers are limited to work a combined (agency/off-duty) total of 16 hours daily (Monitored by agency).

Minimum Job Notification

- 24 hours prior to shift start required for requests.

Agency Assignment

- Requests submitted through agency website will default to that agency in OfficerTRAK, regardless of location.
- The following agencies will serve as backups for the agency:
 - Grantsville Police Department
 - Tooele Police Department

Insurance Coverages

- ODM will provide liability insurance. COI will be provided to city.
- Tooele County will be responsible for all workers compensation coverages and claims resulting from any off-duty officer assignments requested and managed by ODM.

OfficerTRAK Software

- Officers working off-duty jobs will be required to use the OfficerTRAK mobile app.
- Agency will be provided access to OfficerTRAK to view ODM assignments requested through their agency.
- ODM will provide Agency access to OfficerTRAK software to create and manage internal assignments only (limited to agency and county assignments). Internal assignments and ODM will be viewed by officers in the same app. ODM will maintain officer information for both databases.
- Agency will create a web page with link to OfficerTRAK for customers to request service online.

OfficerTRAK Training

ODM will provide the following online training:

- Administrators – Training guides and WebEx training
- Officers – Training guides and practice jobs