

EC-23-296



CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

Mayor Timothy M. Keller

INTER-OFFICE MEMORANDUM (3/21/23)

TO: Patrick Davis, President, City Council

FROM: Timothy M. Keller, Mayor 

SUBJECT: OFF-DUTY MANAGEMENT (CHIEF'S OVERTIME)

Off Duty Management Executive Summary

Off Duty Management saves up to 85% of the time, money, and resources associated with most in-house off-duty programs by relieving the agency of the administrative tasks of scheduling, publishing, invoicing, collecting, and payroll. Off Duty Management manages the entire administrative process and provides accountability and transparency through real-time data capture and reporting.



Off Duty Management Administrative Process Overview

1. Albuquerque PD Customers Request Off-Duty Services Anytime
 - a. Through Online Agency Portal (Connected to OfficerTRAK® Software)
 - b. Call 24/7/365 Toll Free
2. Account Team Dedicated to Albuquerque Reviews Requests for Compliance with Agency's SOP
3. Approved Requests Published to OfficerTRAK® Mobile App
4. Albuquerque Officers Select Jobs On OfficerTRAK® Mobile App
5. Albuquerque Customers & PD Coordinator Can Review Job Details Online Anytime
6. Albuquerque Officers Are Paid Every Week—*Guaranteed!*—Regardless of Customer Delinquency
7. Invoicing and Collections Managed by Off Duty Management
8. Off Duty Management Assumes All Financial Risk And Float
9. Standard & Custom Reports On-Demand Or Scheduled

Bonus! Highest Liability Insurance Coverage Provided at No Additional Cost

Bonus! Workers' Compensation Insurance for 1099 Officers Provided at No Additional Cost

Off Duty Management provides a complete solution for your off-duty program at no cost to your agency, officers, or city. While other companies may only offer scheduling software, limited administrative services, or charge additional fees for insurance coverage, Off Duty Management provides all these components at no cost to agency or officers.

Our complete solution includes exclusive access to OfficerTRAK®, the top-rated off-duty mobile app, the highest liability limits in the industry, and a dedicated 24/7/365 Account Team to assist your agency, officers, and customers.

Off Duty Management – Built By Officers For Officers

Off Duty Management is Built By Officers For Officers. Their mission is to combine the strength and value of their team to serve, support, and protect the men and women of law enforcement when they work off-duty assignments by providing them with the best technology, insurance, and administrative resources.

The owners, Brett & Sherry Rowley, co-founded the nation's largest provider of off-duty officers for the private sector. After identifying a specific need facing law enforcement agencies across the country, they then co-founded Off Duty Management. In 2016, Off Duty Management began with a unique business model to provide the maximum level of service and protection to law enforcement agencies through a no-cost comprehensive off-duty solution.

With a firm foundation of being **Built By Officers For Officers**, Off Duty Management's alliance with the law enforcement community was further strengthened when Brian Manley joined the team as company President in 2021. Brian recently retired as the Chief of Austin, TX PD, the 11th largest city in the nation, and was named one of the top 50 world's greatest leaders by Fortune in 2019 for his leadership during the Austin bombing.

To compliment Brian's knowledge and experience, the company has hundreds of years of law enforcement leaders working every day on behalf of agency partners. The VP of Business Development, Rex Taylor, is the retired Deputy Director (Major) of Virginia State Police. The Business Development team also consists of many seasoned law enforcement professionals: Jeff Ladieu, retired Captain, of New Hampshire State Police; Eric Charles, retired Deputy Chief of Roanoke VA PD; and Shellie Salser, retired Commander of Wheat Ridge CO PD. In addition, we're proud to work with John Neal, retired Chief of Police, Ridgeland, MS, Greg Porter, retired Chief of Police, Clayton County, GA, Jeff Martin, retired Detective, Richmond, TX, and Mike Whan, retired Deputy Chief, Reno PD, NV.

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Off Duty Management is a national company servicing over 200 agencies across the nation. Off Duty Management has been thoroughly vetted and awarded contracts by the largest agencies that utilize a comprehensive extra-duty program (not simply a software solution): Massachusetts State PD, Mesa AZ PD, Tucson AZ PD, Fairfax County VA PD, Maricopa County AZ SO, West Valley UT PD, and many more.

Off Duty Management has not only been reviewed objectively by numerous agencies across the country and chosen as their preferred provider, but they have also been the provider of choice for purchasing cooperative organizations. After being vetted through a rigorous selection process, they were awarded a purchasing cooperative agreement from Sourcewell, NCSA, and PCA.

TITLE/SUBJECT OF LITIGATION*** *Same as subject line on last page*

Approved:



Lawrence Rael Date
Chief Administrative Officer


Approved as to Legal Form:

DocuSigned by:
 4/13/2023 | 9:18 AM MDT
1A21D96D32C74EE...

Date
City Attorney

Recommended:

DS


DocuSigned by:
 4/1/2023 | 5:11 AM MDT
A9B4463A33234EA...

Date
Director

Cover Analysis

1. What is it?

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

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

2. What will this piece of legislation do?

N/A

3. Why is this project needed?

This project is needed because the current way the chief's overtime program is managed is out of date and burdensome. The proposed contract will streamline the way chief's overtime is managed and make it more officer friendly.

4. How much will it cost and what is the funding source?

This contract is at no cost to the city. It will be a concession contract and the vendor would assume all risks and costs related to such.

5. Is there a revenue source associated with this contract? If so, what level of income is projected?

The vendor will be receiving 9% ODM Administrative Fee per hour billed.

6. What will happen if the project is not approved?

We will continue to have a decline in the amount of officers who work chief's overtime. The current process is out dated and not efficient which in turn makes it harder for officers to sign-up. This then leads to officers not signing up for chief's overtime and this is not a good outcome for anyone.

7. Is this service already provided by another entity?

No

FISCAL IMPACT ANALYSIS

TITLE: Off Duty management (Chief's Overtime)

R: O:

FUND: 110

DEPT: Police

- ☒ No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- ☐ (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

	2023	Fiscal Years 2024	2025	Total
Base Salary/Wages				-
Fringe Benefits at				-
Subtotal Personnel	-	-	-	-
Operating Expenses		-		-
Property		-	-	-
Indirect Costs	-	-	-	-
Total Expenses	\$ -	\$ -	\$ -	\$ -
<input type="checkbox"/> Estimated revenues not affected				
<input checked="" type="checkbox"/> Estimated revenue impact				
Revenue from program				0
Amount of Grant		-	-	
City Cash Match				
City Inkind Match				
City IDOH	-	-	-	-
Total Revenue	\$ -	\$ -	\$ -	\$ -

These estimates do not include any adjustment for inflation.

* Range if not easily quantifiable.

Number of Positions created

COMMENTS: The contract is to commence on signing date for two years of execution. The revenue received will off-set the officers overtime and administrative expenses.

COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:

PREPARED BY:

DocuSigned by:

Bridgette Long
7A993234AC0F4AE

3/31/2023 | 9:17 AM MDT

FISCAL ANALYST

APPROVED:

DocuSigned by:

[Signature]
A9B4463A33234EA

4/1/2023 | 5:11 AM MDT

DIRECTOR (date)

REVIEWED BY:

DocuSigned by:

Emma Romero
C5843E08536C4BD

4/12/2023 | 1:56 PM

EXECUTIVE BUDGET ANALYST

DocuSigned by:

Laurence L. Davis
BD22ED76FD0344E

BUDGET OFFICER (date)

DocuSigned by:

Christine Baumer
E02C282346CC47D

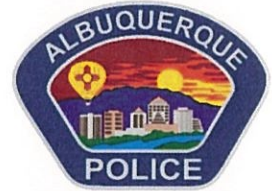
CITY ECONOMIST



Timothy M. Keller
Mayor

City of Albuquerque

Albuquerque Police Department



Harold J. Medina
Chief of Police

March 20, 2023

Interoffice Memorandum

To: Harold J. Medina, Chief of Police, Albuquerque Police Department

From: Joshua M. Hawkes, Deputy Commander, Operations Review

Subject: Off-Duty Management (Chief's Overtime) Contract

DS
[Signature]

JMH

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4. Albuquerque Officers Select Jobs on OfficerTRAK® Mobile App
5. Albuquerque Customers & PD Coordinator Can Review Job Details Online Anytime
6. Albuquerque Officers Are Paid Every Week—Guaranteed!—Regardless of Customer

Delinquency

7. Invoicing and Collections Managed by Off-Duty Management
 8. Off Duty Management Assumes All Financial Risk And Float
 9. Standard & Custom Reports On-Demand Or Scheduled
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It is for these reasons I'm requesting this contract be approved and put on the City Council consent agenda at the next Council meeting.

Master Services Agreement

Sourcewell Contract #051321-OFF, Public Safety Software

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 1906 Avenue D, #200, Katy, Texas 77493 ("ODM" or "Contractor") and City of Albuquerque Police Department (APD), having its principal offices at 400 Roma Ave NW, Albuquerque, NM, 87102 (Client" or "Agency"). 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 Sourcewell Cooperative Contract #051321-OFF, Public Safety Software

- (A) The City of Albuquerque Police Department engages contractor to provide the following goods and/or services: Public Safety Software in accordance with the terms and conditions of the Sourcewell Cooperative Contract Number 051321-OFF, the attached Statement of Work (Exhibit A), and this Standard Contract. The City shall have all rights and remedies available to Sourcewell as set forth in Contract Number 051321-OFF

1.2 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 1.2, 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 Customer off duty outside employment requests and assignments that include, but are not limited to scheduling, billing, payroll, 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) Customer 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 Customers the officer's pay rate plus an administrative fee per assignment as specified in the applicable Statement of Work and any applicable sales tax if required by any state or local taxing authority. ODM reserves the right to require Customers to either prepay or pay by credit card for the services requested, including any applicable administrative fee, and sales tax. Customer shall pay ODM's invoice(s) within thirty (30) days after the date that Customer receives such invoice(s). An overdue 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 overdue 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 Customer's facilities following ODM's provision of at least two (2) days' notice to Customer.

- Credit Card Payments: For customers paying by credit or with a debit card there will be an additional 3.0% bank fee assessed.
- Cancellation:
 1. Once an assignment has been approved and scheduled; Customer canceling or reducing an assignment shall pay the full ODM administrative fees for the first 24 hours of the original assignment.
 2. If, after an assignment has been approved and scheduled, Customer cancels the assignment or requests to reduce staffing and/or hours for the assignment, Customer shall pay the greater of a) officer hours worked up to that time plus ODM administrative fees associated with those hours or b) agency minimum hours plus ODM administrative fees associated with the shifts as originally approved and scheduled.

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. Contractor has the ability to adjust the current customer administrative fee based on inflationary factors up to 1.5% in conjunction with renewal. The Agreement will be deemed to be renewed unless either Party provides notice of intent not to renew at least 30 days prior to the renewal date.

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. To the extent possible and requested by ODM, the Client shall provide reasonable assistance in obtaining permits, licenses, and government approvals.

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 activities of ODM or any of ODM's employees, agents, or independent contractors (together with Contractor, the "**Staff**"). Client retains authority and responsibility for 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. Any 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 the performance of the Services here under, and marked as “Confidential”, or any information whose confidential nature is reasonably obvious from the content of the information and context of the disclosure (“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, customer, 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) is 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 detection 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 customers 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.
- 4.7 Public Records. The parties agree that the terms of this Agreement shall remain confidential and, except as required by law, shall not be divulged to any third party. The parties acknowledge that the City is a government entity and subject to the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq., NMSA 1978). Notwithstanding anything contained herein to the contrary, the City shall not be responsible to the vendor for any disclosure of Confidential Information pursuant to the Act or pursuant to the City of Albuquerque’s public records act laws, rules, regulations, instructions or other legal requirement.

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 rights, 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 technology, such as but not limited to OfficerTRAK® software, the use of which requires the acknowledgment 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. Should those laws, rules, and regulations change after the execution of this Agreement, ODM may be entitled to an equitable adjustment to this Agreement.

7. Insurance

ODM, at its own cost and expense, will maintain the following minimum insurance coverages 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	\$1,000,000 Each Occurrence/\$5,000,000 Aggregate
Employer's Liability	\$1,000,000 per occurrence
Crime	\$1,000,000 Theft of client property
Workers Compensation	Not provided for off-duty assignments - City is responsible for Chief's overtime and off-duty jobs. ODM provides WCI for ODM W-2 employees.

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 the 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 devices capable of transmitting or creating a written record; or personally. Mailed notices shall be deemed delivered three (3) days after mailing, properly addressed. Couriers 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: 1906 Ave D, #200, Katy, Texas 77493; and

If to Client, to:

Attn: Chief Harold Medina - 400 Roma Avenue Northwest, Albuquerque, NM 87102

8.2 Assignment and Delegation

- (a) **No Assignment or Delegation.** Neither party may assign any of its rights or obligations under this Agreement, except with the prior written consent of the other Party. Any such assignment or delegation is prohibited under this subsection, except for a change of control, in which instance an assignment of rights and obligations is deemed to be approved.
- (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 New Mexico 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 New Mexico 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 to 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 costs and fees (excluding 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 Customer worksite 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 prepare checks and to pay any such employee who is a party to such a contract, in conformity with the information provided by Client. With respect to any employment contract between Client and any law enforcement personnel assigned to a Customer worksite, 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 on 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, 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.

8.15 Indemnity. **Definition.** "Claims" means claims, demands, proceedings, liabilities, losses, causes of action, damages, judgements, and reimbursement of reasonable litigation expenses.

(A) Indemnification. Contractor will defend, indemnify, and hold Client and their respective officers, directors, and employees harmless from and against:

- any third-party Claims arising directly from or caused by (a) a material breach of the Agreement by Contractor, its employees, agents, or Subcontractors; and (b) any willful misconduct or negligent act or omission by Contractor, its employees, agents, or Subcontractors, including injuries or death to persons or damage to property.
- Contractor's indemnification obligation herein shall not arise where the negligence or willful act or omission of the Indemnified party is the cause of such Claims.

(B) Indemnification Procedures. Client will notify Contractor in writing of any indemnified Claim within thirty (30) days of receipt of that Claim to allow Contractor to investigate and defend the matter. Failure to give the notice will relieve Contractor of its indemnity obligations to the extent Contractor is prejudiced by the failure. Contractor will have sole control of the defense and all negotiation for any settlement or compromise of any indemnified Claim provided that no indemnified Claim may be settled or compromised by Contractor without Client's prior written consent unless the settlement or compromise includes a release of all claims against Client. Client will have the right at its sole expense to participate in the legal proceeding with counsel of its own choosing. Furthermore, Client will assist and cooperate in the defense of an indemnified Claim as reasonably requested by Contractor.

8.16 No Collusion. The Contractor represents that this Agreement is entered into by the Contractor without collusion on the part of the Contractor with any person or firm, without fraud, and in good faith. The Contractor also represents that no gratuities, in the form of entertainment, gifts or otherwise, were, or will be, offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City for the purpose or with the intention of securing: this Agreement; a subsequent Agreement; more favorable treatment with respect to this Agreement; or more favorable treatment with respect to making any determinations regarding performance under this Agreement.

8.17 Audits and Inspections. At any time during normal business hours and as often as the City may deem necessary, Contractor shall make all of the Contractor's records with respect to all matters covered by this Agreement available to the City for examination. The Contractor shall allow the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data related to all matters covered by this Agreement. The Contractor understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and to appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 9 of the Albuquerque City Charter.

8.18 Discrimination Prohibited, Civil Rights Compliance. In performing the Services required hereunder, the parties hereto shall not discriminate against any person on the basis of race, color, religion, sex, gender, gender identity, sexual orientation, pregnancy, childbirth, or condition related to pregnancy or childbirth, spousal affiliation, national origin, ancestry, age, physical or mental handicap or serious medical condition, or disability as defined in the Americans With Disabilities Act of 1990, as now enacted or hereafter amended. The Contractor agrees to comply and act in accordance with all provisions of the Albuquerque Human Rights Ordinance, the New Mexico Human Rights Act, Titles VI and VII of the U.S. Civil Rights Act of 1964, as amended, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, and all federal, New Mexico and City laws and rules related to the enforcement of civil rights. Questions regarding civil rights or affirmative action compliance requirements should be directed to the City's Office of Civil Rights.

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

CITY OF ALBUQUERQUE

Approved By:

Lawrence Rael
Chief Administrative Officer

Date: _____

Harold Medina
Chief of Police

Date: _____

Jennifer Bradley
Chief Procurement Officer

Date: _____

**CONTRACTOR: Sherry Rowley, CFO
Off Duty Management, Inc.**

By: _____

Date: _____

EXHIBIT A

STATEMENT OF WORK

Scope of Services

March 23, 2022

Off Duty Management (ODM) will manage all external customer requests for the off-duty officer outside employment services as of the 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 the 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 Albuquerque PD and the city weekly reports on actual hours worked by the officer and total weekly hours worked for the agency.
- One cumulative sum will be distributed to the city weekly to process all officer pay and city administration fees accordingly.
- The City of Albuquerque 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 (chief's overtime) work at a rate of time and half their current officer salary.

Off-Duty Rates

Type	Hourly Rate	Notes
Regular	\$61.10	
Traffic	\$61.10	
Supervisor	\$70.27/\$79.77	Sgt. \$70.27/ Lt. \$79.77
Holiday	\$61.10	
Emergency	\$61.10	

The holiday rate will apply to the following days: New Year's Eve., New Year's Day, MLK Day, Presidents' Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, and Christmas Day.

Customer Fees

- Officer hourly pay rate plus 9.0% ODM administration fee per hour.

Vehicle Fees

- Vehicle fee is included in the hourly rate.

Scheduling

Assignment Selection

- Assignments will be pushed out to officers via OfficerTRAK® to their mobile devices once received and approved.
- Officers will select and works shifts based on last name when scheduled during the previous month, then opened to a first come first served basis.

Min and max per shift work

- 2 hours minimum per request.
- Officers are limited to work a total of 25 off-duty (Chief's overtime) hours weekly (Monitored by agency).

Minimum Job Notification

- 24 hours prior to shift start required for requests.

Agency Assignment

- Requests submitted through the agency website will default to that agency in OfficerTRAK®, regardless of location.
- The following agencies will serve as backups for the agency:
 - No backup agencies permitted at this time.
 - TBD

Insurance Coverages

- ODM will provide liability insurance. COI will be provided to the city.
- The City of Albuquerque and APD will be responsible for all workers' compensation coverages and claims resulting from any off-duty (Chief's overtime) officer assignments requested and managed by ODM.

OfficerTRAK® Software

- Officers working for ODM will be required to use the OfficerTRAK® app.
- Agency will be provided access to OfficerTRAK® to view ODM assignments requested through their agency.
- ODM will provide Agency no-cost access to OfficerTRAK® software to create and manage internal assignments only (limited to agency and city 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 a link to OfficerTRAK® for customers to request service online.

OfficerTRAK® Training

ODM will provide the following training:

- Onsite
 - Administrators – Training guides and onsite training
 - Officers – Training guides, practice jobs and onsite training
- Online
 - Administrators – Training guides and WebEx training
 - Officers – Training guides and practice jobs