

STATE OF TEXAS § STANDARD AGREEMENT WITH
 § LOCAL GOVERNMENTAL ENTITY
 § REGARDING OFF-DUTY
COUNTY OF WILLIAMSON § EMPLOYMENT OF COUNTY DEPUTIES

This interlocal agreement (hereinafter, the “AGREEMENT”) is entered into by and between _____, a local governmental entity (hereinafter, “LGE”) in the State of Texas, and Williamson County, Texas (hereinafter, “COUNTY”) a political subdivision of the State of Texas, and the Williamson County Sheriff’s Office (hereinafter, “SHERIFF’S OFFICE”).

For and in consideration of the permission given by COUNTY for the LGE to employ in a private capacity DEPUTIES of the Williamson County Sheriff’s Office (hereinafter “DEPUTIES”), while DEPUTIES are not on duty with and for the COUNTY, it is hereby agreed as follows:

1. It is mutually agreed that while the DEPUTIES are working for the LGE, the DEPUTIES’ primary responsibility is the enforcement of Federal and State laws and County Ordinances to protect life and property and to keep the peace. The peace officers cannot enforce “district policies” or “house rules” of the District. The peace officers shall enforce District Rules and Regulations adopted pursuant to Section 54.205(4) of the Texas Water Code and published in accordance with Sections 54.206 through 54.208 of the Texas Water Code provided that a violation of such District Rules and Regulations also constitutes a crime under the Texas Penal Code. DEPUTIES are at all times subject to the rules and policies of the Williamson County Sheriff’s Office. ***LGE expressly acknowledges and agrees that such DEPUTIES are at all times independent contractors when employed by the LGE.***
2. It is understood by the LGE that the COUNTY shall retain the right to withdraw at any time its permission for the DEPUTIES to work in a private capacity. If the permission of the COUNTY is withdrawn, the LGE agrees to terminate its employment relationships with DEPUTIES. The LGE, as part of this AGREEMENT, binds itself to release and hold harmless the COUNTY from any liability or claim for damages in the event such permission is withdrawn by the COUNTY.
3. Prior to the beginning of DEPUTIES employment with the LGE, the LGE shall obtain a comprehensive general liability insurance policy from a company authorized to do business in the State of Texas with minimum amounts of Ten Thousand Dollars (\$10,000) per occurrence for property damage, One Hundred Thousand Dollars (\$100,000) per person, and Three Hundred Thousand Dollars (\$300,000) per occurrence for personal injury.

4. The term of this AGREEMENT shall begin on the October 1, 2014 and shall terminate on September 30, 2015, and will have three additional one (1) year automatic renewals. The AGREEMENT will automatically renew on October 1, 2015, October 1, 2016, and October 1, 2017. It must be revisited with proper approvals from the applicable governing bodies and elected official(s) for FY2019.
5. State law requires that law enforcement personnel conducting “off-duty” work must be both “full time” and “entitled” to fringe benefits. Tex. Occup. Code Sec. 1702.322(A) & (B)(i). Thus, part-time deputies and “reserve” officers may not conduct “off-duty” work.
6. The COUNTY agrees that each peace officer will be properly insured with automobile liability insurance while operating the patrol vehicle in accordance with Section 612.005(b) of the Texas Government Code, and any other applicable laws.
7. COUNTY agrees to invoice LGE for the reimbursement amounts for officer vehicle usage at the rate of \$8.00 per hour (to cover LGE’s fair share of costs for fuel, maintenance, and yearly premiums on automobile insurance). The LGE acknowledges that the above described reimbursement rate will not totally cover the entire costs incurred by County for the fully equipped patrol vehicle that is being utilized by such peace officer in the LGE’s Area; provided, however, County deems such unrecovered costs for the fully equipped patrol vehicle to be of a public benefit to the citizens of Williamson County.
8. LGE agrees to log and maintain all times that vehicles are allotted to off-duty work, whether actually used or parked, for each deputy on a monthly basis. LGE shall provide such vehicle time records to COUNTY and SHERIFF’S OFFICE no later than the end of each quarter (end of month for each of the following: March, June, September, and December). COUNTY will invoice based on the total usage and rate, as set forth in Paragraph 7, and LGE will pay such invoice pursuant Chapter 2251 of the Texas Government Code (“Texas Prompt Payment Act”). Reporting must be submitted to:

Sheriff’s Office: Williamson County Sheriff’s Office
508 South Rock St.
Georgetown, TX 78626

County: Office of the County Auditor
Attn: David Dukes
700 Main St.
Georgetown, TX 78626

Williamson County
Off-Duty Pay for Law Enforcement

~~“Extra Duty” and “Voluntary Duty”~~

Revised: August , 2014

Policy:

OUTSIDE EMPLOYMENT FOR OFF-DUTY PEACE OFFICERS

(Amended 2009-2010 Budget Order) ~~Amended August~~ Amended April xx, 2014

Background:

The intentional or knowing use of county-owned or controlled assets to assist in the production of private income for a county officer or employee (or knowingly allowing such use by a subordinate) is generally prohibited by state law and could result in criminal prosecution, adverse employment action, or removal from office. As a limited traditional exception recognized by law ~~and as being in the public interest an approved employee benefit is an exception~~ for county peace officers, equipment (including ~~without limitation~~ uniform items, radios, and vehicles) owned by Williamson County that may be used in connection with special duty work in fire protection, law enforcement, or related activities for a separate and independent employer (public or private) during a county employee's off-duty hours in accordance with the following policy. Elected officials may regulate, at their own discretion,¹ other forms of outside employment that do not involve work for the county or the use of county equipment (for example, by an officer wearing a privately-owned uniform and driving a vehicle owned by the outside employer). Use of county property except in accordance with this policy is prohibited.

I. Additional Patrol Services by Williamson County Law Enforcement Employees (Programs for a Fee):

Elected officials are generally free to control the use by on-duty employees of county equipment assigned to their department, but on-duty employees must be paid from the departmental budget. Work in the following categories performed by a non-exempt employee is considered on-duty time that must be compensated at the employee's regular or overtime rate, as applicable.

- A. Work performed for the county itself or for its benefit (unless the duties are performed for another county department and have no connection with the employee's regular duties);
- B. Work performed at the direction of the employee's department or supervisors (including policing services provided by the department for a community event); or
- C. Work performed pursuant to an interlocal or intergovernmental agreement between Williamson County and an agency or political subdivision of the State of Texas in which the county agrees to provide additional law enforcement services for the other party, using on-duty

¹ Op. Tex. Att'y Gen. GA-0480 (Stating "The sheriff, and not the commissioners court, is responsible for seeing that the sheriff's deputies use patrol vehicles only for lawful purposes [in the public interest – e.g., where off-duty work is concerned]. While this opinion indicates there can be no "reimbursement" from the deputies for vehicle usage, it does not prohibit vehicle reimbursement for approved programs such as School Resource Officers or contracts with "private associations" under Ch. 351 of the Tex. Loc. Gov't Code.

officers, on payment of due compensation by that party. Payment to the county shall be ~~\$45.43~~\$65.03 per hour (including both an officer and a vehicle), unless provided otherwise in the individual agreement approved by Commissioners Court.² Non-Exempt employees who provide additional on-duty services pursuant to such an agreement during a given period will be paid straight time (Extra Duty Straight) for the first 5 hours worked under such agreement and overtime (Extra Duty OT) for time worked beyond 5 hours per pay period for such agreement. In other words this time will be counted as productive time (Leave Taken in the pay period will not be reduced) for purposes of such agreement. (If the employee has all ready reached 85 hours productive the Extra Duty will be paid at OT.) Exempt employees who provide additional on-duty services pursuant to such an agreement during a given pay period, and who have performed their regular duties during that pay period to the satisfaction of their department head, shall be entitled to additional compensation from the county at the rate of ~~\$35.00~~\$41.00 per hour for the first 5 hours worked and ~~\$50.00~~\$61.00 per hour for time beyond 5 hours per pay period while providing those additional patrol services and payment of a stipend for coordinating services involved with these additional patrol services. The Stipend will be set per contract and approved by Commissioner's Court.

II. Additional Patrol Services Provided thru Off-Duty Employment:

The policy described in the following paragraphs applies only to off-duty law enforcement or related work performed for a separate and independent employer at the sole option of the employee. Pursuant to the U.S. Department of Labor Regulations contained in 29 C.F.R. Part 553, Sec. 553.227, peace officers and other public safety employees may be permitted (solely at the employee's option, with the consent of the elected department head) to engage in special duty work for a separate and independent employer (public or private) during their off-duty hours. Since this is separate employment, the rate of compensation for such work may differ from the employee's regular pay and the hours of work for the second employer are not combined with the hours worked for the primary public agency employer for purposes of overtime compensation.

A. State law requires that law enforcement personnel conducting "off-duty" work must be both "full time" and "entitled" to fringe benefits. Tex. Occup. Code Sec. 1702.322(A) & (B)(i). Thus, part-time deputies and "reserve" officers may not conduct "off-duty" work.³

~~Pursuant to the stated position of the U.S. Internal Revenue Service in auditing other agencies, any outside employer who wishes to hire an off-duty officer for special duty work permitted by this policy must allow a county agency to facilitate the employment and process payroll, including federal withholding. The outside employer must agree to make payment of the fee for such services directly to the county, which will establish procedures for the officers to receive~~

² For example, School Resource Officer Program(s).

³ It is the commissioners court that sets what compensation (and benefits) employees are entitled to. Tex. Local Gov't Code § 152.011 for purposes of eligibility to qualify for an "off-duty" exception to a security license.

~~their pay for the special detail through the agency's payroll system. The county will retain a fee for administrative expense.~~

B. Contractual Requirements:

Prior to the commencement of outside employment under this policy, the following documents must be executed:

1. A written agreement between the authorized agent of the department and the separate and independent outside employer defining the nature of the special duty work to be performed, giving the consent of the department to the performance of the work, and providing that the outside employer will pay a fee directly to ~~the deputy. Williamson County in accordance with the payment schedule in Section C below for each employee/hour of services. The agreement should also provide for a coordinator to be responsible for managing the special duty work.~~

2. A written acknowledgment by the officer that he or she is undertaking the special duty work at the employee's sole option and not as an assignment from the department, and that payment to the employee will be made directly from the outside entity to the deputy. The officer must also acknowledge that he or she will abide by departmental standards of conduct during any outside off-duty employment and will remain subject to disciplinary action for failure to do so. Breach of any departmental policies, including conduct unbecoming of a peace officer, may constitute grounds for immediate termination or discipline. in the amount set out in paragraph 7 below through the county payroll system will be contingent on payment by the outside employer; and

3. Written acknowledgment from both the employee and the outside employer that the outside employer shall pay deputies directly and file 1099 forms with the Internal Revenue Service. county is providing only administrative services and is not a party to the agreement for special duty services between the officer and the independent employer. Thus, all issues relating to the scope, manner, or means of performance shall be strictly between the parties to the separate employment.

C. Vehicle Reimbursement from Outside Employer (Fee Schedule):

~~1. The rate paid to the deputy by the independent outside employer shall be as negotiated between the parties. The outside employer shall also pay an additional 12.65% fringe (to cover employment taxes and the county's required workers compensation payments). Private employers (not political subdivisions) shall furthermore pay an additional \$4.00 per hour to the county to cover its administration expenses.~~

1. If the deputy is on 24-hour call and has a take-home marked or un-marked vehicle which he is required by his agency to use for commuting, and he uses that vehicle in connection with providing direct services to the outside employer (such as patrolling or traffic control, but not including merely commuting to or from the job site), the outside employer shall reimburse Williamson County at the rate of \$86.00 per hour

(for political subdivisions) or \$142.00 per hour (for private employers).⁴ Internal Revenue Service regulations consider the use of a vehicle for private use to be additional taxable compensation.

2. Outside employer must acknowledge and agree to log and maintain all times that vehicles are allotted to off-duty work, whether actually used or parked, for each deputy on a monthly basis. Outside employer shall provide such vehicle time records to Williamson County no later than the end of each quarter (end of month for each of the following: March, June, September, and December). The County will invoice outside employer based on the total usage and rate, as set forth in Paragraph 1 above.

D. General Requirements:

All officers permitted outside employment under this policy must observe their normal standards of conduct during such employment and are subject to disciplinary action from their department if they fail to do so.

If an officer performing special work duties should observe the commission of a crime that requires response in the employee's official capacity as a Williamson County peace officer and outside the scope of the secondary employment (or if the officer is otherwise called to duty in an official capacity), the officer's performance in that capacity will be treated for payroll purposes as on-duty time and will not be billed to the outside employer.

Summary of Policy-

Background:

⁴ For example, events with large-gathering permits outside the city limits, road jobs, private hospitals, and any non-governmental entity.

~~Prior to enacting this policy, off duty compensation was paid by the contracting entities directly to the officers involved who received a 1099 at the end of each year. Vehicle charges were invoiced separately by the individual departments and paid to Williamson County. However, as a result of recent IRS rulings, it was determined that the IRS considers this type of duty (using County uniforms, equipment, etc.) is really an extension of their employment with the County and these earnings should be included as part of the officers employee salary and annual W-2. Thus, the method of compensating these officers had to be changed.~~

~~Policy:~~

~~There are two main types of Off-Duty Employment. The first is when the County provides "Additional Patrol Services by Williamson County Law Enforcement Employees" also known as "Extra Duty." Under this scenario, the officers are paid their normal pay rates and the entity is invoiced a flat rate per hour. The officer remains an employee of the County for all off duty hours worked. The second is when an officer provides "Additional Patrol Services Provided thru Off-Duty Employment" also known as "Voluntary Duty." Under this type, the County simply provides payroll services and charges the entity for the salary, fringes, work comp, vehicle fees and administration fees. The officer is paid whatever amount the hiring entity has agreed to pay them. Legally, the officer becomes an employee of that entity.~~

~~Public vs. Private:~~

~~In addition, the contracting entities are classified as "Public" (other taxing authorities) and "Private" (non-taxing entities and private companies). This distinction is primarily used when determining the vehicle usage rates to charge that entity.~~

~~Scheduling Fees:~~

~~A few of the Municipal Utility Districts have agreed to pay a scheduling fee directly to the officer in charge of scheduling the patrols. These fees are a flat, monthly rate and paid to the employee through a semi-monthly stipend. The current schedulers are listed on the attachment.~~

**OFFICER'S ACKNOWLEDGMENTS RELATING TO
THE PROVISION OF OFF-DUTY LAW ENFORCEMENT SERVICES**

This Officer's Acknowledgment Relating to the Provision of Off-Duty Law Enforcement Services is made by the undersigned on the date indicated below.

ACKNOWLEDGMENTS:

I, the undersigned, understand and acknowledge the following statements and I agree to abide by and comply with such statements:

- A. The intentional or knowing use of county-owned or controlled assets to assist in the production of private income for a county officer or employee (or knowingly allowing such use by a subordinate) is generally prohibited by Texas law and could result in criminal prosecution, adverse employment action, and/or removal from office.
- B. As a limited traditional exception recognized by law and as an approved employee benefit for Williamson County peace officers, equipment (including without limitation uniform items, radios, and vehicles) owned by Williamson County may be used in connection with special duty work in fire protection, law enforcement or related activities for a separate and independent employer (public or private) during a county employee's off-duty hours in accordance with Williamson County's policy relating to off-duty employment. Use of Williamson County property, except in accordance with Williamson County's policies relating to such use, is prohibited.
- C. I acknowledge that I must enter into to a separate agreement with an outside independent employer in order to provide law enforcement services while I am off-duty from my primary job as a Williamson County peace officer. I understand and agree that Williamson County will not be a party to any agreement for the provision of law enforcement services by and between such outside employer and me. I further agree and acknowledge that, while I am performing off-duty law enforcement services for an outside independent employer under a separate independent agreement, I will be acting as an employee and/or agent of such employer and not as an employee and/or agent of Williamson County and I will be acting in the course and scope of my employment by the employer at all times. All issues relating to the scope, manners and/or means of my performance of off-duty law enforcement services shall be strictly between the me and my outside employer.
- D. I understand that I will be not be covered by Williamson County's workers' compensation coverage while performing services for the outside employer, unless I am called back into duty and revert to my capacity as an employee of Williamson County (e.g., during disasters and emergencies).

- E. Pursuant to the U.S. Department of Labor Regulations contained in 29 C.F.R. Part 553, Sec. 553.227, peace officers and other public safety employees may be permitted (solely at the employee's option, with the consent of the elected department head) to engage in special duty work for a separate and independent employer (public or private) during their off-duty hours. Since such off-duty work is considered separate employment, the rate of compensation for such off-duty work may differ from my regular pay that I receive as an employee of Williamson County and the hours of work for the second employer shall not be combined with the hours worked for Williamson County for purposes of overtime compensation.
- F. I understand that I must observe my department's normal standards of conduct during any outside off-duty employment and that I will remain subject to disciplinary action from my department if I fail to do so. Breach of any departmental policies, including conduct unbecoming of a peace officer, may constitute grounds for immediate termination or discipline.
- G. I acknowledge and agree that I shall remain obligated and responsible to report to the proper taxing authorities any type of income, whether monetary or otherwise, that I receive while performing off-duty law enforcement services.
- H. ~~When I am working for an outside employer and the County is providing payroll services on behalf of such employer, I understand the County should not be held responsible for any income or tax reporting errors or omissions that may result due to the conduct of the outside employer.~~ I acknowledge and agree that all claims that I may have relating to the outside employer's reporting errors shall be brought against the outside employer and that I shall not have any claims against Williamson County relating to such errors.
- I. I understand that I must obtain the consent of my supervisor prior to performing any type of off-duty services for any outside employer and that I must obtain such consent each time I am employed by a new outside employer.
- J. **IN CONSIDERATION OF THE BENEFIT THAT I RECEIVE FROM USING WILLIAMSON COUNTY'S EQUIPMENT AND PROPERTY WHILE PROVIDING OFF-DUTY LAW ENFORCEMENT SERVICES FOR OUTSIDE EMPLOYERS, I HEREBY AGREE AND DO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS WILLIAMSON COUNTY, TEXAS AND ITS OFFICERS, DEPUTIES, AGENTS, OFFICIALS AND EMPLOYEES, AND I HEREBY AGREE TO SAVE, DEFEND AND INDEMNIFY THEM FROM ANY AND ALL PRESENT OR FUTURE CLAIMS, DEMANDS, OBLIGATIONS, ACTIONS, CAUSES OF ACTION, RIGHTS, DAMAGES, COSTS, LOSS OF SERVICES, EXPENSES, COMPENSATION AND/OR PUNITIVE DAMAGES WHICH I OR MY HEIRS AND SUCCESSORS NOW HAVE, OR WHICH MAY HEREAFTER ACCRUE OR OTHERWISE BE ACQUIRED, ON ACCOUNT OF, OR IN ANY WAY GROWING OUT OF, OR WHICH ARE THE SUBJECT OF ANY CLAIM OR LOSS INVOLVING (DIRECTLY OR INDIRECTLY) MY OFF-DUTY EMPLOYMENT FOR ANY OUTSIDE INDEPENDENT EMPLOYER, INCLUDING, WITHOUT LIMITATION, ANY AND ALL CLAIMS FOR BODILY AND PERSONAL INJURIES**

TO ME OR PERSONS IN VEHICLES USED BY ME, WHICH I OR MY HEIRS AND SUCCESSORS, HAVE OR MAY HAVE IN THE FUTURE.

K. I acknowledge and understand that my supervisor may prohibit me from performing off-duty law enforcement services for outside employers at any time.

ACKNOWLEDGED AND AGREED TO AS TO FORM AND SUBSTANCE BY:

By: _____

Printed Name of Officer: _____

Date: _____, 20____

Name of Agency: _____