

STATE OF NORTH CAROLINA
WAKE COUNTY

CONTRACT FOR SECONDARY
EMPLOYMENT OF RALEIGH
POLICE OFFICER

This Contract is entered into this _____ day of _____, 20____ by _____ an individual who is a sworn law enforcement officer and member of the Raleigh Police Department (hereafter "Officer"), _____ a (circle one: sole proprietor/ corporation/ LLC/ Other: _____) (hereafter "Secondary Employer"), and the City of Raleigh, a North Carolina municipal corporation (hereafter "City").

WITNESSETH:

WHEREAS, City wishes to permit its sworn law enforcement officers to engage in secondary employment in order to enhance the safety and security of the community at large through the increased presence of law enforcement officers, and

WHEREAS, Officer wishes to engage in secondary employment during off-duty hours providing services that may involve law enforcement activity, and

WHEREAS, Secondary Employer wishes to hire Officer to increase the safety of Secondary Employer's event or business through Officer's presence and Officer's law enforcement activity on Secondary Employer's premises, through security, loss prevention, and/or through other law enforcement services to include utilization, when necessary, of Officer's power of arrest pursuant to North Carolina General Statutes § 15A-401 and authority to use reasonable force in accordance with North Carolina law and policies promulgated by the Raleigh Police Department, and

WHEREAS, Secondary Employer wishes to establish an employer-employee relationship with Officer so that Officer may work for Secondary Employer during times when the Officer is off duty from work with the City, and

WHEREAS, the parties acknowledge that Secondary Employer is a separate entity from the City and that Secondary Employer is entirely independent from City, and

WHEREAS, Officer and Secondary Employer acknowledge that the employment of off-duty police officers imposes unusual restraints and responsibilities on them, and

WHEREAS, all parties to this Contract intend that any work Officer performs for Secondary Employer shall comport fully with North Carolina, federal, and local laws, as well as with all rules and regulations of the Raleigh Police Department, and

WHEREAS, Officer's decision to work while off-duty is entirely voluntary, and

WHEREAS, the parties acknowledge that Officer's work for Secondary Employer could lead to injuries to Officer and might result in attempts to assert claims against City and Officer. The parties intend that Secondary Employer shall bear all costs related to Officer's secondary employment except as specifically provided in this Contract, and

WHEREAS, the City, Secondary Employer, and Officer acknowledge and agree that in entering into this Contract they neither desire nor intend to create or confer any legally enforceable rights or benefits upon any persons, firms, or entities who are not signatories hereto,

NOW, THEREFORE, in consideration of the mutual agreements set out below and for other good and valuable consideration, the parties agree as follows:

1.0 OBLIGATIONS OF SECONDARY EMPLOYER.

- 1.1. Secondary Employer shall employ Officer in accordance with the terms contained in this Contract and all applicable RPD policies, including Departmental Operating Instruction 1106-07, which shall be provided upon request. The parties understand that this employment is not exclusive. Secondary Employer may employ other officers and Officer may work for other secondary employers.
- 1.2. Secondary Employer shall permit Officer to work only during those periods when the Officer is off-duty from his or her regular employment by the City. Secondary Employer shall comply with and shall assist Officer in compliance with Raleigh Police Department policies for secondary employment.
- 1.3. Secondary Employer shall arrange work schedules with Officer. Secondary Employer will accommodate officer's on-duty schedule when arranging with Officer to perform off-duty work.
- 1.4. Secondary Employer agrees to assume liability and responsibility for Officer's actions and claims arising out of injury, death or property damage caused by Officer while Officer is working within the course and scope of Secondary Employment, including any incidents occurring during Officer's employment, but for which claims may be made subsequent to such employment unless such incidents occur during activities the Officer is involved in at the exclusive direction of the City and not the Secondary Employer.
- 1.5. Secondary Employer shall defend, indemnify, and hold harmless the Officer, the City, its departments, officials, agents, and employees (hereinafter referred to collectively as "Indemnities") from and against any and all claims, actions, liabilities, damages, losses, attorneys' fees, costs, or expenses (hereinafter referred to collectively as "C laims") including but not limited to those for bodily injury, personal injury, emotional or mental distress, death, violation of civil rights, or loss or damage to tangible or intangible property in connection with or arising directly or indirectly out of this Contract or the performance thereof. Secondary Employer's obligation to defend, indemnify, and hold harmless shall apply to Indemnities in their individual and official capacities.

Secondary Employer's obligation to defend, indemnify, and hold harmless the Indemnities shall apply to any or all of the following:

- (a) Claims by any person, firm, or entity arising from the negligent or willful acts, commissions, or omissions of Secondary Employer or any of its owners, officers, directors, agents, or employees. This indemnity includes any claim or amount arising out of the failure of Secondary Employer to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree; and

- (b) Claims by any person, firm, or entity arising from the negligent or willful acts, commissions, or omissions of Officer while performing services within the course and scope of Secondary Employment, except when the Officer is acting under the exclusive control and direction of the City and not for Secondary Employer; and
- (c) Claims and liability arising under the North Carolina Workers' Compensation Act, to include costs and attorney's fees, incurred by the City as a result of any injury, disability, or death suffered by Officer during the course and scope of Officer's employment with Secondary Employer.

It is the express intent of the parties that Secondary Employer's obligation to defend, indemnify, and hold harmless shall apply to any employment of Officer by the Secondary Employer, and that the Indemnities shall, in all instances, be defended, indemnified, and held harmless by Secondary Employer from and against any and all Claims that arise within the course and scope of Secondary Employment. It is agreed that Secondary Employer will be responsible for primary loss investigation, defense and judgment costs where this duty to defend, indemnify, and hold harmless is applicable. Secondary Employer's indemnification obligation to defend, indemnify, and hold harmless shall not be subject to any limitation as to the amount or type of recovery sought or the amount or type of insurance coverage secured by Secondary Employer.

Secondary Employer's obligation to defend, indemnify, and hold harmless shall commence at the date and time Officer begins performance under this Contract and shall extend for the actual times and dates of such employment. Secondary Employer's obligation to defend, indemnify, and hold harmless shall survive the termination of this Contract and shall be in full force and effect beyond the term or termination of this Contract, however terminated.

Secondary Employer hereby waives all rights of subrogation against the Indemnities for losses arising from the work performed by Officer for the Secondary Employer under this Contract. In addition, Secondary Employer shall require insurance carriers, with respect to all insurance policies, to waive all rights of subrogation against the Indemnities incidental to such Officer's performance under this Contract.

Nothing contained herein shall be construed as a waiver of any immunity or limitation of liability the City or the Officer may have under statutory or common law, including the doctrines of governmental immunity, public official's immunity, qualified immunity, or the public duty doctrine.

- 1.6. Secondary Employer agrees to forever release, discharge, and waive any claims Secondary Employer may have in law or equity, contract or tort, against the City, its agents and employees, including the Officer, in their official or individual capacities, for actions or omissions of the Officer in the course and scope of Secondary Employment, including but not limited to Officer's failure to detect or prevent criminal conduct by third parties on Secondary Employer's premises while employed pursuant to this Contract, unless such incidents occur while the Officer is acting at the exclusive direction of the City and not the Secondary Employer.
- 1.7. Secondary Employer agrees to maintain and preserve any and all employment records pertaining to Officer for a period of three (3) years, and to furnish to the City any

employment records pertaining to Officer at the request of the City. As used herein, the term employment records shall refer to any and all data, information, or documents, whether maintained in physical or electronic form, which pertain to the Officer's secondary employment including but not limited to information pertaining to the Officer's duties, activities, work hours, compensation, attendance, performance, and discipline. The term employment records shall also refer to any and all documents or recordings maintained or gathered in the course of Officer's duties for Secondary Employer or in response to any incident involving Officer.

- 1.8. Secondary Employer agrees to employ Officer as an employee and not as an independent contractor and agrees to compensate Officer at a rate of no less than \$35.00 per hour. Secondary Employer agrees to compensate Officer for a minimum of three hours per Secondary employment shift unless otherwise specified by the Chief of Police.
- 1.9. Secondary Employer shall be solely responsible for compensating Officer for secondary employment services, and shall maintain its own payroll system which is wholly separate from that of the City. Secondary Employer shall compensate Officer through its payroll system and all payments to Officer shall be by check. Secondary Employer shall comply with all applicable tax laws and regulations and shall be responsible for reporting income paid to Officer and payment of any applicable payroll taxes. Secondary Employer shall provide Officer with all documents needed for income tax reporting.
- 1.10. Secondary Employer acknowledges and agrees that Officer's on-duty obligations take precedence over secondary employment and that during special events or emergencies City is authorized to postpone, delay, or cancel Officer's secondary employment.
- 1.11. Secondary Employer shall, at its sole expense, obtain and keep in full force and effect:
 - (a) Commercial general liability insurance, with combined single limits of no less than one million dollars (\$1,000,000.00) each occurrence and two million (\$2,000,000.00) aggregate claims.
 - (b) Workers' compensation insurance with limits of coverage equal to or greater than those required by the North Carolina General Statutes.
- 1.12. All insurance companies must be licensed in North Carolina and be acceptable to the City, and Secondary Employer shall notify the City immediately in the event cancellation of insurance is threatened or occurs. Secondary employment of Officer will cease immediately in the event of cancellation of insurance.
- 1.13. Secondary Employer shall not permit Officer to commence work on behalf of Secondary Employer until the insurance required by this Contract is in full force and effect and a Certificate of Insurance showing these coverages is received by the City.
- 1.14. Secondary Employer shall provide a safe work environment for Officer and shall take reasonable steps to address unsafe conditions that Officer notifies Secondary Employer about.
- 1.15. Secondary Employer acknowledges and agrees to employ Officer consistent with North Carolina General Statutes § 74C-21, which provides as follows:

- (a) *No law enforcement officer of the United States, this State, any other state, or any political subdivision of a state shall be licensed as a private detective or security guard and patrol licensee under this Chapter.*
- (b) *An off-duty law enforcement officer may be employed during his off-duty hours by a licensed security guard and patrol company on an employer-employee basis. An off-duty law enforcement officer shall not wear his police officer's uniform or use the police equipment while working for a security guard and patrol company.*
- (c) *A law enforcement officer may provide security guard and patrol services on an individual employer-employee basis to a person, firm, association, or corporation that is not engaged in a security guard and patrol profession.*

1.16. Secondary Employer shall not require or request Officer to act in any manner which is unlawful, improper, or inconsistent with any City or Raleigh Police Department policy, or which evidences bias or favoritism.

2.0 OBLIGATIONS OF CITY

- 2.1. City shall allow Officer to work in an off-duty capacity for Secondary Employer for one (1) year from the date of execution of this agreement. The term may be shortened or terminated upon written notification mailed to Secondary Employer stating that Officer may no longer work for Secondary Employer.
- 2.2. City will determine appropriate dress for Officer for secondary employment.
- 2.3. City will provide at City's own expense, and permit Officer to utilize Raleigh Police Department issued personal equipment during the course of secondary employment.
- 2.4. City will provide at City's own expense, a contact person within the Raleigh Police Department to receive requests for officers, scheduling requests and concerns by the Secondary Employer.
- 2.5. City shall, upon request, provide Secondary Employer with copies of all relevant City procedures, contracts, and rate schedules.
- 2.6. City shall notify Secondary Employer within a reasonable time of any claims or lawsuits brought against the City, its agents or employees, including the Officer, as a result of secondary employment.
- 2.7. City agrees to provide to Secondary Employer necessary documentation required for Secondary Employer to reimburse City for claims.

3.0 OBLIGATIONS OF OFFICER

- 3.1 Officer shall coordinate with Secondary Employer to work at Secondary Employer's event or business according to the rate of pay established by the City.
- 3.2 Officer acknowledges that Secondary Employer seeks services of a security, patrol, and law enforcement nature, and that Officer's ability to provide these services is an inducement to Secondary Employer under this Contract. Consistent with the terms of

this Contract, Officer agrees to perform security, patrol, and law enforcement services for the benefit of Secondary Employer at such times and places as Secondary Employer directs. Officer further acknowledges that Secondary Employer expects Officer to utilize, when necessary, Officer's power of arrest pursuant to North Carolina General Statutes § 15A-401 and Officer's authority to use force in accordance with North Carolina law and policies promulgated by the Raleigh Police Department.

- 3.3 Officer does not warrant or guarantee that Officer's work will detect or prevent all criminal conduct on Secondary Employer's property during secondary employment.
- 3.4 Officer shall be free to decline work offered by Secondary Employer.

4.0 MARKED RALEIGH POLICE VEHICLES

- 4.1. Secondary Employer (elects does not elect) to have a Raleigh Police Department vehicle available for Officer's use during secondary employment.
- 4.2. The Raleigh Chief of Police (shall shall not) require Secondary Employer to have a marked Raleigh Police Department vehicle available for Officer's use during secondary employment.
- 4.3. If Secondary Employer elects to have a Raleigh Police Department vehicle available for Officer's use pursuant to paragraph 4.1, or if Secondary Employer is required to have such vehicle available pursuant to paragraph 4.2, the following additional terms shall apply:
 - (a) Secondary Employer agrees to pay to the City the sum of _____ dollars (\$ _____) per _____ during which a marked Raleigh Police Department vehicle is made available at Secondary Employer's business or event for Officer's use.
 - (b) Marked Raleigh Police Department vehicles may be operated only by a Raleigh Police officer, and may be used only for law enforcement purposes. Marked Raleigh Police Department vehicles shall at all times remain the property of the City and the City shall maintain the sole and exclusive right to possession or use of any such vehicles.
 - (c) City shall remain responsible for damage or loss to marked Raleigh Police Department vehicles while such vehicles are being within the course and scope of secondary employment or are being transported to or from the Secondary Employment location by Raleigh police officers.

5.0 MISCELLANEOUS TERMS

- 5.1. This is a voluntary Contract and any party may terminate the Contract, and halt secondary employment at any time. Any party may terminate this Contract by mailing written notice to the other party at the address listed below:

Officer shall immediately stop work for Secondary Employer in the following circumstances:

- (a) upon giving written notice to Secondary Employer that Officer has terminated

the employment;

- (b) upon receipt of an order by the Chief of Police or his designee to halt the employment;
- (c) upon receipt of a written notice of termination from the Secondary Employer or the City;
- (d) upon learning that the Secondary Employer has mailed written notice of termination to Officer.

5.2. Termination of this Contract shall not relieve Secondary Employer of its obligations herein for claims and causes of action arising during and subsequent to such employment of Officer.

5.3. Secondary Employer is employing Officer because of Officer's power of arrest. Secondary Employer expects Officer to use law enforcement powers in carrying out the work provided by Secondary Employer.

5.4. In consideration of the signing of this Contract, the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this contract, no matter how remote. The parties further agree in all respects to conform with the provisions and intent of City of Raleigh Ordinance 1969-889, as amended. This provision is hereby incorporated into this contract for the benefit of the City of Raleigh and its residents, and may be enforced by action for specific performance, injunctive relief, or other remedy as by law provided. This Contract shall be binding on the successors and assigns of the parties with reference to the subject matter of this Contract.

5.5. This Contract shall apply to, be binding upon and inure to the benefit of the undersigned parties' successors, assigns, heirs and other representatives and be governed by North Carolina law and the applicable provisions of federal law. This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof, and may not be changed, modified, extended, terminated, waived or discharged, except by an instrument in writing signed by each of the parties hereto. The terms and conditions of this Contract constitute the full and complete understandings, agreements and arrangements of the parties with respect to the subject matter hereof, and there are no agreements, covenants, promises, or arrangements relating thereto other than those set forth herein. If a court of competent jurisdiction holds that any provision or sub-part thereof contained in this Contract is invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect any other provision in this Contract and such provision or sub-part thereof shall be construed so as to be consistent with applicable law.

IN WITNESS WHEREOF, Secondary Employer has executed the foregoing with the signature(s) of its duly authorized officer(s), under seal; the Officer has executed with his/her signature; and the City has executed with the signature of the Chief of Police, or his designee, as authorized by Resolution of the Raleigh City Council.

FOR CITY:

Chief of Police
Raleigh Police Department
P.O. Box 590, Raleigh, North Carolina 27602

By: _____
Chief of Police or designee

FOR OFFICER:

(Print Name, Code #, and Division)
Raleigh Police Department
P.O. Box 590, Raleigh, North Carolina 27602

(Officer's Signature)

FOR SECONDARY EMPLOYER:

(Print Name as it appears on page 1)

Address

City State

By: _____
(Signature)/Date

(PRINT)

(Title)

ATTEST:

By: _____
(Signature)

(Affix Corporate Seal)

WAKE COUNTY of NORTH CAROLINA

**ACKNOWLEDGEMENT:
(FOR PARTNERSHIP, CORPORATION, LLC or OTHER)**

I, _____, a Notary Public for said County and State, so hereby
certify that _____ President, Vice President, Chairman, CFO,
CEO, Treasurer, Managing Member of LLC, General Partner (*circle appropriate designation*) of
_____, a Partnership, Corporation, LLC, Other (*circle appropriate designation*),
personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf
of said Partnership, Corporation, LLC, Other (*Circle appropriate designation*).

Witness my hand and official stamp or seal, this the _____ day of _____, 20 _____

Notary Public

(Seal)

My Commission Expires: _____

WAKE COUNTY of NORTH CAROLINA

**ACKNOWLEDGEMENT
(FOR INDIVIDUAL)**

I, _____, a Notary Public for said County and State, so hereby
certify that _____ personally appeared before me this day and
acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the _____ day of _____, 20 _____

Notary Public

(Seal)

My Commission Expires: _____