

## INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement (the "Agreement") is made and entered into as of the 7th day of July, 2020 (the "Effective Date") between Brookings County South Dakota (the "County" also referred to herein as the "BCOAC"), a governmental entity, and Southpaw Defense LLC, a Firearms and Safety Instruction and Training Company, (the "Contractor") (collectively, the "Parties").

The County requests the Contractor to provide the personnel and instructors to perform the services as provided in this Agreement and may request the Contractor to provide personnel to perform other services in the future; and the Parties therefore agree as follows:

### 1.0 Term and Termination

1.1 This Agreement takes effect immediately as of the Effective Date, and remains in full force and effect until terminated by one of the parties pursuant to Section 1.2 of this Agreement.

1.2 Either party may terminate this Agreement by giving the other party thirty (30) days written notice.

### 2.0 Contractor Services

2.1 During the Term, the County may engage the Contractor to provide personnel to provide the following services as needed (the "Services"), or other such services as mutually agreed upon in writing by the Parties (email is acceptable). Such services to be provided to the County are as follows, but are not limited to:

Classes or courses the Contractor will provide instructors to teach or instruct at the Brookings County Outdoor Adventure Center:

- Instruct NRA certified **Basic Pistol** classes or shorter non-NRA Pistol Familiarization classes.
- Instruct NRA certified **Basic Rifle** classes or shorter non-NRA Rifle Familiarization classes.
- Instruct **South Dakota Enhanced Concealed Carry** classes to qualify South Dakota residents to apply for the South Dakota Enhanced Concealed Carry Permit.
- Instruct USCCA certified classes for **Basic Pistol, Concealed Carry, Home Defense**, or a combination thereof.

2.2 The County will provide the necessary equipment to perform the Services, such as:

- Student packages as purchased from the NRA required for each course/class ranging in cost from \$15-\$20 per packet.
- Student packages as purchased from the USCCA required for each course/class ranging in cost from \$15-\$20 per packet.
- Projector or big screen TV for video presentations.
- Posters and other classroom materials as needed to instruct classes.
- Classroom time and firearms range time as required to complete classes.
- The BCOAC will handle registration along with marketing the classes.

2.3 The Contractor will notify the County of any change(s) to the Contractor's schedule that could adversely affect the availability of the Contractor's instructors and personnel, whether known or unknown at the time of this Agreement. The Contractor shall promptly notify the Director of the BCOAC within a reasonable amount of time.

2.4 The work performed by the Contractor's personnel shall be performed at the rate of forty-five dollars (\$45.00) per hour up to 10 hours a month to perform the Services set forth in Section 2.1 of this Agreement.

2.5 The Contractor has agreed to provide instructors to teach some seminars or short classes, at their discretion as a volunteer. The hours an instructor spends teaching volunteer classes will be applied toward the volunteer's BCOAC volunteer hours. While serving as a volunteer, the Contractor's instructors have all the same benefits and privileges granted to other BCOAC volunteers.

2.6 The County will not be responsible for withholding taxes with respect to the Contractor's compensation hereunder. The Contractor, and its personnel and instructors, shall have no claim against the County hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

2.7 The Contractor shall submit requests for payment to the Director of the BCOAC. Once approved and submitted to the County Finance Office by the Director, payments shall follow the same claims approval process as all other county expenditures.

### 3.0 Independent Contractor Status

3.1 The Parties intend that the Contractor be engaged as an independent contractor of the County. Nothing contained in this Agreement will be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship.

3.2 The Contractor may not act as agent for, or on behalf of, the County, or represent the County, or bind the County in any manner.

3.3 The Contractor and its personnel and instructors will not be entitled to worker's compensation, retirement, insurance or other benefits afforded to employees of the County while serving as an independent contractor to the County.

#### 4.0 Representations

4.1 Both Parties to this Agreement represent they are fully authorized and empowered to enter into this Agreement, and that the performance of the obligations under this Agreement will not violate or infringe upon the rights of any third-party, or violate any agreement between the Parties and any other person, firm or organization of any law or governmental regulation.

#### 5.0 Liability of the Parties

5.1 Nothing in this Agreement shall be construed as an indemnification by one party of the other for liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorney's fees) of whatsoever kind and nature, imposed on, incurred by or asserted against a party for property loss, injury, death, or damage. Any liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorney's fees) caused by or resulting from the conduct or omissions of a party or its officers, employees, or agents shall be determined according to applicable law, subject to all available defenses and immunities.

#### 6.0 Volunteer Immunity and Insurance Requirement

6.1 In accordance with SDCL 47-23-29, any volunteer who is providing services on behalf of a governmental entity is immune from civil liability in any action brought in any court in this state on the basis of any act or omission resulting in damage or injury if:

- 6.1.1 The individual was acting in good faith and within the scope of such individual's official functions and duties for the governmental entity; and
- 6.1.2 The damage or injury was not caused by gross negligence or willful and wanton misconduct by such individual.

Accordingly, any services performed by persons designated by Southpaw Defense, LLC as a volunteer will be immune from liability provided Sections 6.1.1 and 6.1.2 set forth above are not violated. However, any services provided for compensation pursuant to this Independent Contractor Agreement must be covered by a Bodily Injury and Property Damage liability policy carried by Southpaw Defense, LLC because the County does not provide liability insurance coverage for independent contractors. For all services performed under this Agreement for compensation, Southpaw Defense, LLC shall at all times carry a Commercial General Liability insurance policy with coverage in the amounts of at least \$500,000 per occurrence and at least \$1,000,000 in the aggregate, for property damage and bodily injury. The County of Brookings shall be named as an additional insured. A certificate of insurance evidencing this coverage shall

be delivered to County prior to the performance of any work under this Agreement. The County shall receive 30 days notice of cancellation from Contractor in the event cancellation of this policy will occur.

#### 7.0 Confidential Information

7.1 Each party agrees to hold and treat all confidential information of the other Party, including, but not limited to, employee and customer information and any other information that the receiving Party should reasonably know is confidential (“Confidential Information”) as confidential and protect the Confidential Information with the same degree of care as each Party uses to protect its own Confidential Information of like nature.

7.2 Confidential Information does not include any information that:

- At the time of the disclosure or thereafter is lawfully obtained from publicly available sources generally known by the public (other than as a result of a disclosure by the receiving Party or its representatives).
- Is available to the receiving Party on a non-confidential basis from a source that is not and was not bound by a confidentiality agreement with respect to the Confidential Information.
- Has been independently acquired or developed by the receiving Party without violating its obligations under this Agreement or under any Federal or State law.

#### 8.0 Liability

8.1 Except with respect to the parties’ indemnification obligations, neither party shall be liable to the other for any special, indirect, incidental, punitive, or consequential damages arising from or related to this Agreement, including bodily injury, death, loss of revenue, or profits or other benefits, and claims by any third party, even if the parties have been advised of the possibility of such damages. The foregoing limitation applies to all causes of action in the aggregate, including, without limitation, to breach of contract, breach of warranty, negligence, strict liability, and other torts.

#### 9.0 Miscellaneous Provisions

9.1 This Agreement, and any accompanying appendices, duplicates, or copies, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements, representations, and understandings of any kind, whether written or oral, between the Parties, preceding the date of this Agreement.

9.2 This Agreement may be amended only by written agreement duly executed by an authorized representative of each party (email is acceptable).

9.3 If any provision or provisions of this Agreement shall be held unenforceable for any reason, then such provision shall be modified to reflect the parties' intention. All remaining provisions of this Agreement shall remain in full force and effect for the duration of this Agreement.

9.4 This Agreement shall not be assigned by either party.

9.5 This Agreement is governed by and construed in accordance with the laws of the State of South Dakota without reference to any principles of conflicts of laws, which might cause the application of the laws of another state. Any action instituted by either Party arising out of the Agreement will only be brought, tried and resolved in the Circuit Court, Third Judicial Circuit, State of South Dakota.

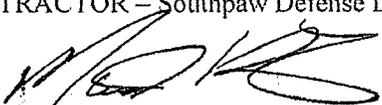
The Parties are signing this Agreement on the date stated in the introductory clause.

COUNTY – Brookings County

By: \_\_\_\_\_

Name: Mike Bartley, Commission Chairperson

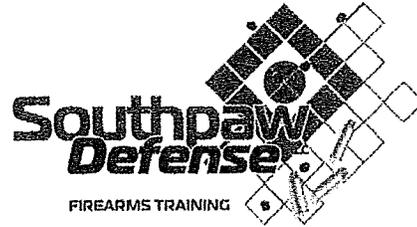
CONTRACTOR – Southpaw Defense LLC

By:  \_\_\_\_\_

Michael Kilmer, Owner, Firearms Instructor

June 26<sup>th</sup>, 2020

Mr. Dustin Huber, Director  
Brookings County Outdoor Adventure Center  
2810 22<sup>nd</sup> Avenue South  
Brookings, SD 57006



Dear Mr. Huber,

I would like to request an amendment to the contract between Southpaw Defense, LLC and The Brookings County Outdoor Adventure Center (Brookings County South Dakota).

I would like section 2.4 amended to reflect an increase in the hourly rate for contract work from \$40.00 per hour to \$45.00 per hour.

This increase is to offset costs incurred to operate Southpaw Defense LLC and maintain training credentials.

Please let me know if you have any questions or concerns.

Thank you,

A handwritten signature in black ink, appearing to read "Michael Kilmer".

Michael Kilmer, Owner  
Southpaw Defense LLC

A handwritten signature in black ink, appearing to read "Dustin Huber".

Dustin Huber, Director  
Brookings County Outdoor Adventure Center