

AGREEMENT BETWEEN THE CITY OF RAPID CITY AND
BLACK HILLS PATROL FOR SECURITY SERVICES AT THE MILO BARBER TRANSPORTATION CENTER

This Agreement is made and entered into between the City of Rapid City, located at 300 Sixth Street, Rapid City, South Dakota 57701, hereinafter called the “City” and Black Hills Asset Protection Group, d/b/a Black Hills Patrol, South Dakota Limited Liability Company, located at 807 Columbus Street, Suite Three, Rapid City, South Dakota 57701, hereinafter referred to as the “Contractor”.

1.a. The Contractor agrees to provide a uniformed security patrol services officer to the City at 333 Sixth Street, Milo Barber Transportation Center (“Bus Terminal”), at the rate of \$17.00 per man-hour. The City and Contractor will mutually agree as to the hours Contractor will provide services; however the minimum hours per week shall be 20 hours under this Agreement.

1.b. The City authorizes Contractor to conduct additional patrols as deemed necessary in the parking structure owned by City located on Sixth Street, at no cost under this initial contract.

1c. The City authorizes Contractor to provide services after business hours at the Bus Terminal should Contractor observe suspicious, unlawful or hazardous conditions, at no cost under this initial contract.

2. Contractor will perform complete security patrols of the facilities and:
 - a. Enforce facility rules and safety regulations and abate hazards;
 - b. Detect, deter and prevent illegal activities on properties under the control of the Department and prepare written reports of the same; and
 - c. Communicate to the proper officials violations of law for enforcement action as needed.
3. The Contractor will provide monthly incident reports to the City.
4. The Contractor shall maintain liaison with the Rapid City Police Department, “RCPD,” and shall respond to all requests for reports, information or actions by the RCPD related to this contract.
5. The Contractor shall obtain and maintain, at its expense, the following minimum limits of occurrence based insurance coverage for the duration of this agreement:

a. Workers Compensation	Statutory
b. WC Employer Liability	\$100,000.00
c. Comprehensive General Liability	\$1,000,000.00
d. General Aggregate	\$2,000,000.00 per occurrence
e. Business Automobile Insurance	As required by statute

Such insurance policies shall name City as an additional insured with respect to all activities arising out of the performance of the Work and/or services under this agreement. Acceptable Certificates of Insurance and Endorsements confirming the above coverage shall be filed with the Department before commencing any work and/or services. Such Certificates shall afford City thirty (30) days written notice of cancelation or material change of coverage.

Department's failure to obtain from Contractor a Certificate of Insurance conforming to the foregoing requirements shall not be deemed a waiver of any of the foregoing requirements. This paragraph shall in no way limit the provisions of the indemnity area.

7. Contractor agrees to indemnify, defend and hold City, its officers, agents and employees harmless from and against any and all actions, suits, damages, liability, or other proceedings that may arise as the result of performing services under this Agreement. Contractor also agrees to indemnify and defend City, its officers, agents and employees against any and all liability, losses, claims, damages, costs, and expenses including, but not limited to, costs of defense and reasonable attorney's fees, which City may hereafter suffer itself or pay to another party by reason of any claim, action, or right of action, at law or in equity, arising out of willful misconduct, error, omission or negligent act of Contractor and resulting in injury (including death) to any person or damage to any property to the extent such are caused by or are alleged to be caused by Contractor or its employees, any subcontractor or its employees, or any person, firm, partnership, or corporation employed or engaged by Contractor.
8. The Contractor will hold all incident reports or other information, in any format whatsoever, confidential and will share it only with such City staff as the City designates. No information will be provided by the Contractor to outside parties unless specifically directed in writing by the City.
9. The Contractor will send an itemized invoice monthly for all hours and fractions thereof of security services provided which the City agrees to pay the Contractor within forty-five (45) days of receipt. If the City fails to pay the Contractor within sixty (60) days of receipt of an invoice, the Contractor may suspend or terminate its services under the Agreement and or may charge a 1.5% late payment fee per month.
10. The Contractor will provide at its sole expense all equipment, tools and supplies necessary to perform the contract services. The City will provide the Contractor with all applicable protocols, including but not limited to; any key(s) and/or code(s) needed for access to areas to be patrolled.
11. This Agreement shall terminate 90 days after its execution is complete. Either party may terminate the Agreement at any time by providing written notice to the other party thirty (30) days prior to the desired expiration date. City shall have an option to renew the contract for one additional year after termination upon the same terms and conditions in this Agreement. If it wishes to exercise that option, City shall provide Contractor with written notice of its intention to renew at least thirty (30) days prior to the date of termination. The renewal term will begin on the date of termination of the Agreement. Upon expiration of any renewal term, the City may renew the Agreement in the above-described manner. The City may renew the Agreement upon the same terms and conditions no more than three times.
12. The parties acknowledge that the Contractor, its agents and employees, are independent contractors and are not employees of the City of Rapid City. The Contractor agrees to maintain Workers' Compensations Insurance for its employees as required under South

Dakota law. The parties further agree the Contractor has the following rights consistent with an independent contractor relationship:

- a. The Contractor will have the right to control and determine the methods and means of performing the contractual services;
- b. The Contractor has the right to perform services for others during the term of the Agreement;
- c. The Contractor has the right to hire assistants as subcontractors, or to use employees to provide the services under this Agreement;
- d. The City shall not require the Contractor to devote full time to performing services required under this Agreement;
- e. Neither the Contractor, its employees, nor subcontractors, are eligible to participate in any employee pension, health, vacation pay, sick pay or other fringe benefit plan of the City of Rapid City.

13. Failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver, or deprive that party of the right thereafter to insist upon strict adherence to that term, or any other term of this Agreement.
14. This Agreement constitutes the entire Agreement of the parties. No other promises or considerations form a part of this Agreement. All prior discussions and negotiations are merged into these documents or intentionally omitted. This agreement may only be amended or modified in writing by mutual agreement of the parties.
15. The parties agree that the terms of this Agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling. Any legal actions arising out of or relating to this agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.
16. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not alter the validity and enforceability of the other provisions hereof. If any portion of this Agreement is unenforceable for any reason whatsoever, such provision shall be appropriately limited and given effect to the extent that it may be enforceable.
17. The City and Contractor have the authority to enter into this agreement.
18. The parties agree that Contractor is not a law enforcement officer under SDCL Chapters 22-1 or 23-3. The parties agree that City is not in any way appointing or acknowledging Contractor is a law enforcement officer as that is defined in SDCL 22-1-2 or SDCL 23-3-27. The Contractor and its employees are not prohibited from making citizen arrests in accordance with SDCL 23A-3-3 as legal and necessary in the course of their duties.
19. Contractor agrees that they will maintain all applicable city, state or federal licensing required. The parties agree that failure to maintain required licensing will effectively terminate this agreement and the City's obligations will immediately cease. The parties agree

BLACK HILLS ASSET PROTECTION GROUP, LLC
DBA BLACK HILLS PATROL

Kenneth E. Orrock, CEO

Subscribed and sworn to before me this ____ of _____, 2016

Notary Public – South Dakota

My Commission expires: _____

(SEAL)