

# WEBER COUNTY CORPORATION CONCESSION CONTRACT FOR SHOOTING COMPLEX

Contract No.

THIS AGREEMENT is entered into and made effective as of the 1st day of January, 2021, by and between Weber County Corporation hereinafter called "County" and 5<sup>th</sup> Dimensional Marketing, LLC, DBA GUNSAMMOPREPAREDNESS.COM, hereinafter called "Concessionaire." For the purposes of this Agreement, the address of the County is 1181 N. Fairgrounds Drive, Ogden, UT 84404, and the address of the Concessionaire is 2446 North 1500 West, Ogden, Utah 84405.

1. **CONTRACT TERM:** The contract term will begin January 1st, 2021 ending January 1st, 2024 subject to termination at any time as hereinafter provided. The contract may be renewed for additional terms of one to five additional years by mutual agreement of both parties. All terms will be reviewed and re-evaluated at the time of renewal.
2. **CONTRACT BINDING:** This agreement shall not become binding on the County until it has been signed by all persons and agencies required by law, and the County shall not be liable for payments for any goods or services to be provided or any other commitments hereunder until this agreement has been fully executed.
3. **CONCESSION GRANTED:** By granting this concession, the County authorizes and requires the Concessionaire to develop and operate an Firearms Sale, Firearms Rental, Ammunition Sales and Gunsmithing concession at the Weber County Shooting Complex ("Shooting Complex"). The Concessionaire accepts, for all purposes, the concession premises in its present physical condition, upon occupancy. The Concessionaire, at its own expense and liability, shall make all improvements necessary to perform this contract. The Concessionaire shall operate the concession so as not to interfere with public use of the Shooting Complex.
4. **CONCESSION PROPERTY:** At its own expense, the Concessionaire shall acquire all personal property the Concessionaire needs to operate the concession and perform this contract. The Concessionaire shall own this property. The Concessionaire shall be responsible for the maintenance and repairs of its own property and the repairs to any County property damaged as a result of the negligence of a Concessionaire's employee or customer. The Concessionaire shall maintain all of its property in a first-class manner throughout the term of this agreement.  
  
The term "first-class" shall mean free from any defects, in a safe condition, clean or otherwise maintained to the satisfaction of the County.
5. **CONTRACT JURISDICTION:** The provisions of this contract shall be governed by the laws of the State of Utah.
6. **TAXES AND ASSESSMENTS:** The Concessionaire shall pay all applicable taxes, fees or assessments levied against the concession premises and property. The Concessionaire shall pay all taxes on goods, merchandise, fixtures, appliances and equipment owned or used therein.
7. **RECORDS ADMINISTRATION:** The Concessionaire shall maintain all records necessary to properly account for all monies received by the Concessionaire through the operation of this concession. The Concessionaire agrees to maintain these records for at least four (4) years after the contract terminates, or until all audits initiated within the four (4) years have been completed, whichever is later. The Concessionaire also agrees to allow County Staff, access to all records relating to this contract, for audit and inspection, and monitoring of payments. Such access will be during normal business hours, or by appointment with advance notice.

8. **INDEPENDENT CONCESSIONAIRE:** The Concessionaire shall be an independent Concessionaire, and as such, has no authority, express or implied, to bind the County to any agreements, settlements, liability, or understanding whatsoever, and agrees not to represent itself as an agent for the County, except as herein expressly allowed. Persons employed by the County and acting under the direction of the County shall not be deemed to be employees or agents of the Concessionaire.
9.
  - A. **SUB-LEASES:** All sub-leases shall have prior, written approval of the County. All sub-leases shall be subject to the general Concessionaire's contract requirements in regard to insurance, fees, terms, etc. Sub-lessor's compliance with contract terms shall be the sole responsibility of the Concessionaire. The Division Director may work through the Concessionaire to resolve any problems/concerns with the sub-lessee.
  - B. **SUB-CONTRACTORS:** The County may review all sub-contractors for legal compliance and consistency with this agreement.
10. **EASEMENTS:** This concession contract, concession premises and the Concessionaire's rights therein, are subject to all easements or right-of-ways that may exist within Shooting Complex or within concession premises. The County may at any time create additional easements or right-of-ways over, under, along, and across the concession premises, and may do so without compensating the Concessionaire. In exercising these rights, the County shall take reasonable steps to minimize any interference with operation of the concession.
11. **EQUAL OPPORTUNITY CLAUSE:** The Concessionaire agrees to abide by the provision of Title VI and VII of the Civil Rights Act of 1964 (42USC2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CAR 90, which prohibits discrimination on the basis of age; Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicapped, and Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
12. **BONDS:** The Concessionaire shall provide and maintain a performance bond in the amount of one hundred percent (100%) of the costs, as estimated by the County, for any construction to be performed. The Concessionaire shall also provide a payment bond in the amount of one hundred percent (100%) of the costs for labor, materials, appliances and utilities, as estimated by the County, used for said construction. The payment bond shall also insure all claimants a right of action to recover thereon in any suit brought to foreclose the liens or in a separate suit brought upon the bond. The bonds shall be payable to the County and executed by a corporate surety authorized to conduct business as a surety in the State of Utah. Said bonds shall remain in effect by the concessionaire until all works of improvement have been accepted by the County and all liens have released.

The County will accept in lieu of the above mentioned bonds, the performance and payment bonds of corporations authorized by the State of Utah to issue surety bonds, naming as principal a licensed contractor employed by the Concessionaire to construct works of improvement upon assigned area, provided each bond is in the amount of one hundred percent (100%); naming the County as an additional obligee; and is satisfactory to the County as to the sufficiency and liability of the sureties named thereon. The bonds shall remain in effect until all work has been accepted by the County and all liens have been released.
13. **INDEMNITY CLAUSE:** LICENSEE hereby assumes the liability for any claim, injury, or damage that occurs in, on or about the premises used by the LICENSEE or arising out of the LICENSEE's performance of this agreement. LICENSEE hereby assumes all liability for any claim, injury, or

damage that occurs in, on, or about the premises used by the LICENSEE or arising out of LICENSEE'S performance of this agreement. LICENSEE hereby agrees to indemnify and hold harmless Weber County, it's officers, agents, and employees, from and against any and all liability for bodily injury (including death), damage to property, personal injury, claims, losses, damages, costs, expenses( including reasonable attorney's fees), and lawsuits arising from, or alleged to arise from, activities which are subject of this agreement. Furthermore, the LICENSEE shall maintain Commercial General Liability ("CGL") Insurance with contractual liability coverage to cover LICENSEE'S obligations under the indemnification section of the Agreement in the minimum of \$1,000,000 per occurrence with a \$2,000,000 general policy aggregate. The policy shall be primary and non-contributory to any other policy(ies) or coverage available to Weber County, whether such coverage be primary, contributing, or excess. If Vendor's CGL coverage is provided on a claims-made basis, Vendor shall maintain such policy for no less than four years after termination of this Agreement. LICENSEE shall provide the COUNTY with a certificate of insurance, verifying coverage at least one week prior to opening and operating at the Shooting Complex.

Licensee's obligation to indemnify County is not limited or waived in any way by compliance or non-compliance with the insurance requirements set forth in this Agreement. Licensee shall be obligated to indemnify County to the fullest extent allowed by law whether or not Licensee has secured insurance to finance the indemnification obligations.

**14. INSURANCE:**

A. Concessionaire shall provide and continuously maintain insurance fully covering its insurable responsibilities under this contract. At its own expense, the Concessionaire shall obtain the insurance from reliable insurance companies (a) that are authorized to do business in Utah and (b) that are rated by A.M. Best Company with a rating of "A" or better, with a financial size category of XII or larger. The insurance shall include at least the following:

Liability Insurance

(1) Workers Compensation Insurance and Employer's Liability Insurance providing statutory benefits. The Best's rating requirements are waived if coverage is provided by the Worker's Compensation Fund of Utah. The Concessionaire shall require all sub-contractors to take and maintain similar policies of Worker's Compensation Insurance. The amount and form of insurance shall meet all requirements of law; and shall cover all risks to all person who provide services with or for the Concessionaire.

(2) Comprehensive General Liability Insurance and/or Commercial General Liability Insurance including coverage for premises and operations, products, and personal injury, including employees, with limits of not less than \$1,000,000.00 combined single limit per occurrence, and an aggregate of not less than \$1,000,000.00 which shall be designated as applying only to this contract. If this coverage is written on claims-made basis, the certificate of insurance shall so indicate. The policy shall also contain an extended-reporting-period provision or similar "tail" provision that keeps full insurance in force for claims reported up to three (3) years after this contract expires or is completed or terminated. The insurance policy shall be endorsed to add the County as an insured.

(3) If, in connection with the concession contract or otherwise in connection with the concession premises, the Concessionaire rents, leases, or lets any equipment, including, but not limited to, firearms, etc., the Concessionaire shall provide renter with a rental agreement which renter shall agree to and sign. The rental agreement shall name the County as released of all liability renter incurs in connection with the use operation of said

equipment. Rental agreements utilized by the concessionaire shall receive prior written approval of the County.

(4) If not included in Commercial General Liability insurance required under this Agreement, Licensee shall secure and maintain during the full term of this Agreement (and for four (4) years after the termination of this Agreement if written on a Claims Made basis) Product Liability insurance in the minimum amount of \$1,000,000 per occurrence with a \$2,000,000 general aggregate.

15. **REVERSAL:** Ownership of all improvements constructed by the Concessionaire upon the concession premises shall remain the Concessionaire's until termination of this contract. Upon termination, whether by expiration of term, cancellation or forfeiture, all rights of ownership and possession of said improvements shall vest in the County. In the event demand for the removal of said improvements is given thirty (30) days prior to cancellation date, and the Concessionaire fails to remove the structures and restore the area to its natural condition, the County may sell, remove or demolish said improvements. The Concessionaire shall reimburse the County for all costs in connection of said sale, removal or demolition.
16. **PROPERTY DESTRUCTION:** If the Concessionaire's property is damaged or destroyed, the Concessionaire, at its own cost, shall restore or rebuild the premises as soon as possible and shall resume operation of the concession as soon as possible. The Concessionaire's duty to restore and rebuild shall be excused only if the County specifically excuses it in writing, in which case the County may declare the contract terminated. Such termination shall not forgive or extinguish any other outstanding obligations or breaches.
17. **COMPLIANCE WITH LAWS:** The Concessionaire shall comply with all federal, state, county and municipal laws, ordinances or regulations that are applicable to the area of operation authorized by this agreement. The Concessionaire shall abide by, and the concession shall be operated in accordance with the rules and regulations established by the County and its administrative staff.
18. **SAFETY:** It is the Concessionaire's responsibility to keep the concession area safe. The Concessionaire shall immediately notify the County of any unsafe condition of the concession premises, as well as any unsafe practices occurring thereon, and work with the County to correct that practice or condition. The Concessionaire shall obtain emergency medical care for any member of the public who is in need thereof because of illness or injury occurring on or from the concession premises. The Concessionaire shall cooperate fully with County and law enforcement offices in the investigation of any accidental injury or death occurring on or from the concession premises, including a prompt report thereof to the County.
19. **SECURITY:** It shall be the responsibility of Concessionaire to work out arrangement for suitable security to be administered at Shooting Complex.
20. **INSPECTION OF PREMISES:** In its discretion the County may enter and inspect the concession premises at any time, and the Concessionaire shall cooperate in the inspection. The Concessionaire's duties under this contract, including the duty to keep the concession premises safe, shall not be lessened or affected if the County either inspects or does not inspect the premises at any time. The County assumes no responsibility or liability for inspecting or not inspecting the premises.
21. **ENFORCEMENT:** The Division Director of Parks and Recreation has the authority to enforce this agreement on behalf of the County and may authorize other County employees to help administer this agreement.

22. **SEVERABILITY:** The provisions of this contract shall be severable such that if any provision is invalid, unenforceable, or waived, the remaining provision shall remain in full force to the extent possible.
23. **DEBARMENT:** The Concessionaire certifies that neither it nor its principals is presently debarred, suspended proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the Concessionaire cannot certify this statement, attach a written explanation for review by the County.
24. **RECOGNITION OR MODIFICATIONS:** This contract may be changed only by written amendment to the contract, executed by the parties hereto, and attached to the original signed copy of the contract.
25. **ASSIGNMENTS:** Unless the County gives its prior written consent, the Concessionaire shall not assign or otherwise transfer this contract or any use, right, duty or interest arising from this contract. Any unauthorized assignment or transfer shall be void or voidable at the County's discretion.
26. **WAIVER:** Any waiver by the County of any breach of any one or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained; nor shall failure on the part of the County to require exact, full and complete compliance with any of the covenants, conditions, or terms of agreement herein contained be construed as in any manner changing the terms of this agreement or stopping the County from enforcing its full provisions thereof.

No delay, failure, or omission of the County to re-enter the concession premises or to exercise any right, power, privilege or options arising from any default nor any subsequent acceptance of payments, then or thereafter accrued shall impair any such right, power, privilege or option or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right.

No notice to the concessionaire shall be required to restore or revive "time of the essence" after the waiver by the County of any default.

No option, right, power, remedy or privilege of the County shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options and remedies given the County by this agreement shall be cumulative.

27. **ENTIRE AGREEMENT:** This document, including any attached exhibits, constitutes the entire agreement between the County and the Concessionaire for the concession and use granted at Shooting Complex. All other agreements, promises and representations with respect thereto, other than those contained herein, are expressly revoked; as it has been the intention of the parties to provide for a complete integration within the provisions of this document. The unenforceability, invalid, or illegality of any provision (s) of this agreement shall not render the other provisions unenforceable, invalid or illegal.
28. **COUNTY REGULATIONS:** It is understood that the Shooting Complex shall be operated in accordance with the rules and regulations established by the County's Administrative Staff. Said rules and regulations are designed for the protection of the visitors and facilities at Shooting Complex, and to provide for emergency conditions that from time to time may require the Shooting Complex, including the concession area, to close temporarily (e.g., because of weather conditions, overcrowding or other conditions requiring immediate action on the part of the Parks Director).

29. **SHOOTING COMPLEX USE FEES:** Notwithstanding any other provision contained herein, the County shall have the right to collect use fees in the amount determined by the County for public use of the facilities provided at Shooting Complex.

30. **TERMINATION:** Unless otherwise stated in the special terms and conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified date, by either party, upon ninety (90) days written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangement set forth herein for approved services rendered to date of termination.

Termination of this contract shall not extinguish or forgive any obligation, debt or breach, and shall not preclude any cause of action or any other remedy.

31. **NOTICE OF TERMINATION:** Notice of termination for default or breach of contract shall be as follows. The County shall give the Concessionaire ninety (90) days notice by certified mail of the date set for cancellation, the grounds, and that an opportunity to be heard will be afforded on or before said date if request is made by the Concessionaire.

32. **FORCE MAJEURE:** If either party is delayed or prevented from performing this agreement by reason of acts of God, strikes, lockouts, labor disputes, inability to procure materials, pandemics, restrictive governmental laws or regulations or other cause without fault and beyond the control of the party obligated (financial loss or inability excepted), performance of such act shall be excused for the period of the delay.

33. **HEADINGS:** Section headings in this contract are intended for convenience only. They shall not be basis for construing the contract.

34. **NON-APPROPRIATION OF FUNDS:** To the extent this contract requires the County to incur debt or spend money, this contract shall be enforceable against the County only if the County Commission provides the necessary funding therefor. If sufficient funds are not appropriated or are otherwise unavailable, the County may terminate this contract, without penalty, by giving thirty (30) days written notice.

35. **USE OF PREMISES:** The designated premises shall be used by the Concessionaire only for the operation of facilities as described herein. The Concessionaire shall offer the following services:

- A. Firearm related items, excluding paper targets.
- B. Firearm related repair services.
- C. Private Firearm lessons, concessionaire will coordinate with Shooting Complex Manager.
- D. Assist in organization and facilitation of leagues and/or events.

Overall item selection must be approved by the Shooting Complex Manager.

36. **OPERATION HOURS:** Operation hours will be within the hours of operation of the Shooting Complex, with a minimum of 40 hours a week. Concession to be open during special events (to be submitted to Concessionaire by Shooting Complex Manager prior to the event). The operating hours of the special events may vary from normal operating days and hours. Operating hours in

addition to listed above shall be determined by Division Director of Parks and Recreation and coordinated with Concessionaire.

Concession operating hours may also be altered by County for special events held at Shooting Complex, which require exclusive use of the Shooting Complex and requires the closure of the Concession.

37. **FEES:** The Concessionaire shall pay the County upon execution of this agreement on or before April 1, and by each successive April 1<sup>st</sup> of each year thereafter, a rental fee of \$0. The Concessionaire shall also pay the County 5% of the gross receipts received from or through operation of the concession. The minimum annual payment will be applied against the percentage amount due the County.

“Operating year” for the purpose of this agreement is defined as that period from January 1 to December 31. The term “gross receipt” shall mean all monies, property and any other things of value received by the Concessionaire through the operation of said concession. It shall not include any sales or excise taxes imposed by any governmental entity and collected by the Concessionaire.

The Concessionaire shall provide to the County a sworn or verified monthly gross receipts report, showing any amount due and payable to the County. Any payment due shall be included with said report. The monthly reporting period shall be by a current year calendar month. Payment shall be made to the County on or before the fifth of each month. Late payments may be subject to an interest charge of 2% monthly on the balance due the County.

Payments shall be made to the order of Weber County and delivered to the Weber County Parks Office.

38. **ACCOUNTING RECORDS:** The Concessionaire shall maintain a method of accounting in accordance with generally accepted accounting principles and procedures, which, to the satisfaction of the County, shall correctly and accurately reflect the gross receipts and disbursements of the Concessionaire. The method of accounting, including bank accounts established for the concession, shall be separate from the accounting system used for any other business operated by the Concessionaire or for recording the Concessionaire’s personal financial affairs. Such method shall include the following documents:

- A. Regular books of accounting such as general ledgers of County approved computer accounting programs.
- B. Journals, including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.
- C. State and Federal income tax returns, and sales tax returns.
- D. Cash register tapes (daily tapes may be separated but shall be retained so that from day to day the sales can be identified).
- E. Any other reporting records that the County deems necessary for proper reporting of receipts.

All sales shall be recorded by means of written receipts or cash registers which publically display the amount of each sales and automatically issue a customer’s receipt or certify the amount recorded in a sales slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating cannot, in either case, be reset, and in

addition, a tape located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register shall be made a matter of daily record.

All documents, books and accounting records shall be open for inspection so that the accuracy of the above records can be confirmed. If the report of gross sales made by the Concessionaire should be found to be less than the amount of gross sales disclosed by such audit, the Concessionaire shall pay the delinquent amount within thirty (30) days notice of deficiency. Interest at the rate of 2% monthly will be added.

The Concessionaire shall provide to the County a sworn or verified yearly income statement, an annual profit and loss statement and a balance sheet. The annual financial statements shall be submitted within sixty (60) days of the close of the current year.

39. **CONSTRUCTION:** If any construction is to be completed it shall be in accordance with the plans and specifications that have been prepared by the Concessionaire and approved by the County. All construction shall be properly bonded as required in section 12. No modification of said final plans and specifications or of said improvements, including landscaping, shall be made by the Concessionaire without prior written approval of the County. In the event the development requires the construction to be completed in phases, the nature of the development and the time interval between phases shall be subject to approval by the County.

The Concessionaire agrees that the County may have on the site at any time during the development period an inspector who shall have the right of access to the concession premises and any construction work.

The Concessionaire shall construct, complete and maintain all construction and installations covered by this agreement in good and workmanlike manner with high quality materials and shall furnish all tools, equipment, labor and materials necessary to perform and complete the same. The Concessionaire expressly warrants that all materials and workmanship will be free from defects.

40. **PROVISIONS FOR SERVICES, AND MAINTENANCE:** The Concessionaire shall be responsible for, and bear all costs of, all services, and maintenance of the concession premises.

**Sanitation:** The Concessionaire shall provide all equipment and materials necessary, including trash receptacles of the size, type and number required by the County, to maintain the concession premises in a sanitary condition. No substance constituting a fire hazard or detriment to public health shall be permitted.

**Maintenance:** The Concessionaire shall maintain the assigned concession premises in good condition, and shall perform all repairs to and replacement of all improvements to the satisfaction of the County. This shall include, but not be limited to, painting, cutting and maintaining the grass, solid waste removal.

41. **CONCESSIONAIRE STAFF:** The Concessionaire shall maintain an adequate and proper staff and shall not engage in, or permit employees to engage in, any behavior that the County deems to be detrimental to the public patronizing the Shooting Complex or to any County employee. The Concessionaire shall designate one member of the staff as the Concession Manager with whom the Shooting Complex Manager may deal on a daily basis.

42. **SIGNS:** All signs that the Concessionaire wishes to place on the concession premises must be approved in advanced and in writing by the County. The County may place its own signs within the concession area, provided that said signs do not interfere with the reasonable business activities of the Concessionaire.



43. **SECURITY:** The Concessionaire shall be responsible for all security and surveillance of concession premises. The Concessionaire may install at its own expense any legal device or equipment designed for the purpose of protecting the concession premises from theft, burglary or vandalism provided that prior, written approval is obtained from the County. Any county provided security patrol shall be limited by and subject to the patrolling activities normally performed by the County.
44. **NOTICE:** Any notice to be given to either party shall be delivered personally or mailed by certified mail, return receipt requested, to the appropriate addresses listed below. Any change in mailing addresses shall be designated in writing to the other party.

Christopher S. Turpin,  
 Owner 4503 Taylor  
 Ave. Ogden, UT 84403

Weber County Parks Department  
 1181 N. Fairgrounds Drive  
 Ogden, UT 84404

Both parties hereto represent they have read this Agreement, understand it, agree to be bound by all terms and conditions stated herein,

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

Christopher S. Turpin

WEBER COUNTY

by:



by:

\_\_\_\_\_  
 Gage Froerer  
 Weber County Commission

Title:

President/owner

Approved as to Form:

by: \_\_\_\_\_

Matthew Wilson  
 Deputy Weber County Attorney

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
 Ricky Hatch  
 Weber County Clerk/Auditor