

CITY OF KELLER  
**THE KELLER POINTE INSTRUCTOR**  
INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT (the "Agreement"), dated to be effective the 1<sup>st</sup> day of October, 2024, is entered into by and between the City of Keller (the "City") and:

Name Chris Folmar - American Defense Arts Academy, LLC ("Contractor")

Address: 1513 North Shropshire Ct. Keller State: TX Zip Code: 76248

Home/mobile number: 972-679-9450 Work numbers: 817-673-0935

The City and Contractor agree as follows:

1. Discrimination Prohibited. The Contractor will not discriminate against anyone on the basis of race, color, national origin, age, handicap, creed, religion, sex, ancestry, or place of birth in the provision of services to the public, and will comply with all application provisions of TITLE IV of the Civil Rights Act of 1964 and the Rehabilitation Act of 1974.
2. Independent Contractor. Subject to the terms and conditions of this Agreement, the City hereby engages the Contractor as an independent contractor to perform the services set forth herein, and the Contractor hereby accepts such engagement.
3. Duties, Term and Compensation. Contractor's duties, term of engagement and provisions for payment are set forth in the attached **Exhibit A**, which may be amended from time to time. All duties performed by Contractor under this Agreement shall be done as an independent contractor and not as an employee of the City. Contractor may not refer to himself/herself as an employee of the City. Contractor shall use his/her independent judgment and discretion in carrying out his/her duties. Contractor shall retain and exercise full control over the details and means by which he/she carries out his/her duties. Contractor agrees to comply with all applicable federal, state, and local laws, rules and regulations in carrying out his/her duties. Contractor is permitted to provide his/her services to third parties provided such other work does not interfere with his/her duties under this Agreement. Contractor agrees to devote the necessary time, energy, attention and abilities as necessary to perform his/her duties in a timely and productive manner. Contractor agrees to make announcements to class participants from

time to time as required by the City, take attendance and prepare class attendance reports for each class taught, distribute class surveys, market City programs, and to perform such other duties as the City deems reasonable and appropriate. Contractor shall not collect any money or fees from class participants.

4. Benefits. As an independent contractor, Contractor is not entitled to benefits of any kind from the City. Contractor has no claim against the City for vacation pay, sick leave, retirement benefits, social security, workers' compensation, health or disability insurance or related benefits, unemployment insurance benefits, or any other type of employee benefits.
5. City Policies. Contractor agrees to comply with all City Parks and Recreation Department rules, procedures and policies governing City Recreational Programs and the City policies and procedures attached as **Exhibit B**. Policies applicable to Contractor may be amended from time to time. Contractor agrees to enforce all applicable rules, procedures and policies during the term of this Agreement.
6. Taxes. Contractor agrees and acknowledges that the City is not responsible for the withholding or the payment of any social security taxes, federal unemployment taxes, or federal income taxes. Contractor acknowledges and agrees that he/she is obligated to report to the Internal Revenue Service (IRS) all compensation he/she earns under this Agreement and to pay any and all local, state, or federal income tax due and owing on such compensation. On an annual basis, the City will prepare a Form 1099 which will reflect compensation paid to Contractor during the prior year.
7. Insurance. It is recommended that contractor obtain and maintain insurance coverage including but not limited to a general liability insurance policy to ensure Contractor has a verified and adequate means of managing the financial consequences of actual or alleged negligence .
8. Indemnity. Contractor agrees to indemnify and hold the City harmless from and against any and all claims, actions, damages, liabilities, losses, costs, or expenses (including without limitation, attorneys' fees, court costs, back taxes, penalties and interest) arising out of Contractor's performance of his/her duties under this Agreement.
9. Instructional Materials and Expenses. Some courses taught by City Contractors involve the use of instructional supplies or other materials. **The Contractor is responsible for obtaining and distributing all required materials and supplies. The City and Contractor must agree in advance on the materials to be used, which will be listed by the Contractor on Exhibit A; and the cost for such materials will be incorporated into the class fee.**



10. Absences and Tardiness. Contractor is expected to be present at The Keller Pointe (or other class location) at least 15 minutes prior to the scheduled start time of each class. Contractor must sign in at the front desk upon his/her arrival, and sign out upon his/her departure. Contractor agrees that he/she will not be absent or tardy except in a case of extreme and unanticipated emergency. In the event of such an emergency, Contractor must notify the Keller Pointe On-Duty Supervisor (phone no. 817-743-4386) as far in advance of the scheduled class time as possible. In the event of such an emergency, Contractor is also responsible for contacting each of the approved substitute contractors listed on the attached Exhibit C, as may be updated by the City from time to time, and arranging for one of the approved substitute contractors to fill in for Contractor during his/her absence or tardy. The City is responsible for compensating the approved substitute contractor for his/her time spent covering for Contractor's absence or tardy. If Contractor is unable to arrange for an approved substitute contractor to fill-in for him/her during an absence or tardy, Contractor must contact the Program Supervisor as far in advance as possible.

11. Class Audits and Evaluations. Contractor agrees to allow City staff members to observe Contractor's classes as deemed necessary by the City in order to audit the classes' operation, to check attendance and to verify Contractor's adherence to curriculum, rules, policies and procedures. Staff members who attend a class as part of their duties and responsibilities as a City employee or representative are not considered class participants for purposes of determining Contractor's compensation. Contractor may not allow anyone else to observe the class without the City's prior authorization. Contractor may, at City's request, be required to administer a class evaluation and submit the results to the City.

12. Termination.

- a. This agreement shall remain in effect until the date of expiration. This agreement may be terminated by either party with a thirty (30) day written notice to the other party. If terminated by Contractor, Contractor must state therein the reasons for such cancellation. Upon delivery of such notice, Contractor shall discontinue all services in connection with the performance of this agreement and shall proceed to immediately cancel all existing orders and contracts insofar as such orders or contracts are chargeable to this agreement. As soon as practical after receipt of notice of termination, the Contractor shall submit a statement to the City for payment of that portion of the agreement successfully performed.
- b. The City shall at all times have the right to immediately terminate this Agreement for cause as reasonably determined by the City. Cause will

include, but is not limited to, Contractor's arrest or conviction, being charged with a felony or Class A misdemeanor, excessive absences or tardies, failure or refusal to comply with the written policies or directive of the City, misconduct, or breach of this Agreement. Any accrued compensation owing to Contractor through the date of termination shall be paid to Contractor in full and final satisfaction of this Agreement.

- c. In the event of Contractor's death or disability, this Agreement will terminate. Any accrued compensation owing to Contractor through the date of termination will be paid by the City to Contractor (or his/her estate) in full and final satisfaction of this Agreement. The term "disability" means a Contractor's substantial inability, either mental or physical, to perform his/her duties under this Agreement as determined by the City.

13. Confidential Information. During the term of this Agreement, Contractor may have access to and become familiar with certain confidential information. Contractor agrees that any confidential information so obtained, including without limitation, any and all documents, memoranda, correspondence, notes, specifications, plans, policies and procedures, computer programs, software, and other proprietary data of whatever type of nature, is confidential information in the nature of a trade secret, and is the exclusive property of the City. Contractor covenants and agrees that he/she will not directly or indirectly, during or after termination of this Agreement, use for his/her own benefit, use to the detriment of the City, or divulge to persons other than authorized officers of the City, any confidential information of the City. Upon termination of this Agreement, all confidential information shall be left with or returned to the City. Contractor agrees that his/her obligations under this paragraph survive the expiration and/or termination of this Agreement.

14. Code of Ethics. Contractor must exercise due care to understand and adhere to the professional obligations stated herein. Contractor shall demonstrate a commitment to the preservation of the City of Keller's core values including excellence, integrity, service, creativity and communication. Treat participants, staff, and others in a respectful and honest manner. Avoid conflicts of interest or the appearance of conflicts of interest, and avoid misrepresenting your opinions as positions of the City of Keller, The Keller Pointe or others. Disclose conflicts to those affected and take due care to manage these conflicts to preserve the objectivity of your work. Exercise due care to use The Keller Pointe procedures as they are described in documents or disseminated through correspondence, and act in a manner consistent with the intent of these procedures and materials to preserve the validity and consistency of Keller Pointe services.

15. Equitable Relief. Contractor acknowledges that irreparable injury will result to the City in the event of Contractor's breach of any of the provisions herein.

Consequently, in addition to any other rights or remedies available to the City for breach of this Agreement by Contractor, the City shall be entitled to enforcement by preliminary restraining order and injunction. The rights and remedies of the City under this Agreement (or otherwise) are cumulative, and no one of them is exclusive of any other or of any right or remedy allowed by law.

16. Miscellaneous.

- a. Any notice required herein must be in writing, and may be given by hand, by overnight carrier, or by certified mail, return receipt requested. If by hand or via overnight carrier, notice is deemed to have been given when delivered. If mailed, the notice shall be deemed given on the third business day after depositing such notice in the United States mail, provided that postage was prepaid and the notice was properly addressed. Such notice shall be given to the parties at the addresses set forth under their names on the signature page of this Agreement. Parties may designate a different address by giving ten (10) days' prior written notice to the other party.
- b. If any term, covenant, or condition of this Agreement is invalid or unenforceable, the remainder of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.
- c. No change or modification of this Agreement will be valid or binding upon the parties, nor shall any waiver of any term or condition in the future be so binding, unless such change or modification or waiver is in writing and signed by the parties.
- d. This Agreement contains the entire understanding between the parties concerning the services to be provided hereunder. There are no representations, agreements, arrangements, or understandings, oral or written, between or among the parties relating to the subject matter of this Agreement that are not fully expressed herein.
- e. Contractor may not assign this Agreement without obtaining the City's prior written consent.
- f. This Agreement, and the rights and obligations of the parties, shall be governed and construed in accordance with the laws of the State of Texas.
- g. If any legal action by the City is necessary to enforce the terms of this Agreement, the City shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which it may be entitled.

- h. The waiver by the City of a breach of any provision of this Agreement by Contractor shall not operate or be construed as a waiver of any subsequent breach by Contractor. IN WITNESS WHEREOF, the parties have executed this Independent Contractor Agreement effective as of the day and year first above written.

THE CITY OF KELLER

By M. Beaver

Michael Beaver, The Keller Pointe Manager  
(Printed name and title)

CONTRACTOR:

By Christopher Folmar, Owner American Defensive Arts Academy, LLC

(Printed name and title)

**CITY OF KELLER  
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**Exhibit A  
Duties, Term, Compensation and Expense Reimbursement**

1. Duties. Contractor is engaged by the City as an instructor to teach the following class or classes, if instructing multiple classes each class must be listed separately.

<u>Class</u>	<u>Day(s)</u>	<u>Dates</u>	<u>Time</u>	<u>Fee</u>	<u>Participants</u>
Kids Martial Arts	T, TH Sat	10/1-31	5:30-8:30p 9:00a -12:30p	\$125/150	5/50
Adult Martial Arts	T, TH Sat	10/1-31	7:00-8:30p 9:00a-12:30p	\$125/150	5/50
Kids Martial Arts	T, TH Sat	11/1-30	5:30-8:30p 9:00a -12:30p	\$125/150	5/50
<b>** No class 11/31 due to Thanksgiving**</b>					
Adult Martial Arts	T, TH Sat	11/1-30	7:00-8:30p 9:00a-12:30p	\$125/150	5/50
<b>** No class 11/31 due to Thanksgiving**</b>					
Kids Martial Arts	T, TH Sat	12/1-31	5:30-8:30p 9:00a -12:30p	\$125/150	5/50
<b>** Classes will be held in the basketball gym 12/3, 12/5, 12/7**</b>					
<b>** No class 12/24 for Christmas Eve**</b>					
<b>** No class 12/31 for New Years Eve**</b>					
Adult Martial Arts	T, TH Sat	12/1-31	7:00-8:30p 9:00a-12:30p	\$125/150	5/50
<b>** Classes will be held in the basketball gym 12/3, 12/5, 12/7**</b>					
<b>** No class 12/24 for Christmas Eve**</b>					
<b>** No class 12/31 for New Years Eve**</b>					
Kids Martial Arts	T, TH Sat	1/1-31	5:30-8:30p 9:00a -12:30p	\$125/150	5/50

Adult Martial Arts	T, TH Sat	1/1-31	7:00-8:30p 9:00a-12:30p	\$125/150	5/50
Kids Martial Arts	T, TH Sat	2/1-28	5:30-8:30p 9:00a -12:30p	\$125/150	5/50
Adult Martial Arts	T, TH Sat	2/1-28	7:00-8:30p 9:00a-12:30p	\$125/150	5/50

The City and Contractor agree that each class participant who registers for the course(s) listed above will be required to pay a materials fee of **\$0.00**, which will be incorporated into the class fee.

Contractor must provide a course curriculum/outline and list of required materials herein attached as Exhibit A-1.

Contractor agrees to follow the course curriculum/outline attached to this Exhibit A. Any deviations from the class objectives and/or course curriculum/outline must be approved in advance by The Keller Pointe Manager or his/her designee. Course offering is subject to change without notice as determined by the City.

2. Term. This Agreement will expire on 2/28/2025, unless terminated earlier by the City in accordance with the terms of the Agreement. The Agreement may only be extended if both parties specifically agree to an extension and such extension is in writing and signed by both parties.

3. Compensation. The paragraph marked with an "x" below sets forth the compensation to be paid by City to Contractor.

       As full compensation for the services rendered by the Contractor pursuant to this Agreement, the City will pay the contractor a flat fee of \$          . Contractors who receive flat fee compensation from the City will be paid in accordance with the City's normal compensation cycle for The Keller Pointe.

X        As full compensation for the services rendered by the Contractor pursuant to this Agreement, the City will pay the contractor 60 percent of the class fees collected (and not refunded) from class participants by the City for the classes taught by Contractor under this Agreement and described in paragraph 1 above. Contractors who receive percentage compensation from the City will be paid net 30 days from completion of class.



The City's obligation to pay Contractor the compensation provided for in this paragraph stops upon the expiration and/or termination of the Agreement.

In order to encourage families to participate in the Martial Arts Program, the contractor and City staff have agreed to an ongoing "Buy Two, Get One Free" membership promotion. This promotion will be applicable indefinitely until instructed by the Contractor to stop. For every two family members who enroll in the program, the third family member's enrollment will be granted at no cost. The Contractor acknowledges and agrees to honor this promotion as a permanent feature of the Martial Arts Program.

The Contractor shall have the flexibility to introduce periodic promotions throughout the current program period. However, staff requires a minimum notice period of three weeks for the initiation of any such promotion. This stipulation ensures effective communication and coordination for the successful execution of promotional activities.

4. Instructional Materials and Expense Reimbursement. The Contractor agrees to provide necessary materials, equipment, and supplies for all classes including by not limited to:

- Responsible for any consumable materials as necessary for the class
- Maintain inventory list of equipment owned by City and used by contractor/class.
- Contractor must personally check any City owned items out before class and in at the end of class. By signing the Agreement, Contractor agrees that he/she is responsible for any and all equipment or other items checked-out to him/her and will be responsible for any losses incurred by the City in connection with Contractor's use of such equipment.
- Contractor authorizes the City to deduct from the Contractor's compensation any amount necessary to cover any losses incurred by the City for damaged, lost, stolen, or otherwise unreturned equipment or which Contractor is responsible.
- The City is not responsible for repair, replacement, or maintenance of any personal equipment or other items used by Contractor.
  - The Contractor shall be responsible for arranging the cleaning of their tumbling mats once a quarter, ensuring a sanitary and safe environment. In the event that the Contractor fails to comply with this requirement, City staff reserves the right to arrange for the necessary cleaning services and subsequently bill the Contractor for any

associated costs incurred. Prior to taking such action, multiple written notices will be issued, offering ample opportunity for the Contractor to fulfill their cleaning obligations.

- Pre-Approved mat cleaning dates
  - November 22<sup>nd</sup>, 2024
  - February 21<sup>st</sup>, 2025

a. Service Expectation. The Contractor agrees to meet the following course/instructional standards.

- Provide all programs in a safe, wholesome and competent manner.
- Arrive early for setup of all necessary equipment and allow time to cleanup class area upon finish of the day. Specifically, Contractor may come in 30 minutes prior to class time to set-up and allow for 30 minutes after class time for clean-up. The Keller Pointe may not be used outside of pre-approved class or program times.
- Contractor will not be allowed to have someone else teach for them unless their substitute happens to have a separate contract with the City or is employed by the City.
- Other than *Pointes of Interest* promotion, Contractor will be responsible for marketing and advertising classes. Contractor must obtain approval from The Keller Pointe Manager or his/her designee before distributing any flyers, posters, advertisement, etc.