

# STATE OF COLORADO SPECIAL USE AGREEMENT

## COVER PAGE

<b>State Agency</b> Department of Natural Resources Colorado Parks and Wildlife 1313 Sherman Street Denver, Colorado 80203	<b>Agreement Performance Beginning Date</b> The Effective Date.		
<b>Holder</b> Insert Holder's Full Legal Name, including "Inc.", "LLC", etc... Address	<b>Initial Agreement Expiration Date</b> Month Day, Year		
<b>Approved Use</b> The approved use is set forth in Exhibit(s) Insert Exhibit(s)			
<b>Exhibits</b> The following Exhibits and attachments are included with this Agreement: <ol style="list-style-type: none"> <li>1. Exhibit A – CRSA § 24-4-104</li> <li>2. Exhibit B – 2019 Provisions Common to All</li> <li>3. Exhibit C – Rationing Plan</li> <li>4. Exhibit D-J</li> </ol>			
<b>Principal Representatives</b> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;">                     For State:                      Agency                      Parks/Recreation Area Name                      Principal Representative                      Address                      City, State, Zip                      Email                 </td> <td style="width: 50%; vertical-align: top;">                     For Holder:                      Business Name                      Doing Business As (d.b.a.)                      Principal Representative                      Address                      City, State, Zip                      Email                 </td> </tr> </table>		For State: Agency Parks/Recreation Area Name Principal Representative Address City, State, Zip Email	For Holder: Business Name Doing Business As (d.b.a.) Principal Representative Address City, State, Zip Email
For State: Agency Parks/Recreation Area Name Principal Representative Address City, State, Zip Email	For Holder: Business Name Doing Business As (d.b.a.) Principal Representative Address City, State, Zip Email		

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## **1. PARTIES**

This special use agreement (“SUA”) is entered into by and between Holder named on the Cover Page for this SUA (the “Holder”), and the STATE OF COLORADO acting by and through the State agency named on the Cover Page for this SUA (the “State”). Holder and the State agree to the terms and conditions in this SUA.

## **2. EFFECTIVE DATE**

This SUA shall not be effective or enforceable until the Effective Date.

## **3. RECITALS**

### **A. Authority, Appropriation and Approval**

Authority to enter into this SUA exists pursuant to § 33-1-104 – 105, § 33-9-102, § 33-10-107, and § 33-12.5-103, CRS. All prior reviews and approvals have been obtained.

### **B. Consideration**

The Parties acknowledge that the mutual promises and covenants contained herein, cash payments set forth in this SUA by Holder to the State, and other good and valuable consideration are sufficient and adequate to support the granting of this SUA.

### **C. Exhibits and other Attachments**

The exhibits and attachments included with this SUA as shown on the Cover Page for this Agreement.

### **D. Purpose**

The purpose of this SUA is for the State to grant the Holder authority to perform the Approved Use on the SUA Area. Pursuant to § 33-15-114, CRS, it is unlawful to operate any commercial business or to solicit business on any property owned or managed by the State unless expressly authorized herein.

## **4. DEFINITIONS**

### **A. AHRA**

“AHRA” means the Arkansas Headwaters Recreation Area.

### **B. Approved Use**

“Approved Use” means providing the goods and or services listed as the approved use on the Cover Page for this SUA.

### **C. “Commercial Vehicle”**

“Commercial Vehicle” means any self-propelled or towed vehicle bearing an apportioned plate or having a manufacturer’s gross vehicle weight rating or gross combination rating of ten thousand one pounds or more, which vehicle is used in commerce on the public highways of this state or is designed to transport sixteen or more passengers, including the driver.

### **D. Effective Date**

“Effective Date” is the date on which this SUA is fully executed by the Parties.

### **E. Hazardous Substances**

“Hazardous Substances” means (i) any hazardous or toxic substance, material or waste that is or becomes regulated by any local governmental authority, the State or the United States Government; (ii) any material or substance defined as a hazardous substance under State law; (iii) any material or substance defined as a hazardous substance pursuant to §311 of the Federal Water Pollution Control Act (33 U.S.C. §1321); (iv) defined as a hazardous waste pursuant to §1004 of the Federal Resource Conservation and Recovery Act (42 U.S.C. §6903); (v) defined as a hazardous substance pursuant to §101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C §9601); or (vi) defined as a regulated substance under subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks) (42 U.S.C. §6991).

### **F. Party or Parties**

“Party” means the State or Holder and “Parties” means both the State and Holder.

### **G. Property**

“Property” means the real property, including land and waters, controlled by the State (through fee title, leasehold, easement, legislative declaration, cooperative agreement, or otherwise), and commonly referred to as AHRA.

## **H. Record Retention Period**

“Record Retention Period” means the period beginning on the Effective Date and ending on whichever of the following events is last to occur: **(i)** a period of three years after the date this SUA expires or is sooner terminated; **(ii)** all final payments as required under this SUA have been made; **(iii)** all pending matters relating to this SUA have been resolved; **(iv)** if an audit is occurring or Holder has notice that an audit is pending, until such audit has been completed and its findings have been resolved.

## **I. ROL**

“ROL” means the River Outfitter Licensing program authorized by § 33-32-101 – 112, CRS.

## **J. Set Rate**

“Set Rate” means the standard rate set forth by the Holder for the Approved Use.

## **K. State Improvements**

“State Improvements” means such permanent and/or semi-permanent fixtures, facilities, structures, and earthwork currently existing in the SUA Area on the Effective Date.

## **L. SUA**

“SUA” means this special use agreement, any documents incorporated by reference, and any future modifying agreements, exhibits, attachments, or references incorporated herein pursuant to Colorado state law, state fiscal rules, and state policies, including the State’s Rationing Plan For Commercial Boating Use In The Arkansas Headwaters Recreation Area and the State’s Assignment / Transfer of Agreement Privileges policy.

## **M. SUA Area**

“SUA Area” means that portion of the Property on which Holder may perform the Approved Use.

## **N. Total Gross Receipts**

“Total Gross Receipts” means anything of value received by the Holder in exchange for providing the Approved Use to the public for commercial gain. If the Holder is a natural person, such value includes anything of value received by the Holder’s relatives, any partnership in which the Holder is a general partner, any general partner of the Holder or any limited liability company or corporation in which the Holder is a director, officer, or person in control, where such natural person or entity provides the Approved Use to the public for commercial gain. If the Holder is a corporation or limited liability company, such value includes anything of value received by any director, officer or person in control of the Holder and any relative of a director, officer, or person in control of the Holder where such natural person or entity provides the Approved Use to the public for commercial gain.

## **5. TERM AND TERMINATION**

### **A. Term of Use**

The term of this SUA begins on the Effective Date and ends on the ensuing October 31, unless sooner terminated as provided for herein.

### **B. Termination**

Either Party may terminate this SUA after providing 60 days written notice in accordance with §13.

Exercise by either Party of its right to terminate shall not be deemed a breach of its obligations hereunder. In the event of termination by either Party, Holder shall pay the State all amounts owed under this SUA within 60 days of the receipt of notice of such termination.

### **C. Immediate Termination and Probation**

Pursuant to § 24-4-104, CRS, the State may immediately revoke, suspend, annul, limit or modify this SUA in cases of deliberate and willful violations or due to substantial danger to public health and safety. The State reserves the right, in its discretion, to terminate this SUA or place Holder on suspension or probation as necessary to protect public health, safety and welfare.

## **6. GRANT OF APPROVED USE, OBLIGATIONS, AND RESTRICTIONS**

The State hereby grants to Holder, its authorized agents and clients a revocable, non-exclusive right to access and occupy the SUA Area for the Approved Use. This grant is limited by the terms of this SUA and does not grant any additional rights or licenses to Holder, its authorized agents or clients not expressly authorized herein. The Parties shall have the following rights subject to the following duties and restrictions:

### **A. Holder Compliance with State Rules and Regulations**

Holder shall comply with all applicable laws, including State regulations.

## **B. Improvements**

### **i. State Improvements**

Holder shall not use any State Improvements for the Approved Use except as authorized herein. Holder is solely responsible for keeping in good condition all State Improvements it uses.

### **ii. Holder Improvements**

Holder shall not construct any buildings, structures, or make improvements of any kind, temporary or permanent, on the SUA Area absent prior written consent of the State. Upon termination of this SUA, in the sole discretion of the State, any improvements Holder makes shall either:

#### **a) State Owned**

Become the property of the State without any compensation to Holder. Holder may not rely on any statements or representations by any State employees that obviate the necessity for State Controller approval (*see* §24-30-202, CRS). Holder acknowledges that any improvements it makes are at Holder's sole financial risk and are a business decision by Holder.

#### **b) Removal**

Be removed by Holder within 90 days of the termination of this SUA and the SUA Area restored to its condition before such improvements were made, all at Holder's sole cost and expense.

## **C. Reporting Accidents and Damage to State Property**

Holder shall supply all necessary labor and equipment to perform the Approved Use safely. In the event of an accident resulting in the death, disappearance or unconsciousness of Holder, its authorized agents or clients, Holder shall notify the State by telephone or e-mail as soon as practical and submit a follow-up written report, e-mailed or postmarked, within five calendar days of such accident. In the event of any other accident resulting in Holder, its authorized agents or clients receiving treatment by a physician or paramedic, Holder shall notify the State by submitting a written report, e-mailed or postmarked, within ten calendar days of such accident. Holder shall notify the State by telephone or e-mail as soon as practical and submit a follow-up written report, e-mailed or postmarked, within five calendar days of any damage to the Property or any facilities located on the Property caused by Holder, its authorized agents or clients.

## **D. Inspection**

The State may, in its sole discretion, monitor Holder's Approved Use in the SUA Area using any reasonable procedures, including, but not limited to: inspection of books and records required to be maintained under this SUA, on-site checking, formal audit examinations, or any other procedures permitted by law. All monitoring controlled by the State shall be performed in a manner that does not unduly interfere with the Approved Use. In the event of an emergency, injury, or fatality, all records shall be made immediately available upon demand by the State.

## **E. Maintenance**

Holder shall keep the SUA Area in substantially the same condition as it was prior to engaging in the Approved Use. Holder shall not introduce "noxious weeds" to the AHRA as defined by § 35-5.5-103(16), CRS. If the SUA Area or the Property is damaged as a result of actions or omissions of Holder, Holder's authorized agents or clients, Holder shall be responsible for all repairs at its sole cost.

## **F. Operating Plan**

Holder shall develop an operating plan detailing the Approved Use. Said plan shall be sufficiently detailed, written, and submitted to the State prior to the Effective Date. Holder shall receive written approval from the State prior to engaging in the Approved Use. Any changes to the operating plan shall be submitted as a request to the State in writing and shall only take effect if approved by the State in writing.

## **G. Outfitter Registration**

Holder shall obtain and maintain a Colorado Outfitters Registration, if applicable, during the term of this SUA. Holder shall provide evidence of current Colorado Outfitters Registration at the time of application to the State.

## **H. Park Property**

Neither Holder nor Holder's authorized agents or clients may destroy, deface, remove, or disturb any building, sign, equipment, or other property or cultural sites, historic structures, natural features of the land vegetation or wildlife habitat located on the Property without the express written approval of the State.

## **I. Personnel Conduct, Service Standards, and Equipment**

Holder and Holder's authorized agents shall treat all employees of the State, members of the general public, and commercial entities with civility while on the Property. Unprofessional conduct is strictly prohibited and may be cause for suspension while the State conducts an investigation of an officially-filed complaint. Unprofessional conduct includes but is not limited to, physical or verbal abuse by the Holder or Holder's authorized agents. If the investigation should determine further action is warranted, this SUA may be placed on probation, suspended or revoked. Holder shall provide service and equipment in accordance with industry standards as determined by the State/ROL. Holder shall remedy any violation within 10 days after receiving notice from the State.

## **J. Preexisting Rights**

This SUA is subject to any and all previously-granted easements, rights-of-way, licenses, and conveyances, recorded or unrecorded. It is Holder's sole responsibility to identify any such preexisting rights. Holder shall not interfere with any use in the SUA Area by any other party holding a senior or equal interest in the Property.

## **K. Public Use**

Throughout the term of this SUA, the Property, including the SUA Area, shall continue to be open and available to the public for State purposes.

## **L. Reserved Rights by the State**

The State reserves all rights not specifically granted under this SUA, including the right to use and occupy the Property for any purpose not inconsistent with, and which does not materially interfere with, Holder's Approved Use. Said rights include, but are not limited to:

### **i. Access**

Continuing access for State staff for administrative and other purposes consistent with the the State's mission and purpose.

### **ii. Additional SUAs**

Entering into additional SUAs with third parties for use of the SUA Area.

### **iii. Closure**

Closing various facilities, sites, river and reservoir sections, and any other area on the Property to public use when, in the State's sole discretion, the State deems it necessary because conditions, including natural, budgetary, or man-made, present: **(a)** a safety risk to the public, **(b)** will cause damage to the Property or resources, or **(c)** the State determines closure to be financially necessary. Holder shall observe and comply with such closures upon notification by way of writing, posting, or otherwise.

### **iv. Visitation**

Continuing current and adopting future use regulations for the Property. Unless use allocations are in place, the Property shall generally remain available on a first-come-first-serve basis to as many other commercial and private users as desire to use it. Irrespective of whether or not Holder is the first Holder at the Property, Holder is not granted any exclusive rights.

### **v. Water Rights**

The State retains the rights to use any and all water rights related to the Property owned, leased, or otherwise controlled by the State.

## **M. Soliciting and Advertising**

### **i. Rates**

All advertised rates shall represent the Holder's clients' cost of the Approved Use, including an explanation of any associated fees. Holder shall charge the public and all State employees the same price for all goods and services Holder offers. Any discounts offered shall be made available without unlawful discrimination.

### **ii. Representations**

All notices and advertising used by Holder or Holders' authorized agents related to the Approved Use shall accurately represent the Approved Use, the status of this SUA (if applicable), and the area covered by this SUA (if applicable). Holder and its authorized agents shall not represent Holder as an agent of the State or use any State trademarks, service marks or symbols. Holder's agent shall disclose that said goods and services are provided by Holder, not the agent.

## **N. Storage**

Holder shall not store any materials, equipment, or other personal property on the SUA Area not necessary for the Approved Use. Holder shall only store materials and equipment necessary to perform the Approved Use in a location and manner approved by the State.

## **O. Holder Records**

### **i. Inspection**

Holder shall make available to the State all records required to be maintained under this SUA for the duration of the Record Retention Period. The State shall have the right to conduct financial audits on Holder between October 1 and April 1. Audits conducted outside of the aforementioned timeframe must be agreed upon by the Parties. If an audit conducted by the State reveals a credit due to Holder, the State shall process a refund request affidavit. In the event an audit reveals a balance due to the State, Holder shall pay the balance due within 30 days of notification by the State. If an external audit is performed on Holder's records for any fiscal year covering a portion of the term of this SUA, Holder shall submit a copy of the final audit report to the State within 10 days of completion of said audit.

### **ii. Maintenance**

Holder shall make and maintain a statement of Total Gross Receipts, income statements, other critical accounting statements, and tax returns pertaining in any manner to this SUA. Holder shall maintain all records for the duration of the Record Retention Period.

### **iii. Standard**

Holder shall make and maintain all financial records using generally accepted accounting principles and standards.

## **P. Holder Reports**

Holder shall submit the following to the State:

### **i. Brochure and Price List**

Prior to the Effective Date, Holder shall provide the State with copies of all current brochures and price lists for the Set Rate used by Holder. Holder shall provide updated brochures and price lists to the State if they are changed at any time during the term of this SUA within 14 business days of said change. If Holder operates and maintains a website that includes a price list, then Holder may submit the URL address to the State in lieu of the requirements set forth above in this Section 6.P.i. Submission of the URL address must occur prior to the Effective Date. Holder shall provide notice to the State within 14 business days of any change to the Set Rate provided on Holder's website.

### **ii. End of Season Report**

Holder shall submit an end of season report to the State in accordance with Exhibit A. Said report shall summarize Holder's Approved Use of the SUA Area, provide an itemized list of all sources of income related to the Approved Use, provide a statement of Total Gross Receipts, and be accompanied by the use fee due to the State pursuant to §7.A.ii. The report shall be submitted in a form designated by the State and be signed and dated by the Holder or an owner or officer of Holder if not a natural person. If this SUA is terminated prior to the expiration date, Holder shall submit said report to the State no later than 30 days after the receipt of notice of such termination.

### **iii. Trip Log Report**

Holder shall submit a trip log report to the State in accordance with Exhibit A .

### **iv. Guide List**

Prior to the Effective Date of this SUA, Holder shall provide the State with a list of all commercial guides, trip leaders, and guide instructors employed by Holder. Holder shall also maintain this list and submit an updated list to the State within 14 days of any change.

### **v. Assignments and Subcontracting**

This SUA is personal in nature and cannot be assigned by Holder without the State's prior written consent pursuant to the State's Assignment / Transfer of Agreement Privileges policy. Holder shall not subcontract with any person or entity to provide in whole or in part the Approved Use without the express written approval of the State.

## **7. HOLDER'S CONSIDERATION - FEES**

Holder shall pay the State in the amounts and using the methods set forth below:

### **A. Fees**

#### **i. Administrative Fee**

Holder shall pay the State a nonrefundable administrative fee in accordance with Exhibit A.

#### **ii. Use Fee**

Holder shall pay the State a use fee of its Total Gross Receipts as shown in the end of season report in accordance with Exhibit A.

### **B. Interest and Late Fee**

Holder shall pay interest on amounts due under this SUA that are not received within 10 days of the due date at a rate of 5% per month compounded monthly until paid in full.

### **C. Restriction**

Holder shall not advertise or itemize fees, costs, and other charges due under this SUA as a tax.

## **8. NO TITLE IN GRANT**

This SUA does not and shall not be construed to vest in Holder title, tenure, or any property rights in the real estate, fixtures, or any personal property belonging to the State now located or which may hereafter be located in or around the SUA Area.

## **9. HOLDER'S REPRESENTATIONS, WARRANTIES, AND OBLIGATIONS**

Holder makes the following specific representations and warranties, each of which was relied on by the State in entering into this SUA:

### **A. Compliance, Licenses, Permits, Etc.**

Holder shall at all times conduct activities in compliance with all State, federal, and local laws. As of the Effective Date, Holder shall have, and at all times during the term hereof shall maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Holder's authorized agents shall hold all required licenses or certifications, if any, to perform their responsibilities.

### **B. Hazardous Substances**

Holder shall not release or allow release of any hazardous or toxic material, substance, or waste, as they may be defined under applicable State, federal, or local law, on the Property or any of the State's adjacent real property. Holder shall be solely responsible for all costs and expenses associated with removing, cleaning up, and remediating any damage caused to the Property if Holder breaches this provision.

### **C. Independent Professional Advice**

Holder received such independent business, legal, and financial advice regarding this SUA as Holder deemed necessary and prudent, and based on Holder's informed judgement, entered into this SUA.

### **D. Industry Standards**

Holder represents that it has the requisite skills and experience to perform the Approved Use and shall do so in accordance with applicable standards.

### **E. Legal Authority—Holder Signatory**

Holder possesses the legal authority to enter into this SUA and its attendant obligations and has taken all actions required by its procedures, ordinances, and/or applicable laws to exercise that authority, to lawfully authorize its undersigned signatory to execute this SUA, and to bind Holder to its terms. If requested by the State, Holder shall provide the State with proof of Holder's authority to enter into this SUA within 15 days of receiving such request.

### **F. Litigation Reporting**

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this SUA or which may affect Holder's ability to perform the Approved Use, Holder shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein.

## **10. INSURANCE**

Holder shall obtain and maintain insurance as specified in this section at all times during the term of this SUA. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Holder and the State.

### **A. Worker's Compensation**

Worker's Compensation Insurance as required by State statute and Employer's Liability Insurance covering all of Holder employees acting within the course and scope of their employment.

### **B. General Liability**

Commercial General Liability Insurance written on ISO occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any one fire.

### **C. Automobile Liability**

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) and a vehicle seating capacity of 15 or less including driver must carry a minimum limit of \$1,000,000 each accident combined single limit. A minimum amount of coverage of one million five hundred thousand dollars (\$1,500,000) combined single limit liability coverage for Commercial Vehicles with a seating capacity of 16 or more including the driver and a vehicle gross combination rating of ten thousand one pounds or more.

### **D. Additional Insured**

The State and US Government shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Holder.

### **E. Primacy of Coverage**

Coverage required of Holder shall be primary over any insurance or self-insurance program carried by the State.

### **F. Cancellation**

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Holder and Holder shall forward such notice to the State within 7 days of Holder's receipt of such notice.

### **G. Subrogation Waiver**

All insurance policies secured or maintained by Holder in relation to this SUA shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Holder or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

### **H. Public Entities**

In the event that Holder is a "public entity" within the meaning of the Colorado Governmental Immunity Act, § 24-10-101, CRS *et seq.*, (the "GIA"), Holder shall, in lieu of the liability insurance requirements stated above, maintain at all times during the term of this SUA such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

### **I. Certificates**

Holder shall provide to the State certificates showing Holder insurance coverage within 10 calendar days following the Effective Date. No later than 15 days before the expiration date of any Holder coverage, Holder shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this SUA, upon request by the State, Holder shall, within 10 calendar days following such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§10**.



## **11. DEFAULT**

In addition to any breaches specified in other sections of this SUA, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner constitutes a default. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Holder, or the appointment of a receiver or similar officer for Holder, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a default.

## **12. REMEDIES**

### **A. Costs**

Each Party is solely responsible for the costs of remedying any default caused by such Party.

### **B. Rights of the State**

If Holder is in breach under any provision of this SUA, the State shall have all of the remedies available to it, in law or in equity, and any other remedies set forth in other sections of this SUA. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

### **C. Continued Enforcement**

Holder shall be liable for full compliance with this SUA including material performance owed to the State at expiration or termination. If, at the expiration or termination of this SUA, Holder has not performed as required under this SUA, has withheld reports required herein, or has failed to make payment of any amounts owed to the State, Holder shall be deemed to be in default and shall remain liable for all performance and fees owed to the State. The State shall have the right to collect from Holder its costs and attorneys' fees incurred in enforcing this SUA.

## **13. NOTICES AND REPRESENTATIVES**

Each individual identified as a Principal Representative on the Cover Page for this SUA shall be the principal representative of the designating Party. All notices required or permitted to be given under this SUA shall be in writing, and shall be delivered **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party's principal representative at the address set forth below or **(C)** as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this SUA. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this SUA. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative by notice submitted in accordance with this section without a formal amendment to this SUA. Unless otherwise provided in this SUA, notices shall be effective upon delivery of the written notice.

## **14. LIMITATION OF STATE LIABILITY**

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of CRS § 24-10-101, *et seq.* and CRS § 24-30-1501, *et seq.* No term or condition of this SUA shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the GIA, as applicable now or hereafter amended. The State shall not be liable to Holder for any incidental, consequential, or punitive damages, including but not limited to any damages for lost profits. In no event shall the total liability of the State exceed the amounts paid by Holder under this SUA.

## **15. GENERAL PROVISIONS**

### **A. Binding Arbitration Prohibited**

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this SUA or incorporated herein by reference shall be null and void.

### **B. Binding Effect**

All provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

### **C. Captions and Headings**

The captions and headings in this SUA are for convenience of reference only and shall not be used to interpret, define, or limit its provisions.

### **D. Choice of Law**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this SUA. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void.

### **E. Compliance with Law**

Holder shall strictly comply with all applicable federal and state laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

### **F. Construction Against the Drafter**

In the event of an ambiguity in this SUA, the rule of contract construction that ambiguities shall be construed against the drafter shall not apply and the Parties shall be treated as equals with no Party being treated with favor or disfavor.

### **G. CORA Disclosure**

To the extent not prohibited by federal law, this SUA and the performance measures and standards under § 24-103.5-101, CRS, if any, are subject to public release through the Colorado Open Records Act, § 24-72-101, CRS, *et seq.*

### **H. Counterparts**

This SUA may be executed in multiple identical original counterparts, all of which constitute one agreement.

### **I. Eminent Domain**

If the SUA Area shall be taken by right of eminent domain, in whole or in part, for public purposes, then this SUA, at the option of either Party, shall forthwith cease and terminate. In such event, the entire damages awarded for such taking shall belong to the State.

### **J. Entire Understanding**

This SUA represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

### **K. Extinguishment and Replacement**

This SUA extinguishes and replaces any prior SUA between the Parties relating to the Approved Use.

### **L. Indemnification**

#### **i. Environmental**

If Holder breaches its obligations in §9(b), or if the presence of Hazardous Substances, pollutants, or contaminants on the Property caused or permitted by Holder results in contamination of the Property, or if contamination of the Property by Hazardous Substances, pollutants, or contaminants otherwise occurs and Holder is legally liable to the State for damage resulting therefrom, then, to the extent required by applicable law, and subject to express or implied immunities, rights, benefits, protection, or other provisions of the Colorado Government Immunity Act, Holder shall defend, indemnify, save, and hold the State harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Property, damages for the loss or restriction on use of rentable or usable space or any amenity of the Property, and sums paid in settlement of claims, attorney fees, consultant fees and expert fees) which arise during or after the term of this SUA solely as a result of such contamination. Without limiting the foregoing, nothing in this SUA shall be construed as giving rise to any right or ability of the State to exercise physical or managerial control over Holder's day-to-day operations of the Property, or otherwise to become a Holder with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

#### **ii. General**

Holder shall defend, indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission on or related to the Property by Holder, or its

employees, agents, subcontractors, or assignees pursuant to the terms of this SUA, including, but not limited to, the presence or release of any hazardous or toxic substance that is regulated under any federal, State or local law; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the CGIA.

**M. Independent Contractor**

Holder is an independent contractor and not as an employee of the State. Neither Holder nor any agent of Holder shall be deemed to be an agent or employee of the State. Holder and its agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Holder or any of its agents. Unemployment insurance benefits are available to Holder and agents only if such coverage is made available by Holder or a third party. Holder shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this SUA. Holder shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding. Holder shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its authorized agents.

**N. Jurisdiction and Venue**

All suits or actions related to this SUA shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the county in which the Property is situated in whole or in part.

**O. Modification**

**i. By the Parties**

Except as specifically provided in this SUA, modifications to this SUA shall not be effective unless agreed to by the Parties in a written amendment hereto, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies.

**ii. By Operation of Law**

This SUA is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification shall be automatically incorporated as part of this SUA on the effective date of such change, as if fully set forth herein.

**P. Severability**

Provided this SUA can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this SUA in accordance with its intent.

**Q. Survival of Certain Terms**

Notwithstanding anything herein to the contrary, provisions of this SUA requiring continued performance, compliance, or effect after termination or expiration hereof, shall survive such termination or expiration and shall be enforceable by the State if Holder fails to perform or comply as required.

**R. Taxes**

The State is exempt from paying any taxes, including but not limited to, real property taxes. Holder shall be solely liable for paying any taxes associated with this SUA as the State is prohibited from paying or reimbursing Holder for such taxes.

**S. Third Party Beneficiaries**

Enforcement of this SUA and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this SUA are incidental to this SUA, and do not create any rights for such third parties.

**T. Waiver**

Waiver of any breach or event of default under a term, provision, or requirement of this SUA, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement. The failure of the State to perform any act required by this paragraph shall not impair the validity of this SUA or limit its enforceability in any way.

**16. APPROVAL AND SIGNATURES**

**THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

\*Persons signing for Holder hereby swear and affirm that they are authorized to act on Holder's behalf and acknowledge that the State is relying on their representations to that effect.

THE STATE OF COLORADO, acting by and through the DEPARTMENT OF NATURAL RESOURCES, for the use and benefit of the DIVISION OF PARKS AND WILDLIFE and the PARKS AND WILDLIFE COMMISSION,

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Robert J. White, AHRA Park Manager

**HOLDER: ACCEPTED AND AGREED TO**

By: \_\_\_\_\_  
Print Holder's Entity Name

Signed by: \_\_\_\_\_ Date: \_\_\_\_\_  
NAME\*, TITLE

Federal E.I.N. or Social Security Number: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

## EXHIBIT A

C.R.S.A. § 24-4-104 Annotated from West Law

§ 24-4-104. Licenses--issuance, suspension or revocation, renewal

Effective: May 29, 2018

(1) In any case in which application is made for a license required by law, the agency, with due regard for the rights and privileges of all interested persons, shall set and conduct the proceedings in accordance with this article unless otherwise required by law.

(2) Every agency decision respecting the grant, renewal, denial, revocation, suspension, annulment, limitation, or modification of a license shall be based solely upon the stated criteria, terms, and purposes of the statute, or regulations promulgated thereunder, and case law interpreting such statutes and regulations pursuant to which the license is issued or required. Terms, conditions, or requirements limiting any license shall be valid only if reasonably necessary to effectuate the purposes, scope, or stated terms of the statute pursuant to which the license is issued or required.

(3)(a) No revocation, suspension, annulment, limitation, or modification of a license by any agency shall be lawful unless, before institution of agency proceedings therefor, the agency has given the licensee notice in writing of objective facts or conduct established upon a full investigation that may warrant such action and afforded the licensee opportunity to submit written data, views, and arguments with respect to the facts or conduct and, except in cases of deliberate and willful violation or of substantial danger to public health and safety, given the licensee a reasonable opportunity to comply with all lawful requirements. For purposes of this subsection (3), "full investigation" means a reasonable ascertainment of the underlying facts on which the agency action is based.

(b) The full investigation requirement specified in subsection (3)(a) of this section shall not apply to licenses issued under articles 1.1, 9, 10.1, and 11.5 of title 40 or article 2 of title 42.

(4)(a) Where the agency has objective and reasonable grounds to believe and finds, upon a full investigation, that the licensee has been guilty of deliberate and willful violation or that the public health, safety, or welfare imperatively requires emergency action and incorporates the findings in its order, it may summarily suspend the license pending proceedings for suspension or revocation which shall be promptly instituted and determined. For purposes of this subsection (4), "full investigation" means a reasonable ascertainment of the underlying facts on which the agency action is based.

(b) The full investigation requirement specified in subsection (4)(a) of this section shall not apply to licenses issued under articles 1.1, 9, 10.1, and 11.5 of title 40 or article 2 of title 42.

(5) A proceeding for the revocation, suspension, annulment, limitation, or modification of a previously issued license shall be commenced by the agency upon its own motion or by the filing with the agency of a written complaint, signed and sworn to by the complainant, stating the name of the licensee complained against and the grounds for the requested action.

(6) Except as provided in subsection (4) of this section, an agency shall not revoke, suspend, annul, limit, or modify a previously issued license until after holding a hearing as provided in section 24-4-105.

(7) In any case in which the licensee has made timely and sufficient application for the renewal of a license or for a new license for the conduct of a previously licensed activity of a continuing nature, the existing license shall not expire until such application has been finally acted upon by the agency, and, if the application is denied, it shall be treated in all respects as a denial. The licensee, within sixty days after the giving of notice of such action, may request a hearing before the agency as provided in section 24-4-105, and the action of the agency after any hearing shall be subject to judicial review as provided in section 24-4-106.

(8) An application for a license shall be acted upon promptly, and, immediately after the taking of action on such application by an agency, a written notice of the action taken by the agency and, if the application is denied, the grounds therefor shall be given to the applicant. The giving of such notice shall be by personal service upon the applicant or by mailing the same to the address of the applicant as shown on the application or as subsequently furnished in writing by the applicant to the agency.

(9) If an application for a new license is denied without a hearing, the applicant, within sixty days after the giving of notice of such action, may request a hearing before the agency as provided in section 24-4-105, and the action of the agency after any hearing shall be subject to judicial review as provided in section 24-4-106.

(10) Written notice of the revocation, suspension, annulment, limitation, or modification of a license and the grounds therefor shall be served forthwith on the licensee personally or by mailing by first-class mail to the last address furnished the agency by the licensee.

(11) A limitation, unless consented to by the applicant, on a license applied for shall be treated as a denial. A modification, unless consented to by the licensee, of a license already issued shall be treated as a revocation.

(12) In an appropriate case a revoked or suspended license may be reissued.

(13)(a) Any applicant who, under oath, supplies false information to an agency in an application for a license commits perjury in the second degree, as defined in section 18-8-503, C.R.S. Any such application shall bear notice, in accordance with section 18-8-501(2)(a)(I), C.R.S., that false statements made therein are punishable.

(b) On and after January 1, 1985, an agency shall not require that information contained in an application for a license be affirmed to before a notary.

#### **Credits**

Amended by Laws 1981, H.B.1008, § 1; Laws 1983, H.B.1123, § 4; Laws 1993, S.B.93-133, § 3, eff. June 6, 1993; Laws 2006, Ch. 189, § 1, eff. Aug. 7, 2006; Laws 2007, Ch. 428, § 48, eff. June 1, 2007; Laws 2018, Ch. 274, § 34, eff. May 29, 2018; Laws 2018, Ch. 288, § 1, eff. May 29, 2018.

C. R. S. A. § 24-4-104, CO ST § 24-4-104

Current through the end of the Second Regular Session of the 71st General Assembly (2018)

**EXHIBIT B  
ARKANSAS HEADWATERS RECREATION AREA  
PROVISIONS COMMON TO ALL**

**GRANT AND TERM:**

This Special Use Agreement, hereinafter referred to as the Agreement, is granted subject to the conditions and limitations set forth herein and provided for the term:

**November 1, 2018 through October 31, 2019**

The term may be modified by CPW whenever necessary to conform to the Arkansas Headwaters Recreation Area Management Plan (AHRA-MP) as that Plan is amended or to reflect current conditions.

For the purpose of any and all payments made to AHRA, only cash, credit cards (MasterCard and Visa by phone or in person only during established AHRA business hours), checks, money orders or certified checks written to the Colorado Parks and Wildlife will be accepted. No Electronic Fund Transfers will be accepted.

A Probationary Agreement will be issued to a Holder no more than two consecutive seasons after which time the Agreement will be revoked (a Probationary Agreement will not be issued three consecutive seasons).

**DEFINITIONS:**

“Application Fee” shall be defined as a nonrefundable fee of \$400 for Boating and \$250 for all other activities. An Application Fee is charged to cover the costs involved in processing the application.

**CONDITIONS:**

1. AHRA Special Use Agreement Application

Any person or business entity conducting a commercial operation which in any way utilizes the surface of the Arkansas River, as well as public lands or waters within the AHRA, must apply for a Special Use Agreement located on the Internet website <https://ahraoutfitters.org/>.

**Application Requirements:**

- a. Submit a completed, signed, and dated AHRA Special Use Agreement Application.
- b. Submit one (1) original Special Use Agreement signature page, completed and signed.
- c. Submit fee payment.

CPW will provide an invoice to each Holder indicating the amount of Preseason Payment due.

- 1) The Preseason Payment is calculated as follows: the previous season’s Agreement Fee divided by 2. This Preseason Payment must be received by April 1<sup>st</sup>.
- 2) Optional Preseason Payment Methods:
  - a) Letter of Credit with Minimum Preseason Fee (Application Fee)

All Boating Holders must pay \$400.00 [current Minimum Preseason Fee (Application Fee)] at time of application. This payment must be received by April 1<sup>st</sup>. All other Holders (Imaging, Walk & Wade Fishing, Shuttle Service, Rock Climbing, Hiking, Mt. Biking and

Food Vendor) must pay \$250.00 [current Minimum Preseason Fee (Application Fee)] at time of application. All applications must be submitted by April 1<sup>st</sup>.

The Holder must also submit an irrevocable letter of credit with the application material for the remaining balance due by May 31<sup>st</sup> (with an expiration date of no later than June 25<sup>th</sup>).

b) Preseason Payment Schedule

All Boating Holders must pay \$400.00 [current Minimum Preseason Fee (Application Fee)] at time of application. This payment must be received by April 1<sup>st</sup>. All other Holders (Imaging, Walk & Wade Fishing, Shuttle Service, Rock Climbing, Hiking, Mt. Biking and Food Vendor) must pay \$250.00 [current Minimum Preseason Fee (Application Fee)] at time of application. All applications must be submitted by April 1<sup>st</sup>.

The remaining Preseason Payment balance may be made in two payments: A minimum of fifty percent (50%) of the remaining balance must be received by 5:00 p.m. mountain daylight time on May 31<sup>st</sup> and the remaining balance must be received by 5:00 p.m. mountain daylight time on June 25<sup>th</sup>.

The administrative penalty for non-payment of the May 31<sup>st</sup> payment is suspension of the Special Use Agreement until payment is made plus a late fee of \$100. Operating under suspension shall be deemed a material breach of this Agreement by the Holder and may warrant revocation of the Agreement.

The administrative penalty for non-payment of the June 25<sup>th</sup> payment is suspension of the Special Use Agreement until payment is made plus a late fee of \$100. Operating under suspension shall be deemed a material breach of this Agreement by the Holder and may warrant revocation of the Agreement.

Failure to submit either 2) a) or 2) b) by June 25<sup>th</sup> shall be deemed a material breach of this Agreement by the Holder after which time the Agreement will be revoked.

- 3) At the discretion of CPW, any applicant or Holder with a record of Poor Payment Performance may be required to pay by certified check or money order, and may be required to pay the previous season's Agreement Fee prior to the season.
  - 4) Payment must be made to Colorado Parks and Wildlife.
- d. Submit a completed AHRA Operating and Safety Plan (form located on the Internet website <https://ahraoutfitters.org/>). Any changes to the authorized operations or activities must be requested in writing. The Holder must then submit an updated AHRA Operating and Safety Plan prior to receiving approval from CPW to commence operations. Approval from the Division will be made via email and/or website notification.
  - e. Submit a Holder's Operating Plan for all commercial operations, including all paid guide training programs offered on the Arkansas River within the AHRA. The Holder shall provide a detailed written description to CPW of the company's intended operations both on and off public lands and waters as they pertain to the AHRA. Any changes to the authorized operations or activities must be requested in writing. The Holder must then submit an updated Holder's Operating and Safety Plan prior to receiving approval from CPW to commence operations. Approval from the Division will be made via email and/or website notification.
- 1) **PROPOSED ACTIVITIES:** In detail, describe what types of trips will be offered. Describe the company's intended operations and uses of Public Lands and Waters as they pertain to the AHRA. Provide full descriptions of all proposed activities. Include operations on and off Public Lands and Waters (i.e. Locations where guests are met and shuttled from). The Holder's Operating Plan must include, but is not limited to:



- a) Day-To-Day Operations
  - b) Guide Training Programs
  - c) Multi-Day Use
  - d) Put-Ins and Take-Outs
  - e) Meeting Guests at AHRA Sites
  - f) Lunch Stops
  - g) Camp Sites
  - h) Hours of Intended Operations
  - i) Subcontracted Operations with other AHRA Shuttle and Imaging Holders.
  - j) Instructional Classes
  - k) Services for People with Disabilities
  - l) Services for Other Special Populations
  - m) Physical Location (Addresses) of All Operation Centers the Company Will Utilize to Conduct Business
  - n) Temporary Facilities, Caches, or Staging Areas
  - o) Hazard Identification (i.e. Scouting Locations)
- f. Submit a copy of all current brochures and price lists.
- g. Submit a copy of your Motor Carrier U.S. DOT (U.S. Department of Transportation) Identification Number.
- h. Submit a list of all Holder-owned and/or non-owned vehicles to be utilized in their commercial operations. List the year, make, model, and license plate number of each vehicle, as well as noting whether the vehicle is commercially marked or unmarked. All vehicles used in commercial operations must, at all times within the AHRA, have a valid registration, proof of insurance, and be visibly marked on the exterior of the vehicle with the Holder's name, initials or an easily identifiable logo.
- 1) Such lettering or logos must be of contrasting color to the background and must be maintained so as to be clearly visible and legible from a distance of at least 150 feet.
  - 2) Letters must be at least four (4) inches in height and the name and/or logo must be a minimum of six (6) inches in width.
- i. Submit, and keep current, a list of all Commercial Guides, Trip Leaders, Guide Trainees and Guide Instructors (not to include Rent-a-Guides who are from a primary Holder with guide qualifications records at their location). Such list must be updated and submitted to AHRA within two (2) weeks of hiring or firing of these employees.
- j. Deadline for submission of all application materials (1.a through 1.i) is April 1<sup>st</sup>. Incomplete Applications will not be processed or refunded.

Failure to comply with any of the above (1.a through 1.i) by April 1<sup>st</sup> will result in an assessment of a late filing fee of \$100.00. Once late, the Minimum Preseason Fee (Application Fee) must include the assessed late fee to be considered complete.

Failure to comply with any of the above (1.a through 1.i) by May 1<sup>st</sup> will result in an assessment of an additional late filing fee of \$100.00. Once late, the Minimum Preseason Fee (Application Fee) must include the assessed late fees to be considered complete.

Failure to comply with any of the above (1.a through 1.i) by June 1<sup>st</sup> will result in Agreement revocation. An Agreement in the process of being transferred in accordance with the Special Use Agreement Assignment Policy, will be exempt from this June 1<sup>st</sup> deadline.

Minimum application processing is thirty (30) days. The Holder must then receive approval from CPW to commence operations. Approval from CPW will be made via email, US Mail and/or website notification.

## 2. End of Season Reporting

All Holders must submit an End of Season Report.

a. Submit a completed Trip and/or Sales Log. Deadline for submission of the Trip and/or Sales Log is November 1<sup>st</sup>.

1) For Boating Holders, the Trip Log must be submitted utilizing the Internet-based Trip Log reporting program located at <https://ahraoutfitters.org/> unless written authorization has been granted from CPW authorizing an alternative electronic method. Such alternative electronic methods must fully integrate with the web-based Trip Log reporting program.

Boating Holders must report Guide Trainee boats on a separate record entry for the purpose of Historic Use exclusion and Agreement Fee exclusion. Guide Trainees on commercial boats must also be reported on a separate record entry for the purpose of Historic Use exclusion and Agreement Fee exclusion. Failure to report Guide Trainees and Guide Trainee boats on a separate record entry will result in the Guide Trainee being recorded as a Client in the Trip Log.

a) After submission of the Trip Log, CPW will email an electronic spreadsheet of the Holder's Trip Log report to the Holder. The Holder is to make any necessary changes, modifications, and/or Trip Log amendments utilizing the supplied Trip Log spreadsheet by November 15<sup>th</sup>.

b) If Trip Log modifications have not been made and resubmitted by November 15<sup>th</sup>, CPW will make corrections to data necessary for the running of the Rationing Program.

c) Modifications made to a Trip Log, at the request of a Holder, after November 15<sup>th</sup> will require the approval of the Park Manager. Any Holder granted a request for modification of a Trip Log after November 15<sup>th</sup> will be charged an administrative fee of \$250.00 per boat. Trip log modifications will only be made to the current year trip log. No historic use credit will be credited to prior years.

2) For Imaging Holders, the Sales Logs will be available on the Internet website at <https://ahraoutfitters.org/>.

Imaging Holders must report daily sales derived from the capturing of images of recreational activities occurring on public lands or waters within the AHRA. The location of the recreational activity being photographed, not necessarily the location of the camera or photographer, may be the determining factor for reporting daily sales. Additionally, if the imaging product sold is that of another AHRA Commercial Holder, the Imaging Holder must identify the AHRA Commercial Holder in the daily sales report.

Imaging Holders who perform wholesale services shall submit to CPW a compensation report from each imaging sales retailer detailing all monetary gain or other compensation received from an AHRA Commercial Holder for providing an imaging product or service that resulted in a retail sale to clients. The total monetary gain or other compensation received from this wholesale service is not to be included in the Imaging Holders' Total Gross Receipts.

3) For Walk and Wade Fishing Holders, the Trip/Sales Logs will be available on the Internet website at <https://ahraoutfitters.org/>.

4) For Shuttle Holders, the Sales Logs will be available on the Internet website at <https://ahraoutfitters.org/>.

- 5) For Climbing, Hiking, Mt. Biking and Food Vendor Holders, the Trip/Sales Logs will be available on the Internet website at <https://ahraoutfitters.org/>.
  - 6) All commercial use of lands authorized under the CPW's Temporary Wildlife Special Use Permit issued by the appropriate Area Wildlife Manager must be reported on the appropriate activity Trip Log, in the State Wildlife Area field.
- b. Submit a completed, signed, and dated End of Season Report. Deadline for submission of the End of Season Report is December 1<sup>st</sup>. The End of Season Report is available for downloading from the Internet website <https://ahraoutfitters.org/>. Either signed hardcopies or an electronic submission will be accepted.
  - c. Submit the Final Payment due. The End of Season Payment must be received by December 1<sup>st</sup>.
    - 1) End of Season Fee Determination
      - a) End of Season Fee is calculated by multiplying the Total Gross Receipts by the appropriate percentage for the authorized activities {5.25% for Boating (5.00% Agreement Fee and .25% Supplemental Flow Program Water Fee), 5.0% for all other activities}, except as outlined in Condition 2.c.2.
      - b) Total Balance Due is shown on Line 12 (Boating), Line 7 (Walk & Wade) and Line 4 (Imaging and Shuttle), Line 4 (Rock Climbing, Hiking, Mt. Biking and Food Vendor) and of the End of Season Report payable to the Colorado Parks and Wildlife.
      - c) If the Balance as shown on Line 13 (Boating), Line 8 (Walk & Wade), and Line 5 (Imaging, Shuttle, Rock Climbing, Hiking, Mt. Biking and Food Vendor) of the End of Season Report is a refund due to the Holder, a Refund Request Affidavit form will be provided to the Holder. The signed Refund Request Affidavit form must then be submitted to AHRA.
      - d) Holders shall not advertise fees as a tax. The Holders may not portray or represent the Agreement Fee as a tax in an itemized customer billing.
    - 2) Minimum Per Client Fee
      - a) A Holder's Per Client Fee is calculated by dividing the Preliminary Agreement Fee shown on Line 4 of the End of Season Report by the total number of clients shown on the End of Season Report.
      - b) For Boating, Walk & Wade Fishing, Rock Climbing, Hiking and Mt. Biking Holders, the Minimum Per Client Fee shall not be less than three (3) dollars (equivalent to the 2018 Individual Daily Pass fee set by the Colorado Parks and Wildlife Commission). Changes to the Individual Daily Pass fee set by the Colorado Parks and Wildlife Commission will require the Minimum Per Client Fee to be reviewed.
      - c) Boating Holders shall pay 5.00% of Total Gross Receipts, OR three (3) dollars multiplied by the total number of clients, whichever is greater. Also, all Boating Holders shall pay an additional 0.25% of Total Gross Receipts as a Supplemental Flow Program Water Fee.
      - d) Walk & Wade Fishing Holders shall pay 5% of the adjusted Total Gross Receipts OR three (3) dollars multiplied by the total number of clients, whichever is greater.
      - e) Rock Climbing, Hiking and Mt. Biking Holders shall pay 5% of the adjusted Total Gross Receipts OR three (3) dollars multiplied by the total number of clients, whichever is greater.

- d. Failure to comply with 2.a by November 1<sup>st</sup> shall be deemed a material breach of this Agreement by the Holder and will result in an assessment of a late filing fee of 20% of the overdue Final Payment amount, or \$500.00 whichever is greater.
- e. Failure to comply with any of the above (2.a through 2.d) by December 1<sup>st</sup> shall be deemed a material breach of this Agreement by the Holder after which time the Agreement will be revoked.

### 3. Holder Vehicle Decals

- a. AHRA will issue one decal per unmarked vehicle on the vehicle list to each Holder to be utilized only within the AHRA. Each decal will have the company name displayed. Holder vehicle decals are to be utilized only for circumstances that require the use of a vehicle not permanently marked with the Holder's name and/or logo. (For example, personal vehicles utilized within the AHRA for commercial operations by fishing guides and/or photographers). (Please see 10.C. on page 8 of the SUA for additional information regarding Holder-owned and non-owned vehicles).
- b. Holder vehicle decals may only be used by the Holder or any agent or employee of the Holder while conducting commercial operations within the AHRA. It is the responsibility of the Holder to ensure that all Holder vehicle decals are used only for specified Special Use Agreement uses. Non-commercial use or misuse of the vehicle decal will result in the confiscation of the decals and may result in the required return of all current year Holder vehicle decals that have been issued to the particular Holder.
- c. Holder vehicle decals may be used on commercial vans, buses and motor coaches chartered by or belonging to clients of the Holders as long as those vehicles are being used as an integral part of the trip (i.e. both dropping off and picking up clients) and are not left parked at an AHRA site without a driver. While those vehicles are within an AHRA site, that vehicle and the driver are acting as an agent of the Holder and are subject to all of the rules and regulations contained in the SUA, associated Exhibit(s), and State and Federal Laws/Regulations.

For any vehicle that falls within this description and is not listed in the Holder vehicle list, a written request may be submitted to the Rationing and Agreement Coordinator for consideration of the issuance of a temporary or floater Holder vehicle decal to be used on said vehicle.

- d. Holder vehicle decals cannot be used by clients in private vehicles for parking at AHRA sites. Decals used in this manner will be confiscated and may result in the required return of all current year Holder vehicle decals that have been issued to the particular Holder. All client vehicles entering AHRA sites requiring a park pass are required to have a valid park pass.
- e. For any Holder vehicle that falls outside of the parameters listed in Conditions 3.a through 3.d, a written request may be submitted to the Rationing and Agreement Coordinator for consideration of the issuance of a temporary or floater Holder vehicle decal to be used on said vehicle.
- f. All Holder vehicle decals must be plainly visible through the front windshield on the lower passenger side of the corresponding vehicle.

### 4. Use Authorizations

- a. It is the Holder's responsibility to obtain written permission from the landowner(s), including railroad right of way, to travel through or use private lands unless otherwise authorized by CPW. Conviction of the Holder, any of the Holder's agents, employees, or clients of trespass while engaged in activities under this Agreement may be cause for suspension or revocation of this Agreement.
- b. The Holder, any of the Holder's agents, employees, clients or vehicles will not interfere with other uses occurring on AHRA lands and waters such as grazing, mining, and other recreational uses, commercial and private.

- c. A CPW Temporary Wildlife Special Use Permit issued by the appropriate Area Wildlife Manager must be obtained for any Holder utilizing State Wildlife Areas within the AHRA for commercial operations.

## 5. Soliciting and Advertising

Any Holder utilizing the services of Booking Agents must ensure the Agent's advertisements, signs, statements, circulars, brochures, letterhead, website, and like material, whether oral, electronic, or written, must not misrepresent in any way the services provided by either the Agent or the Holder. Additionally, the above materials must clearly state an authorized AHRA Agreement Holder will conduct the trip (services) and that the trips (services) are not conducted by the Agent.

## 6. Environmental Awareness

The Holder will stress the value of staying on the trail, not collecting natural items, and picking up all trash and disposing of it properly. Holders and their clients shall endeavor to "leave no trace."

## 7. Food Service

Operation and maintenance of all sanitation, food services, and water supplies, systems and facilities shall comply with all applicable laws and regulations including the standards of the local department of health, Colorado Department of Public Health and Environment and the United States Public Health Service.

## 8. Refuse

- a. The Holder shall guard the purity of waters and dispose of refuse resulting from the authorized commercial operations, including waste materials, garbage and rubbish of all kinds in the following manner:
  - 1) Refuse, such as cans, bottles, metal, foil, ashes, charcoal, food and all other solid materials will be packed out, not buried. Such waste shall be properly disposed of outside the AHRA in compliance with law.
  - 2) Portable toilets and their use are mandatory at all camps at which AHRA does not provide established toilet facilities.
  - 3) Holders are required to provide approved containers for all solid human waste. Holder's agents, employees, or clients must utilize these approved containers for the collection of all solid human waste. Solid human waste shall be carried out and disposed of outside the AHRA in compliance with law. Collection and disposal methods must be disclosed to CPW in the AHRA Operating and Safety Plan.
  - 4) Clients must be informed of sanitation, litter prevention and human refuse disposal methods prior to embarking on commercial trips.
- b. No materials will be discharged onto AHRA lands or waters if they contain any substances in concentrations that would result in any significant harm to fish and wildlife or to human water supplies, including streams, reservoirs and lakes.

## 9. Fires

- a. No fire may be constructed or tended on AHRA administered public lands unless the fire is contained in a CPW-furnished grill or fireplace or in a fire pan with rigid sides at least two (2) inches in height that is elevated above ground level.
- b. All ashes must be carried out and properly disposed of outside the AHRA in compliance with law.

- c. Fires and stoves are prohibited within old cabins or historic structures.
- d. Cutting or gathering firewood is prohibited except that driftwood from the river may be gathered as firewood.
- e. No fire will be left unattended. The Holder is solely responsible for all fires started by the Holder, or any Holder agents, employees, or clients. The Holder may be held responsible for fire suppression costs resulting from wildfires caused by the Holder, or any Holder agents, employees, or clients.
- f. Wildfires shall be reported immediately to the nearest available Law Enforcement Agency. The Holder is responsible for informing employees and clients of the current fire danger and required precautions that may be in effect by CPW, BLM, USFS, counties and/or the State of Colorado.
- g. Open fires may be prohibited during certain periods depending on fire danger.

#### 10. Wildlife

- a. In order to minimize disturbances, the Holder or any Holder agents, employees and clients will limit the level of noise made within 100 yards of any big game animal or any concentration of herons or other sensitive wildlife species.
- b. Harassment of any wildlife or livestock is prohibited by the Holder or Holder's agents, employees and clients.
- c. In Browns Canyon (Section 2b), the Holder or Holder's agents, employees and clients shall restrict use east of the river to areas between the river and the railroad tracks to avoid Bighorn sheep disturbance.
- d. No use on public lands will be allowed on river left between the Five Points Recreation Site and the Parkdale Recreation Site to avoid Bighorn sheep disturbance.

#### 11. Day Use / Camp Areas on AHRA Administered Public Lands

- a. No year-round, permanent day use or camp areas or equipment caches may be established on AHRA administered public lands without written permission from CPW. CPW bears no responsibility for equipment left unattended.
- b. All day use and camp areas are to be on a first-come, first-served basis with the exception of designated reserved campsites within the AHRA. Issuance of this Agreement may specify the Holder's use of specific imaging locations.
- c. All day use facilities must be set up, taken down and removed on the same day.
- d. Camp areas may not be held overnight unless the site is occupied by an overnight camp group on a commercial trip the night before.
- e. The Holder shall maintain all premises to standards of repair, orderliness, neatness and sanitation acceptable to CPW. Day use and camp areas must be kept clean while in use and the Holder shall not allow trash or litter to remain.
- f. When day use or camp facilities are dismantled, the area shall be left in substantially the same condition as it was prior to the activities authorized.
- g. Any Holder utilizing an AHRA campground site within established recreation sites (developed campgrounds) for lunch or other day use activities must reserve a campsite for the day during which the site is occupied.

## 12. Site Specific Requirements

- a. Holders need to be aware of flash flood dangers, especially at Chalk Creek, Badger Creek, Bernard Creek and Texas Creek.
- b. Holders may utilize the Vallie Bridge Campground for boat-in or walk-in camping. Holder vehicles may be driven into the Vallie Bridge Campground circle drive for loading and unloading gear only. Vehicles left onsite must be parked upstream in the designated parking area.
- c. Commercial river access at the Five Points Day-Use Recreation Site (Section 4b) is prohibited.
- d. Commercial river access at the Five Points Campground (Section 4b) south of Highway 50 is authorized. Access to the river is authorized via the walkway underpass.
- e. Commercial river access at the Old Parkdale site (Section 4b) is prohibited.
- f. The Holder, or any Holder agents, employees and clients will limit the level of noise made within 100 yards of any residential dwelling to minimize disturbances.
- g. Any Imaging Holder must have written authorization and approval by The Royal Gorge Express (RGX) and/or The Union Pacific Railroad (UP) to enter upon premises within the right-of-way in order to conduct imaging activities.
  - 1) Written authorization from RGX or UP must be submitted to AHRA as part of the SUA application materials.
- h. Scouting rapids, portaging or scouting for fishing locations on the riverbank must be done as much as possible below the high-water line to prevent resource damage.

## 13. Site Conflict Resolution

Should specific sites of commercial operations become overcrowded, CPW will identify and designate allowable use at these sites in order to reduce conflicts, promote safety and protect the resource. Competitive bidding may be used by CPW to resolve site conflict.

## 14. Holder Workshop

The Holder or a management representative shall attend the Holder Workshop presented by CPW. The Holder is responsible for all information/policy discussed and shall ensure that the information is shared with all employees immediately following the Holder Workshop or before each employee conducts operations within the AHRA. Agreements will not be issued until the Holder or a management representative has attended the workshop. If an Agreement has been issued prior to the workshop and the Holder does not attend, any and all Agreements will be immediately suspended and may be revoked. The location, date, and time of this workshop will be provided by separate notification. There will be one scheduled make-up Holder Workshop.

## 15. Parking

- a. No vehicle parking is allowed at any boat ramp within the AHRA unless the trip is loading or launching.
- b. Parking elsewhere along the river should be in highway pullouts, not on the highway shoulder so as not to impede traffic.
- c. No vehicle shall be parked in AHRA sites such that it impedes the flow of traffic in any way.

## 16. Assignment / Transfer of Agreement Privileges Policy

- a. All defined terms used herein have the same meaning as set forth in the State's Special Use Agreement template. Special Use Agreements ("SUAs") are personal in nature and cannot be assigned without the prior express written consent of State. A \$300 processing fee applies to the assignment of SUAs.
- 1) If an existing Holder wishes to assign their SUA to a third party ("Assignee"), the current Holder shall notify the State in advance in writing. The Holder and Assignee shall schedule a meeting between the State, the Holder and the Assignee prior to any finalized business transactions (i.e. signed contracts, bills of sale).
  - 2) Adequate documentation shall be provided to the State showing that a bona fide business transfer or sale is intended, including but not limited to contracts, bills of sale, terms, and a breakdown of all items that are being sold and their respective costs. The transfer or sale must include a substantial portion (more than 75%) of the equipment and other tangible assets needed to conduct a business and a substantial portion (more than 75%) of the Historical and Allocated Use associated with the Agreement averaged over the last five years of operation.
  - 3) The SUA must not be under probation or suspension to be able to be assigned. If the Assignee has an existing AHRA Special Use Agreement(s), such Agreement(s) must not be under probation or suspension for the Assignee to be eligible for the acquisition of additional Special Use Agreement(s).
  - 4) The Assignee shall provide a detailed written description to the State of the type of services to be offered; including any anticipated operational changes from the present Holder's Approved Use.
  - 5) The Assignee must be able to meet all standards required in conformance with the Arkansas River Recreation Management Plan, outfitter licensing requirements and other regulations of Federal, State, and Local agencies.
  - 6) The Assignee shall provide sufficient personal information and referrals, including resumes, business references, a listing of other commercial or private Agreements/Permits held in the last five (5) years with other public land resource agencies and disclosure of pending legal actions against the Assignee for the State to assess the Assignee's qualifications to operate.
  - 7) The Assignee shall provide adequate documentation of business agreements or contracts such as names of owners, partnership agreements, or articles of incorporation. The Assignee shall disclose the proposed business name and all d.b.a. (s).
  - 8) An SUA that is transferred may contain terms and conditions that are entirely different from the original SUA. Upon transfer of a SUA, subsequent Use Fee payments will be determined by the State based upon the previous season's Total Gross Receipts for Holder and any anticipated operational changes that are submitted by the Assignee.
  - 9) The Holder must pay to the State all outstanding debt in terms of Rationing violations, late fees, etc. prior to receiving written approval for the SUA assignment from the State.
  - 10) The Assignee must receive written approval for the SUA assignment from the State.



- b. Failure to submit any of the above (2.a.1 through 2.a.10) may lead to termination of the transfer process.
- c. If the Assignee knowingly, with intent to defraud, provides any false information that facilitates assignment of the SUA, whether it is written or oral, the false information will void the assignment and the SUA will be revoked.
- d. No one individual, partnership, corporation or company will hold multiple Exhibit Agreements for the same activity unless a new and distinct business entity is formed requiring a separate tax identity. A separate and distinct AHRA Operating and Safety Plan and Holder Operating Plan for each business entity shall be submitted and approved by the State.
  - 1) A unique and valid Colorado River Outfitter License must be held for each entity.
- e. The approval of a SUA assignment, and/or the approval for a business entity to hold multiple SUAs and/or Exhibits is discretionary with the State.

17. Assignment of Rationed Use and Historic Use (Boating)

- a. A Holder's Rationed Use and Historic Use are described in the Rationing Plan for Commercial Boating Use in the Arkansas Headwaters Recreation Area, which is incorporated herein by reference.
- b. A Holder not under probation or suspension with the State may sell or otherwise transfer a portion of its Rationed Use or Historic Use within AHRA to another existing Boating Holder not under probation or suspension with the State.
- c. Written notice of a sale and/or transfer of any part of the Holder's Historic Use must be provided to AHRA 30 days prior of the sale and/or transfer-
  - 1) This notice must be accompanied by a copy of the transfer agreement with original signatures, by all the Holders involved, approving the terms of the agreement.
  - 2) The transfer agreement will specify the terms of the transfer, including the section, boats, days to be transferred, and the effective date of the sale or transfer.
- d. There will be a \$300.00 processing fee for the sale or transfer of Rationed Use or Historic Use.
- e. Leasing, renting or other forms of remuneration for loaning Rationed Use or Historic Use is prohibited.