

# STATE OF COLORADO SPECIAL ACTIVITY PERMIT COVER PAGE

<b>State Agency</b> Colorado Department of Natural Resources Division of Parks and Wildlife 1313 Sherman Street Denver, Colorado 80203	<b>Permit Beginning Date</b> The Effective Date. Month Day, Year		
<b>Permittee</b> Insert Permittee's Full Legal Name, including "Inc.", "LLC", etc... Address	<b>Permit Expiration Date</b> October 31, 2024		
<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 Permit: EXHIBIT A (Provisions Common to All) EXHIBIT B (Rationing Plan if Applicable) EXHIBIT C- G (Approved Use)			
<b>Principal Representatives</b> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;">                             For State:                              Colorado Parks and Wildlife                              Arkansas Headwaters Recreation Area                              John P. Kreski                              307 West Sackett Ave.                              Salida, CO, 81201                              john.kreski@state.co.us                         </td> <td style="width: 50%; border: none;">                             For Permittee:                              Business Name                              Doing Business As (d.b.a.)                              Principal Representative                              Address                              City, State, Zip                              Email                         </td> </tr> </table>		For State: Colorado Parks and Wildlife Arkansas Headwaters Recreation Area John P. Kreski 307 West Sackett Ave. Salida, CO, 81201 john.kreski@state.co.us	For Permittee: Business Name Doing Business As (d.b.a.) Principal Representative Address City, State, Zip Email
For State: Colorado Parks and Wildlife Arkansas Headwaters Recreation Area John P. Kreski 307 West Sackett Ave. Salida, CO, 81201 john.kreski@state.co.us	For Permittee: Business Name Doing Business As (d.b.a.) Principal Representative Address City, State, Zip Email		

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## 1. PARTIES

This special activity permit (“Permit”) is entered into by and between Permittee and the State of Colorado Department of Natural Resources acting by and through the Division of Parks and Wildlife (“State”).

## 2. EFFECTIVE DATE

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

## 3. RECITALS

### A. Authority, Appropriation and Approval

Authority to enter into this Permit exists pursuant to § 33-1-104 – 105, § 33-9-102, § 33-10-107, and § 33-12.5-103, CRS.

### B. Purpose

The purpose of this Permit is for the State to grant the Permittee authority to perform the Approved Use on the Permit Area. Pursuant to § 33-6-113.5, CRS and § 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 without the State’s express written permission.

## 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 Special Activity Permit.

### 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 Permit 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 Permittee and “Parties” means both the State and Permittee.

### 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 Permit expires or is sooner terminated; (ii) all final payments as required under this Permit have been made; (iii) all pending matters relating to this Permit have been resolved; (iv) if an audit is occurring or Permittee 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 Permittee 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 Permit Area on the Effective Date.

**L. Permit**

“Permit” means this Special Activity Permit, any documents incorporated by reference, and any future modifying permits, 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 Permit Privileges policy.

**M. Permit Area**

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

**N. Total Gross Receipts**

“Total Gross Receipts” means anything of value received by the Permittee in exchange for providing the Approved Use to the public for commercial gain. If the Permittee is a natural person, such value includes anything of value received by the Permittee’s relatives, any partnership in which the Permittee is a general partner, any general partner of the Permittee or any limited liability company or corporation in which the Permittee 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 Permittee is a corporation or Limited Liability Company, such value includes anything of value received by any director, officer or person in control of the Permittee and any relative of a director, officer, or person in control of the Permittee 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 Permit begins on the Effective Date and ends on the ensuing October 31, unless sooner terminated as provided for herein. CPW may, in its discretion, extend said term.

**B. Termination**

Either Party may terminate this Permit after providing 60 days written notice in accordance with §13. In the event of termination by either Party, Permittee shall pay the State all amounts owed under this Permit 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 Permit 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 Permit or place Permittee 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 Permittee, its authorized agents and clients a revocable, non-exclusive right to access and occupy the Permit Area for the Approved Use. This grant is limited by the terms of this Permit and does not grant any additional rights or licenses to Permittee, its authorized agents or clients not expressly authorized herein. The Parties shall have the following rights subject to the following duties and restrictions:

**A. Permittee Compliance with State Rules and Regulations**

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

**B. Improvements**

**i. State Improvements**

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

**ii. Permittee Improvements**

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

**a) State Owned**

Become the property of the State without any compensation to Permittee. Permittee 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). Permittee acknowledges that any improvements it makes are at Permittee's sole financial risk and are a business decision by Permittee.

**b) Removal**

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

**C. Reporting Incidents and Damage to State Property**

In the event of an incident resulting in the death, disappearance or unconsciousness of Permittee, its authorized agents or clients ("Critical Incident"), Permittee shall notify the State by telephone or e-mail as soon as practical, but no later than 24 hours after such incident, and submit a follow-up written report, e-mailed or faxed, within five calendar days of such incident.

In the event of any other incident resulting in Permittee, its authorized agents or clients receiving treatment by a physician or paramedic, Permittee shall notify the State by submitting a written report, e-mailed or faxed, within ten calendar days of such incident.

In the event Permittee, its authorized agents or clients causes any damage to the Property, Permittee shall notify the State by telephone or e-mail as soon as practical, but no later than 24 hours after such incident, and submit a follow-up written report, e-mailed or faxed, within five calendar days of such incident.

**D. Inspection**

The State may, in its sole discretion, monitor Permittee's Approved Use in the Permit Area using any reasonable procedures, including, but not limited to: inspection of books and records required to be maintained under this Permit, 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**

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

**F. Operating Plan**

Permittee 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. Permittee 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**

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

**H. Park Property**

Neither Permittee nor Permittee'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**

Permittee and Permittee'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 or revocation of this Permit. Permittee shall provide service and equipment in accordance with industry standards as determined by the State/ROL.

## **J. Preexisting Rights**

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

## **K. Public Use**

Throughout the term of this Permit, the Property, including the Permit 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 Permit, including the right to use and occupy the Property for any purpose not inconsistent with, and which does not materially interfere with, Permittee'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 Permits**

Entering into additional Permits with third parties for use of the Permit 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. Permittee 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 Permittee is the first Permittee at the Property, Permittee is not granted any exclusive rights.

## **M. Soliciting and Advertising**

### **i. Rates**

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

### **ii. Representations**

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

## **N. Storage**

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

## **O. Permittee Records**

### **i. Inspection**

Permittee shall make available to the State all records required to be maintained under this Permit for the duration of the Record Retention Period. The State shall have the right to conduct financial audits on Permittee 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 Permittee, the State shall process a refund request affidavit. In the event an audit reveals a balance due to the State, Permittee shall pay the balance due within 30 days of notification by the State. If an

external audit is performed on Permittee's records for any fiscal year covering a portion of the term of this Permit, Permittee shall submit a copy of the final audit report to the State within 10 days of completion of said audit.

**ii. Maintenance**

Permittee 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 Permit. Permittee shall maintain all records for the duration of the Record Retention Period.

**P. Permittee Reports**

Permittee shall submit the following to the State:

**i. Brochure and Price List**

Prior to the Effective Date, Permittee shall provide the State with copies of all current brochures and price lists for the Set Rate used by Permittee. If Permittee operates and maintains a website that includes a price list, then Permittee may submit the URL address to the State in lieu of paper copies. Submission of the URL address must occur prior to the Effective Date. Permittee shall provide notice to the State within 14 calendar days of any change to the Set Rate.

**ii. End of Season Report**

Permittee shall submit an end of season report to the State in accordance with **Exhibit A**. Said report shall summarize Permittee's Approved Use of the Permit 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 Permittee or an owner or officer of Permittee if not a natural person. If this Permit is terminated prior to the expiration date, Permittee shall submit said report to the State no later than 30 days after such termination.

**iii. Trip/Sales Log Report**

Permittee shall submit a trip/sales log report to the State in accordance with **Exhibit A**.

**iv. Guide List**

Prior to the Effective Date of this Permit, Permittee shall provide the State with a list of all commercial guides, trip leaders, and guide instructors employed by Permittee. This list shall be updated with changes for the current season.

**v. Assignments and Subcontracting**

This Permit is personal in nature and cannot be assigned by Permittee without the State's prior written consent pursuant to the State's Assignment / Transfer of Permit Privileges policy. Permittee 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. FEES**

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

**A. Fees**

**i. Administrative Fee**

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

**ii. Use Fee**

Permittee 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**

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

**C. Restriction**

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

**8. NO TITLE IN GRANT**

This Permit does not and shall not be construed to vest in Permittee 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 Permit Area.



## 9. PERMITTEE'S REPRESENTATIONS, WARRANTIES, AND OBLIGATIONS

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

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

Permittee and its authorized agents shall at all times conduct activities in compliance with all State, federal, and local laws. As of the Effective Date, Permittee and its authorized agents shall have, and at all times during the term hereof shall maintain, at their sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform the Approved Use.

### B. Hazardous Substances

Permittee shall not release or allow release of any Hazardous Substances on the Property or any of the State's adjacent real property. Permittee shall be solely responsible for all costs and expenses associated with removing, cleaning up, and remediating any damage caused to the Property by Permittee or its agents.

### C. Independent Professional Advice

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

### D. Industry Standards

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

### E. 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 Permit or which may affect Permittee's ability to perform the Approved Use, Permittee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein.

## 10. INSURANCE

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

### A. Worker's Compensation

Worker's Compensation Insurance as required by State statute and Employer's Liability Insurance covering all of Permittee 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 Permittee.

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

Coverage required of Permittee 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 Permittee and Permittee shall forward such notice to the State within 7 days of Permittee's receipt of such notice.

### **G. Subrogation Waiver**

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

### **H. Public Entities**

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

### **I. Certificates**

Permittee shall provide to the State certificates showing Permittee insurance coverage within 10 calendar days following the Effective Date. The State shall be named as a certificate holder. No later than 15 days before the expiration date of any Permittee coverage, Permittee shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Permit, upon request by the State, Permittee 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 Permit, 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 Permittee, or the appointment of a receiver or similar officer for Permittee, 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 Permittee is in breach under any provision of this Permit, 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 Permit. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

### **C. Continued Enforcement**

Permittee shall be liable for full compliance with this Permit including material performance owed to the State at expiration or termination. If, at the expiration or termination of this Permit, Permittee has not performed as required under this Permit, has withheld reports required herein, or has failed to make payment of any amounts owed to the State, Permittee 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 Permittee its costs and attorneys' fees incurred in enforcing this Permit.

## **13. NOTICES AND REPRESENTATIVES**

Each individual identified as a Principal Representative on the Cover Page for this Permit shall be the principal representative of the designating Party. All notices required or permitted to be given under this Permit 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 Permit. 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 Permit. 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 Permit. Unless otherwise provided in this Permit, 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 Permit 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 Permittee 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 Permittee under this Permit.

#### **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 Permit 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. Indemnification**

###### **i. Environmental**

If Permittee breaches its obligations in §9(b), or if the presence of Hazardous Substances, pollutants, or contaminants on the Property caused or permitted by Permittee results in contamination of the Property, or if contamination of the Property by Hazardous Substances, pollutants, or contaminants otherwise occurs and Permittee 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, Permittee 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 Permit solely as a result of such contamination. Without limiting the foregoing, nothing in this Permit shall be construed as giving rise to any right or ability of the State to exercise physical or managerial control over Permittee's day-to-day operations of the Property, or otherwise to become a Permittee with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

###### **ii. General**

Permittee 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 Permittee, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Permit, 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.

##### **D. Independent Contractor**

Permittee is an independent contractor and not as an employee of the State. Neither Permittee nor any agent of Permittee shall be deemed to be an agent or employee of the State. Permittee 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 Permittee or any of its agents. Unemployment insurance benefits are available to Permittee and agents only if such coverage is made available by Permittee or a third party. Permittee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Permit. Permittee shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding. Permittee 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.

**E. Jurisdiction and Venue**

All suits or actions related to this Permit 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.

**F. Modification**

**i. By the Parties**

Except as specifically provided in this Permit, modifications to this Permit 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 Permit 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 Permit on the effective date of such change, as if fully set forth herein.

**G. Severability**

Provided this Permit 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 Permit in accordance with its intent.

**H. Survival of Certain Terms**

Notwithstanding anything herein to the contrary, provisions of this Permit 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 Permittee fails to perform or comply as required.

**I. Taxes**

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

**J. Third Party Beneficiaries**

Enforcement of this Permit 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 Permit are incidental to this Permit, and do not create any rights for such third parties.

**K. Waiver**

Waiver of any breach or event of default under a term, provision, or requirement of this Permit, 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 Permit or limit its enforceability in any way.

**16. APPROVAL AND SIGNATURES**

**THE PARTIES HERETO HAVE EXECUTED THIS PERMIT**

\*Persons signing for Permittee hereby swear and affirm that they are authorized to act on Permittee'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,

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Thomas A. Waters Jr., AHRA Park Manager

**PERMITTEE: ACCEPTED**

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

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

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

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

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