

MEMORANDUM OF AGREEMENT

BETWEEN

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION

AND

“ _____ ”

THIS Agreement, made and entered into this _____ day of _____, by and between the **North Carolina Wildlife Resources Commission**, an administrative agency of the State of North Carolina, acting by and through its Executive Director, under authority of Article 13 of Chapter 113 of the General Statutes of North Carolina, hereinafter referred to as “the **Commission**” or “the **State**”, and “ _____ ”, hereinafter referred to as “the **Outfitter**”;

WITNESSETH:

Whereas, the **Outfitter** is a business offering guided rock climbing and rappelling activities to their clients; and

Whereas, the **Outfitter** is interested in utilizing the Big Bradley Falls area of Green River Game Land for the purpose of rock climbing and rappelling, hiking, or other outdoor related activities; and

Whereas, Big Bradley Falls is designated as a “Temporary Restricted Zone” in accordance with Title 15A NCAC 10D .0102, because of danger to the health or welfare of the public due to topographical features or activities occurring on the area.

Whereas, the **Outfitter** understands and discloses to their employees and clients that the Big Bradley Falls area of the Green River Game Land is a dangerous area where people have been seriously injured and died; and

Whereas, the **Commission** is authorized to manage Green River Game Land for the benefit of wildlife and the citizens of North Carolina; and

Whereas, the **Commission** is authorized to enter into cooperative agreements with the public and private agencies and individuals respecting matters within the **Commission’s** jurisdiction; and,

Now, therefore, the **Commission** hereby grants to the **Outfitter** permission to access and use the Big Bradley Falls Temporary Restricted Zone at Green River Game Land from sunrise to sunset only, as indicated on the attached map labeled Attachment A, and subject to further terms and conditions, as follows:

A. **The COMMISSION agrees to,**

1. Grant the **Outfitter** access to utilize the Big Bradley Falls Temporary Restricted Zone at Green River Game Land for the purpose of providing rock climbing and rappelling, hiking, or other outdoor related activities to the **Outfitter's** clients for the duration of this agreement.

B. **The OUTFITTER agrees,**

1. To comply with all applicable rules and regulations contained in Title 15A of the N.C. Administrative Code.
2. That they and their clients will enter Green River Game Land at their own risk, and further agree to hold harmless the State of North Carolina by reason of any claim thereof.
3. The **Outfitter** and all individuals acting on his/her behalf must possess a copy of this agreement at all times while utilizing the Big Bradley Falls Temporary Restricted Zone at Green River Game Land.
4. The **Outfitter** shall carry, at its sole expense, Commercial General Liability Insurance, Automobile Insurance, and Workers' Compensation Insurance. If need arises, the Commission may request that the **Outfitter** add additional coverage to its policy.
5. To comply with all laws, rules, regulations and licensing requirements applicable to the conduct of its business and performance in accordance with this Agreement, including those of State, federal and local agencies having jurisdiction and authority.

C. **It is mutually agreed:**

1. This Agreement grants access to and use of the Big Bradley Falls Temporary Restricted Zone of the Green River Game Land to the **Outfitter** for one calendar year from the date the Agreement is executed.
2. That no employee or agent of the **Outfitter** has offered, and no State employee has accepted, any gift or gratuity in connection this contract.
3. SOVEREIGN IMMUNITY: Notwithstanding any other term or provision in this Agreement, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on sovereign immunity that otherwise would be available to the State or the **Commission** under applicable law.
4. SITUS: The place of this Agreement, its situs and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.

5. **GOVERNING LAWS:** This Agreement is made under and shall be governed, construed and enforced in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules.
6. **GENERAL INDEMNITY:** The **Outfitter** shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind related to the **Outfitter's**, or its client's, use of the Big Bradley Falls Temporary Restricted Zone under the terms of this Agreement, including, but not limited to, all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the **Outfitter** in the performance of this Agreement and that are attributable to the negligence or intentionally tortious acts of the **Outfitter**. The **Outfitter** represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of the **Outfitter's** goods or services to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this Contract.
7. **CONFIDENTIALITY:** Any State information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the **Outfitter** under this Agreement shall be kept as confidential, used only for the purposes required to perform this Agreement and not divulged or made available to any individual or organization without the prior written approval of the State.
8. **ENTIRE AGREEMENT:** This agreement and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This agreement and attachment A are incorporated herein by reference as though set forth verbatim.
9. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.
10. **AMENDMENTS:** This Agreement may be amended only by a written amendment duly executed by the State and the **Outfitter**.
11. **WAIVER:** The failure to enforce or the waiver by the State of any right or an event of breach or default on one occasion or instance shall not constitute the waiver of such right, breach or default on any subsequent occasion or instance.
12. **FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such

obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

13. TERMINATION. Either party may terminate and cancel this Agreement upon written notice to the other party sent by certified mail specifying the date of termination and cancellation thereof, sent not later than thirty (30) days in advance of said date.

14. The parties may not assign or otherwise transfer or delegate any right or duty related to this Agreement.

In witness whereof, the parties hereto have executed this Agreement the day and year of the last signatory.

Approved and agreed to:

N.C. Wildlife Resources Commission

Enter Date: _____

Outfitter

Print name: _____

Sign name and date: _____



BIG BRADLEY FALLS TEMPORARY RESTRICTED ZONE

Green River Game Land, Polk County

Attachment A

