



**2006 – 2007 OURAY ICE PARK
COMMERCIAL GUIDING AGREEMENT AND PERMIT**

This GUIDING AGREEMENT AND PERMIT (the “Permit”) is made on October 15, 2006 by and between **San Juan Mountain Guides, LLC**, a Colorado limited liability company (the “Concessionaire”), and _____ a ___ corporation with its principal place of business at _____, OR an individual with his/her residence at _____, applying as an independent contractor (“Contractor”).

RECITALS

WHEREAS, the Concessionaire has been selected by the County of Ouray (the “County”) and awarded the concession to provide ice climbing and instruction guide services for the public within the Ouray Ice Park (the “Park”) directly and through appropriate independent contractors;

WHEREAS, the Contractor is engaged in the business of providing professional instruction in ice climbing, mountaineering, and general mountain travel skills to the public;

WHEREAS, the Contractor has applied to the Concessionaire as an independent contractor for permission to provide ice climbing instruction and guide services to the public in the Park and the Contractor represents that it has the necessary tools, equipment, facilities and expertise to safely perform the services contracted herein; and

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, the parties hereto agree as follows:

1. Services. Contractor shall be awarded ___ service-days (“SD”) in which to conduct commercial guiding activities in the Park during the 2006/2007 ice climbing season. The ice climbing “season” is defined as approximately December 15, 2006 to March 31, 2007. One “SD” is defined as one guide operating in the Park for one (1) day occupying no more than two (2) routes at any one time and having a maximum of four (4) clients. In other words, guiding one person or one group of up to four people both equal one SD if there is only one guide instructing that group. Two guides with a maximum of four people each equal two (2) SD. The Contractor also agrees to perform all of the services and acts necessary or advisable to carry out Contractor’s duties in accordance with the requirements of this Permit.

2. Compensation. Contractor shall pay to Concessionaire the following fees in both fixed and variable amounts.

(a) Fixed Fee. The Contractor shall pay Concessionaire a fixed fee of \$150, payable on the date of execution of this contract or prior to conducting any guiding activities, whichever comes first.

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(b) Variable Fee. The Contractor shall pay Concessionaire a variable fee in the amount of 2.0% of the Contractor's gross revenues earned through guiding activities conducted in the Park under this Permit. For example, if Contractor collects \$10,000 in gross revenues from their guiding activities, then the variable fee due and owing Concessionaire would equal \$200.00. Payment of the variable fee shall be as follows: One hundred percent (100%) of the Contractor's *estimated* variable fee shall be paid to Concessionaire by December 1, 2006 or prior to conducting any activities, whichever comes first. The *estimated* variable fee shall be based upon the contractor's average SD revenue from the previous season. *Actual* variable fees shall be calculated using the Contractor's final post-use report at the end of the season. Any difference between estimated and actual fees shall be paid by April 15, 2007. No refunds of variable fees shall be paid by Concessionaire for unused SD and no credits for unused SD against future fees shall be granted by Concessionaire.

(c) This Permit shall not be valid until all fees due and owing Concessionaire pursuant to this paragraph 2 are paid by Contractor, and Concessionaire has received Contractor's Certificate of Insurance pursuant to paragraph 4 and Release and Liability Waiver pursuant to paragraph 6(f).

3. Term This Permit shall commence on the date it is executed and the fixed fee paid, whichever occurs later, and terminate on March 31, 2007.

4. Insurance. Contractor shall purchase at a minimum the types and amounts of insurance coverage as stated herein and agrees to comply with any revised insurance limits the Concessionaire and/or the County may reasonably require during the term of this Permit. At the inception of this Permit and prior to undertaking any activities permitted by this Permit, the Contractor shall provide the Concessionaire with a properly authorized and executed Certificate of Insurance and Insurance Policy Endorsement, reflecting insurance coverage that complies with the terms of this Permit. Contractor shall provide the Concessionaire thirty (30) days advance written notice of any material change in the Contractor's insurance program hereunder. The Concessionaire shall not be responsible for any omissions or inadequacies of Contractor's insurance coverages and amounts if such prove to be inadequate or otherwise insufficient for any reason whatever.

(a) Public Liability. The Contractor shall provide comprehensive general liability insurance against claims occasioned by actions or omissions of the Contractor in carrying out the activities and operations authorized hereunder. The limits of liability shall not be less than \$500,000 per occurrence covering both bodily injury and property damage and \$1,000,000 aggregate. If claims reduce or threaten to reduce Contractor's available insurance below the required per occurrence limits, the Contractor shall obtain additional insurance to restore the required limits. An umbrella or excess liability policy, in addition to a comprehensive general liability policy, may be used to achieve the required limits.

(b) No Subrogation Against Concessionaire and Concessionaire Additional Insured. All of Contractor's liability policies shall specify that the insurance company shall have no right of subrogation against the Concessionaire or the County and shall provide that the Concessionaire, the County, and Clint Cook are named as additional insureds. The policy shall provide that the insurance company shall have no recourse against the Concessionaire, the County, or Clint Cook for payment of any premium or assessment.

(c) Other Insurance. The Contractor shall also obtain the following coverages at the same limits as required for comprehensive general liability insurance:

(1) Automobile liability to cover all owned, non-owned, and hired vehicles used in the Ouray Ice Park, if any.

(2) Workers' compensation insurance to cover all of the Contractor's employees, if any.

6. Contractor's Representations and Warranties: The Contractor makes the following representations and warranties:

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(a) All Contractor's employees, agents, contractors or subcontractors operating as guides in the Park (collectively referred to herein as "Employees") have current first aid certifications. At minimum one (1) Employee will be certified at the "First Responder" level or higher medical accreditation and will be physically present in the Park at all times the Contractor is conducting guiding activities. Contractor shall not permit any of its Employees who do not have current first aid certification to operate within the Park.

(b) Contractor acknowledges that it has received and read the Ouray Ice Park Rules and Regulations ("Park Rules") as established by the Ouray Ice Park, Inc. and the County, and agrees that Contractor and its Employees shall abide by all of the Park Rules. Contractor agrees to sign an agreement to abide by all of the Park Rules on a form to be provided by the County.

(c) Contractor agrees that it, and not the Concessionaire, has the best knowledge and expertise and is in the best and often only position to identify, evaluate, and mitigate risks associated with the Contractor's activities under this Permit. In recognition of the Contractor's unique position, expertise, and abilities in the field of guided ice climbing and instruction, and as partial consideration of the granting of this Permit, the Contractor specifically, knowingly, and intentionally assumes the entire risk of all activities of the Contractor and its Employees under this Permit.

(d) Contractor and each Employee have guided ice climbing commercially for a minimum of three (3) years.

(e) Contractor and each Employee have never been found liable by any court of negligence or fault in the death or injury of any client, and to the best of Contractor's knowledge, no such litigation is currently pending or threatened.

(f) Contractor has each Employee and client sign a release and liability waiver prior to guiding, and such release names Concessionaire and Ouray County, as released parties. Contractor shall submit a copy of its release to Concessionaire prior to guiding under this Permit.

(g) Contractor is solely responsible for and shall pay any and all federal, state, and/or local tax and employment liabilities, including but not limited to worker's compensation benefits, associated with Contractor's business during the term of this Permit.

(h) Contractor has obtained insurance in the amounts and under the terms and conditions required in paragraph 4 above.

(i) Contractor's operations and activities shall be in conformance with all applicable federal, state, and local laws, regulations and requirements.

(j) The Contractor shall notify the Concessionaire of all accidents, as soon as possible and in no event later than five (5) hours following any accident involving any: (1) property damage greater than Five Hundred Dollars (\$500.00) in value, (2) personal injury requiring medical attention, or (3) death.

(k) The Contractor's "Ouray Ice Park 2006/2007 Guiding Application" (the "Application") is true, accurate, and complete in all details and is hereby incorporated herewith as a part of this Permit and all of the Contractor's covenants, statements, and representations included therein are likewise incorporated herewith as if part of the Permit. The representations and warranties contained in this Permit and the Application do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements and information contained in Permit and the Application not misleading.

(l) Contractor has read the Park Operating Plan (the "Plan") located online at www.ourayiceparkguiding.com, understands all provisions of the Plan, and agrees to operate in compliance with the Plan and this Permit.

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7. Indemnity and Assumption of Risk. The Contractor shall save, hold harmless, defend, and indemnify the Concessionaire and the County and their subcontractors, representatives, employees, and agents for all losses, damages or judgments, and expenses, including attorneys fees and costs, on account of bodily injury, death, property damage, fire or other peril, or claims for bodily injury, death, or property damage of any nature whatsoever, and by whomsoever made, arising, out of the activities of the Contractor and its Employees under this Permit.

Nothing stated herein is intended to nor shall it be interpreted as diminishing or otherwise affecting any statutory or common law protection or immunity that the County, or the Concessionaire as the County's agent, may otherwise enjoy, including, but not limited to, the governmental immunities, limitations, and protections provided by C.R.S. Section 24-10-101 et seq.

8. General Provisions.

(a) This Permit is only effective for so long as Contractor maintains the requisite insurance and has not breached or defaulted on any term, condition, representation or warranty of this Permit or the Application.

(b) Any and all taxes which may be lawfully imposed by any authorized taxing entities upon the property or business of Contractor shall be promptly paid by the Contractor.

(c) This Permit may not be extended, renewed, or amended in any respect except when agreed to in writing by the Concessionaire and the Contractor.

(d) The Concessionaire may at any time review the conduct of Contractor and/or any of its Employees, and if such conduct is considered by the Concessionaire in its sole discretion to be inconsistent with the proper administration of the Park and/or the enjoyment, safety, and protection of the Park's visitors, the Concessionaire may, in its sole discretion, take any such action as are necessary to correct the situation, including but not limited to revoking this Permit. In the event the Permit is terminated, Contractor shall pay the Termination Fees described in paragraph 10 below. Nothing in this paragraph is intended to nor shall create any obligation or duty on Concessionaire to inspect Contractor's operations in the Park. Contractor understands, intends, and acknowledges that Concessionaire is relying on Contractor's representations regarding Contractor's fitness and ability to provide guiding services in the Park that are set forth in this Permit and the Application. The Concessionaire does not warrant the safety of the equipment used by the Contractor and assumes no responsibility for the Contractor's or Contractor's Employees' actions pursuant to this Permit.

(e) The Contractor's base of operations shall be outside the boundaries of the Ouray Ice Park.

9. Solicitation of Employees and Clients. Contractor shall not during the term of this Permit and for a ONE (1) year period following termination of this Permit, directly or indirectly, or by action in concert with others, induce or influence, or seek to induce or influence, any employee, agent, independent contractor, or other business affiliate of Concessionaire to terminate his or her relationship with Concessionaire.

10. Default. It shall be considered an event of default if Contractor is unable to maintain the required insurance limits, or is in breach of any term, condition, representation or warranty of this Permit or the Application (collectively referred to as "Default"). In the event of any Default, this Permit shall automatically and immediately terminate, regardless of whether the Concessionaire has actual knowledge of the Default. In the event of any Default, Contractor's right to operate in the Park is rescinded and the offer of any additional services during any Default shall be deemed illegal guiding and treated accordingly. If Contractor notifies Concessionaire of any Default immediately upon Contractor's knowledge of such Default and remedies the Default in a timely manner, Contractor may request reinstatement of the Permit. The decision to reinstate the Permit shall be in the sole discretion of Concessionaire, as shall the determination of any reinstatement fees. In the event the Permit terminates as the result of Contractor's Default, Contractor shall pay Concessionaire all of the variable fees due through the term of this Permit, pursuant to paragraph 2 above, which Concessionaire shall calculate in its sole discretion based upon the variable fees paid by other contractors (the "Termination Fees"), and Contractor shall be disqualified from consideration for future

applications for three years.

11. Relationship of the Parties. At all times during the term of this Permit, Contractor is and shall be an independent contractor. Neither Contractor nor any of its Employees shall be deemed to be an employee, agent or representative of Concessionaire. Nothing contained in this Permit is intended to or shall be construed so as to create a partnership or joint venture, or any other relationship between Contractor and Concessionaire, except that of independent contractor and concessionaire. Concessionaire does not have the power to hire or fire Contractor's Employees or in any other way exercise dominion or control over Contractor's business. The parties acknowledge and agree that Contractor shall not be entitled to any benefits which may be secured by Concessionaire for the benefit of Concessionaire's employees, including but not limited to any worker's compensation benefits, nor shall Contractor benefit from any insurance carried by Concessionaire.

12. Severability. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect by any court of competent jurisdiction,, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Permit. Such provision shall be deemed amended to conform to the requirements of the law so as to be valid and enforceable in light of the parties' apparent intent as evidenced by this Permit. If such provision cannot be amended without materially altering the intention of the parties, the tribunal having jurisdiction shall revise the provision in a reasonable manner, to the extent necessary to make it binding and enforceable. If no such revision is possible, this Permit shall be construed as if such provision had never been contained herein, provided that such provision shall be curtailed, limited, or eliminated only to the minimum extent necessary to remove the invalidity, illegality, or unenforceability and the rest of this Permit shall remain in full force and effect.

13. Injunctive Relief. The parties acknowledge that it will be difficult to determine resulting damages if any provisions of this Permit are violated. Contractor agrees that, in addition to other remedies Concessionaire may have, Concessionaire shall be entitled to temporary and permanent injunctive relief without the necessity of posting bond, or proving actual damages should Contractor violate any provision of this Permit.

14. Notices. All notices and other correspondence concerning the parties and provisions of this Permit shall be in writing and deemed conclusively given if delivered personally, or mailed in the U.S. mail first class, postage prepaid, or by registered or certified mail to each party at the address listed below their signatures. Notice of change of address shall be given in the same manner. Notice shall be effective when received.

15. Amendment. This Permit may be modified or amended only by written agreement between Concessionaire and Contractor.

16. Survival. The provisions of paragraphs 6, 7, 8, 9, 10, and 12, and any other provision, which by its terms is to apply after the termination of this Permit, shall survive the termination of this Permit. All of the covenants, representations and warranties of the Parties contained in this Permit shall survive the Closing hereunder (unless a Party had actual knowledge of any misrepresentation or breach of warranty or covenant at the time of Closing) and continue in full force and effect for one (1) year thereafter

17. Successors. This Permit shall be binding upon and shall inure to the benefit of the successors and assigns of the parties to the extent this Permit is assignable. Concessionaire may freely assign its rights and obligations under this Permit. Contractor may not assign this Permit or any rights thereunder without the prior written permission of the Concessionaire. Service-days are intended solely for Contractor and may not be assigned or subcontracted out to any third parties. A violation of this provision is an event of Default and will result in the consequences set forth in paragraph 10 above.

18. Integration. This Permit contains the entire agreement of the parties, and supersedes any prior written or oral agreement or negotiations between them pertaining to this Permit.

19. Governing Law. This Permit shall be governed by and interpreted under the laws of the State of Colorado, without regard to its conflict of laws principles. In the event of a dispute arising out of or relating to this

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Permit, the parties hereby irrevocably consent to jurisdiction of the appropriate Colorado state or federal court. If any legal action is necessary to enforce the terms and provisions of this Permit, the prevailing party shall be entitled to recover all costs of suit or arbitration and reasonable attorney fees as determined by the adjudicating authority.

20. Headings. The various paragraph headings are inserted for reference convenience only, and shall not affect the meaning or interpretation of this Permit or any paragraph.

21. Counterparts. This Permit may be executed in one or more counterparts which, taken together, shall constitute one Permit. Contractor acknowledges and represents that: (a) Contractor has fully and carefully read and considered this Permit prior to execution; (b) Contractor understands each of its terms; (c) Contractor has had the opportunity to make whatever investigation or inquiry it deems necessary or appropriate in connection with the subject matter of this Permit; (d) Contractor has consulted with or has had the opportunity to consult with an attorney regarding the legal effect and meaning of this Permit and all terms and conditions hereof; and (e) Contractor is fully aware of the contents of this Permit and its legal effects.

The parties hereto have executed this Permit, which shall be effective as of the date above first written.

SAN JUAN MOUNTAIN GUIDES, LLC:

Contractor:

By: _____

Clint Cook, Manager
P.O. Box 1214, Ouray, CO 81427

(970) 325-4925

Address

Phone Number

