

2023 OURAY VIA FERRATA COMMERCIAL GUIDING AGREEMENT AND PERMIT

This GUIDING AGREEMENT AND PERMIT (the “Permit”) is made on _____ by and between Friends of the Ouray Via Ferrata, a Colorado 501c3 Non-Profit Company (herein after the “Concessionaire”), and _____ with its principal place of business at _____, applying as an independent contractor (“Contractor”).

RECITALS

WHEREAS, the Concessionaire has been selected by the City of Ouray (the “City”) and awarded the concession to provide Via Ferrata guiding and instruction services for the public within the Uncompahgre Gorge (the “Park”) directly and through appropriate independent contractors;

WHEREAS, the Contractor is engaged in the business of providing professional guiding in via ferrata, hiking, and general mountain travel skills to the public;

WHEREAS, the Contractor has applied to the Concessionaire as an independent contractor for permission to provide via ferrata 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 _____ user days in which to conduct commercial guiding activities in the Park during the 2023 Via Ferrata climbing season. The 2023 via ferrata “season” is defined as approximately Friday May 5, 2023 to October 31, 2023. Exact opening and closing dates will be determined by the Friends of the Ouray Via Ferrata Board/Management (FOVF) and communicated accordingly. For the purposes of this contract, 1 user day is equal to 1 person with 1 guide on the route. 4 users with 1 guide would equal 4 user days, 3 users with 1 guide would equal 3 user days, so on and so forth. 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 estimated use fee payment:

- (a) Use Fee Payment. Calculated according to your estimated use indicated in your online document submission. Fees for Commercial Operations on the Ouray Via Ferrata will be \$10 per person or a **\$350 minimum fee, whichever is greater**. Fifty percent (50%) of the Contractor’s use fee payment shall be paid to Concessionaire by May 15, 2023 or prior to conducting any activities, whichever comes first. Any difference between estimated and actual fees shall be paid by November 15, 2023.
- (b) 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 and estimated variable fees are paid, whichever occurs later, and terminate on October 31, 2023.

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 City 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 \$1,000,000 per occurrence covering both bodily injury and property damage and \$2,000,000 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 City and shall provide that the Concessionaire and the City of Ouray are named as additional insured entities. The policy shall provide that the insurance company shall have no recourse against the Concessionaire, the City of Ouray, FOVF Board Members for payment of any premium or assessment.

(c) **Other Insurance.** The Contractor shall also obtain the following coverage 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.

5. Contractor's Representations and Warranties:

The Contractor makes the following representations and warranties:

(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. All Employees will be certified at the "Wilderness 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 Via Ferrata Rules and Regulations ("Park Rules") as established by the Friends of the Ouray Via Ferrata Inc. and the City of Ouray, and agrees that Contractor and its Employees shall abide by all of the Park Rules. Contractor and its employees agree to sign an agreement to abide by all of the Park Rules on a form to be provided by the concessionaire. <http://ourayviaferrata.org/rules/>

- (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 via ferrata 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 1) completed an American Mountain Guides Association (AMGA) Rock Guide Course, or 2) possess an AMGA Single Pitch Instructor (SPI) Certification. The Concessionaire, in its sole discretion, and in specific circumstances, may require additional information on Contractor employees.
- (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, City of Ouray, and Friends of the Ouray Via Ferrata 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 Via Ferrata 2023 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 understands that route closures due to weather, route conditions, or other such circumstances which directly effect the usability and/or safety of the Ouray Via Ferrata route(s) are the purview of the FOVF Head Ranger. All such closure decisions will be communicated to contractor in a timely manner via email or other electronic means and are final.

6. Indemnity and Assumption of Risk.

The Contractor shall save, hold harmless, defend, and indemnify the Concessionaire and the City 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 Perm

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 City, or the Concessionaire as the City'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.

7. 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 Uncompahgre Gorge.

(f) The Contractor shall not re-assign, subcontract, resell, give marketing rights, or in any other way transfer the use of their User Days to any other business or individual. Only the Contractor has the right to use "Ouray Via Ferrata" in its promotional materials. Other businesses or individuals may not advertise and book trips for the Contractor using "Ouray Via Ferrata" in its marketing materials.

(g) Contractor and contractor guides shall not wear clothing advertising any guide service company or guide services other than the contractor's company while working in the Uncompahgre Gorge and leading trips on the Ouray Via Ferrata.

8. 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.

9. 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.

10. Solicitation

Contractor shall not during the term of this Permit and for a TWO (2) year period following the 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. Contractor shall not during the term of this Permit and for a THREE (3) year period following the 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, elected official, appointed official, or council member of the City of Ouray or board member of the Friends of Ouray Via Ferrata to either change or terminate the concessionaire's historic, contractual, or other agreements and/or working relationships with Concessionaire.

11. 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.

12. 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.

13. 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.

14. Amendment.

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

15. 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

16. 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.

17. 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.

18. 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 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.

19. 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.

20. 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.

Friends of the Ouray Via Ferrata:

Concessionaire:

Board Member
Friends of the Ouray Via Ferrata
PO Box 1214
Ouray, CO 81427
(970) 946-2089

Contractor:

Signature

Company Name

Printed Name, Position

Mailing Address

City, State, Zip

Phone Number