



2019 / 2020 BRIDAL VEIL ICE CLIMBING COMMERCIAL GUIDING SERVICE RENEWAL FORM

THIS SHORT FORM IS FOR RETURNING ICE CLIMBING GUIDES AND ORGANIZATIONS WHO HAVE ALREADY BEEN PREVIOUSLY PERMITTED BY SAN MIGUEL COUNTY AND HAVE PREVIOUS PAPERWORK ON FILE.

Name of Applicant: _____

Organization or Company Name: _____

Current Address: _____

Telephone: _____

Email: _____

Website (if applicable): _____

Legal Entity Info:
(i.e. LLC, S-corp., sole proprietor) _____

Applicant's Tax ID. _____

REQUIREMENTS:

- 1. The Applicant must produce a comprehensive general liability insurance policy naming the County of San Miguel BOCC, Trust for Public Land, Idarado Mining Company, and Telluride Mountain Club as additionally insured parties. An additional written endorsement naming San Miguel County BOCC is required, in addition to the insurance certificate.** See Appendix 1 for addresses of named insured.
- 2. Provide a current list of all qualified ice climbing guides in your organization that might guide at Bridal Veil Falls.** All guides must have current first aid certifications and at least one guide providing services in the Bridal Veil Falls Climbing area must have a First Responder or higher level of certification. If the named guide is already on file (and current) in our office, there is no need to provide additional information. If the named guide is new or not named previously, please provide copy of guide's certifications.
- 3. Complete and sign the BVFICA Commercial Guiding Agreement and Permit (attached).**
- 4. Pay the \$150.00 permit fee to San Miguel County.**
- 5. Attach a copy of your organization's Release of Liability Form.** This participant Release of Liability form (waiver) must reasonably indemnify San Miguel County, the Trust for Public Land, the Idarado Mining Company, and the Telluride Mountain Club from any and all liability as a result of accident, property damage or death. It is not our intent to have your guide company re-write your form if there is reasonable reference to owners, agents, etc. in your waiver. Please keep your signed release of liability forms at your office and do not send to San Miguel County. Your client's signed release of liability forms must be available upon request.

2019 - 2020 BRIDAL VEIL FALLS ICE CLIMBING AREA (BVFICA) COMMERCIAL GUIDING AGREEMENT AND ICE CLIMBING PERMIT

This GUIDING AGREEMENT AND PERMIT (the permit) is made on _____ by and between San Miguel County (SMCO), a Colorado county, acting by and through the Parks and Open Space Department 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 Contractor is engaged in the business of providing professional “guiding” instruction in ice climbing, mountaineering, and mountain travel skills to the public;

WHEREAS, the Contractor has applied to SMCO as an independent contractor for permission to provide ice climbing instruction and guide services to the public in the BVFICA 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 hereby agree as follows:

1. **Services.** Contractor is hereby authorized and permitted, on a non-exclusive basis to conduct commercial guiding activities in the BVFICA during the current ice climbing season. SMCO reserves the right to extend the commercial guiding permit to other independent guiding contractors. The ice climbing “season” is defined as approximately December 15th to March 31st each winter. The Contractor 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 SMCO the following fees:
 - (a) **Fixed Fee. The Contractor shall pay San Miguel County a fixed fee of \$150.00**, payable on the date of this contract or prior to conducting any guiding activities, whichever comes first.
 - (b) **This Permit shall not be valid until all fees due and owing SMCO pursuant to this paragraph 2 are paid by Contractor, SMCO has received Contractor’s Certificate of Insurance and additional endorsement pursuant to paragraph 4, and SMCO has received a copy of Contractor’s release of liability form pursuant to paragraph 6 (f).**
3. **Term.** This Permit shall commence on the date that all conditions stated above in 2(a) and 2(b) are received by SMCO **and will terminate on March 31, 2020.**
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 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 County 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 County thirty (30) days advance written notice of any material change in the Contractor’s insurance program hereunder. The County 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.

(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 \$600,000 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 or the permit shall be suspended. 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 County or Additional Insureds.** All of Contractor's liability policies shall specify that the insurance company shall have no right of subrogation against the County and shall provide that the County, the Trust for Public Land, Idarado Mining Company, and the Telluride Mountain Club are named as additional insureds. The policy shall provide that the insurance company shall have no recourse against the County, the Trust for Public Land, Idarado Mining Company or the Telluride Mountain Club for payment of any premium 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 BVFICA, if any.

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

6. **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 BVFICA (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 BVFICA 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 BVFICA.

(b) Contractor acknowledges that it has received and read the BVFICA Rules and Regulations as established by the County and agrees that Contractor and its Employees shall abide by all of the BVFICA Rules.

(c) Contractor agrees that it, and not the County, 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 at least three 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 San Miguel County, Trust for Public Land, Idarado Mining Company and Telluride Mountain Club as released parties. **Contractor shall submit a copy of its release to County prior to guiding under this Permit.** Please keep your signed release of liability forms at your office and do not send to San Miguel County. Release of liability forms must be available upon request.

(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 County 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) in value, (2) personal injury requiring medical attention or (3) death.

(k) The Contractor's BVFICA 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 BVFICA Rules located online at www.sanmiguelcounty.org and understands all provisions of the Rules, and agrees to operate in compliance with the Rules and this Permit. Climbing rules can be sent via regular mail or email upon request.

7. **Indemnity and Assumption of Risk.** The Contractor shall save, hold harmless, defend and indemnify the County and their subcontractors, representatives, employees, and agents for all losses, damages or judgments, and expenses, including attorney 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, 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 County and the Contractor.
- (d) The County may at any time review the conduct of Contractor and/or any of its Employees, and if such conduct is considered by the County in its sole discretion to be inconsistent with the proper administration of the BVFICA and/or the enjoyment, safety, and protection of the BVFICA's visitors, the County may, in its sole discretion, take any such action as are necessary to correct the situation including but not limited to revoking this Permit. Nothing in this paragraph is intended to nor shall create any obligation or duty on the County to inspect Contractor's operations in the BVFICA. Contractor understands, intends, and acknowledges that County is relying on Contractor's representations regarding Contractor's fitness and ability to provide guiding services in the BVFICA that are set forth in this Permit and the Application. The County does not warrant the safety of the equipment used by the Contractor and assumes no responsibility for the Contractor's or Contractor's Employee's actions pursuant to this permit.
- (e) The Contractor's base of operations shall be outside the boundaries of BVFICA.

9. **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 County has actual knowledge of the Default. In the event of any Default, Contractor's right to operate in the BVFICA is rescinded and offer of any additional services during any Default shall be deemed illegal guiding and treated accordingly. If Contractor notifies County 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 the County.

10. **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 SMCO. 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 SMCO. SMCO 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 SMCO for the benefit of the counties' employees, including any worker's compensation benefits, nor shall Contractor benefit from any insurance carried by SMCO.

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 the Permit are violated. Contractor agrees that, in addition to other remedies the County may have, SMCO 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 US 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 County and Contractor.
15. **Survival.** The provisions of paragraph 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. SMCO 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 County.
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 full aware of the contents of this Permit and its legal effects.

The parties hereto have executed this Bridal Veil Falls Ice Climbing Agreement and Permit, which shall be effective as of the date above first written provided the conditions in 2(b) have been received by San Miguel County officials.

**San Miguel County 2019 / 2020 Winter Season
By and through the County Parks and Open Space Department**

By: _____ Date: _____

Rich Hamilton, Parks Supervisor
POB 1170, Telluride, CO 81435
Cell Phone (970) 729-1829
Fax (970) 728-3718
richh@sanmiguelcountyco.gov

Name of Organization: _____

Contractor's Name (please print): _____

Contractor's Signature: _____

Address: _____

Day phone number: _____

Email: _____

Today's Date: _____

APPENDIX 1 – BRIDAL VEIL FALLS ICE CLIMBING PERMIT

Each of the entities listed below must be named as an additional insured/certificate holder on the contractor's liability insurance.

San Miguel County
Board of County Commissioners (BOCC)
PO Box 1170
Telluride, CO 81435
Fax (970) 728-3718

Idarado Mining Company
Jacqui Beckett
6363 South Fiddler's Green Circle
Suite 800
Greenwood Village, CO 80111
Fax: (303) 837-5810

Trust for Public Land
Eric Love
111 South Grand Ave, Suite 203
Bozeman, MT 59715
Fax (406) 522-7453

Telluride Mountain Club
Tor Anderson
PO Box 2128
Telluride, CO 81435
No Fax
telluridemountainclub@gmail.com