

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

THIS FACILITIES USE AGREEMENT (“Agreement”) made and entered into this _____ day of _____, 2020 by and between **WAKE COUNTY**, a body politic and corporate (hereinafter referred to as “Wake County”) and the **NORTH CAROLINA WILDLIFE RESOURCES COMMISSION**, an agency of the State of North Carolina (hereinafter referred to as “the Commission”), together referred to herein as “the Parties;”

RECITALS:

WHEREAS, the Commission operates several public shooting ranges throughout North Carolina; and

WHEREAS, Wake County is the owner of the Wake County Firearms Education & Training Center, an indoor firearm shooting range, located at 3921 Old Holly Springs Apex Road, Apex, North Carolina 27539 (referred to herein as “the Facility”); and

WHEREAS, the Wake County Sheriff’s Office previously contracted with a private entity, Range Safety Management, LLC, to operate public use of the Facility during weekend and weeknight hours; and

WHEREAS, on January 15, 2020, the contract with Range Safety Management, LLC was terminated, and public use of the Facility was suspended; and

WHEREAS, the Commission has expressed a desire to manage and operate public use of the Facility and resume training programs previously offered to the public; and

WHEREAS, Wake County desires for the Facility to be utilized for law enforcement training and the public while Wake County evaluates long term options for management and operation of the Facility; and

WHEREAS, operating shooting range facilities is consistent with the Commission’s mission to provide access to education and shooting opportunities in a safe shooting environment throughout the State of North Carolina; and

WHEREAS, the Commission has a goal of providing shooting sport opportunities within a fifty (50) mile radius of each North Carolina resident and currently is not associated with a range in the Raleigh metropolitan area; and

WHEREAS, the Commission has the expertise and personnel to independently manage and operate public utilization of the Facility; and

WHEREAS, dual use of the Facility by law enforcement officers and the Commission is compatible with the historic purpose for which the Facility was constructed.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable considerations, the parties hereto contract and agree as follows:

SECTION 1. PURPOSE AND INTENDED USE

The purpose of this Agreement is to authorize the Commission to use the Facility for an indoor firearm range to be open to the public for the term and designated time periods stated herein. The Commission is to commence public hours on March 15, 2020.

SECTION 2. TERM AND PAYMENT.

The term of this Agreement shall commence on February 18, 2020 and shall terminate on February 18, 2021, unless otherwise extended or terminated as specifically provided herein.

For the stated term, Wake County will authorize the Commission's exclusive use of the Facility, during the dates and times stated herein, without charge. In its sole discretion, the Commission may charge reasonable fees to the public to offset staffing and operational costs.

SECTION 3. FACILITY SPACE

Use of the Facility by the Commission shall include the interior portion of the Facility denoted as "Facility Space" and "Common Space" as set forth and shown on the floor plan attached hereto as *Exhibit A*, and specifically incorporated by reference, and the exterior parking lot.

Use by the Commission shall be limited to scheduled dates and times set forth in Section 5, unless otherwise approved by Wake County. The Commission acknowledges that the Facility will be used for law enforcement training and other purposes authorized by Wake County when the Commission is not authorized to use the Facility. Notwithstanding the above, the Parties recognize that Commission staff may request additional access to the Facility outside the programmed dates and times set forth herein to prepare for the commencement of public use. Said access may be granted in the discretion of Wake County, provided it does not interfere with other scheduled uses of the Facility.

SECTION 4. RESPONSIBILITIES OF THE PARTIES

By execution of this Agreement, the Parties agree to the following:

A. The COMMISSION agrees, at its sole expense, to:

1. Manage and operate the Facility during public use hours in a manner consistent with the policies and procedures set forth in the "Wake County Firearms Education and Training Center Short-Term Operations Plan," (the Operation Plan), attached hereto as *Exhibit B* and specifically incorporated by reference.
2. Provide notice to Wake County General Services Administration ("GSA") of all known maintenance or repairs needed at the Facility as soon as practicable by calling the GSA Request Center at (919) 856-2777.

3. Apply for grant funds through the United States Fish & Wildlife Services' Wildlife and Sports Restoration Fund in an effort to cover 75% of the cost of staffing of the Commission's use of the Facility.
4. Provide cost accounting information for maintenance, environmental contracts, and utility bills to the United States Fish and Wildlife Service for purposes of grant funding.
5. The Commission shall be responsible for furnishing and supplying all equipment, apparatus, and supplies associated with its use and operation of the Facility that are not otherwise provided for herein.
6. The Commission shall provide, on a monthly basis, usage data and any other information requested by Wake County deemed relevant to team operations and management of the Facility.

B. WAKE COUNTY agrees, at its sole expense, to:

1. Provide to the Commission, on a quarterly basis, utility bills, environmental contracts, maintenance costs and any other documentation necessary for the application for grant funding.
2. Provide routine maintenance at the Facility including mowing, trash and litter pickup at all times throughout the term of this Agreement
3. Provide all utilities (electric, gas, water phone and internet services) and a video surveillance system at the Facility at all times, including hours in which this Agreement authorizes the Commission's use of the Facility. Video surveillance footage from the Facility shall be solely owned by Wake County and shall not be released, reproduced, or accessed without permission of Wake County, unless otherwise required by law.
4. Provide janitorial services and restroom supplies at the Facility seven (7) days a week, including hours in which this Agreement authorizes the Commission's use of the Facility.
5. Provide all environmental work including lead reclamation, routine cleaning and monitoring required by all applicable state and federal laws.
6. As soon as practicable upon receiving notice from the Commission or any other individual, perform any maintenance or repairs needed at the Facility.
7. Hire a consultant to evaluate and provide recommendations on future use of the Facility and share said recommendations with the Commission.
8. Establish a Core Facilities Committee comprised of representatives from the Commission, the Wake County Sheriff's Office and Wake County for the purpose of providing feedback and recommendations on operations, utilization and future plans for the Facility.

SECTION 5. STIPULATIONS AND LIMITATION ON USE

The parties agree to the following conditions and limitations of use:

1. Use of the Facility by the Commission shall be limited to indoor recreational shooting and firearm educational programs.

2. The Commission shall comply with the “Standard Operating Procedures for NCWRC Indoor Shooting Ranges” attached hereto as *Exhibit C*, and specifically incorporated by reference.
3. The Commission is not authorized to use the exterior portions of the Facility for training purposes. Shooting or target practice outside the Facility is expressly prohibited.
4. The Commission shall have exclusive access and operational hours at the Facility every Sunday from 8:30 a.m. to 7:30 p.m., every Monday from 4:30 p.m. to 9:30 p.m., every Friday from 4:30 p.m. to 9:30 p.m. and every Saturday from 8:30 a.m. to 7:30 p.m.
5. The Commission shall manage and oversee all public use hours at the Facility. At the discretion of the Commission, the Facility shall regularly be open to the public every Sunday from 9 a.m. to 7 p.m., every Monday from 5 p.m. to 9 p.m., every Friday from 5 p.m. to 9 p.m. and every Saturday from 9 a.m. to 7 p.m.
6. Wake County shall not be expected or required to provide any additional services, supplies or personnel except as specifically agreed by the parties in writing.
7. The users of the facility shall remove all cartridge cases (brass) from the range after each daily use and that the cartridge cases be deposit in the designated recycling bins.
8. The users of the facility shall leave the Facility in good working order after each use.
9. The Commission shall have all ownership rights to all information and data it collects during public use hours.

SECTION 6. CONDITION OF FACILITY

The Commission may not make any permanent modification, addition or alteration to Facility for the purpose of use under this Agreement, unless specifically authorized by the Parties in writing. In the event that any intentional or accidental modification, addition, alteration, or destruction of the Facility occurs during the scope of this Agreement, due to the Commission’s acts or omissions, the Commission shall restore the Facility to a state as agreed by paying to the County the actual cost of restoring the Facility to its original condition.

The Commission shall walk through the facility each time it takes possession of the building and each time it releases possession of the building to another user. The Commission shall document any damage to the Facility and any maintenance needed.

SECTION 7. RELATIONSHIP OF PARTIES

Nothing in this Agreement shall be interpreted to make the Parties hereto partners, joint ventures, or agents of each other in any manner or form whatsoever. The Parties will secure, at its own expense, all personnel required in performing activities during its use of the Facility as provided herein. All personnel shall be fully qualified and shall be authorized or permitted under state and local law to perform such duties or services.

SECTION 8. CANCELLATION

This Agreement or any amendments thereof may be canceled by either Party for any reason upon sixty (60) days' written notice to the other Party.

Notwithstanding the above, Wake County may suspend use of the Facility at any time for the purpose of conducting required maintenance, lead abatement or addressing any other safety concerns necessitating immediate attention. When suspension is required under this provision, Wake County shall provide as much advance notice to the Commission as practicable.

If either Party believes that the other Party is not in compliance with the terms of this Agreement, the complaining Party shall notify the Party of the compliance issue and allow them to come into compliance. If the Party does not come into compliance, the complaining Party may cancel this Agreement with thirty (30) day's written notice.

In the event of cancellation under this section by either Party, the Parties shall not be liable to the other Party for costs, expenses, or damages of any kind arising out of such cancellation.

SECTION 9: ADVERTISING

The Parties agree to secure approval of the other Party prior to using the other Party's name or logo on any advertisement regarding this Agreement.

SECTION 10. INSURANCE REQUIREMENTS

The Commission is an agency of North Carolina whose liability is determined by the North Carolina Tort Claims Act, which is found in the North Carolina General Statutes.

The Commission acknowledges that Wake County does not provide insurance for the Commission, Commission employees, Commission's invitees, or members of the public using the Facility during public use hours. The Commission shall be responsible for maintaining any required insurance while participating in activities under this Agreement.

SECTION 11. LIABILITY

Participation of each Party to this Agreement in activities conducted pursuant to this Agreement is not intended to place either party or its representatives in a position of incurring tort liability arising from an action of the other party. Each party is responsible for injury or property damage to third parties caused by negligence of its own employees acting within the scope of their employment/official duty subject to limitations as may be prescribed by applicable laws.

The Commission shall repair or compensate Wake County for damage to the Facility arising from the use of the Facility by the Commission or anyone on or at the Facility in connection with the Commission's use of the Facility, beyond that expected from its intended use as specified herein and with the exception of ordinary wear and tear.

SECTION 12. 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 the principle of sovereign immunity that would otherwise be available to the Parties under applicable law.

SECTION 13. NON-ASSIGNMENT

Neither party shall assign this Agreement, including any rights arising hereunder, to any other party without the prior written agreement of both Parties.

SECTION 14. GOVERNING LAW

This Agreement shall be governed by the laws of the State of North Carolina. Any action to enforce the terms of this Agreement shall be brought exclusively in Wake County, North Carolina.

SECTION 15. NO THIRD-PARTY BENEFICIARIES

This Agreement is not intended for the benefit of any third party. The rights and obligations contained herein belong exclusively to the Parties and shall not confer any rights or remedies upon any person or entity other than the Parties hereto.

SECTION 16. ENTIRE AGREEMENT

The terms and provisions herein contained and any documents specifically incorporated by reference constitute the entire agreement by and between the Parties and shall supersede all previous communications, representation or agreement, either oral or written between the parties hereto with respect to the subject matter hereof. No oral representations, statements, or inducements apart from the foregoing written Agreement have been made.

SECTION 17. MODIFICATION/RENEWAL

Any renewals or modifications of this Agreement must be in writing, signed by both parties, and executed with the same formality as the foregoing instrument.

SECTION 18. SEVERABILITY

If any provision of this Agreement shall be determined to be unenforceable by a court of competent jurisdiction, such determination will not affect any other provision of this Agreement.

SECTION 19. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original. A facsimile signature shall be accepted as an original signature for the purpose of execution or amendment of this Agreement.

SECTION 20. EFFECTIVE DATE OF AGREEMENT

The effective date of this Agreement shall be the date upon which the authorized agent of Wake County executes this agreement.

SECTION 21. E-VERIFICATION

To ensure compliance with E-Verify requirements of the General Statutes of North Carolina, all contractors, including any subcontractors employed by the contract(s), by submitting a bid, proposal or any other response, or by providing any material, equipment, supplies, services, etc., attest and affirm that they are aware and in full compliance with Article 2 of Chapter 64, (NCGS 64-26(a)) relating to the E-Verify requirements.

SECTION 22. NONDISCRIMINATION

In consideration of the signing of this Agreement, the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this License Agreement, no matter how remote.

SECTION 23: COMPLIANCE WITH LAWS

The Parties shall comply with all laws, ordinances, codes, rules, regulations and licensing requirements that are applicable to the conduct of the business and performance in accordance with this Agreement, including those of Federal, State and local agencies having jurisdiction and/or authority.

SECTION 24. ACCESS TO PERSONS AND RECORDS

During and after the term hereof, the State Auditor and any of the Commission's internal auditors shall have access to persons and records related to this Agreement to verify accounts and data affecting fees or performance under the Agreement.

IN TESTIMONY WHEREOF, NORTH CAROLINA WILDLIFE RESOURCES COMMISSION and WAKE COUNTY, through their authorized officers and by their own hands have hereunto set forth their hands and seals of the day and year first above written.

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION

By: _____

Date: _____

WAKE COUNTY

By: _____
Kelli Braunbach, Director
General Services Administration

Approved as to form:

County Attorney

Date: _____

By: _____
David Ellis
County Manager

Date: _____

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Director or designee

EXHIBIT A
“FACILITY FLOOR PLAN”

DRAFT