

Memorandum of Agreement

This Memorandum of Agreement (the “Agreement”) is entered into as of the ___ day of [•], between Project Healing Waters Fly Fishing, Incorporated, a Maryland non-stock corporation (“PHWFFI”), and [•] Chapter of Trout Unlimited, a [•] (the “Chapter”).¹

RECITALS

WHEREAS: The parties agree that it is to their mutual benefit and that of the wounded and injured active service military personnel and veterans to cooperate in delivering the best possible fly fishing experiences consistent with the physical condition of the Participants as defined below and the resources of the parties;

WHEREAS: PHWFFI is dedicated to the physical and emotional rehabilitation of disabled active military service personnel and veterans through fly fishing and fly tying education and outings;

WHEREAS: Trout Unlimited is dedicated to the conservation, protection, and restoration of trout and salmon fisheries, and Trout Unlimited members throughout the country help further that purpose through volunteer activities with their local chapter. Many Trout Unlimited chapters wish to conduct PHWFFI programs in order to further that mission and to provide disabled active military service personnel and veterans with the beneficial experiences of fly fishing and fly tying education and outings;

WHEREAS: the Chapter desires to develop, organize and conduct a PHWFFI program the purpose of which is to enhance the physical and emotional rehabilitation of the active service and veteran patients (the “Participants”) through fly fishing, fly tying and fly fishing outings and other activities consistent with this purpose (the “Program”);

WHEREAS: in order to induce (a) the Participants to participate in the Program and (b) individuals associated with the Chapter to volunteer or donate property or services in connection with the Program (the “Volunteers”), the parties intend that the Program be conducted under the direction of the applicable Department of Veterans Affairs Medical Center, the Department of Defense, or a military hospital, as applicable (collectively, “Government Sponsors”) and under all applicable laws, rules, regulations, handbooks, guidelines or similar requirements, polices or procedures, including any of the forgoing set forth by the Veterans Health Administration, Department of Veterans Affairs Voluntary Service or any Government Sponsor (the “Applicable Laws”);

WHEREAS; the parties intend that by conducting the Program under the direction and supervision of the applicable Government Sponsor and in accordance with the Applicable Laws that the Volunteers will be regarded as within the purview of the Federal Tort Claims Act (the “FTCA”) or any other applicable laws, rules, regulations or guidelines providing protections to

¹ A reader should be familiar with the PHWFFI Program Guide prior to reading this Agreement. The Program Guide is important in setting forth the historical relationship between the parties that has worked so well over the last several years.

volunteers while operating within the scope of their assigned Program duties (the “Volunteer Protection Laws”);

WHEREAS: the Chapter and PHWFFI acknowledge that Trout Unlimited, a Michigan nonprofit corporation (“TU National”), is not a party to this Agreement and that any support, financial or otherwise, provided by TU National to the Program, the Chapter, PHWFFI, the Participants or the Volunteers does not make TU National a party to this Agreement;

WHEREAS: the Chapter acknowledges that the role of PHWFFI is to help launch the Program and to help ensure the Program’s continued success but not to conduct the operations of the Program; and

WHEREAS: the parties desire to set forth the terms under which the Chapter will conduct the Program.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

AGREEMENT

A. Purpose. Each party agrees and recognizes that PHWFFI’s focus is the physical and emotional healing that fly fishing and fly tying promote. The parties are committed to providing services to Participants that support this mission as it relates to wounded or disabled active service members and veterans.

B. Program Area. The Chapter will conduct the Program within [•] (the “Local Area”). In addition to the responsibilities of the Chapter set forth elsewhere in this Agreement, the Chapter shall (i) to the extent necessary to conduct the Program, coordinate with other fly fishing organizations or volunteers located within the Local Area and (ii) identify the Program Lead, as defined below, as the primary point of contact for the applicable Governmental Sponsor in the Local Area (the “Local Government Sponsor”) that will supervise and provide Participants for the Program.

C. Coordination with the Local Governmental Sponsor. All Program services must be approved by and coordinated with the appropriate officials of the Local Government Sponsor and every consideration for the safety and well-being of the Participants must be given highest priority. PHWFFI and the Chapter understand and agree that that the Local Government Sponsor shall maintain final decision-making authority in respect of the health and safety of participants, providing an appropriate level of health care for each participant, providing adequate medical personal for the Program given the needs of all participants and making decisions about the appropriate level of activity for each participant (in all cases whether in the sole discretion of the Local Governmental Sponsor or as required by applicable law). The Chapter agrees:

1. To coordinate with designated representatives of the Local Government Sponsor and to follow the Local Government Sponsor’s directions with respect to compliance with all Applicable Laws;

2. If the Local Government Sponsor determines that any Participant's physical or mental state make it advisable that trained medical personnel, approved and/or supplied by the Staff, as defined below, should accompany the Participant on any Program activity, the Chapter, in coordination with the Local Government Sponsor, shall make sure that the Participant is accompanied by appropriate medical personnel. The Chapter and PHWFFI agree that the Chapter should decline to allow that participant to engage in program activities if the needed medical personnel are not available, provided, that nothing in this Agreement shall require the Chapter or any other person to violate any law, including the Health Insurance Portability and Accountability Act. The ability of any participant to engage in program activities, the nature of their activities, and the need for the presence of medical personnel shall all be matters within the judgment of the Staff, and the Chapter shall work with the Staff to ensure that their decisions are carried out.

3. That, in coordination with the Local Government Sponsor, the Chapter will use reasonable efforts to ensure that all professional outfitters or guides accompanying Participants on fishing trips be licensed and insured, in accordance with federal, state, and local regulations to conduct business within their respective areas.

4. That the Chapter will use reasonable efforts to ensure that any personal watercraft used on a fishing trip and its operators be properly licensed by the appropriate government agency (agencies), if required by law, and insured to cover accidents, injuries to Participants and damage to Participants' property and equipment. Watercraft that are not covered by appropriate liability insurance should not be used for Program activities.

D. Program Operations. The Program shall be managed by the officers and board of directors of the Chapter (or persons of the Chapter performing similar functions, collectively referred to as the "Operating Officers") with the advice and assistance of a representative designated by PHWFFI (the "PHWFFI Representative") and designated therapeutic staff of the Local Government Sponsor (the "Staff"). Without limiting any obligations of the Chapter or Program Lead set forth elsewhere in this Agreement:

1. Operating Officers shall carry out the goals and objectives of the Program within the limitations set by the Staff, PHWFFI policies, and applicable laws.

2. The Operating Officers shall appoint an experienced fly fisher (the "Program Lead") to supervise and coordinate the program with the Staff.

3. The Program Lead's duties shall without limitation include:

(a) Recruiting instructors to teach fly-casting, fishing skills, and fly tying techniques or other skills consistent therewith that take into account the Participants' disabilities and needs;

(b) Recruiting sufficiently skilled fly fishers to act as (one-on-one or an appropriate ratio) of guides and mentors for the Participants on fishing outings;

(c) Coordinating all outings with the Staff to provide transportation and trained medical personnel as deemed necessary by the Staff.

(d) Maintaining and being responsible for all fly fishing and tying equipment and materials whether received from PHWFFI or third party donors;

(e) Providing to the PHWFFI Representative a quarterly program status report in a format specified by PHWFFI (the “Periodic Reports”). The Chapter may provide the Periodic Reports at such other times as the Chapter and the PHWFFI Representative agree; and

(f) Respond to a budget call from the PHWFFI National Organization and present a budget request to the PHWFFI National Organization. PHWFFI will thereafter establish the budget for the Program.

E. Role of PHWFFI. PHWFFI facilitates certain communications and programming functions between the Chapter, the Local Government Sponsor and the Participants. In addition to cooperating with the Program Lead, PHWFFI agrees:

1. To facilitate consultations with the Staff as reasonably requested by the Chapter;
2. To facilitate procurement of equipment and material necessary to the Program;
3. To consult with, and provide information to, the Chapter and Program lead as reasonably requested by the Chapter;

4. Upon receipt of the annual budget from PHWFFI National Organization referred to in Section D.3(f), the Chapter and the Program Lead have discretion as to how to allocate funds to the Program; and

5. To use its best efforts to assist with the resolution of any problems or issues brought to its attention by the Program Lead.

F. Insurance. The Chapter acknowledges that PHWFFI has no obligation to provide insurance coverage for the Chapter or any of its members, operations, programs or volunteers. The Chapter and PHWFFI agree that each organization shall have in place general liability insurance with policy limits of at least [one] million dollars. The Chapter shall use its best efforts to ensure that any other fly fishing organizations that participate in the program carry liability insurance with the same policy limits.

G. Use of PHWFFI Intellectual Property. The Chapter acknowledges PHWFFI’s exclusive rights in its name, logo, website and other products prepared by or on the behalf of PHWFFI (the “PHWFFI Marks”). In connection with the fundraising efforts described in this Agreement, the Chapter shall have a revocable non-exclusive limited license to use the PHWFFI Marks for the solely in connection with the Program (the “License”). Any use by the Chapter of the PHWFFI Marks must be consistent with the written guidelines for use of the PHWFFI Marks provided by PHWFFI to the Chapter. Adaptation or revision of the PHWFFI Marks is not permissible.

H. Program Fundraising. PHWFFI acknowledges that the Chapter, in furthering the Program, may raise money for the Program. All funds so raised must be dedicated by the Chapter to the Program. If the Chapter raises funds as contemplated by this Section G, the

President of the Chapter shall submit to the PHWFFI treasurer on a quarterly basis, or as otherwise agreed to by the Program Lead and PHWFFI Representative, a signed written report setting forth the amount so raised and a reasonably detailed account of the expenses paid for the Program as of the most recent practicable date.

1. The Chapter may, at its discretion, raise funds for National PHWFFI fly fishing activities not specifically related to the Program (for example, and without limitation, trips, rod building kits or boatbuilding kits, referred to collectively as the “National Programs”). Such funds, together with an accounting of all expenses paid in connection with the fundraising, should be made and transmitted to the PHWFFI treasurer within 30 business days after the fundraising is complete. The License and all restrictions described in this Section G shall apply in connection with any such fundraising for National Programs; provided, that the Chapter shall not, for PHWFFI fundraising purposes, contact or solicit, without the prior written consent of PHWFFI, nationally recognized manufacturers, importers, and suppliers of fly-fishing gear or tying materials and equipment. PHWFFI acknowledges that National TU and some of its chapters do contact and solicit many such nationally recognized manufacturers, importers, and suppliers in connection with fundraising and other business unrelated to PHWFFI, and that this agreement in no way affects the ability of the Chapter and TU National to continue these contacts.

2. The Chapter is covered by TU National’s 501(c) (3) tax exemption, and therefore may hold and spend funds raised for the PHWFFI program. If for any reason the Chapter and PHWFFI deem it necessary, funds may be deposited with the National PHWFFI treasurer, from whom it may be withdrawn by the Chapter for PHWFFI equipment or activities as needed.

I. Reporting. In addition to the Periodic Reports, the Chapter will report immediately to PHWFFI, or the PHWFFI Representative, the occurrence of any of the following events:

1. Accidents of any kind, including but not limited to those resulting in injury to or death of Participants;
2. Incidents involving law enforcement agencies;
3. Unfavorable publicity; and
4. Any other events, occurrences or incidents of any type as may be reasonably requested by PHWFFI, or the designated PHWFFI representative.

J. Documentation. The Chapter will use reasonable efforts, and PHWFFI will reasonably assist such efforts, to cause all persons physically present (including but not limited to Volunteers, Participants and other members of organizations involved in the Program) at all or part of the Program to execute:

1. A Participation Agreement and Release of Liability in the form provided by PHWFFI;

2. Such documents as are requested by the Local Government Sponsor, including, without limitation, documents that the Local Government Sponsor requires to ensure that status of such persons as unpaid volunteers engaging in an outing authorized by the Local Government Sponsor, such as registration in a Voluntary Service System (the “Volunteer Documents”). The Chapter will deliver the Volunteer Documents in whatever manner the Local Government Sponsor requires; provided, that if no manner of delivery is specified, the Chapter will deliver the Volunteer Documents by hand to a designated representative of the Local Government Sponsor prior to commencement of any activity under the Program; and

3. A Media Release in the form provided by PHWFFI; provided, that if a Participant declines to sign the Media Release, the Chapter will use best efforts to ensure that no photos or videos of such Participant are taken.

The failure of any Volunteer, Participant or other person to (a) execute any documents, including the Volunteer Documents, or (b) undertake any procedure to fall within the purview of the Volunteer Protection Laws while operating within the scope of his or her assigned Program duties, shall not be construed against that person for purposes of determining such person’s status under the Volunteer Protection Laws.

K. Termination. This Agreement shall terminate upon the earlier of (i) the conclusion of the Program, (ii) upon no fewer than 60 calendar days written notice provided by either party to the other, or (iii) dissolution of the Chapter as an active club. In the event of a termination of this Agreement, the Chapter shall cause all equipment, materials, and funds raised, collected, or otherwise procured for PHWFFI purposes to be accounted for and delivered promptly to PHWFFI or to a designated PHWFFI representative.

L. Severability. If any term or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, provisions and conditions of this Agreement shall nevertheless remain in full force and effect.

M. Assignment; No Third Party Beneficiaries. Neither party may assign or directly or indirectly (by operation of law or otherwise) its rights and obligations under this Agreement without the prior written consent of the other party. This Agreement is for the sole benefit of the parties hereto and their permitted successors and assignees and nothing herein expressed or implied will give or be construed to give any person or entity, other than the parties hereto and such permitted successors and assignees, any legal or equitable rights hereunder. This Agreement may not be amended, varied, suspended, charge, cancelled or terminated without the prior written consent of both parties hereto.

N. The Chapter acknowledges that it has been furnished with a copy of the PHWFFI Program Guide.

O. TU National has reviewed this Agreement. If the Chapter has any questions or concerns regarding this Agreement, it may contact Bryan Moore, TU National’s Vice President of Volunteer Operations at bmoore@tu.org.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement on the date first written above.

Chapter:

[·] Chapter of Trout Unlimited

By: _____

Name:

Title:

Phone Number:

E-Mail Address:

Program Name/Location:

Project Healing Waters Fly Fishing, Inc.:

By: _____

Name: Ed Nicholson

Title: Interim CEO

PROGRAM INFORMATION

Project Healing Waters Fly Fishing, Inc (PHWFF, Inc.) maintains information for each active Program that has a signed Memorandum of Agreement (MOA). Please complete this form and return it to the PHWFF National Office along with the MOA (and update the information whenever the POC information changes). The address for the PHWFF national office is PO Box 695, La Plata, MD 20646.

Program Location: (city and state)		Date
Program Details: Are Program activities held at one of the following? VA Medical Center, Vet Center, VA Outpatient Clinic, VA Nursing Home		
Military Base Warrior Transition Unit (WTU)/Military Hospital		_____
Other: _____		
Facility Name:		
Point of Contact:		
Title:		
Facility Address:		
Address Line 2:		
City:	Zip Code:	
Phone:	Ext.:	
Program Name		
Key Contact (PL)		_____ Male _____ Female
Mailing Address		
City	State:	Zip:
Phone (home)	Phone (cell)	
Phone (work)	Fax:	
E-mail, primary		
E-mail, alternate		
Club Affiliation	Trout Unlimited	Federation of Fly Fishers
		Independent
Club Name		
Total Membership		
Year Founded		Does club carry liability Insurance? yes no _____
	Does club offer this type of service to any other group?	_____ yes _____ no
	Is club a 501 (c)(3) nonprofit organization?	_____ yes _____ no