

**TOWN OF MAMMOTH LAKES SERVICES AGREEMENT FOR TRAILS
COORDINATION SERVICES BETWEEN THE TOWN OF MAMMOTH
LAKES AND THE MLTPA FOUNDATION FOR MAMMOTH LAKES
TRAIL SYSTEM AND RELATED SERVICES**

1. PARTIES AND DATE.

This Agreement is made and entered into effective the 1st day of July, 2023, by and between the Town of Mammoth Lakes, a municipal corporation, organized under the laws of the State of California, with its principal place of business at 437 Old Mammoth Rd., Suite 230, Mammoth Lakes, California, 93546 (“Town”) and the MLTPA Foundation, a California nonprofit public benefit corporation, with its principal place of business at P.O. Box 100 PMB #432 Mammoth Lakes CA, 93546 (“Contractor” or “MLTPA”). Town and Contractor are sometimes individually referred to herein as “Party” and collectively as “Parties.”

2. RECITALS.

2.1 Contractor.

Contractor was selected through a public “Request for Qualifications” process to provide certain services to the Town supporting work pertaining to the Mammoth Lakes Trail System, Office of Outdoor Recreation, and related recreational amenities, required by the Town on the terms and conditions set forth in this Agreement.

2.2 Sources of Funding.

Contractor acknowledges that all of the funds to be provided to Contractor by Town pursuant to this Agreement are public funds, and that some or all of such funds are restricted in the uses to which they may be put.

2.3 Mammoth Lakes Recreation and the Mammoth Lakes Trail System.

Town and Contractor acknowledge that the Town has a contractual relationship with Mammoth Lakes Recreation (“MLR”) which calls for MLR to provide and deliver a variety of services related to the Town, including, but not limited to work programs for the Mammoth Lakes Trail System. The Work Program for the Trail System is managed by the Town through the Town’s Office of Outdoor Recreation. Oversight of funding provided through Measures R and U (local tax measures) is provided by the MLR through the Mammoth Trails Committee (“MTC”) and Town Council. The Mammoth Lakes Trail System Work Program includes work that is completed through contracted services, including services performed by MLR and other contractors in addition to MLTPA.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to the Town all labor, materials, tools, equipment, vehicles, services, and incidental and customary work necessary to fully and adequately supply the services described in Exhibit “A” and Exhibit “B” attached hereto and incorporated herein by reference (“Services”), when specific Services are requested by Town. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable

local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall commence on July 1, 2023 and expire on June 30, 2026. Notwithstanding the foregoing, this Agreement may be terminated as provided herein. Scope of work shall be determined and mutually agreed to annually.

3.1.3 Extension. The term of this Agreement may be extended by the Parties in writing under the same terms and conditions for two additional one-year terms ending on June 30th of each year. Extensions must be agreed to in writing by the Parties, provided that nothing herein shall obligate Town or MLTPA to agree to any such extension.

3.2 Responsibilities of Contractor.

3.2.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods, and details of performing the Services subject to the requirements of this Agreement. Town retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any personnel performing Services under this Agreement on behalf of Contractor shall not be deemed employees of Town by reason of performing such Services and shall at all times be under Contractor's exclusive direction and control. Nothing herein shall be deemed to prohibit employees of Town from separately also being employees of Contractor, subject to Section 3.5.20 below. Neither Town, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents, except as set forth in this Agreement. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Town's Representative. The Town hereby designates the Town Manager, or their designee who can be assigned through written or electronic means, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("Town's Representative"). Town's Representative shall have the power to act on behalf of the Town but not the authority to change the total compensation due to Contractor under this Agreement. Contractor shall not accept direction or orders regarding the Services or this Agreement from any person representing the Town other than the Town Manager, Town Council, or the Town Manager's designee.

3.2.3 Contractor's Representative. Contractor hereby designates Contractor's Vice President, Silver Chesak, or his/her designee who can be assigned through written or electronic means, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("Contractor's Representative"). Notwithstanding the foregoing, under no circumstances shall any member of Contractor's board who is also a member of the Town Council serve as Contractor's Representative. Nor shall any such person communicate with the Town or any Town employee regarding amendments or extensions to this Agreement or regarding additions to the scope of work or compensation due to Contractor under this Agreement. Notwithstanding the foregoing, a member of Contractor's board who is a member of the Town Council may communicate with Town staff regarding scheduling and logistics of work to be

performed by Contractor hereunder. Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.4 Coordination of Services. Contractor agrees to work closely with the Town's Office of Outdoor Recreation Manager and other designated Town Staff, and, as requested by Town, with MLR and the MTC, as required in the provision of the Services as provided for in Exhibit A of this Agreement. Notwithstanding the foregoing, Contractor shall not take direction or orders regarding the Services or this Agreement from any person except in accordance with Section 3.2.2 above.

3.2.5 Standard of Care: Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the Town, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Contractor shall designate key employee(s) or subcontractor(s) assigned to specific tasks, as appropriate, and provide the contact information for any such designated personnel to the Town's Representative.

3.2.6 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Services and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations, Contractor shall be solely responsible for all costs arising therefrom. Contractor shall defend, indemnify and hold Town, its officials, directors, officers, employees, agents, and volunteers free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure by Contractor to comply with such laws, rules or regulations.

3.2.7 Insurance:

3.2.7.1 Time for Compliance. Contractor shall not commence work under this Agreement until it has provided evidence satisfactory to the Town that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the Town that the subcontractor has secured all insurance required under this section. Contractor shall provide immediate written notice if: (i) any of the required insurance policies is terminated; (ii) the limits of any of the required policies are reduced; or (iii) the deductible or self-insured retention is increased.

3.2.7.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the

indemnity provisions of the Agreement, the Contractor, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Contractor agrees to amend, supplement or endorse the policies to do so.

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office “occurrence” form CG 0001, or the exact equivalent, and shall be no less than \$1,000,000 per occurrence and no less than \$2,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; or (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering “Any Auto”, or the exact equivalent, covering bodily injury and property damage for all activities shall be in an amount of not less than \$1,000,000 combined limit for each occurrence. This provision shall apply to vehicles owned and operated by Contractor. Contractor’s employees shall maintain at a minimum, the State required insurance on any personal vehicles used in the course of work under this Agreement.

(C) Workers’ Compensation: Workers’ Compensation Insurance, as required by the State of California and Employer’s Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

(D) Professional Liability: Professional Liability insurance with minimum limits of \$1,000,000. Covered professional services shall specifically include all work to be performed under the agreement. If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement. This section shall apply only to those activities engaged in that require such insurance. The Town and Contractor will review such needs on a case by case basis.

3.2.7.3 Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the Town for approval.

(A) The policy or policies of insurance required by Section 3.2.8.2(A), Commercial General Liability shall be endorsed to provide the following:

(1) Additional Insured: Contractor agrees to endorse the third party general liability coverage required herein to include as additional insured the Town, its officials, employees and agents, using standard ISO endorsement No. CG 2010. Contractor also agrees to require all contractors, subcontractors, and anyone else involved in any way with the Services contemplated by this Agreement to do likewise.

(B) The policy or policies of insurance required by Section 3.2.8.2(C),

Workers' Compensation, shall be endorsed to provide the following:

- (1) **Waiver of Subrogation:** Contractor shall provide a Waiver of Subrogation endorsement in favor of the Town, its officers, agents, employees and volunteers.

3.2.7.4 Primary and Non-Contributing Insurance. All insurance coverages shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.7.5 Waiver of Subrogation. Required insurance coverages shall not prohibit Contractor from waiving the right of subrogation prior to a loss. Contractor shall waive all subrogation rights against the indemnified parties. Policies shall contain or be endorsed to contain such provisions.

3.2.7.6 Deductible. Any deductible or self-insured retention must be approved in writing by the Town and shall protect the parties indemnified by Section 3.5.8.1 in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.7.7 Evidence of Insurance. The Contractor, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the Town. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the Town. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the Town evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.2.7.8 Failure to Maintain Coverage. Contractor agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the Town. The Town shall have the right to withhold any payment due Contractor until Contractor has fully complied with the insurance provisions of this Agreement. In the event that the Contractor's operations are suspended for failure to maintain required insurance coverage, the Contractor shall not be entitled to an extension of time for completion of the Services because of production lost during suspension.

3.2.7.9 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.7.10 Insurance for Subcontractors. All subcontractors shall be included as additional insureds under the Contractor's policies, or the Contractor shall be responsible for causing subcontractors to purchase the appropriate insurance in compliance with

the terms of these Insurance Requirements, including adding the Town as an Additional Insured to the subcontractor's policies. Contractor shall provide to Town satisfactory evidence as required under Section 3.2.7.1 of this Agreement.

3.2.8 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.3 Compensation and Accounting.

3.3.1 Compensation. The Town will provide Contractor, under the terms and conditions set forth herein, with the payments and process as provided in Exhibit A, which include the Base Compensation (as defined in Exhibit A) to be paid quarterly for a fixed number of hours of work performed by Contractor as part of a Base Scope of Services (as defined in Exhibit A), and may include additional compensation for Extra Work (as defined in Section 3.3.3 below) agreed upon by the Parties.

3.3.2 Reimbursement for Expenses. The compensation provided for in this Agreement, including any compensation for Extra Work pursuant to Section 3.3.3 below, constitutes the total compensation to be provided to Contractor for the Services. Contractor shall be reimbursed on a pass-through basis for direct project expenses incurred on behalf of the Town by the Contractor as approved by the Town for identified project services and materials. Pass-through reimbursements do not constitute compensation to Contractor as otherwise defined.

3.3.3 Extra Work. In addition to the Services performed under the Base Scope of Services, Town may request at any time during the term of this Agreement that Contractor perform Extra Work. As used herein, "Extra Work" means any work by Contractor that exceeds the fixed number of hours included within the Base Scope of Services, and may include work which is determined by Town to be necessary for the proper completion of an agreed upon task, service or project, or work authorized by Town for an additional project as part of the Expanded Scope of Work defined in Exhibit A. Compensation for any Extra Work shall be in addition to the Base Compensation specified in Exhibit A for the Base Scope of Work. The nature and extent of any Extra Work, and the additional compensation for such work, shall be as agreed upon in writing between the Parties. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from the Town.

3.3.4 Maintenance and Inspection. In providing the Services, Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of Town during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.4 Reserved

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. Either Party may, by written notice to the other Party, terminate the whole or any part of this Agreement at any time for cause, which shall consist solely of a breach by a Party that remains uncured following a 30-day notice from the other Party specifying the nature of the alleged breach. In addition, either Party may terminate the Agreement effective on July 1 of the current or following year, as applicable, by giving written notice to the other Party of such termination at least ninety (90) days before the effective date of such termination. Upon termination, Contractor shall be compensated according to the Base Compensation rate on a pro-rated basis for work performed under the Base Scope of Services (i.e., for the portion of a fiscal year the Agreement was in effect prior to the effective date of the termination), and for any Extra Work for which Services have been adequately rendered to Town, and Contractor shall be entitled to no further compensation. Contracts entered into by Contractor which are supported by Measure R funds and for which the project or service was approved by the Town Council and for which funds were allocated will be recognized by the Town and honored to the extent possible through the end of this Agreement if this Agreement is terminated without cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, Town may require Contractor to provide all finished or unfinished Documents & Data (as defined below) and other information of any kind prepared by Contractor for Town in connection with the performance of Services under this Agreement, and for which Contractor has been compensated in accordance with the Agreement. Contractor shall be required to provide such documents and other information within fifteen (15) days of the request or as otherwise agreed by the Parties.

3.5.1.3 Replacement Services. In the event this Agreement is terminated in whole or in part as provided herein, Town may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Contractor: Mammoth Lakes Trails and Public Access Foundation
P.O. Box 100 PMB #432
Mammoth Lakes, CA 93546
ATTN: Board Vice President

Town: Town of Mammoth Lakes
P.O. Box 1609
437 Old Mammoth Rd., Suite 230
Mammoth Lakes, CA 93546
ATTN: Town Manager

Such notice shall be deemed made when personally delivered or, if mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its

applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data: Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for Town to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes or other electronic media, which are prepared or caused to be prepared by Contractor for use by Town under this Agreement (“Documents & Data”). Notwithstanding any other provision of this Agreement, Documents & Data do not include any list of names, email addresses, phone numbers or other personal information owned, held or maintained by Contractor or any of its subcontractors, whether or not used in connection with Contractor’s performance of the Services, except as may be specifically agreed between Town and Contractor. Contractor shall require all subcontractors to agree in writing that Town is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares for Town under this Agreement. Contractor represents and warrants that Contractor has the legal right to license any and all Documents & Data. Contractor makes no such representation and warranty in regard to Documents & Data which were prepared by other professionals other than Contractor or provided to Contractor by the Town. Town shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at Town's sole risk. Intellectual property that is copyrighted or otherwise protected will only be used under express authority of the Contractor.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Contractor by or on behalf of Town in connection with the performance of this Agreement shall be held confidential by Contractor. Any such materials provided to Contractor by Town shall not be used by Contractor for any purposes other than the performance of the Services or disclosed to any person or entity not connected with the performance of the Services, without the prior written consent of Town. Nothing furnished to Contractor which is otherwise known to Contractor or is generally known, or has become known, to the related industry shall be deemed confidential. Contractor is not prohibited from reusing internal work product or inputs for other purposes so long as it does not disclose any of Town’s proprietary information.

3.5.4 Reserved.

3.5.5 No Monetary Damages. Contractor acknowledges that Town would not have entered into this Agreement if it were to be subject to liability for monetary damages. Accordingly, Contractor hereby waives any right to seek or obtain monetary damages from the Town in connection with any actual or alleged breach of this Agreement by Town. Contractor’s remedy for a breach by Town shall be limited to seeking specific performance or other injunctive relief.

3.5.6 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.7 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

3.5.8 Indemnification. Notwithstanding any other provision of this Agreement, including Section 3.5.15 below, Contractor's obligations under this Section 3.5.8 shall extend to Contractor only and shall not extend to Contractor's officials, officers, directors, employees, volunteers or agents except to the extent (if any) otherwise required by applicable law.

3.5.8.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the Town, its directors, officials, officers, employees, volunteers and agents (each a "Town Indemnified Party" and together the "Town Indemnified Parties") free and harmless from any and all claims, suits, proceedings, demands, causes of action, costs, expenses or liability (each a "Claim" and together the "Claims") arising from any loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged negligent acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, contractors or agents in connection with the performance of the Contractor's Services or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorney's fees and other related costs and expenses awarded against, or incurred by, a Town Indemnified Party as a result of a Claim.

3.5.8.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of Town's choosing and at Contractor's own cost, expense and risk, any and all Claims that may be brought or instituted against a Town Indemnified Party. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against a Town Indemnified Party as part of any such Claim. Contractor shall also reimburse Town for the cost of any settlement paid by a Town Indemnified Party to resolve any such Claim, provided that Contractor has approved the settlement in advance, in writing. Such reimbursement shall include payment for Town's attorney's fees and costs, including expert witness fees, incurred in connection with the settlement of such Claim. Contractor shall reimburse the Town Indemnified Parties for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Town Indemnified Parties.

3.5.9 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

3.5.10 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Mono County.

3.5.11 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.12 Town's Right to Employ Other Contractors. Town reserves the right to employ other contractors to provide services of any kind.

3.5.13 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.14 Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the Town. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.15 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to Town include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.16 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.17 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.18 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties under this Agreement.

3.5.19 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.20 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, Town shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of Town, during the term of his or her service with Town, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom. Notwithstanding the foregoing, this Section 3.5.20

does not prohibit a member, officer or employee of Town from serving as an officer, director or volunteer of Contractor without compensation.

3.5.21 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.5.22 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.23 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.24 Counterparts; Electronic Delivery. This Agreement, and any modifications or amendments thereto, or waiver or consent provided hereunder, may be executed in any number of counterparts (if applicable), each of which shall constitute an original, and each of which may be delivered electronically, via electronic mail, facsimile or by other means. Any signature delivered by such means shall have the same legal effect as an original.


3.6 Subcontracting.


3.6.1 To the extent that Contractor subcontracts any portion of the work required by this Agreement, each such subcontract shall contain a provision making it subject to all provisions stipulated in this Agreement.

Signatures on Next Page

TOWN OF MAMMOTH LAKES

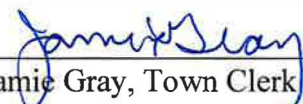
**MAMMOTH LAKES TRAILS AND
PUBLIC ACCESS**

By: 
Daniel C. Holler
Town Manager

By: 
Silver Chesak
Board Vice-President

By: 
Alistair Veitch
Board Member, Treasurer

Attest:

By: 
Jamie Gray, Town Clerk

Approved as to Form:

By: 
Andrew Morris, Town Attorney

EXHIBIT "A"
SCOPE OF SERVICES AND COMPENSATION

Base Scope of Services

The “Base Scope of Services” for this Agreement pertaining to the Mammoth Lakes Trail System shall consist of up to 1,100 hours of work performed by Contractor in each fiscal year of the Agreement (July 1 – June 30) for individual projects and defined services that the Town’s Representative requests in writing for Contractor to perform in support of the Work Program described in Exhibit B. Projects include those to have been budgeted and recommended for by MLR’s “Mammoth Trails Committee” (MTC) and as approved and funded by the Mammoth Lakes Town Council, provided that the Town may decide to deviate from the MTC’s recommendations and/or change the scope for any requested work. Projects also may include additional work that the Town has identified to support the Office of Outdoor Recreation and the Mammoth Lakes Trail System and to provide improved outdoor amenities for residents and visitors.

The Town’s Representative will provide additional documentation and direction on specific work projects and services for areas of the Work Program defined in Exhibit B with the preparation of a specific task order provided to initiate work. To the extent that the Town requests Contractor to perform services or tasks that exceed the 1,100 hours per fiscal year included in the Base Scope of Services, Town shall be responsible for securing funding prior to requesting Extra Work.

All services and deliverables produced through this agreement for the Mammoth Lakes Trail System shall be consistent with the Town’s “Trail System Master Plan” and Standard Operating Procedures (SOPs) developed through recommendations of the Town’s Trail System Master Plan. Examples of these SOPs include the “MLTS Website Handbook,” the “MLTS Signage and Wayfinding Standards Manual,” and the “MLTS Logo and Brand Guidelines.” SOPs may be updated to address identified needs over the course of this Agreement.

Compensation for Base Scope of Services

Town commits to an identified amount of minimum Base Compensation to be paid to the Contractor for providing up to the following number of hours of work under the Base Scope of Services in each fiscal year of the Agreement (the “Base Compensation”): year one 1100 hours; year two 1065 hours; and year three 1035 hours. The burden shall be on the Town to assign appropriate work to Contractor. The amount of the Base Compensation for each fiscal year of the Agreement (July 1 - June 30) shall be one hundred thousand dollars (\$100,000), paid in four quarterly payments in the amount of twenty-five thousand dollars (\$25,000) each, due by end of the month in July, October, January, and April. Scopes of services for each ensuing fiscal year will be mutually agreed upon by the parties in advance. The Contractor will provide detailed reports showing the time spent on each of the service areas described in Exhibit B as part of the Base Scope of Services. The parties will review the number of contracted hours used not less than quarterly to determine if any adjustment in timing of compensation is required. Contractor’s pass-through reimbursements as defined in section 3.3.2 shall be invoiced separately on a quarterly basis outside of the compensation base and will include appropriate documentation from 3rd party vendors.

Any additional work assigned by the Town beyond the base number of hours included in the Base

Scope of Services, but which is related to the Base Scope of Services and Work Program described in Exhibit B, will be compensated as Extra Work, based on detailed invoices showing time worked by specific MLTPA staff positions. The hourly rates used for Extra Work compensation will be as provided in the MLTPA Rate Sheet, Exhibit C.

Expanded Scope of Services. In addition to the work included in the Base Scope of Services, and any Extra Work related thereto, the Town anticipates using Contractor services to complete other, specific projects, which shall constitute Extra Work. The work to be performed by Contractor for such projects (if any) is referred to herein as the Expanded Scope of Services. The Expanded Scope of Services projects are funding-dependent, and the scope of work and updated cost estimate for each such project will be defined and agreed upon between the Parties prior to authorization to proceed with the work. Each project will be initiated through written task orders with project details, timelines and deliverables agreed upon by the Town and Contractor. Projects undertaken through the “Expanded Scope of Services” of this agreement shall be invoiced by Contractor using its billable rates as provided below in the MLTPA Rate Sheet, Exhibit C. Hours worked and compensation shall not be included or calculated as part of the “Base Compensation” as described above (“Compensation for Base Scope of Services”).)

For information only, the potential projects and estimated initial compensation for the Expanded Scope of Services are as follows, provided that the actual compensation for any such project shall be as agreed by the Parties:

A – Recreational Node Planning

Overview: “Existing Conditions” analysis and mapping of the forest access points, amenities, connections between points and access connections to Town staging areas.
Budget Estimate \$50,000

B - Towns to Trails

Overview: Engagement with regional stakeholders on the “Towns to Trails” regional project and planning team to explore opportunities and potential constraints related to connections to the Town of Mammoth Lakes, including adjoining trail and/or road connections through the Inyo National Forest. Town may engage Contractor staff to provide specific support for this project and its benefits to the Town.
Budget Estimate \$10,000

C - Doe Ridge Trail Plan

Overview: “Existing Conditions” analysis and mapping of the Doe Ridge project site to establish efficient communications with land managers to assess potential for expanded trail network with connections to existing facilities such as the Whitmore Recreation Area. Project may expand to include future high level project concept development. Budget Estimate \$10,000

D - Transition of Historic Intellectual Property and Files from MLTPA to Archive

Overview: Implementation of a coordinated effort between Town and MLTPA to identify, duplicate and transfer intellectual property relevant to the MLTS from MLTPA’s Archive to the Town, consistent with existing and prior agreements between the Town and MLTPA.

A Town-based repository of information for long-term documentation will provide information for future town staff and future contractors.

Budget Estimate \$10,000

EXHIBIT "B"

WORK PROGRAM

LEADERSHIP INTENT

The Town working with partners has established an ongoing culture of effective program definition and implementation to enhance recreational experiences through established standards of excellence that anticipate and exceed public expectations for program delivery.

Through a collaborative program of work, the leadership of the Town of Mammoth Lakes, working with the MLTPA Foundation and other partners, seeks to maintain and enhance this effective process of proactive public engagement, anticipation of community needs, and high standards of excellence for all aspects of program development and delivery. It is the leadership's intent that these values and methods be maintained and enhanced through a Collaborative Work Program in the delivery of services provided for in this agreement.

COLLABORATIVE WORK PROGRAM

To effectively produce the deliverables detailed in the Work Program, and other tasks as may be assigned by the Town, the Parties agree to implement the following Work Program procedures and process to facilitate up-reporting to the Town's administration and the public bodies charged with funding and program oversight. Components of the Collaborative Work Program will include:

- Identification of the Project / Contract Manager both for the Town and the Contractor by name and position title.
- Identification of other relevant Town and Contractor staff members by name and position title, and the roles and responsibilities relevant to the implementation of the services provided for in this agreement.
- To maintain effective project management a regular schedule for collaborative team meetings including protocols for focused agendas, expectations for staff attendance from both Town and Contractor, including protocols and expectations for contingencies as may be required.
- Set protocols and expectations for Contractor engagement with the Town's partner agencies that are required for meeting the services provided for in this agreement, which may include attendance at scheduled meetings between the Town and its partners, and which may be focused on matters of policy, project development and task completion reporting.
- Identification and implementation of the necessary analog and digital tools necessary for effective collaboration, including in person and virtual methods of communication and the development and maintenance of shared project and program calendars designed to manage workflow, costs, reporting and assignments.
- Identification and establishment of cadence, protocols, and expectations for Contractor's delivery of financial reporting, invoicing, and desired documentation on tasks and deliverables to be produced by Contractor under this agreement.,

Deliverables: Contractor shall provide Project / Contract Management and ongoing project coordination services with the Town through the designated point of contact within the Office of Outdoor Recreation (OOR). Contractor shall also provide financial, accounting and project financial tracking support and updates as requested to provide the Town and as necessary oversight bodies requested information. Contractor shall advise Town Manager and OOR point of contact if funding for a designated task is being spent at a greater than anticipated rate that could prevent year-long service delivery or completion of any given task. As directed, Contractor shall make available its staff to attend meetings, provide documents, and produce and provide reports and presentations. As determined by the Town, the parties will review specific Mammoth Lakes Trail System (MLTS) SOPs, related handbooks, plans, reporting documents, task assignment documentation, etc. to determine need for updates. SOP's may be amended from time to time. Upon request, updates to identified documents may be assigned to contractor.

DELIVERABLES

#1 – GRAPHICS AND DESIGN

#1a - Public Facing Hard Goods

- **Deliverables:** Graphic support for permanent and temporary sign development, updates, and redesigns including delivery of final approved digital work products for production purposes. Graphics may include, but are not limited to, mapping, messaging, trail use information, and tools for digital access to related materials via QR codes, including websites and social media platforms.

#1b - Graphics in Support of Communications and Information

- **Deliverables:** Graphic support including, but not limited to, trail system information and outreach, closures, seasonal information, public safety, and general information as requested including delivery of final approved digital work products for production purposes. Graphics to be delivered will be developed consistent with relevant MLTS Standard Operating Procedures (SOPs).

#1c - Trail Maps and Guides

- **Deliverables:** Graphic support including, but not limited to, updating and creation of new maps and guides, review of forward-facing products including how-to and stewardship materials, and delivery of final approved digital work products for production purposes. Graphics to be delivered will be developed consistent with relevant MLTS Standard Operating Procedures (SOPs).

#1d - Marketing & Promotions

- **Deliverables:** Graphic support and delivery of final approved digital work products for production purposes, including, but not limited to, promotional materials, shirts, event flyers, and related materials including support for stewardship events, meetings, MLTS programs, and other relevant graphic needs as requested. Graphics to be delivered will be developed consistent with relevant MLTS Standard Operating Procedures.

#2 – PLANNING

#2a Directed Projects

- **Deliverables:** Concept level planning to identify high level improvements and/or enhancements for MLTS, private party, or partner planning efforts. Including, but not limited to, recommendations for trail reroutes, locations for MLTS signage and access points, and recommendations for node or system improvement.

#2b SHARP

- **Deliverables:** Support of SHARP planning efforts for project implementation including, but not limited to, concept planning, changes to existing planning concepts based on conditions on the ground, and unanticipated needs. Technical support to adjust trail alignments for future construction related to trailhead functionality. Development of alternative recommendations for trail and trailhead infrastructure based on environmental findings, including, but not limited to, the flagging of alignments, site visits, and meeting attendance as requested. Delivery of final approved digital work products.

#3 – IMPLEMENTATION

#3a GIS – MLTPA GIS

- **Deliverables:** Ongoing support and delivery of digital data to complete requested work for TOML OOR and MLTS projects utilizing geospatial mapping tools and data management through MLTPA’s Data Library. Work efforts may include, but will not be limited to, maintenance and updating of geospatial and other relevant data, mapping support for existing and new trails and reroutes, management of MLTS spatial database which may be used to assist in the delivery of work products under item #1 (“Graphics and Design”) and item #4 (“Administration + Operations”).

#3b Data

- **Deliverables:** Manage trail counter deployment, tabulation, and analysis of collected data. Presentations of developed data including story maps or other requested digital collateral providing trail use data to assist in future TOML decision making with public, private sector, and agency partners. Management and deployment of avalanche beacon checkers.

#4 – ADMINISTRATION + OPERATIONS

#4a Website - Website Operations & Maintenance; Website Content Development

- **Deliverables:** MLTPA will provide the webmaster and staffing capacity necessary for technical operations and maintenance of the MLTS Website platform at mammothtrails.org including the maintenance and updating of website content. Third

party support for technical operations and maintenance will be necessary from time to time to address technical and security issues. MLTPA will maintain and update a dedicated section of its own website at mltpa.org including the hosting of relevant planning and governance documents, maps, and other digital content currently integrated into mammothtrails.org due to technical limitations of the MLTS Website platform and the complimentary nature of the two platforms.

#4b - Communications & Outreach Support

- **Deliverables:** MLTS branded email communications (currently “Mammoth Lakes Trail System Trail News”) to be drafted and approved by TOML OOR which include the current notice to email recipients that “The Mammoth Lakes Trails and Public Access Foundation (MLTPA) is providing these communication services.” MLTPA provides email communications through its Hubspot platform and website support at mltpa.org for links in the MLTS branded emails to documents and identified on-line resources. As requested, additional outreach and public engagement efforts. Graphic representations in MLTS branded emails will be developed consistent with relevant MLTS SOPs including the “MLTS Logo and Brand Guidelines.”

#4c - Photo and Image Library

- **Deliverables:** Management of the technical operations and digital MLTS photographic assets consistent with the current draft of the “MLTPA Photo Library Workflow” to satisfy photographic and related digital asset needs for MLTS programs including the mammothtrails.org website platform and MLTS needs for outreach, communications, and planning. Photographic documentation and acquisition of images relevant to MLTS recreation activities, events, and programs for use by TOML OOR and other TOML departments. Database, metadata, and file naming and uploading of new photos to identified sharing platforms. The TOML retains the rights for usage of photos acquired through this agreement and images produced for these purposes. The TOML OOR acknowledges that the digital assets themselves are stored and managed using systems provided by MLTPA.

EXHIBIT "C"
MLTPA Rate Sheet

Annual Rate of Increase: MLTPA may increase its annual billable rates at a rate not to exceed 3% per year to allow for annual increases to the costs of doing business in Mammoth Lakes.



MLTPA Billable Rate Sheet
For Fiscal Year 2023/2024
For Town of Mammoth Lakes Office of Outdoor Recreation
(TOML OOR) Natural Resources Manager / MLTS

EFFECTIVE July 1, 2023

<i>Position</i>	<i>Rate</i>
Natural Resources Manager / MLTS	\$ 98.00
Project Management Specialist	\$ 92.00
GIS Manager	\$ 92.00
Webmaster	\$ 92.00
Graphics Coordinator	\$ 92.00
Project Specialist 1	\$ 92.00
Digital Assets Manager	\$ 92.00
Operations Manager	\$ 75.00
Project Specialist 2	\$ 75.00
Funding + Communications Specialist	\$ 75.00
Data Technician	\$ 75.00

NOTE:

- MLTPA staff positions are not annual salaried positions. Projects and assigned tasks are at the direction of the Town of Mammoth Lakes or other clients per executed agreements.

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