TOWN OF MAMMOTH LAKES SERVICES AGREEMENT BETWEEN THE TOWN OF MAMMOTH LAKES AND MAMMOTH LAKES RECREATION (MLR)

1. PARTIES AND DATE.

This Agreement is made and entered into effective as of July 1, 2022, 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 R, Mammoth Lakes, California, 93546 ("Town") and Mammoth Lakes Recreation, a California nonprofit public benefit corporation, with its principal place of business at P.O. Box 8562 Mammoth Lakes CA, 93546 ("Contractor"). Town and Contractor are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for certain services pertaining to recreation, 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, that some or all of such funds are restricted in the uses to which they may be put, and that the expenditure of such funds by the Contractor is restricted in the same manner as if the Town was expending the funds. This includes but is not limited to funds from Town tax Measures R and U.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 Scope of Services. Contractor promises and agrees to furnish to the Town all labor, materials, equipment, services, and incidental and customary work necessary to fully and adequately supply the services and deliverables as provided for in Exhibit A.

3.1.2 Term. The term of this Agreement shall commence on July 1, 2022 and expire on June 30, 2023. Notwithstanding the foregoing, this Agreement may be terminated as provided herein. The term of this Agreement may be extended by mutual agreement for up to two one-year terms based on same terms and conditions provided herein, provided that the scope of services and deliverables may be updated for each extension.

3.1.3 No Limitation on Other Activities. Nothing in this Agreement shall be deemed to prevent Contractor from engaging in other work or activities beyond those set forth

herein, either on its own initiative or at the behest of other parties, provided that Town shall not be required to fund any such work or activities. No funds received from Town shall be used to secure such work or to pay for work that is not within Contractor's scope of services hereunder and in compliance with restrictions on Town revenue sources, including but not limited to funds from Measures R and U.

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 additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of Town and shall at all times be under Contractor's exclusive direction and control. 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 [reserved]

3.2.3 Town's Representative. The Town hereby designates the Town Manager or designee, 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 from any person representing the Town other than the Town Manager or Town Council.

3.2.4 Contractor's Representative. Contractor may designate an employee to act as its representative for the performance of this Agreement ("Contractor's Representative"). In the absence of designating an employee, the Board Chair is designated as Contractor's Representative. 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.

3.2.5 Coordination of Services. Contractor agrees to work closely with Town staff in the performance of Services and shall be available to Town's staff, contractors and other staff at reasonable times.

3.2.6 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.

3.2.7 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 to comply with such laws, rules or regulations.

3.2.8 Insurance:

3.2.8.1 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.

3.2.8.2 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; (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" (Symbol 1), 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 MLR. MLR employees shall maintain at a minimum, the State required insurance on any personal vehicles used in the course of work.

(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 and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). 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.

3.2.8.3 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: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

3.2.8.4 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.

3.2.8.5 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.

3.2.8.6 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.

3.2.8.7 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.

3.2.8.8 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.

3.2.8.9 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.

3.2.8.10 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 3.2.8.1 of this Agreement.

3.2.9 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. Town shall compensate Contractor in the amount of $90,500 to be paid at a rate of $22,625 per quarter, with payment due in August, October, January and April of the Town's fiscal year (July 1 to June 30). Contractor shall submit an invoice for payment by the 15th of the previous month. This compensation is provided for the delivery of the scope of services and specified deliverables as provided for in Exhibit A. Town may, in its sole discretion, provide Contractor with office space for one employee at no charge to assist Contractor in providing the services and specified deliverables as provided herein and to enhance coordination with Town employees.

3.3.2 Reimbursement for Expenses. The compensation provided for in this Agreement constitutes the total compensation to be provided to Contractor. Contractor shall not be granted additional reimbursement for any expenses.

3.3.3 Maintenance and Inspection. 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.

3.3.4 Extra Work. At any time during the term of this Agreement, Town may request that Contractor perform Extra Work to be agreed upon in writing between the parties in exchange for additional compensation to be agreed upon between the parties. As used herein, "Extra Work" means any work which is determined by Town to be necessary or desirable, but which is not set forth in Exhibit A or offset by reduction in other services. Contractor shall not perform, nor be compensated for Extra Work without written authorization from the Town. The parties may agree to extra work that has other funding sources such as grants, donations, from other agencies. Extra work may be agreed to by the parties as provided for in Exhibit A.

3.4 Contracting, Conflicts of Interest, Transparency and Harassment.

3.4.1. Public Contracting Requirements. Contractor shall comply with all bidding and contracting requirements applicable to public entities in general and/or to the Town in particular in the course of awarding subcontracts or procuring goods and services pursuant to this Agreement, to the same extent as the Town would be required to comply if the Town itself were undertaking such activities. Such requirements include, without limitation: (i) the requirements of Public Contract Code Section 20160 et seq regarding competitive bidding for "public projects" in

excess of $5,000; (ii) the requirements of Labor Code Section 1720 et seq regarding payment of prevailing wages for "public works" projects in excess of $1,000; (iii) the provisions of Government Code Section 4525 et seq regarding procurement of engineering, environmental, and certain other types of professional services; and (iv) the provisions of the Mammoth Lakes Municipal Code regarding procurement and expenditures of funds, as they may be amended. Contractor shall maintain records evidencing its compliance with all applicable requirements for a period of five years after each expenditure of funds received from the Town, and shall provide Town with copies of such records not less than four times annually (approximately quarterly) and otherwise upon request.

3.4.2 Conflicts of Interest. Contractor, and its board members and employees, shall fully comply with the provisions of the California Political Reform Act regarding conflicts of interest, and with such regulations as may be adopted by any government agency to implement and enforce the Political Reform Act, to the same extent as such statutes and regulations apply to the Town. No member of Contractor's board of directors may participate in the review or recommendations of Measure R or Measure U restricted funds if that member or the member's immediate family serves on the board of an organization, or is employed by an organization, which has submitted an application for Measure R or Measure U funding, or that may be affected by the recommendation(s) made by Contractor to the Town Council for consideration. Specific conflict standards for Contractor's board and staff shall be defined in an adopted conflict of interest policy.

3.4.3 Ethics Training. Contractor shall cause its board members and employees to obtain the training in ethics and laws governing local governments required by Government Code Section 53234 et seq as if Contractor provides compensation or reimbursement to its board members, regardless of whether Contractor actually does so.

3.4.4 Brown Act and Public Records Act. At all times during the term of this Agreement, Contractor's board of directors shall comply fully with the Ralph M. Brown Act, Government Code Section 54950 et seq. Contractor's obligation hereunder shall not be limited to complying with the Brown Act with respect to the Services, but rather such obligations shall apply to all activities of Contractor and/or its board during the term of this Agreement. Contractor shall comply with the California Public Records Act (PRA) (Government Code Section 6250 et seq).

3.4.5 Harassment Training. Contractor's management staff and board shall attend similar harassment and ethics training as required of Town elected officials and management staff at least every two years and within six months of taking on their respective position. Such training shall be received by attending Town or other governmental agency sponsored training or a similar online training program. Documentation of training shall be maintained by Contractor. Contractor shall notify the Town Clerk of any board vacancy and the name(s) of all new board members.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. Town may, by written notice to

Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been adequately rendered to Town, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause, which shall consist solely of a breach by Town that remains uncured following thirty (30) day notice from Contractor to Town specifying the nature of the alleged breach. Contracts entered into by Contractor which: (i) are supported by Measure R or Measure U funds; (ii) are for a project or service which was approved through the public recommendation process by the Town Council; and (iii) had funds allocated to them, will be recognized by the Town and honored to the extent possible through the term 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 and Data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request. All unexpended Town funds provided to the Contractor will be returned to the Town. In the event Contractor ceases to exist, all unexpended Town funds held by Contractor will be returned to the Town and any equipment and/or materials purchased with such funds.

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 Recreation P.O. Box 8562 Mammoth Lakes, CA 93546 **ATTN: Executive Director/Board Chair**
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 when 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, which are prepared or caused to be prepared by Contractor under this Agreement ("Documents & Data"). 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 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 design 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.

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 in connection with the performance of this Agreement shall be held confidential by Contractor. Such materials shall not, without the prior written consent of Town, be used by Contractor for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services. 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.

3.5.4 Clerking Support and Board Meetings. As additional compensation to Contractor, Town shall, at its own expense, provide clerking support services to include preparation of agendas, clerking meetings, preparing minutes and coordination of compliance with the above laws and similar support for standing committees that are subject to the Brown Act. All of Contractor's public meetings shall be held in the Town Council Chambers and broadcast though the system used by Town for its public meetings, which may include cable TV government channel broadcasting, or other electronic means unless there is a conflict for meeting space and meetings cannot be rescheduled. Notwithstanding the foregoing, Contractor may conduct its meetings online to the extent Town itself is allowed to do so by a gubernatorial executive order or legislative act and shall comply with any requirements imposed on the conduct of such meetings.

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.

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 free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, 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 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.

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, suits, actions or other proceedings of every kind covered by Section 3.5.8.1 that may be brought or instituted against Town or its directors, officials, officers, employees, volunteers and agents. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against Town or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse Town for the cost of any settlement paid by Town or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for Town's attorney's fees and costs, including expert witness fees. Contractor shall reimburse Town and its directors, officials, officers, employees, agents, and/or volunteers, 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, its directors, officials, officers, employees, agents, or volunteers.

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. This Agreement may only be modified by a writing signed by both parties.

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.

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.

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. This Agreement may be signed in counterparts, each of which shall constitute 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.

TOWN OF MAMMOTH LAKES

By: _____
Daniel C. Holler
Town Manager

Attest:

By: _____
Jamie Gray, Town Clerk

Approved as to Form:

By: _____
Andrew Morris, Town Attorney

MAMMOTH LAKES RECREATION

By: _____
Craig Albright, Board President

By: _____
Tamara Bankson, Secretary

EXHIBIT A
Scope of Services and Deliverables FY22-23

Stewardship and Implementation of Outdoor Recreation, Arts and Culture

1) Support for Mammoth Lakes Trail System
   a) Weekly coordination to optimize Measure R resources and link TOML to regional efforts: MLTS Coordination meeting, Town/MLR/MLTS/MLTPA. Meetings are used to coordinate work programs and activities.
   b) Coordination Meetings attended may be limited based on the needs of the Town.
2) Support Adopt-A-Trail program.
3) Assist in trailhead planning effort
4) Coordinate work program with Town Office of Outdoor Recreation.

Communications and Outreach

1) Regular public communications on sustainable outdoor recreation opportunities in and around Mammoth Lakes.
2) Community Stakeholder Meetings: Convene Community meetings (two – four per year) to inform and update a diverse recreational audience on recreation related projects and programs in coordination with Town staff.
3) Prepare Webpages for TOML Projects and Programs.
   a) Develop, host and maintain webpages for TOML projects and programs as defined under current MLTS work program, including but not limited:
      i) Sherwins Area Trails and Trailhead,
      ii) Shady Rest Inyo Craters,
      iii) Lakes Basin Connector Trails, and
      iv) Adopt A Trail
   b) Measure R and U allocations information (application, process, documents, partners and awardees)

Management of Advisory Committees and Funding Recommendations

1) Mammoth Trails Committee
   a) Convene up to six (6) meetings annually to provide fiscal and operational recommendations to Town, including budget updates, in coordination with Town staff
2) Allocations Committee
   a) Conduct at least one public hearing on the proposed allocation and use of Measure U funds
   b) Conduct at least one public meeting (or hearing) on the proposed allocation and use of Measure R funds
   c) Convene at least one (1) but no more than four (4) public meetings for review and recommended allocations of Measure U funds
   d) Conduct public meeting(s) on the specific allocations of Measure R and/or U funds for special projects.
   e) Conduct public meetings on the proposed use of non-committed reserve funds.
3) Provide recommendations to the Town Council for all uses of Measure R and U funds following the public hearing/meeting process.
4) Measure U and Measure R Grant Awards
   a) Provide staff assistance to Measure U applicants ensuring applications are complete and align with restricted use of these funds.
   b) Work with awardees to leverage grant award and review after-event performance reports.
5) Collaborate with TOML to review and update Measure R & U allocation process as needed.

Town Updates

1. Advise the Town Council, Commissions and staff on recreational projects and programs outside of Town recreation programs and on arts and culture opportunities through regular reports at meetings.
2. Provide information to Town staff, Council and Commissions on MLR work programs and progress on implementation of scope of work.

Additional Contracted Services

1) The Town may request extra work outside of the scope of services provided herein which will require the following:
   a) MLR to provide a proposal estimating the hours required to complete the work,
   b) The overall time frame in which the work will be completed,
   c) The impact on achieving the scope of services provided herein, and
   d) Other requirements to determine the ability of MLR to perform the work.
2) Compensation for extra work will be paid at a rate of $60.00 per hour. Payment will be made based on invoices documenting the hours worked and services provided.