SERVICES AGREEMENT BETWEEN THE TOWN OF MAMMOTH LAKES AND MAMMOTH LAKES TOURISM

1. PARTIES AND DATE.

This Agreement is made and entered into effective on the 1st day of July 2019, 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 Mammoth Lakes Tourism, a California mutual benefit corporation and Federal 501(c)(6) nonprofit, with its principal place of business at 2520 Main Street, Mammoth Lakes CA, 93546 ("Contractor" or "MLT"). 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 the provision of Town's tourism attraction, marketing and branding services, required by the Town on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing said professional services and is familiar with the plans of Town.

2.2 Project.

Town desires to engage Contractor to render such professional services related to Town's visitor attraction, marketing, branding, and visitor experience as set forth in this Agreement.

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, services, and incidental and customary work necessary to fully and adequately supply the professional services related to visitor attraction, marketing, branding, public relations and visitor experiences ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. 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. Exhibit "B" sets forth the deliverables under the scope of work which will be reviewed annually by the parties and updated by written mutual agreement.

3.1.2 Term. The term of this Agreement shall commence on July 1, 2019 and terminate June 30, 2023, The Town and MLT may agree to extend the term of this agreement for up to one additional year by written mutual agreement. Notwithstanding the foregoing, this Agreement may be terminated as provided herein.

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 Key Personnel. Contractor has represented to Town that certain key personnel will perform and coordinate the Services under this Agreement. The key personnel for performance of this Agreement are as follows: Executive and the Board of Directors.

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. Any official communication from the Town of Mammoth Lakes with respect to the performance of this contract by the Contractor must come from either the Town Manager or the Town Council, and no other party.

3.2.4 Contractor's Representative. Contractor hereby designates John Urdi, Executive Director or his/her designee, or the executive director as may be filled during the term of this agreement, to act as its representative for the performance of this Agreement ("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 at the direction of the MLT Board. 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 all 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, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of

California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, 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.

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.

(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.

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 with an edition date of 1985. 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.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Town except ten (10) days shall be allowed for non-payment of premium.

(B) The policy or policies of insurance required by Section 3.2.10.2(B) Automobile Liability, and Section 3.2.8.2(D) Professional Liability, shall be endorsed to provide the following:

(1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Town except ten (10) days shall be allowed for non-payment of premium.

(C) 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.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Town except ten (10) days shall be allowed for non-payment of premium.

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 indemnified parties 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. 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 Fees and Payments.

3.3.1 Compensation. The Town will provide to Contractor compensation under the terms and conditions as provided for in Exhibit "C". Exhibit "C" will be updated each fiscal year to reflect the current year compensation for MLT based on the Town's adopted base budget for Transient Occupancy Tax (TOT) revenues.

3.3.2 Reserved.

3.3.3 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.

3.3.4 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 for the proper completion of the agreed upon task, service or project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from the Town.

3.4 Accounting Records.

3.4.1 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.

3.5 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 sixty (60) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been actually 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 sixty (60) days notice from Contractor to Town specifying the nature of the alleged breach. Contracts entered into by Contractor which are supported by funds provided under this Agreement, which are consistent with the purposes of this Agreement, and for which the project or service was approved through the a public process approved by Contractor's Board of Directors and for which funds were allocated shall continue to be funded by the Town to the extent possible, subject to the availability of funding and ability for the Town to assume the contractual obligations, through what would otherwise have been the expiration date 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.

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 Tourism
2520 Main Street
P.O. Box 48
Mammoth Lakes, CA 93546
ATTN: John Urdi, Executive Director

Town: Town of Mammoth Lakes
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.

3.5.3.3 Confidential Information. The Town shall refrain from releasing Contractor's proprietary information ("Proprietary Information") unless the Town's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the Town shall notify Contractor of its intention to release Proprietary Information. Contractor shall have five (5) working days after receipt of the Release Notice to give Town written notice of Contractor's objection to the Town's release of Proprietary Information. Contractor shall indemnify, defend and hold harmless the Town, and its officers, directors, employees and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. Town shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Contractor fails to fully indemnify, defend (with Town's choice of legal counsel), and hold Town harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that Town release such information.

3.5.4 Brown Act, Public Records Act, Conflict of Interest and Harassment Training and Compliance. 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). Contractor shall comply with the provisions of the Political Reform Act and the related regulations adopted by California Fair Political Practices Commission, including without limitation the provisions and regulations concerning conflicts of interest. Specific conflict standards for the Board and Staff will be defined in an adopted conflict of interest policy. Contractor's management staff and board shall attend similar harassment and ethics training as required of elected officials at least every two years and within six months of taking on their respective position. Contractor staff and board will attend similar harassment training as required of Town elected officials and staff, by attending Town or, other governmental agency sponsored training or similar online training program. Documentation of training will be maintained by the contractor. MLT shall notify the Town Clerk of any Board vacancy and the name(s) of all new Board members. The Town, with costs funded from the Tourism Reserve as provided for in Exhibit C will 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 Granicus system, which may include cable TV government channel broadcasting, unless there is a conflict for meeting space and meetings cannot be rescheduled.

3.5.5 Reserved

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.

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. Contractor shall also comply with all relevant provisions of Town's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

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 relevant 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 TOURISM

By: _____
John Urdi, Executive Director

_____
John Morris, Chairman

EXHIBIT "A"

SCOPE OF SERVICES

Mammoth Lakes Tourism (MLT) is tasked with improving the tourism industry in Town and increasing quality visitation. The scope of services provides an overview of the engagement between MTL and the Town of Mammoth Lakes. Specific SMART deliverables within these scope of service categories will be drafted by MLT and delivered to Town Council as part of the annual budget and operating plan review. MLT will be

Access & Transportation Awareness

This service category is focused on increasing awareness of travel access to the destination. The intent is for MLT to drive outbound communications and marketing to improve both visitor awareness of travel options to and within town as well as monitor efficacy of subsidy programs that support regional transportation. Examples of Access and Transportation Awareness include but are not limited to:

- Air Access
    - Future Connectivity, Airline Partners, Airport Expansion
- Air Service Promotion - Develop advertising and communication strategy for regional air service into MMH through media buying partners
    - Promote air service locally through various channels
    - Collaborate with airline partners for "locals' discount program"
    - Partner with local businesses to promote air service to their guests
- In-Town Transportation Awareness
- Regional Mobility

Brand & Community Awareness

As a destination and a brand, the Town of Mammoth Lakes engages MLT to develop and articulate a tourism destination voice that attracts people to the destination. This voice takes into consideration the disparate audiences that are engaged by tourism and marketing to visit the community, Examples of Brand and Community Awareness include but are not limited to:

- Brand Voice for Community
    - Develop tone of voice, key messaging and outreach strategy
- Domestic & International Marketing
    - Develop marketing plans to reach target audiences in order to increase visitation during identified periods (shoulder season, fall, midweek winter)
    - Maintain website with up-to-date information on local businesses and attractions
    - Manage destination Visitor Guide
- Multi-Season Opportunities
- Sustainable Visitation

- Destination Draw
    - Recreation
    - Business
    - Community
    - Events, Arts & Culture
- Public Relations / Communications

Experience & Attractions

Mammoth Lakes primary drivers for visitation are the experiences delivered in the region and the recreation opportunities available. MLT is tasked to drive awareness of and facilitate the development of best-in-class experiences that drive visitation. This includes leveraging partnerships to create recreation opportunities in the surrounding forest lands as well as create program and event support system for experiences in town. Examples of Experiences & Attractions include but are not limited to:

- Event Promotion, Development & Support
- Activity Promotion
- Diverse experience opportunities
- Sustainable Visitation

In Market Communication (B2C)

While outreach to visitors are their point of origin is critical so is the engagement both with the visitor once in the town. MLT will develop communication tools to educate our visitors once in the community. Examples of B2C include but are not limited to:

- Collateral tools
    - Maps, Visitor Guides, Stickers
- Banners
    - Street and Event
- Wayfinding
- In-person representation (boots on the ground)
    - Marketing manager develops communication strategy within local community
    - California Welcome Center
- Local promotion programs

In Market Engagement (B2B)

Integral to the success of tourism outreach is the engagement and support of the local business community that drives tourism engagement and revenue generation. MLT will develop communication tools to educate and engage the tourism industry in the town. Examples of B2B include but are not limited to:

- Marketing Education Programs
- Local advertising programs

- Public Engagement & Outreach
- Local Partnerships (Chamber, MLR, Etc.)

Administration

There are programmatic oversight and financial management roles assigned to MLT. These Programs and management of funds are executed by MLT and include:

- TBID Administration
- Event Allocations

EXHIBIT "B"

Mammoth Lakes Tourism
FY 2022-23 - DELIVERABLES

The FY 2022-23 deliverables reflect MLT's commitment to a community-first approach in presenting the Town of Mammoth Lakes to our residents and visitors and in maintaining our brand awareness in existing and emerging destination markets. Stewardship for our community and environment are paramount.

I. Overarching Organization Strategy: Community Vision of Sustainable Revenue Generation

The Town of Mammoth Lakes continues to thrive as a tourism-based destination from the revenues associated with visitation. Mammoth Lakes Tourism will continue to work to maximize revenues for our businesses and the Town while taking the lead role in education, stewardship, and responsible travel. Balancing resident quality of life, environmental protection and economic prosperity will be the ongoing focus. Considering staffing challenges throughout the town, more people or 100% occupancy is no longer the goal; instead, the focus will be on enhancing the experience of our visitors, and our locals, while maximizing revenues.

In this case, "**sustainable**" means "*to be able to be maintained at a certain level or rate*" and "*to use a resource without it being depleted or permanently damaged*" such as our natural recreation resources.

II. Overarching Organization Objectives:

1. Increased Brand and Community Awareness
2. Enhanced Community Engagement and Communications
3. Access and Mobility Awareness and Expansion

III. Overarching Organization Deliverables:

A. *Achieve $23m in TOT revenues for FY 2022-23 with 6 months at $2m+ and 5 months at $1m+.*
B. *Achieve $6m in TBID revenues for FY 2022-23 via increased length of stay & visitor spend.*
C. *Increase midweek blended average occupancy in January, February & March from 59.5% to 62% by significantly increasing investment for destination marketing for winter 2022-23.*

D. Enplanement goals for FY 2022-23 of 4,500 at MMH and 15,000 at BIH (goal of 10,000+ at MMH in the coming years).

E. Renew TBID (10-years) by September 2022 and achieve 66% support from assessed businesses.

F. Coordinate with TOML, MLH, MLR, MMSA, USFS and other entities to begin developing a comprehensive Sustainable Destination Management Plan for our future success.

G. Create a NPS (net promoter score) baseline for community perspective by April 2023. This is to set a baseline of "How likely are you to recommend Mammoth Lakes as a vacation destination?"

I. Increased Brand and Community Awareness:

1. **Responsible Travel & Visitor Education**
   A. Heavily educate via stewardship messaging to visitors both before they arrive and while they are here and promote alternative activities/locations to limit overcrowding in popular recreation areas. Focus 75%+ of summer 2022 marketing spend on stewardship & visitor education efforts.
   B. Achieve five (5) quality (2m+ UVM) domestic PR summer story placements with community stewardship talking points included.

2. **Domestic Marketing**
   A. Develop air service marketing plan for potential new markets starting in winter 2023-24.
   B. Major marketing focus on midweek winter visitation to minimize the off-peak periods.
   C. Email database growth increase by 10% (approx. 1,300) as compared to FY 2021-22 numbers.
   D. Launch new brand campaign with focus on stewardship by Oct 2022.
   E. Design and launch future-proof, mobile-first website based on new brand campaign by April 2023 and set new baseline for all web stats (i.e., page views, unique users, etc.)

3. **Multi-Season & Need Period Opportunities**
   A. Emphasize marketing of fall months to re-establish and stabilize TOT revenues in September at $1+ million and October at $800,000+ for 2022.
   B. Host 2 international media visits and 3 domestic media visits to promote fall through story placements.

4. **Public Relations / Communications**
   A. Coordinate 20 high quality domestic media (non-syndicated) placements over 2021-22.
   B. Achieve 10% growth in unique impressions domestically over 2021-22 (non-syndicated).
   C. Coordinate 12 high quality international media placements over 2021-22.
   D. Achieve 10% growth in impressions internationally over 2021-22.
   E. Host 15 domestic and 5 international highly qualified media visits.
   F. Host the Midwest Travel Journalists Assoc from Oct. 5-9 focused on fall & air service messaging.
   G. Promote high altitude training through Crib visitation and collaboration with Mammoth Track Club (Olympic focus). Host 40 athletes throughout the year and incorporate stewardship messaging in content.
5. **International Marketing**
   A. Work with Visit California and Alterra to re-establish visitation from key international markets with initial focus on the United Kingdom, Australia, Canada, Latin America, India, and Europe.
   B. Host 5 travel trade FAM trips to promote Mammoth Lakes as a year-round destination.
   C. Increase the international traffic on VisitMammoth.com by 20%. Symphony dashboard to track.
   D. Represent MLT at 8-10 international trade and media sales missions / industry conferences to promote Mammoth Lakes as a year-round destination.

II. Enhanced Community Engagement and Communications

1. **Local Promotion and Advertising Programs**
   A. Create advertising and promotion plans (including work with MLCC, Lodging and Restaurant Associations) for local outreach both to residents and visitors for restaurants, retail, activities, gift cards, air programs, events, etc.
   B. Track website pass-throughs to local businesses and events and achieve 5% (approx. 14K) increase over 2021-22 actuals.

2. **Public Engagement and Outreach**
   A. Continue Community Coffee events, virtually, with a goal of 40+ participants monthly.
   B. Distribute 5-in-5 weekly via email – grow email distribution list by 20% percent.

C. Monthly Tourism Insights email – grow email distribution list by 10% percent.
D. Host an annual open house in Spring 2023 with a goal of 50 attendees.
E. Expand board member engagement including their roles and expectations within the community.
F. Work with global research leaders to provide actionable recommendations for engaging residents/businesses by November 2022.

3. **Local Partnerships**
   A. Assist TOML in the marketing of the workforce housing program to help educate locals on efforts to mitigate the ongoing housing crisis.
   B. Craft a communications plan to promote the ESCCRP 50,000-acre wildfire reduction effort ("The Donut") and the preventative steps being done to protect Mammoth Lakes. Have staff participate in the Citizens Wildfire Academy
   C. Continue to participate in, and provide promotional support for, Camp Like a Pro program.

4. **(B2C) – Banners & Signage**
   A. MLT to produce quality banner product promoting 4-seasons and work with TOML to replace broken banners, hardware and hang banners as needed. Banners should go up in April and down in November and replaced by lighted snowflakes November through April.
   B. Coordinate with TOML to secure digital safety and event message board on the corner of Old Mammoth Road and Main Street by summer/fall 2022.
   C. Explore installing digital kiosks in key locations of town to provide real-time guest information and stewardship messaging on touch screen monitors.

5. **Experience & Attractions: Event Promotion/Support**
   A. Increase budget to $300,000 (31% increase YOY) for 2022-23 event grant funding cycle for events in spring, summer, fall 2023 including a new Tier 1 event to fill off-peak event calendar.
   B. Expand event promotion/advertising plan for summer 2022 to include campground hosts.
   C. Develop an event survey to better understand visitor use, event success and local economic impact and implement for 2022-23 season.

III. Access and Mobility Awareness and Expansion

1. **Air Access**
   A. MLT to continue to support MMH Airport and scheduled charter air service through marketing efforts, airline contracting, and subsidy negotiation and payments.
   B. Explore possible expansion to year-round service at MMH and BIH in spring 2023.
   C. Work towards adding one new carrier, one new market & upgraded aircraft type to BIH for Winter 2023-24.
   D. Look at additional scheduled charter markets in California and the region for winter 2023-24.

2. **Air Service Promotion**
   A. Increase marketing funding for both commercial and scheduled charter services by at least 60%.
   B. Promote local air discount programs to encourage both commercial and scheduled charter flying to fill outbound, off-peak flights and increase number of locals' discount codes requested/distributed by 5% over winter 2021-22.
   C. Track fluctuations in BIH air service via NPS scores related directly to "visiting Mammoth Lakes". Benchmark set at 79. Work with the TOML, business partners, transportation providers, MLCC and MMSA to reach an NPS score of 81 for summer 2022 and winter 2022-23 air visitors.

3. **Regional Mobility**
   A. Continue to assist with coordination and subsidization of transportation services for air passengers arriving at BIH and MMH.
   B. Actively seek additional rental car options for both BIH and MMH.
   C. Develop comprehensive action plan for crisis management of winter highway closures and diversion plans for scheduled charter from MMH to BIH.

EXHIBIT "C"

COMPENSATION

The Town Council adjusted the compensation process for FY22-23, setting an appropriate level of funding based on marketing focus and deliverables. The previous compensation, based on approved Transient Occupancy Tax (TOT) revenue and a calculation of annual compensation was replaced with this specific amount for the final year of the contract. This compensation adjustment sets the funding provided to MLT only and does not adjust the percentage of TOT that is allocated to Tourism.

Section 1: Payments and Financial Accounting and Reporting

(a) Funding Amount for FY 22-23: The annual compensation for FY22-23 has been set to $2,000,000 based on the requested marketing effort and defined deliverables. Notwithstanding this funding allocation, and except as provided below, Town shall make quarterly payments to Contractor for FY22-23 as provided below. If this Agreement is terminated prior to the end of a quarter for which payment has been made, Contractor shall refund to Town a prorated amount for the remainder of the quarter, in accordance with the termination provisions of the agreement.

MLT Payments FY22-23

Contract Amount	$	2,000,000	per year

Quarter	Payment Date		Amount
1st Quarter FY22-23	7/22/2022	$	500,000
2nd Quarter FY22-23	10/21/2022	$	500,000
3rd Quarter FY22-23	1/20/2023	$	500,000
4th Quarter FY22-23	4/21/2023	$	500,000
		$	2,000,000

The Town has established a Town-held "Tourism Reserve" to account for TOT revenues received in addition to the amount provided herein, consisting of 18.076923% of such additional revenues. MLT may request the use of this reserve fund, but Town shall not be required to grant any such request. Prior to the expenditure of any portion of this reserve by the Town, the Town Council will consult with MLT on the Town use of this reserve. The use of this reserve requires Council approval via adoption of a resolution, appropriation of the funds and a budget amendment. The Tourism Reserve may be used to: (i) fund extra work agreed to by the parties to include, but not limited to expanded visitor experiences, special events, capital investment (i.e. signage and wayfinding), expanded promotion/marketing special projects (i.e. L.A. Kings Promotion) or

similar projects; or (ii) as otherwise approved by the Town Council. The Tourism Reserve is not to be used to supplant required services provided for in the agreement.

(b) In the event that this Agreement is extended, MLT may carry over not more than 15% of the payments received from Town in one fiscal year to the next fiscal year to assist in meeting cash flow needs of MLT. A carryover of any amount in excess of 15% from one fiscal year to the next requires Town approval prior to August 31st and requires the specific use of such funds to be defined and made a part of the deliverables provided for in this Agreement. To the extent MLT performs an unapproved carryover of funds, Town shall retain funds that would otherwise be due to MLT in the following fiscal year, in an amount equal to the unapproved carryover. Any such funds retained by the Town shall be used for tourism related purposes as determined in the Town's sole discretion. MLT will provide a proposed budget to the Town in May of each fiscal year. In addition to withholding funds as a result of an unapproved carryover, the Town may at its sole discretion reduce funding in future years if uncommitted reserves exceed 25% of the payments made by Town to MLT in any fiscal year.

(c) By January 30th of each year, MLT will provide to the Town an accounting, plus a copy of any audit, of expenditures showing the use of Town provided funding for the previous fiscal year, July 1 to June 30.

(d) Funds received from non-Town sources shall be identified and accounted for separately. Separation of sources and uses of funds is necessary to provide accounting of the use of restricted funds in compliance with any restrictions placed on funding.

Section 2: The Town may in its sole discretion provide additional funding to MLT in amounts approved by a resolution of the Town Council. The resolution will set forth the purpose of the funding, the source, any restrictions, and other matters relating thereto.

Section 3. In the event MLT ceases to operate or exist, all unexpended Town funds held by MLT shall be returned to the Town.

EXHIBIT "D"

ANNUAL PLANNING CALENDAR

January	Audited Financial Statement Accounting of Expenditures of Town provided funding from prior year
February	Year to Date Financial Review Programs update to Board of Directors
March	Board of Directors Strategy & Goal Setting Community Presentation
April	MLT Deliverables Draft to Board of Directors Deliverables and Strategy Draft to Town Council
May	MLT Budget Draft to Board of Directors Board of Directors to sign off on Deliverables.
June	MLT Budget Approval Council approval of budget and deliverables
July	New Fiscal Year & Budget begins Tracking of new Deliverables
August	No Planning Events
September	No Planning Events
October	No Planning Events
November	Quarter 1 Update Prior Year Recap Report to Board and Town Council
December	No Planning Events