TOWN OF MAMMOTH LAKES

PROFESSIONAL SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this 16th day of September, 2021, 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 DTA, a California Corporation, with its principal place of business at 5000 Birch Street, Suite 3000, Newport Beach, CA 92660 ("Consultant"). Town and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional public finance consulting services required by the Town on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional public finance consulting services to public clients, is licensed in the State of California, and is familiar with the plans of Town.

2.2 Project.

Town desires to engage Consultant to render such professional public finance consulting services for the Town of Mammoth Lakes Development Impact Fee and Affordable Housing Fee Nexus Study project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant 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 public finance consulting services necessary for the Project ("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.

3.1.2 Term. The term of this Agreement shall be from September 15, 2021 to August 31, 2022, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Independent Contractor; Control and Payment of Subordinates. The

Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. Town retains Consultant on an independent contractor basis and not as an employee. Consultant 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 Consultant shall also not be employees of Town and shall at all times be under Consultant's exclusive direction and control. Neither Town, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant 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. Consultant 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 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, Town shall respond to Consultant's submittals in a timely manner. Upon request of Town, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of Town.

3.2.4 Substitution of Key Personnel. Consultant has represented to Town that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of Town. In the event that Town and Consultant cannot agree as to the substitution of key personnel, Town shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the Town, or who are determined by the Town to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the Town. The key personnel for performance of this Agreement are as follows: Nathan Perez, Esq., Managing Director.

3.2.5 Town's Representative. The Town hereby designates Sandra Moberly, Community and Economic Development Director, or his/her 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 for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Work or change the total compensation due to Consultant under this Agreement. The Town Manager shall be authorized to act on Town's behalf and to execute all necessary documents which enlarge the Scope of Work or change the Consultant's total compensation subject to the

provisions contained in Section 3.3 of this Agreement. Consultant shall not accept direction or orders from any person other than the Town Manager, Town's Representative or his/her designee.

3.2.6 Consultant's Representative. Consultant hereby designates Nathan Perez, Esq., Managing Director, or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant'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.

3.2.7 Coordination of Services. Consultant agrees to work closely with Town staff in the performance of Services and shall be available to Town's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant 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. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants 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, Consultant 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 Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the Town to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the Town, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant 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 Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant 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.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant 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, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the Town that the subconsultant has secured all insurance required under this section.

3.2.10.2 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 Consultant, 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, Consultant 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. **If Consultant does not own any company vehicles or may not be able to purchase a Business Automobile Insurance Policy, the requirement may be satisfied by providing either of the following:** (1) a Personal Automobile Liability policy, including an endorsement or designation covering business use, for the Consultant's own vehicle stipulating "Automobile Liability Insurance with a limit of not less than $1,000,000 each accident"; or (2) a non-owned auto endorsement to the Commercial General Liability policy if Consultant uses vehicles of others (e.g., vehicles of employees).

(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 per claim and in the aggregate. 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.

3.2.10.3 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 3.2.10.2(A), Commercial General Liability, shall be endorsed to provide the following:

(1) Additional Insured: Consultant agrees to endorse the third-party general liability coverage required herein to include as additional insureds Town, its officials, employees, agents, and volunteers, using standard ISO endorsement No. CG 2010 with an edition date of 2010 or similar form. This provision shall also apply to any excess/umbrella liability policies. Consultant also agrees to require all contractors, subcontractors, and anyone else involved in any way with the Project contemplated by this Agreement to do likewise.

(B) The policy or policies of insurance required by Section 3.2.10.2(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.

3.2.10.4 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.

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

3.2.10.6 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.

3.2.10.7 Evidence of Insurance. The Consultant, 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, Consultant 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.

3.2.10.8 Failure to Maintain Coverage. Consultant 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 Consultant until Consultant has fully complied with the insurance provisions of this Agreement. In the event that the Consultant's operations are suspended for failure to maintain required insurance coverage, the Consultant shall not be entitled to an extension of time for completion of the Services because of production lost during suspension. 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.

3.2.10.9 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.

3.2.10.10 Pass Through Clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to the Town for review.

3.2.10.11 Requirements Not Limiting. Requirements of specific coverage features or limits contained in this Agreement are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Consultant maintains higher limits than the minimums shown above, Town requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Town.

3.2.10.12 Prohibition of Undisclosed Coverage Limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to the Town and approved of in writing.

3.2.10.13 Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately

to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

3.2.10.14 Timely Notice of Claims. Consultant shall give the Town prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed one hundred and seventy thousand dollars ($170,000) without written approval of the Town Council or Town Manager as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit monthly invoices. Town shall pay all undisputed amounts within 30 days of the receipt of each invoice.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by Town, or included in Exhibit "C" of this Agreement.

3.3.4 Extra Work. At any time during the term of this Agreement, Town may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by Town to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the Town.

3.3.5 Rate Increases. In the event that this Agreement is renewed pursuant to Section 3.1.2, the rate set forth in Exhibit "C" may be adjusted each year at the time of renewal as set forth in Exhibit "C."

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant 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. Consultant 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 Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to Town, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, Town may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional 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:

Consultant: DTA, Inc.
5000 Birch Street, Suite 3000
Newport Beach, CA 92660
ATTN: Nathan Perez, Esq., Managing Director

Town: Town of Mammoth Lakes
PO Box 1609
437 Old Mammoth Road, Suite 230
Mammoth Lakes, CA 93546
ATTN: Sandra Moberly, Community and Economic Development Director

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 Consultant under this Agreement ("Documents & Data"). Consultant shall require all subconsultants to agree in writing that Town is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant 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 Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of Town, be used by Consultant 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 or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use Town's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of Town.

3.5.3.3 Confidential Information. The Town shall refrain from releasing Consultant'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 Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give Town written notice of Consultant's objection to the Town's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the Town, and its officers, directors, employees, agents, and volunteers, 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) Consultant 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 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.

3.5.5 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 reason-

able attorney's fees and all other costs of such action.

3.5.6 Indemnification.

3.5.6.1 Scope of Indemnity. To the fullest extent permitted by law, Consultant 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 Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

3.5.6.2 Additional Indemnity Obligations. Consultant shall defend, with counsel of Town's choosing and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.5.6.1 that may be brought or instituted against Town or its directors, officials, officers, employees, volunteers and agents. Consultant 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. Consultant 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. Consultant 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. Consultant'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.

3.5.7 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.

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

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

3.5.10 Town's Right to Employ Other Consultants. Town reserves the right to

employ other consultants in connection with this Project.

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

3.5.12 Assignment or Transfer. Consultant 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.

3.5.13 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 Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to Town include its elected officials, directors, 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.

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

3.5.15 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.

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

3.5.17 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.

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant 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 Consultant, 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.

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, 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. Consultant 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.

3.5.20 Labor Certification. By its signature hereunder, Consultant 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.

3.5.21 Authority to Enter Agreement. Consultant 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.

3.5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of Town. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

TOWN OF MAMMOTH LAKES

By: _____
Bill Sauser
Mayor

Attest:

By: _____
Jamie Gray
Town Clerk

DTA

By: _____
David Taussig
President

By: _____
Cecily Burke
Secretary

Approved as to Form:

By: _____

Andrew Morris
Town Attorney

EXHIBIT "A"
SCOPE OF SERVICE

SCOPE OF WORK

DTA is pleased to submit this proposal to the Town of Mammoth Lakes (the "Town"), Mammoth Lakes Fire Protection District (the "Fire District"), and Mono County Office of Education ("MCOE"). It is our understanding that the Town, the Fire District, and MCOE are seeking a qualified consultant to conduct a consolidated Assembly Bill ("AB") 1600 Development Impact Fee ("DIF") Nexus Study ("Fee Study") that would recommend the appropriate fee justification methodology and fee levels to support specific types of capital facilities needed to serve new growth for each entity. The DIFs of interest are the Town's General Facilities and Equipment Fees, Police Fees, Storm Drainage Fees, Parkland and Recreation Fees, Vehicle Circulation Fees, Multi-Model Circulation Fees, and Administration Overhead Fees; MCOE's Library and Childcare Services Fees; and the Fire District's Fire Suppression Facilities, Vehicles, and Equipment Fees.

A. DIF Study

Work products stemming from the work plan described in this section will include:

- A memorandum ("memo") summarizing the fee methodology options; and
- The Draft and Final Administrative Reports.

DTA has an enviable reputation for producing high-quality work in a quick and efficient manner to correspond with even the most aggressive project schedule. DTA's clients also receive high levels of personal attention from senior staff, with a Principal, Senior Vice President, or Vice President always available to meet with public agency staff and other groups.

Task 1 – Development of Project Strategy and Kickoff Meeting

DTA staff will meet with Town, Fire District, and MCOE staff in a project kickoff meeting to finalize the details of the project, deliverables, timetables, and tasks, discuss the fee methodologies and best practices, identify needed information (i.e., reports, project/needs lists, stakeholder groups, data, etc.), prepare the final schedule, discuss the public process, and resolve other concerns, as appropriate.

Task 2 – Develop Population and Dwelling Unit Projections

DTA will compile and document existing and future population and development estimates that will be applicable for the Town, the Fire District, and MCOE fee calculations. At this stage, DTA will evaluate resources and influences, all factors affecting the existing Fee Studies, and pertinent impact fees as outlined by the Town, the Fire District, and MCOE (including General Facilities and Equipment Fees, Police Fees, Storm Drainage Fees, Parkland and Recreation Fees, Vehicle Circulation Fees, Multi-Model Circulation Fees, Administration Overhead Fees, MCOE Fees, and Fire District Fees).

This task comprises four subtasks.

Subtask 2A – Population Projections

DTA will gather existing information on present and future population projections for the Town from various sources, including Town staff, the General Plan, existing Master Plans, the U.S.

Census, the local Transportation Agency, the State Department of Finance, and from other data sources, including the Town's Capital Improvement Program ("CIP"), the Fire District's CIP, and MCOE's CIP.

Subtask 2B – Conduct Entitlement Research and Projections

DTA will coordinate with the Town to determine existing and future residential and non-residential development within the Town over the planning horizon (5 years, or otherwise). To complete this subtask, DTA will review the General Plan/CIP and related plans to determine expected development land use patterns in the Town, assess Town records to identify existing entitlements for dwelling units and commercial/industrial development, and project the number of new dwelling units and commercial/industrial development based on existing entitlements and population projections through 2041, or such other target year as selected by Town staff.

Subtask 2C – Review the Current Fee Structures

DTA shall review and summarize the current development fee structures, policies and procedures, and other regulatory requirements affecting potential fee structures and revenue program requirements of the Town, the Fire District, and MCOE.

Subtask 2D – Review Prior Fee Justification Studies

DTA shall review the approach and methodology utilized in prior Town, Fire District, and MCOE fee justification studies so they can be evaluated in light of current needs.

Task 3 – Review Facility/Capital Needs and Levels of Service

This task entails the review of the facilities and capital needs required to serve new development in the study area projected in Task 2. DTA will use existing Town materials (and any relevant Developer Facilities Reports) as base documents and focus our effort on updating this information.

For any fee program to be comprehensive in its scope, it is necessary to complete a thorough identification and review of all the facilities that will be impacted by additional growth, including those already discussed in the General Plans or CIPs. This task will require close coordination with all appropriate Town departments.

Subtask 3A – Survey/Interview Staff

DTA shall survey/interview Town, Fire District, and MCOE staff to review projected facilities in the study area, along with major equipment needs, the timing at which improvements will be needed, and any physical data that would assist in developing the costs estimated below in Subtask 3C. Based upon the results of the surveys and interviews, DTA will verify and, if appropriate, expand the list of new facilities found in the General Plans/CIPs to be included within the fee program for the Town, the Fire District, and MCOE.

Subtask 3B – Facilities List

Based on the information collected in Subtask 3A, DTA shall prepare a facilities needs list that details the new facilities and equipment to serve new development in the jurisdiction of the Town, the Fire District, and MCOE.

Subtask 3C – Review Cost Estimates

DTA's engineering and technical staff will, as necessary, consult with department heads and/or engineering staff or equivalent to ascertain and understand in-house cost data for existing and projected facilities and equipment, apply inflation and cost of- living escalators to the list of projected public facilities to determine future costs, review and/or refine existing cost data, examine major sources of revenue to fund the construction of new public facilities, and provide a proportional estimate between projected costs

Task 4 – Develop Methodology for Calculating New Fee Amounts

This task entails developing the methodology used to establish the fee amount for each fee component to the extent appropriate. There are two critical issues that must be considered in developing a fee program. The fee program must generate revenues in a timely manner and the methodology must meet the nexus or benefit requirements of AB 1600. Since fees of any sort are controversial, it is critical that any fee established be legally defensible.

DTA's Fee Study methodology must meet the nexus or benefit requirements of AB 1600, which requires that there be a nexus between the fees imposed, use of the fees, and development projects on which the fees are imposed. Furthermore, there must be a relationship between the amount of the fee and cost of the improvements. In order to impose a fee as a condition for a development project, the methodology must accomplish the following:

- Identify the purpose of the fee;
- Ascertain the use to which the fee is to be put; if the use is financing public facilities, the facilities must be identified;
- Determine how there is a reasonable relationship between the fee's use and type of development project on which the fee is imposed; and
- Identify how there is a reasonable relationship between the need for the public facility and type of development project on which the fee is being imposed.

Implicit in these requirements is a stipulation that a public agency cannot impose a fee to cure existing deficiencies in public facilities or improve public facilities beyond what is required based on the specific impacts of new development. The benefit methodology established in this task will be documented in the Final Report.

DTA shall prepare a memo to be submitted to Town, Fire District, and MCOE staff summarizing available methodologies and their respective pros and cons and providing detailed examples of other counties' or agencies' impact fee programs. Methodologies to review will include programs based on auto vehicle trips, all mode trips (e.g., auto, transit, bike, and walk), square footages, or household units, etc. The memo will also discuss, as applicable, context-sensitive and transportation demand management adjustments and "credits" for capital improvements required as part of a project application. DTA will recommend a Fee Expenditure Plan to ensure that projects can be fully funded and implemented within any required time limits for expenditures of such funds and possible flexibility to allow collected fees to be used to provide the Town with a match for grant applications. Finally, the memo will include recommendations for methodology and next steps. Upon review and discussion by Town, Fire District, and MCOE staff, a methodology will be selected.

Deliverable: Memo Summarizing the Fee Methodology Options

Task 5 – Determine Fee Levels

This task entails calculating the fee amounts based upon the dwelling unit and commercial/industrial development projections completed in Task 2, facilities needs and costs determined in Task 3, and methodology selected in Task 4.

Subtask 5A – Calculate Recommended Fee Amounts

DTA shall calculate fees by inputting the data compiled under the preceding tasks and computing each fee to be levied. This work will be done in a spreadsheet format that can be updated annually. DTA will also evaluate this data in comparison to surrounding jurisdictions in the region, as selected by Town staff, in order to arrive at comparable and palatable fee levels.

Subtask 5B – Document Fee Derivation

DTA shall document the methodology utilized for the fee calculation model in such a way that can be understood by the Town, the Fire District, MCOE, and the public. DTA shall prepare written statements documenting the validity of the methodology for deriving each of the fees for the Town. These statements will be made to meet the requirements of AB 1600 and documented in the Final Report discussed below.

Task 6 – Prepare Draft and Final Reports

This task entails the preparation of the Draft and Final Reports for consideration by the Town Council, Fire District Board of Commissioners, and MCOE Board of Education.

Subtask 6A – Prepare Draft Report for Comments

Based on the work completed in Tasks 1-5, DTA will prepare the Draft Report for review and consideration by Town, Fire District, and MCOE staff. The Draft Report will be prepared under the standards of AB 1600 and is expected to include an executive summary, population projections, the facilities and improvements list, areas of benefit (if applicable), fee calculations, recommended fee levels, and the suggested process for keeping fees current.

Subtask 6B – Prepare Final Report

Based on the incorporation of Town, Fire District, and MCOE staff comments and concerns on the Draft Report, DTA will prepare the Final Report for presentation to the Town Council and Town staff, Fire District Board of Commissioners and Fire District staff, and the MCOE Board of Education and MCOE staff.

Deliverables : Draft and Final Reports

Task 7 – Attend Meetings and Public Outreach

This task entails in-person attendance at up to four (4) in-person meetings with the Town's Administrator (or similar), the Fire District's Administrator (or similar), the MCOE Administrator (or similar), other Town staff, focus groups, stakeholders, the Town Council, the Fire District Board of Commissioners, and the MCOE Board of Education to present information regarding the status of the impact fee program update, draft study, and Final Report to obtain input, including a kickoff meeting

with Town, Fire District, and MCOE staff and three (3) public hearings. The final studies shall be presented to three separate governing entities (Town, Fire District, and MCOE). DTA staff shall also be available for standing conference calls (i.e., weekly, bi-weekly) and/or virtual meetings, via an online meeting software, with Town, Fire District, and MCOE staff to discuss progress and any issues and receive guidance.

During these meetings, DTA will take into account community and stakeholder input. For this purpose, DTA will develop handouts for these meetings that summarize the findings and analysis from the Public Review Draft.

DTA will also prepare and distribute updated information, as necessary, to facilitate discussion in Focus Group Meetings in which DTA is unable to attend.

Task 8 – Conduct Focus Group Meetings (Optional)

DTA will be prepared to lead meetings and workshops with selected groups to gain better project understanding, gauge community sentiment, and determine the key objectives.

B. Affordable Housing Fee and/or Commercial Linkage Fee Nexus Study

Task 9 – Project Initiation

DTA will meet initially with Town staff to reaffirm the objectives of the project, review the scope, and collect relevant documents. The discussion of the Affordable Housing Fee Nexus Study shall be included in the kickoff meeting conducted under Task 1. At the kickoff meeting, it will also be determined if the Town would like to pursue an Affordable Housing Fee that can be applicable for both residential and non-residential development and/or a Commercial Linkage Fee that is applicable only for non-residential development and reflects the relationship between new commercial development, such as hotels, and demand for affordable housing by the future employees that will result from the commercial development.

Task 10 – Residential Housing Characteristics

DTA will work with the Town to identify residential housing characteristics within the Town. Based on these characteristics, different prototypes will be selected for the fee calculations. The prototypes should be representative of the different residential developments anticipated in the Town. Development cost assumptions will be developed for each of the prototypes.

Task 11 – Affordability Gap Analysis

The affordability gap refers to the difference between what a household can afford to pay for a housing unit and cost to develop the housing unit. The affordability gap will be calculated two ways. The first is based on actual costs and incomes of residents in Town-completed affordable housing projects. The second is based on the maximum affordable home prices and rental rates for employees compared with prototype housing development costs. The latter is developed in Task 10. The former is calculated using relevant data from the U.S. Census, California Department of Housing and Community Development, and others. DTA will work with the Town to ensure that the affordability gap analysis reflects Town housing goals. Our firm will determine the affordability gap with rental and for-sale units.

Task 12 – In-Lieu Fee Structure and Calculations

Under Task 12, DTA will calculate the maximum justifiable fee per for-sale and rental residential unit. The fee will be on a per unit basis or per square foot of livable space basis. The fee structure will be determined in consultation with the Town. Please note that the calculated fee will be the maximum justifiable fee and not a recommended fee.

Integral to the fee calculation is an estimate of jobs created by the market-rate households' demand for goods and services. DTA will estimate job creation and the types of jobs resulting in the projected number of units by household income level to conduct the in-lieu fee calculation. The affordability gap is multiplied by the number of units necessary to house the estimated number of employees generated at each income level to calculate the fee. Income level refers to established income levels in the Town for extremely low, very low, low, and moderate household income brackets.

Task 13 – Prepare Working Draft

An outline of the methodology used and findings of the analysis will be prepared in either a memo or report format. The Working Draft will be for Town staff internal review only. The Working Draft will be complete by end of fiscal year 2020-21.

Task 14 – Regional Fee Comparison

Affordable housing fees of other jurisdictions in the region will be researched for comparison purposes.

Task 15 – Preliminary Feasibility Analysis

Payment of an in-lieu fee adds to the total development costs of a project, potentially making the project financially infeasible for the developer. DTA will perform preliminary financial feasibility tests to determine the general feasibility of market-rate units paying an affordable housing in-lieu fee. The tests will be performed for the different residential prototypes.

Task 16 – Prepare Administrative Draft

DTA will reformat the Working Draft (if in memo format) to a report format and incorporate the findings of Tasks 14 and 15. The study will demonstrate that the maximum justifiable fee satisfies all relevant law. DTA will submit the Administrative Draft for staff review and meet with staff to review staff comments.

Task 17 – Prepare Public Review Draft

Based on staff comments, DTA will prepare a Public Review Draft of the Affordable Housing Fee Nexus Study and submit it to the Town.

EXHIBIT "B"
SCHEDULE OF SERVICES

PROPOSED PROJECT SCHEDULE

DTA's typical schedule of tasks for a DIF program/AB 1600 Nexus Study is outlined below. Given the Town's desired project timeline, this timeline of events can and will be completed within the proposed time frame according to the Town's specifications.

Table 1: Proposed Schedule

Task	Description	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May
1	Development of Project Strategy and Kickoff Meeting								
2	Develop Population and Demographic Projections								
3	Review Facility/Capital Needs and Levels of Service								
4	Develop Methodology for Calculating New Fee Amounts								
5	Determine Fee Levels								
6	Prepare Draft and Final Reports								
7	Attend Three (3) Additional Meetings and Public Outreach								
9-17	Affordable Housing Nexus Study								
Ongoing	Communication, Education, and Outreach of Project								

EXHIBIT "C"
COMPENSATION

II FEE SCHEDULE

Fees for services shall be charged on an hourly basis according to the rates set forth in the fee schedule below, with consolidated invoices (including Town, Fire District, and MCOE work) being submitted to the Town monthly for coordination of payment by all entities. The estimated fee for services is not to exceed $90,000 for an AB 1600 Nexus Study and $80,000 for an Affordable Housing Fee Nexus Study. Further work at that point would require additional fees.

Proposed Budget

AB 1600 Nexus Study

Task Description	Charge
Town of Mammoth Lakes	$60,000.00
Mono County Office of Education ("MCOE")	$15,000.00
Mammoth Lakes Fire Protection District	$15,000.00
Subtotal	**$90,000.00**
Affordable Housing Fee Nexus Study	$80,000.00
Total	**$170,000.00**

DTA's Fee Schedule

President/Managing Director	$290/Hour
Senior Vice President	$260/Hour
Vice President	$240/Hour
Senior Manager	$205/Hour
Manager	$195/Hour
Senior Associate	$185/Hour
Associate III	$175/Hour
Associate II	$165/Hour
Associate I	$150/Hour
Research Associate II	$140/Hour
Research Associate I	$125/Hour

DTA shall attend up to four (4) in-person meetings, including a kickoff meeting with Town staff and three (3) public hearings. The final studies shall be presented to three separate governing entities (Town, Fire District, and MCOE). DTA staff shall also be available for standing conference calls (i.e., weekly, bi-weekly) and/or virtual meetings, via an online meeting software, with Town staff to discuss progress and any issues and receive guidance. Additional meetings shall be charged on a time and materials basis, not to exceed a rate of $2,500 per in-person meeting.

Out-of-pocket and administrative expenses shall be equal to 3% of DTA's billings for labor, plus travel expenses and any outside vendor payments, not to exceed $4,000. All hourly rates for services apply through December 31, 2021, and are subject to a cost-of-living increase.

A. Limitations

The labor costs in the table above include in-person attendance at a total of four (4) formal meetings, including a kickoff meeting with Town staff and three (3) public hearings. In-person attendance at more than four (4) meetings, detailed written responses to resolve disputes, or the preparation of more than

one set of major revisions to the Draft Report will be classified as additional work and may require further billing at the hourly rates identified in Table 2 if the maximum fee levels have been exceeded.

Other examples of additional work shall include:

- Additional analyses based on revised assumptions requested by the Town, including possible changes in the facilities needs list, infrastructure costs, population projections, and related data once the preparation of the Draft Report has been initiated and/or adjustments to assumptions once the Draft Report has been approved;
- Negotiations with stakeholders once the Final Report has been prepared;
- Time expended related to obtaining data assigned to the Town under "Information to be Provided by the Town";
- DTA expects the MCOE Childcare and Library Fees to be calculated using a Plan-Based Approach, wherein MCOE outlines the proposed improvements and facilities;
- Assistance with the Annual and Five-Year Reports is out of scope, but DTA is more than happy to provide a scope of work for continuing services, if requested;
- Actual implementation of the fee program; and
- Reproduction of more than five bound copies of the Final Report and Public Review Draft.

The maximum fees listed above assume the review and implementation of the fee program with a schedule between the initiation of services and public outreach that is within the proposed time frame according to the Town's specifications.