

## AGREEMENT

This Agreement is made and entered into by and between Mammoth Lakes Tourism, a California non-profit mutual benefit corporation (“MLT”) and the Town of Mammoth Lakes, a California municipality (“Town”) as of the date of the last signature appended hereto.

### Recitals

- A. Town is a California municipality located in Mono County, California.
- B. MLT is a corporation formed for the purpose of promoting tourism in the Town of Mammoth Lakes.
- C. Advanced Air LLC (“LLC”) is a company that provides scheduled charter air service.
- D. MLT would like to enter into a contract with LLC for scheduled charter air service from Southern California to the Mammoth Yosemite airport for the 2021-2022 Winter season, conditioned upon financial assistance from Town in the performance of the minimum revenue guarantee provision of this contract; and
- E. Town would like to provide that financial assistance as well as further assistance with forthcoming revenue guarantee obligations of MLT as described in this Agreement.

NOW THEREFORE, in consideration of the above, and of the mutual covenants herein contained, and other good and valuable consideration, the parties agree as follows:

- 1. Recitals. The above Recitals are hereby incorporated into this Agreement and made a substantive part hereof.
- 2. Contract with LLC for Air Service. Concurrently with the execution of this Agreement, MLT shall enter into that contract with LLC for scheduled charter air service to the Mammoth Yosemite airport a true copy of which is attached hereto and incorporated herein by reference as “Exhibit A” (the “Contract”).
- 3. Payment of Minimum Revenue Guarantees by MLT; Partial Reimbursements to MLT by Town. In accordance with the terms of the Contract, MLT shall pay to LLC a minimum revenue guarantee not to exceed Four Hundred Fifty Thousand dollars (\$450,000). In the event this minimum revenue guarantee obligation exceeds Two Hundred Seventy-Five Thousand dollars (\$275,000), then Town shall reimburse MLT for all further revenue guarantee payments made by MLT to LLC under the Contract up to the cap of Four Hundred Fifty Thousand dollars (\$450,000). MLT acknowledges and agrees that Town’s reimbursement obligations hereunder shall not apply to any “Fuel Adjustment” or other obligation owed by MLT under the Contract other than the revenue guarantee set forth in Section 2 therein. Town has allocated a total of Two Hundred Thousand dollars (\$200,000) toward minimum revenue guarantees for scheduled charter air service. Therefore, the balance of this Two Hundred Thousand dollars (\$200,000) after reimbursement to MLT of the aforementioned minimum revenue guarantee payments under the

Contract shall be paid to MLT as reimbursement to MLT for any minimum revenue guarantee for which MLT is obligated for air service for the 2022 Summer season (“Town’s Summer Contribution”), provided that Town has approved the terms of any such contract to be entered into by MLT for the 2022 Summer season. No such contribution shall be due if MLT has no such minimum revenue guarantee obligation for the 2022 Summer season or if MLT has entered into a contract for the 2022 Summer season which the Town has not approved. If MLT’s 2022 Summer Season guarantee is less than Town’s Summer Contribution, then Town’s payment hereunder shall only be in the amount of that actual guarantee obligation of MLT. Nothing herein shall preclude the parties from agreeing to a further contribution from Town toward a minimum revenue guarantee for the 2022 Summer season should they so desire in the future, provided that Town may refuse to provide any such guarantee in its sole discretion.

4. Procedure for Payment by Town to MLT. MLT shall invoice Town for the reimbursement amount owing to MLT by Town under this Agreement for the 2021-2022 Winter season by or about April 30, 2022, and MLT shall invoice Town for the amount owing to MLT, if any, for the 2022 Summer season by on or before the thirtieth day after termination of the 2022 scheduled charter air service for the 2022 Summer season. MLT shall include with these invoices accountings showing how the invoiced amounts were calculated, as well as documentation in the possession of MLT which supports the accounting. The invoices and supporting documentation shall be hand delivered to the office of the Town Manager for Town, and any undisputed portion of the invoiced amounts shall be due and payable by Town to MLT no later than thirty (30) days from the date of delivery of complete supporting documentation. In the event that Town requests additional supporting documentation from MLT, the thirty-day period shall commence to run upon the delivery of the last requested item.

5. Time is of the Essence. Time is of the essence. It shall be a default of this Agreement if Town fails to pay when due any sum payable under this Agreement.

6. General Provisions.

6.1 Attorney’s Fees. In the event any action at law or in equity is initiated to enforce or interpret the terms of the Agreement, or arises out of or pertains to the Agreement, the prevailing party shall be entitled to reasonable attorney’s fees, costs, and necessary disbursements in addition to any other relief to which that party may be entitled.

6.2 Joint Preparation; Entire Agreement. This Agreement shall for all purposes be deemed to have been jointly prepared by the parties and interpreted accordingly, and therefore the provisions of Civil Code section 1654 shall not be deemed applicable in the event of any interpretation of the Agreement. In entering into this Agreement, neither party has relied on any inducements, promises, or representations made by the other party or its representatives that are not contained in this Agreement. This Agreement represents the entire agreement of the parties, supersedes any prior oral or written agreements regarding the subject matter hereof, and each party has freely and voluntarily entered into this Agreement after having ample opportunity to consult with its or his respective attorney.

6.3 Attorney Representation. Each party has been represented by its own attorney in the negotiation and preparation of this Agreement. Each party shall bear its own attorneys' fees and costs in that regard.

6.4 Effect of Waiver. No waiver of any breach of any term, covenant, agreement, restriction, or condition of this Agreement shall be construed as a waiver of any succeeding breach of the same or any other covenant, agreement, term, restriction, or condition of this Agreement. The consent of approval of either party to or of any action or matter requiring consent or approval shall not be deemed to waive or render unnecessary any consent to or approval of any subsequent or similar act or matter.

6.5 Remedies. Enforcement of any provisions of this Agreement shall be by proceedings at law or in equity against any persons or entities violating or attempting to violate any promise, covenant, or condition contained herein, either to restrain violation, compel action and/or to recover damages. Any and all remedies provided by this Agreement, operation of law, or otherwise, shall be deemed to be cumulative and the choice or implementation of any particular remedy shall not be deemed to be an election of remedies to the mutual exclusion of any other remedy provided for herein, by operation of law, or otherwise.

6.6 Venue. This Agreement is entered into in Mono County, California, and shall be interpreted under the laws of the State of California. The sole and exclusive venue for any litigation involving this Agreement shall be in Mono County.

6.7 Assignment. This Agreement and the rights and obligations thereunder may not be assigned by either party without the prior written consent of the other party, in its sole exercise of discretion.

6.8 Successor or Assigns. This Agreement shall be binding upon and inure to the benefit of the parties thereto and to their respective successors and assigns.

6.9 Assent. The terms, conditions, and covenants of this Agreement and the transactions contemplated hereby have been explained to the respective parties by their respective counsel, and the signatures of all the parties hereto are to be deemed voluntarily appended to this Agreement, and with the full knowledge of the parties of the terms, conditions and covenants and obligations of this Agreement.

6.10 Execution of Documents. Each party hereto agrees to execute and deliver all such other documents and instruments and to take all such other actions as may be necessary to carry out the terms and provisions of this Agreement.

6.11 Authority. By executing this Agreement hereinbelow, each signatory represents and warrants that he has been duly authorized by the entity he represents to sign this Agreement on its behalf.

6.12 Indemnity. To the fullest extent permitted by law, MLT shall defend, indemnify and hold 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 this Agreement, including without limitation those pertaining to the air service the operation of which is subsidized hereunder, and including without limitation the payment of all consequential damages, expert witness fees and attorneys fees and other related costs and expenses.

Mammoth Lakes Tourism, a California  
Nonprofit Mutual Benefit Corporation

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: John Urdi  
Its: Chief Executive Officer

Town of Mammoth Lakes

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: Daniel C. Holler  
Its: Town Manager

(MLT\agmt2.080321)