

**TOWN OF MAMMOTH LAKES LAND USE PLANNING AGREEMENT  
WITH MAMMOTH LAKES FOUNDATION  
FOR PROPOSED IMPROVEMENTS ON PROPERTIES LOCATED  
AT 100 COLLEGE PARKWAY AND 10 WAGON WHEEL ROAD**

This Land Use Planning Agreement ("Agreement") is entered into to be effective on July 1, 2022 ("Effective Date"), by and between the Town of Mammoth Lakes, a municipal corporation, located at 437 Old Mammoth Road, Suite 230, in Mammoth Lakes, California ("Town"), and Mammoth Lakes Foundation, a California Non-Profit Public Benefit Corporation, located at 100 College Parkway, in Mammoth Lakes California ("MLF"). The Town and MLF are also referred to individually as a "Party" or collectively as the "Parties."

**RECITALS**

A. MLF owns two parcels of real property located at 100 College Parkway and 10 Wagon Wheel Road in Mammoth Lakes, California, which are identified in the satellite photograph attached as Exhibit A (collectively, the "Properties").

B. The parcel located at 100 College Parkway (the "Edison Hall Parcel") includes approximately 7.94 acres of land, an approximately 8,000 square-foot building commonly referred to as Edison Hall, a small storage building and utility-related improvements, and a paved parking area of approximately .4 acres, with the remainder of the parcel as vacant land.

C. The parcel located at 10 Wagon Wheel Road (the "Wagon Wheel Parcel") is approximately 19.05 acres of vacant land.

D. The Town and MLF intend to plan the potential development of the Properties with certain improvements to include: (1) a childcare facility; (2) a support building for the proposed Mammoth Arts and Cultural Center ("MACC"); (3) an outdoor amphitheater; (4) a temporary dog park; (5) up to twenty housing units; (6) additional vehicular parking; and (7) a temporary snow storage area (collectively, the "Proposed Improvements").

E. Upon the terms and conditions of this Agreement, the Town and MLF agree to proceed with planning efforts including, but not limited to environmental analysis, site design, conceptual designs, improvement designs, and certain entitlements and use permits for the Properties, as referenced in the conceptual land use plan attached as Exhibit B.

F. Upon execution of this Agreement, the Town and MLF intend to commence good-faith negotiations of one or more separate agreements and/or leases by which the Parties will document the details of the Town's proposed development of the Proposed Improvements and the proposed uses of the Proposed Improvements by the Town, MLF, and the public.

G. Concurrently with the execution of this Agreement, the Parties intend to execute a Lease Agreement by which the Town will Lease Edison Hall from MLF ("Lease Agreement").

THEREFORE, the Town and MLF agree:

## TERMS AND CONDITIONS

1. **Contingency and Term.** The effectiveness and enforceability of this Agreement is contingent upon the Parties' concurrent execution of the Lease Agreement. The term of this Agreement shall commence on the Effective Date. The term shall continue for five (5) years after the Effective Date. Upon 60 days' written notice, the Town shall have the option to extend the Agreement for successive one-year terms, for up to an additional five (5) years, unless sooner terminated or amended pursuant to its terms.
2. **Planning Costs.** All costs incurred by the Town in any way related to the planning efforts associated with the Proposed Improvements shall be borne by the Town. The Town shall not take any action to incur, pledge, promise or assign any cost to MLF without its prior written approval.
3. **Future Agreements.** Notwithstanding any implication to the contrary in this Agreement, this Agreement does not provide the Town any right to enter upon or use any portion of the Properties at any time, or to authorize any third parties to do so, except as reasonably required to plan for the potential installation or construction of the Proposed Improvements on the Properties. The Parties will negotiate in good faith the terms of one or more leases or other agreements to permit the Proposed Improvements and associated uses on the Properties. If the Parties fail to agree on the terms of any of the Proposed Improvements or associated uses, then the Town shall not proceed with those Proposed Improvements or uses.
4. **Access to the Properties.** MLF grants the Town permission to access the Properties, upon reasonable notice by email or telephone, for the following purposes:
  - 4.1 **Environmental Analysis.** The Town will complete all environmental reviews and assessments, including the preparation of all studies, reports, and disclosures which may be required to comply with the California Environmental Quality Act based upon the proposed uses planned for the Properties as depicted in Exhibit B, which shows that all of the Proposed Improvements, with the exception of the Temporary Snow Storage Area, are proposed to be located on the Edison Parcel.
  - 4.2 **Site and Facility Design.** The site and facility design will include all planning required to facilitate the development of the Properties in phases. This work includes all planning, building, engineering, environmental, and other agency review and permits for the following proposed uses:
    - i. **Childcare Facility.** The planned facility will include 6,600+/- square feet (not to exceed 7,000 square feet) of facility space to accommodate childcare and potential pre-school services. An outdoor play area of approximately 7,800 square feet, with the final design based on a requirement to provide 75 square feet of outdoor space per child is proposed. This is a near-term project planned to be operational in the summer/fall of 2023. Operation of the childcare facility by a public agency and/or the private sector is under consideration.

- ii. **MACC Support Building.** A 1,000+/- square foot support building for the MACC is planned. The building would provide storage for overall site needs, a workshop area, and related support for the MACC and Edison Hall operations. The building is planned to be operational in the summer/fall of 2023.
- iii. **Outdoor Amphitheater.** The site plan includes space for an outdoor amphitheater which was part of previous concept planning work related to the MACC. The area is 1+ acre in size. This is a long-term project, and no completion date has been established.
- iv. **Temporary Dog Park.** The near-term plan includes an approximate 1+/- acre temporary dog park with associated amenities (fencing, water, seating area, small storage for materials, and shade). The dog park is planned to be opened in late summer/fall of 2023. The long-term plan is for the dog park to be relocated off-site to accommodate the development of housing units at this location.
- v. **Housing Units.** The planning effort includes the analysis of a future housing development plan of up to 20 units. Initial design shows 10 two-unit townhome sites (footprint is approximately 635 square feet per unit), but final configuration and unit count will be determined cooperatively between the Town and MLF within the noted limits. Currently, there is no identified funding, builder, or operator for the proposed housing project.
- vi. **Additional Parking.** The plan incorporates an estimated 40-space parking lot. The lot is proposed to serve all services provided on the properties and provide additional spaces near an access point to the Town's Multi-Use Path System (MUPS). Pending the public bidding process, this project is planned for completion in the summer/fall of 2023.
- vii. **Temporary Snow Storage Area.** The concept plan includes a 5+/- acre site on the 10 Wagon Wheel Road property to be used as a temporary snow storage area. Access road, security fencing/gate, and best management mitigation measures shall be included. The Parties will attempt in good faith to negotiate a separate use agreement for the site based on the outcome of the environmental planning work. The agreement shall include a funding structure to compensate MLF. The implementation goal is for winter 2022-23.

4.3 **Building Materials.** The Foundation is aware of and consents to the Town's planned reuse of up to six modular buildings for the childcare facility and one modular building MACC support building. Other than these, the Town will not place any additional modular buildings on any portion of the Property. All construction and buildings will comply with applicable Town codes.

4.4 **Site Maintenance and Care.** The Town shall use best management practices in accessing the site for planning and environmental work and for the use of

the Properties for site analysis, development activities, security, construction, utility connections, grading, and related work. The Town will provide all maintenance required for the temporary dog park and associated amenities, the additional parking lot, improved MUPS/sidewalks, fencing, and any public utilities under Town control. The Town will provide for ongoing maintenance, mitigation, and site remediation as required for the temporary snow storage area. Maintenance of new structures is not the responsibility of MLF; the Town and/or operator of the facilities will be responsible for maintenance of all buildings and appurtenances. The Town will be responsible for snow removal for the new parking lot, improved sidewalks, or MUPS at its sole discretion.

**5. Indemnity.** Except to the extent to which any claims, liability, loss, damage, or expenses arise from the negligence of MLF or its agents or employees, the Town agrees to indemnify, defend, and hold MLF, its directors, employees, agents, successors and assigns, volunteers, and guests, and the personal property of MLF, including the Property, free and harmless of any and all claims, liability, loss, damage, or expenses resulting from Town's occupation and/or use of the Property, specifically including:

- i. The death or injury of any person or persons, including any person who is an employee, agent, guest, or customer of the Town,
- ii. The damage or destruction of the Property or any Improvements by any person who is an employee, agent, guest, or customer of Town,
- iii. Any work performed on the Properties or materials furnished to the Property at the insistence or request of Town; and
- iv. The Town's failure to perform any provision of this Agreement, or to comply with any requirement of local, state, or federal law or any requirement imposed on Town or by any duly authorized governmental agency or political subdivision.

**6. Hazardous Materials Prohibited.** The use, generation, storage or disposal of Hazardous Materials on the Properties is strictly prohibited, and any such use, generation, storage, or disposal shall result in a default and termination of this Agreement. For the purpose of this section, Hazardous Materials shall include, without limitation, substances defined as "hazardous substances", "hazardous materials", "toxic substances", "hazardous wastes", "extremely hazardous wastes", or "restricted hazardous wastes", or stated to be known to cause cancer or reproductive toxicity, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. sections 9601, et seq; the Hazardous Materials Transportation Act, 49 U.S.C. sections 1801, et seq; the Resource Conservation and Recovery Act, 42 U.S.C. sections 6901, et seq; the Federal Water Pollution Control Act, 33 U.S.C. sections 1317, et seq; sections 25115, 25117, 25122.7, 25140, 25249.5, 25249.8, 25281, 25316 or 25501 of the California Health & Safety Code; or any substances so defined or stated in any of the regulations adopted and publications promulgated pursuant to said laws as they may be amended from time to time.

## **7. Insurance.**

7.1 The Town shall obtain insurance in the amounts described below unless specifically altered or waived by MLF (“Required Insurance”). If any of the Required Insurance contains a general aggregate limit, that insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit. Notwithstanding any provision of this Agreement, the Town may furnish the Required Insurance through coverage provided by Town’s participation in a joint powers self-insurance authority.

- i. General Liability Insurance. Town shall maintain occurrence version general liability insurance, or an equivalent form, with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence, which limit may be satisfied by a combination of primary and umbrella policies.
- ii. Workers’ Compensation Insurance. In the event that the Town has any employees who will be working on the Properties, it shall maintain Workers’ Compensation insurance in compliance with all applicable statutes.

7.2 The general liability insurance policy shall name MLF, its directors, officers, employees, agents, and volunteers as additional insureds. The Required Insurance shall be primary as to Town’s operations with respect to any insurance or self-insurance programs covering the Foundation, its directors, officers, employees, agents, and volunteers, or if in excess, shall stand in an unbroken chain of coverage in excess of Town’s scheduled underlying coverage. The Required Insurance shall contain standard separation of insureds provisions and shall contain no special limitations on the scope of its protection to MLF, its directors, officers, employees, agents, and volunteers.

7.3 The Town shall provide MLF properly executed certificates of insurance which evidence all Required Insurance prior to initiating any work on the property. The Town shall maintain the Required Insurance at all times while this Agreement is in effect, and shall replace any certificate, policy, or endorsement which will expire ten (10) business days before expiration without a lapse in coverage. The Town shall forward any notice of cancellation to MLF within two (2) business days from the date of the Town's receipt. The Town's failure to forward MLF any notice of cancellation issued to the Town shall be considered a breach of this Agreement. Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to MLF, its directors, officers, employees, agents, and volunteers. Unless approved in writing by MLF, the Town shall place the Required Insurance with insurers licensed or authorized to do business in the State of California with a current A.M. Best rating of at least A-.

**8. Attorneys’ Fees.** If any legal action or proceeding is commenced between the Parties concerning the Properties or the Parties' respective rights and obligations pursuant to this Agreement, then the prevailing party in that action or proceeding shall be entitled, in addition to such other relief as may be granted, to recover its reasonable attorneys’ fees and costs, including any fees and costs incurred on appeal or in any effort to enforce a judgment.

**9. Termination.** Without limiting its ability to seek other remedies, either at law or in equity, either Party may terminate this Agreement and all of the obligations herein, at its option, upon the other Party's breach of any of its obligations under this Agreement and failure to cure such breach within thirty (30) days after receipt of written notice from the non-breaching Party or, if such cure cannot be completed within thirty (30) days, the breaching Party's failure to commence such cure within thirty (30) days after its receipt of written notice and thereafter failing to diligently prosecute such cure to completion. In addition, upon expiration of the initial term provided in Section 1 of this Agreement, either Party may terminate this Agreement by providing the other Party thirty (30) days' prior written notice of its desire to terminate. Notice shall be sent via certified mail, return receipt requested, to the location specified in Section 9 of this Agreement, and shall be deemed accepted upon delivery.

**10. Notices.** All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered or sent by registered or certified mail, return receipt requested, and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice and (ii) if mailed, three (3) business days after the date of posting by the United States post office.

To Town:           Town of Mammoth Lakes  
                          P.O. Box 1609  
                          Mammoth Lakes, CA 93546  
                          Attn: Town Manager

To MLF:            Mammoth Lakes Foundation  
                          PO Box 1815  
                          Mammoth Lakes, CA 93546  
                          Attn: Executive Director

Notice of change of address shall be given by written notice in the manner detailed in this Section. Rejection or other refusal to accept, or the inability to deliver because of changed address of which no notice was given, shall be deemed to constitute receipt of the notice, demand, request or communication sent.

**11. Compliance with Laws.** The Town shall comply with all applicable Federal, State and local laws, regulations and standards that are or may become applicable to Town's occupancy and/or activities on the Properties. The judgment of any court of competent jurisdiction, or the admission by the Town in a proceeding brought against it by any governmental entity, that the Town has violated any such statute, ordinance, regulation, or requirement shall be conclusive as between MLF and the Town and shall constitute grounds for declaration of default, material breach, forfeiture, and termination of this Agreement by MLF.

**12. Cumulative Remedies.** No remedy or election contained in this Agreement shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies available at law or inequity.

- 13. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.
- 14. Captions.** Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any of its provisions.
- 15. No Obligations to Third Parties.** Except as otherwise expressly provided in this Agreement, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties, to any third parties.
- 16. Amendment of Agreement.** The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties.
- 17. Waiver.** The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision.
- 18. Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action to interpret or enforce this Agreement shall be brought and maintained exclusively in the Mono County Superior Court.
- 19. Fees and Other Expenses.** Except as otherwise provided in this Agreement, each of the Parties shall pay its own fees and expenses in connection with this Agreement, including any permit or license fees which Town may be required to obtain pursuant to its occupancy.
- 20. Authority to Execute Agreement.** MLF and the Town warrant that the individuals who have signed this Agreement have the legal power, right and authority to enter into this Agreement so as to bind each Party for whom they sign.
- 21. Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties.
- 22. Incorporation of Recitals and Exhibits.** Each and all of the Recitals and Exhibits to this Agreement are incorporated by reference as though fully set forth in this Agreement.
- 23. Entire Agreement.** This Agreement supersedes any prior agreements, negotiations, and communications, oral or written, and contains the entire agreement between the Town and MLF as to its subject matter. No subsequent agreement, representation, or promise made by either Party, or by or to any employees, officer, agent or representative of either Party, shall be of any effect unless it is in writing and executed by the Party to be bound by it.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

**MLF AND THE TOWN HAVE CAREFULLY READ AND REVIEWED THIS AGREEMENT AND EACH OF ITS TERMS AND CONDITIONS, AND BY THE EXECUTION OF THIS AGREEMENT CONFIRM THEIR INFORMED AND VOLUNTARY CONSENT TO BE BOUND BY IT. THE PARTIES AGREE THAT, AT THE TIME THIS AGREEMENT IS EXECUTED, ITS TERMS ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF MLF AND THE TOWN.**

**THE TOWN**

Town of Mammoth Lakes, a municipal corporation

By: \_\_\_\_\_

Name: Daniel C. Holler

Title: Town Manager

Date: \_\_\_\_\_

**MLF**

Mammoth Lakes Foundation, a California Non-Profit Public Benefit Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



# EXHIBIT A







