

**MEMORANDUM OF UNDERSTANDING
BETWEEN
the TOWN of MAMMOTH LAKES and WHITEBARK INSTITUTE of
INTERDISCIPLINARY ENVIRONMENTAL SCIENCES**

This Memorandum of Understanding (MOU) is entered into between the Town of Mammoth Lakes (Town) and the Whitebark Institute of Interdisciplinary Environmental Sciences, a California corporation (Whitebark). Town and Whitebark are each a “Party” and are collectively the “Parties” in this MOU.

Section 1. Purpose

The purpose of this MOU is to facilitate a collaborative effort among the Parties, including the retention of a registered professional forester, an approved timber operator, and a California Environmental Quality Act (CEQA) consultant, for CEQA planning and associated hazard fuels reduction of vegetation on Town-owned property. A map of proposed treatment areas (Project Sites) is attached hereto as “Exhibit A” which includes approximately 16 acres on property commonly referred to as the Bell-Shaped Property and open space parcels referred to as Mammoth Creek Parcels encompassing approximately 29 acres.

Section 2. Scope of Work

There are two phases established under this collaborative effort, and by signing this MOU, both Parties agree to undertake work associated with each phase set forth herein, while this MOU remains in effect.

PHASE I: CEQA Planning & Treatment Prescription Development

The Parties agree to the following:

Town shall:

- Provide access for Whitebark personnel and contractor to the Project Sites upon issuance of required Town permits.
- Provide review and comment on request for proposals (RFQ/P) for CEQA planning.
- Assist Whitebark to inform area residents of the need and rationale for the fuels reduction work.
- Ensure internal communications are maintained to avoid misunderstandings between TOWN and project partners.
- Review the proposed treatment prescriptions and the CEQA analysis
- Assist with public outreach through normal communication channels.

Whitebark shall:

- Lead development and circulation of a Request for Proposals (RFP) for a California registered professional forester to develop treatment prescriptions at the Project Sites and enter into a contract for the development of the treatment prescriptions. Whitebark shall not circulate the RFP until the Town has approved it.
- Assist in the preparation of the CEQA analysis of the planning project in preparation for project implementation and work with CalFire, which will be acting as the lead agency preparing the

CEQA analysis.

- Establish a contract for services with the successful bidder to perform the fuels reduction work as described in the treatment prescriptions developed by the registered forester, following approval by Town of the treatment prescriptions.
- Coordinate all scheduling for services to be performed and provide updates to project partners on progress and challenges of the work.
- Provide Town with proof of insurance for itself and all contractors, in amounts and on forms to be prescribed by the Town, which will include obtaining endorsements naming the Town as an additional insured and making the insurance primary and any Town insurance noncontributory.
- Whitebark is responsible for all grant-related reporting, compliance with local and state laws and regulations and with Town permit conditions and any applicable laws, regulations, ordinances, and/or policies.
- Whitebark is responsible for the management of contracts and oversight of the contractors.

PHASE II: Implementation

Whitebark shall:

- Issue an RFP to select a qualified contractor and enter into a contract between Whitebark and the successful bidder for implementation of the prescribed fuels treatment and any related services.
- Provide Town with proof of insurance for the fuels reduction contractor to work at the Project Sites, in amounts and on forms to be prescribed by the Town, which will include obtaining endorsements naming the Town as an additional insured and making the insurance primary and any Town insurance noncontributory.
- Provide Town with proof of insurance for Whitebark to work at the Project Sites, in amounts and on forms to be prescribed by the Town, which will include obtaining endorsements naming the Town as an additional insured and making the insurance primary and any Town insurance noncontributory.
- Lead necessary outreach and education to adjacent homeowners in cooperation with Mammoth Lakes Fire Protection District, other agencies and Town officials and staff.
- Provide regular site inspections to ensure work is being implemented to specifications as developed in Phase I
- Confirm completion of prescribed treatments for each designated unit of land, via field mapping to standards specified in treatment specifications
- Work with Town to ensure the treatment prescriptions developed as part of Phase I are implemented in order to meet fuel reduction, forest health, and user needs. This includes any site-specific restrictions on work as established in treatment prescriptions for sensitive resources and any specialized timber removal elements for the site as described in treatments specifications developed as part of the CEQA planning process or other mitigation requirements.
- Work with project partners to ensure all goals and objectives for the project are being met and that any concerns are brought to the contractor through a single point of contact.
- Make timely payment to the fuels reduction contractor, ensuring CAL FIRE CCI grant funding award in a timely manner.

- Provide regular updates to project partners and landowners on project progress.

Town shall:

- Grant access and permissions necessary to perform work on Town property as described in the treatment prescriptions developed in Phase I through the issuance of required Town permits.
- Aid in communication of information to adjacent property owners about the need for and importance of the fuels work.

Both Parties agree to the following reimbursement terms:

- Whitebark will submit advanced payment requests to CAL FIRE to obtain funds needed to promptly pay the fuels reduction contractor.
- Whitebark will in turn submit invoices to CAL FIRE every other month, to draw down expenditures from cash advances received by the funder.
- Town will submit in-kind match documentation to Whitebark within one week after the end of each quarter if any in-kind work is performed.

Section 3. Responsibilities of the Parties

3.1 The Parties agree to work in good faith to achieve the purpose and goals of this MOU and the purpose of the Grant noted herein to reduce the threat of fire on Town properties.

3.2 To fulfill the purpose of this MOU, the Parties agree to contribute to the efficient flow of information and to provide access to information that supports the goals of this agreement.

3.3 Each Party shall inform the other of relevant communications it receives from third parties in relation to achieving the goals of the agreement.

3.4 All written reports, legal memoranda, graphs, analyses, models, drawings, notes, calculations, field data, laboratory test data, estimates and other work developed to achieve the goals of the MOU (the "Work") shall belong to the Party developing such Work. Each Party agrees not to assert any rights and not to establish any claim with respect to the Work produced by the other Party. Unless restricted by law all finished work products will be considered public records.

3.5 Each Party agrees that in developing the work described in MOU, neither Party is bound to implement or perform any specific project except as described herein. All Parties reserve their rights to cease participation at any time.

3.6 The Parties agree to work in good faith to achieve the goals of this MOU. However, the Parties recognize that achieving the goals of this MOU may not be possible for any reason, including technical feasibility, ecological value, permitting constraints or costs.

3.7 The Town shall not be obligated to make any financial contributions to any of the work contemplated by this MOU.

3.8 Whitebark shall indemnify, defend, and hold Town, its elected and appointed officials, employees, agents, successors and assigns, free and harmless of any and all claims, liability, loss,

damage, or expenses resulting from performance by Whitebark or any contractor of the work contemplated by this MOU, specifically including, without limitation, any claim liability, loss or damage arising by reason of:

- (a) The death or injury of any person or persons, including any person who is an employee, agent, or contractor of Whitebark, or by reason of the damage or destruction of any property, and caused or allegedly caused by some act or omission of Whitebark or of some employee, agent, or contractor of Whitebark;
- (b) Whitebark's failure to perform any provision of this MOU, or to comply with any requirement of local, state or federal law or any requirement imposed on Whitebark or its employees, agents, or contractors by any duly authorized governmental agency or political subdivision.

Section 4. Designated Representatives

Each Party will designate a representative for purposes of implementing this MOU. The designated representative of Whitebark will initially be Janet Hatfield. The designated representative of TOWN will be Daniel C. Holler, Town Manager or designee. The designated representatives will coordinate all matters under this MOU. Either Party may change its designated representative by providing written notice of the change to the other Party.

Section 5. Dispute Resolution and Termination

- 5.1 The Parties shall first attempt to resolve any dispute arising under this MOU through informal negotiations between the Parties.
- 5.2 Either Party may terminate this MOU upon providing thirty (30) days advance written notice to other Party.

Section 6. Other Provisions

- 6.1 Notwithstanding the agreements made under this MOU, neither Party shall be limited or affected in any way with regard to its authority, rights, or actions beyond the scope of this MOU.
- 6.2 Nothing in this MOU limits either Party from participating in similar activities or arrangements with other public, private, non-profit or individual entities.
- 6.3 This MOU contains the entire understanding of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This MOU may be modified only through mutual, written agreement by the Parties.
- 6.4 This MOU does not establish a partnership or joint venture or any employer-employee relationship, and Whitebark and selected consultants and contractors are independent contractors and not employees of the Town

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6.5 Whitebark shall ensure that selected consultants and contractors are responsible for providing required worker's compensation coverage, payment of prevailing wages if required and meeting the requirements of the grant funding as provided for in this MOU.

6.6 Each and every provision in this MOU is governed by the laws of the State of California. Venue shall be in Mono County.

6.7 Time is of the essence for completion of the work provided for in this MOU.

6.8 This MOU shall become effective upon the date of last signature by all Parties below (the "Effective Date"). This MOU may be executed in one or more counterparts, each of which will be considered an original document.

6.9 Unless terminated as set forth herein, this MOU shall remain in effect for one year from the Effective Date. The term of this MOU shall be renewed automatically for up to two successive terms of one year each unless either Party provides written notice of a decision not to renew this MOU to the other Party at least thirty (30) days prior to the expiration of the then-current term of the MOU.

6.10 All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, return receipt requested, telegraphed, delivered or sent by telex, telecopy or email 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, or (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: Dan Holler, Town Manager
dholler@townofmammothlakes.ca.gov

To Whitebark:

6.11 Except as otherwise expressly provided herein, the execution and delivery of this MOU shall not be deemed to confer any rights upon, nor obligate any of the parties thereto, to any person or entity other than the parties hereto.

6.12 This MOU supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Town and Whitebark as to the subject matter hereof. No

subsequent agreement, representation, or promise made by either party hereto, 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 thereby. The terms of this MOU may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

6.13 Town and Whitebark warrant that the individuals who have signed this MOU have the legal power, right and authority to enter into this MOU so as to bind each party for whom they sign to perform as provided herein.

6.14 The waiver or failure to enforce any provision of this MOU shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

6.15 Whitebark shall not convey, assign, or encumber any interest in this MOU or in the Project Sites during the term of this MOU without first obtaining Town's prior written approval, which may be granted or refused in Town's sole and absolute discretion. Any attempted conveyance, assignment, or encumbrance shall be void where prior written approval has not first been obtained from Town. Any assignment approved by Town shall not relieve Whitebark of any of its obligations or liabilities under this MOU, and both Whitebark and any subsequent assignor(s) and lessor(s) will be deemed to be bound by this MOU.

Acknowledged and agreed by:

Town of Mammoth Lakes

Whitebark Institute

Signature: _____

Signature: _____

Name: Daniel C. Holler

Name: Holly Alpert

Title: Town Manager

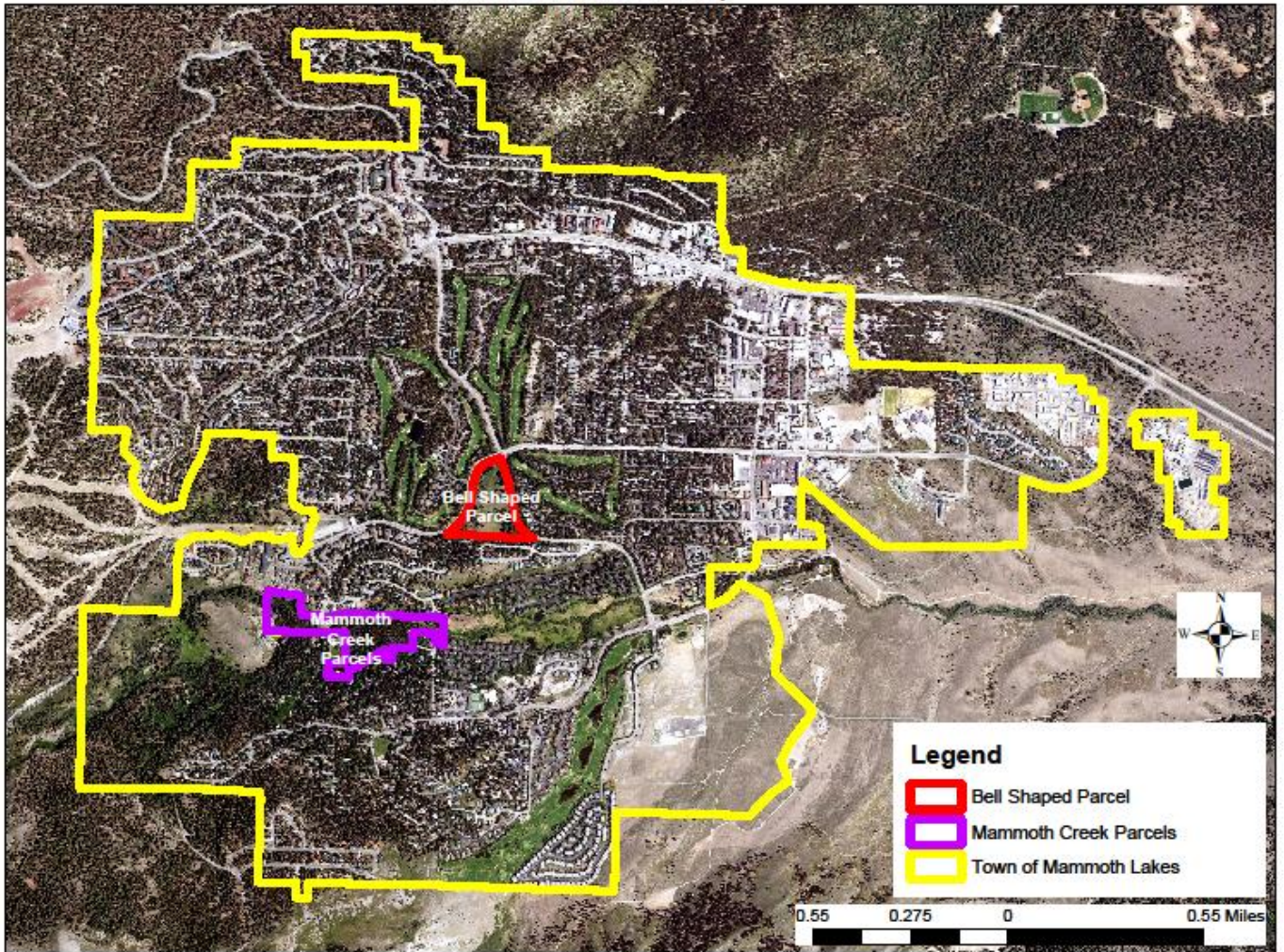
Title: Executive Director

Date: _____

Date: _____

Exhibit A

Eastern Sierra Climate & Communities Resilience Project: Phase 1 Town of Mammoth Lakes Parcel Planning Town of Mammoth Lakes Parcels Only



Date: 7/13/2022 Author: Whitebark Institute, SH