

**TOWN OF MAMMOTH LAKES  
LEASE AGREEMENT WITH MAMMOTH LAKES FOUNDATION  
FOR PROPERTY AND BUILDING LOCATED AT 100 COLLEGE PARKWAY**

This Lease Agreement ("Lease") is entered into 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 in this Lease individually as a "Party" or collectively as the "Parties."

**RECITALS**

A. MLF is the owner of certain real property located at 100 College Parkway, in Mammoth Lakes, California ("Property"). The Property includes approximately 7.94 acres of land and an approximately 8,000 square-foot building commonly known as Edison Hall, consisting of offices, meeting rooms, a kitchen, restrooms, a theatre, storage, and common areas. The Property is depicted in Exhibit A, attached.

B. The Parties anticipate the commencement of construction of a new facility connected to Edison Hall, known as the Mammoth Arts and Culture Center ("MACC"), that will incorporate the existing Edison Hall. A draft site plan for the MACC (performing arts auditorium) is attached as Exhibit B. The construction of the MACC has been a longstanding goal of the Town and MLF, and this Lease is intended, in part, to facilitate the Parties' efforts to achieve that goal.

C. MLF has publicly pledged to contribute a minimum of Nine Million Dollars (\$9,000,000), which MLF obtained through a combination of "Measure C" funds and private donations, toward the total costs to design and construct the MACC ("MLF's Pledge"). The Town has publicly pledged to contribute from "Measure U" funds: (1) a minimum of Two Million Five Hundred Thousand Dollars (\$2,500,000) toward the cost to construct the MACC; and (2) the amount reasonably required to maintain and operate the MACC upon certificate of occupancy, which the Town estimates at up to Three Hundred Thousand Dollars (\$300,000) per year (collectively, the "Town's Pledge").

D. In order to secure the Town's contractual commitment to honor the Town's Pledge, contingent upon MLF's contractual commitment to honor MLF's Pledge, MLF intends to lease the Property to the Town for monthly rent payments that are below the fair market rental value of the Property.

E. The Town and MLF anticipate that during the term of this Lease, the construction of the MACC may commence and proceed for up to two years. In that event, the Town's use and occupancy of the Property may be interrupted, altered, or otherwise impacted.

F. Upon the terms and conditions of this Lease, MLF desires to lease the Property to the Town, and the Town desires to lease the Property from MLF.

G. Concurrently with the execution of this Lease, the Parties intend to execute a Land Use Planning Agreement related to the Property ("Planning Agreement").

## **TERMS AND CONDITIONS**

**1. Contingency and Term.** The effectiveness and enforceability of this Lease is contingent upon the Parties' concurrent execution of the Planning Agreement. MLF hereby leases the Property to The Town, subject to the provisions of Section 4.4. The term of this Lease shall commence on July 1, 2022 ("Commencement Date"). The Lease shall continue for five (5) years after the Commencement Date.

1.1 If and when construction of the MACC is commenced, the Parties shall discuss whether to continue, modify, or terminate this Lease, provided that if the Parties do not agree to another course of action, then this Lease shall remain in effect.

1.2 If a new lease is not negotiated prior to the expiration of the term of this Lease, and if the Town has not vacated the Property prior to expiration, then tenancy shall continue on a month-to-month basis, until either Party terminates this Lease pursuant to Section 12.

### **2. Payments and Maintenance.**

2.1 **Rent Payments.** The Town shall pay to MLF, as rent, the sum of two thousand two hundred fifty dollars (\$2,250) per month (the "Base Rent Payment"). The first rent payment shall be due and payable on the Commencement Date. Subsequent rent payments shall be due and payable on the 10<sup>th</sup> day of each calendar month throughout the term of the Lease. Beginning on July 1, 2023, the Base Rent Payment shall increase by three percent (3%) per year.

2.2 **One-Time Payment by the Town.** Within 30 days of the Effective Date, The Town shall provide MLF a one-time payment of Twenty Thousand Dollars (\$20,000), based upon the Parties' mutual acknowledgment that the Base Rent Payments due under this Lease are below the fair market monthly rent for the Property.

2.3 **The Town's Pledge.** Contingent upon MLF's contribution of MLF's Pledge toward the design and construction of the MACC, the Town agrees to contribute the Town's Pledge toward the construction of, and the annual maintenance and operation of, the MACC.

2.4 **Snow Removal.** The Town shall provide for or contract for snow removal for the existing parking area adjacent to Edison Hall, as necessary for its use of Edison Hall as provided for in this Lease. Snow removal will be done at the Town's discretion, provided that the Town shall use its best efforts to ensure that snow is removed from roadways and parking areas when it reaches a depth of 6", and from sidewalks and building entryways when it reaches a depth of 4".

2.5 **Edison Hall Maintenance.** The Town shall provide for the following items of basic maintenance and cleaning services for Edison Hall:

- i. maintaining proper functioning of windows and doors, and the replacement of

- broken hardware or glass;
- ii. maintaining proper functioning of restroom facilities (excluding the repair or replacement of water or sewer lines);
- iii. maintenance of HVAC systems (excluding replacement);
- iv. repair of damage caused to Edison Hall caused by the Town or others whose use of Edison Hall has been authorized by the Town (excluding any damage caused by MLF or its guests or invitees); and
- v. cleaning of Edison Hall.

The Town may perform emergency repairs to Edison Hall to protect the health and safety of the public and to reduce additional damage to Edison Hall. If any such repairs are performed, then the Parties will negotiate as to their respective responsibility for the cost of the repairs.

**2.6 Parking Area Maintenance.** The Town may, in its sole discretion, but shall not be required to, provide basic maintenance to the parking area adjacent to Edison Hall such as striping, signage, pothole repair, and surface treatments.

**2.7 Outside Maintenance.** The Town will assist in keeping the immediate outside area, (generally within 50 feet of the Property) and existing landscaping clear of rubbish and dead weeds or other debris that may create a hazard, provided that the scope of such assistance shall be in the Town's sole discretion. MLF authorizes the Town to assist in the maintenance and improvement of the landscaping in the vicinity of Edison Hall.

**2.8 Structural Integrity of Edison Hall.** MLF shall repair and maintain the structural portions of Edison Hall, including the exterior walls and roof, exterior windows, as well as the plumbing and electrical equipment in the portions of the Property outside of or attached to Edison Hall.

**3. Capital Improvements by the Town.** The Town may, upon receipt of MLF's written approval, make capital improvements intended to enhance the accessibility or functionality of Edison Hall and the adjacent exterior areas of the Property. The Town may, at its sole cost, contract for and install any improvements required to connect Edison Hall to "Digital 395" or to otherwise enhance its internet connectivity or capacity. The Town may also install, at its sole cost, any security systems it believes are necessary or prudent to protect its hardware and software systems or other technology and equipment.

#### **4. Uses of Property.**

**4.1. Use in Compliance with Law.** The Town shall: (i) observe and comply with all local, state, and federal laws and regulations, including any Town, County, and State restrictions, laws, and ordinances affecting the Property or occupancy thereof; and (ii) only use the Property for one or more permitted uses, as defined in this Lease.

**4.2 Permitted Uses of Edison Hall.** For purposes of this Lease, the Town shall use Edison Hall, and may allow others to use Edison Hall, only for the following:

- i. Live theatre productions

- ii. Live music
- iii. Individual and small group entertainment/meetings/presentations
- iv. Multi-media presentations/seminars
- v. Educational forums/classes
- vi. Community and school programs
- vii. Meeting space for college programs
- viii. Public and community meeting space
- ix. Office space for Town uses
- x. Training classes
- xi. Arts shows, provided, however, that MLF shall not be required to remove any existing exhibits
- xii. Similar uses to support education, arts and culture, and public meeting space
- xiii. Use of Edison Hall support areas
- xiv. Access and use of kitchen area, provided that the Town will review requests by third parties for such access and use on a case-by-case basis
- xv. Users, employees, guests, and invitees of the Town and of third parties authorized to use Edison Hall by the Town may park in the parking spaces adjacent to Edison Hall or in other parking areas pursuant to the Town's agreements with those third parties.

4.3 **Sale and Use of Alcohol.** The sale and use of alcohol is allowed in compliance with permitting and licensing requirements established by the Town and the State of California.

4.4 **MLF's Uses of Edison Hall.** MLF may continue to use: (a) the office spaces in Edison Hall that are depicted in red in Exhibit C, attached, or as otherwise designated in writing by the Parties; (b) meeting space; and (c) common areas, the kitchen, restrooms, and storage, provided such uses are not in conflict with the Town's use or that of other users approved by the Town. MLF may continue the existing month-to-month leases to third parties of the offices in Edison Hall that are depicted in green in Exhibit C and may retain all revenue from those leases, throughout the term of this Lease.

4.5 **MLF's Responsibilities for Edison Hall.** MLF shall continue in its name and pay for the following utility services throughout the term of the Lease: water and sewer service, electric service, propane, and trash/recycling services; and for the cleaning and maintenance of the office spaces depicted in red and green in Exhibit C.

4.6 **Mammoth Ski Museum Items.** MLF may remove or leave in place in Edison Hall all items related to the Mammoth Ski Museum. The Town shall have no responsibility or liability for damage to or loss of any such items, unless such damage results from the willful act or negligence of any employee, agent, or invitee of the Town.

5. **Discrimination.** The Town covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, and this Lease is made and accepted upon and subject to the requirement that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex,

marital status, national origin, or ancestry, in the leasing, use, occupancy, tenure, or enjoyment of Edison Hall, nor shall the Town itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of the Town.

**6. Conditions of Property and Disclaimer of Liability.**

6.1 **Condition of Property.** The Town has examined the Property and agrees to take possession of the Property in an “as is” condition. The Town acknowledges and agrees that MLF has made no representations, guarantees, or warranties regarding the Property, nor has MLF made representations, guarantees, or warranties regarding whether the Property and improvements thereon comply with applicable covenants and restrictions of record, building codes, ordinances, or statutes in effect at the commencement date of this Lease.

6.2 **Accessibility.** MLF shall be liable for any and all fines, penalties, citations, and damages imposed or awarded as a result of the failure of Edison Hall or the Property to comply with accessibility standards of the Americans with Disabilities Act and/or California law (“Accessibility Claims”). To the fullest extent permitted by law, MLF 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 Accessibility Claims, including without limitation the payment of all expert witness fees and attorneys' fees and other related costs and expenses. MLF shall reimburse the 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. MLF'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. Pursuant to California Civil Code Section 1938:

“A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or MLF may not prohibit the Town or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the Town or tenant, if requested by the Town or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

6.3 **Damage or Destruction of Premises; Repairs and Maintenance.** Unless as the result of negligence or intentional unlawful act of the Town, if during the term of this Lease, any portion of Edison Hall shall be damaged by fire or other catastrophic cause, so as to render such portion of Edison Hall untenable, then the obligations under this Lease may be suspended while

such portion of Edison Hall remains untenable. In the event of such damage, the Town shall give MLF notice of such untenable conditions and MLF shall elect in its sole discretion, whether to repair Edison Hall or to cancel this Lease with respect thereto. In the event that MLF elects not to repair Edison Hall or portion thereof, this Lease shall be deemed canceled as of the date the damage occurred with respect to the applicable portion(s). In the event such damage is not repaired within ninety (90) days and that such damage impairs the Town's ability to conduct its operations, the Town shall have the option to terminate the Lease.

**6.4 Alterations, Additions and Improvements.** The Town may not make any alterations, improvements, or additions in, on, or about Edison Hall, including but not limited to the Town's occupied portion, after providing written notice to MLF but without first obtaining MLF's prior written consent, provided that the obligation to obtain MLF's consent shall not apply to repairs nor to non-structural work to improve the condition or extend the useful life of Edison Hall or any portion thereof, including without limitation the installation of new carpet or flooring, painting, and kitchen and/or restroom remodeling. Any and all alterations which become fixtures under California law shall at once become a part of the realty and belong to MLF. The Town shall keep Edison Hall free from any liens arising out of any work performed, materials furnished, or obligations incurred by the Town, and the Town shall be responsible for the removal of any such liens and all costs to remove same. Failure to remove any such liens within thirty (30) calendar days of written request by MLF shall constitute a default of this Lease.

**7. Indemnity.** Except to the extent such 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, officers, employees, agents, successors and assigns, volunteers, and guests, and the personal property of the MLF, including the Property, free and harmless of any and all claims, liability, loss, damage, or expenses resulting from the Town's occupation and/or use of the Property.

**8. Insurance.**

8.1 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, then such insurance shall apply separately to this Lease or be no less than two times the specified occurrence limit. Notwithstanding any term of this Lease, the Town may furnish the Required Insurance through coverage provided by the Town's participation in a joint powers self-insurance authority.

- i. **General Liability Insurance.** The 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 in Edison Hall, the Town shall maintain Workers' Compensation insurance in compliance with all applicable statutes.

8.2 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 the Town's operations with respect to any insurance or self-insurance programs covering MLF, its directors, officers, employees, agents, and volunteers, or if in excess stand in an unbroken chain of coverage in excess of the 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.

8.3 The Town shall furnish to MLF properly executed certificates of insurance which evidence all Required Insurance within 30 days of the Effective Date of this agreement. Licensee shall maintain the Required Insurance at all times while this Lease is in effect, and shall replace any certificate, policy, or endorsement which will expire or does expire, within ten (10) business days thereof without a lapse in coverage. The Town shall forward any notice of cancellation to MLF within two (2) business days from date of receipt by the Town. The Town's failure to forward MLF any notice of cancellation issued to the Town shall be considered a breach of this Lease. 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 and with a current A.M. Best rating of at least A-.

8.4 MLF shall obtain and keep in force during the term of this Lease a policy or policies of insurance covering loss or damage to Edison Hall in the amount of the full replacement value thereof, insuring against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (all risk excluding earthquake), and sprinkler leakage.

**9. Dispute Resolution.** If a dispute arises to enforce or interpret the terms of this Lease, then the Parties agree to make a good-faith effort to resolve the dispute by mediation, through a qualified mediator jointly selected by the Parties, before filing any legal action.

**10. Attorneys' Fees.** If either Party files a legal action to enforce or interpret the Lease, or the Parties' respective rights and obligations pursuant to the Lease, then the prevailing Party shall be entitled, in addition to any other relief the court may grant, to recover its reasonable attorneys' fees and costs of suit, including any fees or costs incurred on appeal or in an effort to enforce a judgment.

**11. Assignment and Subletting.** The Town agrees not to convey, assign, sublet, or encumber any interest in Edison Hall or the Property during the term of this Lease without first obtaining MLF's prior written approval, which may be granted or refused in MLF's sole and absolute discretion, notwithstanding sections 1995.260 and 1995.270 of the California Civil Code as they may be amended. Any attempted sale, conveyance, assignment, sublet, or encumbrance shall be void where prior written approval has not first been obtained from MLF. Any assignment or subletting approved by MLF shall not relieve the Town of any of its obligations or liabilities under this Lease for the term of this Lease, and both the Town and any subsequent assignor(s) and MLF(s) will be deemed to be bound by this Lease.

**12. Termination.** Without limiting its ability to seek other remedies, either at law or in equity, either Party may terminate this Lease and all of the obligations herein, at its option, upon the other party's breach of any of its obligations under this Lease 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, then 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 to the foregoing, upon expiration of the Lease term provided in Section 1 of this Lease, either Party may terminate this Lease by providing the other Party with thirty (30) days' prior written notice of its wish to terminate. Notice shall be sent via certified mail, return receipt requested, to the location specified in Section 13 of this Lease, and shall be deemed accepted upon delivery.

**13. Notice.** 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, 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 the 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.

**14. No Right to Holdover.** The Town has no right to retain possession of Edison Hall or the Property beyond the expiration or termination of this Lease. In the event that the Town holds over, the Lease payment amount specified in Section 2 of this Lease shall be increased to one hundred ten percent (110%) of the applicable amount immediately preceding the expiration or termination of this Lease.

**15. No Smoking.** The Town agrees that it shall not allow the combustion of tobacco or any other substance in a cigar, cigarette, pipe, vape pen, or any similar smoking device in any area of Edison Hall. Smoking is prohibited inside and within an outdoor area that is located within 20 feet of a main exit, entrance, or operable window of Edison Hall.



16. **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 the Town's occupancy and/or activities in Edison Hall or on the Property. The judgment of any court of competent jurisdiction, or the admission of 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 the MLF and the Town and shall constitute grounds for declaration of default, material breach, forfeiture, and termination of this Lease by MLF.

17. **Cumulative Remedies.** No remedy or election shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

18. **Counterparts.** This Lease may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute the same instrument.

19. **Captions.** Any captions to, or headings of, the sections or subsections of this Lease are solely for the convenience of the parties hereto, are not a part of this Lease, and shall not be used for the interpretation or determination of the validity of this Lease or any provision hereof.

20. **No Obligations to Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this Lease 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.

21. **Amendment of Lease.** The terms of this Lease may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

22. **Waiver.** The waiver or failure to enforce any provision of this Lease shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

23. **Applicable Law and Venue.** This Lease shall be governed by and construed in accordance with the laws of the State of California. Any action to interpret or enforce this Lease shall be brought and maintained exclusively in the Mono County Superior Court.

24. **Fees and Other Expenses.** Except as otherwise provided herein, each of the Parties shall pay its own fees and expenses in connection with this Lease, including any permit or license fees which The Town may be required to obtain pursuant to its occupancy.

25. **Authority to Execute Lease.** MLF and the Town warrant that the individuals who have signed this Lease have the legal power, right, and authority to enter into this Lease so as to bind each Party for whom they sign to perform as provided herein.

26. **Successors and Assigns.** This Lease shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties.

27. **Incorporation of Recitals and Exhibits.** All of the Recitals and Exhibits to this Lease are incorporated by reference as though fully set forth in this Lease.

**28. Entire Agreement.** This Lease 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 thereby.

IN WITNESS WHEREOF, the Parties executed this Lease to be effective on the Effective Date.

**MLF AND THE TOWN HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH OF ITS TERMS, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT TO THOSE TERMS. THE PARTIES AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, ITS TERMS ARE COMMERCIALY REASONABLE AND EFFECTUATE THEIR MUTUAL INTENT WITH RESPECT TO THE TOWN'S LEASE OF THE PROPERTY.**

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: \_\_\_\_\_

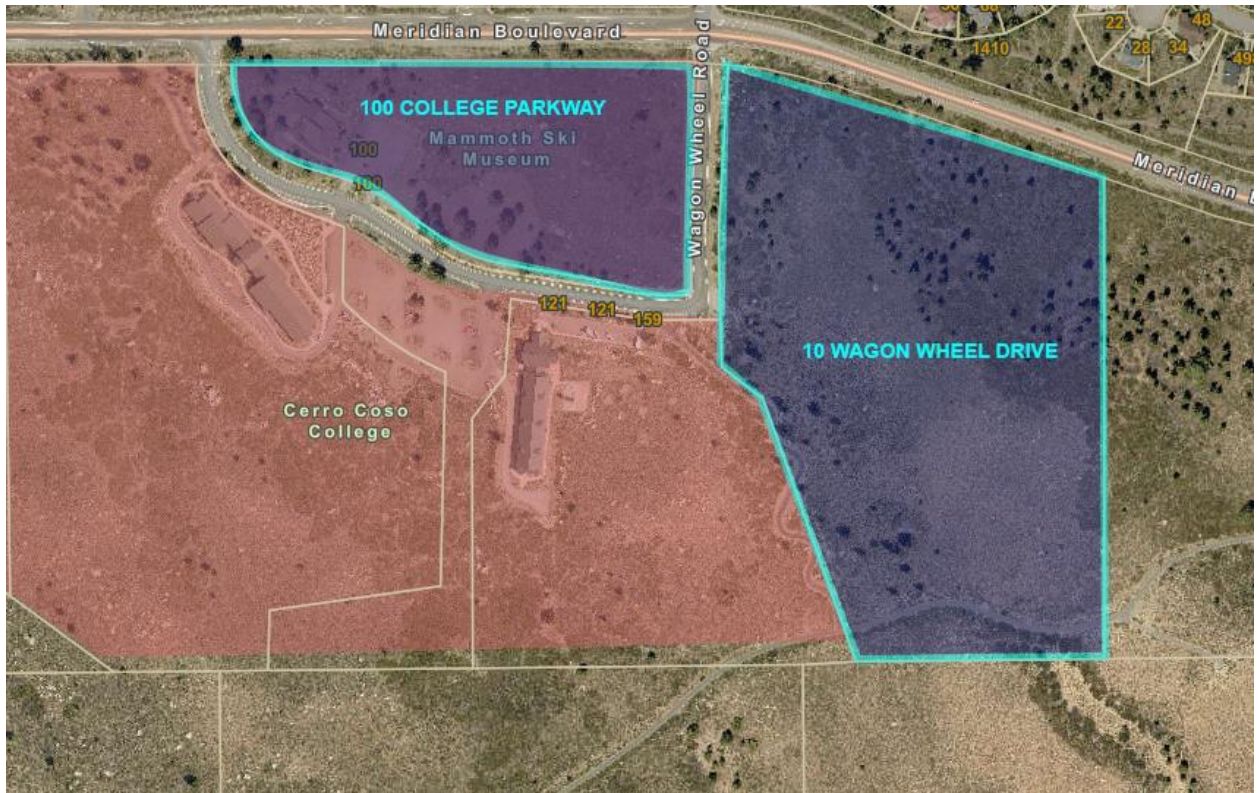
By: \_\_\_\_\_

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

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

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

**EXHIBIT A**







**EXHIBIT B**  
**(Draft – Subject to Change)**



**SITE PLAN**



Mammoth Lakes Foundation, Arts & Cultural Center

HMC Architects |  iDIBri

# EXHIBIT C

