

**TOWN OF MAMMOTH LAKES AGREEMENT BETWEEN THE TOWN OF
MAMMOTH LAKES AND MAMMOTH LAKES HOUSING FOR HOUSING
ADMINISTRATIVE, DEVELOPMENT, AND SUPPORT SERVICES**

1. PARTIES AND DATE.

This Agreement is made and entered into this 1st day of July, 2022, 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 230, Mammoth Lakes, California, 93546 ("Town") and Mammoth Lakes Housing, a California Nonprofit Public Benefit Corporation, with its principal place of business at 587 Old Mammoth Road, #4, PO BOX 260, Mammoth Lakes, CA 93546 ("Contractor"). Town and Contractor are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Contractor.

Contractor is a California non-profit public benefit corporation established for the purpose of acquiring and developing reasonably priced housing for the resident worker population of the greater Mammoth Lakes area. The further purposes of the Contractor include managing, facilitating the ownership or rental of such housing, promoting the need for reasonable priced housing for resident workers, as well as assisting and encouraging other entities, both public and private, in the development and acquisition of housing for this purpose. Contractor desires to perform and assume responsibility for the provision of certain professional housing consulting services required by the Town on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing professional housing consulting services to public clients, is licensed in the State of California, and is familiar with the related plans of Town.

2.2 Project.

Town desires to engage Contractor to render such professional housing services as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to the Town all the services described in Exhibit "A" attached hereto and incorporated herein by reference ("Services"). 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 is July 1, 2022 through June 30, 2023 and shall be renewed automatically for two (2) successive terms of one (1) year (July 1, 2023, through June 30, 2025) under the same terms and conditions. Either party may provide written notice of a decision not to renew this Agreement to the other party at least sixty (60) days prior to the expiration of the then-current term of the Agreement. Nothing herein shall prevent or require

the parties to negotiate an extension or amendment to the Agreement to change its terms in connection with an extension, including without limitation by amending the compensation or scope of work.

3.2 Responsibilities of Contractor.

3.2.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. Town retains Contractor on an independent contractor basis and not as an employee. Contractor 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 Contractor shall also not be employees of Town and shall at all times be under Contractor's exclusive direction and control. Neither Town, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents, except as set forth in this Agreement. Contractor 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. Contractor 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 Substitution of Key Personnel. Contractor has represented to Town that certain key personnel will perform and coordinate the Services under this Agreement. The key personnel for performance of this Agreement are as follows: Patricia Robertson, Executive Director. Should Ms. Robertson become unavailable, Contractor may substitute other personnel of at least equal competence upon written approval of Town. In the event that Town and Contractor cannot agree as to the substitution of key personnel, Town shall be entitled to terminate this Agreement. Contractor shall notify the Town of any proposed changes to the key personnel for performance of this Agreement. Notwithstanding anything to the contrary, the Town agrees and acknowledges that nothing herein shall restrict the Contractor from employing additional personnel to provide the Services under the contract as it deems reasonable, so long as Ms. Robertson continues to be the key personnel for the performance of this Agreement.

3.2.3 Town's Representative. The Town hereby designates Daniel C. Holler, Town Manager, 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 Contractor but not the authority to enlarge the Scope of Work or change the total compensation due to Contractor 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 Contractor's total compensation subject to the provisions contained in Section 3.3 of this Agreement. If and to the extent the Town enlarges the Scope of Work under this Agreement, all work performed under the expanded Scope of Work shall be considered Extra Work as defined herein and will be billed by the Contractor on an hourly basis. Contractor shall not accept direction or orders from any person other than the Town Manager, as Town's Representative or his/her designee.

3.2.4 Contractor's Representative. Contractor hereby designates Patricia Robertson, Executive Director, or his/her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor'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.

3.2.5 Coordination of Services. Contractor agrees to work closely with Town staff in the performance of Services and shall be available to Town's staff, Contractors and other staff at all reasonable times, subject to the Schedule of Services to be agreed to by the parties.

3.2.6 Standard of Care; Performance of Employees. Contractor 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. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. As provided for in the indemnification provisions of this Agreement, Contractor 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 Contractor's failure to comply with the standard of care provided for herein.

3.2.7 Laws and Regulations. Contractor 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. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations, Contractor shall be solely responsible for all costs arising therefrom. Contractor 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.

3.2.8 Insurance.

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

3.2.8.2 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 Contractor, 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, Contractor 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: To the extent applicable, Contractor shall provide either (1) a Personal Automobile Liability policy for the Contractor'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 Contractor 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. 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.

3.2.8.3 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: Contractor agrees to endorse the third party general liability coverage required herein to include as additional insureds Town, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition date of 2010. Contractor 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.

3.2.8.4 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.

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

3.2.8.6 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.

3.2.8.7 Evidence of Insurance. The Contractor, 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, Contractor 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.

3.2.8.8 Failure to Maintain Coverage. Contractor 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 Contractor until Contractor has fully complied with the insurance provisions of this Agreement. In the event that the Contractor's operations are suspended for failure to maintain required insurance coverage, the Contractor 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.

3.2.8.9 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.

3.2.8.10 Insurance for Subcontractors. All Subcontractors shall be included as additional insureds under Contractor's policies, or Contractor shall be responsible for causing Subcontractors to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the Town as an Additional Insured to the Subcontractor's policies. Contractor shall provide to Town satisfactory evidence as required under Section 3.2.8.1 of this Agreement.

3.2.9 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.3 Fees and Payments.

3.3.1 Compensation. Contractor shall receive compensation for all Services rendered under this Agreement as set forth in Exhibit "B" attached hereto and incorporated herein by reference. The total compensation shall not exceed eighty-four thousand (\$84,000) per quarter (\$28,000/month) without written approval of the Town Council or Town Manager as applicable, subject to exceptions and terms of Exhibit B related to additional payments. Extra Work may be authorized, as described below, and if authorized, will be billed by the Contractor on an hourly basis at an agreed upon amount.

3.3.2 Payment of Compensation. Contractor 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. Other than as specified in Exhibit B and subject to the terms of Section 3.3.4, the compensation provided for in this agreement constitutes the total compensation to be provide to Contractor. Other than as specified in Exhibit B, the Contractor shall not be granted additional reimbursement for any expenses.

3.3.4 Extra Work. At any time during the term of this Agreement, Town may request that Contractor perform Extra Work, defined to mean any work not specifically identified in the Services, in exchange for additional compensation to be agreed upon between Town and Contractor and billed by the Contractor on an hourly basis. As used herein, "Extra Work" means any work which is determined by Town to be necessary for the proper completion of the agreed upon task, service or project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall identify any work requested by Town that Contractor believes to be Extra Work, prior to undertaking any such work. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from the Town.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Contractor shall maintain complete and

accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor 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. Contractor 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 Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been adequately rendered to Town, and Contractor shall be entitled to no further compensation. Contractor 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 Contractor to provide all finished or unfinished Documents and Data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor 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:

Contractor: Mammoth Lakes Housing
587 Old Mammoth Road, #4
PO BOX 260
Mammoth Lakes, CA 93546
ATTN: Patricia Robertson, Executive Director

Town: Town of Mammoth Lakes
PO Box 1609
437 Old Mammoth Road, Suite 230
Mammoth Lakes, CA 93546
ATTN: Daniel C. Holler, Town Manager

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. Subject to the rights and restrictions of vendors and subcontractors, 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 Contractor under this Agreement (“Documents & Data”). The term Documents & Data shall specifically exclude licenses, sublicenses, copies, use of databases or software acquired by MLH or its subcontractors. Contractor shall request all subcontractors to agree in writing that Town is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Contractor represents and warrants that Contractor will make best efforts to obtain legal rights to license any and all Documents & Data. Contractor makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Contractor or provided to Contractor 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 Confidential Information. The Town agrees and acknowledges that Contractor is subject to the California Public Records Act. The Town shall have access to the information kept by the Contractor associated with the Contractor's performance under this Agreement. The Town shall refrain from releasing information provided to Town by Contractor that Contractor claims is exempt from disclosure under the California Public Records Act (“Contractor Information”) unless the Town's legal counsel determines that the release of such 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 Contractor of its intention to release the Contractor Information (“Release Notice”).

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

3.5.6 Brown Act, Public Records Act, Conflict of Interest and Harassment Training and Compliance. At all times during the term of this Agreement and for all Services performed under the Agreement, the Contractor and Contractor's board of directors shall comply fully with the Ralph M. Brown Act, Government Code Section 54950 et seq. Contractor's

obligation hereunder shall not be limited to complying with the Brown Act with respect to the Services, but rather such obligations shall apply to all activities of Contractor and/or its board during the term of this Agreement. Contractor will comply with the California Public Records Act (PRA) Government Code Section 6250 et seq. Contractor's board members and staff shall comply with the provisions of the Political Reform Act and the related regulations adopted by the Fair Political Practices Commission. Contractor staff and board members shall attend similar harassment and ethics training as required of elected officials, at least every two years and within six months of taking on their respective positions. Contractor shall notify the Town Clerk of any Board vacancy and the name(s) of all new Board members. To assist in meeting these requirements the Town will provide administrative support to Contractor. All confidential records not subject to the Public Records Act will be held and maintained confidentially by the Contractor.

3.5.6.1 Clerking Support Services. The Town, with costs funded from the Housing Reserve, will provide clerking support services to include preparation of agendas, clerking meetings, and preparing minutes in compliance with the above laws and similar support for standing committees that are subject to the Brown Act. All public meetings will be held in the Council Chambers and broadcast through the Granicus system, which may include cable TV government channel broadcasting, unless there is a conflict for meeting space and meetings cannot be rescheduled.

3.5.7 Indemnification.

3.5.7.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor 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 Contractor, its officials, officers, employees, subcontractors, Contractors or agents in connection with the performance of the Contractor's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorney's fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Contractor's Services under this contract are subject to Civil Code Section 2782.8, the above indemnity shall be limited and shall not apply, 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 Town.

3.5.7.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of Town's choosing and at Contractor'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. Contractor 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. Contractor 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. Contractor 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. Contractor'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.

3.5.8 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.

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

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

3.5.11 Town's Right to Employ Other Contractors. Town reserves the right to employ other Contractors in connection with this Project.

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

3.5.13 Assignment or Transfer. Contractor 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.

3.5.14 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 Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to Town include its elected officials, 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.

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

3.5.16 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.

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

3.5.18 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.

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

3.5.20 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, 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. Contractor 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.

3.5.21 Labor Certification. By its signature hereunder, Contractor 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.

3.5.22 Authority to Enter Agreement. Contractor 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.

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

3.6 Subcontracting.

3.6.1 Subject to Provisions. To the extent that Contractor subcontracts any portion of the work required by this Agreement, each such subcontract shall contain a provision as applicable making it subject to all provisions stipulated in this Agreement.

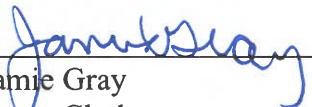
TOWN OF MAMMOTH LAKES

By: 
Daniel C. Holler, Town Manager

MAMMOTH LAKES HOUSING

By: 
Kirk A. Stapp, President

Attest:

By: 
Jamie Gray
Town Clerk

Approved as to Form:

By: 
Andrew Morris
Town Attorney

EXHIBIT "A"
SCOPE OF SERVICES & DELIVERABLES

Mammoth Lakes Housing (MLH) implements a number of programs and services designed to increase the amount of affordable housing and to preserve existing affordable housing in the Town of Mammoth Lakes. MLH provides basic housing related services such as providing bilingual information and educational resources, support for housing grant applications and implementation, housing projects, advocacy, and securing affordable deed restricted housing units. MLH works to support and facilitate community housing at all income levels, with the priority being low- to moderate-income levels within the Town of Mammoth Lakes through ongoing programs and services and the implementation of deliverables provided herein.

1. Provide Community Housing Resources
 - a. Continue to provide overall management and support for MLH services.
 - b. Provide housing services and information to community members through regular office hours, an updated website, and providing information on housing-related resources and/or services.
 - c. Provide at least two homebuyer education classes or other training opportunities annually.
 - d. Serve on the regional Continuum of Care for homelessness program coordination.
2. Creation and preservation of Deed Restricted Units (ownership and rental)
 - a. Partner with the Town and Mono County to leverage the respective Revolving Loan Funds (RLF) to preserve deed restricted units.
 - b. Use the Town Bridge program to add new deed restricted units, as staff capacity allows, up to three units.
 - c. Identify funding sources and develop new programs to add affordable deed restricted units.
 - d. Upon implementation of the HomeKeeper database software, MLH will provide on an annual basis by April 30th of each year a monitoring compliance report of the deed restricted units to show units in compliance, sales of units, and other pertinent information.
3. Grant Procurement and Management to bring more money to produce new housing units and programs (e.g., mortgage assistance, rent assistance, etc.):
 - a. Traditional funding sources like CDBG, HOME, and similar programs.
 - b. Non-traditional sources (e.g., Community Reinvestment Act (CRA)).
 - c. Actively manage, report, track and promote grant funding.
 - d. Costs of administering grants shall be paid to the extent contemplated by Section 1.c of Exhibit B.
4. Provide Real Estate Services
 - a. Any additional real estate services, such as selling Town-owned real estate, will be commission-based.
 - i. Representation of the Seller will be performed for 1.5% of the Sales Price.
 - ii. Representation of the Buyer will be performed for 1.5% of the Sales Price.

Mammoth Lakes Housing Contract – July 1, 2022

5. Stewardship of Existing Community Housing Assets
 - a. Ensure applicant compliance with the Kitzbuhl Regulatory Agreement
 - b. Annually monitor homeownership land trust units and Town's mortgage assistance loan portfolio.
 - c. Enter all of the Town's deed restrictions into the HomeKeeper Database and provide annual monitoring services. Any costs associated with enforcing restrictions that MLH is not a party to, will be billed directly.
 - d. Prepare the Annual Apartment Vacancy Report.
6. Provide Community Updates
 - a. Formal updates (a minimum of two per year) to the Town Council on MLH activities with one to outline the coming year's work program.
 - b. Provide ongoing informal updates as appropriate to Town Council and Town Staff.
 - c. Submit all documents and invoices (activity delivery, setup/completion, state funds request, deed of trust, promissory note, etc.) on a timely basis.

EXHIBIT "B"
COMPENSATION

Section 1: Payments and Financial Accounting and Reporting

- a) The Town shall pay to Mammoth Lakes Housing (MLH) the sum of \$84,000 per quarter (\$28,000/month) beginning July 1, 2022, unless adjusted as provided for herein. Payment will be made on a quarterly basis during the term of this Agreement. Payments are not to exceed \$336,000 per fiscal year, unless specifically approved by the Town Council. Extra Work may be authorized, as allowed under Section 3.3 of the Agreement, and if authorized, will be billed by the Contractor on an hourly basis at an agreed upon amount.
- b) MLH shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor 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. Contractor 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.
- c) In addition to the payments under Section 1.a above, the Town agrees to pay MLH the administrative and activity delivery funds allowed in all housing related grants received by the Town, including CDBG, HOME, HELP Begin, etc. as mutually agreed upon through applicable subrecipient agreements. MLH acknowledges that Town may refuse to enter into subrecipient agreements that do not permit Town to retain a portion of the administrative funds to support the Town's administrative costs.
- d) Funds received from non-Town sources shall be identified and accounted for separately. Separation of sources and uses of funds is necessary to provide accounting of the use of restricted funds in compliance with restrictions placed on funding in connection with state, federal or other grants, funding from other agencies and the Town. Separation of revenues and expenditures will identify and reduce potential Town subsidies of other agency grants and programs. Other Town sources of funds received (i.e. grant funds) will be reviewed and may reduce the amount of allowed carryover or final payment of funds provided herein.

Section 2: The Town may, in its sole discretion, provide additional funding to MLH in amounts approved by a resolution of the Town Council. The resolution will set forth the purpose of the funding, the source, any restrictions, and other matters relating thereto. MLH may request additional Town housing restricted funds for specific uses.

Section 3. Town funding provided for under this Agreement is for Mammoth Lakes Housing, Inc. only, in order to complete the deliverables outlined in Exhibit A (except as noted), or as approved by the Town Council. It is not intended to be used on behalf of or to offset expenses incurred by activities undertaken by MLH acting in the capacity of a Community Housing Development Organization (CHDO), unless such use of Town funds are expressly approved by the Town Council.

Section 4. Ongoing funding is subject to Town Council appropriation and subject to available

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revenues. In the event that revenues are not available or not appropriated, the Town shall no longer be obligated to make any payments to MLH and MLH shall no longer be required to perform any Services on behalf of the Town. Non-appropriation of funds shall require at least 90-day notice to MLH. To the extent the additional payments are necessary to meet contractual obligations which relate to the defined deliverables provided in this agreement, MLH will need to request these funds with information on the obligations to meet contractual requirements.

Section 5. In the event MLH ceases to operate or exist, all unexpended Town funds held by MLH shall be returned to the Town.