

**MEMORANDUM OF UNDERSTANDING
BETWEEN
GOLDEN STATE CONNECT AUTHORITY
AND
TOWN OF MAMMOTH LAKES
REGARDING
IMPLEMENTATION OF LOCAL AGENCY TECHNICAL ASSISTANCE GRANT**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is dated _____, 2022 and made between **GOLDEN STATE CONNECT AUTHORITY** (“GSCA”) and **TOWN OF MAMMOTH LAKES** (“Town”). This MOU is made in reference to the following facts:

RECITALS:

- (a) GSCA is a joint powers authority organized and existing under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.
- (b) Under that certain *Golden State Connect Authority Joint Exercise of Powers Agreement*, GSCA is authorized to establish and operate programs and projects to facilitate the provision and expansion of broadband internet access service in rural communities, and to acquire, construct, improve, and maintain broadband infrastructure and operate broadband internet access service.
- (c) Under Section 4.d of the GSCA JPA, any public agency that is authorized to provide, permit, or facilitate broadband internet access service or related telecommunications services may become a Participating Entity in GSCA upon approval and adoption of a participation agreement in the form prescribed by GSCA.
- (d) Town is a political subdivision of the State of California located within Mono County, a full Member of GSCA. Town is authorized to establish, purchase, and operate public works to furnish its inhabitants with means of communication, including broadband Internet access services, under California Constitution, article XI, section 9 and Public Utilities Code sections 10001 et seq.
- (e) Town is applying for grant funding from the California Public Utilities Commission's Local Agency Technical Assistance program. If approved, this grant funding will cover the cost of preparing conceptual network design and cost estimation, refined high-level design and foundational planning, and low-level design and engineering for portions of a proposed open access broadband internet access network serving certain areas within Town's boundaries.

- (f) In the event that Town is awarded a grant under the Local Agency Technical Assistance program, GSCA desires to assist Town in implementing the grant by undertaking responsibility for performance of the grant-funded work, as set forth herein.
- (g) Under the Joint Exercise of Powers Act (Gov. Code, §§ 6500 et seq.), GSCA and Town (collectively, the “Parties”) are authorized to enter into an agreement to jointly exercise any power common to both entities.

THEREFORE, THE PARTIES SHALL JOINTLY EXERCISE THEIR COMMON POWER AS FOLLOWS:

1. Recitals Incorporated. The above recitals are true and correct, and are hereby incorporated into this MOU.
2. Authority. This MOU is authorized by Government Code sections 6500 et seq., 26231, and 53703. This MOU shall constitute a participation agreement for purposes of Section 4.d of the GSCA JPA.
3. No Separate Entity. This MOU does not create an agency or entity that is separate from the parties to the agreement.
4. Responsibilities of Town. Town shall do all of the following:
 - a. Submit a timely application for grant funding from the California Public Utilities Commission's Local Agency Technical Assistance program, consistent with the scope of work set forth in the proposed *Agreement for Professional Services and Memorandum of Understanding between Golden State Connect Authority and Utah Telecommunication Open Infrastructure Agency Regarding Engineering Management Services*, collectively attached hereto as **Attachment 1**, and the *Local Agency Technical Assistance Application Budget Summary*, attached hereto as **Attachment 2**.
 - b. In the event the application is approved, submit all documentation necessary to accept and receive the grant funds, with the assistance of GSCA as set forth in Section 5.
 - c. Submit timely payment requests to the California Public Utilities Commission, in accordance with the approved grant, upon receipt of invoices from GSCA.
 - d. Upon receiving payment(s) from the California Public Utilities Commission under the grant, compensate GSCA as set forth in Section 6.
 - e. Timely make all reports to the California Public Utilities Commission required under the grant, with the assistance of GSCA as set forth in Section 5.
5. Responsibilities of GSCA. GSCA shall do all of the following:

- a. In the event the grant application is approved, promptly enter into an *Agreement for Professional Services* and a *Memorandum of Understanding between Golden State Connect Authority and Utah Telecommunication Open Infrastructure Agency Regarding Engineering Management Services* in substantially the forms attached hereto as **Attachment 1**.
 - b. Administer and oversee the performance of services under the foregoing agreements to ensure completion of the scope of work set forth therein in accordance with the terms of the approved grant.
 - c. Compensate the contractors under the foregoing agreements in accordance with the terms of those agreements and the approved grant, and submit timely invoices for reimbursement to Town.
 - d. Submit timely invoices to Town for GSCA's administrative staff costs in accordance with Section 6 and the approved grant.
 - e. Assist the Town in preparing and submitting any documentation necessary to accept and receive the grant funds, and in making any necessary reports and payment requests to the California Public Utilities Commission in accordance with the terms of the grant.
 - f. Have full responsibility for performance of the grant-funded work and compliance with the terms of the approved grant, except as otherwise expressly set forth herein.
6. Fiscal Provisions. Town shall make payment to GSCA from Local Agency Technical Assistance grant funds received by the Town for services provided hereunder, as follows.
 - a. Town shall reimburse GSCA for all amounts paid to the contractors under the *Agreement for Professional Services* and the *Memorandum of Understanding between Golden State Connect Authority and Utah Telecommunication Open Infrastructure Agency Regarding Engineering Management Services*.
 - b. Town shall further reimburse GSCA for all costs incurred for GSCA staff to perform the services set forth in Section 5, at GSCA's actual cost, including indirect costs allowable under the uniform cost principles promulgated by the United States Office of Management and Budget, not to exceed \$15,000.
 - c. GSCA will submit invoices to Town for the foregoing amounts in the time and manner consistent with the approved grant.
 - d. The maximum amount payable to GSCA under this MOU shall not exceed \$475,000, or ninety-five percent (95%) of the grant amount awarded under the California Public Utilities Commission's Local Agency Technical Assistance program, whichever is less.
7. Term. This Agreement shall commence upon award of funding for the proposed work under the Local Agency Technical Assistance program,

and terminate upon completion of, and final payment for, all services set forth in this MOU. If the Local Agency Technical Assistance grant application submitted by GSFA is not approved, this MOU shall be of no further force or effect.

8. Compliance with Law. GSCA and Town shall perform all functions related to the services or activities described herein in accordance with all applicable federal, state, and local laws, ordinances, regulations, and rules, and in accordance with the terms of the aforementioned grant.
9. Independent Contractor. GSCA shall, during the entire term of this MOU, be construed to be an independent contractor and nothing in this MOU is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow Town to exercise discretion or control over the professional manner in which GSCA performs the services which are the subject matter of this contract. GSCA staff performing services under this MOU not be deemed employees of Town for any purpose.
10. Indemnification. In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties hereto pursuant to Government Code section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the parties agree, pursuant to Government Code section 895.4, as follows:
 - a. GSCA shall hold harmless, defend, and indemnify Town, its agents, officers, and employees, against all claims, suits, actions, costs, expenses (including but not limited to reasonable attorney's fees, expert fees, litigation costs, and investigation costs), damages, judgments or decrees by reason of any person's or persons' bodily injury, including death, or property (including property of Town) being damaged by the negligent acts, willful acts, or errors or omissions of GSCA, or any person employed by or under GSCA in any capacity, during the provision of services provided for herein, except when the injury or loss is caused by the sole negligence or intentional wrongdoing of Town.
 - b. Town shall hold harmless, defend, and indemnify GSCA, its agents, officers, and employees, against all claims, suits, actions, costs, expenses (including but not limited to reasonable attorney's fees, expert fees, litigation costs, and investigation costs), damages, judgments or decrees by reason of any person's or persons' bodily injury, including death, or property (including property of GSCA) being damaged by the negligent acts, willful acts, or errors or omissions of Town, or any person employed by or under Town in any capacity, during the provision of services provided for herein, except when the injury or loss is caused by the sole negligence or intentional wrongdoing of GSCA.

11. Insurance. GSCA and Town shall each secure and maintain in full force and effect during the full term of this agreement commercial general liability insurance or participation in a self-insurance program with limits of liability of not less than \$1 million combined single limit bodily injury and property damage. Policies shall be written by carriers reasonably satisfactory to each party. On request, a certificate evidencing the insurance requirements of this paragraph shall be provided.
12. No Third Party Beneficiary. Nothing in this MOU shall be construed to create any rights of any kind or nature in any other party not a named party to this MOU.
13. Authorization. Each party executing this MOU and each person executing this MOU in any representative capacity, hereby fully and completely warrants to all other parties that he or she has full and complete authority to bind the person or entity on whose behalf the signing party is purporting to act.
14. Entire Agreement/Amendments. This MOU supersedes all previous agreements or understandings and constitutes the entire understanding between the parties with respect to the above referenced services, terms of compensation, and otherwise. This MOU shall not be amended, except in a writing that is executed by authorized representatives of both parties.
15. Governing Law and Venue. This agreement shall be deemed to be made in, and shall be governed by and construed in accordance with the laws of the State of California (excepting any conflict of laws provisions which would serve to defeat application of California substantive law). Venue for any action arising from this agreement shall be in Sacramento County, California.
16. Notices. Any notice required to be given pursuant to the terms and provisions of this MOU shall be in writing and shall be sent first class mail to the following addresses:

GSCA: Golden State Connect Authority
 Attn: Executive Director
 1215 K Street, Suite 1650
 Sacramento, CA 95814

Town: Town of Mammoth Lakes
 Attn: Town Manager
 PO Box 1609
 Mammoth Lakes, CA 93546

IN WITNESS WHEREOF, GSCA and Town have executed this Memorandum of Understanding on the day and year set forth below.

Date: _____

GOLDEN STATE CONNECT AUTHORITY

By: _____

Executive Director

Date: _____

TOWN OF MAMMOTH LAKES

By: _____

Daniel C. Holler, Town Manager

ATTACHMENT 1

**[INSERT DRAFTS OF DESIGN PROFESSIONAL AGREEMENT
AND UTOPIA MOU]**

ATTACHMENT 2

[INSERT BUDGET SUMMARY FROM GRANT APPLICATION]