

TOWN OF MAMMOTH LAKES

PROFESSIONAL SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this 2nd day of November, 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 R, Mammoth Lakes, California, 93546 (“Town”) and Cardno USA, Inc (STANTEC), an environmental services firm, with its principal place of business at 5496 Reno Corporate Drive, Reno, Nevada 89511 (“Consultant”). Town and Consultant are sometimes individually referred to herein as “Party” and collectively as “Parties.”

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional environmental consulting services required by the Town on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional environmental consulting services to public clients, is licensed in the State of California, and is familiar with the plans of Town.

2.2 Project.

Town desires to engage Consultant to render such professional environmental consulting services for the Sherwins Area Trails (SHARP) project (“Project”) as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the Town all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional environmental consulting services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. 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 shall be from **November 2nd, 2022** to **November 2nd, 2024**, unless earlier terminated as provided herein. The Town shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than **two (2)** additional one-year terms. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. Town retains Consultant on an independent contractor basis and not as an employee. Consultant 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 Consultant shall also not be employees of Town and shall at all times be under Consultant's exclusive direction and control. Neither Town, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant 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. Consultant 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 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "A" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, Town shall respond to Consultant's submittals in a timely manner. Upon request of Town, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of Town.

3.2.4 Substitution of Key Personnel. Consultant has represented to Town that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of Town. In the event that Town and Consultant cannot agree as to the substitution of key personnel, Town shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the Town, or who are determined by the Town to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the Town. The key personnel for performance of this Agreement are as follows: **Crystal West (Project Manager) & Peter Cary (Director/Principal Investigator).**

3.2.5 Town's Representative. The Town hereby designates **Lawson Reif, Outdoor Recreation 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 Consultant but not the authority to enlarge the Scope of Work or change the total compensation due to Consultant 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 Consultant's total compensation subject to the provisions contained in Section 3.3 of this Agreement. Consultant shall not accept direction or orders from any person other than the Town Manager, Town's Representative or his/her designee.

3.2.6 Consultant's Representative. Consultant hereby designates **Crystal West (Project Manager) & Peter Cary (Director/Principal Investigator)**, or his/her designee, to act as its representative for the performance of this Agreement (“Consultant's Representative”). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant'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.

3.2.7 Coordination of Services. Consultant agrees to work closely with Town staff in the performance of Services and shall be available to Town's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant 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. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant 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 Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the Town to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the Town, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

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

3.2.10 Insurance.

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

3.2.10.2 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 Consultant, 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, Consultant 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: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering “Any Auto” (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities shall be in an amount of not less than \$1,000,000 combined limit for each occurrence. *If consultant does not own any company vehicles or may not be able to purchase a Business Automobile Insurance Policy, the requirement may be satisfied by providing either of the following:* (1) a Personal Automobile Liability policy, including an endorsement or designation covering business use, for the Consultant'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 Consultant 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 per claim and in the aggregate. 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.

3.2.10.3 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: Consultant agrees to endorse the third party general liability coverage required herein to include as additional insureds Town, its officials, employees, agents, and volunteers, using standard ISO endorsement No. CG 2010 with an edition date of 2010 or similar form. This provision shall also apply to any excess/umbrella liability policies. Consultant 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.

3.2.10.4 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.

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

3.2.10.6 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.

3.2.10.7 Evidence of Insurance. The Consultant, 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, Consultant 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.

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

3.2.10.9 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.

3.2.10.10 Pass Through Clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to the Town for review.

3.2.10.11 Requirements Not Limiting. Requirements of specific coverage features or limits contained in this Agreement are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Consultant maintains higher limits than the minimums shown above, Town requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Town.

3.2.10.12 Prohibition of Undisclosed Coverage Limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to the Town and approved of in

writing.

3.2.10.13 Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

3.2.10.14 Timely Notice of Claims. Consultant shall give the Town prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant 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. Safety precautions, where applicable, shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.12 Water Quality Management and Compliance.

3.2.12.1 Storm Water Management. Storm, surface, nuisance, or other waters may be encountered at various times during the Services. Consultant hereby acknowledges that it has investigated the risk arising from such waters, and assumes any and all risks and liabilities arising therefrom.

3.2.12.2 Compliance with Water Quality Laws, Ordinances and Regulations. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the Town's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant shall additionally comply with the lawful requirements of the Town, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges.

3.2.12.3 Standard of Care. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies described in Section 3.2.12.2 of this Agreement. Consultant further warrants that it, its employees and subcontractors have or will

receive adequate training, as determined by the Town, regarding these requirements as they may relate to the Services.

3.2.12.4 Liability for Non-compliance.

(A) Indemnity: Failure to comply with laws, regulations, and ordinances listed in Section 3.2.12.2 of this Agreement is a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, Consultant agrees to indemnify and hold harmless the Town, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the Town, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Services, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the Town, its officials, officers, agents, employees or authorized volunteers.

(B) Defense: Town reserves the right to defend any enforcement action or civil action brought against the Town for Consultant's failure to comply with any applicable water quality law, regulation, or policy. Consultant hereby agrees to be bound by, and to reimburse the Town for the costs associated with, any settlement reached between the Town and the relevant enforcement entity.

(C) Damages: Town may seek damages from Consultant for delay in completing the Services caused by Consultant's failure to comply with the laws, regulations and policies described in Section 3.2.12.2 of this Agreement, or any other relevant water quality law, regulation, or policy.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. The total compensation shall not exceed *one hundred twenty thousand* dollars [**\$120,000.00**] without written approval of the Town Council or Town Manager as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit *monthly invoices, (unless project work takes less than 1 month in which case a final invoice can be submitted after completion of the project)*. Town shall pay all undisputed amounts within 30 days of the receipt of each invoice.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by Town, or included in Exhibit "C" of this Agreement.

3.3.4 Extra Work. At any time during the term of this Agreement, Town may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by Town to be necessary for the proper completion of the Project, but which the

Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the Town.

3.3.5 Rate Increases. In the event that this Agreement is renewed pursuant to Section 3.1.2, the rate set forth in Exhibit “B” may be adjusted each year at the time of renewal as set forth in Exhibit “B.”

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant 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. Consultant 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 Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to Town, and Consultant shall be entitled to no further compensation. Consultant 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 Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant 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:

Consultant: Cardno USA, Inc.
ATTN: Crystal West
5496 Reno Corporate Drive
Reno, Nevada 89511

Town: Town of Mammoth Lakes
PO Box 1609
437 Old Mammoth Road, Suite R
Mammoth Lakes, CA 93546
ATTN: Lawson Reif, Outdoor Recreation 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. 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 Consultant under this Agreement (“Documents & Data”). Consultant shall require all subconsultants to agree in writing that Town is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant 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 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of Town, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use Town's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of Town.

3.5.3.3 Confidential Information. The Town shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the Town's legal counsel determines that the release of the Proprietary 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 Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give Town written notice of Consultant's objection to the Town's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the Town, and its officers, directors, employees, agents, and volunteers, from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. Town shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with Town's choice of legal counsel), and hold Town harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that Town release such information.

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 Indemnification.

3.5.6.1 Scope of Indemnity. To the fullest extent permitted by law, Consultant 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 Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, 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 Consultant.

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

3.5.7 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.

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

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

3.5.10 Town's Right to Employ Other Consultants. Town reserves the right to employ other consultants in connection with this Project.

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

3.5.12 Assignment or Transfer. Consultant 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.

3.5.13 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 Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to Town include its elected officials, directors, 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.

3.5.14 Amendment; Modification. No supplement, modification, or amendment

of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 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.

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

3.5.17 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.

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

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, 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. Consultant 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.

3.5.20 Labor Certification. By its signature hereunder, Consultant 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.

3.5.21 Authority to Enter Agreement. Consultant 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.

3.5.22 Counterparts. This Agreement may be signed in counterparts, each of

which shall constitute an original.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of Town. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

TOWN OF MAMMOTH LAKES

Cardno USA, Inc.

By: _____
Daniel C. Holler
Town Manager

By: _____
Name:
Title:

Attest:

By: _____
Jamie Gray
Town Clerk

By: _____
Name:
Title:

Approved as to Form:

By: _____
Andrew Morris
Town Attorney

EXHIBIT "A"
SCOPE OF SERVICES

***SCOPE OF SERVICES IS CONTAINED IN THE ATTACHED REQUEST FOR
PROPOSAL AND OUTLINED BELOW***

SCOPE OF WORK

Phase 1: Project Description, APE Development, and Field Preparation

Task 1.1: Project Description, APE Development, and Field Preparation

Project Description and APE Development

Cardno will assist TOML with the development of the Project description, planning and design for inclusion in the INF archaeological permit and survey strategy. Cardno may also assist TOML with Project planning with the INF.

Assumptions:

- > Cost includes time for Cardno's Senior Consultant and Archaeological Field Director to assist TOML with Project description, APE development, and survey strategy.
- > Cost includes a 1-hour meeting with the INF.

Field Preparation: Records Search

Archaeological studies and site records on file at the INF and the California Historical Resources Information System (CHRIS) and other pertinent sources of information (e.g., mineral and land ownership records, historical maps, and local museum collections) will be consulted prior to starting fieldwork. In addition to the record search, Cardno will submit a Sacred Lands File request to the Native American Heritage Commission. Previous survey work will be critically reviewed to determine whether reliable coverage is provided for any portion of the APE. The Cardno team will consider survey age, methodology, changes in field conditions, thoroughness of documentation, and/or other indications of reliability. The study area for the record search will be within 0.5 mile of the Project APE.

Assumptions:

- > GIS shapefiles of the Project APE will be provided to Cardno for its records search
- > Cardno will conduct one site visit to the INF Supervisor's Office in Bishop, California, to conduct the records search.
- > Cardno will request a Sacred Lands File search from the Native American Heritage Commission.
- > Cost includes fees associated with digital record search request at the CHRIS, Eastern Information Center (EIC), University of California—Riverside, California.
- > Cardno will remain in close communication with TOML staff and the Forest HPM (or delegate) to review and finalize Project work site data and the APE prior to initiating surveys.
- > Prior to starting fieldwork, Cardno will consult with the Forest HPM regarding recommendations for areas exempted from new surveys.
- > The INF will conduct Tribal consultation regarding the Project and communicate to Cardno any Tribal Resources that may need to be considered during fieldwork.

Field Preparation: Archaeological Survey Permit

The Cardno team will obtain an archaeological study permit from the INF prior to starting work. Cardno will notify the TOML and the INF (1) about dates of fieldwork; (2) about any changes to schedule and reasons for any changes in fieldwork activities (e.g., inclement weather); and (3) upon completion of the field activities.

Assumptions:

- > The INF will provide the Cardno team with an archaeological study permit prior to the fieldwork.

Phase 2: Cultural Resources Survey

Task 2.1: Cultural Resources Survey

Field Survey

Sherwins Area Trails Project (SHARP) – 11/2/2022

The Cardno field team consisting of an SOI-Qualified Archaeological Field Director and five archaeological field staff will systematically survey the approximately 1,000 acres of the APE. It is assumed that 25 percent of the total 1,350 acres of the APE have been adequately surveyed and will not need to be resurveyed. Surface intensive coverage of the APE will be performed using parallel adjacent pedestrian transects spaced no more than 15 to 20 meters apart within the practical limits of safety, topography, vegetation, water, or other constraints. Transects do not need to be straight lines but should meander opportunistically to take advantage of soil exposures and topographic probabilities to facilitate the examination of suspected cultural resources. Survey of unnavigable steep terrain (>30 degree slopes) will emphasize pedestrian and/or visual examination of likely or suspected site locations as practical (e.g., rock shelters, quarries, game drives, hunting blinds, mining adits, trails, roads, and logging features). Proposed adaptations to the survey strategy will be discussed with the Forest HPM prior to their implementation. The cultural resources inventory report will accurately depict and describe precise methodologies employed, including reasons for not surveying areas in the APE (e.g., impenetrable brush, wetlands, and cliffs).

Field Site Recordation

All previously documented NRHP-eligible and unevaluated cultural resource sites in and adjacent to the APE not visited in the past 10 years will be inspected and updated according to the following provisions and per the INF archaeological study permit:

- > Inspected sites will be completely examined, with at least broad-scale observations made for portions of the site extending beyond the survey area, unless otherwise negotiated with the Forest HPM (or delegate).
- > If existing site records meet current documentation standards, and no appreciable changes or significant new information is found, then a concise site update containing only pertinent information to supplement the existing record will be needed (e.g., information about current condition, additional diagnostic artifacts or features located, current photographs, information related to the assessment of effect or protection recommendations, adjusted shapefiles, and additional sketches or maps). If these conditions are not met, comprehensive site documentation will occur.
- > A Global Positioning System (GPS) unit (Trimble) with sub-meter accuracy (Datum NAD 83, UTM Zone 11) will be used to record resources. Other types of handheld GPS units or iPad devices may be used to record transect data.
- > All artifacts will be documented in the field, not collected.
- > No archaeological testing will occur.
- > Cultural resources recorded or updated within the past 10 years will be inspected only if current documentation does not meet standards, new information or data are found, or information for assessing effects of the current undertaking is lacking.
- > Sites previously determined to be ineligible for listing in the NRHP will be examined and updated only if reconsideration of previous determinations is required based on new information or changed conditions.
- > All newly identified sites, including portions outside the APE, will be completely documented. In the case of historic roads or trails, documentation will extend at least to the nearest intersection with a paved road, an intersection with another road or trail, or the National Forest boundary.
- > Alternative documentation methods may be negotiated with the Forest HPM for sites that extend over 100 meters beyond the APE.

Assumptions:

- > Fieldwork will consist of a 10-day fieldwork rotation and 8-hour workdays to survey approximately 1,000 acres.
- > Cost includes a half day of travel time (4 hours) on either end of the 10-day fieldwork rotation.
- > Crew will consist of six (n=6) people total: one Cardno Bishop Archaeological Field Director, two Cardno archaeological staff, and three ASM archaeological staff.
- > Cost includes recordation of 10 new archaeological resources and 10 site record updates.
- > Cost includes Mammoth Lakes' General Services Administration (GSA) meals per diem of \$70 per day per person for five non-local staff.

Sherwins Area Trails Project (SHARP) – 11/2/2022

- > Cost includes Mammoth Lakes GSA lodging per diem of \$138 per night person for five non-local staff.
- > Cost includes rental cost of \$75 per day for the GPS unit (Trimble) with sub-meter accuracy.
- > Cost includes rental cost of \$25 per day for ASM's GPS unit.
- > Cost includes mileage from Cardno's Bishop Office to the Project (10 roundtrips) and travel time for Cardno's Archaeological Bishop Field Director.
- > Cost includes mileage from Cardno's Bishop Office to the Project (2 roundtrips) and travel time for ASM's Principal Investigator.
- > Cardno will notify the TOML and the INF via email when the surveys have been completed.

Phase 3: Cultural Resources Reporting

Task 3.1: Site Records and Cultural Resources Report

Site Records

All newly identified resources and existing resources will be recorded according to the INF cultural resources definitions and warranting updated documentation on the appropriate California Department of Parks and Recreation Series 523 forms. All updates will include a new primary record and/or archaeological site record unless the existing site record has a current and accurate primary record in which case a continuation sheet will be sufficient. Location maps will be updated with current GPS locational data, unless the previous record's location map is accurate, on the most current topographic map at a 1:24,000 scale. Any impacts from recreation use or other disturbances will be documented in the site record and on site maps. Photographs will be included in the new and updated records for each site.

Cultural Resources Inventory Report

The cultural resource inventory report will meet National Forest (Forest Service Manual 2363.16) and the California Office of Historic Preservation's *Archaeological Resource Management Report Recommended Contents and Format* (1990). It will include background research, historic contexts, oral histories, survey design, field methods, cultural resource findings, NRHP-eligibility recommendations, Project effect recommendations, maps, site forms, photographs, and collection logs as applicable.

- > A preliminary fieldwork summary will be submitted to the TOML and the INF within 1 week of completing a fieldwork tour.
- > A draft cultural resources report will be submitted to the Forest HPM using a secure file sharing system to protect confidential cultural resources information for a 30-day review period.
- > The report will be submitted in accordance with provisions of the archaeological study permit.
- > Forest report and site numbers will be assigned by the Forest HPM during the draft review and this information will be included in the final report.
- > The Forest HPM will provide one round of consolidated review comments on the draft report.
- > The final submitted package will include an unbound original color copy of the report, electronic files (Microsoft Word and Adobe PDF), applicable shapefiles (e.g., APE, survey area, and cultural resource locations), digital photographs and photo logs, and other logs (as applicable).

Confidentiality of Information

The Cardno team will ensure the confidentiality of legally protected site location information on public lands pursuant to the NHPA, Archeological Resources Protection Act, and other statutes. No legally protected information will be held or shared (1) with any third party not identified as a qualified professional in the archaeological study permit, (2) with external Project proponent, (3) with contract administrator, or (4) without express consent of the Forest HPM.

Assumptions:

- > Cardno will provide general NRHP-eligibility recommendations in the report and site records based on back-ground research and surface surveys. This work will not include extensive NRHP-eligibility research, context development, or subsurface testing.
- > Cardno will submit the final report and site records to the EIC on behalf of the INF.

Deliverables/ Schedule

Sherwins Area Trails Project (SHARP) – 11/2/2022

The following table presents the deliverables and schedule for the proposed Project.

Deliverable	Schedule	Recipient
Submit fieldwork summary	1 week after completion of fieldwork	TOML and Forest HPM
Submit draft report and draft site records	45 days after completion of fieldwork	Forest HPM
Submit final report and site records	30 days after receiving INF comments	Forest HPM and EIC

EXHIBIT "B"
COMPENSATION

**2022 Schedule of Fees for Professional Services Science and
Environment Division, Natural Resources Area**

Prepared for TOML Office of Outdoor Recreation

Field Technician/Specialist	\$75
Field Technician/ Native American Monitor	\$130
Project Coordinator	105
Senior Project Coordinator	115
Production Specialist	140
Technical Editor	95
Senior Technical Editor	150
CADD/Drafting/GIS Consultant	115
Assistant Staff Consultant	90
Staff Consultant 1	95
Staff Consultant 2	105
Senior Staff Consultant 1	115
Senior Staff Consultant 2	130
Project Consultant 1	145
Project Consultant 2	155
Senior Project Consultant 1	165
Senior Project Consultant 2	185
Senior Consultant 1	200
Senior Consultant 2	225
Director	275

Effective through December 31, 2022

Expenses

Use of a personal vehicle will be at the current IRS allowable rate. Subconsultant fees and all other costs identifiable to an assignment will be charged at cost plus ten percent (10%).

Payment

Cardno invoices will be submitted monthly. Payment is due on or before the thirtieth (30th) day following the date of the invoice. Invoices paid more than thirty (30) days after the invoice date are subject to a finance charge of one percent (1%) per month.

Conditions

Cardno specifies that our services are performed, within the limits prescribed by our clients, with the usual thoroughness and competence of the environmental consulting profession. No other warranty or representation, either expressed or implied, is included or intended in our proposals, contracts, or reports.

EXHIBIT “B”
COMPENSATION

ASM AFFILIATES, INC.
STANDARD BILLING RATES

<u>Classification</u>	<u>Hourly Rate</u>
Project Manager III/Principal III	\$160.00
Project Manager II/Principal II	\$140.00
Senior Archaeologist II	\$125.00
Senior Archaeologist I	\$105.00
Senior Historian II	\$110.00
Associate Archaeologist II	\$95.00
Associate Archaeologist I	\$80.00
Assistant Archaeologist/Technician	\$75.00
GIS Administrator II	\$125.00
GIS Administrator I	\$95.00
Accountant	\$90.00
Admin Associate II	\$73.00
Records/Title Search	At Cost
Artifact Curation	At Cost
GPS Units	\$25/day
GPR Rental	\$500/day

General Terms

1. Labor rates are effective from January 1, 2022 through December 31, 2022.
2. Travel, records searches, reproduction, blueprinting, telephone, supplies, fees, and other non-labor direct costs are billed at cost. Per diem charges are based on reasonable and actual costs. Mileage will be charged at standard Internal Revenue Service rate. Rental of off-road vehicles will be billed at \$40 per day plus \$0.64 per mile. Sub-consultants are billed at cost plus 5% for administrative and management oversight.
3. Billing invoices will be prepared monthly and will contain charges of the previously ended month and prior for work in progress unless otherwise agreed. Invoices are to be paid to ASM Affiliates, Inc., 2034 Corte del Nogal, Carlsbad, California 92011, within 90 days after invoice date. Any invoices not paid in 90 days are subject to a service charge of 1.5% per month on the unpaid balance.
4. Invoice must be accepted or rejected by CLIENT within 10 days of its receipt and communicated to ASM's Accounting Department (Accounts Receivable: accountsreceivable@asmaffiliates.com) in writing (email, letter, etc.). CLIENT will then issue a payment to ASM within 10 days of receipt of payment from the PRIMARY CLIENT or within 120 days from the date of the accepted invoice, whichever is sooner.
5. Payment of ASM Affiliates' invoices for services performed will not be contingent upon the client's receipt of payment from other parties. Client agrees to pay legal costs, including attorney's fees, incurred by ASM Affiliates in collecting any amounts past due and owing to client's account.