

FS Agreement No. __
Cooperator Agreement No. _____

DRAFT MEMORANDUM OF UNDERSTANDING
Between
THE TOWN OF MAMMOTH LAKES
And The
USDA, FOREST SERVICE
INYO NATIONAL FOREST

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the Town of Mammoth Lakes, California, hereinafter referred to as "Town," and the USDA, Forest Service, Inyo National Forest, hereinafter referred to as the "U.S. Forest Service."

Background: The Forest Service is completing the Inyo National Forest Over-snow Vehicle (OSV) Use Designation Process, in accordance with the 2005 (Amended in 2015) Travel Management Rule (36 CFR 212, Subparts B and C; Travel Management Rule). The Town of Mammoth Lakes has requested, and the Forest Service has agreed to grant, cooperating agency status with respect to the OSV use designation process, pursuant to 40 CFR 1501.8.

Title: Inyo National Forest Over-snow Vehicle Use Designation Process

PURPOSE: The purpose of this MOU is to define the relationship and duties of the Forest Service and the Town, as a Cooperating Agency, in accordance with the following provisions.

I. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

In harmony with the goals of the National Environmental Policy Act (NEPA), participation by cooperating agencies promotes efficiency, cooperation, and disclosure to the public of all relevant information (Statement Clarifying Cooperating and Joint Lead Agency Provisions, US Forest Service, Bureau of Land Management, and National Park Service, 9/2/1998). By cooperating in the development of the OSV Use Designation Process, the Forest Service and Town can better integrate decision making within their respective jurisdictions. .

To complete the OSV use designation process, the Forest Service plans to prepare an Environmental Impact Statement (EIS) that complies with the National Environmental Policy Act (NEPA) and other applicable statutes and regulations such the Endangered Species Act, National Historic Preservation Act, etc.

A team of Inyo National Forest interdisciplinary resource specialists, known as the Interdisciplinary Team (IDT), will be assigned to prepare the EIS and OSV Use Designation Plan. The final outcome of this decision will be an over-snow vehicle use map (OSVUM), showing where, and under what

conditions, areas and trails will be designated for OSV use. OSVs are defined as, “a motor vehicle that is designed for use over snow and that runs on a track or tracks and/or a ski or skis, while in use over snow.” (36 CFR 212.1).

The Forest Supervisor of the Inyo National Forest is the responsible official for development and approval of the OSV Use Designation Project. Under the provisions of the Council for Environmental Quality's Regulations for Implementing NEPA (40 CFR Parts 1500-1508):

The Forest Service may designate a State, County or local government agency as a “cooperating agency” to assist the Forest Service in preparing an EIS for a project on National Forest System lands (40 CFR 1501.8 and 1508.1). Cooperating agencies have jurisdiction by law or special expertise on environmental issues related to the project. A cooperating agency may provide special expertise or assistance to the lead agency in analyzing the effects of the lead agency's proposed action.

In consideration of the above premises, the parties agree as follows:

II. THE TOWN SHALL:

- A. Serve as a cooperating agency with special expertise (Appendix 1) relevant to the preparation of the EIS for the OSV Use Designation Process, with the rights and duties of a cooperating agency as set forth in this MOU and the CEO regulations at 40 CFR 1501.8.
- B. Within timeframes established by the Forest Service, provide input on the development of the EIS specific to the Town's areas of special expertise. This may include, but is not limited to, the following:
 - i. Assessment of resource conditions and trends, including recreation and local and regional economics.
 - ii. Best available scientific (not sure how much true scientific info we have) and area statistical information as related to the Town's areas of special expertise.
 - iii. Road and trail jurisdiction, allowable uses, winter operations, and maintenance.
 - iv. Conflict between OSVs and wheeled vehicles or road operations and methods to minimize any identified conflicts.
 - v. Winter recreational use and trends within the Town Planning boundaries and within outlying areas of Mono County.
 - vi. Assessment of consistency and application of uses with Town adopted plans including but not limited to: General Plan, Parks and Recreation Plan, Trail System Master Plan, Mobility Master Plan, and various special studies, area specific plans, informing plans (not formally adopted) and related Town policies.
- B. Complete review and analysis of preliminary Draft EIS, or portions thereof, relevant to the Town's areas of special expertise. The length of the Town's review period(s) will vary based on Forest Service timing constraints and when possible,

a minimum of two weeks will be provided. The Town may request additional review time. If Forest Service timelines do not accommodate a longer review period, the Town will attempt to respond within the Forest Service timeframe.

- C. The Town will complete a review of its planning and land use policies that it considers relevant to OSV Use Designation and identify opportunities for the OSV Use Designation process to address identified impacts, contribute to joint objectives including expanded areas for OSV staging, access and use, or resolve or reduce conflicts.
- D. Reserve the right to participate in the public involvement process for the Draft EIS and to submit comments on all aspects of the Draft EIS during the public comment periods to the same extent as any member of the public. The Town's participation as cooperating agency is not an endorsement of the final decision.

III. THE U.S. FOREST SERVICE SHALL:

In the development of the Environmental Impact Statement (EIS) for OSV Use Designation, the Forest Service shall:

- A. Provide the opportunity for the Town to provide input on the development of the EIS specific to the Town's areas of special expertise as noted in Section II, B, above.
- B. Provide the opportunity for the Town to review and provide analysis for preliminary Draft EIS and supporting documents, or portions thereof, relevant to the Town's areas of special expertise.
- C. Use the Town's environmental analyses and proposals, to the maximum extent possible consistent with the Forest Service's responsibility as lead agency in the development and approval of the EIS for OSV Use Designation, as provided in 40 CFR 1501.8(a)(2).
- D. Meet with the Town at the latter's request, as provided in 40 CFR 1501.8(a)(3).
- E. The Forest Service principal contact listed in Section IV, paragraph K shall serve as the primary liaison between the Town and the Inyo National Forest Interdisciplinary Team and Forest Supervisor. The Forest Service principal contact shall:
 - i. Promptly inform the Town of schedule changes that may affect the time afforded the Town to perform its responsibilities as cooperating agency. The Forest Service will consider requests from the Town for additional time to perform its cooperating agency responsibilities.
 - ii. Coordinate with the Forest Supervisor or designee to provide the Town the opportunity to provide input on the development of the EIS for OSV Use Designation to the Town's areas of special expertise as specified in Section III, B and C and Section IV, A and B.
 - iii. Ensure information provided by the Town under the terms of this agreement is promptly delivered to the Forest Supervisor or designee for consideration in the development of the EIS for the Revised Plan.
 - iv. Coordinate with the principal Town contact identified in Section V, paragraph L to schedule meetings between Town staff and the Interdisciplinary Team. The purpose of the meetings is to share

information, provide a forum for the Interdisciplinary Team and Town staff to discuss resource issues or topics, and to involve the Town in the development of the EIS as related to its areas of special expertise. The Interdisciplinary Team / Town meeting schedule will vary according to the project timeline or resource topic or issue but is generally expected to coincide with milestones identified in the schedule in Appendix 2.

IV. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

- A. The Forest Service and the Town will work together in good faith and shall attempt to resolve any disagreements under this MOU by negotiation.
- B. The Forest Service and the Town shall endeavor to work together to produce the work per the schedule identified in Appendix 2.
- C. For the purposes of this MOU, the Town's areas of special expertise are described in Appendix 1. In the event of changed circumstances or new information, it may be desirable to revise the Town's areas of special expertise without amending this MOU. The following protocol shall be utilized to revise the Town's areas of expertise:
 - i. The principal contact person (Section IV, paragraph K) of the party that becomes aware of the need to revise the Town's areas of special expertise shall notify the other party's principal contact person in writing as soon as possible. The notification shall include the specific areas of special expertise to be revised and the justification.
 - ii. Within two weeks of notification, the other party's principal contact person shall notify the first party's principal contact person in writing whether or not it is agreeable to revise the Town's areas of special expertise.
 - iii. If the parties agree to revise the Town's areas of special expertise, such revision shall be documented in a memorandum within two weeks of the notification of agreement describing the specific revision of the areas of special expertise and signed and dated by both parties' principal contact persons. The memorandum shall be prepared by the Town in consultation with the Forest Service. The memorandum shall be kept with and appended to this agreement.
 - iv. If the parties are not agreeable to revising the Town's areas of special expertise, the parties shall meet within two weeks of the notification of the failure to agree to work in good faith to resolve any points of disagreement. If the parties are able to agree through this subsection to revise the Town's areas of expertise, then the process described above shall be utilized to document the revision.
- D. The Forest Service will determine the scope, scale, methods, forums, and timing for public participation in all aspects of the OSV Use Designation process; developing a proposal; commenting on the proposal and the disclosure of its environmental impacts in accompanying NEPA documents; and reviewing the results of monitoring information. The Town may provide recommendations on the scope, scale, timing, methods, and forums for public involvement. In cooperation with the

Forest Service, the Town may offer opportunities to co-sponsor public meetings and other public participation forums. The Town may circulate public documents to solicit feedback from Town Parks and Recreation and Planning and Economic Development Commissions.

- E. The Forest Service is not obligated by this MOU to provide a written response to the Town's input on the development of the EIS; however, the Forest Service and Town principal contacts will make reasonable efforts to jointly review and discuss the Town's suggested changes, analysis, recommendations and data before the Final EIS and draft decision document are released to the public by the Forest Service.
- F. The Forest Service will work cooperatively with the Town to ensure full access to non-privileged Forest Service expertise and factual data, information, and analysis related to the special expertise of the Town so that the Town may carry forth its responsibilities as cooperating agency. The Town will provide the Forest Service full access to non-privileged factual data, information, and analysis related to its areas of special expertise and relevant to the assessment, revised plan, and plan monitoring program.
- G. Information will be freely shared with either party except when constrained by factors such as the need to protect confidentiality. When information needs to be kept confidential, the entity providing the information shall indicate the need for confidentiality when conveying the information. This exchange will allow for useful comments related to the information to be exchanged amongst the parties. Any information that is exchanged may be subject to disclosure under the California Public Records Act and the Freedom of Information Act.
 - a. The principal contact person for each party (Section IV, paragraph K) shall act as a liaison for the information exchange. This person will be responsible to disseminate the information amongst staff and consultants. Copies of the data are to be made and distributed only to those staff and consultants directly involved with the Revised Plan, unless otherwise agreed to by the parties. Files are to be maintained of said data for the required document retention period based on applicable law. Any shared data is intended to be used exclusively for the development of the Revised Plan.
 - b. Information may be exchanged in-person, via mail, or email, or any other means deemed applicable. Information provided by either entity shall be accompanied by a summary of the information in order to clarify what is being provided and to identify any confidentiality issues related to the information being provided.
- H. The Town and the Forest Service will keep confidential and protect from public disclosure any and all documents exchanged or developed as a part of this MOU prior to a determination by the applicable party of the releasability of the documents under the Freedom of Information Act, 5 U.S.C. §552, or the California Public Records Act, California Government Code §6250 et seq. Neither party will disclose documents exchanged or developed as a part of this MOU without providing notice to the other party. Each party will protect, to the extent allowed by applicable state and federal laws, the confidentiality of the other party's documents. Both parties agree to impose the requirement of this paragraph upon their consultants, and the

release of documents to those consultants shall not be deemed public disclosure.

- I. By this MOU, the Forest Service does not relinquish its primary responsibility for NEPA (National Environmental Policy Act) and NFMA (National Forest Management Act) compliance. The Forest Service will retain responsibility for the development and content of the Revised Plan.
- J. The Town reserves its rights to pursue any remedies whatsoever to challenge the adequacy of the EIS and its compliance with applicable laws and regulations in any administrative or judicial forum. The Forest Service likewise reserves its rights to raise all applicable affirmative defenses should any challenge to the adequacy of the Revised Plan be raised.
- K. **PRINCIPAL CONTACTS.** Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

Principal Cooperator Contacts:

Cooperator Program Contact	Cooperator Administrative Contact
Lawson Reif Office of Outdoor Recreation Manager PO Box 1609 Mammoth Lakes, CA 93546 Phone: Email: lreif@townofmammothlakes.ca.gov	Daniel C. Holler Town Manager PO Box 1609 Mammoth Lakes, CA 93546 Phone: 760-965-3601 Email: dholler@townofmammothlakes.ca.gov

Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact
Erin Noesser Environmental Coordinator, Inyo National Forest Address: 351 Pacu Ln, Suite 200 Bishop, CA 93514 Telephone: 760-920-3048 Email: erin.noesser@usda.gov	

- L. **NOTICES.** Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or Town is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the US Forest Service Program Manager, at the address specified in the MOU.

To the Town, at the Town's address shown in the MOU or such other address designated within the MOU.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

- M. PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the U.S. Forest Service or Town from participating in similar activities with other public or private agencies, organizations, and individuals.
- O. ENDORSEMENT. Any of the Town's contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service endorsement of Town's products or activities and does not by direct reference or implication convey the cooperator's endorsement of the FS products or activities.
- P. NONBINDING AGREEMENT. This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate agreements and are contingent upon numerous factors, including, as applicable, but not limited to: agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the parties elect to enter into an obligation agreement that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective agreement, each party operates under its own laws, regulations, and/or policies, and any Forest Service obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective agreements must comply with all applicable laws.

Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.

- Q. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no U.S. member of, or U.S. delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.

- R. **FREEDOM OF INFORMATION ACT (FOIA)**. Public access to MOU or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552).
- S. **TEXT MESSAGING WHILE DRIVING**. In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All cooperators, their employees, volunteers, and contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.
- T. **TERMINATION**. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration agreement by providing a 60-day notice of termination to the other party.
- U. **DEBARMENT AND SUSPENSION**. The Town shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should the Town or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- V. **MODIFICATIONS**. Modifications within the scope of this MOU must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.
- W. **COMMENCEMENT/EXPIRATION DATE**. This MOU is executed as of the date of the last signature and is effective through December 31, 2027 at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.

X. **AUTHORIZED REPRESENTATIVES.** By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this MOU. In witness whereof, the parties hereto have executed this MOU as of the last date below:

Town of Mammoth Lakes
Daniel C. Holler, Town Manager

Date

US Forest Service

Date

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

APPENDIX 1
Conceptual Work Plan and Schedule for Memorandum of Understanding Town of Mammoth Lakes and the USDA, Forest Service

The Forest Service and Town shall work to meet the deadlines in this conceptual schedule as they may be applicable throughout the development of the EIS for the OSV Use Designation process and as described in Sections II, III, and IV of the *Memorandum of Understanding between the Town of Mammoth Lakes and the USDA, Forest Service (MOU)*.

Coordination of the sub-tasks identified in the conceptual schedule will be primarily accomplished through a series of meetings between the principal contacts identified in the MOU and other Forest Service and Town staff involved in the revision process. The timing and frequency of the meetings may be adjusted as needed throughout the process. Meetings will be scheduled around major milestones to ensure both parties have sufficient time to provide and respond to input and resolve any concerns or disagreements. The Forest Service principal contact listed in the MOU shall serve as the primary liaison between the Town and the Inyo National Forest Supervisor and shall coordinate with the principal Town contact to schedule meetings at the request of either party.

Milestone	Subtask- Forest Service (FS)	Subtask- Town of Mammoth Lakes (Town)	Approximate Schedule
Scoping/Proposed Action Finalized			October 2022-April 2023
	Schedule meetings between Inyo National Forest and Town before release of proposed action. Identify portions of the proposed action to be cooperatively developed.	Participate in meetings	February-March 2023
	Board Of Supervisors (BOS) briefings	BOS briefings	FS to brief BOS as needed
	Release Proposed Action to public for scoping period		Late March 2023
Draft EIS Developed			April 2023-Feb. 2024
Sub-milestone - Identify Alternatives to analyze in the Draft EIS	Provide public comments received to Town, summarized and with proposed alternatives or comment resolution (related to Town areas of expertise)		May 2023

Appendix 2 - Conceptual Work Plan and Schedule
 Memorandum of Understanding between Town of Mammoth Lakes and the USDA, Forest Service

		Provide staff comments re: alternatives	June 2023
Sub-milestone - Identify Draft EIS sections to be cooperatively developed	Meet w/ Town staff to identify sections of draft plan and draft EIS to be prepared in cooperation with Town and/or specific information needs (e.g., review of Town winter road maintenance policies)	Meet w/ FS staff to identify sections	June 2023
Sub-milestone - Development of Draft EIS (pre-public release)	Share and/ or discuss draft documents and analysis concepts with Town staff/ (Board of Supervisors if needed).	Provide feedback iteratively. To protect deliberative process, submit draft BOS Agenda Request to FS for review and approval before sharing draft documents with BOS.	July-Sept 2023
	Provide DEIS sections for review		November 2023
		Provide Town comments to FS	W/i 2 weeks of DEIS sections shared with Town
	Publish DEIS / . Public Meetings		February 2024
		Board, Commissions, Committees Updates	As soon as possible once Draft Plan/DEIS are available for public review.
		Provide summary of comments from the Town (Town Council, Commissions, and Committees) to FS	Two weeks after close of comment period
Development of Final EIS/Draft Decision			April 2024-August 2024
	Provide draft versions of response to comments for areas of Town expertise		May 2024
		Provide staff comments re: first screen responses to comments/FEIS	W/i 2 weeks of receipt

Appendix 2 - Conceptual Work Plan and Schedule
 Memorandum of Understanding between Town of Mammoth Lakes and the USDA, Forest Service

	Consider Town staffs' comments on responses to public comments. Incorporate as appropriate.		
	Submit FEIS for publishing		June 2024
Notice of Objection	Issue Notice of Objection, FEIS, and Draft Record of Decision		August 2024
	Provide copies of objections to Town		W/i 2 weeks of end of Objection Filing Period
		Provide Town comments to FS	W/i 2 weeks of objection receipt
Objection Process	Coordinate Objector Meetings (requested by Reviewing Officer or Objector)	Participate in Objector Meetings if warranted/ desired	As needed (January 2025)
Record of Decision	Publish ROD / Notice of Plan Approval		March 2025
Implement Decision	Set up meetings to implement actions needing cooperation (develop signs, maps, online information sharing for decision)	Participate in meetings with Inyo National Forest staff and cooperatively develop education and information sharing as needed	April – July 2025