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ESSRP MOU

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into by and between the PARTIES who have executed this MOU. Each entity who executes this MOU as shown in Attachment A is a "PARTY" to this MOU and all such entities are considered "PARTIES" to this MOU.

BACKGROUND

- A. The Eastern Sierra Sustainable Recreation Partnership (ESSRP) is a unique partnership formed to encourage collaboration among local Eastern Sierra governments, state agencies, federal agencies, other public entities and sovereign tribes. Current and potential future participants in the ESSRP include but are not limited to: the City of Bishop and the Town of Mammoth Lakes, California municipal corporations; the Los Angeles Department of Water and Power, a municipal utility; the Counties of Alpine, Inyo, and Mono, political subdivisions of the State of California; the California Department of Transportation (Caltrans) and the California Department of Parks and Recreation, departments within the State of California, the Eastern Sierra Council of Governments (ESCOG), a California joint powers authority; and the National Park Service (NPS) at Death Valley National Park, Sequoia & Kings Canyon National Parks, Yosemite National Park, Devils Postpile National Monument, Manzanar National Historic Site, the Bureau of Land Management (BLM), and the United States Forest Service (USFS) at Inyo National Forest and Humboldt-Toiyabe National Forest, federal agencies.
- B. On July 18, 2017, the Mono County Board of Supervisors and the Mammoth Lakes Town Council held a joint meeting to initiate the ESSRP.
- C. On July 19, 2018, the Town of Mammoth Lakes, Mono County, USFS Inyo National Forest, and USFS Humboldt-Toiyabe National Forest entered into a Non-Funded Challenge Cost Share Agreement (Cost Sharing Agreement). The Cost Sharing Agreement sets forth the ESSRP goals, including the creation of healthy forests and watersheds, fire-safe communities, and sustainable local economies. The Cost Sharing Agreement intends to reduce duplication of efforts and harness the expertise of employees of all parties thereto, as well as maximize cash and non-cash contributions leading to joint accomplishment of work. This MOU intends to extend the understanding between the four parties to the Cost Sharing Agreement to all of the ESSRP PARTIES.
- D. On August 20, 2019, Alpine County voted to join the ESSRP, on September 9, 2019, the City of Bishop voted to join the ESSRP, and on October 8, 2019, Inyo County voted to join the ESSRP.
- E. The BLM, Caltrans, Los Angeles Department of Water and Power, and the National Park Service have also been actively engaged in the ESSRP partnership.
- F. The ESSRP has formed an ESSRP subcommittee to conduct tribal outreach and coordination.
- G. PARTIES intend to memorialize their agreement and intentions with this MOU.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the PARTIES agree as follows:

AGREEMENT

1. PURPOSE

- 1.1 Environmentally sustainable recreation in the Eastern Sierra. The purpose of this MOU is to document the PARTIES' desire to work cooperatively on mutually beneficial plans, programs, and projects that improve public services, infrastructure, and natural and cultural resources in the Counties of Alpine, Inyo, and Mono (Eastern Sierra). The PARTIES intend to: design, plan, implement, and promote projects to improve and maintain recreational opportunities; restore ecosystems to their natural resiliency and functions; cooperatively perform projects, maximize resources, reduce redundancies; increase transparency between and with stakeholders; improve programs, public services, infrastructure and support sustainable management of natural resources and the protection of cultural resources; implement a sustainable recreation program and infrastructure; and create fire-safe communities.
- 1.2 Opportunities. The PARTIES intend to establish their mutual goals, purposes, and opportunities so PARTIES can share resources, staff, and otherwise work together to improve recreation and preservation in the Eastern Sierra through grants and other funding sources.
- 1.3 Cost Sharing Agreement can terminate. The Cost Sharing Agreement is set to terminate June 30, 2023. The parties to that Cost Sharing Agreement are also anticipated to be PARTIES to this more broadly applicable MOU and may choose to terminate the Cost Sharing Agreement earlier upon the Effective Date of this MOU.
- 1.4 Potential Projects. PARTIES seek to coordinate and undertake projects in the Eastern Sierra, including but not limited to those identified through the ESSRP Priority Development described in the Cost Sharing Agreement, projects included in the ESCOG's SREMP established pursuant to ESCOG Resolution No. 20-03, and projects identified through the Sustainable Recreation and Tourism Initiative (SRTI) ESSRP Prospectus for Future Investments and SRTI Portfolio of Projects
- 1.5 Non-Exclusivity: This MOU is not exclusive; PARTIES remain able to enter into agreements with other entities, including with respect to projects on which PARTIES are engaged pursuant to this MOU, in ways that do not conflict with this MOU.

2. AGREEMENTS AND RESPONSIBILITIES

All PARTIES agree to undertake the following responsibilities in carrying out the objectives of this MOU:

- 2.1 Participation. Participate, to the extent feasible and consistent with PARTY resources and priorities, in regular ESSRP meetings, sharing pertinent information with the ESSRP Partnership, its workgroups, and individual members. Assist in and promote the achievement of the collective goals of the ESSRP. PARTIES may assign and/or change representatives to participate in ESSRP meetings, workgroups and projects on their behalf as needed.
- 2.2 Shared Resources. Share experience, expertise, and resources as a means of advancing the ESSRP's common interests and conduct activities collaboratively approved by the ESSRP.

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- 2.3 Comply with Applicable Law. Comply with all applicable federal, state, or local laws applicable to any action or approval taken pursuant to this MOU.
- 2.3 Project Inventory. If any projects are permitted, authorized, or funded by a PARTY pursuant to this MOU, that PARTY shall maintain an inventory of work for regular review by all PARTIES that includes: title; location; funding; leads; status; and timelines.
- 2.4 Point of Contact. Designate an employee to serve as a single point of contact for this MOU, as shown in the Section 6.9 notice provisions below. PARTIES may change their point of contact as needed.
- 2.5 Assurance regarding Felony Conviction or Tax Delinquent Status for Corporate Entities. This MOU is subject to the provisions contained in the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2012, P.L. No. 112-74, Division E, Section 433 and 434 as continued in the Consolidated Appropriations Act, 2016, P.L. No. 114-113, Division E, Title VII, General Provisions Section 745 and 746 respectively regarding corporate felony convictions and corporate federal tax delinquencies. Accordingly, by entering into this MOU, PARTIES acknowledge that they: 1) do not have a tax delinquency, meaning that they are not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that are not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, and (2) have not been convicted (or had an officer or agent acting on their behalf convicted) of a felony criminal violation under any Federal law within 24 months preceding the MOU, unless a suspending and debarment official of the United States Department of Agriculture has considered suspension or debarment is not necessary to protect the interests of the Government. If PARTIES fail to comply with these provisions, the USFS will annul this MOU and may recover any funds PARTIES have expended in violation of sections 433 and 434.
- 2.6 No Federal Employees. PARTIES except BLM, USFS, and NPS agree that any of their employees, volunteers, and program participants shall not be deemed to be Federal employees for any purposes including Chapter 171 of Title 28, United States Code (Federal Tort Claims Act) and Chapter 81 of Title 5, United States Code (OWCP), as PARTIES hereby willingly agree to assume these responsibilities. PARTIES shall provide any necessary training to their employees, volunteers, and program participants to ensure that such personnel are capable of performing tasks to be completed. PARTIES shall also supervise and direct the work of their employees, volunteers, and participants performing under this MOU.
- 2.7 Eligible Workers. PARTIES shall ensure that all employees complete the 1-9 form to certify that they are eligible for lawful employment under the Immigration and Nationality Act (8 USC 1324a). PARTIES shall comply with regulations regarding certification and retention of the completed forms. These requirements also apply to any contract awarded under this MOU.
- 2.8 Nondiscrimination. PARTIES will not discriminate in programs and activities pursuant to this MOU on the basis of race, color, national origin, age, disability, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program.

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- 2.9 Access. PARTIES may be granted access to federal facilities and/or computer systems to accomplish work performed pursuant to this MOU, in accordance with individual agency policies and regulations. All PARTIES may be required to have individual background checks, complete mandatory security training, sign individual agreements, and sign applicable statements of responsibilities before being allowed access to networked federal computers and unescorted access to federal buildings. Notwithstanding the foregoing, nothing in this MOU requires any federal agency to grant any PARTY access to any federal facility or computer system; each federal PARTY shall decide, in accordance with individual agency policies and regulations, whether and under what conditions to grant such access.
- 2.10 Use for Government Property. To the extent the NPS, BLM and/or USFS furnish federal government property to other PARTIES for use related to this MOU, including but not limited to federal government vehicles, such PARTIES may only use such property for performing tasks assigned pursuant to this MOU. PARTIES shall not modify, cannibalize, or make alterations to such property. Property will be tracked in accordance with owner/agency policies. Each PARTY shall retain title to all of its furnished property.
- 2.11 Liability for Government Property. PARTIES shall take all reasonable actions necessary to protect property from further loss, damage, destruction, or theft. PARTIES shall separate the damaged and undamaged property and place all the affected property in the best possible order. PARTIES shall do nothing to prejudice a PARTY's rights to recover against third parties for any loss, damage, destruction, or theft of property. PARTIES shall not be liable for loss, damage, destruction, or theft of property furnished or acquired under this MOU, except when any one of the following applies:
- a. The risk is covered by insurance or a PARTY is otherwise reimbursed (to the extent of such insurance or reimbursement).
 - b. The loss, damage, destruction, or theft is the result of willful misconduct or lack of good faith on the part of PARTY's managerial personnel. PARTY's managerial personnel, in this provision, means PARTY's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of PARTY's activities; all or substantially all of PARTY's operation at any one plant or separate location; or a separate and complete major industrial operation.
- 2.12 Particular Responsibilities of the ESCOG. The ESCOG will endeavor, upon approval and/or direction by its Board and the Boards of its four member agencies and with consideration of its available capacity, to leverage its position as a regional entity to pursue funding opportunities that may not be accessible to other PARTIES whose jurisdiction is limited to one specific national park, national forest, city, etc. ESCOG will also attempt to pursue funding opportunities that are related to the SREMP or any future programs that may be authorized by the ESCOG Board and all member agencies.

3. ADDITIONAL COMMITMENTS BY PARTIES

In addition to the foregoing responsibilities undertaken by all PARTIES, the individual PARTIES may undertake additional commitments in furtherance of the ESSRP goals and the purposes of this MOU.

4. CONTENT REVIEW AND ACKNOWLEDGEMENTS

PARTIES will coordinate on any publications, electronic media, and other public content developed as a result of this MOU.

- 4.1 Acknowledgment. PARTIES will acknowledge other PARTIES' support in any publications, audio, visual, and electronic media developed as a result of this MOU.
- 4.2 Permission. PARTIES will obtain written permission from other PARTIES for use of any logos and insignia and other intellectual property on any published materials and media, such as Web pages, printed publications, or audio, visual, or electronic production.
- 4.3 Review & Approval. PARTIES will submit materials that are intended for public distribution and that refer to other PARTIES, or to the ESSRP or associated agreements, to the other PARTIES for advance review and approval to ensure information is accurate, does not commit any PARTY to an inappropriate action or funding, and does not lead to false expectations or misrepresents another PARTY. Materials that require advance review and approval include, but are not limited to: Donation solicitation materials, website information, press releases, and brochures where the material references the relationship(s) to the ESSRP or other PARTIES.
 - a. Exemptions from Advance Review. Internal communications within the PARTIES are not subject to this review.
 - b. Standard Language. The PARTIES may develop standard language that does not require approval beyond the initial approval.
 - c. Time for Review. Where standard language has not been developed, the PARTIES will use best efforts to review, approve, or deny approval for materials subject to this Section 4.3 within 10 business days of receipt. Each PARTY agrees that failure on its part to review, approve, or deny approval for such materials within 10 business days of receipt will serve as an automatic approval of the proposed materials.

5. PUBLIC RECORDS & RETENTION

- 5.1 Public Records. PARTIES acknowledge that records shared with other PARTIES pursuant to this MOU may be subject to disclosure by another PARTY pursuant to the federal Freedom of Information Act (FOIA), California Public Records Act (PRA), or local public records laws. Tribal or culturally sensitive information, and other records, may be exempt pursuant to the applicable law.
- 5.2 Retention. PARTIES shall retain all records pertinent to this MOU for a period of no less than 3 years from the expiration or termination date of the MOU. As used in this provision, "records" includes

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books, documents, accounting procedures and practice, and other data, regardless of the type or format. PARTIES shall provide each other access and the right to examine all records related to this MOU. The rights of access in this section must not be limited to the required retention period but must last as long as the records are kept. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the 3-year period, the records must be kept until all issues are resolved, or until the end of the regular 3-year period, whichever is later.

6. TERMS

- 6.1 Non-Binding. The PARTIES agree to work in good faith to fulfill the objectives of this MOU. Nothing in this MOU will be construed as obligating a PARTY to expend funds or create any legally binding or enforceable obligations on the part of any PARTY collaborating in the ESSRP.
- 6.2 Modifications. Modifications to this MOU must be made by mutual consent of the PARTIES by the issuance of a written modification signed and dated by all PARTIES. Requests for modification should be made in writing at least 30 days prior to the implementation of the requested change and become effective upon the last signature by any PARTY.
- 6.3 Entire Agreement. This MOU constitutes the entire understanding among the PARTIES with respect to the matters set forth herein and supersedes all prior or contemporaneous understandings or agreements among the PARTIES with respect to the subject matter hereof, whether oral or written.
- 6.4 Effective Date. This MOU shall become effective as of the date that Town of Mammoth Lakes, Mono County, USFS Inyo National Forest and USFS Humboldt-Toiyabe National Forest have all executed this MOU. Additional PARTIES may join the MOU before or after the Effective Date in accordance with Section 6.10.
- 6.5 Termination. This MOU has no set termination date. Any PARTY may resign from this MOU without cause by providing at least 30 days written notice to the other PARTIES. PARTIES may terminate this MOU by written agreement of all PARTIES.
- 6.6 Non-Fiduciary Relationship. It is expressly understood and agreed that the PARTIES' obligations hereunder are not fiduciary in nature.
- 6.7 Counterparts. This MOU may be executed simultaneously or in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.
- 6.8 Authority. The PARTIES warrant and represent that they have the power and authority to enter into this MOU and the names, titles and capacities herein stated on behalf of any entities, persons, states or firms represented or purported to be represented by such entities, persons, states or firms and that all former requirements necessary or required by the state or federal law in order to enter into this MOU have been fully complied with.

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- 6.9 Notices. All notices shall be sent to each PARTY Point of Contact identified in Attachment A hereto. Any Party may change its
- 6.10 Additional PARTIES. Additional PARTIES may join this MOU by executing a signature page for inclusion in Attachment A.

IN WITNESS WHEREOF, this MOU has been entered into by and between the PARTIES set forth in Attachment A hereto.

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Signature Pages for PARTIES

[This is a template page to be completed and executed by each PARTY]

[PARTY Name, a [entity type]]

Executed as of _____ [date].

By: _____

Name: _____

Its: _____

ATTEST: [Delete if not required]

By: _____

Name: _____

Its: _____

APPROVAL AS TO FORM: [delete if not required]

By: _____

Name: _____

Its: _____

POINT OF CONTACT FOR ALL NOTICES:

[Name]

[Mailing Address]

[Email Address]

[Telephone]