

**AGREEMENT BETWEEN THE TOWN OF MAMMOTH LAKES AND
MAMMOTH LAKES TOURISM FOR ADMINISTRATION AND
IMPLEMENTATION OF THE MAMMOTH LAKES TOURISM
BUSINESS IMPROVEMENT DISTRICT**

1. PARTIES AND DATE.

This Agreement is made and entered into effective on the 1st day of July 2023, by and between the Town of Mammoth Lakes, a municipal corporation, organized under the laws of the State of California, with its principal place of business at 437 Old Mammoth Rd., Suite 230, Mammoth Lakes, California, 93546 (Town) and Mammoth Lakes Tourism, a California mutual benefit corporation, with its principal place of business at 2520 Main Street, Mammoth Lakes CA, 93546 (MLT). Town and MLT are sometimes individually referred to herein as “Party” and collectively as “Parties.”

2. RECITALS.

MLT and Town wish to enter into this Agreement, pursuant to section 36612 of the California Streets & Highways Code, for MLT to act as the “owners’ association” for the Mammoth Lakes Tourism Business Improvement District (MLTBID), on the terms and conditions set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. MLT promises and agrees to furnish to the Town all labor, materials, services, and incidental and customary work necessary to administer and implement the MLTBID. MLT is appointed the owners’ association of the MLTBID as defined in Streets and Highways Code §36612. MLT shall perform all the functions of an owners’ association set forth in Streets & Highways Code §36600 et seq, including without limitation providing an annual report at the end of each year of operation to the Town Council pursuant to Streets and Highways Code §36650. The annual report shall include:

- Any proposed changes in the boundaries of the improvement district or in any benefit zones or classification of businesses within the district.
- The improvements and activities to be provided for that fiscal year.
- An estimate of the cost of providing the improvements and the activities for that fiscal year.
- The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.
- The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.

- The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

3.1.2 Term. The term of this Agreement shall commence on July 1, 2023, and terminate June 30, 2028. Notwithstanding the foregoing, this Agreement may be terminated as provided herein, and shall be deemed terminated upon the effective date of the termination of the MLTBID, if such termination occurs prior to June 30, 2028.

3.2 Responsibilities of MLT.

3.2.1 Independent MLT; Control and Payment of Subordinates. MLT's services hereunder are provided on an independent contractor basis and not as an employee. MLT 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. MLT 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 Town's Representative. The Town hereby designates the Town Manager or 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 but not the authority to change the total compensation due to MLT under this Agreement. Any official communication from the Town of Mammoth Lakes with respect to the performance of this contract by the MLT must come from either the Town Manager, their designee or the Town Council, and no other party.

3.2.3 MLT's Representative. MLT hereby designates John Urdi, Executive Director or his/her designee, or the executive director as may be filled during the term of this Agreement, to act as its representative for the performance of this Agreement ("MLT's Representative"). MLT's Representative shall have full authority to represent and act on behalf of the MLT for all purposes under this Agreement at the direction of the MLT Board.

3.2.4 Laws and Regulations. MLT 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 Services and shall give all notices required by law. MLT shall be liable for all violations of such laws and regulations in connection with Services. MLT 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.

3.2.5 Insurance:

3.2.5.1 Time for Compliance. MLT 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.

3.2.5.2 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 MLT, 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 existing policies do not meet the insurance requirements set forth herein, MLT 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.

(C) Workers’ Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

(D) Professional Liability: Professional Liability insurance with minimum limits of \$1,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

3.2.5.3 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 3.2.5.2(A), Commercial General Liability shall be endorsed to provide the following:

- (1) Additional Insured: MLT agrees to endorse the third-party general liability coverage required herein to include as additional insured the Town, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition date of 1985 or later. MLT also agrees to require all contractors, subcontractors, and anyone else involved in any way with the Services contemplated by this Agreement to do likewise.

- (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Town except ten (10) days shall be allowed for non-payment of premium.

- (B) The policy or policies of insurance required by Section 3.2.5.2(B) Automobile Liability, and Section 3.2.5.2(D) Professional Liability, shall be endorsed to provide the following:
 - (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Town except ten (10) days shall be allowed for non-payment of premium.

- (C) The policy or policies of insurance required by Section 3.2.5.2(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.
 - (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Town except ten (10) days shall be allowed for non-payment of premium.

3.2.5.4 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.

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

3.2.5.6 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.

3.2.5.7 Evidence of Insurance. MLT, 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, MLT 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.

3.3 Fees and Payments.

Town shall remit to MLT the MLTBID assessment funds it collects, provided that Town may retain up to two percent (2%) of such funds to offset its costs of collection. MLT shall not be entitled to receive any other compensation or reimbursement from Town.

3.4 Accounting Records.

MLT shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. MLT 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. MLT 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.

This Agreement shall be deemed terminated upon the termination or expiration of the MLTBID.

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:

MLT: Mammoth Lakes Tourism
2520 Main Street
P.O. Box 48
Mammoth Lakes, CA 93546
ATTN: John Urdi, Executive Director

Town: Town of Mammoth Lakes
P.O. Box 1609
Mammoth Lakes, CA 93546
ATTN: Town Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Brown Act, Public Records Act, Conflict of Interest and Harassment Training and Compliance. At all times during the term of this Agreement MLT's Board of Directors shall comply fully with the Ralph M. Brown Act, Government Code Section 54950 et seq. MLT shall comply with the California Public Records Act (PRA). MLT shall comply with the provisions of the Political Reform Act and the related regulations adopted by California Fair Political Practices Commission, including without limitation the provisions and regulations concerning conflicts of interest. Specific conflict standards for the Board and Staff will be defined in an adopted conflict of interest policy. MLT's management staff and board shall attend similar harassment and ethics training as required of elected officials at least every two years and within six months of taking on their respective position. MLT staff and board will attend similar harassment training as required of Town elected officials and staff, by attending training organized by Town or another governmental agency or a similar online training program. Documentation of training will be maintained by MLT. MLT shall notify the Town Clerk of any Board vacancy and the name(s) of all new Board members. All of MLT's public meetings shall be held in the Town Council Chambers and broadcast through the eSCRIBE system, which may include cable TV government channel broadcasting, unless there is a conflict for meeting space and meetings cannot be rescheduled.

3.5.4 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.

3.5.5 Indemnification.

3.5.5.1 Scope of Indemnity. To the fullest extent permitted by law, MLT 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 MLT, its officials, officers, employees, subcontractors, MLTs or agents in connection with the performance of the MLT's Services or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorney's fees and other related costs and expenses.

3.5.5.2 Additional Indemnity Obligations. MLT shall defend, with counsel of Town's choosing and at MLT's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.5.5.1 that may be brought or instituted against Town or its directors, officials, officers, employees, volunteers and agents. MLT 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. MLT 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. MLT 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. MLT'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.

3.5.6 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.

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

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

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

3.5.10 Assignment or Transfer. MLT 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.

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

officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

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

3.5.13 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.

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

3.5.15 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.

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

3.5.17 Authority to Enter Agreement. MLT 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.

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

3.6 Subcontracting.

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

TOWN OF MAMMOTH LAKES

MAMMOTH LAKES TOURISM

By: _____
Daniel C. Holler
Town Manager

By: _____
John Urdi, Executive Director

Pat Foster, Chairman

Attest:

By: _____
Jamie Gray, Town Clerk

Approved as to Form:

By: _____
Andrew Morris, Town Attorney