

TOWN OF MAMMOTH LAKES

**NINTH AMENDED
EMPLOYMENT AGREEMENT
FOR
NON-REPRESENTED EMPLOYEE
(TOWN MANAGER)**

1. PARTIES AND DATE.

This Ninth Amended Employment Agreement (“Agreement”) is made and entered into this 21st day of June 2023, by and between the Town of Mammoth Lakes, a municipal corporation (“Town”) and Daniel C. Holler, an individual (“Employee”), in order to provide in writing the terms and conditions of employment for Town Manager services. Town and Employee are sometimes individually referred to herein as “Party” and collectively as “Parties” The employment agreement in effect between Town and Employee immediately prior to the effective date of this Agreement is hereby superseded and is of no further force or effect, provided that the intention of Town and Employee is that Employee’s employment shall continue uninterrupted.

2. RECITALS.

Employment of Town Manager

Town currently employs Employee as Town Manager for the Town of Mammoth Lakes and wishes to amend the terms and conditions of such employment. Employee desires to continue his employment as Town Manager under amended terms and conditions as set forth herein. It is the desire of the Parties through this Agreement to provide for certain benefits, establish conditions of employment, and to set working conditions for Employee.

3. TERMS.

3.1 Duties

3.1.1 Designated Duties. Town hereby agrees to employ Employee as Town Manager of Town to perform the functions and duties in accordance with applicable state law, the Town’s Municipal Code (including, but not limited to Chapter 2.08), as well as the approved Town job description for the position. Employee shall also perform other legally permissible and proper duties and functions as the Town Council shall from time-to-time assign.

3.1.2 Control and Supervision. Employee shall serve at the will and pleasure of the Town Council pursuant to the terms and limitations of this Agreement and will be under the day-to-day supervision and direction of the Town Council.

3.1.3 Town Council Meetings. Employee shall attend all Town Council meetings, unless excused by Mayor or directed otherwise by Council.

3.1.4 Moonlighting. Employee will focus his professional time, ability, and attention on Town business during the term of this Agreement. To the extent consistent with applicable law, Employee shall not engage in any other business duties or pursuits whatsoever or, directly or indirectly, render any services of a business, commercial or professional nature to any other person or organization, whether for compensation or otherwise, without the prior consent of the Town Council, except that:

(1) The expenditure of reasonable amounts of time not in conflict with the Town's needs and interests, for educational, charitable, community, and professional activities shall not be deemed a breach of this Agreement and shall not require prior consent.

(2) This Agreement shall not be interpreted to prohibit Employee from making passive personal investments or conducting private business affairs if those activities do not materially interfere with the services required under this Agreement or create conflicts of interest.

3.1.5 Town Documents. All data, studies, reports and other documents prepared by Employee while performing his duties during the term of this Agreement shall be furnished to and become the property of the Town, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to Employee in connection with the performance of this Agreement shall be held confidential by Employee. Such materials shall not, without the prior written consent of the Town Council, be used by Employee for any purposes other than the performance of his duties. Nor shall such materials be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by law. The terms of this Section 3.1.5 shall survive termination or expiration of this Agreement.

3.2 Term; Termination; Severance Pay

3.2.1 Term. This Agreement shall be effective through February 29, 2024 unless terminated or extended by the Town Council as provided herein ("Term"). In the event that Town wishes to extend the term of this agreement Town shall notify Employee prior to the expiration of this Term and Town and Employee shall thereafter negotiate in good faith concerning any extension of the term and conditions of employment, provided that Town's decision to extend the term shall be made in the Town Council's sole discretion and that a decision not to extend the term shall not be deemed a termination without cause.

3.2.2 Termination. The Parties understand and agree that the employment relationship created by this Agreement is "at-will" and that the Employee shall serve at the will and pleasure of the Town Council. The Employee may be terminated at any time for cause, with no advance notice. For purposes of this Agreement, a termination for cause shall be any termination for any cause set forth in California Government Code section 19572. In addition, the Town Council may terminate Employee without cause pursuant to section 3.2.5. This Agreement may also be terminated upon mutual agreement in writing, executed by both Parties.

3.2.3 Voluntary Termination. Employee may voluntarily terminate his employment, by resignation or retirement, at any time during the term of this Agreement, subject to at least thirty (30) days' written notice to the Town, unless the Town Council and Employee agree otherwise. In such case, Town shall have no further obligation to provide payments and benefits, including severance benefits, upon the effective date of termination of employment, other than payment of accrued comprehensive leave.

3.2.4. Death. In the event the Employee dies while employed by the Town, his beneficiaries or those entitled to his estate shall be paid any earned salary and accrued comprehensive leave at the Employee's pay rate on the date of death.

3.2.5 Termination Without Cause. In addition to the other means of terminating this Agreement set forth herein, the Town Council may terminate Employee at any time without cause. In such event, Employee shall be entitled to receive a severance payment equal to nine (9) weeks of his salary and shall upon termination be entitled to compensation for accrued comprehensive leave. Nothing in any statute, ordinance, or rule shall prevent, limit or otherwise interfere with the right of the Town Council to terminate, without right of appeal or grievance, the employment of the Employee at any time during the Initial Term or any extension of this Agreement, as provided herein. Accordingly, Employee agrees that this Agreement sets forth the only terms and conditions applicable to the termination of his employment.

3.3 Salary

3.3.1 Base Salary. Effective the first full pay period of July 2023 the Town shall compensate Employee at the weekly rate of \$_____. (~~\$4,010.404~~) This base salary shall be payable bi-weekly at the same time as other employees of the Town are paid.

3.3.2 Merit Increase. Employee shall be eligible for a merit increase of not more than 5% based on an annual performance evaluation conducted by the Town Council. Notwithstanding the foregoing, Employee's salary will not exceed the adopted salary range for the Town Manager as it may be amended from time to time. In addition, the Town Council may, in its sole discretion, consider granting to Employee as part of or in lieu of a merit-based pay increase, up to 40 hours of additional comprehensive leave time.

3.3.3 Statutory Requirements. This Agreement shall be deemed to incorporate by reference the provisions of Sections 53243 *et seq.* of the California Government Code, as they may be amended or renumbered.

3.3.4 Deferred Compensation. Town will contribute to a Town Section 457(b) deferred compensation plan for the benefit of Employee. Beginning July 1, 2023, the Town shall contribute into the employee's Section 457(b) plan an amount equal to the amount contributed by that employee, not to exceed one hundred dollars (\$100) (~~\$75~~) per pay period for twenty-four (24) periods per year. The amount of the Town's contribution is subject to a dollar-for-dollar match by the employee. Such contributions shall continue for the Term of this Agreement unless employee

matching funds are reduced or eliminated, or the benefit is terminated by Amendment to this Agreement. Payments shall occur as part of the first and second pay periods for each month.

3.3.5 Future Bonus Program. Each year during the term of this Agreement, Employee shall be eligible to receive a bonus, in addition to base salary. The bonus is based on the amount of Transient Occupancy Tax (TOT) received by the Town that is greater than the amount budgeted to be received and retained by the Town (i.e., the amount does not include TOT allocated to outside agencies including MLT, MLH, & ESTA). The bonus will be calculated by dividing 8% of the amount of net TOT received by the Town as of August 31st for the preceding fiscal year in excess of the adopted budget by the number of regular, full-time employees. Notwithstanding the foregoing, Employee's bonus will not exceed \$4,000 and will be calculated and paid in the same manner as for eligible town employees. Bonus is only applicable if employee is employed at the time the Town makes the bonus payment.

3.3.6 One-Time Appreciation Bonus. Employee will receive a one-time lump-sum bonus in the amount of three thousand two hundred and fifty dollars (\$3,250). The appreciation bonus payment will be made in July of 2023 at the Town's sole discretion and the payment is subject to all applicable taxes and withholdings. Employee must be employed by the Town on the date of disbursement to be eligible for this bonus program, and employees may elect to have any or all of the lump-sum payment deposited into an eligible 457(b) account.

3.4 Retirement

3.4.1 Retirement Program. Employee is a "Classic" (not a new member) miscellaneous member of the California Public Employees Retirement System (PERS). The Employee will be covered under the Town's Local Miscellaneous 2.7% at age 55 formula and covered in all respects by the Town's contract with PERS, including any amendments thereto that apply retrospectively and/or affect current employees. Employee will pay the normal member contribution to PERS which is currently 8% of compensation. The Town will pay the required employer contribution to PERS and will pay the employer share of Medicare taxes. Employee will receive the Level 4 Survivor Benefit with PERS. The Town will withhold the employee share of Medicare taxes from Employee's taxable wages.

3.5 Leaves

3.5.1 Comprehensive Leave Accruals. Employee may accrue comprehensive leave based upon length of continuous service as determined by his anniversary date according to the following schedule:

- (a) Date of hire in full-time status until two-year anniversary: 16.67 hrs/month
- (b) Two year anniversary: 18.67 hrs/month
- (c) Five year anniversary 20.67 hrs/month
- (d) Ten year anniversary 22.67 hrs/month

Comprehensive leave will not be accrued in excess of eight hundred fifty (850) hours and no more than 850 hours may be carried forward to the following fiscal year.

3.5.2 Elective Payout. Employee may request a pay-out of comprehensive leave of up to a total of 200 hours per fiscal year. Employee's request for a pay-out must retain an accrued comprehensive leave balance of not less than 112 hours after the pay-out. Pay-outs will be made at Employee's then-current regular rate of pay. Pay-outs will be made in December and June. The requests must be made at least 5 months in advance of the payment and can only apply to leave that will accrue between the date of the request and the pay-out date. Each December and June the Finance Department will notify Employee of the opportunity to request a pay-out of comprehensive leave for the following June or December. Requests need to be filed on the forms provided by the Finance Department and submitted within the timelines provided on the submission forms.

3.5.3. Administrative Leave. Employee will receive eighty-eight (88) hours ~~(80)~~ of administrative leave per fiscal year. Unused leave will not be carried forward to the next fiscal year or paid out.

3.5.4 Other Leaves. Other leaves will be provided and managed as required by law or Town policy (FMLA, CFRA, Jury Duty, Catastrophic Leave etc.). Employee will integrate the use of Comprehensive and Administrative Leaves for salary purposes as required by law or policy but may leave a maximum of 80 hours in Comprehensive Leave.

3.6 Insurance

3.6.1 Workers Compensation; Disability Insurance. The Town shall provide Employee with State Disability Insurance. Under the California Unemployment Insurance Code, "disability" includes any illness or injury, either physical or mental, including pregnancy, childbirth, or related medical condition that prevents a member from doing their regular or customary work. If Employee is eligible to receive State Disability Insurance he must utilize paid leave on a prorated basis to supplement State Disability Insurance payments, in accordance with SDI rules. All benefits, including leave accrual, health insurance, and retirement, shall be reduced proportionally to the reduction in paid leave hours utilized. Employee is covered by the Town's Workers Compensation insurance program. Whenever Employee is absent due to an illness or injury arising out of and in the course of employment, Employee shall receive full compensation, less any Worker's Compensation insurance benefits received, during the first fifteen (15) working days of such absence without deduction from accrued comprehensive leave. Thereafter, if Employee is still properly absent from duty, he may receive, from accrued comprehensive leave, if any, an amount equal to the difference between the amount Employee receives as Worker's Compensation insurance benefits and the amount of his regular compensation until Employee returns to work or accrued leave is exhausted. If comprehensive leave is exhausted, Employee will be compensated at the statutory rate under the current Worker's Compensation regulations by the Town's Worker's Compensation Insurance carrier. All benefits, including leave accrual, health insurance, and retirement, shall be reduced proportionally to the reduction in work hours; exceptions to the pro-

ration may be considered by the Town Council. Employee will pay the amount charged by the State for SDI.

3.6.2 Life Insurance. While employed by the Town, Employee will be provided with a term life insurance policy in the amount of \$50,000 and dependents of Employee shall receive a term life insurance policy in the amount of \$5,000.

3.6.3 Health Insurance. Employee and his dependents shall be eligible for coverage under the Town's health plan, subject to the plan's terms and conditions. Health insurance is provided through a Section 125 flexible benefit account. Employee may participate in other programs offered by the Town by other vendors.

a The Town will contract with CalPERS health insurance plan. The town will also maintain a flexible benefit program (Section 125 Plan).

b The Town shall contribute the PEMCHA minimum amount required by CalPERS per month per employee as the "employer contribution" to the cost of the premium for the health program should the employee elect to participate in the plan.

c The Town will provide a monthly contribution to the employee in an amount equal to the cost of coverage under the PERS Choice health insurance plan based upon Employee's dependent status definition under the PERS health benefit program as "employee", "employee +1", or "employee +2" for Employee's flexible spending (cafeteria) account. This amount is inclusive of the "employer contribution" for the CalPERS health program premium.

3.6.4 Vision and Dental Health Reimbursement Arrangement (HRA) Plan

Employee may participate in the Health Reimbursement Arrangement Plan (HRA) as established by the Town shall reimburse Employee every fiscal year for professional services and prescription products and/or frames for dental care and vision correction up to a maximum of \$1,500 for Employee and \$800 per dependent (as defined by PERS Health) These amounts may be combined for the use of either Employee or any of his/her dependents. Up to 80% of the unused portion of the total benefit may be "rolled over" from one fiscal year to the next, for a total of not more than three fiscal years. For purposes of identifying the unused portion, receipts for the previous year must be submitted within 60 days of the beginning of the fiscal year. Requests for any prior fiscal year's qualified vision/dental expense submitted after 60 days after the close of the fiscal year will be paid out of the current fiscal year's benefit amount.

The current fiscal year benefit amount will be used to pay all reimbursement requests. Once the current fiscal year benefit amount is exhausted, rollover benefit amounts from previous years will be used to fund the reimbursement requests. "Rollover Year 1" benefit will be accessed first for reimbursement requests. Then, "Rollover Year 2" benefit amount will be accessed for reimbursement requests. Finally, if current fiscal year and Rollover Years 1 and 2 benefits have been exhausted, "Rollover Year 3" will be accessed for reimbursement requests. Any amount remaining in "Rollover Year 3" 60 days after the close of a fiscal year will no longer be available to fund reimbursement requests. Employee may elect to not participate in the HRA reimbursement program by notifying Human Resources with a written request to opt out of the plan.

3.7 Other Terms

3.7.1 Automobile and Transportation. Town shall provide Employee with an automobile (which may be from Town's existing vehicle fleet) for his use on Town business and for occasional and necessary personal purposes, in lieu of providing any vehicle allowance. Town shall be responsible for the costs of operation, repair, maintenance, and liability, property damage and comprehensive insurance for the vehicle. All other travel expenses for which Employee seeks reimbursement will be provided pursuant to Town policies.

3.7.2 Discussion of Amendments. In the event that Town amends the Management Employees Association Memorandum of Understanding to alter the retirement, leave, and/or insurance benefits provided to management employees, Town may request that Employee consider amendments to this Agreement to harmonize it with the revised benefits provided to management employees.

3.7.3 Telephone; Computer. Town will provide a cell phone, capable of receiving and sending email and accessing the Internet. A laptop computer and other related devices for Employee to assist in working hours outside of the Town offices.

3.7.4 Holidays. Employee will be compensated for recognized municipal holidays.

3.7.5 Participation in Town Employee Programs. Employee may participate in Town Employee Assistance Program, and Anniversary Awards, etc. on the same terms as other employees and to the extent that such programs exist.

3.7.6 Work Schedule. The normal work schedule for employee is from 8:00 a.m. to 5:00 p.m., Monday through Friday. Additional work hours are anticipated for meetings, workload, events and other work-related requirements. Employee shall receive no extra compensation for hours worked in excess of the normal schedule.

3.7.7 Professional Memberships & Meetings; Other Expenses. Town shall pay for Employee's professional membership in the League of California Cities and International City / County Management Association (ICMA). Town shall pay for Employee to attend the annual League of California Cities and ICMA conference. Town will pay for such other professional memberships and conference attendance subject to budgetary limits. Town recognizes that certain expenses of a non-personal and job-related nature may be incurred by Employee and shall reimburse Employee for reasonable expenses which are authorized by the Town budget and submitted in accordance with Town policies.

3.7.8 Indemnification. Town shall defend, hold harmless and indemnify Employee against any claim, demand, judgment, or action of any type or kind arising within the course and scope of Employee's employment to the extent required by Government Code Sections 825 and 995.

3.8 Notices

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage pre-paid, addressed as follows:

Town	Town of Mammoth Lakes P.O. Box 1609 Mammoth Lakes, CA 93546 ATTN: Mayor
Employee:	Daniel C. Holler P.O. Box 1330 Mammoth Lakes, CA 93546

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

3.9 General Provisions

3.9.1 Entire Agreement. The text herein shall constitute the entire agreement between the Parties.

3.9.2 Severability. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

3.9.3 Bonding. If applicable, the Town shall bear the full cost of any fidelity or other bonds required of Employee in the performance of his duties as Town Manager.

3.9.4 Modification. Any modification of this Agreement will be effective only if it is in writing and signed by both Parties. The Town Council may from time to time fix other terms and conditions of employment relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provision of this Agreement, the Town's Municipal Code, or other applicable law.

3.9.5 Effect of Waiver. The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other Party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

3.9.6 Assignment. Neither this Agreement, nor any right, privilege or obligation of Employee hereunder shall be assigned or transferred by him without the prior written consent of

the Town Council. Any attempt at assignment or transfer in violation of this provision shall, at the option of the Town Council, be null and void and may be considered a material breach of this Agreement.

3.9.7 Law Governing Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in Mono County, California.

3.9.8 No Presumption of Drafter. The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the Parties, and this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any Party to be the drafter of this Agreement and, therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

3.9.9 Attorneys' Fees. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to recover such amount as the court may award as reasonable attorneys' fees and costs.

3.9.10 Assistance of Counsel. Each Party to this Agreement warrants to the other Party that it has either had the assistance of counsel in negotiation for, and preparation of, this Agreement or could have had such assistance and voluntarily declined to obtain such assistance.

IN WITNESS WHEREOF, the Town of Mammoth Lakes has caused this Ninth Amended Employment Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its Town Clerk, and Employee has signed and executed this Ninth Amended Employment Agreement effective on the day and year first above written.

TOWN OF MAMMOTH LAKES

By:

John Wentworth
Mayor

ATTEST:

Jamie Gray
Town Clerk

Approved as to Form by _____
Andrew Morris
Town Attorney

EMPLOYEE

By: _____
Daniel C. Holler