



Town of Mammoth Lakes

P.O. Box 1609, Mammoth Lakes, CA, 93546

(760) 965-3600

www.townofmammothlakes.ca.gov

June 18, 2025

Thomas Cage, President
Mammoth Lakes Performing Arts Foundation
PO Box 100 PMB 157
Mammoth Lakes, CA 93546

Re: Letter Agreement for Fundraising and Endowment Management

Dear Tom,

This letter shall be our agreement ("Letter Agreement") regarding fundraising and endowment management services described below ("Services") to be provided by Mammoth Lakes Performing Arts Foundation, a 501(c)(3) tax exempt, California public benefit corporation ("Foundation") as an independent contractor to the Town of Mammoth Lakes ("Town"). Foundation is retained as an independent contractor and is not an employee of the Town.

SERVICES; SCHEDULE OF PERFORMANCE: Foundation shall provide fundraising activities and financial investment activities to build a permanent endowment for operations and maintenance of the McCoy Performing Arts Center (MACC). Foundation may also perform fundraising activities for specialized equipment necessary to operate the MACC as a performing arts facility. Investment earnings on permanent endowment funds are intended to be distributed to the Town to support operational and maintenance costs of the MACC. However, in the event these funds are not transferred for any reason, those earnings will be reinvested into the permanent endowment fund. Other funds generated from fundraising efforts shall remain separate from the permanent endowment fund and any earnings on those funds shall remain available for the purchase of items and equipment. Nothing in this Agreement shall be deemed to prohibit Foundation from raising funds for other purposes consistent with its bylaws, articles of incorporation, and tax-exempt status. Foundation shall account for MACC donations and interest separately from donations and interest received by Foundation for any other purpose and shall restrict MACC donations and interest to being used or donated for the MACC, through establishment of a MACC endowment or by other means sufficient to restrict the use of such funds.

ANNUAL REPORT: Foundation shall provide one report to the Town Council each year, on or about March 1st, addressing donations raised by Foundation for the MACC, the

performance of Foundation's investment activities, and specifying the amount of interest earned that may be applied to expenditures to be incurred by operations and maintenance of the MACC in the subsequent July 1-June 30 fiscal year. This timeframe corresponds with the budget development for the subsequent fiscal year. It is the intent of the parties hereto that the distribution of funds for operations and maintenance will not occur until after the MACC is operational. Notwithstanding the foregoing, the distribution of funds secured for specialized equipment may occur when that equipment is purchased for the MACC.

DISBURSEMENT OF INVESTMENT PROCEEDS. Foundation shall periodically, not less frequently than once per calendar year, disburse to Town funds in an amount equal to the investment income received by Foundation derived from endowment funds from donations earmarked for the MACC endowment by donors. Town will provide a statement of funding needs prior to that disbursement, reflecting the amount needed for operating and maintenance costs for that subsequent fiscal year, and Foundation shall not be obligated to disburse funds in an amount exceeding Town's stated funding needs.

DISBURSEMENT OF ENDOWMENT FUNDS UPON DISSOLUTION OF FOUNDATION. It is the mutual intent and goal of Town and Foundation that Foundation will exist in perpetuity. However, Foundation shall take steps to ensure that if Foundation is dissolved or otherwise ceases to exist at any point, any funds contributed to Foundation by Town for the purpose of creating or augmenting Foundation's MACC endowment shall be refunded to Town, and all remaining MACC endowment funds shall be distributed to an entity which agrees to maintain the endowment for the purpose of supporting the MACC, consistent with applicable law and Foundation's stated purposes in its state and federal applications for recognition of tax-exempt status and Foundation's governing documents. To the extent that funds are transferred to Town pursuant to this paragraph, Town shall agree to restrict their use to operating, maintaining, repairing, equipping, and furnishing the MACC.

TERM. The term of this Agreement shall be from **the date of execution to June 30, 2028**, unless earlier terminated as provided herein.

STANDARD OF CARE: Foundation shall perform all Services under this Letter Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by non-profit corporations in the State of California, and consistent with all applicable laws.

COMPENSATION: Town will provide Foundation with an annual lump sum payment of \$25,000 during the term of this Agreement for fundraising and Foundation overhead expenses. Town shall not otherwise compensate Foundation.

INSURANCE: Foundation shall provide proof of commercial general liability to the Town in amounts and with policies, endorsements and conditions acceptable to the Town. If Foundation is an employer or otherwise hires one or more employees during the term of this Project, Foundation shall also provide proof of workers' compensation coverage for such employees, which meets all requirements of state law. The general liability and fiduciary liability policies shall include or be endorsed (amended) to state that: (1) the Town, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to Foundation's Services; and (2) the insurance coverage shall be primary insurance as respects the Town, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Foundation's scheduled underlying coverage. Any insurance or self-insurance maintained by the Town, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

TERMINATION: The Town may terminate this Letter Agreement at any time with or without cause, following not less than 90 days written notice of termination to Foundation. If the Town finds it necessary to terminate this Letter Agreement, Foundation shall be entitled to be paid in full for those Services adequately completed prior to the notification of termination. The provisions of the paragraphs of this Letter Agreement entitled *DISBURSEMENT OF INVESTMENT PROCEEDS* and *DISBURSEMENT OF ENDOWMENT FUNDS UPON DISSOLUTION OF FOUNDATION* shall remain in effect in perpetuity following the termination of this Letter Agreement.

INDEMNIFICATION: To the fullest extent permitted by law, Foundation 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 of Foundation, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Foundation's Services or this Letter Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorney's fees and other related costs and expenses. Foundation's obligation to indemnify shall survive expiration or termination of this Letter Agreement, and shall not be restricted to insurance proceeds, if any, received by the Town, its directors, officials, officers, employees, agents, or volunteers.

LAWS & REGULATIONS; EMPLOYEE/LABOR CERTIFICATIONS: Foundation 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/or Foundation's status as a tax-exempt California public benefit corporation. By executing this Letter Agreement, Foundation verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens. Foundation shall maintain records of its compliance, including its verification of each employee, and shall make them available to the Town or its representatives for inspection and copy at any

time during normal business hours. By its signature hereunder, Foundation certifies that it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services. Finally, Foundation represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment in violation of state or federal law. As provided for in the indemnity obligations of this Letter Agreement, Foundation shall indemnify Town against any alleged violations of this paragraph, including, but not limited to, any fines or penalties imposed by any governmental agency.

GOVERNING LAW; VENUE; GOVERNMENT CODE CLAIM COMPLIANCE; ATTORNEY'S FEES: This Letter Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Letter Agreement, the action shall be brought in a state or federal court situated in Mono County, State of California. Foundation must comply with the claim procedures set forth in Government Code sections 900 *et seq.* prior to filing any lawsuit against the Town. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Foundation. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Foundation shall be barred from bringing and maintaining a valid lawsuit against the Town. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Letter Agreement, the prevailing party shall be entitled to recover all reasonable fees and costs incurred, including reasonable attorney's fees, as determined by the court.

ASSIGNMENT; AMENDMENT: Foundation shall not assign, sublet, or transfer this Letter Agreement or any rights under or interest in this Letter Agreement without the written consent of the Town, which may be withheld for any reason. This Letter Agreement may not be modified or altered except in writing signed by both parties. Except to the extent expressly provided for in the termination paragraph, there are no intended third party beneficiaries of any right or obligation of the Parties.

ENTIRE AGREEMENT; CONSTRUCTION & CAPTIONS: This is an integrated Letter Agreement representing the entire understanding of the parties as to those matters contained herein, and supersedes and cancels any prior oral or written understanding or representations with respect to matters covered hereunder. Since the Parties or their agents have participated fully in the preparation of this Letter Agreement, the language of this Letter Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. The captions of the various paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Letter Agreement.

If you agree with the terms of this Letter Agreement, please indicate by signing and dating where indicated below. An original, executed copy is enclosed for your records.

TOWN OF MAMMOTH LAKES

Approved by:

Attest:

Robert Patterson
Town Manager

Jamie Gray
Town Clerk

MAMMOTH LAKES PERFORMING ARTS FOUNDATION

Reviewed and Accepted by Foundation

Thomas Cage
President

James Preusch
Treasurer

Date

Date