

**TOWN OF MAMMOTH LAKES SERVICES AGREEMENT BETWEEN
THE TOWN OF MAMMOTH LAKES AND
MAMMOTH LAKES RECREATION (MLR)**

1. PARTIES AND DATE.

This Agreement is made and entered into effective as of October 20, 2014, 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 R, Mammoth Lakes, California, 93546 (“Town”) and Mammoth Lakes Recreation, a California nonprofit public benefit corporation, with its principal place of business at 2520 Main Street / P.O. Box 8562 Mammoth Lakes CA, 93546 (“Contractor”). Town and Contractor are sometimes individually referred to herein as “Party” and collectively as “Parties.”

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for certain services pertaining to recreation, required by the Town on the terms and conditions set forth in this Agreement.

2.2 Sources of Funding.

Contractor acknowledges that all of the funds to be provided to Contractor by Town pursuant to this Agreement are public funds, and that some or all of such funds are restricted in the uses to which they may be put.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to the Town all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the services described in Exhibit “A” attached hereto and incorporated herein by reference (“Services”). All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. Exhibit “B” sets forth the deliverables under the scope of work for Fiscal Year 2014-15. Exhibit “B” will be updated annually to reflect changes in specific deliverables for each Fiscal Year.

3.1.2 Term. The term of this Agreement shall commence on October 20, 2014 and expire on June 30, 2017 (the “Initial Term”). Notwithstanding the foregoing, this Agreement may be terminated as provided herein.

3.2 Responsibilities of Contractor.

3.2.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. Town retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of Town and shall at all times be under Contractor's exclusive direction and control. Neither Town, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents, except as set forth in this Agreement. Contractor 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. Contractor 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 [reserved]

3.2.3 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 Contractor under this Agreement. Contractor shall not accept direction or orders from any person representing the Town other than the Town Manager or Town Council.

3.2.4 Contractor's Representative. Contractor hereby designates its Executive Director or his/her designee, as such position may be filled during the term of this Agreement, to act as its representative for the performance of this Agreement ("Contractor's Representative"). In the absence of an Executive Director, the Board Chair is designated as Contractor's Representative. Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.5 Coordination of Services. Contractor agrees to work closely with Town staff in the performance of Services and shall be available to Town's staff, contractors and other staff at all reasonable times.

3.2.6 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the

term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the Town, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein.

3.2.7 Laws and Regulations. Contractor 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. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations, Contractor shall be solely responsible for all costs arising therefrom. Contractor 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

3.2.8 Insurance:

3.2.8.1 Time for Compliance. Contractor 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. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the Town that the subcontractor has secured all insurance required under this section. Contractor shall provide immediate written notice if: (i) any of the required insurance policies is terminated; (ii) the limits of any of the required policies are reduced; or (iii) the deductible or self-insured retention is increased.

3.2.8.2 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 Contractor, 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 the existing policies do not meet the insurance requirements set forth herein, Contractor 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. This provision shall apply to vehicles owned and operated by MLR. MLR employees shall maintain at a minimum, the State required insurance on any personal vehicles used in the course

of work.

(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. This section shall apply only to those activities engaged in that require such insurance. The Town and MLR will review such needs on a case by case basis.

3.2.8.3 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 3.2.8.2(A), Commercial General Liability shall be endorsed to provide the following:

(1) **Additional Insured:** Contractor 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 2010. Contractor also agrees to require all contractors, subcontractors, and anyone else involved in any way with the Services contemplated by this Agreement to do likewise.

(B) The policy or policies of insurance required by Section 3.2.8.2(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.

3.2.8.4 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.

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

contain such provisions.

3.2.8.6 Deductible. Any deductible or self-insured retention must be approved in writing by the Town and shall protect the parties indemnified by Section 3.5.8.1 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.

3.2.8.7 Evidence of Insurance. The Contractor, 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, Contractor 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.

3.2.8.8 Failure to Maintain Coverage. Contractor agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the Town. The Town shall have the right to withhold any payment due Contractor until Contractor has fully complied with the insurance provisions of this Agreement. In the event that the Contractor's operations are suspended for failure to maintain required insurance coverage, the Contractor shall not be entitled to an extension of time for completion of the Services because of production lost during suspension.

3.2.8.9 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.8.10 Insurance for Subcontractors. All subcontractors shall be included as additional insureds under the Contractor's policies, or the Contractor shall be responsible for causing subcontractors to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the Town as an Additional Insured to the subcontractor's policies. Contractor shall provide to Town satisfactory evidence as required under Section 3.2.8.1 of this Agreement.

3.2.9 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.3 Compensation and Accounting.

3.3.1 Compensation. The Town will provide Contractor, under the terms and conditions set forth herein, with the payments and process as provided in Exhibit C.

3.3.2 Reimbursement for Expenses. The compensation provided for in this Agreement constitutes the total compensation to be provided to Contractor. Contractor shall not be granted additional reimbursement for any expenses.

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

3.4 Contracting and Conflicts of Interest.

3.4.1. Public Contracting Requirements. Contractor shall comply with all bidding and contracting requirements applicable to public entities in general and/or to the Town in particular in the course of awarding subcontracts or procuring goods and services pursuant to this Agreement, to the same extent as the Town would be required to comply if the Town itself were undertaking such activities. Such requirements include, without limitation: (i) the requirements of Public Contract Code Section 20160 et seq regarding competitive bidding for “public projects” in excess of \$5,000; (ii) the requirements of Labor Code Section 1720 et seq regarding payment of prevailing wages for “public works” projects in excess of \$1,000; (iii) the provisions of Government Code Section 4525 et seq regarding procurement of engineering, environmental, and certain other types of professional services; and (iv) the provisions of the Mammoth Lakes Municipal Code regarding procurement and expenditures of funds, as they may be amended. Contractor shall maintain records evidencing its compliance with all applicable requirements for a period of five years after each expenditure of funds received from the Town, and shall provide Town with copies of such records not less than four times annually (approximately quarterly) and otherwise upon request.

3.4.2 Conflicts of Interest. Contractor, and its board members and employees, shall fully comply with the provisions of the California Political Reform Act regarding conflicts of interest, and with such regulations as may be adopted by any government agency to implement and enforce the Political Reform Act, to the same extent as such statutes and regulations apply to the Town. Contractor shall cause its board members and employees to obtain the training in ethics and laws governing local governments required by Government Code Section 53234 et seq as if Contractor provides compensation or reimbursement to its board members, regardless of whether Contractor actually does so.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. Town may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least ninety (90) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been adequately rendered to Town, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause, which shall consist solely of a breach by Town that remains uncured following 30 days notice from Contractor to Town specifying the nature of the alleged breach. Contracts entered into by MLR which are supported by Measure R or Measure U funds and for which the project or service was approved through the public recommendation process by the Town Council and for which funds were allocated will be recognized by the Town and honored to the extent possible through the end of this agreement if the contract is terminated without cause..

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, Town may require Contractor to provide all finished or unfinished Documents and Data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Replacement Services. In the event this Agreement is terminated in whole or in part as provided herein, Town may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

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:

Contractor: Mammoth Lakes Recreation
P.O. Box 8562
2520 Main Street
Mammoth Lakes, CA 93546
ATTN: Executive Director

Town: Town of Mammoth Lakes
P.O. Box 1609
437 Old Mammoth Rd., Suite R
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 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for Town to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Contractor under this Agreement (“Documents & Data”). Contractor shall require all subcontractors to agree in writing that Town is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Contractor represents and warrants that Contractor has the legal right to license any and all Documents & Data. Contractor makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Contractor or provided to Contractor by the Town. Town shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at Town's sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor. Such materials shall not, without the prior written consent of Town, be used by Contractor for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or is generally known, or has become known, to the related industry shall be deemed confidential.

3.5.3.3 Confidential Information. The Town shall refrain from releasing Contractor's proprietary information ("Proprietary Information") unless the Town's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the Town shall notify Contractor of its intention to release Proprietary Information. Contractor shall have five (5) working days after receipt of the Release Notice to give Town written notice of Contractor's objection to the Town's release of Proprietary Information. Contractor shall indemnify, defend and hold harmless the Town, and its officers, directors, employees and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. Town shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Contractor fails to fully indemnify, defend (with Town's choice of legal counsel), and hold Town harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that Town release such information.

3.5.4 Brown Act Compliance. At all times during the term of this Agreement Contractor's board of directors shall comply fully with the Ralph M. Brown Act, Government Code Section 54950 et seq. Contractor's obligation hereunder shall not be limited to complying with the Brown Act with respect to the Services, but rather such obligations shall apply to all activities of Contractor and/or its board during the term of this Agreement.

3.5.5 No Monetary Damages. Contractor acknowledges that Town would not have entered into this Agreement if it were to be subject to liability for monetary damages. Accordingly, Contractor hereby waives any right to seek or obtain monetary damages from the Town in connection with any actual or alleged breach of this Agreement by Town. Contractor's remedy for a breach by Town shall be limited to seeking specific performance or other injunctive relief.

3.5.6 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.7 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.

3.5.8 Indemnification.

3.5.8.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor 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 Contractor, its officials, officers, employees, subcontractors, Contractors or agents in connection with the performance of the Contractor'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.

3.5.8.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of Town's choosing and at Contractor's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.5.8.1 that may be brought or instituted against Town or its directors, officials, officers, employees, volunteers and agents. Contractor 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. Contractor 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. Contractor 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. Contractor'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.

3.5.9 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.

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

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

3.5.12 Town's Right to Employ Other Contractors. Town reserves the right to employ other Contractors to provide services of any kind.

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

3.5.14 Assignment or Transfer. Contractor 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.

3.5.15 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 Contractor include all personnel, employees, agents, and subcontractors of Contractor, 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.

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

3.5.17 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.

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

3.5.19 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.

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

3.5.21 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.5.22 Labor Certification. By its signature hereunder, Contractor 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 Worker's 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.

3.5.23 Authority to Enter Agreement. Contractor 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.

3.5.24 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 Contractor subcontracts any portion of the work required by this Agreement, each such subcontract shall contain a provision making it subject to all provisions stipulated in this Agreement.

TOWN OF MAMMOTH LAKES

MAMMOTH LAKES RECREATION

By: _____
Daniel C. Holler
Town Manager

By: _____
Danna Stroud, Board President

Attest:

By: _____
Rick Wood, Secretary

By: _____
Jamie Gray, Town Clerk

Approved as to Form:

By: _____
Andrew Morris, Town Attorney

EXHIBIT "A"
SCOPE OF SERVICES

**Mammoth Lakes Recreation will enhance Arts & Culture and Recreation
for those who play in Mammoth Lakes.**

- 1. Provide Leadership, Expertise & Advocacy**
 - Complement and enhance community recreation facilities and services and provide leadership and expertise to the Town of Mammoth Lakes.
- 2. Partnerships - Develop partnerships both within and outside the community that will enhance arts & culture and recreation in our community.**
 - Develop plans with agency partners to ensure a seamless recreation experience and responsible use of public lands.
 - Public and private partnership engagement and development.
- 3. New Product Development /Experience Development.**
 - Position Mammoth to act on emerging recreation trends identified through research and development.
 - Recognize, nurture and invest in recreation trend-setters, and high profile athletes and programs.
 - Develop new capital projects and experiences.
- 4. Leveraged Funding - Develop additional funding for both capital and non-capital projects and programs.**
 - Seek grants to fund increased recreation experiences.
 - Cultivate individual and business support for and partnerships with MLR both locally and regionally.
 - Initiate capital campaigns to raise funds for arts & culture and recreation facilities.
- 5. Create and operate a dynamic Communications System**
 - Disseminate information about recreation opportunities to maximize community engagement with recreation opportunities.
 - Develop a communications plan and relationships with relevant town, county, state, and other governmental agencies to ensure awareness and involvement with MLR goals and projects.
- 6. Serve as the primary designated body for providing for the public process in the development of funding recommendations as provided for in the Voter Approved Measures R and U and in compliance with the requirements of those Measures as codified by Town Ordinances.**

EXHIBIT “B”
Fiscal Year (FY 14-15) Deliverables

Mammoth Lakes Recreation will enhance Arts & Culture and Recreation for those who play in Mammoth Lakes.

The following represent general priority and specific work products or deliverables required of Mammoth Lakes Recreation (MLR) and are provided in priority order. Both parties recognize that other work may be undertaken to meet the requirements of the Town and MLR, and based on opportunities, priorities may shift accordingly, provided that MLR shall remain responsible for delivering all work products or deliverables listed herein unless this Exhibit B is amended. The Parties agree that this Exhibit B may be amended by mutual agreement of the parties to include additional deliverables and to define the responsibility and authority to achieve those deliverables.

1. Maintain Mammoth Lakes Recreation as an operating California public benefit corporation with 501(c)(3) tax-exempt status which will enhance recreation in Mammoth Lakes.
 - All formation requirements completed by December 31, 2014.
 - Notifications on MLR formation status to be provided to Town as received.
2. Manage the public process for the next allocation of Measure R and U dollars including:
 - Publicize, organize and conduct outreach and allocation process.
 - Set funding priorities and present recommendations to Town Council.
 - Perform Operational/Financial Review to evaluate whether grantees have used R & U funds appropriately, and as prescribed in the allocation request/contracts.
 - Initial allocation recommendation will be completed by February 15, 2015.
 - Additional allocation recommendations may be made as deemed necessary by the MLR Board or requested by the Town Council.
3. Prepare and provide to the Town a prioritized list of the primary amenities recommended to be supported through Measures U and R funds by December 2015.
4. Actively engage on behalf of the Town of Mammoth Lakes with the Mammoth Lakes Foundation, Cerro Coso College, and other partners on the proposed development of a Performing Arts Center.
 - Provide a Proceed/Not Proceed recommendation by June 30, 2015.
 - Provide Measure U and other potential funding recommendations under a “Proceed” recommendation.

5. Mammoth Lakes Trail System

- Act as the lead organization and contact point with TOML staff interactions with USFS for strategies, funding, and projects.
- Collaborate with the Town and partners on providing recommendations to Town Council for the continuation, prioritization, implementation, and design of programs and services to support the Mammoth Lakes Trail System and the leveraging of the annual \$300,000 allocation for the MLTS committed through FY 16-17. MLR will focus on delivering the following:
 - Based on annual Council project approvals MLR will initiate implementation of directed projects and coordination with partners, including projects in FY 14-15 and development of project list and budget for FY 15-16.
 - MLR will review and confirm the list of initial trails to be incorporated in the SHARP NEPA review by December 31, 2014 and recommend a level(s) of funding to be committed for future SHARP area trail maintenance.
 - MLR will review the Lakes Basin Special Study (LABSS) and recommend a level of action to be taken by the Town Council by February 1, 2015 in regards to the LABSS document.
 - MLR will develop recommendations including funding levels for proceeding forward with implementation of LABSS.
 - Projects implemented under the Town and USFS MOUs, permits and agreements will receive the Town and USFS review and approval prior to implementation.
- Engage with the Town on the oversight and ongoing development of the mammothtrails.org website, with planned (possible) transition of website management or support to MLR, pending USFS review, coordination with the Town and continued work with current partners, targeted for September 2015.

6. Leverage TOML funds to improve recreation in Mammoth Lakes.

- Apply for, obtain, and administer grant funding.
- Identify a minimum of three (3) grant opportunities for MLR.
- Apply for a minimum of one (1) grant by December 2015.

7. Additional tasks, projects, and deliverables may be mutually agreed upon by the Town and MLR.

8. MLR will provide the Town Council with at least a quarterly update, starting not later than March 2015.

EXHIBIT "C"
COMPENSATION

Section 1: Payments and Financial Accounting and Reporting

a) The Town shall pay to Mammoth Lakes Recreation (MLR) the sum of \$25,000 per month beginning November 1, 2014. Payment will be made by the 5th day of each month during the term of this agreement. Payments under this section are not to exceed \$300,000 per fiscal year. The Fiscal Year 14-15 allocation will not exceed \$200,000.

b) Accounting information on the use of the previous month's allocation will be provided to the Town for review through a monthly statement of activity. The statement will be provided by the 15th of each month. Additional information will be provided as requested by the Town.

c) MLR may carry over not more than 15% of the total payment from one fiscal year to the next. A carryover of any amount in excess of 15% from one fiscal year to the next requires Town approval prior to the end of the fiscal year in which the funds to be carried over have been provided.

d) By November 15th of each year, not including 2014, MLR will provide to the Town an accounting of expenditures showing the use of all Town provided funding, specifically showing the use of restricted funding sources as being expended in accordance with restrictions placed on the funding sources such as Measures R and U funds for the previous Fiscal Year.

Section 2: The Town may provide additional funding to MLR in amounts approved by a resolution of the Town Council. The resolution will set forth the purpose of the funding, the source, any restrictions, and other matters relating thereto.

Section 3. Ongoing funding is subject to Town Council appropriation and subject to available revenues. In the event that revenues from Measure R or Measure U are eliminated, or the use of these funds for the purposes provided for in this agreement is prohibited the Town shall no longer be obligated to make any payments to MLR.

Section 4. In the event MLR ceases to exist, all unexpended Town funds held by MLR will be returned to the Town.