

INTELLECTUAL PROPERTY

Track #2

Document Date: October 12, 2011

Document Contents:

1. "Memorandum on IP for MLTPAF (GW 08.29.11)"
2. "Town of Mammoth Lakes Trademark and Copyright License Agreement"
3. "Town of Mammoth Lakes Amendment to Consulting Agreement"
4. "TOML/MLTPA Master Agreement" (054_MLTPA_TOML_AgreePage8_110810)

Document Summary:

1. Meeting notes from Partner meeting as summarized by Jonathan Blinderman of "Glaser Weil Fink Jacobs Howard Avchen & Shapiro"
2. Draft trademark and copyright license agreement
3. Draft language to update TOML/MLTPA master agreement

Document Contributors:

1. MLTPA/Recreation Comm. Trails Committee – August 11, 2011 @ 3:00 p.m.

In attendance: John Wentworth, Jay Deinken, Bill Taylor, Danna Stroud (SMG); Tony Colasardo, Sean Turner (TOML Recreation Commission/Trails Committee)
2. Draft legal documents prepared by Jonathan Blinderman of "Glaser Weil Fink Jacobs Howard Avchen & Shapiro"

Next Steps:

Glaser Weil Fink Jacobs
Howard Avchen & Shapiro LLP

MEMORANDUM

PRIVILEGED AND CONFIDENTIAL

TO: John Wentworth
FROM: Jonathan Blinderman
DATE: August 28, 2011
SUBJECT: IP Exploitation Strategy

We have reviewed the options of the Mammoth Lakes Trails and Public Access Foundation (the "MLTAPF") with respect to the development and implementation of a plan to develop intellectual property and to exploit the intellectual property in a manner to best support the MLTAPF's mission. Our goal is to permit the creation of a robust portfolio of IP assets that can be exploited to further development and promotion of the Mammoth Lakes trail and public access system. A secondary goal is to ensure that valuable good will is not developed and lost to judgment creditors holding rights against the Town of Mammoth Lakes. The following is an outline of our suggestions.

1. Ownership of All Rights MLTAPF

Our initial suggestion is to revise the Consulting Agreement between the Town of Mammoth Lakes (the "Town") and the MLTAPF to permit MLTAPF to create and own IP in its own name. Current the Consulting Agreement provides that all IP created under the Consulting Agreement is created on a work-for-hire basis, such that the Town owns the underlying rights in all such IP. Thus in order to implement this change, the Town and MLTAPF would need to amend the Consulting Agreement.

We have been informed that there is some concern regarding amending the Consulting Agreement. The concern revolves around the fact that the MLTAPF is funded, wholly or substantially, with funds provided by the Town. There is resistance to permitting the MLTAPF to own the underlying IP in that there is a belief by some that this would be a misuse of the Town's resources. While we believe that the Consulting Agreement could be modified to require that all proceeds of the exploitation of developed IP would be used to promote the MLTAPF's mission (which is supported by the Town), we understand that the Town wishes to pursue an alternative plan.

2. Licensing of Rights to MLTAPF

As an alternative plan, the MLTAPF can develop IP pursuant to the Consulting Agreement as work-for-hire for the Town, but receive back an exclusive license to exploit the IP in a manner that best promotes the MLTAPF mission.

The first consideration is to treat copyrighted materials and trademark's separately.

Copyrights are the writes of an author of original works that embody original ideas in a tangible form. Thus, the creation of trail maps, trail guides, photographs, drawings, etc... are protected by copyright. A trademark is a distinctive symbol or indicator used by an individual, business organization, or other legal entity to identify that the products or services to consumers with which the trademark appears originate from a unique source, and to distinguish its products or services from those of other entities. Thus, the creation of a logo that represents the Mammoth Lakes Trail System would be protected by trademark.

a. Copyrights

Materials that are created to support the MLTPAF mission, such as trail maps, guides, descriptions, photographs and artworks should be protected by copyright. MLTPAF would develop copyrighted materials and work for hire for the Town.

MLTPAF and the Town would enter into an exclusive license agreement, granting MLTPAF the exclusive right to control the underlying works and to exploit them. This license would generally require and capture all copyrighted materials created under the Consulting Agreement.

Some of the terms that would need to be discussed would be: i) the length of the license (and automatic extensions); ii) how proceeds of the exploitation of the copyrighted materials would be shared between MLTPAF or a portion being paid back to the Town); and iii) approval rights (would the Town need to approve any aspect of the creation or exploitation of the copyrighted works).

The idea would be to allow the Town to own the underlying copyrights, but to give MLTPAF unfettered control to develop and exploit the works, with the understanding that all proceeds must be used to further promote the Mammoth Lakes Trail System.

b. Trademarks

In the scenario at hand, trademarks are a more difficult right to manage. Because trademarks are intended to protect the public (as opposed to the trademark holder); there are specific requirements to permit a party to exploit a trademark of a different party.

Thus, after MLTPAF assists the Town in developing one or more trademarks, the Town will necessarily be required to maintain some control over the marks. The proposed license would include i) controls over the types of goods and services with which the

marks could be used (in line with the quality of goods normally associated with the underlying mark); ii) provisions that the goodwill associated with the marks belongs to the Town; and iii) some type of oversight by the Town to ensure that the marks are being used in accordance with the license.

3. Conclusion

Based upon the needs of the Town and MLTPAF, we recommend that the copyright and trademarks be treated separately. There should be a master copyright license that permits MLTPAF to fully use and exploit the copyrighted materials. There should be a trademark license that gives the Town the necessary control to ensure that the mark remains valid and enforceable against third parties.

TRADEMARK AND COPYRIGHT LICENSE AGREEMENT

THIS AGREEMENT, made and entered into on or around the ____ day of October, 2011 and effective as of the ____ day of October, 2011 (“Effective Date”), is between the Town of Mammoth Lakes (“Town”), and Mammoth Lakes Trails and Public Access Foundation (“Licensee”).

WHEREAS, Town and Licensee are parties to that certain Consulting Agreement, dated as of December 2, 2010, as amended by the Amendment to Consulting Agreement, dated October ____, 2011 (the “Consulting Agreement”);

WHEREAS, Town is the owner of all right, title, and interest in and to the trademarks listed on the attached Exhibit A, as updated from time to time by mutual consent of the parties (the “Trademarks”), and the copyrights listed on the attached Exhibit B, as updated from time to time by mutual consent of the parties (the “Copyrights”), together with the Trademarks, the “Licensed Property”);

WHEREAS, Licensee desires to acquire an exclusive license to use the Licensed Property, throughout the territories set forth in Exhibit C (the “Licensed Territories”), pursuant to the terms and conditions set forth herein

NOW THEREFORE, in consideration of the promises and obligations in this Agreement, and other good and valuable consideration received sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant

1.1 Trademark License. Subject to the terms and conditions set forth in this Agreement, Town grants to Licensee an exclusive, non-transferable license to use the Trademarks, throughout the territories set forth in Exhibit C (the “Licensed Territories”) (the “Trademark License”) for use on the goods and services set forth in Exhibit A-1 (when branded with one or more of the trademarks, the “Licensed Goods/Services”), as modified by mutual agreement of the parties, provided the Licensed Goods/Services shall be subject to the Quality Control provisions provided in section 3 of this Agreement. No license is granted hereunder for any use other than that specified under this Agreement.

1.1.b. New Trademark. Notwithstanding the foregoing, Licensee shall have the right during the Term to modify or create new trademarks for use in developing good will in the Town and the Mammoth Lakes Trail System. Licensee shall submit to the Town any new proposed Trademark to be added to Exhibit A. Town shall provide fifteen (15) days in which to give or withhold its written approval for inclusion of the new Trademark on Exhibit A; provided that Town shall be deemed to have approved submission if Town does not reject the proposed addition within the fifteen (15) day period. Licensee shall cooperate with Town in connection with Town’s review of the new Trademark, including by providing any additional information or materials that may be requested by Town or making requested modifications to the proposed Trademark. Licensee shall have the right to register any new Trademark on behalf of the Town with the United States Patent and Trademark Office.

1.2 Copyright License. Subject to the terms and conditions set forth in this Agreement, Town grants to Licensee an exclusive, non-transferable license to use, reproduce, distribute copies of, make derivative works of, publish, distribute, display, broadcast and/or transmit the Copyrights in the Licensed Territory, through all media whether now known or hereinafter devised (the "Copyright License").

1.2.a. Limitation on Copyright License. The Copyright License is limited to uses necessary for Licensee to perform Licensee's obligations under the Consulting Agreement with regards to public outreach, including web posting, printing and publication, as well as the reproduction and sale of the Copyrights with all proceeds going to Licensee to fulfill its duties under the Consulting Agreement.

1.2.b. New Copyright. Notwithstanding the foregoing, Licensee shall have the right during the Term to modify or create derivative works of the Copyrights and to create new copyrights. Licensee shall submit to the Town any newly proposed Copyrights to be added to Exhibit A. Town shall have fifteen (15) days in which to give or withhold its written approval for the proposed new Copyrights; provided, that Town shall be deemed to have approved any new Copyright if Town does not reject the proposed new Copyrights within the fifteen (15) day period. Licensee shall cooperate with Town in connection with Town's review of matters contained in Licensee's notice, including any requested modifications by the Town. Licensee shall have the right to register a new Copyright on behalf of the Town with the United States Copyright Office.

2. Term and Termination

2.1 This Agreement shall commence on the Effective Date and terminate on December 31, 2021 (the "Initial Term") unless sooner terminated by operation of law or in accordance with the provisions of this Agreement.

2.2 Upon expiration of the Initial Term, this Agreement shall be automatically renewed for additional five-year terms (each a "Renewal Term") on the same terms and conditions herein except otherwise provided. The Initial Term and each Renewal Term are each referred to as a "Contract Period."

2.3 Either Town or Licensee may terminate a Contract Period upon written notice to the other at least One Hundred Eighty (180) days prior to the expiration of the then-current Contract Period.

2.4 Upon termination of this Agreement, Licensee will immediately cease all use or exploitation of the Licensed Property.

3. Quality Control, Marketing

3.1 Licensee acknowledges that the maintenance of the high quality of the Licensed Property usage are material conditions of this Agreement and Town is relying upon Licensee's representation and warranty that Licensee will use the Licensed Property only in a manner approved by the Town and consistent with the highest standards of services and products. Licensee agrees that Town may, at any time and not less than once a year, request that Licensee

submit samples of all uses of the Licensed Property as applied to services, goods, products, advertisements and promotions, and submit to Town on-site inspection of Licensee's facilities as Town may request from time to time.

3.2 Licensee agrees that it will use its reasonable best efforts to comply with all conditions set forth in writing from time-to-time by Town with respect to the title, appearance and manner of use of the Licensed Property. In addition, upon Town's request, Licensee shall place all Trademark and Copyright notices reasonably acceptable to Town on any Licensed Property usage and any marketing, advertising, or promotional materials bearing the Licensed Property to identify the licensed use under this Agreement and the proprietary rights of Town in such Licensed Property.

3.3 Prior to the use or exploitation of the Licensed Property by Licensee, at least representative specimen showing the Trademark and Copyright notice(s) and their location on any Licensed Property usage or any promotional, advertising, or marketing materials, shall be provided by Licensee, at Licensee's sole expense to Town and Town shall have thirty (30) days to review and approve any such specimen. If Town does not respond within such thirty (30) day period, such approval shall be deemed to have been denied unless Town gives approval for a specific use of a Licensed Property, substantially similar uses will be deemed approved without the need to resubmit a request for approval to Town.

3.4 All marketing, advertising and promotional materials shall be subject to prepublication review and approval with respect to, but not limited to content, style, appearance, and composition. At least one copy of all such marketing, advertising and promotional material shall be provided by Licensee at its sole expense to Town, and Town shall have thirty (30) days to review and approve any such material. If Town does not respond within such thirty (30) day period, such approval shall be deemed to have been denied. Once Town gives approval for a specific use of a Licensed Property, substantially similar uses will be deemed approved without the need to resubmit a request for approval from Town.

3.5 Licensee will use and display trademarks only in a form and style which do not defame, disparage, diminish, place in a bad light, or otherwise injure Town, any affiliate of Town, or any officer, or director of Town or any of their respective affiliates.

3.6 Licensee will not represent in any manner that it has any ownership interest in the Licensed Property or any goodwill associated therein. Licensee will not represent in any manner that it has any rights or to the Licensed Property other than as set forth in this Agreement.

3.7 Licensee further agrees that it will not apply for nor seek to obtain trademark or copyright registration or any other property rights in the Licensed Property and that, upon request Licensee shall furnish to Town any reasonably necessary specimens or facsimiles for the purpose of submitting appropriate trademark/service mark or copyright applications in the name of Town.

3.8 Licensee agrees that if Licensee receives knowledge of any usage or exploitation of the Licensed Property by any person or entity other than Licensee or Town that Licensee has a belief that the use is not approved of by Town, or of other confusingly similar marks, Licensee

will promptly call such fact to the attention of Town in writing and shall assist Town in any enforcement action Town may elect to bring in the Town's sole and absolute discretion.

3.9 Licensee shall undertake any corrective actions required by Town in order to comply with Town's Quality Control Requests in a timely and professional manner and shall provide Town with such evidence of compliance as Town may reasonably require.

4. **Proceeds**

4.1 All proceeds derived from Licensee's exploitation of the Licensed Property shall inure to the benefit of Licensee for the purposes of Licensee's performance of services related to the Mammoth Lakes Trails System including, inter alia, public outreach, data collection, updating and adoption of a trail system master plan, development of a prioritized implementation program, implementation of signage and wayfinding, incorporation and implementation of special projects, implementation of information system development of a management plan, facilitating cooperation and consultation between multiple jurisdictions, product development and marketing, and representing Town in collaboration with other jurisdictional partners.

5. **No Partnership.** Licensee agrees that this Agreement does not constitute a partnership or joint venture, and agrees not to use the Licensed Property or the name of Town other than as provided by this Agreement or in the Consulting Agreement.

6. **Ownership and Protection of Rights**

6.1 Licensee acknowledges the value of the goodwill associated with the Licensed Property and acknowledges that such goodwill belongs exclusively to Town. Licensee further acknowledges the exclusive right, title and interest of Town in and to the Licensed Property.

6.2 Licensee agrees that during the Term and thereafter, Licensee will not attack any of Town's Trademark or Copyright or other intellectual property right pertaining to the Licensed Property in the United States or anywhere in the world, and will not aid or assist any third person or entity in doing so.

6.3 Licensee agrees that it will not harm, misuse or bring into dispute the Licensed Property in the United States or anywhere in the world.

6.4 Licensee agrees that it will use and exploit the Licensed Property only in accordance with the terms and intent of this Agreement.

6.5 Licensee agrees that its use of the Licensed Property inures to the benefit of Town and agrees not to register, attempt to register, or attempt to obtain ownership, on its own behalf or through any third party, in any jurisdiction, of any of the Licensed Property.

6.6 Licensee agrees that it will comply with all laws and regulations relating or pertaining to the use or exploitation of the Licensed Property and shall maintain the highest quality and standards in relation to the goods and services provided by it which bear or are

related to or are in connection with the Licensed Property, and shall comply with any regulatory agencies which shall have jurisdiction over the Licensed Property.

6.7 At the request of Town, Licensee shall perform any reasonable acts necessary to assist Town in preserving and protecting, and to vest in Town, ownership of and title to the Licensed Property, including, without limitation, the execution and delivery of necessary documents.

6.8 Licensee agrees not to use or authorize use of, either during or after term of this Agreement, any configuration, mark, name, design, logo or other designation confusingly similar to any of the Trademarks.

6.9 Licensee agrees to notify Town promptly in writing of any merchandise or services advertised, promoted or sold that may constitute infringement or improper use of the Licensed Property, of which Licensee has knowledge. Licensee further agrees to assist Town in obtaining, defending and enforcing its rights in or registration of the Marks by providing evidence, testimony, and documents concerning, among other things, Licensee's use of the Licensed Property, and by taking any other action reasonably requested by Town, including but not limited to joining in any such enforcement action, at the request and expense of Town.

6.10 As between Town and Licensee, Licensee shall have the sole right to determine whether or not any action shall be taken on account of infringement or improper use of the Licensed Property. Licensee agrees not to contact any third party or to make any demands or claims, not to institute any suit, and not to take any other action on account of such infringements or uses without first obtaining the prior written permission of Town. All costs and expenses, including attorneys' fees incurred in connection with any suit instituted by Licensee without the consent of Town shall be borne solely by Licensee.

6.11 With respect to all claims and suits for infringement of any of the Licensed Property, including suits in which Licensee is joined as a party, Town shall have the sole right to employ counsel of choice and to direct the handling of the litigation and any settlement thereof. Town shall be entitled to receive and retain all amounts awarded as damages, profits or otherwise in connection with such suits.

Indemnification

7.1 Town assumes no liability to Licensee or any third parties with respect to the performance, use or disposal of the Licensed Goods/Services manufactured, sold, offered for sale or distributed by Licensee. Licensee agrees to hold harmless, defend and indemnify Town and its governing board members, shareholders, affiliates, employees and agents against third party claim liabilities (demands, judgments or causes of action, and costs and expenses related thereto (including but not limited to reasonable attorneys' fees and costs), arising out of the manufacture, distribution, advertising, use, sale or marketing of the Licensed Goods/Services, and any breach of this Agreement, provided that: (a) prompt written notice is given to Licensee of any such suit or claim; (b) Licensee shall have the option and right to undertake and conduct the defense of any such suits or claims brought against Town; and (c) no settlement of any suit or claim is made or entered into without the prior express written consent of Licensee.

7.2 Town agrees to hold harmless, defend and indemnify Licensee, its officers, shareholders, employees and agents against third party claims, liabilities, demands, judgments, or causes of action and costs and expenses related thereto (including but not limited to reasonable attorneys' fees and costs) of trademark or copyright infringement, or unfair competition, or damages relating thereto, related to Licensee's use of the Licensed Property that are registered in the identified Licensed Territories, on or in connection with the Licensed Goods/Services as expressly authorized by this Agreement provided that (a) prompt written notice is given to Town of any such suit or claim; (b) Town shall have the option and right to undertake and conduct the defense of any such suits or claims brought against Licensee; and (c) not settle any suit or claim is made or entered into without the prior express written consent of Town. This indemnification shall not apply to actions arising out of the use of trademarks in Territories where such Trademarks are not registered.

8. Licensee's Duties upon Termination

8.1 Upon termination of this Agreement for any reason, Licensee shall (a) immediately discontinue manufacturing, distributing, selling and offering for sale all Licensed Goods/Services, (b) immediately discontinue all uses of the Licensed Property, and (c) promptly destroy all materials in its possession incorporating the Licensed Property and provide to Town a description of the materials destroyed.

8.2 Notwithstanding the provisions of Section 1 in the event that this Agreement is terminated for any reason other than for a breach or other failure of Licensee to meet the quality standards warranted herein or otherwise to permit its obligations under this Agreement, Licensee shall have a period of six (6) months following the date of termination in which to distribute, sell, and offer for sale Licensee's inventory of Licensed Goods on hand at the date of termination.

9. Survival of Rights and Obligations

9.1 Termination of this Agreement shall not impair any rights of Town, nor shall it relieve Licensee of its obligations under Section 8 hereof or any rights or obligations that have accrued prior to termination of this Agreement.

10. Remedies

10.1 Licensee acknowledges that any material breach of this Agreement will result in immediate and irreparable damage, and that money damages alone will be inadequate to compensate Town. Therefore, in the event of a material breach or threatened material breach of any provision of this Agreement, Town may, in addition to all other remedies, obtain immediate injunctive relief prohibiting the breach or compelling specific performance.

11. Severability

11.1 If any provision of this Agreement is held to be unenforceable, such provision shall be limited and construed so as to make it enforceable consistent with the parties' manifest intentions or, if such limitation or construction is not possible or would be inconsistent with the parties' manifest intentions, such provision will be deemed stricken from this Agreement. In any

such event, all other provisions of this Agreement will remain in full force and effect, unless such enforcement would result in an injustice or be inconsistent with the purposes of this Agreement.

12. Waiver

12.1 No waiver of any term of this Agreement shall be valid unless a writing signed by the party against which the waiver is sought to be enforced. No waiver of any party of any breach of or failure of performance under this Agreement shall be deemed a continuing waiver or a waiver as to any subsequent or similar breach.

13. No Assignment

13.1 Neither this Agreement nor any right, license or privilege granted to Licensee herein shall be assignable, by operation of law or otherwise, without the other party's prior written consent to such assignment.

14. Notice

14.1 All notices, demands, and other communications required by this Agreement and all payments to be made pursuant to this Agreement shall be sent to the addresses set forth below unless and until a notification of a change of address is given in writing. All notices, demands, payments and other communications shall be deemed to have been duly given or made (i) when delivered personally, (ii) when sent by telefax to the telephone number on the address shown below, (iii) the second day following the date of delivery prepaid to a national air courier service, or (iv) three business days after deposit in the U.S. mails certified or registered, postage prepaid, in each case addressed to the party to whom notice is being given at the addresses set forth below.

Town
Ray C. Jar
Public Works Director
Town of Mammoth Lakes
P.O. Box 1609
Mammoth Lakes, CA 93546

Licensee
John Wentworth
President & Chief Executive Officer
Mammoth Lakes Trails and Public Access
Foundation
P.O. Box 100 PMB 432
Mammoth Lakes, CA 93546-0100

15. Governing Law

15.1 All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by, and construed in accordance with the laws of the State of California applicable to contracts made and to be wholly performed within such State (with giving effect to any choice of law or conflict of law principles whether of the State of California or any other jurisdiction that would cause the application of the Laws of any jurisdiction other than the State of California). The parties hereby irrevocably submit themselves to the jurisdiction of the courts residing in Los Angeles, California, and irrevocably waive any other forum to which they might be entitled by reason of their present or future domicile or any reason whatsoever.

16. Entire Agreement

16.1 This Agreement contains the entire agreement between the parties with regard to its subject matter and supersedes all prior agreements between them pertaining to its subject matter. This Agreement may be altered or amended only in a duly executed written

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives on the dates set forth below.

TOWN

LICENSEE

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

Trademarks

EXHIBIT A-1

Goods and Services

EXHIBIT B

Copyrights

EXHIBIT C

Licensed Territories

**AMENDMENT TO
CONSULTING AGREEMENT**

This AMENDMENT TO CONSULTING AGREEMENT (this "Amendment"), dated as of October ____, 2011, by and between the Town of Mammoth Lakes ("TOWN") and Mammoth Lakes Trails and Public Access Foundation ("CONSULTANT") is made and entered into with reference to the following facts and circumstances.

WHEREAS, the parties hereto have heretofore entered into the certain Consulting Agreement dated as of December 2, 2010 (the "Agreement"). Capitalized terms used herein but not otherwise defined have the meaning set forth in the Agreement.

WHEREAS, the parties hereto now desire to amend the Agreement, as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Amendment of Agreement The Agreement is hereby amended as follows:

(a) Amendment of Section 8 Section 8 of the Agreement is hereby deleted in its entirety and replaced with the following language:

All results and proceeds of CONSULTANT's services pursuant to this Agreement, including but not limited to all original documents, records, drawings and other material prepared by CONSULTANT under this Agreement ("Work Product"), shall constitute a work product specially ordered or commissioned by TOWN, or created within the scope of CONSULTANT's employment, and shall be deemed a "work made for hire" under U.S. copyright law with TOWN being considered the author for copyright purposes and the owner of the copyright (and all extensions and renewals thereof) and all other rights now known or hereafter recognized. If any results and proceeds of CONSULTANT's services are determined not to be "works made for hire," CONSULTANT hereby assigns and/or is deemed to have assigned the same to TOWN unconditionally, irrevocably and in perpetuity. CONSULTANT waives any "moral rights" of authors and any similar rights throughout the world. TOWN shall have no limitation whatsoever on the uses that may be of the results and proceeds of CONSULTANT's services throughout the world in perpetuity in any manner or method now known or hereafter devised. TOWN agrees that CONSULTANT shall have an exclusive license to exploit the Work Product, subject to the term of the Trademark and Copyright License Agreement between TOWN and CONSULTANT, dated October ____, 2011.

2. Remaining Effect. The Agreement is hereby amended to reflect the foregoing. Except as amended herein, the Agreement continues in full force and effect without change thereto.

3. Entire Agreement. The Agreement, as amended hereby, constitutes the entire subject matter hereof and thereof and supersedes prior agreements and undertakings, both oral and written among the parties with respect to the subject matter hereof and thereof.

4. Representation and Warranties. The parties each represent and warrant for themselves, and not for the other party, that they have all requisite power and authority to enter into this Amendment, and the Amendment has been duly authorized by the necessary actions on the part of each party.

5. Counterparts. This Amendment may be executed in separate counterparts each of which shall be an original and all of which taken together shall constitute one and the same agreement.

6. Governing Law. All issues and questions concerning the construction, validity, enforcement and interpretation of this Amendment shall be governed by, and construed in accordance with the laws of the State of California applicable to contracts made and to be wholly performed within such State (without giving effect to any choice of law or conflict of law principles whether of the State of California or any other jurisdiction that would cause the application of the Laws of any jurisdiction other than the State of California). The parties hereby irrevocably submit themselves to the jurisdiction of the courts sitting in Los Angeles, California, and irrevocably waive any other forum to which they might be entitled by reason of their present or future domicile or any reason whatsoever.

7. Descriptive Headings. The descriptive headings of this Amendment are inserted for convenience only and do not constitute a part of this Amendment.

8. No Waiver. Nothing contained in this Amendment shall operate as a waiver by either party of any prior or continuing breach of any of the provisions contained in the Agreement.

* * * * *

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first above written.

CONSULTANT

TOWN OF MAMMOTH L ES

President & Chief Executive Officer

Town Manager

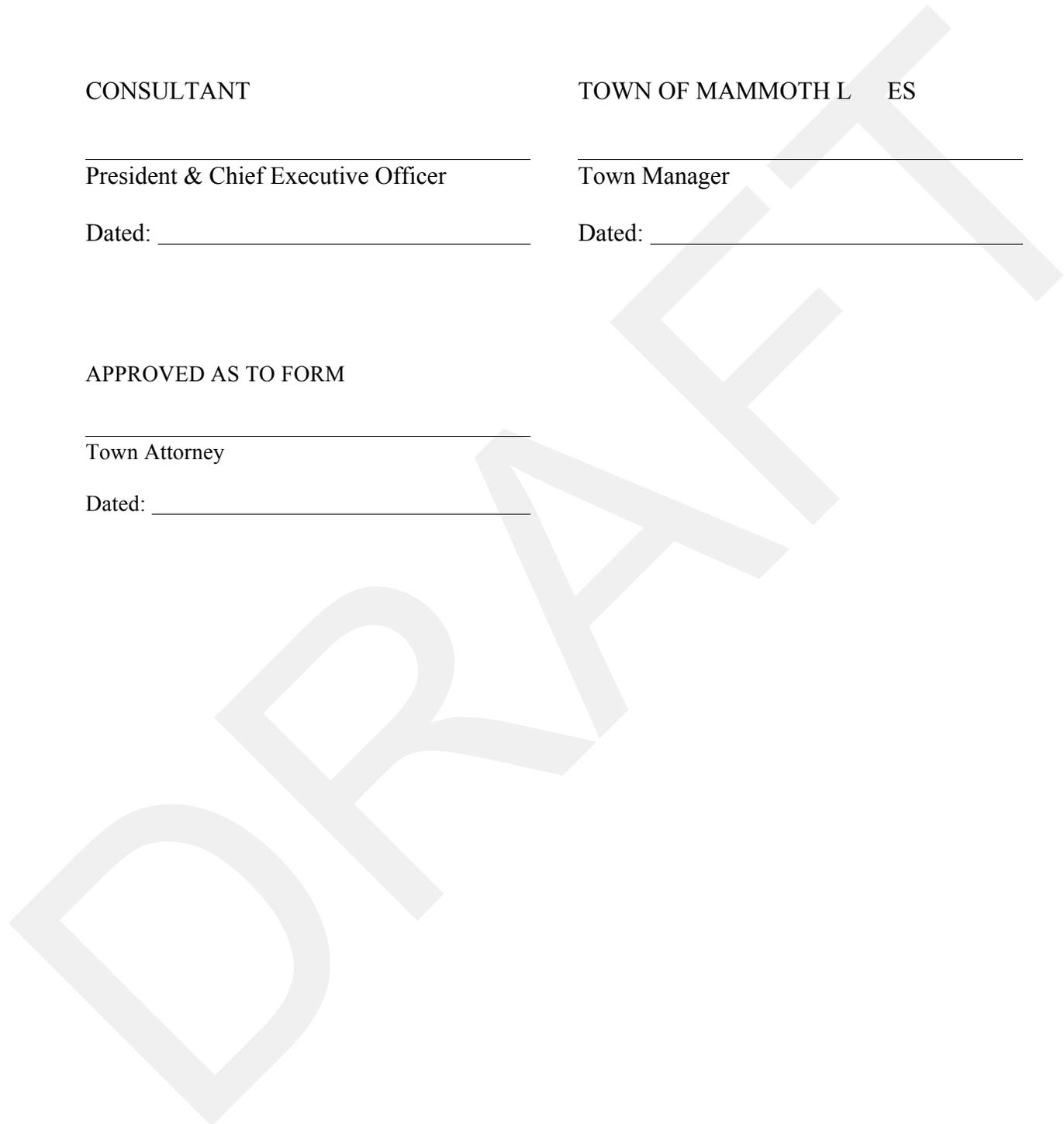
Dated: _____

Dated: _____

APPROVED AS TO FORM

Town Attorney

Dated: _____



7.7 Failure to Maintain Coverage. CONSULTANT 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 CONSULTANT until CONSULTANT has fully complied with the insurance provisions of this Agreement. In the event that the CONSULTANT's operations are suspended for failure to maintain required insurance coverage, the CONSULTANT shall not be entitled to an extension of time for completion of the Services because of production lost during suspension.

7.8 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.

7.9 Insurance for Sub-CONSULTANTS. All Sub-CONSULTANTS shall be included as additional insureds under the CONSULTANT's policies, or the CONSULTANT shall be responsible for causing Sub-CONSULTANTS to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the TOWN as an Additional Insured to the Sub-CONSULTANT's policies. CONSULTANT shall provide to TOWN satisfactory evidence as required under this Agreement.”

8. All original documents, records, drawings and other material prepared by CONSULTANT under this Agreement, shall become the exclusive property of TOWN and shall not be used in any manner without prior consent of TOWN. TOWN agrees that CONSULTANT shall have access to all documents, drawings and exhibits necessary for CONSULTANT to perform necessary tasks with regards to public outreach, including web posting, printing and public distribution. Any reuse of such documents, records, drawings, and other material by TOWN on any project other than that covered by this Agreement and its Amendments, shall be TOWN's sole risk and without liability to CONSULTANT. TOWN and CONSULTANT recognize that the work product generated by CONSULTANT under this Agreement may include intellectual property. TOWN's needs for the services and deliverables to be provided by CONSULTANT may not necessarily include the need for ownership of, or the right to use, all such intellectual property. Moreover, CONSULTANT may have opportunities to generate income, which could be used to further benefit the Mammoth Lakes Trail System, by exploiting some of such intellectual property outside of this Agreement. Therefore, TOWN and CONSULTANT agree to explore and negotiate appropriate allocations of rights in such intellectual property where this may potentially benefit TOWN, CONSULTANT and the Mammoth Lakes Trail System.