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AGREEMENT FOR THE PROVISION OF PROJECT EVALUATION, ENVIRONMENTAL REVIEW, AND PROCESSING SERVICES

INTRODUCTION

WHEREAS, _____ (hereinafter referred to as "Applicant") proposes to engage in the following activities in Mono County: _____
_____
_____
(The activities proposed by Applicant are hereinafter referred to as the "Project.")

WHEREAS, the Mono County Code, General Plan, policies, regulations, and/or state laws or regulations require(s) that Applicant obtain the following permit(s) or other discretionary approval(s) from the Mono County Planning Commission, Board of Supervisors, or other County department or agency before Applicant may implement the proposed Project _____
_____
_____ (hereinafter "the Discretionary Approval(s)").

WHEREAS, Applicant has applied to the Mono County _____ Department for the above-referenced discretionary approval(s) for the proposed Project.

WHEREAS, pursuant to the Mono County Code, General Plan, policies, regulations, and/or state laws or regulations, the Planning Commission, Community Development Department, Public Works Department, Environmental Health Department and/or the Board of Supervisors (the "Decision Maker(s)") have the responsibility for determining whether the discretionary approval(s) being sought by Applicant may be issued for the proposed project.. The Decision Maker(s) also have responsibility for the County's compliance with the California Environmental Quality Act ("CEQA") in regard to the project application.

WHEREAS, County has determined that the Project may be subject to CEQA and thus that appropriate reports and documentation may need to be prepared, completed, and certified in compliance with CEQA before the Decision Maker(s) may consider the project application and the discretionary approval(s) being sought for the proposed Project.

WHEREAS, County may find it necessary or desirable to enter into contracts with independent contractors (hereinafter "Contractor or Contractors") to assist the County in the evaluation of the proposed Project and in the preparation of the CEQA reports and documentation.

WHEREAS, this Agreement sets forth the understanding between the Parties as to the roles and responsibilities of the Parties in evaluating the proposed Project, in processing the application(s) for the Discretionary Approvals, in preparing CEQA documentation, in retaining Contractors, and for payment by Applicant to County of all costs incurred by County in conducting these activities.

TERMS AND CONDITIONS

1. <u>TERM</u>.

The term of this Agreement shall commence on _____. This Agreement shall terminate sixty (60) days from the final action (including any appeal to another County Decision Maker) being

taken by the Decision Maker(s) either granting or denying the Discretionary Approval(s). The date of termination shall be sixty (60) days from the effective date of the final decision. Notwithstanding the foregoing, the obligation of the Applicant to defend, indemnify, and hold the County harmless, as provided in paragraph 8 of this Agreement, shall survive such termination. This Agreement may be sooner canceled or terminated as provided below.

2. SCOPE OF WORK.

The County shall perform the following services and work:

- evaluate the environmental impacts of the proposed Project;
- evaluate any other impacts or aspects of the Project pertinent to the County's evaluation of the proposed Project;
- prepare CEQA reports and documentation that address and analyze the proposed Project, including an Environmental Impact Report if deemed appropriate by the County;
- determine whether to approve the discretionary approval(s) sought with respect to the proposed Project.

3. PERFORMANCE OF WORK.

A. Use of Employees and Contractors. County may perform work and services under this Agreement either by its own employees, or by using one or more Contractors retained by the County. County will have such work or services performed by employees or Contractors who are qualified to, and capable of, doing such work. County will determine which employee(s) and Contractors are qualified and capable to perform the work and services under this Agreement. Applicant has no right to designate, or require work or services to be performed by a particular County Department, class of County employee, specific County employee(s), or by Contractors. County need not obtain Applicant's approval prior to or after incurring any travel and/or per diem, or overtime expenses in performing work or services under this Agreement. Services and work provided by the County under this Agreement will be performed by County employees or Contractors in a manner consistent with the requirements and standards established by applicable federal, state, and County laws, County Codes, regulations, and resolutions. Such laws, County Codes, regulations, and resolutions include, but are not limited to, those referred to in this Agreement.

B. Selection of Contractors. County shall notify Applicant in advance of retaining a Contractor to perform services in regard to the proposed Project. Any Contractor who has not already been retained by the County to perform services in regard to the proposed Project shall be selected in a manner consistent with the guidelines set forth in the Mono County Environmental Handbook or may be selected utilizing an alternative procedure mutually acceptable to the parties hereto that is in compliance with County and other applicable law. The Mono County Community Development Director shall determine whether the Contractor, who will assist the County in the preparation of the CEQA reports and documentation, shall be selected in a manner consistent with the guidelines set forth in the Mono County Environmental Handbook or shall be selected through an alternative procedure. The Community Development Director shall also determine the selection procedure that will be employed with regard to retention of the services of any other Contractor for the purpose of assisting their respective Departments in performing other work required by the County Code or other applicable County or state laws, regulations, or policies.

C. General Provisions Pertaining to Contracts.

(1) Any contract between the County and a Contractor shall prohibit the Contractor from assisting in the preparation of engineering plans and/or construction designs for the proposed Project. No Contractor retained by the County shall have any financial or economic interest in the Community Development, design, construction or operation of the proposed Project. Prior to the execution of the contract(s) between the County and a Contractor, the Contractor shall execute a statement of financial interest that states that the Contractor has no financial or other interest in the outcome of the Project.

(2) Any contract between the County and a Contractor shall require that the Contractor procure and maintain insurance for the protection and benefit of the Parties. Prior to the selection of a Contractor, the County will provide Applicant with its minimum insurance requirements for the contract.

(3) Any contract between the County and a Contractor shall provide that the Contractor may only employ a subcontractor after receipt of prior approval by the County.

(4) Any contract between the County and a Contractor shall provide that any subcontractor to be hired by the Contractor shall be required to furnish a statement of financial interest to the Contractor that states that the subcontractor has no financial or economic interest in the Community Development, design, construction or operation of the proposed Project. The Contractor shall be required to submit this statement to the County prior to the retention of the subcontractor.

(5) County shall have authority to suspend work and to suspend payments to any Contractor if the contract work is not performed in a professional, cost effective and generally satisfactory manner. Any suspension of a Contractor for these reasons shall be in the form of a written notice concurrently provided to Applicant and the Contractor.

4. **COUNTY COSTS, CONTRACTOR COSTS AND CONSIDERATION.**

A. Amount of payment for services and work performed by County Employees. Applicant shall pay all County costs for all services and work performed by County employee(s) under this Agreement. The County's costs for these services and work shall be the sum of the following: (1) Employee Costs, (2) Travel Costs, and (3) Special Costs incurred by the County, as defined and described more fully below:

(1) Employee Costs. Employee Costs shall be the County's actual costs of providing employees who provide work or services under this Agreement, including their hourly rates of pay (or pro rata portion of salary), fringe benefits, overtime (if applicable), and indirect costs such as overhead. Costs billed to Applicant shall be based on the hours that are actually spent by County employees performing such work or services, rounded up or down to the nearest fifteen minutes.

(2) Overtime. Where the circumstances of the services and work provided under this Agreement require a County employee to work in excess of eight (8) hours per day

or 40 hours per week (in the case of an 8 hour per day employee), or 7 hours per day or 35 hours per week (in the case of a seven hour per day employee), and County is obligated by law or contract to compensate the employee for such work at a rate of one and one half (1 1/2) times their hourly rate of pay (hereinafter referred to as "overtime"), the hourly rate of pay for such overtime hours worked under this Agreement, used for purposes of determining Employee Costs, will be one and one half (1-1/2) times the employee's hourly rate of pay.

(3) Travel Costs. Travel and per diem costs shall be the actual costs incurred by the County when an employee travels and/or incurs per diem expenses in performing work under this Agreement. Actual costs to the County will be determined by the County policy then in effect that establishes travel and per diem reimbursement rates for County employees.

(4) Special Costs. Special costs are those costs incurred by the County that have been approved in advance by Applicant for the purchase of particular specialized equipment, supplies, tools and materials used by County in performing work or services under this Agreement.

B. Amount of Payment for Services and Work Performed by Contractors. Applicant shall pay all of the County's costs for any Contractor retained by the County to perform services or work under this Agreement. The County's costs for these services and work shall be the actual cost to the County for the services and work.

C. Project Fund. County shall establish a Project Fund (hereinafter referred to as "Project Fund") to administer all funds provided by Applicant to County pursuant to this Agreement: All costs incurred by County that arise from this Agreement will be paid from the Project Fund. Any money deposited in the Project Fund shall be used for no purpose other than the payment of these costs; however, within sixty days following the termination of this Agreement, and after payment has been made of all outstanding costs incurred by the County, any funds remaining in the Project Fund will be returned to Applicant. Applicant shall not be entitled to any interest on funds deposited and held in the Project Fund, nor shall County have any obligation to invest said funds on behalf of the Applicant. Nevertheless, in the event that the County itself actually earns any interest on such funds in its possession that can be reasonably traced or attributed to those funds, it shall, to the extent both legally permissible and reasonably practicable for the County Auditor-Controllers office, use its best efforts to pass said earned interest through to the Applicant by depositing or crediting it to the Project Fund. The Mono County Community Development Director, or his designee, shall be responsible for insuring that all payments from Project Fund are made in the appropriate time and manner.

D. Initial Deposit/Payments to County and Contractors. Within 15 days after the effective date of this Agreement, Applicant shall deposit with the County the sum of $_____. County shall immediately deposit the funds into the Project Fund. Thereafter, between the first and tenth day of each succeeding month, County shall transfer to itself from the Project Fund an amount equal to any costs (plus overhead) incurred by the County from the first day of the preceding month through and including the last day of the preceding month for work or services performed by the County, for special costs incurred by the County, and for the costs of Contractors retained by the County.

E. Subsequent Payments. County shall submit to Applicant an itemized statement of the costs

of all services and work performed by the County, any special costs incurred by the County, and the costs of any Contractor retained by the County. The statement shall cover the period from the first (1st) day of the preceding month through and including the last day of the preceding month. The statement will be submitted to Applicant by the tenth day of each month. This statement will identify the date on which the services and work were performed, describe the nature of the services and work, itemize any travel or special costs incurred by County during the period, and provide copies of all Contractors invoices paid by the County during the period. Applicant shall make payment to County in the amount of the statement within twenty days of receipt of the statement. Upon receipt of a payment from Applicant, County shall immediately deposit the funds into the Project Fund. If Applicant fails to make a payment in the amount of the statement to the County within the 20-calendar day period, County may cease all work and services under this Agreement until the funds have been provided.

F. Limit Upon Amount Payable Under Agreement. Except for costs that may be required to be paid to County or others pursuant to Section 8 (Defense and Indemnification), the total sum of all payments made by Applicant to County for services and work performed under this Agreement shall not exceed the total of the following: (1) costs of County employees who perform services and work pursuant to this Agreement (including overtime, costs of fringe benefits, and travel costs), (2) special costs incurred by the County, (3) costs of services and work performed by any Contractors retained by County to perform work and services under this Agreement, and (4) overhead costs.

G. Federal and State Taxes. Applicant will not withhold any federal or state income taxes or social security from any payments made by Applicant to County pursuant to this Agreement.

5. WORK PLAN AND SCHEDULE.

Within 60 days after the execution of this Agreement, County and Applicant shall establish a mutually acceptable master time schedule and work plan for the performance of the work described in this Agreement. Applicant understands that the performance of the work within the time limits of the schedule will require mutual cooperation and coordination between County and Applicant. (County need not await establishment of the master schedule and work plan before commencing work on the evaluation of the environmental effects of the proposed Project, or on other work in regard to the proposed Project if such other work is deemed necessary by the County.)

6. ADDITIONAL PROCEDURES AND OBLIGATIONS.

A. The procedures that will be followed in preparing and processing the CEQA reports and documentation on the proposed Project are set forth in the Mono County Environmental Handbook.

B. The Mono County Community Development Director shall establish a project working group composed of such County personnel as are deemed necessary. The working group will meet monthly, or more frequently if necessary, to provide internal staff communication and coordination in regard to the County's work on the proposed Project.

C. Representatives of each party shall attend regular meetings with the other party, with federal, state, regional, and local agencies, with concerned groups, and attend other meetings as necessary, for the purpose of providing information concerning the proposed Project and

work plan and receiving comments on the proposed Project and related environmental documents. County will notify Applicant of any meetings that are scheduled in regard to the Project. County will immediately notify Applicant of any matter raised by a federal, state, regional, or local agency that may require significant changes to the project proponent's application, or that may result in County incurring significant additional costs pursuant to this Agreement.

D. County shall make the final determination as to the accuracy, inclusion, deletion, or revision of any material, (including all issues, data, analyses, and conclusions) relating to evaluations of the Project and application(s) related thereto.

E. The Parties shall identify, and protect from public disclosure, confidential or proprietary information (including data) as required by applicable laws.

F. Any determination by the Planning Commission and/or board of supervisors as to whether the applied for discretionary approval(s) will be approved for the proposed Project shall be based upon the whole of the record including the CEQA reports and documentation, recommendations from county Departments, testimony from public hearings, and all relevant written evidence submitted on the Project.

G. The Community Development Department will:

(1) As directed by the Mono County Community Development Director, either prepare and circulate a request for qualifications to appropriate Contractors for the preparation of the CEQA reports and documentation, or follow alternate Contractor selection procedures.

(2) In the event that it is determined to select a Contractor to assist the Community Development Department in performing its responsibilities under the County Code through the procedures set forth in the Mono County Environmental Handbook, the Community Development Department will:

a. Review any statements of qualifications received from Contractors interested in preparing the CEQA reports and documentation or in assisting the Community Development Department in performing its other responsibilities under the County Code, determine which Contractors are qualified to perform the requested services, and prepare and circulate a request for proposal to each Contractor deemed qualified.

b. Evaluate any proposals submitted for the preparation of the CEQA reports and documentation and/or for provision of other services in assisting the Community Development Department in performing its responsibilities under the County Code, determine the best proposals, and interview the Contractor or Contractors submitting the best proposals.

c. Select the most qualified Contractor or Contractors to prepare CEQA reports and documentation, and/or to provide other services in assisting the Community Development Department in performing its responsibilities under County Code.

(3) Manage the preparation of the CEQA reports and documentation, economic evaluation, and other work required of the Community Development Department

by the Mono County Code, the Mono County General Plan, or California law.

(4) Prepare all necessary documents and notices for the Planning Commission use for rendering decision on the Project application(s) and associated CEQA reports and documentation.

(5) Provide staff assistance to the applicable Commission/Board for the County with the responsibility for the County's compliance with CEQA and for certification of the adequacy of any CEQA reports and documentation for the proposed project.

(6) Perform additional services in regard to the proposed Project as may be requested by the Planning Commission, the Board of Supervisors, or other decision making county commission or official.

7. STATUS OF PARTIES.

A. All acts of County, its agents, its Contractors, officers, and employees, relating to the performance of this Agreement, and all actions taken by the Applicant shall be performed as independent contractors, and not as agents, officers, or employees of Applicant or County. The parties have no authority to bind or incur any obligation on behalf of one another. No party to this agreement has the authority or responsibility to exercise any rights or power vested in the other parties to this agreement. No agent, officer, or employee of the any party to this Agreement is to be considered an employee of any other party to this agreement. This Agreement shall not, under any circumstances, be construed or considered to create an employer-employee relationship or a joint venture between County and Applicant. The County and the Applicant, its agents, officers, and employees are not, and at all times during the term of this Agreement shall not, represent or conduct themselves as employees of one another.

B. County shall determine the method, details, and means of performing the work and services to be provided by County under this Agreement. County shall be responsible to Applicant only for the responsibilities and work specified in this Agreement, and, except as expressly provided in this Agreement, shall not be subjected to control with respect to the physical action or activities of Applicant in fulfillment of this Agreement.

8. DEFENSE AND INDEMNIFICATION.

A. Applicant shall defend, indemnify, and hold harmless County, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, resulting from, or in connection with, the County's acts or omissions with regard to its compliance with CEQA or other laws, with regard to the preparation and processing of the CEQA reports and documentation and with regard to the decision based thereon concerning the Project. Specifically, Applicant’s obligation to defend, indemnify, and hold the County harmless specifically extends to any suit or challenge by any third party against the County that contests the legality or adequacy of the CEQA reports and documentation or the County's compliance with the requirements of CEQA or other laws. The Applicant will have the option to use Mono County legal counsel (which could include contracted attorneys) and pay the County for those fees or obtain outside counsel to handle such suit. In either case, the County will have the right to participate in settlement of any such suit or challenge. Should Applicant fail to defend, indemnify, and hold harmless County, County may discontinue the

defense of any such litigation. Nothing in this Agreement shall be construed to waive or diminish either Party's right, or the right of a non-Party, to challenge any decision, or defend any challenge, arising out of the CEQA process.

(1) Applicant's obligations to defend, indemnify, and hold the County, its agents, officers, and employees harmless under the provisions of this paragraph shall include, but not be limited to:

a. the costs of any judgments or awards against the County for damages, losses, litigation costs, or attorney's fees arising out of a suit or challenge contesting the adequacy of the CEQA reports and documentation and/or County's compliance with CEQA or other laws;

b. the costs of any settlement representing damages, litigation costs, and attorney's fees to be paid to other parties arising out of a suit or challenge contesting the adequacy of the CEQA reports and documentation and/or the County's compliance with CEQA or other laws.

(2) As to any judgments, awards or settlement costs, all parties to this agreement, or persons hired by any party to this agreement, will proceed in good faith and with reasonable diligence to achieve a settlement or other disposition of the same that will minimize, to the extent reasonably practicable, Applicant's costs of defense and indemnification of County under this Agreement. Parties will consult with one another and give due consideration to all party's views prior to any such settlement of final disposition. County shall promptly notify Applicant of any claim, action, or proceeding brought pursuant to Government Code Section 66499.37 and shall cooperate fully in its defense.

B. Applicant's obligations to defend, indemnify, and hold the County, its agents, officers, and employees harmless under the provisions of this paragraph are not limited to, or restricted by, any policy of insurance or contract limit.

C. Applicant's obligations to defend, indemnify, and hold the County, its agents, officers, and employees harmless under the provisions of this paragraph will be effective regardless of whether a valid permit is in place or has been invalidated.

9. <u>CANCELLATION/WITHDRAWAL OF APPLICATION</u>.

A. This Agreement may be canceled by Applicant without cause and at will for any reason by giving to County written notice of such intent to cancel. Cancellation of this Agreement shall be effective on the fifth business day following receipt of a written cancellation notice by County. Cancellation of this Agreement by Applicant shall act as a withdrawal by Applicant of its request for any approval from Mono County pertaining to the Project as described in this Agreement effective on the date of the cancellation.

B. Upon receipt of notice of a cancellation, or upon the effective date of a termination by default, County shall terminate all contracts with Contractors and make final payment from the Project Fund to such Contractors. County also shall make final payment to itself for any other unpaid costs incurred by the County in providing services or work under this Agreement. Within sixty days of the cancellation or termination, County shall pay to Applicant any funds remaining in the Project Fund after the County has paid all Contractors,

all costs incurred for work or services performed by County employees, and all special costs.

C. A cancellation of this Agreement, or a termination of this Agreement by default as set forth in Section 11 below, shall not terminate Applicant's obligation to defend, indemnify, and hold the County harmless under the provisions of Section 8 of this Agreement.

10. ASSIGNMENT.

Applicant may assign its rights or delegate its duties under this Agreement at any time, to any party surviving a takeover or merger of the real property involved in this Agreement with Applicant providing that such party assumes in writing all of Applicant's obligations under this Agreement.

11. DEFAULT.

A. If Applicant fails to pay County for the work and services performed by County in a timely manner, County may declare default, and notify Applicant in writing of the facts constituting such default. Within 30 days of service of such notification of default, Applicant may cure the default by paying to County all amounts owing to County for services and work. Service of a notice of default on the defaulting party and allowance of the thirty (30) calendar day period for the defaulting party to commence with diligence to cure such default shall be a condition precedent to any termination of this Agreement or to the bringing of any action based upon such default. If Applicant fails to make the payment within the 30-day period, County may deduct the amount owed from any available funds that remain in the Project Fund. Such deduction by County shall not cure Applicant's default unless the Applicant replenishes the Project Fund within thirty (30) calendar days from the day of withdrawal by the County. Applicant's default shall not be excused if insufficient funds remain in the Project Fund to cover the amount owed. If at the end of the 30-day period, Applicant has failed to make the required payment, County at its election, may terminate this Agreement by written notice thereof to the Applicant. A notice of Termination shall act as a withdrawal by Applicant of its request for any approval from Mono County pertaining to the Project as described in this Agreement effective on the date of the notice.

B. Except for a failure to make a required payment as set forth in paragraph "A" above, if either Party should fail to comply with the other terms and conditions of this Agreement, the other party may declare default and notify the "defaulting" party in writing of the facts constituting such default. Upon making such written notification, the defaulting party will have thirty (30) calendar days to cure such default. A party shall be deemed to cure the default if within the time period set forth herein, the defaulting party begins and thereafter diligently continues to completion curing such default. Service of a notice of default on the defaulting party and allowance of the thirty (30) calendar day period for the defaulting party to commence with diligence to cure such default shall be a condition precedent to any termination of this Agreement or to the bringing of any action based upon such default. If any default is not cured or deemed cured hereunder, the non-defaulting party, at its election, may terminate this Agreement by written notice thereof to the defaulting party. A notice of Termination shall act as a withdrawal by Applicant of its request for any approval from Mono County pertaining to the Project as described in this Agreement effective on the date of the notice of default.

12. WAIVER OF DEFAULT.

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any

subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is amended as described in Section 16 below.

13. CONFIDENTIALITY.

The County shall make every effort to keep information and records kept, maintained, or accessible by County in the course of performance under this Agreement as privileged, restricted, or confidential to the fullest extent possible while complying with applicable provisions of the federal, state, and county regulations.

14. SEVERABILITY.

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction, or if it is found in contravention of any federal, state, or county statute, County Code, or regulation, the remaining provisions of this Agreement, or the application thereof, shall not be invalidated thereby, and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

15. ATTORNEY'S FEES.

If either of the Parties brings an action or proceeding against the other, including, but not limited to, an action to enforce or declare a default, cancellation, termination, or revision of the Agreement, the prevailing party in such action or proceeding shall be entitled to receive from the other party all reasonable attorney's fees and costs incurred in connection therewith.

16. AMENDMENT.

This Agreement may be modified, amended, changed, added to, or subtracted from, by the mutual consent of the Parties. Any modification, amendment or change shall be in written form and executed with the same formalities as this Agreement, and attached to the original Agreement.

17. NOTICE.

Any notice, communication, amendments, additions, or deletions to this Agreement, including change of address of either party during the term of this Agreement, which Applicant or County shall be required, or may desire, to make, shall be in writing and may be personally served, or sent by prepaid first class mail to, the respective parties as follows:

County of Mono: Applicant:

County Community Development Director
P.O. Box 347
Mammoth Lakes, CA 93546

18. ENTIRE AGREEMENT.

This Agreement contains the entire agreement of the parties, and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein or

incorporated herein by reference, shall be of any force or effect.

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS THIS _____ DAY OF _____, _____.

COUNTY	**APPLICANT**
By:_____	By: _____