

TOWN OF MAMMOTH LAKES

PROFESSIONAL SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this 4th day of April 2019, 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 Lisa Wise Consulting, Inc., a California Corporation, with its principal place of business at 983 Osos Street, San Luis Obispo, CA 93401 (“Consultant”). Town and Consultant are sometimes individually referred to herein as “Party” and collectively as “Parties.”

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional planning consulting services required by the Town on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional planning consulting services to public clients, is licensed in the State of California, and is familiar with the plans of Town.

2.2 Project.

Town desires to engage Consultant to render such professional planning consulting services for The Parcel conceptual land use planning as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant 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 professional planning consulting services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. 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. [

3.1.2 Term. The term of this Agreement shall be from April 4, 2019 to March 1, 2020 unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the

means, methods and details of performing the Services subject to the requirements of this Agreement. Town retains Consultant on an independent contractor basis and not as an employee. Consultant 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 Consultant shall also not be employees of Town and shall at all times be under Consultant's exclusive direction and control. Neither Town, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant 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. Consultant 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 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of Town.

3.2.4 Substitution of Key Personnel. Consultant has represented to Town that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of Town. In the event that Town and Consultant cannot agree as to the substitution of key personnel, Town shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the Town, or who are determined by the Town to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the Town. The key personnel for performance of this Agreement are as follows: Jennifer Daugherty, Senior Associate.

3.2.5 Town's Representative. The Town hereby designates Sandra Moberly, Community and Economic Development Director, or his/her 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 for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Work or change the total compensation due to Consultant under this Agreement. The Town Manager shall be authorized to act on Town's behalf and to execute all necessary documents which enlarge the Scope of Work or change the Consultant's total compensation subject to the provisions contained in Section 3.3 of this Agreement. Consultant shall not accept direction or orders from any person other than the Town Manager, Town's Representative or his/her designee.

3.2.6 Consultant's Representative. Consultant hereby designates Jennifer Daugherty, Senior Associate, or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement.

The Consultant'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.

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

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants 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, Consultant 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 Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the Town to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the Town, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant 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 Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant 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.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant 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, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the Town that the subconsultant has secured all insurance required under this section.

3.2.10.2 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 Consultant, 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, Consultant 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.

(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.

3.2.10.3 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 3.2.10.2(A), Commercial General Liability, shall be endorsed to provide the following:

- (1) **Additional Insured:** Consultant agrees to endorse the third party general liability coverage required herein to include as additional insureds Town, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition date of 2010. Consultant also agrees to require all contractors, subcontractors, and

anyone else involved in any way with the Project contemplated by this Agreement to do likewise.

(B) The policy or policies of insurance required by Section 3.2.10.2(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.

3.2.10.4 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.

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

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

3.2.10.7 Evidence of Insurance. The Consultant, 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, Consultant 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.

3.2.10.8 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. 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.

3.2.10.9 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.

3.2.10.10 Insurance for Subconsultants. All Subconsultants shall be included as additional insureds under Consultant's policies, or Consultant shall be responsible for causing Subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the Town as an Additional Insured to the Subconsultant's policies. Consultant shall provide to Town satisfactory evidence as required under Section 3.2.10.1 of this Agreement.

3.2.10.11 Requirements Not Limiting. Requirements of specific coverage features or limits contained in this Agreement are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Consultant maintains higher limits than the minimums shown above, Town requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Town.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant 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. Safety precautions, where applicable, shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "A" attached hereto and incorporated herein by reference. The total compensation shall not exceed three hundred eighty three thousand eight hundred and ninety one dollars (\$383,891) without written approval of the Town Council or Town Manager as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit monthly invoices. Town shall pay all undisputed amounts within 30 days of the receipt of each invoice.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by Town, or included in Exhibit "A" of this Agreement.

3.3.4 Extra Work. At any time during the term of this Agreement, Town may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by Town to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the Town.

3.4 Accounting Records.

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

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. Town may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to Town, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

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

3.5.1.3 Additional 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:

Consultant:	Lisa Wise Consulting Inc. 983 Osos Street San Luis Obispo, CA 93401 ATTN: Jennifer Daugherty, Senior Associate
Town:	Town of Mammoth Lakes PO Box 1609 437 Old Mammoth Road, Suite R Mammoth Lakes, CA 93546 ATTN: Sandra Moberly, Community and Economic Development Director

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 Consultant under this Agreement (“Documents & Data”). Consultant shall require all subconsultants to agree in writing that Town is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant 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 Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of Town, be used by Consultant 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 or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use Town's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any

magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of Town.

3.5.3.3 Confidential Information. The Town shall refrain from releasing Consultant'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 Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give Town written notice of Consultant's objection to the Town's release of Proprietary Information. Consultant 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) Consultant 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 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.

3.5.5 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.

3.5.6 Indemnification.

3.5.6.1 Scope of Indemnity. To the fullest extent permitted by law, Consultant 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 Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

3.5.6.2 Additional Indemnity Obligations. Consultant shall defend, with counsel of Town's choosing and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.5.6.1 that may be brought

or instituted against Town or its directors, officials, officers, employees, volunteers and agents. Consultant 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. Consultant 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. Consultant 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. Consultant'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.

3.5.7 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.

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

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

3.5.10 Town's Right to Employ Other Consultants. Town reserves the right to employ other consultants in connection with this Project.

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

3.5.12 Assignment or Transfer. Consultant 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.

3.5.13 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 Consultant include all personnel, employees, agents, and subconsultants of Consultant, 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.

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

3.5.15 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.

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

3.5.17 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.

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

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, 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. Consultant shall also comply with all relevant provisions of Town's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.20 Labor Certification. By its signature hereunder, Consultant 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.

3.5.21 Authority to Enter Agreement. Consultant 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.

3.5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of Town. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

TOWN OF MAMMOTH LAKES

LISA WISE CONSULTING

By: _____
V. Cleland Hoff

By: _____
Lisa Wise, President

Attest:

By: _____
Henry Pontarelli, Secretary

By: _____
Jamie Gray
Town Clerk

Approved as to Form:

By: _____
Andrew Morris
Town Attorney

EXHIBIT "A"
SCOPE OF SERVICES
SCHEDULE
COMPENSATION

DRAFT

March 26, 2019

Sandra Moberly, AICP
Community and Economic Development Director
Town of Mammoth Lakes

Regarding: The Parcel Land Use Planning and Related Civil Engineering Services Proposed Scope of Work, Budget, and Target Milestones

Dear Mrs. Moberly:

The following describes a proposed work plan, budget, and target milestones for The Parcel Land Use Planning and Related Civil Engineering Services. The Consultant Team remains flexible and willing to modify the scope of work, budget, and target milestones to better fit the Town's needs or constraints.

Near-term action strategies in the Community Housing Action Plan (CHAP) include the acquisition and design of The Parcel to create a great neighborhood and increase community housing choices. The Town has acquired The Parcel, and the following scope of work represents the next step of The Parcel design.

Scope of Work

1. Project Initiation

Project initiation will kick off the conceptual land use planning and include the establishment of communication strategies, public outreach plan preparation, and will begin Team discussions on development objectives. During this task, the Consultant Team will also review previous planning documents for The Parcel.

The internal communication strategy will address communication among the Consultant Team, The Parcel Development Team, and supporting experts, while the external communication strategy will address the Town's commitment to a transparent and inclusive public process that reaches a diversity of stakeholders, including target residents of The Parcel and minority populations. The external communication strategy will build upon the Town's existing efforts (e.g., Town website, email distribution list, Bang the Table, etc.), facilitate consistent messaging and information dissemination, and be integrated with the public outreach plan. The Consultant Team is anticipated to provide content to assist the Town with external communication and project messaging.

The public outreach plan (POP) will be informed by the Town’s Public Engagement Plan, which includes identified stakeholders, an ambassador program, bilingual communication tools, and a range of outreach events (e.g., workshops, charrettes, open houses, community meetings (in multiple locations), focused employer and employee events, Council and Commission meetings, etc.). The POP will describe the objectives of each event and multiple methods to provide feedback (e.g., oral, handwritten, electronic, etc.) so participants feel comfortable giving authentic responses. Results of engagement activities will be reported in aggregate to accommodate confidentiality and inform conceptual plan development. A detailed schedule of events and meetings will be developed with the POP, clearly outlining the sequence of tasks, preparation deadlines, review timelines, and responsible parties.

At the kick off meeting (in-person), the Team will discuss communication strategies, POP, list of stakeholders, and begin discussions on development objectives and public amenities for The Parcel.

The Consultant Team will also prepare a data/document request for information and data needed or desired from the Town for the Consultant Team to proceed with work.

The Consultant Team will hold biweekly calls with The Parcel Team.

Deliverables:

- Kickoff meeting agenda and notes
- Internal and external communication strategies
- Public outreach plan (POP)
- Specific schedule of events and meetings
- Data/document request
- Biweekly call agendas and notes

2. Development Objectives

The Consultant Team will conduct one-on-one and/or small group interviews with stakeholders. Stakeholders will be identified by the Town, and the Town will schedule stakeholder interviews over two days. Up to 15 interviews will be conducted. The interviews are anticipated to include a discussion of opportunities and constraints, development objectives, and public amenity preferences. Individual and small group interviews enable the Consultant Team to gather insight that may not be able to be gathered in larger group settings. Confidentiality will be observed with results reported in aggregate, as appropriate, as it builds trust, protects stakeholders from real or perceived harm, and assures more accurate interview responses. Interviews are anticipated to include a broad cross section of community stakeholders.

After stakeholder interviews are summarized by the Consultant Team, feedback will be obtained from the Town Council (Council) and Planning and Economic Development Commission (PEDC) at a joint workshop. Community input on potential development objectives and public amenities, including prioritization, will also be gathered, and could be online (Bang the Table) or other method outlined in the POP. The Consultant Team will document the results of this input.

Once the results of development objectives input and prioritization have been reported, an internal Team charrette (The Parcel Development Team and supporting experts) will be conducted to develop a framework for the development of conceptual site plans based on input received. The internal charrette will include a discussion of potential housing types, circulation and multi-modal networks and options, issues related to physical and environmental constraints, and alignment with Walk, Bike, Ride and the Downtown Revitalization Action Plan (e.g., Missing Middle Housing Strategy, building prototypes). A site tour would occur, weather permitting. Rough preliminary concepts or portions of concepts would be sketched out during the internal charrette, which is anticipated to occur over one day. The purpose of the rough preliminary concepts is to facilitate public engagement efforts, including the public charrette (see next task).

The Consultant Team will hold biweekly calls with The Parcel Team.

Deliverables:

- Stakeholder interview questions and summary memo
- Council/PEDC presentation and summary memo
- Community outreach material and summary memo
- Internal charrette agenda and notes
- Biweekly call agendas and notes

3. Land Use Plan Concept Alternatives

A four-day charrette will be used to develop land use plan concept alternatives and obtain input to guide the development of a preferred alternative. A charrette is an opportunity to engage the public in the visioning process and create detailed design solutions with specific direction for future entitlement efforts. Including a comprehensive team of experts is necessary to move quickly through the refinement of concepts that are viable from market and engineering perspectives. The charrette effort will produce up to three alternative land use concepts for The Parcel. Alternatives will include concepts for circulation and multi-modal infrastructure, housing products and densities, public amenities, and how development would relate to nearby land uses and other planning efforts (e.g., Walk, Bike, Ride and Downtown Revitalization Action Plan). The Consultant Team will include 3-dimensional studies, conceptual architecture, and rendered perspectives (street level and aerial), which allow the public to get a “feel” of potential future development and can help build support. The charrette is anticipated to include an opening presentation, focused meetings with agency partners and key stakeholders, open studios (public welcome to view and comment on work being produced), and a final presentation. Visual preference materials for housing types, public amenities, and multi-modal infrastructure and facilities could also be included, as well as door-to-door interviews with minority business owners or other groups. An “Affordable Housing Development 101” presentation by Novin Development, Corp. could be included during the charrette to educate the community on developing affordable housing, including methods and sources of funding and financing.

Community input on each concept alternative, which may include ranking of the alternatives, will be conducted during the charrette and could be online (Bang the Table) immediately following the charrette. The Consultant Team will document the results of this input.

The Consultant Team will hold biweekly calls with The Parcel Team.

Deliverables:

- Charrette materials
- Three land use plan concept alternatives
- Community outreach material and summary memo
- Biweekly call agendas and notes

4. Preferred Conceptual Land Use Plan

Based on the community feedback provided in the previous task, the Consultant Team will coordinate with The Parcel Development Team, supporting experts, and key stakeholders to prepare the preferred conceptual land use plan and an accompanying narrative summary. The preferred conceptual land use plan will include an analysis of existing conditions and housing needs, a detailed narrative and drawings of proposed circulation and multi-modal infrastructure, housing products (addressing type, size, tenure, and affordability levels) and densities, and public amenities. It will also describe and illustrate how The Parcel development will relate to nearby land uses (single-family, multi-family, lodging, and commercial uses), public transit, and other planning efforts (e.g., Walk, Bike, Ride and Downtown Revitalization Action Plan). The Consultant Team will coordinate with The Parcel Development Team's supporting experts to ensure the preferred conceptual land use plan is economically viable.

The preferred conceptual land use plan will be presented to the Council and PEDC for discussion at a joint workshop. Also, separate community input on the preferred conceptual land use plan will be offered and could be online (Bang the Table) or other method outlined in the POP. The Consultant Team will document the results of this input.

The Consultant Team will hold biweekly calls with The Parcel Team.

Deliverables:

- Preferred conceptual land use plan and narrative
- Council/PEDC presentation
- Community outreach material and summary memo
- Biweekly call agendas and notes

5. Final Conceptual Land Use Plan

The Consultant Team will refine the preferred conceptual land use plan based on input from the Council, PEDC, and community to create the final conceptual land use plan, narrative, and drawings. The Consultant Team will coordinate with The Parcel Development Team's supporting experts to ensure the final conceptual land use plan is economically viable.

The final conceptual land use plan will be presented to the Council and PEDC for review and acceptance at a joint workshop.

The Consultant Team will hold biweekly calls with The Parcel Team.

Deliverables:

- Final conceptual land use plan, narrative, and drawings
- Council/PEDC presentation
- Biweekly call agendas and notes

6. *Additional Services*

Additional services not described in this scope of work may be desired by the Town after contract execution. The Consultant Team will provide additional services requested by the Town on a time and materials basis, up to the not-to-exceed budget amount. Hourly rates charged under this task are included in the attached budget.

Budget

Based on the proposed scope of work, the Consultant Team offers a budget estimate (attached). Should any changes to the scope of work be required, LWC will work with the Town and Consultant Team to revise the budget as needed.

Target Milestones

April/May 2019	<ul style="list-style-type: none"> • Project kickoff • Prepare Public Outreach Plan • Prepare detailed scheduled of meetings/events • Schedule stakeholder interviews
May/June 2019	<ul style="list-style-type: none"> • Stakeholder interviews • Prepare stakeholder interview summary
June/July 2019	<ul style="list-style-type: none"> • Council/PEDC Workshop #1 • Internal Team charrette • Prepare rough preliminary land use plan concepts
July/August 2019	<ul style="list-style-type: none"> • Rough preliminary concepts available to public • Charrette • Prepare preferred conceptual land use plan and narrative

September/October 2019	<ul style="list-style-type: none"> • Council/PEDC Workshop #2
October/November 2019	<ul style="list-style-type: none"> • Prepare final conceptual land use plan and narrative
November/December 2019	<ul style="list-style-type: none"> • Council/PEDC Workshop #3

Assumptions

- All deliverables that the Consultant Team will prepare are identified in the scope of work. Any studies, tasks, deliverables, reports, or meetings not specifically identified are assumed to not be included and may be addressed through the Additional Services task and budget.
- All calls and meetings that the Consultant Team will prepare for and attend are identified in the scope of work. Any calls or meetings not specifically identified in the scope of work are assumed to not be included and would be charged on a time and materials basis in addition to the proposed budget.
- The level of effort for each task is limited to the cost estimate for each task listed in the budget table. The team may reallocate budget between tasks if individual tasks are completed in less time than anticipated.
- All Town comments on Consultant Team deliverables will be provided as a single set of non-conflicting and actionable comments.
- The Town will provide a local Spanish-speaker(s) for translation services throughout the project, as needed.
- The Town will maintain the project webpage, social media, and other communication outlets for the project.
- Keyser Marston Associates will provide expected market demand and absorption to help determine housing product types, size and mix, and target affordability levels and tenure.

Sincerely,



Lisa A. Wise, President, CEO

Town of Mammoth Lakes - The Parcel, Land Use Planning and Related Civil Engineering Services

March 25, 2019

Should any changes to the scope of work be required, LWC will work with the Town and Consultant Team to revise the budget as needed.

		TASK 1	TASK 2	TASK 3	TASK 4	TASK 5	TASK 6	
		Project Initiation	Development Objectives	Land Use Plan Concept Alternatives	Preferred Conceptual Land Use Plan	Final Conceptual Land Use Plan	Additional Services	TOTAL
LWC								
Principal \$250	Hours	12	32	48	32	24		148
	Cost	\$3,000	\$8,000	\$12,000	\$8,000	\$6,000		\$37,000
Senior Associate \$175	Hours	32	80	80	72	72		336
	Cost	\$5,600	\$14,000	\$14,000	\$12,600	\$12,600		\$58,800
Associate \$140	Hours	40	100	100	100	80		420
	Cost	\$5,600	\$14,000	\$14,000	\$14,000	\$11,200		\$58,800
FIRM TOTAL	Hours	84	212	228	204	176		904
	Cost	\$14,200	\$36,000	\$40,000	\$34,600	\$29,800		\$154,600
Opticos Design, Inc.								
Principal \$275	Hours	16	15	58	16	10		115
	Cost	\$4,400	\$4,125	\$15,950	\$4,400	\$2,750		\$31,625
Senior Associate \$210	Hours	0	5	9	7	0		21
	Cost	\$0	\$1,050	\$1,890	\$1,470	\$0		\$4,410
Associate \$184	Hours	45	97	110	60	36		348
	Cost	\$8,280	\$17,848	\$20,240	\$11,040	\$6,624		\$64,032
Designer \$152	Hours	6	64	120	27	40		257
	Cost	\$912	\$9,728	\$18,240	\$4,104	\$6,080		\$39,064
FIRM TOTAL	Hours	67	181	297	110	86		741
	Cost	\$13,592	\$32,751	\$56,320	\$21,014	\$15,454		\$139,131
Crabtree Group, Inc.								
Principal \$225	Hours	26	30	42	24	16		138
	Cost	\$5,850	\$6,750	\$9,450	\$5,400	\$3,600		\$31,050
Senior Project Engineer \$120	Hours	0	0	16	8	8		32
	Cost	\$0	\$0	\$1,920	\$960	\$960		\$3,840
CAD Designer \$80	Hours	0	0	8	8	8		24
	Cost	\$0	\$0	\$640	\$640	\$640		\$1,920
FIRM TOTAL	Hours	26	30	66	40	32		194
	Cost	\$5,850	\$6,750	\$12,010	\$7,000	\$5,200		\$36,810
Novin Development, Corp.								
Principal \$280	Hours	6	12	28	8	6		60
	Cost	\$1,680	\$3,360	\$7,840	\$2,240	\$1,680		\$16,800
Development Analyst \$150	Hours	8	16	30	10	8		72
	Cost	\$1,200	\$2,400	\$4,500	\$1,500	\$1,200		\$10,800
FIRM TOTAL	Hours	14	28	58	18	14		132
	Cost	\$2,880	\$5,760	\$12,340	\$3,740	\$2,880		\$27,600
Reimbursables/Direct Costs								
LWC		\$1,250	\$3,750	\$3,700	\$1,250	\$1,250		\$11,200
Opticos Design, Inc.		\$880	\$1,080	\$1,760	\$540	\$540		\$4,800
Crabtree Group, Inc.		\$950	\$950	\$1,950	\$200	\$200		\$4,250
Novin Development, Corp.		\$1,250	\$1,250	\$2,500	\$250	\$250		\$5,500
REIMBURSABLES/DIRECT COSTS TOTAL		\$4,330	\$7,030	\$9,910	\$2,240	\$2,240		\$25,750
PROJECT TOTAL	Hours	191	451	649	372	308		1971
	Cost	\$40,852	\$88,291	\$130,580	\$68,594	\$55,574	\$38,389	\$422,280

Lisa Wise Consulting, Inc.

	LWC	ODI	CGI	NDC	Total
1. Project Initiation	\$15,450	\$14,472	\$6,800	\$4,130	\$40,852
2. Development Objectives	\$39,750	\$33,831	\$7,700	\$7,010	\$88,291
3. Land Use Plan Concept Alternatives	\$43,700	\$58,080	\$13,960	\$14,840	\$130,580
4. Preferred Conceptual Land Use Plan	\$35,850	\$21,554	\$7,200	\$3,990	\$68,594
5. Final Conceptual Land Use Plan	\$31,050	\$15,994	\$5,400	\$3,130	\$55,574
6. Additional Services					\$38,389
Total	\$165,800	\$143,931	\$41,060	\$33,100	\$422,280