

COMMERCIAL AIR SERVICE REVENUE GUARANTEE COST SHARING AGREEMENT

This COST SHARING AGREEMENT (the “Agreement”) is made effective this 21 day August, 2017, by and between MAMMOTH MOUNTAIN SKI AREA, LLC, a Delaware limited liability company (hereinafter referred to as “MMSA”), and MAMMOTH LAKES TOURISM, a California non-profit corporation (hereinafter referred to as “MLT”).

I. Recitals.

- I.1. MLT is the Direct Marketing Organization formed to promote the development and marketing of the Town of Mammoth Lakes, a California Municipal Corporation and a general law city (the “Town”) as a travel destination. A core aspect of MLT’s mission is to promote the economic well-being of the Mammoth Lakes community through the development and execution of well-planned tourism sales and marketing strategies. MLT recognizes that the availability of year-round commercial air service to the community directly serves MLT’s mission.
- I.2. MMSA owns and operates a world class four season resort in the community. MMSA recognizes that the availability of commercial air service is vital to MMSA’s private business interests as well as to the interests of the community as a whole.
- I.3. MLT and MMSA have a joint interest in establishing, maintaining, and expanding commercial air service to the Mammoth Yosemite Airport (“MMH”) under mutually acceptable conditions.
- I.4. In 2008, MMSA began a concerted effort to foster the growth of commercial air service to the community by, among other things, guaranteeing the minimum revenues of the airlines servicing MMH during the winter snow sports season.
- I.5. From time to time, MMSA has guaranteed that airlines providing commercial air services to MMH will receive a minimum level of revenue (the “minimum revenue guarantee”). Services have been provided by Horizon Air Industries, Inc. (“Horizon”), United Airlines, Inc. (“UAL”), and Alaska Airlines, Inc. (“Alaska”), JetSuiteX Inc. (“JetSuiteX”).
- I.6. MLT, beginning in 2013 and following the formation of the Mammoth Lakes Tourism Business Improvement District, has agreed to assume the entire Non-Winter Season air service minimum revenue guarantees, as well as a defined portion of the Winter Season guarantees.
- I.7. It is the intent of the parties, as set forth in greater detail herein, for MLT to assume the entire cost of the minimum revenue guarantee for the Non-Winter

Season for both 2017 and 2018, and to assume a portion of the cost of the Winter Season air service for the 2017-2018 Winter Season. For clarification, the Winter Season date range was defined as:

Winter Dates

2014-15= December 1, 2014 to April 6, 2015
2015-16= November 19, 2015 to April 10, 2016
2016-17= November 19, 2016 to April 17, 2017
2017-18= November 18, 2017 to April 16, 2018

The Non-Winter Season date ranges defined as:

Non-Winter Dates

2015= April 7, 2015 through November 18, 2015
2016= April 11, 2016 through November 18, 2016
2017= April 18, 2017 through November 17, 2017

For purposes of clarity, the Winter Season is sometimes identified as Service periods A, A2 and A3, and the Non-Winter Season is sometimes identified as Service periods B, C, D, E, & F.

- 1.8. Based on MLT's commitment to sharing the cost of these minimum revenue guarantees, as evidenced by prior Agreements and this Agreement, MMSA will enter into "Air Service Agreements" with Alaska and United or any other carrier both parties agree to, whereby MMSA will commit to provide, among other things, minimum revenue guarantees, letters of credit, and insurance. Copies of the draft Air Service Agreements are attached hereto as Exhibit "A." These agreements are drafts, and are therefore provided for the sake of detail, but remain subject to final changes.
2. Incorporation of Recitals. The foregoing recitals are true and correct and are hereby incorporated as substantive provisions of this Agreement.
3. MMSA Representations and Warranties. MMSA hereby represents and warrants to MLT each of the following:
 - 3.1. MMSA is not prevented from entering into this Agreement or complying with its commitments hereunder by its limited liability company agreement, or by any statute, regulation or order of any governmental authority;
 - 3.2. MMSA is not prevented from entering into this Agreement or complying with its commitments hereunder by any statute, regulation, order of or agreement with, governmental or quasi-governmental authority or by any license, debt instrument, mortgage, lease, contract or other agreement or instrument binding it or any of its property;

- 3.3. MMSA is duly authorized to enter into this Agreement and has taken all necessary corporate action to obtain such authorization and that no consent of, or notice to, any other individual, public or private entity, or governmental authority is required in connection with the execution, delivery, and performance of this Agreement;
 - 3.4. This Agreement constitutes a legal, valid and binding agreement, enforceable by MLT against MMSA in accordance with its terms; and
 - 3.5. The party executing this Agreement on behalf of MMSA has full right, power and authority to execute this Agreement and to bind MMSA to the terms hereof.
4. MLT Representations and Warranties.
 - 4.1. MLT is not prevented from entering into this Agreement or complying with its commitments hereunder by its limited liability company agreement, or by any statute, regulation or order of any governmental authority;
 - 4.2. MLT is not prevented from entering into this Agreement or complying with its commitments hereunder by any statute, regulation, order of or agreement with, governmental or quasi-governmental authority or by any license, debt instrument, mortgage, lease, contract or other agreement or instrument binding it or any of its property;
 - 4.3. MLT is duly authorized to enter into this Agreement and has taken all necessary corporate action to obtain such authorization and that no consent of, or notice to, any other individual, public or private entity, or governmental authority is required in connection with the execution, delivery, and performance of this Agreement;
 - 4.4. This Agreement constitutes a legal, valid and binding agreement, enforceable by MMSA against MLT in accordance with its terms; and
 - 4.5. The party executing this Agreement on behalf of MLT has full right, power and authority to execute this Agreement and to bind MLT to the terms hereof.
5. Cost Sharing. MMSA and MLT agree to share the financial obligations incurred in connection with the Air Service Agreements as follows:
 - 5.1. With respect to the 2017-2018 Winter Season, MLT shall pay the entire cost of the first portion of the total minimum revenue guarantee up to \$755,000 on May 1st 2018 and the second portion if necessary up to \$755,000 on June 1st 2018, but in no event shall MLT's obligation for the 2016-2017 Winter Season exceed the amount of One Million Five Hundred and Ten Thousand Dollars and No Cents (\$1,510,000.00)(the "MLT Winter Obligation");

- 5.2. To the extent the minimum revenue guarantee payments due for the Winter Season exceeds the total MLT Winter Obligation, MMSA shall pay the remaining amounts as they become due;
- 5.3. MLT shall pay the entire portion of the minimum revenue guarantees for air service for the Non-Winter Season in 2018 as defined in 7.1.
- 5.4. MMSA shall provide the required letter of credit (as set forth in Section 4 of the Air Service Agreement), and shall provide the required insurance (as set forth in Section 11(ii) of the Air Service Agreement).
6. Potential Contribution by Mono County. The parties contemplate that Mono County, acting by and through its Board of Supervisors, may from time to time elect to share the financial obligation due and owing in connection with guaranteeing the minimum revenue for Non-Winter Season air service to MMH for calendar year 2018. In the event Mono County in fact does so, any contribution by Mono County shall be allocated to reduce the obligations owed by MLT.
7. Invoicing and MLT Payments.
 - 7.1. With respect to the 2017 and the 2018 Non-Winter Season, MLT shall pay the entire cost of the minimum revenue guarantee on March 1, 2018 for the 2017 non-winter season and on March 1, 2019 for the 2018 non-winter season. Upon receipt of invoices from Alaska or United, MMSA shall, within five (5) days, provide a copy of the invoice to MLT, and MMSA and MLT shall jointly review the invoice, determine whether it is correct, and if so accept it for payment. If it is incorrect, MLT and MMSA shall alert the airline, and shall proceed through the dispute process until the invoice is in sufficient condition to accept for payment, at which time MMSA shall advance the payment to the airline on MLT's behalf.
 - 7.2. Within thirty (30) days of the party's determination that the invoice is accepted for payment, as set forth in Section 7.1 above, MLT shall pay the invoiced amount to MMSA.
8. No Set Off by MLT. MLT shall make all payments due MMSA pursuant to this Agreement without deduction or offset, and MLT waives any right of offset it now has or may have against MMSA and its successors and assigns with respect to MLT's cost sharing and payment obligations in this Agreement.
9. No Agency, Joint Venture or Partnership. This Agreement shall in no way be construed to create, and shall not be deemed to have created, any relationship of employer/employee, master/servant, principal/agent, partnership, joint venture, or otherwise. Neither party shall have authority, whether express or implied, to bind the other to any contractual or other third party relationship, obligation, or liability.

10. Indemnification. Each party shall indemnify and hold harmless the other party, and its officers, directors, employees and agents from all liabilities, damages, losses, claims, suits, judgments, costs and expenses, including reasonable attorneys' fees, directly or indirectly incurred by the other party from claims by third parties as the result of or arising out of or in connection with its respective products or services supplied in connection with this Agreement, to the extent allowed by law.
11. Entire Agreement. This Agreement is intended by the parties to be the final expression of the intentions and agreements of the parties related to the subject matter of this Agreement. This Agreement supersedes any prior agreements, whether oral or written. Any modifications to this Agreement shall be of no force or effect unless made in writing and signed by the party or parties to be charged.
12. Severability. In the event any term or provision of this Agreement is deemed to be in violation of law, null and void, or otherwise of no force or effect, the remaining terms and provisions of this Agreement shall remain in full force and effect.
13. Governing Law. The terms and provisions of this Agreement shall be interpreted and governed pursuant to the laws of the State of California.
14. Attorney's Fees. In the event any action at law or in equity is initiated to enforce or interpret the terms of this Agreement, or arises out of or pertains to this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which that party is entitled.
15. Notices. Any notice or other written communication required or permitted to be given hereunder shall be deemed to be given when hand delivered, when sent by facsimile with confirmation of transmission, one (1) business day after pickup by UPS, Federal Express, or similar overnight express service or via electronic mail, in all cases addressed to the parties at their respective addresses referenced below for delivery the next business morning:

Mammoth Mountain Ski Area, LLC
Attention: Eric Clark, Chief Operating Officer, Resort Services
PO Box 24
Mammoth Lakes, CA 93546
Fax: (760) 934-0673

Mammoth Lakes Tourism
Attention: John Urdi, Executive Director
PO Box 48
Mammoth Lakes, CA 93546
Telephone: (760) 934-2712 x1259
Fax: (760) 934-2712 x1259

16. Remedies. The remedies specified in this Agreement shall be in addition to, and not exclusive of, any other remedies available to a party at law or in equity.
17. Joint Preparation. This Agreement shall be deemed to be jointly prepared by all parties hereto. In connection therewith, the provisions of Civil Code section 1654 shall not be deemed applicable in the event of any interpretation of this Agreement.
18. Effect of Waiver. If either party fails to enforce any of the provisions of this Agreement or any rights or fails to exercise any election provided in the Agreement, it will not be considered to be a waiver of those provisions, rights or elections or in any way affect the validity of this Agreement. The failure of either party to exercise any of these provisions, rights or elections will not preclude or prejudice such party from later enforcing or exercising the same or any other provision, right or election which it may have under this Agreement.
19. No Right to Assign Agreement. Neither party shall assign, transfer or sell all or any part of its rights or obligations hereunder, by operation of law or otherwise, without the prior written consent of the other party.
20. Counterparts. This Agreement may be executed in one or more counterparts. All counterparts shall be valid and binding on the party executing them and shall, when taken together, constitute one and the same document for all purposes. MMSA and MLT each hereby agrees to execute, acknowledge and deliver any and all further instruments and other documents as the other may reasonably determine to be necessary or desirable for the achievement or furtherance of the purposes, terms and/or conditions of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year written above.

MAMMOTH MOUNTAIN SKI AREA, LLC.

By: _____
Eric Clark, Chief Operating Officer

Date: _____

MAMMOTH LAKES TOURISM

By: _____
John Urdi, Executive Director

Date: _____