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**Mono County Grand Jury 2013-2014
Mammoth Lakes Tourism
Case # 1314.03**

Summary:

The Grand Jury conducted a preliminary inquiry into the operation of Mammoth Lakes Tourism (MLT). We reviewed documentary information provided by the organization and interviewed three witnesses: a Town finance department employee, MLT's executive director, and the chair of its board of directors.

To the limited extent of our review, the Grand Jury is satisfied that MLT is operating with a reasonable degree of transparency and has adequate financial controls in place.

However, given the limited scope of our review, and in light of the recently-imposed assessment for the Mammoth Lakes Tourism Business Improvement District (TBID), we recommend that a more thorough investigation be carried out by the Grand Jury in two years.

The Issue:

The Grand Jury made this inquiry on its own initiative, given the recent imposition of the TBID and the clear public interest in ensuring that MLT uses its public funding in the best interests of the community it serves. We were particularly interested in examining the degree of transparency with which MLT operates as well as the extent to which it has implemented basic financial controls.

The Method of Study:

The investigation began in December 2013 with an interview of the interim finance director for the Town of Mammoth Lakes. This was followed by a Public Records Act request to MLT seeking production of broad documentation, including:

1. Revenues received each year since its inception;
2. Expenditures each year since its inception;
3. Total compensation by year, including salary, wages and benefits, for each officer, director, and employee of Mammoth Lakes Tourism;
4. Annual financial reports and audits for Mammoth Lakes Tourism since its inception;
5. A description of job duties for each officer, director, and employee of Mammoth Lakes Tourism;

6. For each officer, director, and employee of Mammoth Lakes Tourism, a statement of qualifications or resume for that individual's job;
7. Form 700s (conflict of interest disclosure statements) for each officer, director, and employee;
8. Expense reimbursements for each officer, director, and employee since inception;
9. Copies of all contracts with vendors;
10. MLT policies; and
11. Articles of Incorporation and Bylaws.

We then interviewed MLT's executive director and the chair of its Board of Directors. Thereafter, MLT provided the following additional documents:

12. The current MLT budget;
13. 2012 and 2013 Return on Investment studies by Leisure Trends;
14. March 2014 Interactive Report;
15. 2014 Mammoth Lakes Tourism Facts and Figures;
16. March 2014 Monthly Report; and
17. 2013-14 Measure A Proposed Master Budget.

Discussion:

MLT was incorporated on June 15, 2010, as a California non-profit mutual benefit corporation. It is exempt from both federal and state taxes. According to its Bylaws, its principal purpose is "to engage in such activities as are meant to improve the tourism industry in the Town. These may include activities outside the Town that are in furtherance of these purposes."

MLT was formed for the purpose of assuming, by contract, tourism-related functions that were previously performed by Town government. At the outset, this was done by means of a month-to-month contract. That changed on November 20, 2013, when Town Council approved a long-term agreement that went into effect retroactively as of July 1, 2013 (the "Agreement").

MLT's compensation under the terms of the Agreement consists of the following for fiscal years 2013-2014 through 2017-2018:

1. 2.5% of the Transient Occupancy Tax (TOT) collected by the Town; and

2. The entire amount of the Business License Tax collected by the Town, less \$215,562 per year, provided as part of the Town's financial restructuring plan.

These sums are paid after a deduction for the Town's administrative costs which, under the Agreement, may not exceed \$10,000 per year. According to the finance department employee we interviewed, the maximum \$10,000 deduction does not cover the Town's administrative costs.

In addition, the Town collects and passes through to MLT all TBID funds, "less funding support for the Town's employee assigned to TBID collection, enforcement, and related work as agreed upon" by MLT and the Town.

In exchange, MLT provides the Town "all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional services related to Town's tourism, attraction, marketing, and branding" as more fully described in an attachment to the Agreement (Exhibit A, Scope of Services and Deliverables).

The contract expires on June 30, 2018, which coincides with the five-year TBID assessment.

MLT is governed by a nine-member Board of Directors, none of whom are compensated. Three of these positions are appointed and serve no specified term — one each designated by Mammoth Lakes Chamber of Commerce, Mammoth Mountain Ski Area, and Town Council. The other six serve two- or three-year terms and are elected by the Board of Directors — two from the lodging industry, and one each from restaurants, retail, cultural arts/special events, and "at large" interests within the Town.

MLT's day-to-day operations are overseen by an executive director. The executive director is also responsible for directing six other employees:

1. director of marketing;
2. director of international sales and marketing;
3. director of interactive marketing;
4. marketing manager;
5. media relations manager; and
6. marketing assistant.

We reviewed resumes and job descriptions for each of the incumbents in these positions. In each case, the incumbent's skills appeared to be reasonably well suited to their assigned responsibilities. We also reviewed compensation information for each, including the executive director, which we also found reasonable in each case.

Transparency

MLT, as a nonprofit corporation designated by the Town to perform Town functions, constitutes a

local legislative body. It is therefore subject to open meetings requirements under California's Brown Act (Government Code section 54950, *et seq.*). By all appearances, MLT complies with these requirements, properly noticing meetings of its Board and permitting public access and participation.

MLT is also subject to the California Public Records Act (Government Code section 6250, *et seq.*), which gives the public a right of access to documents and records "concerning the conduct of the people's business." As discussed above, the Grand Jury submitted a Public Records Request to MLT. Our written request was dated February 26, 2014. MLT responded on March 20, 2014, with documents and information responsive to most of the categories specified in the request. The only exceptions were to the requests for salary information and expense reimbursement records for each employee. In both cases, MLT objected (through its attorney) that producing the information would violate affected employees' personal privacy rights.

In lieu of specific salary information, MLT initially produced "salary ranges" for each employee. After further discussion, however, MLT agreed (through its attorney) that specific salary information is not protected by the individual right of privacy and that it would produce the records as requested. The Grand Jury never received these records, however, a fact that we attribute to an oversight on MLT's part as well as our own failure to follow up.

MLT initially refused to produce employee expense records altogether, because of the possibility that they could include employees' private financial information such as social security numbers or credit card numbers. After further discussion, MLT agreed (through its executive director) to allow us to examine the original expense records in the offices of its accounting firm, and to make copies of the records as warranted (with private financial information removed).

In addition to the records request, we interviewed MLT's executive director and the chair of the organization's Board of Directors. We found both to be open, cooperative, and helpful during the interview process; they even volunteered additional information we had not asked for. In addition, they agreed to provide us with other information we had not previously requested, and followed through promptly.

An organization's website is another important opportunity for transparency. We reviewed MLT's website - VisitMammoth.com - which the executive director acknowledged is not without problems. This website predates MLT's involvement and has been rebuilt once since then, but has outlived its useful life as a medium to draw visitors to Mammoth Lakes. We found that it is not user-friendly. Specific examples of deficiencies include: lack of a comprehensive calendar and downloadable pdf version of the visitor guide. These recommendations had already been made to MLT by others and, as stated, they are aware of the problems. MLT is currently working on a revamped website that it expects to launch by Thanksgiving 2014. The development process includes an assessment of needs as well as auditing the current website to identify additional flaws.

We noted the difficulty at present in finding information about MLT on the web, either on the Town website or on MLT's current website. While we understand that it might not be advantageous to include nuts and bolts information about MLT as an organization on a website designed to increase tourism, having such information readily available to concerned citizens via the web would enhance MLT's efforts with regard to transparency. The Grand Jury learned that MLT has

anticipated this concern and is preparing to launch a new website — MLTIndustryinsider.com, which will have more in-depth information about the business end of MLT. This website will be available to the general public.

On April 30, 2014, MLT gave a 1-1/2 hour presentation to the public on its marketing plans for summer 2014. The presentation included information about MLT's revenues, expenditures, and accomplishments in fiscal years 2012 and 2013, including the return on investment as shown by studies commissioned by MLT. Each of the MLT employees who were in town introduced themselves and explained what they do for the organization.

MLT also makes an annual report and presentation to Town Council. This information is open and available to the public.

Financial Controls

Since MLT's inception, the accounting firm of Porter & O'Dell has handled its day-to-day accounting needs. Payroll is done by direct deposit, prepared by Porter & O'Dell. For accounts payable, checks are cut every two weeks. The executive director organizes the payables and presents them to MLT's treasurer (an office held for a one-year term by a member of the Board of Directors). The treasurer reviews and approves the payments, which are then submitted to Porter & O'Dell. Porter & O'Dell prepares the checks. The executive director is authorized to sign checks up to \$500. Over that amount, checks must be countersigned by a member of the Board's Executive Committee (*i.e.*, the chair, vice-chair, secretary or treasurer).

The Town pays MLT all revenues due under the Agreement by check (not electronic deposit). The executive director deposits the checks. MLT maintains a checking and savings account specifically for TBID funds, and separate checking and savings accounts for Measure A funds (TOT and Business License Tax). This makes it easier for MLT to track the expenditure of TBID monies, which by law must be used to provide specific benefit to businesses subject to the assessment.

This year, for the first time, Porter & O'Dell prepared audited financials on behalf of MLT. The audited financials cover fiscal years (ending June 30) 2011, 2012, and 2013. The Grand Jury was provided with only a draft, as the final reports had not yet been completed.

We independently reviewed employee expense records, finding them generally reasonable and appropriate. We noted that, in general, MLT employees charge business-related travel and meal expenses to credit cards for which they are personally responsible. They then recover their costs by submitting claims for reimbursement. The only exception is the executive director, who instead uses a "company credit card." This credit card may also be used by other MLT employees, with the executive director's permission, for MLT's general business expenses, such as advertising and office supplies. The executive director is responsible for turning over credit card receipts for this account, including his travel/entertainment expenses, to Porter & O'Dell, which uses them to reconcile and pay the periodic credit card statement.

In general, employee travel and entertainment expense receipts include a statement of the business purpose and the names of each participant. However, we saw too many instances in which this information was not provided. This led to a concern about possible lack of adequate enforcement of this requirement.

Finally, we also reviewed copies of MLT's policies. In particular, we noted that under Paragraph 3.5.5 of the Agreement, MLT is required to provide each of its employees with a copy of the Town's Fraud Policy and then provide the Town with a signed statement by each employee certifying that they received and read it. As of May 2, 2013, when we interviewed MLT representatives, the organization had not yet complied with this provision.

Findings and Recommendations:

1. **Finding:** Mammoth Lakes Tourism appears to operate with a reasonable degree of transparency. It appears to comply with open meeting requirements under the Brown Act and responded appropriately to the Grand Jury's Public Records Act request. It has also made appropriate efforts to disseminate information about its operations to the public by means of a public event on April 30, 2014, and VisitMammoth.com. Its leaders acknowledged that the quality of the website is not up to par, and that there are plans to launch a re-vamped website by Thanksgiving 2014. They also acknowledged that more detailed financial information about MLT and its operation is not currently available on the web, but that this will be remedied with the impending launch of MLTIndustryinsider.com.

Recommendation: Ensure that a new, user-friendly VisitMammoth.com goes live by Thanksgiving 2014. In addition, ensure that MLTIndustryInsider.com contains sufficient information to allow concerned citizens to make an informed assessment of MLT's performance, including information on operations, marketing plans, budgets, revenues, expenses, audited financials, Board agendas and minutes, relevant travel statistics and trends, and return on investment. When this website is ready to go live, it should be widely advertised within the Town.

2. **Finding:** Bookkeeping and accounting services are provided by an independent accounting firm, Porter & O'Dell. Payroll is done by direct deposit, prepared by Porter & O'Dell. For accounts payable, checks are cut every two weeks. The executive director organizes the payables and presents them to MLT's treasurer (an office held for a one-year term by a member of the Board of Directors) for approval. The treasurer reviews and approves the payments, which are then submitted to Porter & O'Dell. Porter & O'Dell prepares the checks. The executive director is authorized for amounts up to \$500. Over that amount, checks must be countersigned by a member of the Board's Executive Committee (*i.e.*, the chair, vice-chair, secretary or treasurer).

Recommendation: None.

3. **Finding:** In general, MLT employees charge business-related travel and meal expenses to credit cards for which they are personally responsible. They then recover their costs by submitting claims for reimbursement. The only exception is the executive director, who instead uses a credit card billed directly to MLT. This credit card is also used by other MLT employees, with the executive director's permission, for MLT's general business expenses, such as advertising and office supplies. The executive director is responsible for turning over credit card receipts for this account, including his travel/entertainment expenses, to Porter & O'Dell, which uses them to reconcile and pay the periodic credit card statement.

Recommendation: The Grand Jury reviewed the executive director's expenses as

charged on the MLT credit card and found them appropriate, even fairly modest. In the interest of increased accountability, however, we recommend that the executive director be required to use the same procedure as other employees for travel and entertainment expenses — that is, charge these costs to a separate credit card for which he is personally responsible and then submit expense reimbursement claims.

4. **Finding:** In reviewing employee expense records, we found the expenses incurred to be reasonable and appropriate. We did note, however, that receipts for business meals/entertainment too frequently failed to identify the business purpose for the expense and the names of the persons who attended.

Recommendation: Receipts for meals/entertainment should always identify the business purpose and names of the persons who attended.

5. **Finding:** Paragraph 3.5.5 of the Agreement requires MLT to provide each of its employees with a copy of the Town’s Fraud Policy. MLT is then required to provide the Town with a signed statement by each employee certifying that they have received and read it. As of May 2, 2013, MLT had not complied with this provision.

Recommendation: MLT should immediately comply with Paragraph 3.5.5 of the Agreement.

The Mono County Grand Jury closed the investigation of this matter on _____, 2014.