

MEMORANDUM OF UNDERSTANDING

By and Between the TOWN OF PALMER LAKE and the PALMER LAKE RESTORATION PROJECT, INC., (dba AWAKE THE LAKE/AWAKE PALMER LAKE), a Colorado non-profit corporation

This Memorandum of Understanding (this "MOU" or this "Agreement") is entered into this ___ day of _____, 2020 ("Effective Date") by and between the Town of Palmer Lake, Colorado ("Town") and the Palmer Lake Restoration Project, Inc., dba Awake the Lake, a Colorado non-profit corporation ("ATL") (collectively, the "Parties").

RECITALS

WHEREAS, Palmer Lake ("Lake") is a prominent geographic feature that helped shape the historical evolution of the Town; and

WHEREAS, the Lake is generally described as a naturally occurring freshwater lake of approximately 11.5 surface acres that is surrounded by approximately 32 acres of park land owned by the Town and by El Paso County (the "Parkland"); and

WHEREAS, the Town is currently restoring and protecting the Lake; and

WHEREAS, there is limited funding currently identified by and available to the Town to perform the necessary work to develop, operate and/or maintain the Lake and Parkland and to create a premier amenity with a high level of design excellence, and as a result the Town is interested in seeking support from a nonprofit entity to financially assist the Town with these functions; and

WHEREAS, towns throughout the country have entered into public-private partnerships with nonprofit organizations to create and revitalize urban parks and maximize the development, operation, and maintenance of such parks; and

WHEREAS, the ATL was formed as a Colorado nonprofit corporation known as the Palmer Lake Restoration Project, Inc., on September 12, 1995 to, among other things, (i) facilitate and aid the Town with respect to the preservation of the Lake and adjacent Parkland, (ii) raise a portion of the necessary funds to defray costs of the preservation, restoration, landscaping and other amenities, and (iii) assist the Town with developing a master plan for the Lake and Parkland to govern their future use and development of amenities; and

WHEREAS, the Board of Trustees of the Town support a structure of potential roles and responsibilities of the Parties; and

NOW, THEREFORE, in order to advance their mutual objectives with respect to the Lake and Parkland and to commence a collaborative process with each other, the Parties agree as follows:

SECTION 1 – PURPOSE OF AGREEMENT

The purpose of this Agreement is (a) to lay the foundation for a cooperative working relationship between the Parties, (b) to establish the role of each Party in that relationship, as the Parties continue to work together to further their common goal of preserving, restoring, developing, enhancing, rehabilitating and maintaining the Lake and Parkland, and (c) to document the unique cooperative public relationship and purpose of the Parties, as opposed to other charitable nonprofit entities.

SECTION 2 – AWAKE THE LAKE

2.1 Responsibilities of ATL under this Agreement. The responsibilities of ATL shall include the following:

- (a) Raise funds on an initial and ongoing basis to pay for a portion of the costs of design, construction, maintenance, and operation of projects that have been agreed upon by both ATL and the Town Board of Trustees associated with the Lake and Parkland.
- (b) Work in cooperation with the Town and subject to the Town's Comprehensive Plan to assist in the design, construction, maintenance and operation of the Lake and Parkland, and projects associated therewith.
- (c) Assist the Town with public outreach with respect to the Lake.
- (d) Promote, preserve, and encourage the effective and responsible operation and usage of the Lake and Parkland.
- (e) ATL funds shall be expended only on improvements to public land within the Town. No funds raised by ATL, or contributed to ATL, will be spent on improvements to private land. To the extent any private land will be converted to public land to be considered Town Park area, ATL will be required to acquire either fee ownership of such land or acquire a permanent easement for park use, either by purchase of the land or by contribution of the land by the private owners. The Land may then be donated to and accepted by the Town.
- (f) While funds raised and collected by ATL shall be expended only for the purposes described within this MOU, it is expressly agreed and acknowledged that, as a nonprofit corporation independent of the Town, ATL may further restrict the use of such ATL-raised funds in its sole discretion, and no funds raised by ATL shall be considered funds available to the Town for its own discretionary use consistent with this MOU until such time as ATL makes such funds available.

2.2 Directors and Officers.

(a) As of the date of this MOU, the ATL board is composed of the following officers and directors:

Jeff Hulsmann	President
Chris Cummins	Vice President
Bonnie Tinker	Secretary
Stan Benton	Treasurer
Cindy Graff	Director
Darin Dawson	Director
Linda Vier	Director

(b) A representative from the Town, as designated by the Board of Trustees, will be a non-voting ex-officio member of the ATL board, in order to ensure transparency and facilitate communication of ATL business, projects and fundraising efforts to the Town.

2.3 Transparency of Operations.

(a) The ATL board shall from time to time hold board meetings which shall be open to the public. Agendas of such meetings will be published in advance on the ATL's website. At a minimum the ATL board will hold board meetings at the required times that have been set as a condition of their 501(c) status.

(b) ATL will make its annual IRS form 990 reports available for public inspection and will make available annual financial statements, prepared by a CPA.

(c) ATL will produce an annual report and present that report at a Board of Trustee Meeting, and will be available for reporting on a more frequent basis to the Town Board of Trustees upon request.

(d) All books and records of the ATL, audits, board meeting minutes, annual reports, and information regarding donations will remain available to the public, subject to requests for confidentiality by specific donors and with respect to legal, employment, strategic planning for donor outreach and development, and other similar matters.

(e) ATL will continue to maintain its public website with information about ATL, its operations, and the Lake.

(f) Neither ATL nor its meetings are or shall be subject to the Open Meetings Act. Elected officials attending ATL meetings, however, are and will be subject to applicable provisions of the Open Meetings Act and responsibility for posting any required notice will be with the public entity that such officials represent.

(g) Funds raised by ATL for projects within the Town, or by solicitation, advertisement, or other representation that such projects will be done within the Town, must be utilized only for the purpose represented for the solicitation of such funds. ATL will maintain records to show compliance with this provision and such records will be available for inspection by any interested party.

SECTION 3 – THE TOWN

3.1 Responsibilities of the Town under this Agreement. The responsibilities of the Town shall include the following:

(a) It is the Town's intent through this Agreement to create a public-private partnership that will result in ATL and the Town designing, developing, operating, maintaining and managing the Lake and Parkland through specific projects as agreed upon by the Town and ATL. However, nothing herein shall grant or create AWL any ownership, authority, or control over any Town property. Control over all Town Property rests solely with the Board of Trustees.

(b) The Town shall have the right to supervise, and direct all work performed on the Lake and Parkland, including, but not limited to, projects, construction of capital improvements, landscaping, and other initiatives for the purpose of ensuring that such work is performed in accordance with the Town's Comprehensive Plan, and in accordance with any and all applicable Town Resolutions and Ordinances.

(c) The Board of Trustees may approve on an annual or occasional basis, a slate of events presented by ATL, to be held on Town property. The Town acknowledges that certain ATL fundraising efforts are somewhat spontaneous, and that failure to be included on such annually approved slate of events shall in no instance mean such events may not be approved by the Board of Trustees from time to time throughout the years as may be requested by ATL. Notwithstanding this MOU, no events may be held on Town property without prior approval by the Town Board of Trustees.

(d) To the extent feasible and otherwise compliant with the law, and to avoid the purchase of unnecessary and duplicative insurance coverage by ATL and/or the Town, the Town will include approved ATL events under applicable insurance coverage maintained by the Town so long as there is no cost to the Town for such coverage. Otherwise, ATL shall be responsible for securing such insurance coverage for ATL events.

Section 4 – General Conditions

4.1 Cooperation. The Parties agree to work together at all times in good faith, meet regularly as needed, and keep each other informed as to activities of the other, and

maintain at all times a designated representative who shall serve as a point of contact for communications.

4.2 Costs. Each Party shall be responsible for all costs and expenses associated with the preparation and adoption of this MOU, and future actions related thereto. Any and all sums of money required by the Town will be subject to appropriation by the Town Board of Trustees. Failure to appropriate shall not constitute a violation, breach, or otherwise to this MOU.

4.3 Term. This MOU shall be perpetual in nature, subject to written modification signed by authorized representatives of each party, and further subject to termination by either party upon 30 days written notice to the other.

4.3 Jurisdiction and Governing Law. This MOU shall be performed and enforced in Palmer Lake, Colorado, and shall be construed in accordance with the laws of the State of Colorado.

4.4 Severability. In the event any provision of this Agreement is found to be invalid or unenforceable, it may be severed from the Agreement by court order and the remaining provisions of the Agreement shall continue to be binding and effective, provided the central purposes of this Agreement continue to be served.

4.5 Notices. Any notice which a Party is required or may desire to give or deliver to the other Party shall be given in writing by (i) personal delivery; (ii) certified mail, return receipt requested, postage prepaid; (iii) a national overnight courier service that provides written evidence of delivery; or (iv) email transmission and addressed as follows:

With respect to the Town: Town Administrator
Town of Palmer Lake
42 Valley Crescent
P.O. Box 208
Palmer Lake, CO 80133
Email: bob@palmer-lake.org

With copies to: Town Attorney
Matthew Z. Krob
8400 E. Prentice Avenue, Penthouse
Greenwood Village, CO 80111
Email: matt@kroblaw.com

With respect to ATL: ATL President
Jeff Hulsmann
c/o O'Malley's Steak Pub
104 Highway 105
Palmer Lake, CO 80133

Email: punchyco@gmail.com

4.6 Counterparts; Electronic Signatures. This Agreement may be executed in counterparts, and the signature pages combined to constitute one document. Facsimile or electronically transmitted signatures will have the same force and effect as original signatures.

4.7 No Waiver Of Immunity. Nothing herein shall be construed as a waiver by the Town of any of the immunities, privileges and defenses available to it under the Colorado Governmental Immunity Act, as may be amended from time to time, or arising under common law.

Dated as of the Effective Date set forth above, which shall be the date the last Party signs this Agreement.

(signature page follows)

ATL:
Palmer Lake Restoration Committee d/b/a/
Awake the Lake, a Colorado nonprofit corporation

By: _____
Jeff Hulsmann, President

Date: _____

Town of Palmer Lake:

Mayor, John Cressman

Date: _____

Attest: _____
Town Administrator

