

Town of Palmer Lake, Colorado
AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this _____ day of November, 2024, by and between the Town of Palmer Lake, State of Colorado (hereinafter referred to as the "Town"), and Stolfus and Associates, Inc. (hereinafter referred to as "Consultant").

RECITALS:

- A. The Town seeks professional services.
- B. Consultant has held itself out to the Town as having the requisite expertise and experience to perform the required services for the Project.

NOW, THEREFORE, it is hereby agreed, for the consideration hereinafter set forth, that Consultant shall provide to the Town professional consulting services for the Project.

I. SCOPE OF SERVICES

Consultant shall furnish all labor and materials to perform the services required for the complete and prompt execution and performance of all duties, obligations and responsibilities for the Project, which are described or reasonably implied from **Exhibit A**, which is attached hereto and incorporated herein by this reference.

II. THE TOWN'S OBLIGATIONS/CONFIDENTIALITY

The Town shall provide Consultant with reports and such other data as may be available to the Town and reasonably required by Consultant to perform hereunder. No project information shall be disclosed by Consultant to third parties without prior written consent of the Town or pursuant to a lawful court order directing such disclosure. All documents provided by the Town to Consultant shall be returned to the Town. Consultant is authorized by the Town to retain copies of such data and materials at Consultant's expense.

III. OWNERSHIP OF INSTRUMENTS OF SERVICE

The Town acknowledges that the Consultant's documents are an instrument of professional service. Nevertheless, the documents prepared under this Agreement shall become the property of the Town upon completion of and payment for the services. Any reuse of the Consultant's documents is at the Town's own risk.

IV. COMPENSATION

A. In consideration for the completion of the services specified herein by Consultant, the Town shall pay Consultant an amount not to exceed \$33,930. Payment shall be made in accordance with the schedule of charges in **Exhibit A**, which is attached hereto and incorporated herein by this reference. Invoices will be itemized and include hourly breakdown for all personnel and other charges. The maximum fee specified herein shall include all fees and expenses incurred by Consultant in performing all services hereunder.

B. Consultant may submit monthly or periodic statements requesting payment. Such request shall be based upon the amount and value of the services performed by Consultant under this Agreement, except as otherwise supplemented or accompanied by such supporting data as may be required by the Town.

1. All invoices, including Consultant's verified payment request, shall be submitted by Consultant to the Town no later than the twenty-fourth (24th) day of each month for payment, pursuant to the terms of this Agreement. In the event Consultant fails to submit any invoice on or before the twenty-fourth (24th) day of any given month, Consultant defers its right to payment, pursuant to said late invoice, until the twenty-fourth (24th) day of the following month.
2. Progress payments may be claimed on a monthly basis for reimbursable costs actually incurred to date as supported by detailed statements, including hourly breakdowns for all personnel and other charges. The amounts of all such monthly payments shall be paid within thirty (30) days after the timely receipt of invoice, as provided by this Agreement.

C. The Town has the right to ask for clarification on any Consultant invoice after receipt of the invoice by the Town.

D. In the event payment for services rendered has not been made within forty-five (45) days from the receipt of the invoice for any uncontested billing, interest will accrue at the rate of eight percent (8%) per annum compounded annually. In the event payment has not been made within ninety (90) days from the receipt of the invoice for any uncontested billing, Consultant may, after giving seven (7) days' written notice and without penalty or liability of any nature, suspend all authorized services specified herein. In the event payment in full is not received within thirty (30) days of giving the seven (7) days' written notice, Consultant may terminate this Agreement. Upon receipt of payment in full for services rendered, Consultant will continue with all authorized services.

E. Final payment shall be made within sixty (60) calendar days after all data and reports (which are suitable for reproduction and distribution by the Town) required by this Agreement have been turned over to and reasonably approved by the Town and upon receipt by the Town of Consultant's written notification that services required herein by Consultant have been fully completed in accordance with this Agreement and all data and reports for the Project.

V. COMMENCEMENT AND COMPLETION OF SERVICES

Within seven (7) days of receipt from the Town of a Notice to Proceed, Consultant shall commence services on all its obligations as set forth in the Scope of Services or that portion of such obligations as is specified in said Notice. Except as may be changed in writing by the Town, the Project shall be complete and Consultant shall furnish the Town the specified deliverables, as provided in **Exhibit A**.

VI. CHANGES IN SCOPE OF SERVICES

A change in the Scope of Services shall constitute any material change or amendment of services or time for completion of such services, which is different from or additional to the Scope of Services specified in Section I of this Agreement. No such change, including any additional compensation, shall be effective or paid, unless authorized by written amendment executed by the Town. If the requested changes in the scope of services will increase the costs and/or if the requested changes will affect the time for completion, then the Town and Consultant shall attempt to agree in writing on a description of the proposed changes and an appropriate adjustment in compensation and/or time for completion resulting from such changes, which the parties shall negotiate in good faith. If Consultant proceeds without such written authorization, then Consultant shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee or representative of the Town shall have the authority to enter into any changes or modifications, either directly or implied by a course of action, relating to the terms and scope of this Agreement.

VII. PROFESSIONAL RESPONSIBILITY

A. Consultant hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, as required by law.

B. The services performed by Consultant shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of services in the applicable community. Subject to the foregoing standard of care, Consultant may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, the Town, and the publishers of technical standards.

C. Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by Consultant under this Agreement. Consultant shall, at its sole cost, correct or resolve any errors or deficiencies in its designs, drawings, specifications, reports, and other services, that constitute a breach of this Agreement.

D. Approval by the Town of drawings, designs, specifications, reports and incidental services or materials furnished hereunder shall not in any way relieve Consultant of responsibility for technical adequacy of the services. Neither the Town's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Consultant shall be and remain liable in accordance with applicable performance of any of the services furnished under this Agreement.

E. The rights and remedies of the Town provided for under this Agreement are in addition to any other rights and remedies provided by law.

F. Provided however, (1) the Town acknowledges that the Consultant's work product is not intended or represented to be suitable for use on a particular project unless completed by

Consultant or for use or reuse by Consultant or others on extensions of a project, on any other project, or for any other use or purpose, without written verification or adaptation by Consultant; (2) any such use or reuse, or any modification of the Consultant's work product, without written verification, completion, or adaptation by Consultant, as appropriate for the specific purpose intended, will be at the Town's sole risk and without liability or legal exposure to Consultant or to its officers, directors, members, partners, agents, employees, and consultants; (3) The Town will release and hold harmless the Consultant and its officers, directors, owners, employees and consultants from any losses, expenses, or claims arising out of or related to any re-use or modification of the Consultant's work product by the Town, without the written verification, completion or adaptation by Consultant. The Consultant shall not be liable for damages or delays resulting from the actions or inactions of any third-party contractor that is not under the direct control of the Consultant, including but not limited to government agencies that have review and permit authority.

VIII. COMPLIANCE WITH LAW

The services to be performed by Consultant hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

IX. INDEMNIFICATION

To the fullest extent permitted by law, the Consultant agrees to indemnify and hold harmless the Town, and its elected and appointed officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which are directly caused by the Consultant's breach of this Agreement, if and to the extent such injury, loss, or damage is caused by the negligent act, omission, or other fault of the Consultant or any subcontractor of the Consultant, or any officer, employee, or agent of the Consultant, or any other person for whom Consultant is responsible. The Consultant shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands. The Consultant shall further bear all other direct and verifiable costs and expenses incurred by the Town or Consultant and related to any such liability, claims and demands, including but not limited to court costs, expert witness fees and reasonable attorneys' fees if the court determines that these incurred costs and expenses were caused by such negligent acts, errors, and omissions or other fault of the Consultant. Notwithstanding the foregoing, if the Services are for architectural, engineering, or surveying services; design; construction; alteration; repair; or maintenance of any building, structure, highway, bridge, viaduct, water, sewer, or gas distribution system, or other works dealing with construction, or any moving, demolition, or excavation connected with such construction, the Consultant's duty to defend, indemnify and hold harmless the Town, and its elected and appointed officials and employees as set forth in this section shall only arise upon determination, by adjudication, alternative dispute resolution, or mutual agreement between Consultant and the Town, of the Consultant's liability or fault pursuant to C.R.S. Section 13-21-111.5. The Town shall be entitled to its costs and attorneys' fees incurred in any action to enforce the provisions of this Section where it is judicially determined to be the prevailing party. The Consultant's indemnification obligation shall not be construed to extend to any injury, claim, cause

of action, demand, liability, loss, or damage which is caused by the act, omission, or other fault of the Town or of any third party for which the Consultant has no responsibility.

X. INSURANCE

A. Consultant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands and other obligations assumed by Consultant, pursuant to Section IX, Indemnification, above. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law. Consultant shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to Section IX, Indemnification, above, by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.

B. Consultant shall procure and maintain and shall cause any subconsultant of Consultant to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Town. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Consultant, pursuant to Section IX, Indemnification, above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Worker's compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of services under this Agreement, and Employer's Liability insurance with minimum limits of Five Hundred Thousand Dollars (\$500,000) each claim, Five Hundred Thousand Dollars (\$500,000) disease - policy limit, and Five Hundred Thousand Dollars (\$500,000) disease - each employee.
2. Commercial general liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products and completed operations. The policy shall contain a severability of interests provision.
3. Professional liability insurance with minimum limits of One Million Dollars (\$1,000,000) each claim and Two Million Dollars (\$2,000,000) annual aggregate, and Consultant shall maintain such coverage for at least three (3) years from the termination of this Agreement.
4. The policy required by Paragraph 2, above shall be endorsed to include the Town and the Town's officers, employees and consultants as additional insureds. Every policy required above shall be primary insurance, with the exception of Professional Liability and Worker's Compensation, and any insurance carried by the Town, its officers, its employees or its consultants shall be excess and not contributory

insurance to that provided by Consultant. No additional insured endorsement to the policy required by Paragraph 1, above shall contain any exclusion for bodily injury or property damage arising from completed operations. Consultant shall be solely responsible for any deductible losses under any policy required above.

5. The certificate of insurance provided for the Town shall be completed by Consultant's insurance agent as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect, and shall be reviewed and approved by the Town prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled or terminated until at least thirty (30) days' prior written notice has been given to the Town. The completed certificate of insurance shall be sent to:

Dawn A. Collins, Town Administrator / Clerk
Town of Palmer Lake
42 Valley Crescent
P.O. Box 208
Palmer Lake, Colorado 80133

6. Failure on the part of Consultant to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a material breach of agreement upon which the Town may immediately terminate this Agreement or, at its discretion, the Town may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by Consultant to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to Consultant from the Town.
7. The Town reserves the right to reasonably request and receive a certified copy of any policy and any endorsement thereto.
8. The parties hereto understand and agree that the Town, its officers and its employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently Four Hundred Twenty-Four Thousand Dollars (\$424,000) per person and One Million, One Hundred Ninety-Five Thousand Dollars (\$1,195,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Colo. Rev. Stat. §24-10-101, et seq., 10 Colo. Rev. Stat., as from time to time amended, or otherwise available to the Town, its officers or its employees.

XI. NONASSIGNABILITY

Neither this Agreement nor any of the rights or obligations of the parties hereto shall be assigned by either party without the written consent of the other.

XII. TERMINATION

This Agreement shall terminate at such time as the services in Section I are completed and the requirements of this Agreement are satisfied, or upon the Town's providing Consultant with seven (7) days' advance written notice, whichever occurs first. In the event the Agreement is terminated by the Town's issuance of said written notice of intent to terminate, the Town shall pay Consultant for all services previously authorized and completed prior to the date of termination. If, however, Consultant has substantially or materially breached the standards and terms of this Agreement, the Town shall have any remedy or right of set-off available at law and equity. If the Agreement is terminated for any reason other than cause prior to completion of the Project, any use of documents by the Town thereafter shall be at the Town's sole risk, unless otherwise consented to by Consultant.

XIII. CONFLICT OF INTEREST

The Consultant shall disclose any personal or private interest related to property or business within the Town. Upon disclosure of any such personal or private interest, the Town shall determine if the interest constitutes a conflict of interest. If the Town determines that a conflict of interest exists, the Town may treat such conflict of interest as a default and terminate this Agreement.

XIV. VENUE

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of El Paso, State of Colorado.

XV. INDEPENDENT CONTRACTOR

Consultant is an independent contractor. Notwithstanding any provision appearing in this Agreement, all personnel assigned by Consultant to perform services under the terms of this Agreement shall be, and remain at all times, employees or agents of Consultant for all purposes. Consultant shall make no representation that it is the employee of the Town for any purposes.

THE PARTIES HERETO UNDERSTAND THAT THE CONSULTANT IS NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS OR UNEMPLOYMENT COMPENSATION BENEFITS AND IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED PURSUANT TO THIS AGREEMENT.

XVI. NO WAIVER

Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligations of this Agreement.

XVII. ENTIRE AGREEMENT

This Agreement and the attached Exhibit A is the entire Agreement between Consultant and the Town, superseding all prior oral or written communications. None of the provisions of this Agreement may be amended, modified or changed, except as specified herein.

XVIII. NOTICE

Any notice or communication between Consultant and the Town which may be required, or which may be given, under the terms of this Agreement shall be in writing, and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first class United States mail, addressed as follows:

The Town: Dawn A. Collins, Town Administrator / Clerk
Town of Palmer Lake
42 Valley Crescent
P.O. Box 208
Palmer Lake, Colorado 80133
dawn@palmer-lake.org

Copy to: Scotty Krob, Town Attorney
KROB LAW OFFICE, LLC
8400 E. Prentice Ave., Penthouse
Greenwood Village, CO 80111
scott@kroblaw.com

Consultant: Stolfus & Associates Inc
5690 DTC Blvd. #330W
Greenwood Village, CO 80111
ATTN:

XIV. WAIVER OF CONSEQUENTIAL DAMAGES & LIMITATION OF LIABILITY

Notwithstanding any other provision to the contrary, and to the fullest extent permitted by law, neither the Town nor Consultant shall be liable to the other for any special, incidental, indirect, exemplary, punitive or consequential damages arising out of or connected in any way to the project or this Agreement. This mutual waiver of such damages shall include, but not be limited to, loss of use, loss of profit, loss of business or income or any other consequential damages that either party may have incurred from any cause of action whatsoever, EXCLUDING DAMAGE OR LOSS TO, OR INJURY OR DEATH OF, THIRD PARTIES, OR THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY HERETO.

(SIGNATURES ON FOLLOWING PAGES)

SIGNATURE PAGE TO AGREEMENT FOR PROFESSIONAL SERVICES

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in triplicate, as of the date first written above.

TOWN OF PALMER LAKE, COLORADO

By: _____
Mayor

CONSULTANT: Stolfus & Associates, Inc.

By: _____
Title: _____

STATE OF
COLORADO)
) ss.
COUNTY OF)
EL PASO)

Subscribed and sworn to before me by _____ **(CONSULTANT)** and _____ **(TOWN)**, who appeared personally before me this ____ day of _____, and who did swear, affirm, certify, depose, and warrant that he/she/they have signed the hereinabove instrument as his/her/their sui juris act and who is/are legally authorized to sign the hereinabove instrument and do hereby attach documentary evidence of his/her/their authority if acting on behalf of any fictitious legal entity of public or private law.

Notary

My Commission Expires: _____ (SEAL)