

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, entered into the \_\_\_\_ day of October, 2022, by and between the Town of Palmer Lake, hereinafter called "Client," and MEYER & SAMS, INC. d/b/a GMS, INC., a Colorado corporation, hereinafter called "Engineer," is as follows:

**NOW, THEREFORE,** in exchange of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Client and Engineer, with intent to be legally bound, covenant and agree as follows:

The Client engages Engineer to perform professional services for a project known and described as Upper Glenway Street, Water and Drainage Improvements, hereinafter called the "Project."

A. Engineer agrees to provide and perform certain professional services for Client upon the Project as follows: Per attached Scope of Design Services for the Upper Glenway Street, Water and Drainage Improvements.

B. Period in which services are to be rendered: The design work associated with the Project will have a term which is correlated to the timeline and expiration dates of the Client's funding assistance contracts. The intent is to complete the work no later than December 31, 2023.


C. Client's responsibility shall be as follows: Provide data requested by the Engineer pertaining to the street, water and drainage systems, including but not limited to: system operations, system problem areas, available system mapping, available property information and right-of-way mapping, input on growth projections and areas of future growth and development, any correspondence with the Colorado Department of Public Health and Environment, Colorado Department of Transportation, Lewis-Palmer School District 38, and make the systems and project areas available for access by Engineer's staff.

D. Client agrees to pay Engineer as compensation for its services as follows: Lump sum fee of \$165,300 for design related work on the project. Statements shall be provided to the Client as work progresses. Engineer will assist the Client in preparing required draw requests for Client to obtain funds from the Colorado Department of Transportation grant to the extent available for design services.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Agreement upon the terms, conditions and provisions above stated, and as stated on the attachment hereto entitled Standard Provisions of Agreement for Professional Services, which is hereby incorporated into this Agreement by reference, the day and year first above written.

MEYER & SAMS, INC. d/b/a GMS, INC.  
611 N. Weber Street, Suite 300  
Colorado Springs, CO 80903

Town of Palmer Lake  
42 Valley Crescent  
Palmer Lake, CO 80133

By   
Title Principal

By \_\_\_\_\_  
Title \_\_\_\_\_

STANDARD PROVISIONS OF AGREEMENT  
FOR PROFESSIONAL SERVICES

The Client and Engineer agree that the following provisions shall be a part of their agreement.

1. Neither the Client nor Engineer shall assign its interest in this agreement without the written consent of the other.

2. All agreements on Engineer's part are contingent upon, and Engineer shall not be responsible for damages or be in default, or be deemed in default, by reason of delays in performance by reason of strikes, lock-outs, accidents, pandemics, acts of God and other delays unavoidable or beyond Engineer's reasonable control, or due to shortages or unavailability of labor at established area wage rates or delays caused by failure of Client or Client's agents to furnish information or to approve or disapprove Engineer's work promptly, or due to late, slow, or faulty performance by Client, other contractors or governmental agencies, the performance of whose work is precedent to or concurrent with the performance of Engineer's work. In the case of the happening of any such cause of delay, the time of completion shall be extended accordingly.

3. In the event that any changes are made in the plans and specifications by the Client or persons other than Engineer which affect Engineer's work, any and all liability arising out of such changes is waived as against Engineer and the Client assumes full responsibility for such changes unless Client has given Engineer prior notice and has received from Engineer written consent for such changes.

4. Engineer is not responsible, and liability is waived by Client as against Engineer, for use by Client or any other person of any plans or drawings not signed by Engineer.

5. All tracings, survey notes and other original documents are instruments of service and shall remain the property of Engineer, except where by law or precedent these documents become public property.

6. Engineer's liability to the Client for injury or damage to persons or property arising out of work performed for the Client and for which legal liability may be found to rest upon Engineer, other than for professional errors and omissions, will be limited to \$1,000,000. For any damage on account of any error, omission or other professional negligence, Engineer's liability will be limited to a sum not to exceed \$50,000 or Engineer's fee, whichever is greater.

7. Fees and all other charges will be billed approximately monthly as the work progresses, and the net amount shall be due at the time of billing.

8. Interest of 1½% per month (but not exceeding the maximum allowable rate) will be payable on any amounts not paid within 30 days of the billing date, payment thereafter to be applied first to costs including attorney fees, second to accrued interest, and then to the principal unpaid amount. Any attorney's fees or other costs incurred in collecting any delinquent amount or other breach of this agreement shall be paid by the Client.

9. The Client shall pay the costs of checking and inspection fees, zoning and annexation application fees, assessment fees, soils engineering fees, soils testing fees, aerial topography fees, and all other fees, permits, bond premiums, title company charges, blueprints and reproductions, and all other charges not specifically covered by the terms of this agreement.

10. In the event all or any portion of the work prepared or partially prepared by Engineer is suspended, abandoned, or terminated, the Client shall pay Engineer for the work performed on an hourly basis, not to exceed any maximum contract amount specified herein.

11. Any Opinion of the Construction Cost prepared by Engineer represents his judgment as a design professional and is supplied for the general guidance of the Client. Since Engineer has no control over the cost of labor and

material, or over competitive bidding or market conditions, Engineer does not guarantee the accuracy of such opinions as compared to contractor bids or actual cost to the Client.

12. The Client agrees that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for jobsite conditions during the course of construction of the project, including safety of all persons and property and that this requirement shall be made to apply continuously and not limited to normal working hours.

13. In the performance of its professional services, Engineer will use that degree of care and skill ordinarily exercised under similar conditions in similar localities and no other warranties, express or implied, are made or intended in any of Engineer's proposals, contracts or reports. The Client agrees to defend, indemnify and hold Engineer harmless from any and all liability, real or alleged, legal fees and costs arising in connection with the performance of work on this project, excepting liability proximately arising from the sole negligence of Engineer.

14. In the event Client fails to pay Engineer within thirty (30) days after invoices are rendered, then Client agrees that Engineer shall have the right to consider said default a total breach of this agreement and the duties of Engineer under this agreement terminated upon five (5) days' written notice. This agreement may be terminated by either Client or Engineer upon thirty (30) days' written notice in the event of substantial failure of the other party to perform in accordance with the terms of this agreement. Client expressly agrees to indemnify and hold Engineer harmless from any liability arising out of Engineer's termination of its services hereunder due to Client's failure to perform and/or pay in accordance with the provisions of this agreement. In the event of termination of this agreement, Client shall then promptly pay Engineer for all of the fees, charges and services performed by Engineer in accordance with the compensation arrangements under this agreement or on an agreed hourly basis.

15. Should litigation be necessary to enforce any term or provision of this agreement, or to collect any portion of the amount payable under this agreement, then all litigation and collection expenses, witness fees and court costs, and attorney's fees shall be paid to the prevailing party.

16. Should any provision herein be found or deemed to be invalid, this agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this agreement are declared to be severable.

17. Services provided within this agreement are for the exclusive use of the Client.

18. Engineer and Client have each had the opportunity to consult with professional advisors of their choosing regarding this agreement. The language used herein shall be deemed to be the language chosen by the parties to express their mutual intent, and no rule of construction against the author shall be applied against either party.

19. This agreement shall inure to the benefit of the successors, assigns, heirs, beneficiaries, administrators, partners, agents, and representatives of each party.

20. This agreement has been entered into in El Paso County, State of Colorado and shall be construed and enforced in accordance with the laws of Colorado.

21. Any amendment to this agreement shall be in writing and executed by each Party.

22. There are no understandings or agreements except as herein expressly stated.

## SCOPE OF DESIGN SERVICES

### UPPER GLENWAY STREET, WATER AND DRAINAGE IMPROVEMENTS

#### A. General Information

1. The area included in the project's scope of work generally encompasses a portion of Upper Glenway Road described as follows; beginning at the west end of Upper Glenway Road at High Street and extending north and northeast along Upper Glenway Road to Pie Corner, then continuing south on Pie Corner to Columbine Road.
2. The project's scope of work generally includes street improvements of roadway surface removal and replacement, curb, gutter and sidewalk removal and replacement, pedestrian ramp construction, cross pan installation and drive apron construction; water system improvements of pipeline and valve replacement, service tap and service line connections and fire hydrant installation; drainage improvements of storm sewer inlet construction and storm sewer piping installation

#### B. Description of Project Design Work

1. The Engineer will perform the design related work only under this agreement, construction phase services are not included in the scope of this agreement. The Engineer will provide services under the general design work categories listed below in order to complete the design work and prepare Construction Documents which can be utilized in the bidding of the construction work:
  - a. Field surveying
  - b. Property, right-of-way and easement research
  - c. Right-of-way plan set
  - d. Drainage study
  - e. Design
  - f. Predesign geotechnical engineering
  - g. CDOT project administration
    - (1) Forms and submissions
    - (2) Scoping meeting
    - (3) Right-of-way clearance
    - (4) Utility clearance
    - (5) Environmental clearance
    - (6) Field inspection review
    - (7) Final office review
  - h. Other engineering
    - (1) Funding administration
    - (2) Reproductions
2. The Town will be provided with no more than three (3) bound copies each of the Construction Drawings and Project Manual for the project. The Construction Drawings and Project Manual will also be provided in electronic format in portable document file (pdf) format. The design work will be conducted in close coordination with representatives of the Town of Palmer Lake. Draft Construction Drawings and Project Manual will be prepared within approximately 45 days prior to finalization and submitted to the Town for review and comment. A workshop will be conducted with Town representatives to review the draft Construction Drawings and Project Manual. Comments received will be incorporated into the final bound documents as appropriate.