Example: Cost Reimbursement Deposit Upfront

**TOWN OF PALMER LAKE
DEVELOPER COST REIMBURSEMENT AGREEMENT
FOR:** _____

<mark>(name of land development application)</mark>

THIS AGREEMENT (the "Agreement"), made and entered into this _____ day of _____ 20__, by and between the TOWN OF PALMER LAKE, COLORADO, a Colorado municipal corporation (the "Town"), and _____ a Colorado _____ . hereinafter referred to as (the "Applicant"), and _____ as owner ("Owner"). The Town and the Applicant are referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the Applicant submitted an application for _____ ("Application") pursuant to the PALMER LAKE Municipal Code ("Code") for property situated in the County of Weld, State of Colorado, and legally described in Exhibit A, attached hereto and incorporated herein (the "Property"); and

WHEREAS, the Applicant acknowledges that the Town will incur costs to review the Application, including but not limited to, legal publication costs, recording fees and reproduction costs; and

WHEREAS, the Applicant further acknowledges that the Town retains third-party consultants to review land use proposals, which may include, but not be limited to, engineers, surveyors, inspectors, attorneys and planners; and

WHEREAS, while the Town endeavors to keep the Town's expenses to a reasonable and acceptable level, the actual amount is subject to factors outside the control of the Town; and

WHEREAS, the Code requires the Applicant to pay all the Town's expenses incurred in reviewing, evaluating and processing the Application; and

WHEREAS, the Parties recognize that this Agreement will facilitate the Town's ability to review, evaluate and process the Application and that this Agreement is mutually beneficial to the Parties; and

WHEREAS, the Parties desires to enter into this Agreement to facilitate the review, evaluation and processing of the Application.

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AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing premises and of the mutual promises and conditions hereinafter contained, it is hereby agreed as follows:

1.   Recitals. The Recitals are incorporated as if fully set forth herein.

2.   Funds Deposit. Upon the execution of this Agreement, the Applicant agrees to deposit with the Town the sum of $_____ to be used to pay the Town's expenses to review, evaluate and process the Application ("Deposit"), which funds may be used to pay the cost of third-party consultants. If the Deposit is depleted, or nearing depletion, prior to the completion of the work, the Town may request, and the Applicant shall thereafter promptly deposit, additional monies with the Town in an amount required by the Town. In the event the Applicant fails to pay the additional monies within ten (10) days of the Town's request, the Town may suspend all further review and cancel any scheduled public hearings.

3.   Banking and Accounting. The Town shall deposit the Deposit in a separate checking account for developer funds in its bank and shall separately account for the funds. The Town shall disburse monies from the deposited funds in payment of the Town's expenses related to the Application. Within ten (10) days of a written request by Applicant, the Town shall provide an accounting to Applicant of the funds disbursed.

4.   Termination. When the review, evaluation and processing of the Application is complete or if negotiations on the Application terminate, then any monies deposited by the Applicant remaining after payment of the costs incurred by the Town shall be refunded to the Applicant without interest. Alternatively, if the Applicant has not deposited sufficient funds to cover the Town's expenses when the review, evaluation and processing of the Application is complete or negotiations terminate, then the Town may provide written notice to the Applicant of funds that are due and owing. The Applicant shall have ten (10) days after receipt of the Town's notice to pay the amount due and owing.

5.   Collection of Fees and Costs. If the Applicant fails to pay the funds required herein when due, the Town may add a five percent (5%) penalty to the balance and charge interest at the rate of one and one-half percent (1½%) per month. The Town may also take those steps necessary and authorized by law to collect the fees due and shall be entitled to all court costs and attorney fees incurred in collection of the balance due, including interest on the amount due from its due date at the rate of eighteen percent (18%) per annum. In its discretion, the Town may certify to the Weld County Treasurer any amount due as a lien on the property for which the Application is submitted, which lien will be due and payable with the real estate taxes for the Town if the Applicant or the Owner does not pay such amount within thirty (30) days of written request by the Town.

6.   No Acquired Rights. The Applicant agrees that it does not acquire any rights by virtue of the review and evaluation of, and negotiations related to, the Application. Any and all negotiations and work on Application shall be final only upon approval by the appropriate actions of the Town Board of Trustees of the Town of PALMER LAKE and other governmental

entities having jurisdiction, upon the completion of appropriate actions of the Applicant and upon expiration of any applicable time periods required for finality under law.

7.   Assignment. If Applicant sells or conveys all or any portion of the Property or any part of the Application, Applicant shall provide notice to the Town and shall assign or transfer any and all of its interests, rights or obligations under this Agreement to the purchaser or assignee.

8.   Notices. All notices, demands, or other documents required or desired to be given, made or sent to either Party under this Agreement shall be made in writing, shall be deemed effective upon receipt and shall be personally delivered or mailed postage prepaid, certified mail, as follows:

    TO THE TOWN:
    Town of PALMER LAKE
    Attn: Town Administrator
    223 1st Street
    PALMER LAKE, CO 80615
    Email: wesley@PALMER LAKEco.org

    TO APPLICANT:

    _____

    _____

    Email: _____

The addresses for notices may be changed by written notice given to the other Party in the manner provided above. Notice may also be sent via e-mail delivery and shall be effective upon confirmation of receipt of the email.

9.   Amendment.   This Agreement may not be amended or modified except by a subsequent written instrument signed by both Parties.

10.   Severability. If any part, term or provision of this Agreement is declared unlawful or unenforceable, the remainder of this Agreement shall remain in full force and effect.

11.   Waiver. No consent or waiver, express or implied, by a Party to or of any breach or default by the other Party in the performance by the other Party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default by the non-defaulting Party. Failure on the part of any Party to complain of any act or failure to act or to declare any other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder.

12.   Applicable Law and Venue. This Agreement shall be construed according to the laws of the State of Colorado. Venue for any claim, proceeding or action arising out of this Agreement shall be in Weld County, State of Colorado.

13.   Mediation. In the event of any dispute arising under this Agreement, the Parties shall submit the matter to mediation prior to commencing legal action and shall equally share the cost of the mediation. Mediation shall occur in Weld County, unless the Parties agree to a different location.

14.   Entire Agreement. The provisions of this Agreement represent the entire and integrated agreement between the Town and the Applicant and supersede all prior negotiations, representations and agreements, whether written or oral.

15.   No Presumption. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

16.   Authority. Each person executing this Agreement represents and warrants that he or she has been duly authorized by the party which he or she purports to represent to execute this Agreement, and has authority to bind said party to the terms and conditions of this Agreement.

17.   Headings. The headings in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

18.   Execution and Counterparts. This Agreement may be executed and filed in any number of counterparts, all of which when taken together shall constitute the entire agreement of Parties. Signature pages may be removed from any counterpart and attached to another counterpart to constitute a single document.

(Remainder of Page Intentionally Left Blank)

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IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

TOWN OF PALMER LAKE, COLORADO

ATTEST:

By: _____   By: _____
    Margaret Jane Winter, Town Clerk   Wesley LaVanchy, Interim Town
                                          Administrator

APPLICANT:

_____

By: _____

Name: _____

Title: _____

STATE OF COLORADO   )
) ss

COUNTY OF _____)

SUBSCRIBED AND SWORN to before me this _____ day of _____,

20_____, by _____ as the _____ of

_____.

WITNESS my hand and official seal.

My commission expires: _____

_____
Notary Public

OWNER

_____

ACKNOWLEDGED AND AGREED TO BY OWNER:

By: _____

Name: _____

Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY