

# Town of Palmer Lake, Colorado

## AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this \_\_\_\_ day of December 2021, by and between the Town of Palmer Lake, State of Colorado (hereinafter referred to as the "Town"), and Community Matters, *Institute* (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 described below.

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 the services. Any reuse of the Consultant's documents is at the Town's own cost and 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 \$118,689.00. 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 breakdowns 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 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 have been submitted.

## **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 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 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.

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, without additional compensation, correct or resolve any errors or deficiencies in his designs, drawings, specifications, reports, and other services, which fall below the standard of professional practice, and reimburse the Town for construction costs caused by errors and omissions which fall below the standard of professional practice.

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.

## **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**

A. **INDEMNIFICATION – GENERAL:** The Town cannot and by this Agreement does not agree to indemnify, hold harmless, exonerate, or assume the defense of the Consultant or any other person or entity whatsoever, for any purpose whatsoever. Provided that the claims, demands, suits, actions or proceedings of any kind are not the result of professional negligence, the Consultant shall defend, indemnify, and hold harmless the Town, its mayor and Town council, officials, officers, directors, agents, and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including worker's compensation claims, in any way resulting from or arising from the services rendered by Consultant, its employees, agents, or subconsultants, or others for whom the Consultant is legally liable, under this Agreement; provided, however, that the Consultant need not indemnify or save harmless the Town, its mayor, the Town Board of Trustees, its officers, agents, and employees from damages to the extent caused by the negligence of the Town's mayor, Town Board of Trustees, officials, officers, directors, agents, and employees.

B. **INDEMNIFICATION FOR PROFESSIONAL NEGLIGENCE:** The Consultant shall indemnify and hold harmless the Town, its mayor and Town council, and any of its officials, officers, directors, and employees from and against damages, liability, losses, costs and expenses, including reasonable attorneys fees, but only to the extent caused by the negligent acts, errors or omissions of the Consultant, its employees, subconsultants, or others for whom the Consultant is legally liable, in the performance of professional services under this Agreement. The Consultant is not obligated under this subparagraph IX.B. to indemnify the Town for the negligent acts of the Town, its mayor, Town Board of Trustees, or any of its officials, officers, directors, agents, and employees.

C. **INDEMNIFICATION – COSTS:** Consultant agrees, to the extent provided in Paragraph A., above, to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims, or demands at the sole expense of Consultant or, at the option of the Town, agrees to pay the Town or reimburse the Town for the defense costs incurred by the Town in connection with any such liability, claims or demands. Consultant also agrees, to the extent provided in Paragraph A. above, to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false, or fraudulent. If it is determined by the final judgment of a court of any competent jurisdiction that such injury, loss or damage was caused in whole or in part by the act, omission, or other fault of the Town, its mayor and Town Board of Trustees, officials, officers, directors, agents and employees, the Town shall reimburse Consultant for the portion of the judgment attributable to such act, omission or other fault of the Town, its mayor and Board of Trustees, officials, officers, directors, agents, and employees.

## **X. INSURANCE**

A. A. CMI 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 CMI pursuant to this Agreement. At a minimum, CMI shall procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.
2. General Liability insurance with minimum combined single limits of Commercial \$150,000 single occurrence/\$600,000 aggregate.
3. Automobile Combined Single Limit (\$600,000)
4. At the Town's request, CMI shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

*Since we do not build anything or create architectural or design plans, the above insurance has been accepted by all municipalities we have worked with over the last ten years.*

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. 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.
2. 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

3. 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.
4. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
5. 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 One Hundred Fifty Thousand Dollars (\$150,000) per person and Six Hundred Thousand Dollars (\$600,000) 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 REQUIRED 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, and/or electronic 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 CO 80133  
[dawn@palmerlake.org](mailto:dawn@palmerlake.org)

Copy to: Matthew Z. Krob, Town Attorney  
KROB LAW OFFICE, LLC  
8400 E. Prentice Ave., Penthouse  
Greenwood Village CO 80111  
[matt@kroblaw.com](mailto:matt@kroblaw.com)

Consultant: Community Matters Inc.  
Attn: Barbara Cole  
5021 Juniper Street  
Littleton CO 80123  
[barbcole@communitymattersinstitute.org](mailto:barbcole@communitymattersinstitute.org)



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: \_\_\_\_\_  
David Cooper, Planning Commission Chair

ATTEST:

\_\_\_\_\_  
Dawn A. Collins, Town Clerk

**CONSULTANT**

By: \_\_\_\_\_  
President