

MEMORANDUM OF UNDERSTANDING FOR PICKLEBALL COURT GRANT

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 _____, 2024 ("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, there are limited resources, including funding and personnel, available for projects throughout the Town, and as a result, the Town is interested in receiving support from a nonprofit entity to financially assist and coordinate projects with the Town for the benefit of all Town Citizens and Businesses; and

WHEREAS, the Parties seek to enter into public-private partnerships with nonprofit organizations to create, revitalize, and maintain parks and other public spaces on a project specific basis; 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, ATL has applied for and obtained a grant to install pickleball courts and restrooms within the Town and upon Town property as further depicted in the Grant Application ("Project"), said application being incorporated herein for definition purposes; and

WHEREAS, the Board of Trustees of the Town support the Project and the Parties seek to establish the Parties' roles and responsibilities with respect to the Project.

NOW, THEREFORE, in order to advance their mutual objectives with respect to the Project 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 to establish the roles and responsibilities of the Parties with respect to the Project.

SECTION 2 – AWAKE THE LAKE

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

(a) Manage the Grant, including but not limited to complying with the reporting requirements to the Grant administration.

~~(b)~~—Work in cooperation with the Town and subject to all rules, regulations, and laws, to assist in the Project and secure approval of the Town of all design, plans, construction and otherwise for the Project prior to commencement of each phase of the Project.

~~(c)(b) Since there is a Town-owned water line that will be under the pickleball courts, ATL will provide \$20,000 to be deposited into the Town's water capital improvement fund to be used as determined by the Board of Trustees, and subject to the Town's exclusive control, for possible future repairs or relocation of said water line, or other use as determined by the Board of Trustees, with said funds provided to the Town no later than the completion of the Project and close out of the Grant. Such deposit by ATL shall relieve ATL of any and all future liability or responsibility associated with said Town water line, and the Town shall be solely responsible for the management and control of such funds.~~

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SECTION 3 – THE TOWN

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

(a) Work collaboratively with ATL to complete the Project. Nothing herein shall grant or create for ATL any ownership, authority, or control over any Town property. Control over all Town Property rests solely with the Board of Trustees.

(b) Town approval is required for each phase of the project as well as any and all plans for construction of the Project and no construction will take place without the agreement and permission of the Town.

(c) In support of the Project, the Town will (i) contribute a Water Tap to be used for the restrooms; (ii) provide approximately 1,000 yards of infill for the site and the staff and equipment to grade such fill as available; (iii) provide liability insurance under the Town's applicable insurance for the Project being constructed on Town Property and for the benefit of the Town's citizens; and, (iv) allow the use of Town Hall for project meetings as available.

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 annual appropriation by the Town Board of Trustees. Failure to appropriate shall not constitute a violation, default, 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, or completion of the project, whichever occurs first.

4.4 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.

4.5 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.

4.6 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: dawn@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:

Project Manager, Tim Caves
Email: tlccaves@yahoo.com

With copies to:

ATL President, Jeff Hulsmann
Email: punchyco@gmail.com

4.7 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.

4.8 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.

4.9 No Creation of Ownership Interest. Nothing herein shall be construed to create an ownership interest of any kind in any Town owned property or any of the improvements upon Town owned property.

4.10 Operation and Future Use. Nothing herein shall be used to determine the way in which the Town will choose to operate, maintain, or use the Town Property as a result of the Project, including the improvements as a result of the Project.

4.11 Third Party Beneficiaries. The Parties do not intend by the AGREEMENT MOU to assume any contractual obligations to anyone other than the Parties and do not intend that there be any third-party beneficiary to this AGREEMENT MOU.

4.12 No Partnership. This AGREEMENT MOU shall not be interpreted or construed to create an association, joint venture or partnership among the Parties or to impose any partnership obligation or liability upon any Party. Further, no Party shall have any authority to act on behalf of or as an agent for or to otherwise bind the other Party.

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

ATL:

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

By: _____
Authorized Representative of Awake the Lake

Date: _____

Town of Palmer Lake:

By: _____
Mayor, Grant Havenar

Attest: _____
Town Administrator/Clerk

Date: _____