

**TOWN OF MOUNTAIN VILLAGE
SPECIAL TOWN COUNCIL MEETING
MONDAY, JANUARY 30, 2023, 6:00 PM
2nd FLOOR CONFERENCE ROOM, MOUNTAIN VILLAGE TOWN HALL
455 MOUNTAIN VILLAGE BLVD, MOUNTAIN VILLAGE, COLORADO
AGENDA**

https://us06web.zoom.us/webinar/register/WN_x4TsTD5CRua_28gwiUCiwA

Please note that times are approximate and subject to change.

	Time	Min	Presenter	Type	
1.	6:00				Call to Order
2.	6:00	60		Legal	Executive Session for the Purpose of: a. Conference with the Town Attorney for the Purpose of Receiving Legal Advice on Specific Legal Questions, to Determine Positions Relative to Matters that may be Subject to Negotiations Developing Strategy for Negotiations and/or Instructing Negotiators, In Connection With Friends of TMVOA vs. Telluride Mountain Village Owners Association Pursuant to C.R.S. 24-6-402(4)(b) and (e) b. Conference with the Town Attorney for the Purpose of Receiving Legal Advice on Specific Legal Questions, to Determine Positions Relative to Matters that may be Subject to Negotiations Developing Strategy for Negotiations and/or Instructing Negotiators, In Connection With the Development of Town-Owned Lot 644 Pursuant to C.R.S. 24-6-402(4)(a), (b), and (e)
3.	7:00	10	Wisor	Action	Consideration of Approval to Execute an Amendment to the Pre-Development Agreement with Triumph West Regarding Lot 644 Community Housing Development, Meadows Subarea Dated April 21, 2022
4.	7:10	10	Wisor	Action	Consideration of Approval to Execute an Amendment to the Original Contract for Construction Services with Triumph Development West for Village Court Apartments Phase IV Dated November 1, 2022
5.	7:20				Adjourn

Individuals with disabilities needing auxiliary aid(s) may request assistance by contacting Town Hall at 970-369-6429 or email: mvclerk@mntvillage.org. A minimum notice of 48 hours is required so arrangements can be made to locate requested auxiliary aid(s)

<https://bit.ly/WatchMVMeetings>

Register in advance for this webinar:

https://us06web.zoom.us/webinar/register/WN_x4TsTD5CRua_28gwiUCiwA

After registering, you will receive a confirmation email containing information about joining the webinar.

Zoom participation in public meetings is being offered as a courtesy, however technical difficulties can happen and the Town bears no responsibility for issues that could prevent individuals from participating remotely. Physical presence in Council chambers is recommended for those wishing to make public comments or participate in public hearings.

**TOWN COUNCIL MEETING
AGENDA FOR JANUARY 30, 2023**

Public Comment Policy:

- All public commenters must sign in on the public comment sign in sheet and indicate which item(s) they intend to give public comment on
- Speakers shall wait to be recognized by the Mayor and shall give public comment at the public comment microphone when recognized by the Mayor
- Speakers shall state their full name and affiliation with the Town of Mountain Village if any
- Speakers shall be limited to two minutes with no aggregating of time through the representation of additional people
- Speakers shall refrain from personal attacks and shall keep comments to that of a civil tone
- No presentation of materials through the AV system shall be allowed for non-agendized speakers
- Written materials must be submitted 48 hours prior to the meeting date to be included in the meeting packet and of record. Written comment submitted within 48 hours will be accepted, but shall not be included in the packet or be deemed of record



TOWN MANAGER
455 Mountain Village Blvd.
Mountain Village, CO 81435
(970) 729-2654

TO: Mountain Village Town Council

FROM: Paul Wisor, Town Manager

DATE: January 27, 2023

RE: Amendment to the Pre-Development Agreement for Lot 644

Executive Summary: In April 2022, Town Council approved a Pre-Development Agreement with Triumph Development West to establish terms of the preliminary services to be provided by the Developer prior to execution of the development agreement for the project. Staff and Triumph have proposed an amendment to this agreement to keep the schedule on track while negotiating the final terms of the development agreement.

Overview

The following changes are proposed in the presented amendment:

- The original pre-development agreement referenced construction of 35 units. The amendment corrects this number to the approved 29 units. (See section 3.b. and 3.n.)
- Language surrounding deed restrictions was updated to reflect that council has not yet decided on the specifics of the deed restriction that will apply to Lot 44. (See section 3.c.)
- The original agreement stated the Town would contribute its equity to the project simultaneously upon closing of the construction loan. This amendment clarifies the Town's equity amount may be utilized to fund up front costs to the project such as modular factory deposits, project engineering and modular design costs. (See section 3.n.)

Financial Considerations

This amended agreement does not change the Town's overall commitment to the project of \$4,300,000, but rather the timing of the contribution of the Town's equity allowing for the modular deposit to be made prior to the construction loan. The deposit required to secure the timeline for modular construction is \$298,393.10. Delaying the construction loan will ultimately result in savings in financing costs.

Proposed Motion

I move to approve the Amended Pre-Development Agreement with Triumph Development West in substantially the form set forth in Exhibit A of the staff memo.

Exhibit A

PRE-DEVELOPMENT AGREEMENT

THIS PRE-DEVELOPMENT AGREEMENT (the "Agreement") is made this ___ day of January~~April~~, 2023~~2~~ (the "Effective Date"), by and between the Town of Mountain Village, a Colorado home rule municipality, with an address of 455 Mountain Village Blvd. - Site A, Mountain Village, Colorado 81485 (the "Town"), and Triumph Development West, LLC, a Delaware limited liability company with an address of 105 Edwards Village Blvd. - #C201, Edwards, Colorado, 81632 ("Developer") (each individually a "Party" and collectively the "Parties").

WHEREAS, the Town is the owner of certain real property more particularly described as Lot 644 Telluride Mountain Village Filing 22 (the "Property");

WHEREAS, the Town wishes to redevelop the Property for deed restricted, resident-occupied housing for employees (the "Project");

WHEREAS, Developer is willing to redevelop the Property for affordable housing; and

WHEREAS, the Parties wish to [modify the terms of the current Pre-Development Agreement dated April 21, 2022 to](#) establish terms of the preliminary services to be provided by Developer for the Project.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the services to be provided by Developer prior to execution of the development agreement for the Project.
2. Scope of Services. During the term of this Agreement, Developer shall perform the following services:
 - a. Developer shall conduct all due diligence necessary to determine whether the Property is suitable for the Project.
 - b. Developer shall prepare a development plan, budget and sales projection for review, feedback and refinement by the Town.
 - c. Developer shall prepare and submit to the Town a development application for the Project for Design Review Board approval.
 - d. Developer shall work with the Town to establish the financing necessary for construction of the Project.
 - e. The Parties acknowledge that the Scope of Services contemplated by this Agreement will require Developer to contract with third-party designers, engineers, consultants and contractors to perform some of the services set forth in the Scope of

Services. The Developer shall prepare a Predevelopment Budget for Town approval, and the Town shall be responsible for these out-of-pocket development costs.

3. Development Agreement Terms. The Project shall be subject to a mutually acceptable development agreement ("DA"), which shall contain the following essential terms, at a minimum:

a. The construction of the Project shall be subject to the Mountain Village Municipal Code and other applicable law.

b. The Project shall be subject to approval by the Town through its typical land use approval process, which the parties acknowledge is not guaranteed, and shall include ~~at least approximately 35-2933~~ residential dwelling units including both townhomes and condominiums, the location and design of which will be agreed upon by the Town and Triumph. The project will be approved by the Town through its typical land use approval process.

c. All residential dwelling units on the Property shall be subject to a deed restriction ~~limiting the occupancy of the dwelling units to households with at least one person who is an employee of a business registered within San Miguel County~~ to be approved by Town Council.

d. The Town shall grant to Developer, for the benefit of the Property, easements that are mutually determined to be necessary for the Development, including without limitation utility, drainage, and access easements.

e. The Town shall be responsible for all planning fees, permit fees, impact fees tap fees, or density transfer fees in connection with the Project.

f. The Town will be responsible for constructing site access and infrastructure to the property. This shall include construction of any public improvements such as streets, sidewalks and utilities on access Tract F22-2.

g. Developer shall select the general contractor and modular manufacturer for the Project, with the Town's approval, which shall not be unreasonably withheld.

h. Developer shall procure and include the Town as an additional insured on a policies of insurance that (1) are sufficient to cover construction defects for the term of the applicable statute of limitations and statute of repose, (2) a builder's risk policy to cover full replacement cost in the event of a loss, (3) normal and customary professional liability insurance from the design team.

i. Developer shall maintain all books and records related to the Project for public inspection. Upon request by the Town, Developer shall provide evidence of all costs, expenses and mark-ups related to the Project.

j. Other than the cost of the improvements identified in paragraph 2.f, the Project's development budget shall cover all development costs necessary for the Project.

k. Developer or its general contractor shall provide each homeowner a warranty for the residential dwelling units, for a minimum of one year.

l. Developer shall be entitled to a development fee of 4% of total development costs in connection with its development of the Property to cover all developer overhead and personnel costs. Direct out of pocket costs related to the project such as out of town meals and travel will be included as a separate line item in the budget.

m. Upon receipt of planning entitlement for the development, the Town will contribute the Property to a Development LLC and become a member of the LLC. Triumph will be the managing member of this LLC with the obligation to complete the development.

n. ~~Simultaneously with the closing of the construction loan, the~~The Town or the Mountain Village Housing Authority shall contribute approximately \$4.3 million in equity to the Development LLC for a project that includes 2933 units. The equity amount of \$4.3 million may be utilized to fund up front predevelopment costs of the project such as but not limited to: 5% modular factory deposits, project engineering and modular design costs, , fire sprinkler design, truss design, long lead electrical supplies, and micropiles.

o. Triumph will procure and guarantee a construction loan from a lender to finance the balance of construction costs and will provide any excess equity required for the Development.

p. Upon completion and sale of the units, net proceeds from the sale of units would flow in the following priority: (1) repay the construction loan, (2) repay Triumph and Town equity on a pari passu basis, and (3) split any excess proceeds with 80% to Triumph and 20% to the Town. These distributions will be subject to a mutually determined reserve to cover any warranty costs that fall to the Development LLC.

4. Term and Termination.

a. This Agreement shall commence on the Effective Date and shall continue until terminated as provided herein.

b. Either Party may terminate this Agreement upon 30 days advance written notice. In the event of Termination by the Town, the Town shall pay Developer for all out-of-pocket costs and a pro-rata portion of the Triumph fee incurred prior to the date of termination. If, however, Developer has substantially or materially breached this Agreement, the Town shall have any remedy or right of set-off available at law and equity.

5. Professional Responsibility.

a. Developer 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, required by law.

b. The work performed by Developer 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 work in the applicable community. The work and services to be performed by Developer hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

6. Ownership. Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Developer or its consultants shall be owned by the Developer unless these costs are reimbursed by the Town in event of termination by the Town.

7. Insurance.

a. Developer 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 Developer pursuant to this Agreement. At a minimum, Developer shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

i. Worker's Compensation insurance as required by law.

ii. Commercial General Liability insurance with coverage at least equal to the limitations on judgment provided by the Colorado Governmental Immunity Act (§ 24-10-114, C.R.S.) at any given time, which for 2022 are currently \$424,000 for one person in a single occurrence or \$1,195,000 for two or more persons in a single occurrence. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

c. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Developer. Developer shall be solely responsible for any deductible losses under any policy.

d. Upon request, Developer shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect.

8. Miscellaneous.

a. Modification. This Agreement may only be modified by subsequent written agreement of the Parties.

b. Integration. This Agreement and any attached exhibits constitute the entire agreement between Developer and the Town, superseding all prior oral or written communications.

c. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

d. Severability. If any provision of this Agreement is determined to be void by a court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect.

e. Governing Law and 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 San Miguel County, Colorado.

f. TABOR. The Parties understand and acknowledge that the Town is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the Town are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Town's current fiscal period ending upon the next succeeding December 31. Financial obligations of the Town payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of Town of Mountain Village, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.

g. Assignment. There shall be no transfer or assignment of any of the rights or obligations of Developer under this Agreement without the prior written approval of the Town.

h. Third Parties. There are no intended third-party beneficiaries to this Agreement.

i. No Joint Venture. Notwithstanding any provision hereof, the Town shall never be a joint venture in any private entity or activity which participates in this Agreement, and the Town shall never be liable or responsible for any debt or obligation of any participant in this Agreement.

j. Independent Contractor. Developer is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Developer to perform work under the terms of this Agreement shall be, and remain at all

times, employees or agents of Developer for all purposes. Developer shall make no representation that it is a Town employee for any purposes.

k. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.

I. Prior Agreement Superseded. This Agreement supersedes and replaces the Pre-Development Agreement dated April 21, 2022.

WHEREFORE, the Parties have executed this Agreement as of the Effective Date.

TOWN OF MOUNTAIN VILLAGE

Paul Wisor, Town Manager

ATTEST:

_____, Town Clerk

DEVELOPER

By: _____
Name: _____
Its: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this _____ day of _____, 2016, by _____ as the _____ of Triumph.

(S E A L) My commission expires:

Notary Public



TOWN MANAGER
455 Mountain Village Blvd.
Mountain Village, CO 81435
(970) 729-2654

TO: Mountain Village Town Council

FROM: Paul Wisor, Town Manager; Michelle Haynes, Assistant Town Manager; Lizbeth Lemley, Finance Director

DATE: January 26, 2023

RE: **VCA Professional Services Amendment**

Executive Summary: In November 2022, Town Council approved an Agreement for Professional Services with Triumph Development West relative to the VCA Phase IV expansion project. Staff and Triumph have proposed an amendment to this agreement updating the scope of services to include selection of a general contractor and funding of early authorized costs to keep the project on the scheduled time.

Overview

The Triumph team working with Shaw construction has identified certain project costs that will need to be included in the preconstruction budget. These costs, referred to as early authorized costs, are related to electrical gear, trusses, fire sprinkler design and micropiles. The early authorized costs are necessary to get approval for the modular state building permit, to order long lead time items and to assist with the completion of the overall design to keep the project on schedule. The following updates are included in the proposed amendment:

- III. Compensation – This section has been updated to include the early authorized costs discussed above.
- Schedule A – Scope of Services has been amended to reflect Triumph’s selection of a General Contractor and identification of early authorized costs.
- Schedule B – The Project Precon Budget was updated to include the early authorized Costs.

Financial Considerations

This amended agreement does not change the Town’s overall cost of the project, but rather moves certain costs from the construction budget to the preconstruction budget. The early authorization costs identified to keep the project on schedule total \$296,001.

Proposed Motion

I move to approve the Amended Agreement for Professional Services with Triumph Development West in substantially the form set forth in Exhibit A of the staff memo.

Exhibit A

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (the "Agreement") is made and entered into this 1st day of November, 2022-2023 (the "Effective Date"), by and between the Town of Mountain Village, a Colorado home rule municipality, with an address of 455 Mountain Village Blvd., Suite A, Mountain Village, Colorado 81485 (the "Town"), and Triumph Development West LLC, a Delaware limited liability company with a principal place of business at 105 Edwards Village Blvd., #C201, Edwards, Colorado, 81632 ("Contractor") (each a "Party" and collectively the "Parties").

WHEREAS, the Town of Mountain Village Housing Authority, on behalf of the Town, is the owner of certain real property in San Miguel County known as The Village Court Apartments at 415 Mountain Village Blvd., and more particularly described as Lot 1001, Telluride Mountain Village according to the plat recorded as Reception No. 434465 (the "Property"); and

WHEREAS, the Town wishes to develop the Property for deed restricted employee housing as generally shown ~~to the Town Council~~ in the modified development plans for the Village Court Apartments Phase IV at the October 4, 2022 Town of Mountain Village Town Council Meeting (the "Project"); and

WHEREAS, the Contractor, along with its proposed "General Contractor" Shaw Construction, submitted a proposal for development services on July 6, 2022, which detailed its approach to developing the Project including proposed compensation structure (the "Proposal"); and

WHEREAS, the Town selected the Contractor's Proposal, and prior to executing a development agreement, the Parties entered into an Agreement for Professional Services, dated November 27, 2022 ~~July 26, 2022~~, to further refine the Project and reduce the proposed development budget ~~dated July 26, 2022~~; and

WHEREAS, the ~~initial scope of work is now complete and the~~ Town desires to modify that November 27, 2022 Service Agreement to hire the Contractor to lead the development team's work to revise the project drawings, update the projects entitlements, interview and select a modular contractor, negotiate and finalize an onsite construction contract with Shaw Construction, and assist in identifying sources of funding for the Project.

NOW, THEREFORE, for the mutual consideration set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. SCOPE OF SERVICES

A. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities that are

described or reasonably implied from the "Scope of Services" set forth in **Exhibit A**, attached hereto and incorporated herein by this reference.

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement, executed by both Parties. If Contractor proceeds without such written authorization, Contractor 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 is authorized to modify any term of this Agreement, either directly or implied by a course of action.

II. TERM AND TERMINATION

A. This Agreement shall commence on the Effective Date, and shall continue until ~~the earlier of May~~December 31, 2022 ~~(the "Term")~~, ~~the mutual execution of a final Development Agreement, or until~~unless terminated ~~earlier~~ as provided herein. Subject to annual appropriation, the Town shall have the option to renew the Agreement~~Agreement shall automatically renew for a one (1) year term (i.e., January 1 to December 31) (the "Renewal Term"), which Renewal Term may be terminated as provided herein. } by written notice to Contractor no later than thirty (30) days prior to the expiration of the current Term.~~

B. Either Party may terminate this Agreement upon thirty (30) days' advance written notice. The Town shall pay Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached this Agreement, the Town shall have any remedy or right of set-off available at law and equity.

III. COMPENSATION

In consideration for the completion of the Scope of Services by Contractor, the Town shall pay Contractor an amount not to exceed \$164,000 ("Contract Price"), as shown in **Exhibit B**. The Contract Price includes all fees, costs, and direct expenses incurred by Contractor for the Services. The Contract Price shall be paid by the Town in a monthly retainer of \$20,000 ~~(over an estimated 7 months)~~ to the Contractor, plus direct expenses incurred ~~in the execution of the work by Contractor for the Services-~~, Estimated which direct expenses are estimated at to be \$24,000. Contractor's monthly retainer will be credited towards its overall development fee upon execution of a separate development agreement.

It is agreed that the Town shall pay up front and before the forthcoming Development Agreement, the following items: 5% factory deposit and the early authorized costs from the General Contractor in order to facilitate a timely project schedule. The description of scope is set forth in Exhibit A. The amounts are set forth in Exhibit B. In addition to the above compensation, the Town has increased the amounts payable to the Contractor to the total "Estimated Precon Costs for TOMV" identified in Exhibit B.

IV. PROFESSIONAL RESPONSIBILITY

A. Contractor 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, required by law. The work performed by Contractor 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 work in the applicable community. The work and Services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules, and regulations.

B. The Town's review, approval, or acceptance of, or payment for any services, shall not 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.

V. OWNERSHIP

Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Contractor, shall be exclusively owned by the Town. Contractor expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the Town all of its right, title, and interest in such work. The Town may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Contractor.

VI. INDEPENDENT CONTRACTOR

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

VII. INSURANCE

A. Contractor 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 Contractor pursuant to this Agreement. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to 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. Commercial General Liability insurance with coverage at least equal to the limitations on judgments provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-114, *et seq.*, at any given time, which for 2022 are currently \$424,000 for one person in a single occurrence or \$1,195,000 for two or more persons in a single occurrence. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least thirty (30) days' prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Upon execution of this Agreement, Contractor 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.

VIII. INDEMNIFICATION

Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor. Contractor's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the Town may be determined only after Contractor's liability or fault has been determined by adjudication,

alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

IX. MISCELLANEOUS

A. Governing Law and 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 San Miguel County, Colorado.

B. 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 obligation of this Agreement.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail to the Party at the address set forth on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. Governmental Immunity. The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

J. Rights and Remedies. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

K. Subject to Annual Appropriation. All direct and indirect financial obligations of the Town under this Agreement are subject to appropriation, budgeting, and availability

of funds to discharge such obligations. No provision of this Agreement shall be construed or interpreted: (a) to directly or indirectly obligate the Town to make any payment in any year in excess of amounts appropriated for such year; (b) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or (c) as a donation or grant to or in aid of any person, company, or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution.

L. Prior Agreement Superseded. This Agreement supersedes and replaces the Agreement for Professional Services dated November 27, 2022.

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DRAFT

EXHIBIT A

SCOPE OF SERVICES

Contractor's Duties

During the Term of this Agreement, Contractor shall perform the following duties, as directed by the Town:

- Lead and oversee the Town's current design team to prepare revised construction documents for Village Court Apartments Phase IV that incorporate the design changes and program options presented to Town Council at the October 4, 2022 Meeting.
- Prepare a detailed development and construction budget based on this revised building plan.
- Prepare a design and budget comparison of two program options for Building E for review and selection by the Town Council. Option 1 will include 1BR and 2BR units. Option 2 will include all 4BR units.
- Work with Town's Planning staff to revise the entitlements for the Project based upon the approved changes to the design.
- Interview and select a modular manufacturing partner for the Project. Negotiate a contract for the supply of modular component of the Project for execution by ~~TOMV~~the Town to secure a modular manufacturing window for the spring or summer of 2023 for construction. Appropriate modular factory security deposits shall be made by the Town ~~of Mountain Village~~ to facilitate the projected schedule.
- Interview and selection of the General Contractor. Upon selecting the General Contractor, it shall be necessary for the Town to approve and fund Early Authorized Costs of Electrical Gear, Trusses, Fire Sprinkler Design, and Micropiles
- Negotiate the general contractor contract with Shaw Construction for the onsite component of Project for execution by ~~TOMV~~the Town.
- Assist in the procurement of modular and onsite building permits to commence construction in the summer of 2023.
- Prepare and update the Project schedule.
- Regular meetings with Town Staff and Town Council to provide updates on the Project.

EXHIBIT B

PROJECT PRECON BUDGET AND DEVELOPER FEES

<u>Precon Development Budget</u>	<u>Estimated Precon Costs for TOMV</u>	<u>Service Agreement Developer Fees</u>
Hardcost		
Shaw Precon Fee	\$ 25,000	
Geotech and Foundation Design	\$ 16,000	
Modular Factory 5% Dposit	\$ 304,391	
Shaw Early Authorization Costs	\$ 296,001	
Hardcost	\$ 641,392	\$ -
Entitlement, Permit & Impact Fees		
Planning & Entitlement Fees	TBD	
Entitlement, Permit & Impact Fees	-	-
Soft cost		
Code Consulting	\$ 5,000	
Modular Design Allowance	\$ 107,387	
Survey	\$ 5,000	
Project Legal	\$ 10,000	\$ -
Estimated Developer Reimbursables	\$ -	\$ 24,000
Total Soft Cost	\$ 127,387	\$ 24,000
Developer Fee (7 Months @ \$20,000/Mo)	\$ -	\$ 140,000
Contingency & Working Capital		
Startup Working Capital		
Developer Hardcost Contingency		
Owner Softcost Contingency	\$ 23,289	\$ -
Total Contingency	\$ 23,289	\$ -
Financing		
Lender Costs	TBD	
Total Financing	\$ -	\$ -
Total After Contingency	\$ 792,068	\$ 164,000
Cost before Contingency	\$ 768,779	\$ 164,000

Precon Development Budget	Estimated Precon Costs for TOMV	Service Agreement Developer Fees
Hardcost		
Shaw Precon Fee	\$ 25,000.00	\$ -
Geotech and Foundation Design	\$ 16,000.00	\$ -
Modular Factory 5% Deposit	\$ 304,391.25	\$ -
Hardcost	\$ 345,391	\$ -
Entitlement, Permit & Impact Fees		
Municipality Fees:		
Planning & Entitlement Fees	TBD	\$ -
Entitlement, Permit & Impact Fees	\$ -	\$ -
Soft cost		
Code Consulting	\$ 5,000	\$ -
Modular Design Allowance	\$ 107,387	\$ -
Survey	\$ 5,000	\$ -
Project Legal	\$ 10,000	\$ -
Estimated Developer Reimbursables	\$ -	\$ 24,000
Total Soft Cost	\$ 127,387	\$ 24,000
Developer Fee (7 months @ \$20,000/Mo)	\$ -	\$ 140,000
Contingency & Working Capital		
Owner Softcost Contingency	\$ 23,288.70	\$ -
Total Contingency	\$ 23,289	\$ -
Financing		
Lending Costs	TBD	\$ -
Total Financing	\$ -	\$ -
Total After Contingency	\$ 496,067	\$ 164,000
Cost Before Contingency	\$ 472,778	\$ 164,000