AGENDA BRIEF

MEETING: Town Council - 01 Feb 2022
FROM: Andrea Phillips, Town Manager

PROJECT:	Pre-Development Agreement with Servitas LLC for Workforce Housing Development and Management
ACTION:	Council action or information

PURPOSE/BACKGROUND:
At the November 18, 2021 Council meeting, Council approved staff to beging negotiations with Servitas, a developer for the town's workforce housing project. They were selected through a competitive RFP process, with a committee including town staff and councilmembers reviewing proposals, conducting interviews and making a recommendation to Council. At this time, staff is presenting a Pre-Development Agreement with Servitas, which outlines the terms and conditions for moving forward with these activities. There is financial obligation by the Town to pay for these services should the project not come to fruition. The PDA and exhibits have been reviewed by both the Town Attorney, Clay Buchner, and the Town's special legal counsel for this project, Kate Starick at Kutak Rock LLC. All parties are in agreement as to the terms presented.

ATTACHMENTS:
Pagosa Servitas Pre-Development Agreement Workforce Housing

FISCAL IMPACT:
See details in agreement. The Town would be responsible for payment on predevelopment services performed by the contractor should the project not proceed. Otherwise, costs are wrapped into the project financing.

TOWN COUNCIL GOALS & OBJECTIVES:
Workforce Housing

RECOMMENDATIONS:
1. Move to Approve the Pre-Development Agreement with Servitas LLC for Workforce Housing Development and Management.
2. Move to Approve the PDA with the following suggested amendments (which will then go to Servitas for review and possible approval).
3. Deny Approval of the PDA and direct staff.

Pre-Development Agreement

THIS PRE-DEVELOPMENT AGREEMENT ("Agreement") is entered into on this ___ day of _____, 2022 ("Effective Date") by and between the Town of Pagosa Springs of Colorado, located in Archuleta County, Colorado (hereinafter the "Town") and Servitas LLC, a Texas limited liability company (hereinafter "Servitas" or "Developer") and together with the Town, collectively the "Parties" and each, a "Party"), regarding the following:

RECITALS

WHEREAS, the Town issued a Request for Proposals, dated September 1, 2021 (the "RFP"), to select a developer for the development of a workforce housing project on up to three possible project sites in Archuleta County, Colorado, which will provide housing to local workforce for rents in general accordance with the limitations contained in the RFP.

WHEREAS, in response to the RFP, the Developer submitted its proposal dated October 1, 2021 ("Proposal"), attached as Exhibit "A".

WHEREAS, the Town selected the Developer pending negotiation and execution of the more substantive agreements, including the Ground Lease and Development Agreement defined below, for completion of the Project (the "Definitive Agreements") to design, build, finance, operate, maintain, and manage a workforce housing project (the "Project"), and the Town desires to enter into this Agreement with Developer to enable Developer to engage in certain pre-development activities.

WHEREAS, the Parties acknowledge that through the pre-development activities contemplated by this Agreement, the Parties will work together in good faith to define and refine both the programmatic elements of the Project, including unit-type, total square footage area and any ancillary facilities, and the subsequent design phases under the preliminary Pre-Development Schedule attached as Exhibit "C".

WHEREAS, the Parties agree to work together to jointly select an appropriate and mutually acceptable ownership and financing structure with either the Town, Servitas or a not-for-profit entity to serve as borrower and owner of the proposed Project (the "Project Company").

WHEREAS, the proposed Project sites are owned by Town, subject to the Pagosa Springs Land Use Development Code.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Pre-Development Generally.

   A. General.

(i) Developer is hereby engaged to collaborate with Town for the planning, programming, design, permitting, financing, construction, maintenance, management, operation, and overall development of the Project. Town acknowledges and accepts Servitas' agents, contractors, and employees, as presented in the Developer's Proposal, and as detailed in Exhibit "A". Additionally the Town will act as a vested partner throughout the permitting process.

(ii) Subject to the conditions that Town and Developer first come to agreement on major terms, conditions, and other aspects of the Project's structure, ownership, development, construction, financing, operation, maintenance, and management, Town currently anticipates that it shall, at the Project's Financial Closing (as defined in (iii) below), execute the Definitive Agreements with the Project Company, to achieve the desired financing method for the Project. There will be an engagement letter executed with the Project Company within six (6) months of the execution of this Agreement. Following approval by the Town of a plan for financing for the Project, Developer will endeavor to: (a) satisfy the requirements of the proposed financing; (b) negotiate the terms of the financing documents; (c) close the financing; and (d) otherwise implement the financing plan for the Project (all with the approval of the Town).

(iii) The Parties agree to pursue all pre-development activities pertaining to the Project with a cooperative, good-faith effort, with due diligence, and in a commercially reasonable manner, including without limitation, the pre-development services to be performed by Developer and Town (the "Services," as set forth in Exhibit "B") and various types of Project delineation and support to be provided by Town, including but not limited to, identification of a useable project site (the "Project Site," as set forth in Exhibit "G") for the Project and providing Developer existing, relevant reports that may include environmental, title reports, market and feasibility studies and other materials associated with pre-development activities performed by the Town. It is the goal of both Parties to achieve financial closing, to obtain the funding for the design, construction and development of the Project (the "Financial Closing"), and to commence construction of the Project within twelve (12) months of the execution of this Agreement to allow for substantial completion to be achieved within eighteen (18) months of financial closing, to allow it to be occupied by Eligible Residents, at rental rates to be charged per unit consistent with the pricing identified in the Developer's Proposal (Exhibit "A") or as identified in the corresponding Feasibility Study. The Town may reduce rental rates by providing additional financial support to the Project.

B. Proposal & Development.

Developer prepared its Proposal and submitted it to the Town on October 1, 2021. The Parties shall cooperate in good faith to develop the terms and conditions for the structure, ownership, development, design, construction, financing, maintenance, management, and operation of the Project (collectively, the "Development"), using the Proposal as the reference point. In that regard, Developer does hereby agree to confirm and to continue to develop, in a timely manner, the assumptions and projections on which the Proposal is based, and the Parties agree to continue to engage with each other

on updated schedules, budgets, and plans for, and all other aspects of, the Project. Developer shall: (i) enter into appropriate contractual agreements with project consultants in accordance with Section 1A(i), (ii) work with the Architect to complete the design phase of the Project; (iii) secure the necessary governmental approvals, consents, licenses, and permits for the Project; (iv) work with its general contractor to price the plans; (v) work with an investment banker or similar financial institution to create the financial models to facilitate underwriting of the Project; (vi) arrange for the Project Company (or other parties, as applicable) to execute acceptable development, financing, management, and/or other appropriate contracts (as applicable) in formats acceptable to Town to achieve Financial Closing, (vii) submit a final Project development budget to the Town, and (viii) arrange the Project's financing and the Financial Closing, the terms and conditions of each of the final agreements for Financial Closing and other matters identified in the foregoing items (i) through (viii) being subject in all respects to the reasonable approval of Town. Items (i)-(viii) above shall be collectively referred to herein as the "Preliminary Closing Conditions." Subject to the satisfaction of the Preliminary Closing Conditions and the occurrence of the Financial Closing, Developer shall thereafter schedule and monitor the commencement and completion of the Project construction, providing the Town with a schedule of major milestones, as well as monthly updates on the progress of Project construction, including but not limited to suggested or requested design alterations, construction delays, and financial impacts to the Project budget.

C. Development Team Members and Consultants.

The Developer shall not substitute any development team member or consultant identified in its Proposal or Exhibit "A" without the written notice to of such substitution to the Town. Nothing in the foregoing provision shall create any contractual relationship between the Town and the professionals and consultants engaged by the Developer or between the Developer and the professionals and consultants engaged by the Town under the terms and conditions of this Agreement. The Developer will not create or knowingly permit any liens to be recorded against the Project Site in the performance of Services pursuant to this Agreement. If a lien is recorded against the Project Site as a result of such Services, the Developer shall cause such lien to be released or discharged by bond or otherwise within ten (10) business days following receipt of written notice from the Town.

2. Designated Representative of Each Party; Notices. The Parties agree that to facilitate an efficient working relationship throughout the term of this Agreement, Andrea Phillips, primarily, and a designated person, secondarily, will serve as the designated representative and "point person" for the Town, and Angel Rivera, primarily, or Garrett Scharton, secondarily, or their successors will serve in the same capacity for the Developer. All official communication should flow through these designated representatives. Each Party may replace or appoint additional designated representative(s) from time-to-time upon written notice to the other Party. Every notice, request or other statement to be made or delivered to a Party pursuant to this Agreement shall be directed to such Party at the address or e-mail given in Section 32 of this Agreement or to such other address or e-mail as the Party may designate in writing from time-to-time. Each Party, by written notice to the other Party, shall have the right to specify

one additional address to which copies of notices shall be sent. Except as provided otherwise in this Agreement, any notice, request, statement, payment, or other communication (including, without limitation, by e-mail or mail where transmission confirmation is received) shall be deemed to have been given on the date on which it is received by the recipient.

3. Term; Termination.

A. Term. The term and effectiveness of this Agreement (the "Term") shall commence upon the Effective Date and shall terminate upon the earliest to occur of the following:

(i) the effective date of the Financial Closing of the Project;

(ii) the effective date of any termination of this Agreement by the Town pursuant to Section 3(B);

(iii) the effective date of any termination of this Agreement by the Town pursuant to Section 5;

(iv) the termination of this Agreement by either Party as a result of a material breach or default by the other Party of any of its undertakings or obligations under this Agreement which has not been cured within thirty (30) business days after receiving written notice of such breach or default from the non-defaulting Party (should the defaulting Party not take steps or present a plan to cure the default within ten (10) business days' of such written notice, the non-defaulting party shall have the right to stop work until such efforts have begun in earnest or such plan is presented);

(v) such other date as the Parties may mutually agree in writing; or

(vi) five (5) calendar years from the date of this Agreement.

B. Town Termination Rights. In addition to any other rights it may have under this Agreement, at law, in equity, or otherwise, the Town may unilaterally terminate this Agreement for its convenience at any time during the term of this Agreement (a "Termination for Convenience") upon thirty (30) business days prior written notice to Developer, subject to conditions in Section 6B. The date on which Developer receives such notice is referred to herein as the "Termination for Convenience Notice Date."

4. Exclusivity. During the Term, the Town agrees to negotiate exclusively with Servitas concerning the development of the Project.

5. Development and Construction Schedule. Developer will achieve substantial completion of the Project within eighteen (18) months of financial closing, and obtain a Certificate of Occupancy from the relevant authority having jurisdiction promptly after substantial completion. To meet the Project occupancy date goal, the Developer (with the cooperation of the Town) will work toward completion of all pre-construction activities, including, without

limitation, securing all regulatory approvals, closing the financing, and finalizing construction plans and specifications within twelve (12) months (the "Financial Closing"). The Parties agree that the aforementioned "Current Project Development Schedule" constitutes nonbinding progress goals during the life of this Agreement. The Parties understand and agree that if construction does not begin within sixteen (16) months of the execution of this agreement, then Town may elect to terminate or extend this Agreement, and in the latter case, the Parties will work cooperatively towards a revised delivery date if such delivery is determined to be feasible and in Town's best interests.

6. Pre-Development Budget, Pre-Development Expenses, Development Fee, and Town Expenses.

A. Generally. Developer has expended, and will continue to expend, in good faith, money to engage third parties in furtherance of the Development of the Project. Any such expenditures incurred thus far, and anticipated to be expended, in furtherance of the Development of the Project are specifically described in that certain "Pre-Development Budget" attached hereto as Exhibit "F" (such budget, as amended, modified, and/or supplemented from time-to-time with the Town's prior written consent (not to be unreasonably withheld, conditioned, or delayed) in each instance, the "Pre-Development Budget"). The expenditures identified in the Pre-Development Budget are collectively referred to in this Agreement as the "Pre-Development Expenses". The Pre-Development Budget also refers to a development fee, identified therein as the "Fee" to Developer and referred to in this Agreement as the "Development Fee." For the avoidance of doubt, the Development Fee shall not in any event be deemed or construed to be included in the definition of, or to otherwise constitute, Pre-Development Expenses.

B. Payment of Pre-Development Expenses, Development Fee, and Town Expenses. Pre-Development Expenses incurred by Developer directly related to the Project from November 18th, 2021 until the Effective Date of this Agreement shall be presented to Town for approval and upon Town's approval, these Pre-Development Expenses shall be repaid to Developer under the terms set forth in this Agreement. Town's approval of Pre-Development Expenses incurred for Schematic Design and Design Development will be based on the percentage of work completed for the items to be provided by design professionals for Schematic Design and Design Development under the guidelines set forth by the American Institute of Architects. As part of expenses submitted for Schematic Design and Design Development, Developer shall submit to Town an itemized list of work completed for Schematic Design and Design Development, in accordance with the guidelines set forth by the American Institute of Architects, along with the percentage of work completed for each item. Town's liability for Pre-Development Expenses incurred by Developer prior to the Effective Date of this Agreement shall not, without prior written approval of the Town, in any event exceed the aggregate amount of $10,000. The Town Expenses as defined in this Agreement shall be reimbursed to Town at the Financial Closing with proceeds of the Project's financing. "Town Expenses" means those expenses incurred by the Town

paid or payable to third parties for purposes of advancing the Project to Financial Closing.

Any other Pre-Development Expenses incurred by Developer directly related to the project as outlined in the attached Exhibit "F" are subject to the conditions set forth in Sections 6(B)(i) and 6(B)(ii). The actual verifiable and documented cost of the Pre-Development Expenses (including actual costs incurred), plus the Development Fee as defined in this Agreement, shall be paid to Developer at the Financial Closing with proceeds of the Project's financing; provided, however, that:

i. if Town exercises its Termination for Convenience rights under Section 3(B), then Town shall, within 30 days after the effective date of such termination, reimburse Developer in an amount equal to the Pre-Development Expenses incurred through the Termination for Convenience Notice Date as indicated in Exhibit "F," along with a prorated share of the Development Fee as reflected in Exhibit "F." Town's liability for the Pre-Development Expenses shall not in any event exceed the aggregate amount of $869,263.00. Town's liability for the Development Fee shall not in any event exceed the aggregate amount of $750,000.00 ("Pre-Development Fee" - calculated as one half of the estimated Development Fee). The Town's total exposure to Developer shall not exceed $1,619,263.00, without prior authorization from the Town.

ii. if Town exercises its termination rights under Section 3(A)(iv) due to a breach or default by Developer, then Town shall not have any obligation or liability whatsoever to Developer, whether for Pre-Development Expenses, the Development Fee, or otherwise, and Developer shall be liable to reimburse Town for any portion of Pre Development Expenses and the Development Fee already paid to Developer, and the Town Expenses.

iii. if at any time during the Term, the Parties determine that the viability of the Project is jeopardized due to the failure to obtain reasonable construction pricing or financing; to the failure of financing to close; to changes in entitlements, restrictions, or zoning affecting the Project, Force Majeure or to unforeseen economic events or uncertainties (the "Closing Risks"), the Parties shall work together in good faith to maintain the viability of the Project, either through modifications to various aspects of the Project, modifications to the transaction structure for the Project, or otherwise. If despite such efforts of the Parties, the Parties mutually determine in good faith that the Project is no longer viable due to the Closing Risks, the Parties shall agree to terminate this Agreement pursuant to Section 3(A)(vi), and Town shall, within 60 days after the effective date of such termination: (a) reimburse Developer in an amount equal to 100% of the Pre-Development Expenses incurred for work performed through the effective date of such termination as reflected in Exhibit "F"; and (b) one half of the accrued Development Fee, as of the effective date of the termination. Developer shall have no obligation to transfer ownership of the plans, designs, or other work product as set forth in Section 6(D) until

Developer is reimbursed for 100% of its Pre-Development Expenses incurred and the accrued Pre-Development Fee as reflected in Exhibit "F".

iv. In the event a Closing Risk which results in the Project not being financially feasible is identified, the parties shall work collaboratively to seek a method by which the Project shall be financially viable for a period of six (6) months. If at the conclusion of the above referenced six month period, the Town has not made an election whether to terminate the Project and desires to continue evaluating alternative options, the Town shall reimburse Developer in an amount equal to 100% of the Pre-Development Expenses incurred as reflected in Exhibit "F" and the payment of the accrued Development Fee shall be held in abeyance until a final decision is made by the Town.

C. Definition of Force Majeure. As used in this Agreement, the term "Force Majeure" means an event, circumstance, cause, or condition that is beyond the reasonable control of, and without the fault or negligence of, a Party and includes, without limitation: (a) sabotage, riots, or civil disturbances as designated by the appropriate jurisdictional authority; (b) acts of God; (c) acts of a public enemy; (d) terrorist acts affecting a Party, the Town, or the Project; (e) pandemic outbreaks (including any resulting governmental shut downs, quarantines, blockades, suspensions of travel and/or shipping from certain countries or areas and labor unrest); or (f) volcanic eruptions, earthquake, hurricane, tsunami, flood, ice storms, explosion, fire, lightning, landslide, or similarly cataclysmic occurrence. Economic hardship of or suffered by a Party shall not constitute a Force Majeure event under this Agreement.

D. Transfer of Ownership of All Plans, Designs, Documents, and Other Work Product. Subject to Town's payment to Developer of the amounts, if any, required pursuant to Section 6(B) Developer shall transfer, assign, and convey to Town (or its nominee or designee) good and marketable title and ownership (free and clear of any and all liens, security interests, and other encumbrances of any nature whatsoever) to, and all right title and interest in, all plans, designs, design models, drawings, documents, data, intellectual property, materials, things, and other work and work product developed for or in connection with, or relating in whole or in part to, the Development or the Project. In furtherance of the foregoing, Developer shall execute and deliver to Town such deeds, bills of sale, assignments, and other documents and instruments as Town may reasonably request to effect or otherwise evidence such transfer, assignment, and conveyance to Town (or its nominee or designee).

7. Ground Lease and Development Agreement. Town will negotiate in good faith with Developer (i) a definitive ground lease for the Project Site with the Project Company ("Ground Lease"), and (ii) a definitive development agreement (a "Development Agreement") for the delivery of services set forth in the Development Agreement to complete the design, construction, and delivery of the Project, both to be effective at the Financial Closing.

8. Structure and Payment of Development Fee. The Development Agreement shall also provide for the payment to the Developer of (i) a development fee of the greater of $1,500,000 or five

percent (5%) of the total development budget as defined below, ("Development Fee") (but such percentage shall not be assessed against the Development Fee) plus (ii) the Pre-Development Expenses described in clause (ii) of such term's definition, plus (iii) a construction administration fee of two percent (2%) of total construction hard costs ("Construction Management Fee").

"Development Fee" is calculated as the greater of $1,500,000 or 5% of all construction costs and soft costs. Soft costs include design, consultants, legal, entitlement, permits, FF&E, IT, startup, insurance, and contingency. Financing costs,the Construction Management Fee and the Development Fee itself are excluded from this calculation.

The Development Agreement will provide that the Development Fee is to be earned and paid by the Project Company to the Developer as follows:

(a) an amount equal to fifty percent (50%) of the Development Fee (this portion of the Development Fee also being known and defined earlier as the "Pre-Development Fee") shall be earned and paid to the Developer at the Financial Closing;

(b) the balance of the Development Fee shall be earned and paid as follows:

(i) an amount equal to forty percent (40%) of the Development Fee shall be paid to the Developer in equal monthly payments during the scheduled construction period beginning the month following the month in which Financial Closing occurs;

(ii) an amount equal to ten percent (10%) of the Development Fee shall be paid to the Developer upon Final Completion.

(c) Should the Town terminate the Development Agreement or the Project, in general, after Financial Closing, but before Final Completion, for any reason other than Developer's default, the Developer shall be paid the remaining balance of the total Development Fee.

(d) "Construction Management Fee" is calculated as 2% of all construction costs that are included in the Guaranteed Maximum Price (GMP) contract held with the General Contractor.

9. Supporting Documentation; Audits.

A. Supporting Documentation. Developer shall submit monthly reports to the Town with appropriate documentation evidencing the incurrence of each of the Pre-Development Expenses and the calculation of all or any portion of the Pre-Development Fee in the form of copies of invoices, receipts, vouchers or the like, for Developer and Town to determine that such items constitute Pre-Development Expenses incurred, or a Pre-Development Fee payable, in accordance with the terms and conditions of this Agreement. These amounts shall include expenses incurred by Project Company in creating the single purpose entity to act as owner of the Project and other costs incidental to preparing for the finance closing.

B. Audit. At its option, Town may from time to time, at its expense, review the books, accounts, and financial information of Developer regarding the Pre-Development Expenses, including by being audited by an independent auditor selected by the Town. Developer agrees to cooperate with such auditor and to make any of its books, accounts and financial information of Developer regarding the Project available to Town or such auditor. If an audit discloses a material discrepancy (*i.e.*, a discrepancy by more than five (5) percent in the aggregate with respect to the expenses or fees being audited), Developer shall reimburse the Town for the cost of the audit. Any adjustments in amounts due and owed by either Party to the other Party shall be promptly paid by the Party with the amounts due.

10. Labor and Wages.Developer, its agents, contractors, or employees shall ensure that every employee, worker, or agent of each or either of them has all required licenses and training to perform the services for which engaged and is lawfully authorized to work and to perform such services. Developer, its agents, contractors or employees shall ensure that every employee, worker, and agent of each or either of them are aware of and agree to abide by all applicable Town policies and procedures at all times on Town property and while interacting with any Town personnel. To the extent any of the applicable policies and procedures are amended during Pre-Development or construction period, the Town shall provide written notice of the changes or modifications within ten (10) working days of the changes taking effect. If Town reasonably determines that any person associated with Developer, its agents, contractors or employees has violated Town policies, such person shall be removed from and prohibited access to Town property.

11. Alternative Dispute Resolution. The Parties agree that any dispute between the Parties arising from or in any way related to this Agreement or the Project will first attempt to be resolved through non-binding mediation with a mediator that is mutually agreeable to the Parties, and if the Parties are unable to resolve any such dispute in non-binding mediation, then any such dispute shall be resolved through judicial proceedings. The fees and expenses of the mediator shall be split and paid equally by the parties. To the extent allowed by law, in the event of any litigation between the parties hereto involving this Agreement or the respective rights of the parties hereunder, the party who does not prevail in such litigation shall pay all the prevailing party's reasonable attorneys' fees, costs and expenses incurred by the prevailing party in resolving said matter, including any litigation over the amount of fees and costs to be recovered.

12. Entire Agreement. This Agreement and the Exhibits "A-G" attached hereto (which are incorporated into this Agreement by this reference) constitute the entire agreement between the Parties relating to the subject matter hereof, and may be amended, modified, or supplemented only in a writing executed by each Party.

13. Due Authorization; Binding Agreement. Each Party represents and warrants (as to itself only) that the signatory signing on behalf of such Party is duly authorized by such Party to execute and deliver this Agreement on behalf of such Party, and by its signature does bind such Party to the terms of this Agreement.

14. Controlling Law. This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the State of Colorado and the United States, including but not limited to any law pertaining to prevailing wage, discrimination, and professional conduct.

15. No Partnership or Joint Venture. The Parties agree that nothing herein shall serve to create any agency, employment, or other principal-agent, partnership, joint venture, or fiduciary relationship between the Parties.

16. Developer Hold Harmless of the Town.

A. General. Developer shall indemnify, defend, and hold the Town and its directors, officers, trustees, employees, and agents ("Indemnified Parties") harmless for, from, and against any and all third-party Claims (as defined in Section 16(D), to the extent caused by Developer's: (i) breach of any obligation, representation, or warranty contained herein; and/or (ii) negligence or willful misconduct.

B. Without limiting the generality of the foregoing, Developer shall also indemnify, defend, and hold harmless Town for, from, and against any and all Claims arising out of, relating to, or in connection with:

(i) any payment or other claim or dispute between Developer, on the one hand, and any of the consultants, contractors, or subcontractors (of any tier) of Developer, on the other hand (if such payment or other claim or dispute is not a result of any payment or other claim or dispute between Town and Developer pertaining to this Agreement, or any aspect of the Project);

(ii) the acts or omissions of, or the misconduct of, any consultants, contractors, or subcontractors (of any tier) of Developer; and/or

(iii) a failure of Developer to obtain Town's approval or consent where required under this Agreement. The obligations of Town under the foregoing provision shall survive the expiration or earlier termination of this Agreement with respect to any Claims arising prior to such termination. The obligations of Developer under this Section 16(B) shall be independent of, and in addition to, those of Developer under Section 16(A) and Section 16(C). In no event shall Developer's obligations under this Section 16 (B) be limited to or by the amounts (if any) of insurance proceeds recovered by it with respect to such obligations or otherwise.

C. Environmental. Developer shall indemnify, defend, and hold harmless the Town and its Indemnified Parties for, from, and against Claims arising out of or relating to any of Developer's Environmental Conditions. Each Party shall promptly notify the other Party if it becomes aware of any presence, deposit, spill, or release of (or exacerbation of any presence, deposit, spill, or release of) any Hazardous Substance on or about the lands designated by the Town in Archuleta County, Colorado. The indemnity obligations of Developer under this Section 16(C) shall survive the expiration or earlier termination of this Agreement with respect to any Claims arising prior to such termination. The indemnity obligations of Developer under this Section 16(C) shall be

independent of, and in addition to, those of the Parties under Sections 16(A) and (B). In no event shall Developer's indemnity obligations under this Section 16(C) be limited to or by the amounts (if any) of insurance proceeds recovered by Developer with respect to such obligations or otherwise.

D. Certain Defined Terms. As used in this Section 16,

(i) the term "Claims" means any and all liabilities, obligations, damages, losses, demands, penalties, fines, claims, actions, suits, judgments, settlements, costs, expenses, and disbursements (including, without limitation, reasonable, actually incurred legal fees, expenses, and costs of investigation) of any kind and nature whatsoever, including, without limitation, those arising out of property damage and personal injury and bodily injury (including, without limitation, death, sickness, and disease);

(ii) the term "Hazardous Substance" means any substance, waste or material which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, including, without limitation, petroleum, its derivatives, by-products and other hydrocarbons and asbestos, and which is or becomes regulated by any applicable governmental authority, including, without limitation, but only to the extent applicable, any agency, department, commission, board, or instrumentality of the United States, the State of Colorado or any political subdivision thereof; and

(iii) the term "Developer Environmental Conditions" means: (a) any Hazardous Substances or objects creating dangerous environmental conditions that are introduced, transported, or brought to the Town by Developer, any of its consultants, contractors, or subcontractors (of any tier) or any other person or entity under Developer's authority or control; (b) any Hazardous Substances or dangerous environmental conditions are spilled, released, created, or otherwise exacerbated by Developer (and with the discovery by Developer and/or any of its consultants, contractors, or subcontractors (of any tier) or any other person or entity under Developer's authority or control of a Town Environmental Condition not constituting an exacerbation), any of its consultants, contractors, or subcontractors (of any tier) or any other person or entity under Developer's authority or control; and/or (c) Developer, any of its consultants, contractors, or subcontractors (of any tier) or any other person or entity under Developer's authority or control engages in conduct (or fails to engage in conduct) in violation of any applicable law, rule, or regulation pertaining to Hazardous Substances;

E. Insurance Requirements. Developer, at its sole cost and expense, shall insure its activities in connection with this Agreement, and/or cause the professionals to insure such activity, as appropriate. In the event that Developer hires any contractors or consultants to perform any part of this Agreement, Developer is responsible for ensuring that these insurance provisions shall apply to each contracting entity. Developer, and each of its contractors and consultants of any tier, shall obtain, keep in

force, and maintain insurance as follows (except that Developer sub-contractors may maintain limits of $1,000,000 per occurrence with a $2,000,000 annual aggregate for the general liability insurance, and with respect to Excess Liability coverage, it is Developer's option to determine the limit of excess liability that it will require the professionals, contractors, and consultants to maintain):

(i) Comprehensive or Commercial Form General Liability Insurance (contractual liability included) as follows:

(a.) Each Occurrence: $1,000,000

(b.) Products/Completed Operations Aggregate: $2,000,000

(c.) Personal and Advertising Injury: $2,000,000

(d.) General Aggregate: $4,000,000

However, if any such insurance is written on a claims-made basis,coverage shall continue for a period of not less than three (3) years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the commencement of the Term of this Agreement.

(ii) Developer will ensure that all design professionals hired to provide design services for the Project carry Professional Liability Insurance covering its negligent acts, errors, and omissions with a minimum limit of $1,000,000 for each claim. In addition, architectural and other licensed professionals will carry Professional Liability Insurance with minimum limits of $2,000,000 and $2,000,000 in the aggregate. If the above insurance is written on a claims-made basis, it shall continue for the latter of three years following termination of this Agreement or five years following the substantial completion of the Project. The insurance shall have a retroactive date of placement prior to or coinciding with the commencement of any professional services performed for this Agreement. Such coverage shall be required of each design architect, engineer, or consultant hired directly or indirectly to perform professional services for this Agreement, and shall include Town as an indemnified party for vicarious liability caused by professional services performed for this Agreement.

(iii) Comprehensive Automobile Liability Insurance covering owned, non-owned, and hired vehicles. The limits of liability shall not be less than a combined single limit of $2,000,000 per occurrence.

(iv) Excess Liability, umbrella insurance form, applying excess of primary to the commercial general liability, commercial automobile liability and employer's liability insurance shall be provided with minimum limits of $5,000,000 per occurrence, $5,000,000 general aggregate, and $5,000,000 products/completed operations.

(v) Workers' Compensation and Employer's Liability Insurance as required by Colorado law and with an insurance carrier registered with the Colorado Insurance Department.

Insurance required under 16.E.i, 16.E.ii, 16.E.iii, 16.E.iv, and 16.E.v of Section 16 shall be issued by companies licensed to do business with a Best rating of A(XI)- or better and a financial classification of VIII or better (or an equivalent rating by Standard & Poor's or Moody's), or as otherwise reasonably acceptable to the Town.

The insurance coverage referred to under 16.E.i, 16.E.ii, 16.E.iii, and 16.E.iv of this Section 16 shall be endorsed to include Town, its trustees, directors, officers, agents, employees, volunteers, consultants, representatives, and representative's consultants, and the State of Colorado as additional insureds. A copy of this insurance certificate and endorsement will be provided to the Town's Risk Management office thirty (30) days prior to the commencement of Financial Closing date to determine its acceptability.

In the event that Developer receives notice from an insurer of any modification, change or cancellation of any of the above insurance coverage, it will provide a copy of such notice to Town within three business days thereof. If insurance policies are canceled for non-payment, Town reserves the right to maintain policies in effect by continuing to make the policy payments and assessing the cost of so maintaining the policies against Developer, which assessments shall be a set-off from any payment or distribution of funds due to Developer under this agreement, if still outstanding at the time of the distribution/payment.

Developer, upon the execution and continuously during this Agreement, shall furnish Town with Certificates of Insurance acceptable in form to Town evidencing compliance with all requirements noted above in Sections 16.E.i, 16.E.ii, 16.E.iii, 16.E.iv, and 16.E.v. If Developer has to expend additional funds to achieve the requested insurance coverage, such additional expenses shall be a Pre-Development Expense.

17. Confidentiality; Publicity.

A. Confidential Information. "Confidential Information" shall mean information that is identified as "Confidential" by a Party and that is disclosed in connection with this Agreement. Without limiting the generality of the foregoing, Confidential Information may include: (i) technical and financial information relating to the Project; (ii) information relating to either Party, its ownership, operations, assets, financial, development and operating plans, status and condition, business, contractual agreements or arrangements and the Town; and (iii) correspondence, proposals, and other documents.

B. Exclusions. Notwithstanding the foregoing, Confidential Information shall not include any information that: (1) is in or enters the public domain through no fault of the receiving Party; (2) lawfully was known or becomes known to the receiving Party independent of any disclosure in connection with this Agreement; (3) is disclosed to the receiving Party

by another person or entity having a bona fide right to disclose it; (4) is independently developed by a receiving Party; (5) is included in Town public meeting agenda; or (6) is subject to disclosure under Colorado's Open Records Act ("CORA").

C. Use of Confidential Information. Any Confidential Information shall be used by the receiving Party only for the purposes of performing its obligations under this Agreement or otherwise in connection with the Project.

D. Disclosure of Confidential Information. During the term of this Agreement, neither Party shall disclose Confidential Information to any third party other than as provided for herein. The following exceptions shall not be construed as a violation of this section: a Party may disclose Confidential Information to: (a) its affiliates, agents, consultants, accountants, representatives, and legal counsel of such Party in connection with the Project, or otherwise as is reasonably necessary with respect to the Project, whether in connection with the fulfillment of the Preliminary Closing Conditions, pursuing the Financial Closing, or otherwise; (b) in connection with an assignment permitted by Section 20; (c) the Project's financing parties, in each case provided that such disclosure is subject to confidentiality requirements substantially similar to those set forth herein and (d) Compelled Disclosures as provided in this Section 18(D). The receiving Party shall take such steps to protect Confidential Information as such Party normally takes to preserve and safeguard its own information of a similar kind.

E. Publicity. Neither Party shall make any public announcement regarding this Agreement without the prior written consent in each instance of the other Party, which consent will not be unreasonably withheld. Any such public announcement must be in form and substance approved by both Parties in each instance, but the Parties mutually acknowledge that because the Agreement relates to a development for a public entity, public announcements about the project will be needed from time to time to comply with applicable law.

F. Compelled Disclosures. If the receiving Party or any of its representatives is compelled by an administrative or judicial order to disclose any Confidential Information, or if Town receives a CORA request identifying disclosable records, then, to the extent permitted by applicable law, the receiving Party shall: (a) promptly, and prior to such disclosure, notify the disclosing Party in writing of such requirement or records requested so that the disclosing Party can seek a protective order or other remedy or waive its rights under this section; and (b) provide reasonable cooperation to the disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure.

G. Other Public Entities. Town is required to interact with multiple public entities in its operations, and in furtherance of this Agreement and the Project, including entities with governance authority in the State of Colorado. If requested in writing by Developer, Town will designate documents containing Confidential Information as "confidential" in transmitting them to other public entities, but the Parties acknowledge that Town has no capacity to control the actions of such other public entities.

18. Entry Upon Project Site. Town hereby grants to Developer, and to its agents, contractors, and employees to provide services outlined in Exhibit "B" during the term of this Agreement, the right to enter upon the Project Site for the purpose of conducting such services. Developer, and its agents, contractors, and employees, shall: (a) provide 24-hour advance notice prior to entry upon Project Site, (b) not unreasonably interfere with the operation and maintenance of the Town; (c) not damage any part of the Town or any personal property thereon; (d) not injure or otherwise cause bodily harm to Town agents, contractors, employees, or visitors; (e) promptly pay when due the costs of all tests, investigation, and examinations done with regard to the Project; (f) not permit any liens arising by reason of Developer's actions in connection with this Agreement to remain attached to the Project for more than ten days after receipt of written notice thereof; and (g) restore the land to the condition in which the same was found before any such inspection or tests were undertaken. Developer shall, at is sole cost and expense, comply with all applicable federal, state, and local laws, statutes, rules, regulations, ordinances, and policies in conducting its inspection for the Project. Developer shall and does hereby agree to indemnify, defend, and hold Town and its Indemnified Parties harmless from and against any and all claims, demands, suits, obligations, payments, damages, losses, penalties, liabilities, costs, and expenses (including but not limited to attorneys' fees) arising out of actions taken in, on, or about the Town in the exercise of the inspection and testing rights granted under this Agreement by Developer or its agents; provided, however, that Developer shall have no liability with respect to any reduction in value of the Town due to information merely discovered by Developer during its Pre-Development Activities or other loss, damage, or expense resulting from a legal obligation of Developer or its agents to report a matter pertaining to the Project. This Section 18 shall survive any termination of this Agreement for so long as any potential liabilities or causes of action related to the activities of Developer or its agents are legally cognizable in any court of law.

19. Assignment. Neither Party shall assign this Agreement, or any of its rights hereunder, without the prior written consent of the other Party, in each instance, provided only that Town's interests and obligations hereunder shall automatically pass to any successor agency.

20. Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained herein.

21. Counterparts. This Agreement may be executed in one or more counterparts and by the Parties under separate counterparts, any one of which need not contain the signatures of more than one Party, but all of which when taken together shall constitute one and the same instrument notwithstanding that both Parties have not signed the same counterpart hereof.

22. Performance. TIME IS OF THE ESSENCE OF THIS AGREEMENT AND OF EACH PROVISION HEREOF.

23. Calculation of Time. The time in which any act required or permitted by this Agreement is to be performed shall be determined by excluding the day upon which the event occurs from whence the time commences. If the last day upon which performance would otherwise be required or permitted is a Saturday, Sunday, or a federal or Colorado holiday, then the time for performance shall be extended to the next day which is not a Saturday, Sunday, or holiday. To

the extent the period is defined by "working days", working days shall be based on a five (5) day work week (Monday-Friday), regardless of whether Town is working on a four (4) or five (5) day work week but excluding Town-approved holidays.

24. Integration. This Agreement constitutes the entire understanding and agreement of the Parties, and all prior agreements, understandings, representations, or negotiations are hereby superseded, terminated, and canceled in their entirety, and are of no further force or effect.

25. Amendment. This Agreement is not subject to modification or amendment except by a writing of the same formality as this Agreement and executed by both Town and Developer.

26. Severability. Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance, or regulation contrary to which the Parties have no legal right to contract, the latter shall prevail, but the provisions of this Agreement affected shall be limited only to the extent necessary to bring it within the requirements of such law.

27. Independent Contractor. The Developer shall perform its Services pursuant to this Agreement as an independent contractor and not as an agent or employee of Town.

28. Developer Hiring. The Developer shall not hire any officer or employee of Town to perform any service pursuant to this Agreement.

29. Legal and Regulatory Compliance. The Developer shall perform all Services pursuant to this Agreement and prepare documents in compliance with the requirements of laws, codes, rules, regulations, and ordinances applicable to the Project.

30. Conflict of Interest. The Developer affirms that to the best of its knowledge, as of the Effective Date, the Services under this Agreement shall be performed on an arms-length basis, and Developer does not have a direct or indirect ownership interest in the parties with whom it is contracting for the Services.

31. Notices. Any notice required or permitted to be given by the terms of this Agreement shall be in writing and addressed to the other Party's address below, and shall be deemed to have been received by such other Party: (i) on personal delivery; (ii) on the business day following its deposit for overnight delivery with a recognized overnight delivery service; (iii) if by electronic mail, on receipt of electronic confirmation of its receipt; or (iv) if mailed, on actual receipt (but only if sent by registered or certified mail, with return receipt requested):

If to Developer:

Servitas LLC
Angel Rivera
5525 N. MacArthur Blvd, Suite 760
Irving, TX 75038
E: Arivera@servitas.com

If to Town:

Andrea Phillips, Town Manager, ICMA-CM
Town of Pagosa Springs
551 Hot Springs Blvd.
P.O. Box 1859
Pagosa Springs, CO 81147
E: aphillips@pagosasprings.co.gov

IN WITNESS WHEREOF, this Agreement is hereby executed as of the date first above set forth.

Servitas LLC	Town of Pagosa Springs, Colorado
By:_____	By:_____
Title:_____	Title: _____
Date: _____	Date: _____

EXHIBITS

Exhibit “A”	Servitas proposal October 1, 2021
Exhibit “B”	Predevelopment Services
Exhibit “C”	Development Schedule
Exhibit “D”	Left Blank
Exhibit “E”	Left Blank
Exhibit “F”	Predevelopment Budget
Exhibit “G”	Project Sites