

DEVELOPMENT AGREEMENT
(Phase 1, Residences at Main Vail)

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 2021 (the "Effective Date"), by and between the Town of Vail, a Colorado home rule municipal corporation with an address of 75 South Frontage Road, Vail, CO 81657 (the "Town"), and Triumph Development West LLC, a Delaware limited liability company with an address of 12 Vail Road, Suite 700, Vail, CO 81657 ("Developer") (each a "Party" and collectively the "Parties").

WHEREAS, the Town owns Lot 3, Middle Creek (the "Middle Creek Property"), as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference;

WHEREAS, the Town wishes to redevelop the Middle Creek Property as the Residences at Main Vail, a 100% deed-restricted employee housing project (the "Project"), and wishes to pay Developer to manage and oversee construction of the Project;

WHEREAS, on February 10, 2021 the Parties entered into a Pre-Development Agreement to set forth their expectations regarding the Project (the "Pre-DA");

WHEREAS, on March 23, 2021, the Parties entered into a Development Agreement, under which Developer provided entitlement services for the Project (the "DA"), which services have been completed;

WHEREAS, on June 16, 2021, the Parties agreed to modify certain provisions of the Pre-DA and DA;

WHEREAS, on August 17, 2021, the Parties entered into a Professional Services Agreement, under which Developer provided design and preconstruction services for the Project (the "PSA"); and

WHEREAS, Developer has held itself out to the Town as having the requisite expertise and experience to perform the development services required to complete the Project in a timely fashion.

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

I. PURPOSE

To date, Developer has worked on the Project under the Pre-DA, DA and PSA, and the Town and Developer, as co-applicants, have filed all necessary development applications for the Project. The Town continues to have sole ownership rights to all application materials and approved development plans. The Parties now wish to divide the Project into two phases ("Phase 1" and "Phase 2"); this Agreement governs Phase 1, and a later agreement will govern Phase 2. The Scope of Work set forth in **Exhibit B**,

attached hereto and incorporated herein by this reference (the "Scope of Work"), includes additional work to be completed by Developer in furtherance of the Project during Phase 1 and in advance of Phase 2.

II. DEVELOPER'S OBLIGATIONS

A. *Scope of Work.* Developer shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Work. A change in the Scope of Work shall not be effective unless authorized as an amendment to this Agreement. If Developer proceeds without such written authorization, Developer shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit 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.

B. *Schedule.* Developer shall manage the schedule of construction of the Project and shall complete and deliver the Project to the Town in compliance with the schedule attached hereto as **Exhibit C** and incorporated herein by this reference (the "Schedule").

C. *Applicable Law.* Developer shall at all times comply with all applicable law, including without limitation all current and future federal, state and local statutes, regulations, ordinances and rules relating to: the emission, discharge, release or threatened release of a Hazardous Material into the air, surface water, groundwater or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a Hazardous Material; and the protection of human health, safety or the indoor or outdoor environmental, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Clean Air Act; the Federal Water Pollution Control Act; the Occupational Safety and Health Act; all applicable environmental statutes of the State of Colorado; and all other federal, state or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, in effect now or anytime hereafter.

D. *Administration.*

1. Developer shall provide construction administration services throughout construction of the Project.

2. The construction contract between Developer and the general contractor for the Project (the "GC") shall be subject to the Town's prior approval, and shall include without limitation: a provision for assignment of the construction contract to the Town in the event of Developer's default under this Agreement; a 2-year warranty from the GC for its work and the work of its subcontractors, fully assignable to the Town; and an assumption by the GC of all responsibility for subcontractors performing any work on the Project.

3. Developer shall cause the GC to furnish the Town, within 10 days after the Effective Date, a payment and performance bond for the Project in which the Town is designated as beneficiary (the "Bond"), on a standard AIA Document A312-2010 in the amount of the total Project construction costs.

4. Developer shall be responsible for managing the payment of amounts owed to any person or entity working on the Project.

5. Developer shall maintain all books and records related to the Project and shall deliver any requested books and records to the Town within one business day after the Town's request so that the Town may comply with any valid open records request. Upon request by the Town, Developer shall provide evidence of all costs, expenses and mark-ups related to the Project.

6. Developer shall be responsible for all applications, design drawings and plans for the Project, and shall be responsible for obtaining all required permits for the Project.

7. Pursuant to the Keep Jobs in Colorado Act, C.R.S. § 8-17-101, *et seq.* (the "Act"), and the rules adopted by the Division of Labor of the Colorado Department of Labor and Employment implementing the Act (the "Rules"), Developer shall ensure that the general contractor for the Project employs Colorado labor to perform at least 80% of the work under this Agreement and shall obtain and maintain the records required by the Act and the Rules. For purposes of this Section, "Colorado labor" means a person who is a resident of the state of Colorado at the time of this Agreement, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a *bona fide* qualification. A resident of the state of Colorado is a person with a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last 30 days. Developer represents that it is familiar with the requirements of the Act and the Rules and will ensure that the general contractor fully complies with the same.

E. *Authority.* Developer shall have no right, authority or power to bind the Town or any interest of the Town in the Property for any claim for labor or for material or for any other charge or expense incurred in delivering the Project or performing any alteration, renovation, repair, refurbishment or other work, nor to render the Town's

interest in the Property liable for any lien or right of lien for any labor, materials or other charge or expense.

F. *Sales Tax Exemption.* Developer shall prepare all necessary documents to apply for a sales tax exemption from the State of Colorado for all materials used in the Project, and submit such documents to the Town for filing with the State.

III. TERM AND TERMINATION

This Agreement shall commence on the Effective Date, and shall continue until Developer completes the Scope of Work to the satisfaction of the Town, or until terminated as provided herein.

IV. COMPENSATION

A. The total Project costs are set forth in **Exhibit D**, attached hereto and incorporated herein by this reference (the "Total Project Costs"). The Total Project Costs are subject to allowances, qualifications and exclusions as set forth on **Exhibit D** and include without limitation all amounts payable under the general contract for the Scope of Work. For completion of the Project in accordance with this Agreement, the Town shall pay Developer an amount equal to 6% of the Total Project Costs (the "Development Fee"), payable in installments as Total Project Costs are billed to the Town. The Town shall also pay Developer for the Total Project Costs, with the understanding that such amounts shall be held in trust by Developer for payment to the various contractors and subcontractors on the Project, but which shall not be considered compensation to Developer. The Town shall make payments within 30 days following receipt of invoices detailing the Work performed. If the actual total Project costs exceed the Total Project Costs, the Town may, in its discretion and by amendment to this Agreement, approve an increase in the Total Project Costs, as deemed necessary by the Town.

B. In addition to the Development Fee, in consideration for Developer's availability to timely complete the Project in accordance with the Town's proposed schedule, the Town has agreed to pay Developer a fee of \$3,500,000 (the "Availability Fee"). The Town shall make the first payment of the Availability Fee in the amount of \$1,500,000 to Developer upon the Town's issuance of the first building permit for vertical construction on the Project. The remaining \$2,000,000 shall be governed by the agreement for Phase 2 of the Project, and shall be paid upon the Town's issuance of a certificate of occupancy for the Project.

C. In addition to the Development Fee and the Availability Fee, the Town shall pay Developer the additional amounts set forth on **Exhibit E** to compensate Developer for services provided under the PSA and DA that have not been previously paid.

V. 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. 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.

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.

VI. OWNERSHIP

Any materials, items, and work specified in the Scope of Work, and any and all related documentation and materials provided or developed by Developer shall be exclusively owned by the Town. Developer 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," Developer 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 Developer; provided that Developer shall have no liability for any work that has been modified by the Town.

VII. 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.

VIII. INSURANCE

A. Developer agrees to procure and maintain the policies of insurance as described on **Exhibit F**. The responsibility for the costs of such insurance shall be as specified in **Exhibit F**.

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 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. The Town and the Town's officers, employees, and contractors shall be named as additional insureds under all policies.

C. Developer 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.

D. Developer shall cause all contractors hired by Developer to perform work on the Project to provide the minimum insurance coverages required by this Section, and to include the Town and the Town's officers, employees, and contractors as additional insureds.

IX. INDEMNIFICATION

A. Developer agrees to indemnify and hold harmless the Town and its officers, insurers, representatives, agents, employees 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 omission, error, professional error, mistake, negligence, or other fault of Developer, any subcontractor of Developer, or any officer, employee, representative, or agent of Developer, or which arise out of a worker's compensation claim of any employee of Developer or of any employee of any subcontractor of Developer. Developer'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 Developer, any subcontractor of Developer, or any officer, employee, representative, or agent of Developer or of any subcontractor of Developer.

B. If Developer is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Developer's obligation to indemnify and hold harmless the Town may be determined only after Developer'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).

X. WORKERS WITHOUT AUTHORIZATION

A. *Certification.* Developer hereby certifies that, as of the Effective Date, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement and that Developer will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

B. *Prohibited Acts.* Developer shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Developer that the subcontractor shall

not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

C. *Verification.*

1. If Developer has employees, Developer has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. Developer shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Developer obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization who is performing work under this Agreement, Developer shall: notify the subcontractor and the Town within 3 days that Developer has actual knowledge that the subcontractor is employing or contracting with a worker without authorization who is performing work under this Agreement; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the worker without authorization who is performing work under this Agreement; except that Developer shall not terminate the subcontract if during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a worker without authorization who is performing work under this Agreement.

D. *Duty to Comply with Investigations.* Developer shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Developer is complying with the terms of this Agreement.

E. *Affidavits.* If Developer does not have employees, Developer shall sign the "No Employee Affidavit" attached hereto. If Developer wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Developer shall sign the "Department Program Affidavit" attached hereto.

XI. DEFAULT AND REMEDIES

A. *Developer Default.* Each of the following is a Developer default of this Agreement:

1.. If Developer fails to perform any of its obligations under this Agreement and fails to remedy the same within 30 days after Developer is given a written notice specifying the same; provided that, if the nature of the violation is such that it cannot reasonably be remedied within 30 days, and Developer provides evidence

to the Town that the violation cannot reasonably be remedied within 30 days, then the violation shall be remedied as soon as reasonably practicable, but in any case, within 90 days of the original notice of violation.

2. If an involuntary petition is filed against Developer under a bankruptcy or insolvency law or under the reorganization provisions of any law, or when a receiver of Developer, or of all or substantially all of the property of Developer, is appointed without acquiescence, and such petition or appointment is not discharged or stayed within 90 days after the happening of such event.

3. If Developer makes an assignment of its property for the benefit of creditors or files a voluntary petition under a bankruptcy or insolvency law, or seeks relief under any other law for the benefit of debtors.

B. *Town Default.* Each of the following is a Town default of this Agreement:

1. If the Town fails to perform any of its obligations under this Agreement other than its obligation to pay the expenses and fees of the Project and fails to remedy the same within 30 days after the Town is given a written notice specifying the same; provided that, if the nature of the violation is such that it cannot reasonably be remedied within 30 days, and the Town provides evidence to Developer that the violation cannot reasonably be remedied within 30 days, then the violation shall be remedied as soon as reasonably practicable, but in any case, within 90 days of the original notice of violation.

2. If the Town fails to pay any amount owed to Developer under this Agreement within 30 days after the date such payment is due.

C. *Remedies.*

1. If a Developer default occurs, the Town may, in its sole discretion and without waiving any other rights under this Agreement or available to the Town, cause construction of all or part of the Project to be completed and recover appropriate damages from Developer. If the Town proceeds to complete all or part of the Project, Developer shall, at the request of the Party completing the Project, promptly deliver a copy of all of Developer's plans and specifications related to the Improvements. In addition, if a Developer default occurs prior to the payment of any portion of the Availability Fee, the Town shall have no obligation to pay any portion of the Availability Fee. In addition to the specific remedies set forth herein, the Town shall have all other remedies available at law or equity, and the exercise of one remedy shall not preclude the exercise of any other remedy.

2. If a Town default occurs, Developer shall have all remedies available at law or equity, and the exercise of one remedy shall not preclude the exercise of any other remedy, provided that Developer shall not have the remedy of specific performance against the Town. Without limiting the generality of the foregoing, in the event a Town default occurs, Developer may terminate this Agreement upon notice given to the Town, without waiving any of its rights or remedies hereunder.

XII. 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 Eagle 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. Notwithstanding the immediately preceding sentence, this Agreement supersedes the terms and provisions of Sections 2.d., 2.e., and 2.g. of the Pre-DA, but all other terms and provisions of the Pre-DA shall remain in full force and effect. The DA and PSA are hereby terminated and fully superseded by this Agreement.

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.* Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the

current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

L. *Force Majeure*. No Party shall be in breach of this Agreement if such Party's failure to perform any of the duties under this Agreement is due to Force Majeure, which shall be defined as the inability to undertake or perform any of the duties under this Agreement due to acts of God, floods, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government or pandemics.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF VAIL, COLORADO

Scott Robson, Town Manager

ATTEST:

Tammy Nagel, Town Clerk

TRIUMPH DEVELOPMENT WEST, LLC

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ____ day of _____, 2021, by _____ as _____ of Triumph Development West, LLC.

My commission expires:

(S E A L)

Notary Public

NO EMPLOYEY AFFIDAVIT

[To be completed only if Developer has no employees]

1. Check and complete one:

I, _____, am a sole proprietor doing business as _____ . I do not currently employ any individuals. Should I employ any employees during the term of my Agreement with the Town of Vail (the "Town"), I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

OR

I, _____, am the sole owner/member/shareholder of _____, a _____ [specify type of entity – i.e., corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the Town, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

2. Check one.

I am a United States citizen or legal permanent resident.

The Town must verify this statement by reviewing one of the following items:

- *A valid Colorado driver's license or a Colorado identification card;*
- *A United States military card or a military dependent's identification card;*
- *A United States Coast Guard Merchant Mariner card;*
- *A Native American tribal document;*
- *In the case of a resident of another state, the driver's license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card; or*
- *Any other documents or combination of documents listed in the Town's "Acceptable Documents for Lawful Presence Verification" chart that prove both Developer's citizenship/lawful presence and identity.*

OR

I am otherwise lawfully present in the United States pursuant to federal law.

Developer must verify this statement through the federal Systematic Alien Verification of Entitlement ("SAVE") program, and provide such verification to the Town.

Signature

Date

DEPARTMENT PROGRAM AFFIDAVIT

[To be completed only if Developer participates in the Department of Labor Lawful Presence Verification Program]

I, _____, as a public contractor under contract with the Town of Vail (the "Town"), hereby affirm that:

1. I have examined or will examine the legal work status of all employees who are newly hired for employment to perform work under this public contract for services ("Agreement") with the Town within 20 days after such hiring date;

2. I have retained or will retain file copies of all documents required by 8 U.S.C. § 1324a, which verify the employment eligibility and identity of newly hired employees who perform work under this Agreement; and

3. I have not and will not alter or falsify the identification documents for my newly hired employees who perform work under this Agreement.

Signature

Date

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ____ day of _____, 2021, by _____ as _____ of _____.

My commission expires:

(S E A L)

Notary Public

EXHIBIT A

LEGAL DESCRIPTION

FIRST AMENDMENT OF LOT 3, AMENDED FINAL PLAT MIDDLE CREEK
SUBDIVISION, A RESUBDIVISION OF LOT 1, COUNTY OF EAGLE, STATE
OF COLORADO

EXHIBIT B

SCOPE OF WORK

Developer's Duties:

During the term of this Agreement, Developer shall cause completion of Phase 1 of the Project, which includes demolition of the existing structures, construction of the micropile and soil shoring system, all excavation and export required for the installation of this shoring system, and permanent storm and groundwater system that is integral to the shoring system, in accordance with the following plans:

| <u>Drawing</u> | <u>Title</u> | <u>Date</u> |
|--|--------------------------------|--------------------|
| <i>Civil</i> | | |
| C1.0 | Civil Notes | October 8, 2021 |
| C1.1 | Existing Conditions-Demolition | October 8, 2021 |
| C1.2 | Site Plan | October 8, 2021 |
| C2.0 | Grading and Drainage Plan | October 8, 2021 |
| C2.1 | Earthworks | October 8, 2021 |
| C2.2 | Wall Profiles | October 8, 2021 |
| C3.0 | Storm Sewer Plan | October 8, 2021 |
| C4.0 | Utility Plan | October 8, 2021 |
| C5.0 | Erosion Control Plan | October 8, 2021 |
| C7.1 | Drainage/Utility Details | October 8, 2021 |
| C7.3 | Erosion Control Details | October 8, 2021 |
| <i>Temporary & Permanent Micropile & Ground Nail Walls</i> | | |
| B.1.01 | Cover | September 30, 2021 |
| B.1.02 | Locations | September 30, 2021 |
| B.1.03a | Profiles | September 30, 2021 |
| B.1.03b | Profiles | September 30, 2021 |
| B.1.04 | General Notes | September 30, 2021 |
| B.1.05 | Sections | September 30, 2021 |
| B.1.06a | Typical Sections & Details | September 30, 2021 |
| B.1.06b | Typical Sections & Details | September 30, 2021 |

In addition, Developer shall perform the following work in furtherance of Phase 2 of the Project:

- Develop and maintain a Master Project Budget, including all Project costs, and update the budget monthly, reflecting changes and trending from the previous budget, as well as contingency allocations for Town review.
- Finalize Phase 2 cost estimates and present the information to the Town for review.

- Coordinate a value engineering exercise with the Town and the general contractor for Phase 2 to further evaluate the total cost of the Project.
- Complete Phase 2 "For Construction Design Documents"
- Negotiate and execute a Phase 2 Development Agreement no later than February 15, 2022.
- Develop and maintain a Master Project Schedule for the Project and update the Schedule monthly for Town review.
- Hold weekly meetings with the Project design team, construction team and the Town.

EXHIBIT C

SCHEDULE

Milestone Schedule:

In performance of the duties described above, Developer shall achieve the following schedule activities:

- TOV Approved Shoring Material Order October 7, 2021
- CGL School Vacated October 19, 2021
- Town Council Approves Agreement October 19, 2021
- Town of Vail Approval of Notice of Award October 20, 2021
- Town of Vail Approval of Notice To Proceed October 25, 2021
- Mobilize onsite October 25, 2021
- Required Demo Gas Line By Xcel Gas November 5, 2021
- Commence Shoring November 22, 2021
- Building Demolition December 15, 2021
- Finish Shoring May 13, 2022
- Additional Time for Anticipated Weather Days
(15 total days) June 10, 2022

EXHIBIT D

TOTAL PROJECT COSTS

| Cost Category | Project Cost | Earned to Date |
|---|---------------------|-----------------------|
| Shaw Preconstruction | 20,000.00 | 5,000.00 |
| Shoring Design | 4,950.00 | 4,950.00 |
| Schofield Contract: | | |
| Traffic Control | 5,000.00 | - |
| Temporary Facilities | 38,052.00 | - |
| Construction Fence | 20,000.00 | - |
| Surveying | 10,000.00 | - |
| Equipment Mobilization/Demobe | 7,500.00 | - |
| Bonds & Insurance | 31,502.00 | - |
| Project Management | 44,446.00 | - |
| Temp & Permanent Soil Nail Wall | 965,000.00 | - |
| Demo | 133,000.00 | - |
| Erosion Control | 6,800.00 | - |
| Cut/Export to East Vail or Equivalent | 429,828.00 | - |
| Wall Drain | 26,862.00 | - |
| Street Sweeping | 28,800.00 | - |
| Winter Conditions | 32,800.00 | - |
| Builders Risk Insurance | 18,462.00 | - |
| TCS Traffic Control | 12,600.00 | - |
| Export Down Valley to SEI Provided Site | 240,000.00 | - |
| Total Construction Costs | 2,075,602.00 | 9,950.00 |
| Architecture | 321,725.00 | 208,125.00 |
| Design Consultants | - | - |
| Civil Engineering | 30,000.00 | 11,213.75 |
| Landscape | 10,000.00 | 1,500.00 |
| Survey | 2,500.00 | - |
| Title | 1,000.00 | - |
| Geotech and Wall Design | 20,000.00 | - |
| Utility Disconnect | 15,000.00 | - |
| Hazardous Material Disposal | 5,000.00 | - |
| Misc | 3,500.00 | 588.01 |
| Total Softcost | 408,725.00 | 221,426.76 |
| Developer Fee (6%) | 160,239.09 | 13,882.61 |
| Contingency (7.5%) | 186,324.53 | - |
| Total Project Costs | 2,830,890.62 | 245,259.37 |

Total Project Cost Allowances, Qualifications and Exclusions:

Electric transformer demolition is not included and will be used for temporary construction power.

Over-excavation, replacement material and re-compaction of any unsuitable soils is not included.

Demolition of buried underground facilities other than utility services that are exposed during excavation is not included.

Rock excavation and disposal for rock larger than 1 cubic yard or rock formation that cannot be reasonably excavated with a CAT 330 Excavator is not included.

Special handling required for large quantities of rock such as breaking, stockpiling and handling to allow for export is not included.

Dewatering costs are not included.

The cost of Town permits, tap fees, and inspection fees are not included.

Demolition of visible existing walls and MSE gravity walls is included. Demolition for unanticipated shotcrete, soil nails or other earth retention systems is not included.

Demolition and removal of hazardous material including asbestos, freon and fluorescent bulbs is included as a \$5,000 allowance.

Direct utility disconnect costs are included as \$15,000 allowance.

Changes to Contract Price:

1. A credit of \$15 per cubic yard will be provided for export material that is brought to the East Vail Berm site or another in-town location with the same travel times and logistics. Trips and soil quantities will be tracked with tickets.
2. Work that is not included in this proposal will be tracked with tickets and billed on a Time & Materials basis based on the Schofield Excavation 2019 Hourly Rate Sheet.

SCHOFIELD EXCAVATION

2019 HOURLY RATE SHEET

| | |
|----------------------------------|--------------|
| CAT 349 EXCAVATOR | \$ 275.00 |
| CAT 335 EXCAVATOR | \$ 225.00 |
| CAT 330 EXCAVATOR | \$ 225.00 |
| CAT 328 EXCAVATOR | \$ 225.00 |
| CAT 325 EXCAVATOR W/TH | \$ 225.00 |
| CAT 320 EXCAVATOR | \$ 200.00 |
| CAT 315 EXCAVATOR W/TH | \$ 190.00 |
| CAT 308 EXCAVATOR | \$ 185.00 |
| CAT 305 EXCAVATOR | \$ 160.00 |
| EXCAVATOR W/BREAKER | \$ 450.00 |
| CAT D6 DOZER | \$ 225.00 |
| CAT 980 WHEEL LOADER | \$ 300.00 |
| CAT 966 WHEEL LOADER | \$ 250.00 |
| CAT 950 WHEEL LOADER | \$ 200.00 |
| CAT 950 LOADER W/ ASPHALT ZIPPER | \$ 325.00 |
| JOHN DEERE 624 WHEEL LOADER | \$ 185.00 |
| JOHN DEERE 544 WHEEL LOADER | \$ 185.00 |
| GEHL 5640 SKIDSTEER | \$ 165.00 |
| GEHL CTL 60 SKIDSTEER | \$ 165.00 |
| CAT 299 SKIDSTEER | \$ 165.00 |
| SKIDSTEER WITH BREAKER | \$ 250.00 |
| CAT 143 BLADE | \$ 200.00 |
| CAT CP56 SHEEPS FOOT ROLLER | \$ 200.00 |
| BOMAG SMOOTH DRUM ROLLER | \$ 170.00 |
| HAMM SMOOTH DRUM ROLLER | \$ 170.00 |
| HYPAC DOUBLE DRUM ROLLER | \$ 150.00 |
| WALKBEHIND ROLLER | \$ 100.00 |
| PLATE COMPACTOR/JUMPING JACK | \$ 130.00* |
| TRUCK W/ TRAILER | \$ 120.00 |
| TRACTOR W/ END DUMP TRAILER | \$ 130.00 |
| TRACTOR W/LOWBOY | \$ 150.00 |
| TANDEM DUMP TRUCK | \$ 105.00 |
| WATER TRUCK | \$ 105.00 |
| WATER TRAILER | \$ 300.00* |
| TYMCO STREET SWEEPER | \$ 300.00 |
| LIGHT PLANT | \$ 300.00* |
| GROUND THAW MACHINE | \$ 1,100.00* |
| COMPRESSOR AND JACKHAMMER | \$ 350.00* |
| 5000W GENERATOR | \$ 100.00* |
| PROJECT MANAGER | \$ 125.00 |
| SUPERVISOR | \$ 100.00 |
| OPERATOR | \$ 70.00 |
| LABOR | \$ 55.00 |
| TRENCH BOX RENTALS START AT | \$ 330.00* |

*REFLECTS DAILY RATE

- Overtime labor rates are 1.5x the above rates for time over 40 hours per week and Saturdays. 2x above rates for nights (work after 5pm) / Sundays / or holidays.
- Subcontractor and material costs shall include 15% markup.
- Any rate not included on this sheet will be quoted at the time it is needed.

EXHIBIT E

SUMMARY OF DEVELOPER PRIOR COMPENSATION

| Category | Budget Amount | Paid To Date | Balance Remaining | Total Compensation |
|--|--------------------------|-------------------------|------------------------------|-------------------------------|
| 3/23/21 Development Agreement | | | | |
| Direct Expenses | 390,000.00 | 367,956.56 | - | 367,956.56 |
| Developer Fee | 300,000.00 | 200,000.00 | 100,000.00 | 300,000.00 |
| DA Total | 690,000.00 | 567,956.56 | 100,000.00 | 667,956.56 |
| 8/17/21 Professional Services Agreement | | | | |
| Architecture | 321,725.00 | 174,125.00 | 34,000.00 | 208,125.00 |
| Civil Engineering | 30,000.00 | 6,008.75 | 5,205.00 | 11,213.75 |
| Landscape | 10,000.00 | 1,500.00 | - | 1,500.00 |
| Survey | 2,500.00 | - | - | - |
| Title | 1,000.00 | - | - | - |
| Geotech | 7,500.00 | - | - | - |
| Construction Precon | 150,000.00 | - | 9,950.00 | 9,950.00 |
| Misc | 1,000.00 | 381.53 | 206.48 | 588.01 |
| Triumph Fee (6%) | 34,423.50 | 10,920.92 | 2,961.69 | 13,882.61 |
| Contingency | 50,000.00 | | - | - |
| PSA Total | 608,148.50 | 192,936.20 | 52,323.17 | 245,259.37 |

EXHIBIT F

INSURANCE AND BONDING REQUIREMENTS

Performance and Payment Bonds

Each contractor entering into a Project Contract for the construction of the Project shall be required to furnish a performance and payment bond in a form acceptable to the Town, copies of which shall be provided to the Trustee. Such bonds shall be made payable to the Town and the Trustee as co-obliges, subject to the provisions of the Indenture, shall be executed by a corporate surety licensed to transact business in Colorado and acceptable to the Town, and shall be in an amount equal to the contract price for such contractor's Project Contract. If, at any time during the construction of the Project, the surety on such bond shall be disqualified from doing business within the Colorado, or shall otherwise become incapable of performing its obligations under such bond, an alternate surety acceptable to the Town shall be provided. In the event of any change order resulting in the performance of additional work in connection with the Project, the amounts of such bonds pertaining thereto shall be increased to include the cost of such additional work or materials or fixtures to be incorporated in the Project as a cost of the Project.

Professional Errors and Omissions Liability Insurance

Each design consultant for the Project shall obtain and maintain professional liability insurance for damages for claims by reasons of any negligent act, error or omission committed or alleged to have been committed by them or anyone for whom they are liable, in an amount of not less than \$2,000,000 per claim and \$2,000,000 aggregate. Professional liability insurance coverage may be structured to provide coverage on a "claims-made" basis; provided, however, the professional liability insurance coverage shall remain in effect for the period set out in C.R.S. §13-80-104. Deductibles for such insurance shall be paid by the design consultants. The limits of this insurance shall not be reduced unless approved by the Town in writing.

Contractor's Commercial General Liability Insurance

Each contractor entering into a Project Contract for the construction of any portion of the Project shall be required to procure and maintain Commercial General Liability Insurance during the duration of such contractor's Project Contract in the amount of at least \$2,000,000 each occurrence and \$4,000,000 general aggregate (which coverage can be provided through a combination of General Liability Insurance and Umbrella Insurance). The policies shall be applicable to all premises and operations. Such policies shall include the Town and the Trustee as additional named insureds and shall include a provision prohibiting cancellation or termination without thirty (30) days prior written notice to the Town and the Trustee. A certificate of insurance in a form acceptable to the Town shall be provided to the Town and the Trustee with respect to each contractor. Such insurance shall provide protection from all claims for bodily injury, including death, property damage, contractual liability and completed operations.

Design Consultant's General Liability Insurance

Each design consultant entering into a Project Contract for the design of any portion of the Project shall be required to procure and maintain Commercial General Liability Insurance during the duration of such design consultant's Project Contract in the amount of at least \$1,000,000 each occurrence, and \$2,000,000 general aggregate. The policies shall be applicable to all premises and operations. Such policies shall include the Town and the Trustee as additional named insureds and shall include a provision prohibiting cancellation or termination without thirty (30) days prior written notice to the Town and the Trustee. A certificate of insurance in a form acceptable to the Town shall be provided to the Town and Trustee with respect to each design consultant. Such insurance shall provide protection from all claims for bodily injury, including death, property damage, contractual liability and completed operations.

Contractor's Automobile Liability Insurance

Each contractor entering into a Project Contract for the construction of any portion of the Project shall be required to procure and maintain automobile liability insurance with minimum combined single limits for bodily injury and property damage of not less than \$1,000,000 for any one occurrence with respect to each of the contractor's owned, hired or non-owned vehicles assigned to or used in performance of its work.

Builder's Risk Insurance

Developer or contractor shall provide Builder's Risk Insurance with minimum limits in the amount Total Construction Costs. A certificate of insurance shall be provided to the Trustee and the Town within seven Business Days of the effective date of the policies. The policies shall be written on an "all risk" basis and shall name the Town and the Trustee as insureds. The policies shall contain a waiver of subrogation by the issuer of such policies with respect to the Town and the Trustee, and their respective officers, agents and employees while acting within the scope of their employment. This policy will be in place the duration of the Work.

Design Consultant's and Contractor's Worker's Compensation Insurance

Each design consultant and contractor entering into a Project Contract shall be required to procure and maintain, at its own cost and expense, worker's compensation insurance during the term of its Project Contract covering its employees working thereunder. Such insurance, if issued by a private carrier, shall contain a provision that such coverage shall not be canceled without thirty (30) days' prior written notice to the Town and the Trustee. A certificate issued by the state compensation insurance fund evidencing such coverage shall be provided to the Town and the Trustee or, if such insurance is provided by a private carrier, a completed certificate of insurance, in a form acceptable to the Town, shall be provided to the Town with respect to each design consultant and contractor. Minimum limits of Worker's Compensation Insurance shall be \$500,000 each accident; \$500,000 disease policy and \$500,000 disease each employee.

Proceeds of Certain Insurance Policies and Performance Bonds

The Net Proceeds of any performance or payment bond or insurance policy and any Net Proceeds received as a consequence of default under a Project Contract shall be deposited into the Town's Construction Fund for the development.