

**TOWN OF PAGOSA SPRINGS
SERVICES AGREEMENT**

THIS SERVICES AGREEMENT (this “Agreement”) is made and entered into the most recent day and year set forth below by and between the Town of Pagosa Springs, a municipal corporation and political subdivision of the State of Colorado (the “Principal”), whose mailing address is PO BOX 1859, 551 Hot Springs Boulevard, Pagosa Springs, CO. 81147, and _____ (the “Consultant”), whose mailing address is _____. The Principal and the Consultant are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

WITNESSETH:

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the Parties as follows:

1. Scope of Services. The Consultant agrees to provide services related to the following scope of services: Town of Pagosa Springs Land Use Development Code Comprehensive update, including public outreach and engagement, draft format,**To be filled in based on the selected firm’s accepted proposal.** The scope of services referenced above is supplemented by a detailed Scope of Work originally included with the Consultant’s proposal and is attached as **Exhibit A** hereto and incorporated herein by this reference. The scope of services referenced above along with exhibit A is hereinafter referred to as the “Scope of Services.” All provisions of the Scope of Services, including without limitation any terms and conditions included therein, shall be subject to the provisions of this Agreement.

2. Time of Commencement and Completion of Services. The services to be performed pursuant to this Agreement shall be initiated no later than _____, _____. Services shall be completed no later than _____, _____, unless further agreed upon by the parties. If the Consultant has not completed the scope of work by _____, _____, the Principle may terminate this Agreement by providing written notice to the Consultant. Any extensions of the time limit set forth above must be agreed upon in writing by the Parties.

3. Early Termination by Principal. Notwithstanding the time periods contained herein, the Principal may terminate this Agreement at any time without cause by providing written notice of termination to the Contractor. Such notice shall be delivered at least three (3) days prior to the termination date contained in said notice unless otherwise agreed in writing by the Parties. In the event of any such early termination by the Principal, the Consultant shall be paid for services rendered prior to the date of termination, subject only to the satisfactory performance of the Consultant’s

obligations under this Agreement. Such payment shall be the Consultant's sole right and remedy for such termination.

4. Suspension. Without terminating this Agreement or breaching its obligations hereunder, the Principal may, at its convenience, suspend the services of the Consultant by giving the Consultant written notice one day in advance of the suspension date. Upon receipt of such notice, the Consultant shall cease its work in as efficient a manner as possible so as to keep its total charges to the Principal for services under this Agreement to the minimum. No work shall be performed during such suspension except with prior written authorization by the Principal Representative. After a suspension has been in effect for thirty (30) days, the Consultant may terminate this Agreement at will.

5. Compensation. In consideration of the services to be performed pursuant to this Agreement, the Principal agrees to pay the Consultant a maximum compensation not exceed _____ (\$XXX,XXX.00), unless the Scope of Services is modified pursuant to a written Change Order mutually agreed upon and executed by the Parties. The Principal shall provide no benefits to the Consultant other than the compensation stated above. The Consultant shall bill its charges to the Principal periodically, but no more frequently than once a month.

6. Qualifications on Obligations to Pay. No partial payment shall be final acceptance or approval of that part of the Scope of Services paid for or shall relieve the Consultant of any of its obligations under this Agreement. Notwithstanding any other terms of this Agreement, the Principal may withhold any payment (whether a progress payment or final payment) to the Consultant if any one or more of the following conditions exists:

(a) The Consultant is in default of any of its obligations under this Agreement.

(b) Any part of such payment is attributable to services that are not performed according to this Agreement. The Principal will pay for any portion of the services performed according to this Agreement.

(c) The Consultant has failed to make payments promptly to any third party used to perform any portion of the services hereunder, subject to Paragraph 9, for which the Principal has made payments to the Consultant.

7. Principal Representative. The Principal will designate, prior to commencement of work, its project representative (the "Principal Representative") who shall make, within the scope of his or her authority, all necessary and proper decisions with reference to the Scope of Services. All requests for contract interpretations, change orders, and other clarification or instruction shall be directed to the Principal

Representative. **Add expected town staff functions: secure meeting space, assist with out-reach efforts, ect...**

8. Independent Consultant. The services to be performed by the Consultant are those of an independent Consultant and not of an employee of the Principal. **The Consultant is obligated to pay federal and state income tax on any moneys earned pursuant to this Agreement. Neither the Consultant nor its employees, if any, are entitled to workers' compensation benefits from the Principal for the performance of the services specified in this Agreement.**

9. Personal Services. It is understood that the Principal enters into this Agreement based on the special abilities of the Consultant and that this Agreement shall be considered an agreement for personal services. Accordingly, the Consultant shall neither assign any responsibilities nor delegate any duties arising under this Agreement without the prior written consent of the Principal. The Consultant accepts the relationship of trust and confidence established between the Parties. The Consultant shall use its best efforts and shall perform the services hereunder at or above the standard of care of those in its profession or industry providing similar services.

10. Accuracy of Work. The Consultant represents, covenants, and agrees that it will perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. The Principal's approval shall not diminish or release the Consultant's duties, since the Principal is ultimately relying upon the Consultant's skill and knowledge.

11. Duty to Warn. The Consultant agrees to call to the Principal's attention errors in any draft or final outlines, sketches, illustrations, instructions, information, requirements, procedures, and other work product supplied to the Consultant by the Principal or a third party that it becomes aware of and believes may be unsuitable, improper, or inaccurate in a material way. However, the Consultant shall not independently verify the validity, completeness, or accuracy of such information unless otherwise expressly engaged to do so by the Principal. Nothing shall detract from this obligation unless the Consultant advises the Principal in writing that such data may be unsuitable, improper, or inaccurate and the Principal nevertheless confirms in writing that it wishes the Consultant to proceed according to such data as originally given.

12. Insurance. The Consultant represents, warrants, and agrees that it has and shall maintain State minimum workers' compensation insurance coverage for its employees, if any. The Consultant shall also maintain broad form general liability, and automotive liability insurance in the minimum amount of \$350,000 for bodily injury, death, or damage to property of any person and \$990,000 for bodily injury, death, or damage to property of more than one person, or the maximum amount that may be recovered under the Colorado Governmental Immunity Act, § 24-10-101 *et seq.*, C.R.S., as from time to time amended (the "CGIA"), whichever is higher. All insurance policies

(except workers' compensation) shall include the Principal and its elected officials and employees as additional insureds. At the request of the Principal, the Consultant shall provide the Principal with documentation evidencing such coverages.

13. Illegal Aliens. The Consultant certifies that the Consultant shall comply with the provisions of Section 8-17.5-101 *et seq.*, C.R.S. The Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into an agreement with a subcontractor that knowingly employs or contracts with an illegal alien. The Consultant represents, warrants and agrees that it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or the Department Program described in Section 8-17.5-101, C.R.S. The Consultant shall use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed. If the Consultant obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Consultant shall: (i) notify the subcontractor and the Principal within three (3) days that the Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and (ii) terminate the subcontract with the subcontractor if within three (3) days of receiving such notice, the subcontractor does not stop employing or contracting with the illegal alien, unless the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Consultant shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment. If the Consultant fails to comply with any requirement of Section 8-17.5-102(2), C.R.S., the Principal may terminate this Agreement for breach, and the Consultant shall be liable for actual and consequential damages to the Principal. If the Consultant participates in the Department Program, the Consultant shall provide the affirmation required under Section 8-17.5-102(5)(c)(II), C.R.S., to the Principal.

The Consultant, if operating as a sole proprietor, hereby swears or affirms under penalty of perjury that the Consultant (i) is a citizen of the United States or legal permanent resident or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of Section 24-76.5-101 *et seq.*, C.R.S., and (iii) shall produce one of the forms of identification required by Section 24-76.5-103, C.R.S., prior to the performance of any of its other obligations hereunder.

14. Compliance with Laws/Licenses. The Consultant is obligated to (a) familiarize itself and comply with all laws applicable to the performance of the Scope of Services; and (b) acquire and/or maintain licenses, certifications and permits required to perform the Scope of Services.

15. Acceptance Not Waiver. The Principal's approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights or benefits provided to the Principal under this Agreement.

16. Default. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either Party should fail or refuse to perform according to the terms of this Agreement, such Party may be declared in default.

17. Remedies. In the event a Party declares a default by the other Party, such defaulting Party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the Party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail itself of any other remedy at law or equity. If the non-defaulting Party commences legal or equitable actions against the defaulting Party, the defaulting Party shall be liable to the non-defaulting Party for the non-defaulting Party's reasonable attorney fees and costs incurred because of the default. Under no circumstances shall either Party be liable to the other Party for special, punitive, indirect or consequential damages arising out of or in connection with this Agreement, including without limitation lost profits, loss of use, or loss of opportunity, except as required by Paragraph 13 (Illegal Aliens).

18. Indemnification; No Waiver of Liability. The Consultant agrees to indemnify, defend, and hold harmless the Principal from any and all damages and liabilities arising from the Consultant's performance of the Scope of Services. As part of this obligation, the Consultant shall compensate the Principal for the time, if any, spent by its legal counsel in connection with such claims or actions. If an Additional Scope of Services contains any provisions purporting to require the Principal to defend, indemnify, or hold harmless the Consultant or purporting to affect a waiver or limitation of the Consultant's liability (either by type of liability or amount), the Principal does not agree or accept such provisions and such provisions are not part of the Agreement. The Principal is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, defenses and protections provided by the CGIA or otherwise available to the Principal or its officers or employees.

19. Binding Effect. This writing constitutes the entire agreement between the Parties and shall be binding upon the Parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of the Parties.

20. Law; Venue. The laws of the State of Colorado shall govern the construction, interpretation, execution and enforcement of this Agreement. Venue for any dispute between the Parties arising out of or relating to this Agreement shall be in the

State of Colorado District Court for the county in which the Principal's mailing address is located.

21. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

22. Annual Appropriation. The Principal's obligations hereunder are subject to the annual appropriation of funds necessary for the performance thereof, which appropriations shall be made in the sole discretion of the Principal's Board of Directors.

23. Ownership of Work Product. All documents such as reports, plans, drawings and contract specifications, information, and other materials prepared or furnished by the Consultant (or the Consultant's independent professional associates, subcontractors, and consultants) and paid for pursuant to this Agreement are instruments of public information and property of the Principal. All internal documents which support the public information such as field data, field notes, laboratory test data, calculations, estimates and other documents prepared by the Consultant as instruments of service shall be provided to the Principal. The Principal understands such documents are not intended or represented to be suitable for reuse by the Principal or others for purposes outside the specific scope and conditions of the Scope of Services. Any reuse without written verification or adaptation by the Consultant for the specific purpose intended will be at the Principal's sole risk and without liability or legal exposure to the Consultant, or to the Consultant's independent professional associates, subcontractors, or consultants.

24. Taxes. The Principal is a governmental entity and is therefore exempt from state and local sales and use tax. The Principal will not pay for or reimburse any sales or use tax that may not directly be imposed against the Principal. The Consultant shall use the Principal's sales tax exemption for the purchase of any and all products and equipment on behalf of the Principal.

25. Time Is of the Essence. All times stated in this Agreement are of the essence.

26. Notices. All notices which are required or which may be given under this Agreement shall be effective when mailed via registered or certified mail, postage prepaid and sent to the address first set forth above.

27. Counterparts, Electronic Signatures and Electronic Records. This Agreement may be executed in two counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument. The Parties consent to the use of electronic signatures and agree that the transaction may be conducted electronically pursuant to the Uniform Electronic Transactions Act, § 24-71.3-101, *et seq.*, C.R.S. The Agreement and any other documents requiring a signature may be

signed electronically by either Party. The Parties agree not to deny the legal effect or enforceability of the Agreement, solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature on the grounds that it is an electronic record or an electronic signature or that it is not in its original form or is not an original.

28. No Third Party Beneficiaries. The Parties to this Agreement do not intend to benefit any person not a party to this Agreement. No person or entity, other than the Parties to this Agreement, shall have any right, legal or equitable, to enforce any provision of this Agreement.

CONSULTANT: SE Group

By: _____
Name: _____
Title: _____
Date: _____

PRINCIPAL: Town of Pagosa Springs

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A
SCOPE OF WORK