

Agreement for Professional Services

This Agreement for Professional Services (the "Agreement") is made and entered into this _____ day of _____, 2025 (the "Effective Date"), by and between the Town of Erie, a Colorado home rule municipality with an address of 645 Holbrook Street, P.O. Box 750, Erie, CO 80516, (the "Town"), and CTL|Thompson, Inc., an independent contractor with a principal place of business at 1971 West 12th Avenue, Denver, CO 80204 ("Consultant") (each a "Party" and collectively the "Parties").

Whereas, the Town requires professional services; and

Whereas, Consultant has held itself out to the Town as having the requisite expertise and experience to perform the required professional services.

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

I. Scope of Services

A. Consultant 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 Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference.

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Consultant proceeds without such written authorization, Consultant shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

II. Term and Termination

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

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

III. Compensation

In consideration for the completion of the Scope of Services by Consultant, the Town shall pay Consultant an amount not to exceed \$170,000. This amount shall include all fees, costs and expenses incurred by Consultant, and no additional amounts shall be paid by the Town for such fees, costs and expenses. Consultant may submit periodic invoices, which shall be paid by the Town within 30 days of receipt.

IV. Professional Responsibility

A. Consultant 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 Consultant 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 Consultant 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.

C. Consultant shall at all times comply with all applicable law, including all federal, state and local statutes, regulations, ordinances, decrees 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 and safety, including without limitation the following, as amended: the Comprehensive Environmental Response, Compensation and Liability Act; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act; the Toxic Substances Control Act; the Clean Water Act; the Clean Air Act; the Occupational Safety and Health Act; the Solid Waste Disposal Act; the Davis Bacon Act; the Copeland Act; the Contract Work Hours and Safety Standards Act; the Byrd Anti-Lobbying Amendment; the Housing and Community Development Act; and the Energy Policy and Conservation Act.

D. Consultant shall comply with the accessibility standards for an individual with a disability adopted by the State Office of Information Technology pursuant to C.R.S. § 24-85-103, and shall indemnify, hold harmless and assume liability on behalf of the Town and its officers, employees, agents and attorneys for all costs, expenses, claims, damages, liabilities, court awards, attorney fees and related costs, and any other amounts incurred by the Town in relation to Consultant's noncompliance with such accessibility standards.

V. Independent Consultant

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

VI. Insurance

A. Consultant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Consultant pursuant to this Agreement. Consultant shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.
2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.
3. Professional liability insurance with minimum limits of \$1,000,000 each claim and \$2,000,000 general aggregate.

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 by Consultant 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 Consultant. Consultant shall be solely responsible for any deductible losses under any policy.

C. Consultant 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.

VII. Indemnification

A. Consultant agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs, and assigns from and against all claims, liability, damages, losses, expenses and demands, including reasonable 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 Consultant, any subcontractor of Consultant, or any officer, employee, representative, or agent of Consultant, or which arise out of a worker's compensation claim of any employee of Consultant or of any employee of any subcontractor of Consultant; provided that Consultant'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 Consultant, any subcontractor of Consultant, or any officer, employee, representative, or agent of Consultant or of any subcontractor of Consultant.

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

B. *No Waiver.* Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by either party shall not constitute a waiver of any of the other terms or obligation of this Agreement.

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

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

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

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

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

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

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

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

K. *Subject to Annual Appropriation.* 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.

M. *Electronic Signatures.* The Parties intend that this Agreement be governed by the Uniform Electronic Transactions Act, C.R.S. § 24-71.3-101, *et seq.*

In Witness Whereof, the Parties have executed this Agreement as of the Effective Date.

Town of Erie, Colorado

Andrew J. Moore, Mayor

Attest:

Debbie Stamp, Town Clerk

Consultant

By: *[Signature]*

State of Colorado)
County of *Denver*) ss.

The foregoing instrument was subscribed, sworn to and acknowledged before me this *8* day of *January*, 2025, by *Erin Bouchette* as *Associate* of CTL Thompson, Inc. *26*

My commission expires:

(Seal)

[Signature]
Notary Public



Exhibit A Scope of Services

Consultant's Duties

During the term of this Agreement, Consultant shall perform the following duties, as directed by the Town:

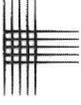
- 1) Schedule the Utility Notification Service of Colorado (UNCC) to mark locations of public underground utilities.
- 2) Engage a subcontractor to drill 14 exploratory borings using air rotary drill tools powered by a track-mounted drill rig. Approximate locations are shown on the provided Proposed Boring Locations Plan.
 - a) The borings shall be drilled vertically to depths of up to 150 feet, unless practical drill rig refusal occurs or air circulation is lost.
 - b) Drilling shall be observed and logged by a representative of Consultant (CTL|T).
 - c) The borings shall be left open to allow for delayed groundwater measurements and geophysical testing. Borings shall be subsequently grouted in accordance with Colorado Department of Health and Environment requirements.
- 3) Retain geophysical testing services to log down-hole density, gamma, electrical resistivity, and caliper.
- 4) Analyze the results of field investigation to evaluate the presence of mines and risks of potential ground movement due to subsidence of the abandoned mines.
- 5) Summarize the results of the investigation and present results in a report which shall include:
 - a) A site plan showing the boring locations and proposed construction;
 - b) Descriptions of existing site conditions and the proposed construction;
 - c) Graphical logs of the borings indicating soil and bedrock types, groundwater levels, geophysical test results, and depths to mines, if found;
 - d) A discussion of extent of mining and condition of workings indicated by borings and mine maps;
 - e) A summary of the results of the analysis and failure modes of the mine workings that could be translated to risk of subsidence potential;
 - f) A discussion of potential future subsidence risks, limitations on development, and mitigation concept alternatives; and
 - g) A conceptual void-fill grouting plan and specifications.
- 6) Provide general consultation to the Town on the selection of a specialty contractor to execute the void-fill grouting plan.

- 7) Attend meetings with the selected specialty contractor to aid in the development of a final void-fill grouting plan and specifications.
- 8) Attend meetings with representatives from the Colorado Geological Survey to:
 - a) Discuss results of investigation and proposed mitigation plan; and
 - b) Obtain consensus regarding the development constraints due to underground mining and potential mitigation.

Upon completion of the investigation, Consultant shall provide an electronic (PDF) copy of the report, signed by a Professional Engineer registered in the State of Colorado, and make hard copies available upon request.

Consultant will take reasonable precautions to reduce damage to the site when performing its services; however, Town accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided in the Scope of Services.

The Town shall furnish or cause to be furnished to Consultant all documents and information known or available to the Town that relate to the identity, location, quantity, nature, or characteristic of any hazardous waste, toxic, radioactive, or contaminated materials existing at or near the project site ("Affected Materials"), and shall immediately transmit new, updated, or revised information as it becomes available. The term "Affected Materials" excludes any hazardous, toxic, or radioactive substance brought on to and released upon the project site by Consultant in conjunction with the performance of its services. The Town agrees that Consultant is not responsible for the disposition of Affected Materials and that the Town is responsible for directing such disposition. In no event shall Consultant be required to sign a hazardous waste manifest or take title to any Affected Materials. The Town shall have the obligation to make all spill or release notifications to appropriate governmental agencies relating to any Affected Materials. The Town agrees that Consultant neither created nor contributed to the creation or existence of any Affected Materials conditions at the project site and that Consultant shall not be responsible for any claims, losses, or damages allegedly arising out of Consultant's performance of services hereunder, or for any claims against Consultant as a generator, disposer, or arranger of the Affected Materials under federal, state, or local law or ordinance. Should unanticipated Affected Materials be discovered in the course of Consultant's performance of its Services, such discovery shall constitute a changed condition mandating a renegotiation of the Scope of Services. Consultant shall notify the Town promptly when it encounters unanticipated or suspected Affected Materials.



BORING LOCATION PLAN

DN-25-0495R4 – ERIE TOWN CENTER, PHASE 1 – NW OF ERIE PARKWAY & EAST COUNTY LINE ROAD – ERIE

