

AGREEMENT FOR PROFESSIONAL SERVICES
(Coal Mine Subsidence Evaluation)

THIS AGREEMENT FOR PROFESSIONAL SERVICES (the "Agreement") is made and entered into this ____ day of _____, 2020 (the "Effective Date"), by and between the Town of Erie, a Colorado municipal corporation with an address of 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516, (the "Town"), and Lithos Engineering, LLC, a Colorado limited liability company with a principal place of business at 5205 South College Avenue, Suite B, Fort Collins, Colorado 80525 ("Contractor") (each a "Party" and collectively the "Parties").

WHEREAS, the Town requires professional services; and

WHEREAS, Contractor 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. Contractor 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. Contractor shall evaluate a parcel of land located northwest of the Erie Parkway and Interstate-25 Intersection (the "Project Site"), as more particularly described in **Exhibit B**, attached hereto and incorporated by this reference, for the presence and extent of historic coal mining and coal mining subsidence and provide recommendations to the Town on how to limit the risks associated with hazards presented by the Project Site's current condition.

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

II. TERM AND TERMINATION

A. This Agreement shall commence on the Effective Date, and shall continue until Contractor 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 Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached this Agreement, the Town shall have any remedy or right of set-off available at law and equity.

III. COMPENSATION

A. In consideration for the completion of the Scope of Services by Contractor, the Town shall pay Contractor an amount not to exceed \$115,300. This amount shall include all fees, costs and expenses incurred by Contractor, and no additional amounts shall be paid by the Town for such fees, costs and expenses. Compensation shall be paid in lump sum amounts upon completion of each task set forth in **Exhibit A**, in the amounts as follows:

Task 1 (Literature Review and Site Reconnaissance):	\$9,300
Task 2 (Geotechnical Investigation):	\$93,700
Task 3 (Recommendations Report):	\$12,300

B. If additional services are requested in writing by an authorized representative of the Town, compensation for such additional services shall be agreed to at that time prior to the performance of additional services. Contractor may submit periodic invoices, which shall be paid by the Town within 30 days of receipt.

IV. PROFESSIONAL RESPONSIBILITY

A. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

B. The Town's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

C. Because the Town has hired Contractor for its professional expertise, Contractor agrees not to employ subcontractors to perform any work except as expressly set forth in the Scope of Services.

D. Contractor 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.

E. The Town acknowledges that Contractor is not a handler, generator, operator, treater, transporter or disposer of hazardous or toxic substances, and the Town shall arrange for any necessary handling, removal, treatment, storage, transportation and disposal of hazardous substances found or identified at the Project Site.

V. OWNERSHIP

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

VI. INDEPENDENT CONTRACTOR

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

VII. INSURANCE

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

1. Worker's Compensation insurance as required by law.
2. Commercial General Liability insurance with 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 to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

VIII. INDEMNIFICATION

A. Contractor hereby acknowledges that the Project Site may have latent hazards caused by historic undermining in, on, and around the Project Site. The Town is unaware of the full extent of the hazards caused by these historic activities on the Project Site, which is the purpose of entering into this Agreement. The Town therefore makes no representations of safety of the Project Site. Contractor hereby acknowledges and knowingly accepts all risk associated with historic undermining of the Project Site in conducting activities pursuant to this Agreement.

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

C. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the Town may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

IX. ILLEGAL ALIENS

A. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the United States 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. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. If Contractor has employees, Contractor 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. Contractor 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 Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under this Agreement, Contractor shall: notify the subcontractor and the Town within 3 days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien 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 illegal alien who is performing work under this Agreement; except that Contractor 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 an illegal alien who is performing work under this Agreement.

D. Duty to Comply with Investigations. Contractor 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 Contractor is complying with the terms of this Agreement.

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

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 Weld County, Colorado.

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

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

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

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States 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, storms, 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 ERIE, COLORADO

Jennifer Carroll, Mayor

ATTEST:

Heidi Leatherwood, Town Clerk

CONTRACTOR

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF Larimer)

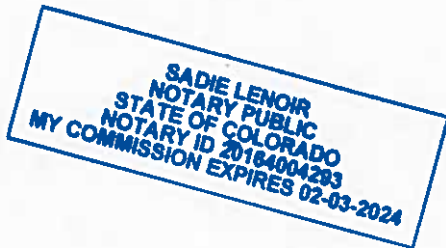
The foregoing instrument was subscribed, sworn to and acknowledged before me this 2nd day of October, 2020, by Robin Dornfest as President of Lithos Engineering, LLC.

My commission expires: 02/03/2024

(S E A L)

Sie

Notary Public



NO EMPLOYEE AFFIDAVIT

[To be completed only if Contractor 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 Erie (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 Contractor's citizenship/lawful presence and identity.*

OR

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

Contractor 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 Contractor participates in the
Department of Labor Lawful Presence Verification Program]*

I, Robin Dorset, Lithos Engineering as a public contractor under contract with the Town of Erie
(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)
COUNTY OF Larimer) ss.

The foregoing instrument was subscribed, sworn to and acknowledged before me this 2
day of October, 2020, by Robin Dorset as President of
Lithos Engineering.

My commission expires:

(S E A L)

Notary Public

SHARON A MCFALL
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20074027900
MY COMMISSION EXPIRES JULY 20, 2023

EXHIBIT A SCOPE OF SERVICES

During the term of this Agreement, Contractor shall perform the following duties with respect to the Project Site:

- 1) Evaluate coal mine presence and depths;
- 2) Estimate accuracy of the existing coal mine extents and characteristics;
- 3) Evaluate subsidence hazards associated with the site; and
- 4) Provide recommendations to reduce coal mine subsidence risk during Project Site development and for the life of potential structures.

If it becomes apparent during the drilling investigation that additional data will be required to evaluate the Project Site, or should the Town wish to further explore risk posed to specific locations, Contractor shall recommend further phases as an addendum to this Agreement which would constitute additional work for additional compensation and include additional investigation steps to characterize mine hazards and risks.

Task 1: Literature Review and Site Reconnaissance

Contractor shall procure all relevant and public literature and coal mine subsidence data available for the Project Site and vicinity, including without limitation: geologic maps; historic mine maps; publicly-available aerial photography; previous coal mine subsidence investigations/evaluations; and GIS data with compiled borehole and past subsidence data. Contractor shall then conduct a site visit to observe the surface conditions of the Project Site, look for surficial expressions of coalmine subsidence, and plan access and boring locations for the geotechnical investigation to take place in Task 2. This task shall be summarized in a concise memorandum for the Town's review and comments.

Task 2: Geotechnical Investigation

To assess mine presence, depth and subsurface conditions relevant to subsidence, Contractor shall:

- Obtain all requisite permits for drilling, with the Town's assistance in gathering any required documentation needed for permit application submittal.
- Engage a qualified, local drilling subcontractor to drill up to 8 borings at select locations to a maximum depth of 350' below existing grades or 20' below the depth of the mined coal seam or mine workings, whichever is shallower.
- Distribute 6 boreholes across the site in equal intervals to assess general mine depth, with 2 boreholes in the southern portion of the Project Site near Erie Parkway.
- Engage a qualified subcontractor to perform downhill caliper logging and downhole gamma/resistivity testing at each borehole which encounters mine workings, to assist in evaluating the condition of mine workings and mine rubble.
- Attend a pre-construction meeting or conference call with the Town and CGRS, Inc. to discuss site safety and procedures.
- Call in to the Utility Notification Center of Colorado to identify utilities for each boring.

- Use standard air or mud rotary drilling techniques and targeted wireline coring as applicable. In general, most of the borings will be drilled with air or mud rotary.
- Provide full-time oversight of drilling operations.
- Log each bore hole in general accordance with the applicable American Society for Testing and Materials standard for rock and soil.
- Perform downhole caliper and gamma logging of each borehole.
- Measure groundwater depth at completion of drilling.
- Backfill the borings using cuttings, bentonite chips, and sand; provided that Contractor is not responsible for restoration of nominal and typical damage occurring to the Project Site in the normal course of carrying out its obligations in a reasonable manner.
- Dispose of excess drill cuttings and drilling fluids by spreading at a location on the site directed by the Town or backfilling the hole.

Task 3 – Recommendations Report

Contractor shall meet with the Town and CGRS, Inc. to summarize Contractor's findings and recommendations. After the meeting, Contractor shall provide a concise report presenting its findings and recommendations for Project Site development as it relates to risk of coal mine subsidence potential. Specifically, the report shall:

- Summarize the results of Tasks 1 and 2;
- Include a Project Site Vicinity and Boring Location Plan;
- Include a map showing the probable extent of mining and mine depth contours;
- Include detailed boring logs and the results of field exploration and laboratory testing;
- Include recommendations to limit mine subsidence risk to development, provided that design of a structure-specific subsidence mitigation system or program is not included in this Scope of Services.
- Include a coal mine subsidence overlay map for the site, including recommendations for further investigation needs which a future developer should consider implementing prior to development within each hazard zone.

Contractor shall submit a draft version of the report to the Town in electronic format for review and revision up to 2 times as necessary to address comments, and then submit an electronic copy of the final report to the Town.

Timing

The total time commitment for performance of these tasks is approximately 8-12 weeks and will depend heavily on driller availability for Task 2, as follows:

- Task 1: 2 weeks
- Task 2: 8 weeks (up to 6 weeks for driller availability and 2 weeks for investigation).
- Task 3: 2 weeks

**EXHIBIT B
PROJECT SITE**