

TEMPORARY ACCESS PERMIT AGREEMENT

THIS TEMPORARY ACCESS PERMIT AGREEMENT (the "Agreement") is made and entered into this 3 day of June, 2019 (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 Mountain View Fire Protection District, a Colorado special district with an address of 3561 N. Stagecoach Road, Longmont, Colorado 80504 (the "District") (each a "Party" and collectively the "Parties").

WHEREAS, the District is the owner of the real property more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Property") that is within the Town of Erie planning area;

WHEREAS, the District wishes to develop the Property with maintenance facility ("Phase I") and, eventually, with a fire station ("Phase II") (collectively, the "Project");

WHEREAS, the Property is located in unincorporated Weld County and the Project received Weld County approval by resolution of the Weld County Board of County Commissioners on November 7, 2018, as USR 18-0076;

WHEREAS, the Town is not involved in reviewing or permitting the Project except as it relates to access to Weld County Road 7 ("WCR 7");

WHEREAS, WCR 7 is under the Town's jurisdiction and access to the Property for the Project requires a Town right-of-way access permit;

WHEREAS, the Town and the District wish to formalize the conditions and requirements to be imposed by the Town in connection with the Project's access to and use of WCR 7, including how such access will change between Phase I and Phase II; and

WHEREAS, this Agreement is necessary to protect, promote and enhance the public health, safety and welfare of the Town.

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the terms and conditions upon which the Town will issue a right-of-way access permit for access to WCR 7 during the Project and, eventually, on a permanent basis, for the Property.

a. Access to the Property for Phase I of the Project will allow access to the south end of the Property off WCR 7 as shown on the plot plan attached hereto and incorporated herein as **Exhibit B** (the "Phase I Entry/Exit"). Phase I Entry/Exit will be by Town Access Permit # 19-001.

b. At such time as Phase II is complete, the District shall relinquish the Temporary Town Access Permit # 19-001 and apply for a new access permit. Upon application by the District and subject to all other applicable requirements, the Town will issue a new right-of-way access

permit allowing permanent access to the Property off WCR 7 from the north end of the Property (the "Permanent Entry/Exit").

c. At no time shall the Property have two access points off WCR 7, and the Town's issuance of right-of-way access permit for the Permanent Entry/Exit shall automatically revoke approval of the Phase I Entry/Exit.

2. In exchange for the Town allowing access to WCR 7 the District agrees as follows:

a. The District shall dedicate to the Town land sufficient for future right-of-way expansion of WCR 7 in accordance with the Town's Engineering Standards and Specifications for either a Collector or Minor Arterial, whichever the Town determines to be applicable. Dedication shall occur prior to the District's commencement of construction of the Phase II improvements and shall comply with Section 10.7.11 of the Unified Development Code, adopted by the Section 10-1-1 of the Erie Municipal Code, as both may be amended from time to time.

b. At such time as the Town has expanded WCR 7 and has installed sidewalks and landscaping in Town right-of-way along the frontage of WCR 7, the District shall irrigate and otherwise maintain the landscaping that is adjacent to and abutting the Property.

c. When water service becomes available to the Property, the District shall connect the Property to the Town water system according to Title 8, Chapter 1, of the Erie Municipal Code, as amended. When Town's sanitary sewer becomes available within one hundred feet (100') of the property line of the Property, the District shall connect the Property to the Town's sanitary sewer system pursuant to Section 8-2-4 of the Erie Municipal Code.

d. The District shall annex the Property into the Town in accordance with the Colorado Municipal Annexation Act of 1965, as amended, by filing a petition for annexation as fee owner of 100% of the Property at the time the District connects to Town water or sanitary sewer service.

3. Title Policy. Prior to the dedication of land, the District shall provide the Town with a title commitment for the Property. The title commitment shall show that all property to be dedicated to the Town is or shall be subsequent to the recording of the plat, free and clear of all liens and encumbrances (other than real estate taxes which are not yet due and payable) which would make the dedications unacceptable, as the Town determines in its sole discretion. The title policy evidenced by the title commitment shall be provided to the Town prior to the dedication of land required by Section 2.a. above.

4. Nuisance Conditions. The District shall prevent the existence of any nuisances by way of its construction activities for the Project. If the Town determines that a nuisance exists, the District shall be subject to the provisions of the Erie Municipal Code regarding the abatement of nuisances and the cost assessed therefor. If the nuisance is not abated or an abatement plan is not submitted to the satisfaction of the Town, the Town may, upon 30 days' notice under this Agreement, draw upon the Performance Guarantee to pay the entire cost of abating the nuisance. The Town may exercise this right in addition to, or in lieu of, the withholding of permits or certificates of

occupancy. The decision to draw on the Performance Guarantee shall be within the sole discretion of the Town.

5. Hold Harmless. The District hereby agrees to hold harmless the Town, its officers, employees, agents or servants from any and all suits, actions and claims of every nature and description caused by, arising from or on account of any act or omission of the District, or of any other person or entity for whose act or omission the District is liable, with respect to the Project, Town Access Permit # 19-001, and the right-of-way access permit the Town may issue for the Permanent Entry/Exit.

6. Waiver. In executing this Agreement, the District waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the Town to impose conditions on the District as set forth herein, and concerning the procedure, substance and form of the resolution approving this Agreement. The District expressly agrees that the Town cannot be legally bound by the representations of any of its employees, officers or agents, except in accordance with the Erie Municipal Code and state law.

7. District's Representations and Warranties. The District hereby represents and warrants to the Town that all of the following are true and correct as of the date of signature and the Effective Date:

a. This Agreement has been duly authorized and executed by the District as the legal, valid and binding obligation of the District, and is enforceable as to the District in accordance with its terms.

b. The person executing this Agreement on behalf of the District is duly authorized and empowered to execute and deliver this Agreement on behalf of the District.

c. To the best of the District's knowledge, there is no pending or threatened litigation, administrative proceeding or other proceeding pending or threatened against the District which, if decided or determined adversely, would have a material adverse effect on the ability of the District to undertake its obligations under this Agreement nor, to the best of the District's knowledge, is there any fact or condition of the Property known to the District that may have a material adverse effect on the District's ability to Develop the Property as contemplated.

d. Neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement will constitute a breach under any contract, agreement or obligation to which the District is a party or by which the District is bound or affected.

8. Breach and Remedies. If the District breaches this Agreement, the Town may take such action as permitted or authorized by law, this Agreement or the ordinances of the Town, as the Town deems necessary to protect the public health, safety and welfare. The remedies include but are not limited to the refusal to issue a new access permit for the Permanent Entry/Exit, and any other remedy available at law or in equity. Unless necessary to protect the immediate health, safety and welfare of the Town, the Town shall provide the District 30 days' written notice of its intent to take any action under this Section, during which the District may cure the breach and prevent further action by the Town. 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.

9. Miscellaneous.

a. Assignment. This Agreement shall not be assigned by the District in whole or in part without the prior written authorization of the Town.

b. Governing Law and Venue. The laws of the State of Colorado shall govern this Agreement, and the exclusive venue for any legal proceeding arising out of this Agreement shall be Weld County, Colorado.

c. No Third-Party Beneficiaries. There are no intended third-party beneficiaries to this Agreement.

d. 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.

e. Governmental Immunity. Nothing herein shall be construed as a waiver of any protections or immunities the Town, the District, or their respective employees, officials or attorneys may have under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended.

f. No Joint Venture. Notwithstanding any provision hereof, the Town shall never be a joint venture in any private entity or activity which participates in this Agreement, and the Town shall never be liable or responsible for any debt or obligation of any participant in this Agreement.

g. Notice. Notices under this Agreement shall be sufficiently given if sent by regular U.S. mail, postage prepaid, to the address on the first page of this Agreement.

h. Integration. This Agreement, together with all exhibits attached hereto, constitute the entire understanding and agreement of the Parties, integrates all the terms and conditions mentioned herein or incidental thereto, and supersedes all negotiations or previous arrangements between the Parties with respect to any and all of the subject matter hereof.

i. Binding Effect. This Agreement shall be binding upon the District, its successors in interest, or its legal representatives, including all developers, purchasers and subsequent owners of the Property, and shall constitute covenants running with the land. This Agreement shall be recorded with the County Clerk and Recorder of Weld County, Colorado, at the District's expense.

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

TOWN OF ERIE, COLORADO

Jennifer Carroll, Mayor

ATTEST:

Jessica Koenig, Town Clerk

**MOUNTAIN VIEW FIRE
PROTECTION DISTRICT**

By:

Fire Chief
FIRE CHIEF

ATTEST:

Assistant Chief
ASSISTANT CHIEF

EXHIBIT A
LEGAL DESCRIPTION

Parcel Number: 146703300054-R2241403

Legal: LOT A RECX17-0184 BEING PART W2SW4 SECTION 3, T1 N, R68W of the 6th
P.M., Weld County, Colorado

EXHIBIT B

EXHIBIT B