

RESOLUTION 10-155
Series of 2010

A RESOLUTION OF THE TOWN OF ERIE, COLORADO APPROVING A CROSSING LICENSE AGREEMENT FOR USE OF THE COAL CREEK CULVERT CROSSING; ESTABLISHING A LICENSE FEE; AND SETTING FORTH DETAILS IN RELATION THERETO.

WHEREAS, on January 26, 2010 the Town of Erie, Board of Trustee approved the construction of the Coal Creek Culvert Crossing on Town property immediately adjacent to Coal Creek between the Erie Municipal Airport and private properties to the west of the Airport; and

WHEREAS, the approval of the construction of the Coal Creek Culvert Crossing on Town property included a requirement for a license agreement ("License Agreement") for those parties desiring to use the culvert crossing on Town property between the Erie Municipal Airport and private properties to the west of the Airport; and

WHEREAS, on November 23, 2010 the Town of Erie, Board of Trustee approved a License Agreement fee of \$400.00 per year starting upon completion of the Coal Creek Culvert Crossing to continue until the payments equal the amount of \$26,000.00 at which time the License Agreement fee will be reduced to \$1.00 annually; and

WHEREAS, the Board of Trustees of the Town of Erie believes it is in the best interest of the Town to adopt the License Agreement to allow parties to use the culvert to cross Town property and to set the License Agreement fees as set forth herein.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO, AS FOLLOWS:


Section 1. That the License Agreement for those parties desiring to use the culvert crossing on Town property between the Erie Municipal Airport and private properties to the west of the Airport (a copy of which is attached hereto and incorporated herein by reference) is found to be a reasonable and acceptable License Agreement and is hereby adopted for use by the Town.

Section 2. That the License Agreement fee is hereby established as follows: \$400.00 per year starting upon completion of the Coal Creek Culvert Crossing to continue until the payments equal the amount of \$26,000.00 at which time the License Agreement fee will be reduced to \$1.00 annually.

Section 3. That adopting the License Agreement to allow parties to use the culvert to cross Town property between the Erie Municipal Airport and private properties to the west of the Airport and setting the License Agreement fee is found to be in the best interest of the Town of Erie, and necessary for the preservation of the public health and safety.

**ADOPTED AND APPROVED THIS 14TH DAY OF DECEMBER, 2010, BY THE BOARD
OF TRUSTEES OF THE TOWN OF ERIE, COLORADO.**

TOWN OF ERIE,
a Colorado Municipal Corporation

By 
Joseph A. Wilson, Mayor

ATTEST:


Nancy J. Parker, CMC, Town Clerk



CROSSING LICENSE AGREEMENT

THIS CROSSING LICENSE AGREEMENT ("Agreement") is made and entered into at Erie, Colorado this ____ day of _____, 2010, by and between the TOWN OF ERIE, a Colorado municipal corporation ("Town") and _____, a Colorado limited liability company (referred to herein after as the "Licensee").

RECITALS

A. Licensee is the owner/renter of _____ (business, or condo unit) on Lot ____, Block ____, _____, Town of Erie, County of Weld, State of Colorado, known as _____ (street address), Erie, Colorado 80516, according to the plat thereof recorded on _____ under reception number _____ ("Licensee's Property").

B. This License is for the following described and identified aircraft: _____, "N" number: _____. [List those aircraft owned or used by Licensee. No listing is necessary for aircraft of business invitees, customers or transient aircraft]

C. Licensee currently has a valid Town of Erie Through the Fence Permit/License, Permit/License No. _____. Failure of the Licensee to maintain a valid Through the Fence Permit shall be considered to be a default of this Agreement.

D. Licensee, if a business, currently has a valid Town of Erie Town of Erie Business License, Business License No. _____. Failure of the Licensee to maintain a valid Town of Erie Business License shall be considered to be a default of this Agreement.

E. Town is the owner of _____, Town of Erie, County of Weld, State of Colorado, ("Town's Property").

F. Town has constructed and is the owner of a box culvert facility on the Town's Property. Pursuant to this License, aircraft and aircraft towing vehicles may use the top surface of the box culvert to cross over Coal Creek (the "Crossing"). The box culvert is located at _____. Only aircraft and aircraft towing vehicles may use the Crossing. Users of the box culvert facility other than aircraft and aircraft towing vehicles shall be limited to use of those portions of the box culvert below the top surface as designated for such non-aircraft usage.

G. Licensee desires to use the Crossing and related Town taxiways and improvements in connection with crossing the Town's Property in order to access the Erie Municipal Airport ("Airport"). The Town Property, the Crossing and related Town taxiways and improvements are shown on Exhibit "A" attached hereto and incorporated herein by this reference.

H. The Town has agreed to grant to Licensee a personal privilege to enter upon the Town's Property in order to use the Crossing and related Town taxiways and improvements described above, all in accordance with, and subject to the terms, conditions and limitations of, this Agreement.

1. Grant of License. The Town hereby grants to the Licensee the personal privilege and permission to enter upon the Town's Property, to use the Crossing and to use the taxiways and improvements described above on the Town's Property subject, however, to the terms, conditions and limitations of this Agreement ("License"). The License herein granted shall be subject to all existing utility easements, if any, located on or under the Town's Property.

2. Term.

A. Prepayment of Five Year Term. This Agreement and the License granted to Licensee hereunder shall commence as of _____, 2010 (the "Effective Date"), and shall continue for a term of five (5) years, terminating on _____, 2015 ("Term"), unless earlier terminated pursuant to the terms of Paragraph 12 of this Agreement. The five year term described herein is available only to those Licensees prepaying the full five year cost of the License.

Or,

B. One Year Term. This Agreement and the License granted to Licensee hereunder shall commence as of _____, 2010 (the "Effective Date"), and shall continue for a term of one (1) year, terminating on _____, 2011 ("Term"), unless earlier terminated pursuant to the terms of Paragraph 12 of this Agreement.

3. Consideration. The consideration to be paid by the Licensee to the Town for the privilege granted by this Agreement shall be _____ (\$____.00), receipt of which is hereby acknowledged by the Town, and other good and valuable consideration as herein provided.

4. No Interest In Land. Licensee understands, acknowledges and agrees that this Agreement does not create an interest or estate in Licensee's favor in the Town's Property, the Crossing or the taxiways and improvements. The Town retains legal possession of the full boundaries of Town's Property, the Crossing and the taxiways and improvements and this Agreement merely grants to the Licensee the personal privilege to use and cross the Town's Property, the Crossing and the taxiways and improvements described herein throughout the Term of this Agreement.

Notwithstanding the expenditure of time, money or labor by the Licensee on the Town's Property, the Crossing and the taxiways and improvements, this Agreement shall in no event be construed to create an assignment coupled with an interest in favor of the Licensee. Licensee shall expend any time, money or labor at Licensee's own risk and peril.

5. Limited Scope of License. The License granted to the Licensee is limited in scope to the following permitted use or uses: allowing aircraft and aircraft towing vehicles to cross the Town's Property, the Crossing and the taxiways and improvements in order to access the Airport from the Licensee's Property, and in order to access the Licensee's Property from the Airport. Use is limited to aircraft and aircraft towing vehicles only. Licensee shall not have the right to expand the uses allowed herein or Licensee's use of the Town's Property, the Crossing and the taxiways and improvements or to alter or change the Town's Property, the Crossing and the taxiways and improvements.

6. **NO WARRANTIES.** **TOWN MAKES NO REPRESENTATIONS OR**

WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, REGARDING ANY ASPECT OF CONSTRUCTION, USE OR OTHERWISE COVERING THE TOWN'S PROPERTY, THE CROSSING AND THE TAXIWAYS AND IMPROVEMENTS OR ANY COMPONENT OR ELEMENT THEREOF, INCLUDING WITHOUT LIMITATION, THE SAFETY, SUITABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE OR RESULTS TO BE DERIVED FROM THE USE OF THE SAME, AND TOWN SPECIFICALLY DISCLAIMS ALL SUCH IMPLIED REPRESENTATIONS AND WARRANTIES.

7. Use at Licensee's Own Risk; Assumption of Risk. Licensee hereby agrees and acknowledges that use of the Town's Property, the Crossing and the taxiways and improvements is inherently dangerous, fully realizes the dangers of such use, and fully assumes the risks associated with such use for the Licensee, Licensee's employees, business invitees, contractors, tenants, subcontractors, lessees, agents, customers and others ("Licensee's Users"). Licensee, on behalf of itself and Licensee's Users, hereby waives, releases, discharges, holds harmless, and promise to indemnify the Town from any and all rights and claims which Licensee and/or Licensee's Users have or which may hereafter accrue to Licensee, and from any and all damages which may be sustained by Licensee and/or Licensee's Users directly or indirectly in connection with, or arising out of, use of the Town's Property, the Crossing and the taxiways and improvements.

Licensee agrees and acknowledges, on behalf of itself and Licensee's Users, that the Town's Property, the Crossing and the taxiways and improvements do not meet FAA taxiway or taxi-lane standards, slope or grade standards. The Town makes no representation or warranty as to the suitability of the Crossing for use by aircraft or vehicles towing aircraft. With this knowledge and understanding, Licensee, on behalf of itself and Licensee's Users, accepts the current slope and grade of the Town's Property, the Crossing and the taxiways and improvements, as is, and agrees that Licensee's use of the Town's Property, the Crossing and the taxiways and improvements shall be at Licensee's sole risk.

8. Rules and Regulations of Use.

A. Town may close the Town's Property, the Crossing and the taxiways and improvements for maintenance and/or snow removal as may be necessary in the determination of the Town.

B. Snow removal will be provided on limited bases only after the snow event.

C. Aircraft and aircraft towing vehicles shall be operated at a safe and reasonable speed in a safe and reasonable manner.

D. There shall be no engine run up or testing engines on Town's Property, the Crossing and the taxiways and improvements.

E. The Town's Property, the Crossing and the taxiways and improvements will not be lighted; all aircraft being taxied, towed or otherwise moved will proceed with navigational lights on following and during the sunset and prior to and during the sunrise.

F. Town's Property, the Crossing and the taxiways and improvements are designed as a two-way operations with room for only a single aircraft to pass at a given time. No person may taxi or tow an aircraft on the Town's Property, the Crossing and the taxiways and improvements until having ascertained that there is no danger of collision with any aircraft, towing vehicles, persons or objects.

G. The Town may add additional Rules and Regulations to this License from time to time as the Town deems necessary or appropriate.

9. Use of Licensed Premises By Licensee's Users. Licensee may permit Licensee's Users to use the portion of the Town's Property, the Crossing and the taxiways and improvements for which this Agreement has been executed, subject to the terms hereof and subject to the agreements and representations made by Licensee herein, so long as the aircraft using the Town's Property, the Crossing and the taxiways and improvements are designated, and set forth in this License under Paragraph B, of the Recitals.

10. Transferability of License. The License granted to the Licensee by this Agreement may be transferred to a subsequent owner of Licensee's Property; provided, however, that such subsequent Licensee shall be required to assume in writing all of Licensee's obligations hereunder (in a form acceptable to Town) and such subsequent Licensee shall acquire nothing more than the personal privilege herein granted to Licensee. Further, the rights of any subsequent Licensee shall be subject to termination in accordance with the provisions of Paragraph 12 of this Agreement.

11. Default. In the event Licensee materially defaults in the performance of any of the material covenants or agreements to be kept, done or performed by it under the terms of this Agreement, the Town shall notify the Licensee in writing of the nature of such default. Within five (5) days following receipt of such notice the Licensee shall correct such default; or, in the event of a default not capable of being corrected within five (5) days, the Licensee shall commence correcting the default within five (5) days of receipt of notification thereof and thereafter correct the default with due diligence in a timely manner. If the Licensee fails to correct the default as provided hereinabove, the Town, without further notice, shall have the right to declare that this Agreement is terminated pursuant to Paragraph 12 hereof effective upon such date as the Town shall designate. The rights and remedies provided for herein may be exercised singly or in combination.

12. Termination. This Agreement and the License herein granted to Licensee is fully terminable in accordance with the following terms and conditions:

A. Termination Upon Notice To Licensee. This Agreement, and the License herein granted to Licensee, may be terminated by Town without liability for breach of this Agreement by the giving of notice as hereafter provided. If notice of termination is given by the Town pursuant to this Paragraph 12, this Agreement, and the License herein granted to Licensee, shall terminate thirty (30) days from the date of the notice of termination. The notice provision established by this Paragraph 12.a. shall conclusively be deemed to be reasonable.

B. Termination Upon Destruction Or Removal Of Crossing. In the event that the Town's Property, the Crossing and/or the taxiways and improvements are destroyed or are permanently removed, this Agreement, and the License herein granted to Licensee, may be terminated by Town upon not less than thirty (30) days' advance written notice to Licensee.

C. Termination Upon Default. This Agreement and the License herein granted to Licensee may be terminated by the Town upon the material default of the Licensee in the performance of the material covenants or agreements of this Agreement in accordance with the provisions of Paragraph 11 of this Agreement.

D. Recording Of Notice Of Termination. Upon termination of this Agreement the Town may cause to be recorded with the Clerk and Recorder of Weld County, Colorado a written Notice of Termination. The recording of the Notice of Termination shall be at the sole discretion of the Town.

E. No Compensation To Licensee. In the event of termination of this Agreement for any reason, Licensee shall not be entitled to receive a refund of any portion of the consideration paid for this Agreement, nor shall Licensee be compensated for any damages which may be incurred by Licensee in any way related to the termination of this Agreement.

13. No Placement Of Encroachments. Licensee shall not place or locate, at any time, any encroachments, improvements, materials, gates, signage, buildings, or equipment upon the Town's Property, the Crossing or the taxiways and improvements.

14. Insurance.

A. Licensee shall obtain and maintain at all times during the term hereof, at Licensee's sole cost, a policy or policies of comprehensive general liability insurance with limits of coverage of not less than \$1,000,000 for injuries, damages or losses sustained by any one person in any one accident or event, and not less than \$1,000,000 for injuries, damages or losses incurred by two or more persons in any one accident or event. The Town shall be named as an additional insured on all such policies and Licensee shall furnish the Town with a copy of such policy or policies prior to the effective date of this Crossing License Agreement, as provided for herein, below. Said general liability insurance policy shall cover the use of the Town's Property, the Crossing and the taxiways and improvements by Licensee's employees, business invitees, contractors, tenants, subcontractors, lessees, agents, customers and others as Licensee may allow such usage under Licensee's license. Notwithstanding anything contained herein to the contrary, Town may terminate this Agreement, and the License herein granted to Licensee, in accordance with the provisions of Paragraphs 11 and 12 of this Agreement, if Licensee fails to procure and maintain the insurance required by this Paragraph 14. If at any time while the Agreement is in effect, the limits of liability for local governments under the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S., are raised above the limits of liability provided hereinabove, Licensee's insurance requirement provided in this Paragraph 14 shall be increased accordingly.

B. A certificate of insurance shall be completed by the Licensee's insurance agent and provided to the Town as evidence that policies providing the required coverages, conditions,

and minimum limits are in full force and effect, and shall be reviewed and approved by the Town prior to commencement of the Crossing License Agreement. The certificate shall identify this Crossing License Agreement and shall provide that the coverages afforded under the policies shall not be cancelled until at least thirty (30) days prior written notice has been given to the Town. Licensee shall notify the Town within ten (10) days if the coverages afforded under the policies are materially changed. The completed Certificate of Insurance shall be sent to: Town Clerk, Town of Erie, P.O. Box 750, Erie, CO 80516

15. Damages. Licensee shall, at Licensee's sole cost and expense, be fully responsible for the repair and replacement of any and all damages to the Town's Property, the Crossing and the taxiways and improvements caused by Licensee or related to the use by Licensee of the Town's Property, the Crossing and the taxiways and improvements. Licensee's responsibility as set forth herein shall extend to Licensee's employees, business invitees, contractors, tenants, subcontractors, lessees, agents, customers and others as Licensee may allow such usage under Licensee's license.

16. Licensee's Waiver Of Claims Against Town. As a part of the consideration paid by Licensee for this Agreement, Licensee hereby waives any and all claims which Licensee may or might hereafter have or acquire against Town for loss or damage to the Licensee or the Licensee's property arising from the use of the Town's Property, the Crossing and the taxiways and improvements by the Licensee, other licensees, the Town, or the public, for any purpose.

17. Indemnification. Licensee agrees to indemnify and hold harmless the Town, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily 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 the use of the Town's Property, the Crossing and the taxiways and improvements pursuant to this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, any alleged act or omission of Licensee, any contractor or subcontractor of the Licensee, or any officer, employee, tenant, agent, customer, or representative of the Licensee, or of any person permitted or allowed to use the Town's Property, the Crossing and the taxiways and improvements by Licensee, or which arise out of any worker's compensation claim of any employee of the Licensee or of any subcontractor of the Licensee or of any tenant or customer of Licensee; except to the extent such liability, claim or demand arises through the negligence of Town, its officers, employees or agents. Licensee agrees to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims or demands at the sole expense of the Licensee. Licensee also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees. If, however, it becomes necessary for the Town to defend any action arising by reason of, or in connection with, any alleged act or omission of Licensee or any person claiming under, by or through Licensee seeking to impose liability for such claim or demand, Licensee shall pay all court costs, witness fees, expert witness fees, and attorney's fees, incurred by the Town in effecting such defense in addition to any other sums which the Town may be called upon to pay by reason of the entry of any judgment, assessment, bond, writ or levy against the Town in the litigation in which such claims are asserted.

18. Mechanics' Liens. Licensee shall not allow any liens or mechanics' or similar liens to be

19. Notices. Any notice required or permitted under this Agreement shall be in writing and shall be sufficient if personally delivered or mailed by certified mail, return receipt requested, addressed to the following:

With a copy (which shall not constitute notice) to:

Mark R. Shapiro
Mark R. Shapiro, P.C.
1650 38th Street, Suite 103
Boulder, Colorado 80301

With a copy (which shall not constitute notice) to: _____

21. Attorney's Fees. If any action is brought in a court of law by either party to this Agreement concerning the enforcement, interpretation or construction of this Agreement, the

prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees as well as costs, including expert witness's fees, incurred in the prosecution or defense of such action.

22. Waiver. The failure of either party to exercise any of its rights under this Agreement shall not be a waiver of those rights. A party waives only those rights specified in writing and signed by the party waiving its rights.

23. Governmental Immunity. The parties hereto understand and agree that the Town 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, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as from time to time amended, or any other law, protection or limitation otherwise available to the Town, its officers, or its employees.

24. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties hereto and supersedes any prior agreement or understanding relating to the subject matter of this Agreement. Any such prior agreement shall be deemed to be null and void and of no further effect.

25. Modification. This Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto.

26. Paragraph Headings. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

27. Terminology. Wherever applicable, the pronouns in this Agreement designating the masculine or neuter shall equally apply to the feminine, neuter and masculine genders. Furthermore, wherever applicable within this Agreement, the singular shall include the plural, and the plural shall include the singular.

28. Situs, Venue and Severability. The laws of the State of Colorado shall govern the interpretation, validity, performance and enforcement of this Agreement. For the resolution of any dispute arising hereunder, venue shall be in the Courts of the County of Weld, State of Colorado. If any provision of this Agreement shall be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

29. Non-Exclusive License; Town Ownership. Licensee understands acknowledges and agrees that the License and rights provided to Licensee herein are non-exclusive and that the Town's Property, the Crossing and the taxiways will be used by other licensees, the Town and the public. Licensee acknowledges that the Town's Property, the Crossing and the taxiways are the exclusive property of the Town.

30. No Third-party Beneficiaries. The Town and the Licensee are the only entities intended to be the beneficiaries of the License and rights granted and described herein, and no other person or entity is so intended.

31. Recording. This License Agreement may be recorded in the real property records of the Clerk and Recorder of Weld County, Colorado at the option of the Town.

32. Authority of Town. This Agreement is entered into pursuant to a Resolution of the Town Council of the Town of Erie, Colorado adopted _____, 2010.

[signatures on following page]

STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The forgoing Crossing License Agreement was subscribed and sworn to before me this ____ day
of _____, 2010, by _____, owner.

My Commission expires:

(Seal of Notary)

Notary Public
Address:

11.18/10

EXHIBIT A

[map of the Town's Property, the Crossing and the taxiways and improvements]