



**TOWN OF MILLIKEN
BOARD OF TRUSTEES
AGENDA MEMORANDUM**

To: Mayor Tokunaga and Town Board of Trustees		Meeting Date: Wednesday, August 12, 2015	
From: Bruce Fickel, Town Attorney			
Via: Kent Brown, Town Administrator			
Agenda Item #	Action: X	Discussion:	Information:
Agenda Title: MOU with Purvis, property owner along the Milliken-Johnstown Trail.			
Attachments: Memorandum of Understanding with Purvis Properties, LLC			

PURPOSE

Purvis will donate and convey to the Town a 15 foot strip of land adjacent to and south of the existing 30 foot right-of-way of Weld County Road 46 ½, and convey a 30 foot temporary construction easement adjacent to and south of the dedicated 15 foot strip of land. Both of these are needed for the construction of the proposed trail and are included in Exhibit “A”, the Trail and Exhibit “B”, the Temporary Construction Easement.

BACKGROUND

Per CDOT requirements, an additional strip of land adjacent to the current right of way along WCR46 ½ was needed in order to construct the Milliken-Johnstown Trail. Negotiations with the two property owners ensued. After a lengthy process, the result is a MOU that will allow the Town of Milliken to construct the trail with Purvis Properties, LLC. The MOU with the other property owner will be presented at the next Board meeting.

BUDGET IMPLICATONS

The Town’s payment to Purvis Properties, LLC for various items in the MOU of \$15,575 is included in the construction costs for the Milliken-Johnstown Trail.

RECOMMENDED MOTION

"I move to approve the MEMORANDUM OF UNDERSTANDING BETWEEN THE TOWN OF MILLIKEN, COLORADO AND PURVIS PROPERTIES, LLC and authorize the Mayor to execute on behalf of the Town."

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE TOWN OF MILLIKEN, COLORADO
AND PURVIS PROPERTIES, LLC**

The parties to this Memorandum of Understanding (“MOU”) are the Town of Milliken, a Colorado Municipal corporation, hereinafter referred to as the “Town”, and Purvis Properties, LLC, a Colorado Limited Liability Company, hereinafter referred to as “Purvis”.

WHEREAS, The Town is desirous of constructing a trail for the benefit of its citizens; and

WHEREAS, Purvis owns real property which it desires to donate and dedicate to the Town for the trail; and

WHEREAS, the parties desire to set forth their expectations as to the requirements concerning the donation and dedication of the trail as follows:

1. Purvis will donate and convey to the Town a 15 foot strip of land adjacent to and south of the existing 30 foot right-of-way of Weld County Road 46 ½, and convey a 30 foot temporary construction easement adjacent to and south of the dedicated 15 foot strip of land. Both of these are needed for the construction of the proposed trail and are included in Exhibit “A”, the Trail and Exhibit “B”, the Temporary Construction Easement. The parties agree that the Temporary Construction Easement Agreement will address topsoil grading, revegetation, weed management and contain an expiration date.

2. A preliminary plan showing the location of the proposed 10 foot trail and other proposed improvements is included in Exhibits “C1”, “C2”, “C3” and “C4”.

3. During the preparation of final construction drawings, and any required field adjustments during construction, the Town will coordinate with Purvis to ensure the existing irrigation tailwater flows will continue to be conveyed along the south side of the proposed trail during irrigation season. A new irrigation tailwater ditch will be constructed by the Town on the south side of the trail and routed through an appropriately-sized culvert at the existing access point for the oil and gas facilities.

4. The Town will pay to Purvis a total of \$4,000 for crop damage upon approval of this Memorandum of Understanding by the Board of Trustees.

5. A farm fence shall be installed by the Town south of the trail. The farm fence will consist of four (4) rows of smooth wire attached to metal T-posts, with “no Trespassing” signs attached to the fence. The Town will provide two (2) gates serving the existing access roads. The farm fence and type of gate to be installed will be similar to the ones shown in Exhibit “D”.

6. The Town will revegetate any areas disturbed during construction in cooperation with Purvis comparable to its existing vegetation. Any areas that will not be cultivated as part of the active farming operation will be reseeded and maintained, including weed control, by the Town. Reseeding and maintenance will be consistent with Town of Milliken's codes and ordinances.

7. The Town will maintain the area between the existing roadway and proposed fence, provide weed control and snow removal on the trail as necessary. The Town will be responsible for the maintenance and repair of the trail at no expense to Purvis.

8. The Town will construct a concrete or asphalt apron to the two existing access points to the Purvis property. The width of the aprons will be equivalent to or wider than the existing accesses. Pavement material will be determined by the Town.

9. The placement of the trail is based on the ultimate road cross section as shown on exhibit "C3". An additional 15 feet of right-of-way is needed to construct the trail. No additional right-of-way along the northern border of the Purvis property along Weld County Road 46 ½ will be required at the time the property is developed.

10. The Town will be responsible for protecting all existing utilities on Purvis property during construction. The Town is responsible for the costs to relocate any existing utilities required by the construction of the trail.

11. 0.455 acres of land will be donated and dedicated to the Town. In addition, 0.910 acres of land will be conveyed to the Town as a temporary construction easement for consideration of \$1,000.00 paid to Purvis.

12. The Town will credit the 0.455 acres of land donated and dedicated as right-of-way towards the open space dedication requirements when the property is developed within the Town.

13. The Town will compensate Purvis for administrative costs in the amount of \$500; management fees in the amount of \$3,500; Resource Conservation Partners, LLC in the amount of \$1,575; and attorney's fees, in accord with his invoice, in an amount not to exceed \$5,000. Payments set forth in Paragraph 4.11 and 13 shall be paid to Purvis in one check upon approval of this Memorandum of Understanding by the Board of Trustees.

14. The Town will not require Purvis or the future developer of the property to repay the Town for the trail or any other improvements constructed as part of the trail project.

My commission expires _____.

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF _____)

Subscribed, sworn to, and acknowledged before me by CHERYL POWELL, Town Clerk, Town of Milliken, on _____, 2015.

Witness my hand and official seal.

My commission expires _____.

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF _____)

Subscribed, sworn to, and acknowledged before me by VIRGINIA PURVIS, Managing Partner, Purvis Properties, LLC, on _____, 2015.

Witness my hand and official seal.

My commission expires _____.

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF _____)

Subscribed, sworn to, and acknowledged before me by Barbara K. Purvis, Managing Partner, on _____, 2015.

Witness my hand and official seal.

My commission expires _____.

Notary Public

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT dated as of _____ 2015, (the "Agreement" or "Easement"), is entered into between **PURVIS PROPERTIES, LLC**, ("Purvis") and **THE TOWN OF MILLIKEN, COLORADO, A MUNICIPAL CORPORATION OF THE STATE OF COLORADO** ("the Town").

WHEREAS, Purvis and the Town desire to establish a temporary easement across certain real property owned by Purvis described in **Exhibit "A"** attached hereto (the "Easement Area") for the purpose specified herein, on the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purvis and the Town hereby agree as follows:

1. Purvis hereby sells and conveys to the Town a Temporary Construction Easement (the "Easement") in, on, over, under, across and through the Easement Area, as more particularly described on **Exhibit "A"** for the purpose of grading, installing, and constructing trail improvements, as described in the parties' Memorandum of Understanding ("Improvements") on real property located in Weld County, Colorado.

2. The Town, its agents, successors and permitted assigns, shall have and exercise the right of ingress and egress in, on, to, through, over, under and across the Easement Area for any purpose necessary for the construction of the Improvements.

3. This Easement shall expire by its own terms and be of no force or effect without any further action by Purvis or the Town at the expiration of six months from the date the Town takes possession and commences construction of this Easement Area or in the event the Town has not taken possession and commenced construction by July 1, 2016.

4. All work in the Easement Area pursuant to this Easement shall be performed in a good and workmanlike manner in compliance with all applicable laws, rules, regulations, ordinances and other requirements of governmental authorities. All such work shall be diligently pursued to completion. The Town shall not suffer any mechanics' or materialmens' liens to be enforced against the Easement Area or other property of Purvis for work done or materials furnished in connection therewith.

5. Purvis and the Town agree that the Town will retain all topsoil on site. The Town shall promptly backfill any disturbance of the ground, returning the retained topsoil. The fill dirt for any disturbance shall be compacted and kept at the same gradient as the adjacent soil. The Town shall repair any damage to Purvis' property, providing revegetation of the area and weed control, as necessary; protection of utilities; and reseedling, as further described in the parties' Memorandum of Understanding.

6. The Town shall give Purvis reasonable advance notice of entry by the Town or its employees, agents or contractors onto the Easement Area, unless such entry is solely for purposes of routine inspections.

7. Purvis, for itself and its successors and assigns, reserves the right to use the Easement Area for any purpose which does not impair the purpose of the Easement hereby granted as stated in Section 1 above, including, without limitation, the right to grant other easements within the Construction Easement Area.

8. Each party shall be entitled to all remedies at law or in equity for the enforcement of this Agreement. In any action brought to enforce or contest any provision of this Agreement, or to obtain a declaration of the rights or responsibilities of any party hereunder, the prevailing party shall be awarded all costs and expenses (including, without limitation, reasonable attorney's fees and disbursements) incurred by such party in connection with such action.

9. Purvis hereby represents and warrants that it is the owner of the fee title to the Easement Area and has full right, power and authority to grant the Easement to the Town.

10. This Agreement may be executed in any number of counterparts each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

EXECUTED as of the date first set forth above,

GRANTOR: PURVIS PROPERTIES, LLC

By: _____

Name: Virginia Purvis_____

Title: Manager_____

By: _____

Name: Barbara K. Purvis_____

Title: Manager_____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____ 2015, by Virginia Purvis, as Manager, of Purvis Properties, LLC.

Witness my hand and official seal.
My commission expires: _____

Notary Public
Address: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____ 2015, by Barbara K. Purvis, as Manager, of Purvis Properties, LLC.

Witness my hand and official seal.
My commission expires: _____

Notary Public
Address: _____

