



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

To: Mayor Tokunaga and Town Board of Trustees		Meeting Date: Wednesday, August 26, 2015	
From: Bruce Fickel, Town Attorney			
Via: Kent Brown, Town Administrator			
Agenda Item #	Action: X	Discussion:	Information:
Agenda Title: MOU with Mark and Robin Spaur, property owners along the Milliken-Johnstown Trail.			
Attachments: Memorandum of Understanding with Mark and Robin Spaur			

PURPOSE

The Spaur's 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 is needed in order to construct the Milliken-Johnstown Trail. Negotiations with the two property owners ensued. The MOU with Purvis Properties, LLC was approved at the Board meeting on August 12, 2015. The MOU with the other property owner is presented here.

BUDGET IMPLICATONS

The Town's payment to Mark and Robin Spaur for crop damage in the MOU of \$4,000 is included in the construction costs for the Milliken-Johnstown Trail. Other items related to the security concerns will be paid during the construction of the Trail including a section of fencing, security cameras and lighting. These costs will be included in the construction costs for the Trail itself. Finally, the costs for the annexation of the Spaur property identified will be the Town's responsibility.

RECOMMENDED MOTION

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

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE TOWN OF MILLIKEN, COLORADO
AND MARK R. SPAUR AND ROBIN E. SPAUR**

The parties to this Memorandum of Understanding (“MOU”) are the Town of Milliken, a Colorado Municipal corporation, hereinafter referred to as the “Town”, and Mark R. Spaur and Robin E. Spaur, hereinafter referred to as the “Spaurs.”

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

WHEREAS, the Spaurs own 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. The Spaurs will donate and dedicate 15 feet to the Town adjacent to the 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 right-of-way. 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 the Spaurs 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 Spaurs a total of \$4,000 for crop damage upon approval of this Memorandum of Understanding by the Board of Trustees.

5. Both the Town and the Spaurs are concerned regarding the security of the Spaurs’ property, as well as the safety of the general public, with respect to usage of the trail. The Town will therefore be responsible for the following security-related improvements:

- a. A light for the brick shed; and

- b. The installation of a trash can near the trail and the brick shed; and
- c. The purchase and installation of security cameras to be installed on Spaur's brick shed; and
- d. The purchase and installation of approximately 250 feet of vinyl privacy fence with a 25 foot remote control gate.

6. The Town will proceed with the annexation of the Spaur's property generally described as the Southwest Quarter of Section 10, Township 4N, Range 67 at no cost to Spaur's. It is specifically understood that the subdivision exemptions which are located on the Southwest Quarter will be excluded from the annexation.

7. The Town will evaluate the location of the county road adjacent to the shed and the trail to determine how best to insure the safety of persons using the trail as it relates not only to the location of the road, but also the speed of the vehicles on the road.

8. The Town will revegetate any areas disturbed during construction in cooperation with Spaur's 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.

9. 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 Spaur's.

10. 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 Spaur's property along Weld County Road 46 ½ will be required at the time the property is developed.

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

12. 0.455 acres of land will be donated and dedicated to the Town. In addition, 0.910 acres of land will be dedicated as a temporary construction easement.

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

14. Town will not require the Spaur's 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.

15. The trail is being constructed by the Town of Milliken for the benefits of the citizens of the Town and general public. It is the part of an overall trail system linking the Towns of Milliken and Johnstown. Exhibit "C4" illustrates the location of the Milliken portion of the trail and also includes a conceptual connection and alignment for the Johnstown's portion of the trail. Johnstown will be responsible for the alignment and the Town does not take any responsibility for the future location and alignment of the trail that will be constructed by the Town of Johnstown.

16. The MOU constitutes a formal agreement accepting these conditions, a commitment by the Town to construct the trail along the Spaur's property within a reasonable period of time and accept the dedication of right-of-way. This MOU will be provided to the Town Trustees for approval.

The parties acknowledge that this document constitutes an understanding of the desires and expectations of the parties and is a binding agreement between the parties.

Dated this ____ day of _____, 2015

TOWN OF MILLIKEN
A Colorado Municipal Corporation
1101 Broad Street
PO Box 290
Milliken, CO 80543

By: _____
Milt Tokunaga
Mayor, Town of Milliken

By: _____
Mark R. Spaur, Owner

Attest: _____
Cheryl Powell
Town Clerk, Town of Milliken

By: _____
Robin E. Spaur, Owner

STATE OF COLORADO)
) ss.
COUNTY OF _____)

Subscribed, sworn to, and acknowledged before me by MILT TOKUNAGA, Mayor, 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 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 MARK R. SPAUR, 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 ROBIN E. SPAUR, on _____
_____, 2015.

Witness my hand and official seal.

My commission expires _____.

Notary Public