

TOWN OF MINTURN, COLORADO
RESOLUTION NO. 20 – SERIES 2017

A RESOLUTION AUTHORIZING THE MAYOR OF THE TOWN OF MINTURN TO SIGN A MEMO OF UNDERSTANDING WITH DARIN L. TUCHOLKE REGARDING THE NORTH MINTURN STATE LAND BOARD PARCEL.

WHEREAS, the Town of Minturn desires to approve a Memo of Understanding with Darin L. Tucholke set forth in Exhibit A.

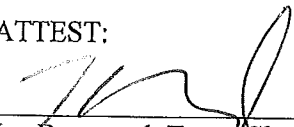
NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO THAT THE MAYOR OR HIS DESIGNEE IS AUTHORIZED TO SIGN ON BEHALF OF THE TOWN OF MINTURN ANY AND ALL NEGOTIATED DOCUMENTS REQUIRED TO EXECUTE SAID AGREEMENT.

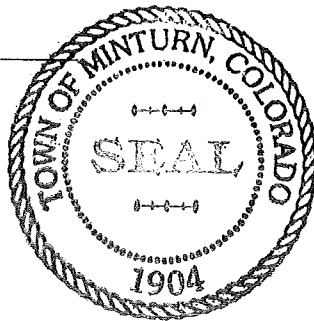
INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED THIS 6TH DAY OF SEPTEMBER, 2017.

TOWN OF MINTURN

By: 
Matt Scherr, Mayor

ATTEST:


Jay Brunvand, Town Clerk



**MEMORANDUM OF UNDERSTANDING RELATING TO STATE LAND BOARD
PARCEL**

This Memorandum of Understanding Relating to the State Land Board Parcel (this “**MOU**”) is made and entered into as of the ___ day of August, 2017 (“**Effective Date**”), by and among Darin L. Tucholke (together with respective successors and assigns, “**DLT**”), and the Town of Minturn, Colorado, a home rule municipal corporation (“**Town**”).

RECITALS

This MOU is made with respect to the following facts:

A. The State Land Board is the owner of certain real property within the jurisdiction of Eagle County (the “**Property**”). The Property is situated to the north of the Town of Minturn, east of Highway 24, and adjoins the Town of Minturn’s existing limits on more than one-sixth of the Property’s boundaries. The general location of the Property is as depicted on the Site Plan (defined below) attached as Exhibit A.

B. The Town, acting by and through its governing body (“**Town Council**”), desires to consider annexation of the Property under Section 16-1-70 and the Colorado Municipal Annexation Act of 1965, as applicable, based on the terms set forth in this MOU, and such other terms as the Town and DLT deem desirable and appropriate in conjunction with the annexation process (the “**Annexation**”).

C. The Town will consider an Annexation petition submitted by DLT, provided that DLT enters into an agreement for a permanent pedestrian and bicycle trail easement along a prescribed alignment over the Property running in a general southerly to northerly direction the distance of the Property (the “**Trail Easement**”). DLT is amenable to accommodating the Trail Easement on the Property. DLT and the Town agree to work together to locate the Trail Easement in a mutually agreed upon alignment over the Property and in accordance with the terms and conditions of the MOU, as set forth further below .

D. In the event the Property is not annexed for any reason, DLT agrees to nonetheless accommodate the trail on the Property, subject to submission to and approval by the Town of a final “site plan” depicting the agreed upon location of the Trail Easement and entry by the Town and DLT into a Trail Easement Agreement, on such terms as Eagle County and DLT may agree to as to existing use and potential future use of the Property (the “**Site Plan**”), including the potential for future Annexation, as may be desired by the Town and DLT. A copy of the draft Site Plan depicted the general alignment of the Trail Easement is attached hereto as Exhibit A. The Town and DLT acknowledge that the proposed location of the Trail Easement is a general depiction only, with the final location to be determined based on further site work and discussions between the Town and DLT.

E. The Town and DLT will undertake joint negotiations with the State Land Board, as the Property has previously been and is envisioned to again be, or remain, on the State Land Board “disposal list” valued at less than \$500,000, due in large part to the Property being located in whole or in part within a geographical hazard zone, so to enable DLT to acquire the

Property for the collective purposes expressed by the Town and DLT, as set forth in this MOU, on the terms set forth in greater detail below.

F. The Property is currently zoned "Resource" and, to the extent the Annexation does not occur, is subject to such use by right as provided for under Eagle County zoning maps and applicable code provisions, or such other use as may be acknowledged or approved by Eagle County (collectively, the "**Existing Entitlements**"), without further approval by the Town.

G. If the Annexation does proceed, as may be considered and approved by Town Council, an appropriate Ordinance shall be adopted, together with a "Vested Property Rights Agreement" to be negotiated in conjunction with the Annexation (the "**Annexation Agreement**") and zoning permits. The Vested Property Rights Agreement shall allow for the uses contemplated below, subject to appropriate screening and related zoning requirements or variances, as may be applicable.

H. The Town and DLT wish to proceed in order to further investigate and potentially implement the matters contemplated above, such that DLT may acquire the Property on the terms agreed upon between DLT, the Town and the State Land Board, so to enable the Town to review such petitions, applications, and other zoning submittals as may be required to implement and create the opportunity for near-term development of the Trail Easement to benefit the community and enhance safety for pedestrians and cyclists in the Highway 24 corridor north of the Town where the subject Property is located.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this MOU and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Property Acquisition.** DLT will work with the State Land Board to acquire the Property on terms contemplated by the State Land Board and agreeable to DLT, with accommodation of the Trail Easement as proposed by the Town. The Town agrees to cooperate and facilitate communications with the State Land Board toward enabling the Property to be acquired to accommodate the Trail Easement, as set forth further below.

2. Property Approvals.

(a) **Initial Phase.** The Town (in consultation with DLT) will review submissions by DLT of a Site Plan and Trail Easement Agreement and petition for Annexation, together with the Vested Property Rights Agreement ("Initial Phase Agreements"), and will process such Initial Phase Agreements in accordance with the Minturn Municipal Code ("**Code**"), consistent with the following allocated responsibilities:

(i) DLT will work diligently, in cooperation with the Town, to enter into a term sheet setting forth the terms upon which the Property is proposed to be acquired by DLT (the "SLB Letter of Intent") at DLT's expense. DLT will submit a draft of the SLB Letter of Intent to the Town for review within 7 business days of mutual execution of the MOU, with the objective that the

SLB Letter of Intent may be accepted by the State Land Board prior to December 1, 2017. The SLB Letter of Intent will provide for an option or other definitive agreement for DLT to acquire the Property from the State Land Board with closing scheduled as soon thereafter as is practicable (the "Acquisition"), toward allowing for construction of the trail under the Trail Easement. The Town and DLT shall be signatories to the SLB Letter of Intent toward an expression of the interest of the Town and DLT to proceed with the collaboration of establishing the Trail Easement, as provided for in this MOU.

(ii) If approved by the State Land Board, the petition for Annexation may be filed in advance of the Acquisition, provided that DLT shall not incur any costs with respect to the Initial Phase Agreements until the Acquisition is consummated. DLT shall otherwise provide the Town with draft Initial Phase Agreements within sixty (60) days of the Acquisition. The Town will work diligently to provide comments to DLT on draft Initial Phase Agreements within thirty (30) days of receipt of the each of the Initial Phase Agreements.

(iii) The Site Plan proposes a location of the Trail Easement, but the final location of the trail under the Trail Easement will be determined in conjunction with the Initial Phase Agreement negotiation and will take into account a number of factors, including, as a substantial factor, the Town's health and safety standards for the trail under the Trail Easement. The Site Plan will allow for (x) any current right of use of the Property as a permitted use, (y) auto towing storage and impound, together with related office facilities, as a permitted use, and the Town will (z) consider other potential permitted uses.

(iv) The Town will endeavor to have public notice requirements completed so that the Annexation may be considered by Town Council within four (4) months of the Acquisition and will endeavor to schedule such hearings as may be required so that a final determination of the Annexation may be completed within six (6) months of the Acquisition.

(b) Second Phase. To the extent the Town or DLT elect not to proceed with the Annexation, the Trail Easement will be recorded as an easement encumbering the Property in the Eagle County public records and the Trail Easement will be depicted in all future requests and submissions by DLT to Eagle County for special or other permitted use approvals with respect the Property. The Town will not object to submissions to Eagle County regarding the Property, provided that the Trail Easement shall remain in effect notwithstanding any future use approved.

2. Cooperation. In connection with processing the Annexation and other Initial Phase Agreements, DLT and the Town will work in good faith to have regularly scheduled meetings to coordinate efforts toward progress with Initial Phase Agreements and the Annexation in accordance with the timelines set forth in Paragraph 2 above.

3. **Nature and Purpose of the Trail Concept.** Preliminary plans, if any, for the trail under the Trail Easement are not intended to identify with certainty the specific location and configuration of trail and specifications. The final trail specifications, location and designated open space related to the trail shall be as agreed upon by DLT and the Town and approved by the Town in the final Site Plan.

4. **Costs and Expenses.** The Trail Easement and Vested Property Rights Agreement shall set forth the obligations of the parties related to the costs and expenses incurred in connection with the matters addressed therein. All Acquisition costs shall be borne by DLT.

5. **Term; Termination.** This MOU may be terminated by either party, in its sole discretion, by giving the other party written notice thirty (30) days in advance, provided that the Town shall not terminate the MOU after the Annexation petition has been submitted.

6. **Aspirational Nature of Agreement.** This MOU is aspirational in nature. The dates described herein constitute target dates to initiate or accomplish tasks. Said dates are not enforceable deadlines. The parties acknowledge that the items described herein are subject to public approval processes and governing law. Nothing herein shall constitute a waiver of any public right or legally required process. Nothing herein shall be construed as a guarantee that any proposed Code provision, agreement, or land use entitlement will be granted. The intent of this MOU is to establish a process for the consideration of the items discussed herein in the context of governing law. The parties agree to work exclusively with each other toward negotiations with the State Land Board while the MOU is in effect, given the time and expense invested by the parties in exploring the matters set forth herein.

7. **No Amendment.** This MOU shall not be amended except by further amendment signed by both parties.

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

DLT:

By: 

Name: Darin L. Tucholke

TOWN OF MINTURN, a municipal corporation of the State of Colorado

By: 

Name: Matt Scherr

Title: Mayor