

Agenda Item: Consent Agenda -g.

Meeting Date: April 12, 2021

Subject: Non-Disclosure Agreement with Rocky Mountain Rail, Inc.

Staff Member: A.J. Euckert, City Manager

g. Resolution 21-26, approving a Non-Disclosure Agreement with Rocky Mountain Rail, Inc.

Background: The team at Rocky Mountain Rail has requested the City enter into a non-disclosure agreement to be able to review their standard intergovernmental agreement (IGA) and other related items. The City Attorney's Office has reviewed the agreement and proposed modifications to comply with provisions of the Colorado Open Records Act and other disclosure requirements as provided by law.

Recommended Action: Consideration and approval of Resolution 21-26, approving a Non-Disclosure Agreement with Rocky Mountain Rail, Inc.

RESOLUTION NO. 21-26

A RESOLUTION APPROVING A NON-DISCLOSURE AGREEMENT WITH ROCKY MOUNTAIN RAIL, INC.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DACONO, COLORADO:

Section 1. The Non-Disclosure Agreement by and between the City of Dacono and Rocky Mountain Rail, Inc. is hereby approved in essentially the same form as the copy of such Agreement accompanying this resolution.

Section 2. The Mayor is hereby authorized to sign the Agreement and is further authorized to negotiate and approve on behalf of the City such revisions to the Agreement as the Mayor determines necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Agreement are not altered.

INTRODUCED, READ, and ADOPTED this 12th day of April, 2021.

CITY OF DACONO, COLORADO

Joe Baker, Mayor

ATTEST:

Valerie Taylor, City Clerk

ROCKY MOUNTAIN RAIL, Inc. NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is made and entered into by and between **The Rocky Mountain Rail, Inc. (“RMR”)**, a Colorado Corporation established pursuant to C.R.S. § 24-48.5-101, and the **City of Dacono**, a Colorado home rule municipal corporation, whose address is 512 Cherry Street, Dacono, Colorado (“City”), (collectively the “Parties”). This Agreement is made to document the confidential nature of the Regional Transportation Rail System project organized by RMR. (“the Project”).

RECITALS

- A. **RMR** desires to provide the City, and **RMR** desires to receive from City, certain information that the City and **RMR** desire to keep confidential (“Information”), which may include **RMR** and City trade secrets, proprietary information, and/or confidential financial information or data relating to the Project.
- B. The Parties may wish to disclose the Information to each other in confidence, to the extent permitted by law.
- C. The Parties acknowledge that **RMR** and City are subject to the provisions of the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.* (“CORA”) and other disclosure requirements as provided by law.

THE PARTIES AGREE AS FOLLOWS:

- 1. The Party receiving Information (“Receiving Party”) shall keep the Information received from the other party (“Disclosing Party”), in whatever form, as strictly confidential and shall not disclose that information to third parties without the prior written consent of the Disclosing Party, except as otherwise provided in this Agreement or required by law or court order.
- 2. The Receiving Party shall restrict access to Information received from the Disclosing Party to only its employees, representatives, attorneys, contractors, advisors or members or staff of any organization this information is shared with to whom such access is reasonably necessary or appropriate for the purposes of the Project. **RMR and City** shall inform individuals to whom such access is given of the proprietary and confidential nature of said Information and of this Agreement.
- 3. The Disclosing Party shall specify what Information is subject to this Agreement by marking it “confidential” on each page of the document. If an application for an **RMR** incentive is submitted through a Salesforce tool, the Disclosing Party shall mark each page of any document submitted as an attachment that is subject to this Agreement “confidential.” If the Disclosing Party enters into Salesforce field Information it deems confidential, the Disclosing Party shall state in such Salesforce field that that Information is “confidential.”
- 4. The Disclosing Party shall identify and conspicuously mark “CONFIDENTIAL” on each page of all documents pertaining to the City’s trade secrets, privileged information and confidential commercial or financial data. If the Receiving Party is required by a court order or other legal process to reveal Information, the Receiving Party will promptly notify the Disclosing Party so that the Disclosing Party may take action to limit disclosure of the Information, including a protective order, as appropriate, and the Receiving Party will cooperate with the Disclosing Party to protect the Information in a lawful manner
- 5. The obligation to keep Information confidential shall not apply to any Information which:
 - (a) Is generally known to the public at the time of disclosure or later becomes so generally known through no fault of the Receiving Party;
 - (b) Was known to the Receiving Party prior to disclosure by the Disclosing Party as proven by the contemporaneous written records of the Receiving Party;
 - (c) Is disclosed to the Receiving Party by a third party who did not obtain such information, directly or indirectly, from the Disclosing Party subject to any confidentiality obligation;
 - (d) Is at any time independently developed by the Receiving Party as proven by its contemporaneous written records;
 - (e) Or, must be disclosed pursuant to CORA, any other law, or any court order. If **the** Receiving Party is required to disclose the Information, then the Receiving Party will give the Disclosing Party as much notice thereof as

reasonably practicable and will communicate regularly with the Disclosing Party about any such disclosure. Required disclosure of any Information will be made in accordance with relevant law.

6. The obligation to keep Information confidential shall remain in effect unless (i) this Agreement is modified or terminated in writing, (ii) disclosure is required by law, or (iii) the Parties mutually agree to disclose certain Information relating to the Project.
7. Information shall be deemed the property of the Disclosing Party, and the Receiving Party will, upon receipt of a written request from the Disclosing Party, return all Information received in tangible form to the Disclosing Party or destroy all such Information and all copies thereof or documents containing Information, except as otherwise required by law.
8. The Parties acknowledge that breach of this Agreement by the Receiving Party may result in injury to the Disclosing Party and that the Disclosing Party shall be entitled to pursue any available legal or equitable remedy. Nothing herein shall constitute a waiver by the City or **RMR** of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*
9. No failure or delay of either Party in exercising its rights herein shall be deemed to be a waiver of such rights unless expressly made in writing by the Party waiving such rights. This Agreement contains the entire understanding between the Parties with respect to the subject matter described herein. This Agreement may not be terminated, modified, amended or waived orally but only through writing and must be signed by an authorized representative of each Party. There are no representations or warranties except as expressly stated herein. Neither Party shall assign or transfer this Agreement or any right under this Agreement to any third party without the prior written consent of the other Party.
10. Any notice given to a Party shall be deemed properly given if specifically acknowledged by the other Party in writing or when delivered to the recipient by certified or registered mail to the following addresses:

(a) If to City:

A.J. Euckert, City Manager

City of Dacono
512 Cherry Avenue

Dacono, CO 80514

(b) If to RMR:

Bob Briggs
Rocky Mountain Rail, Inc.
9191 Sheridan Blvd, Suite 300
Westminster, CO 80031

11. This Agreement is governed and shall be interpreted in accordance with the laws of the state of Colorado. Any dispute arising under or in connection with the Agreement or related to any matter which is the subject of the Agreement shall be subject to the exclusive jurisdiction of the state and/or federal courts located in Denver, Colorado.

This Agreement has been signed by the duly authorized representatives of each Party.

CITY

City of Dacono

By: _____
(Signature)

Print Name: Joe Baker

Title: Mayor

Date: _____

RMR

Rocky Mountain Rail, Inc.

By: _____
(Signature)

Print Name: Bob Briggs

Title: CEO

Date: _____