

CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 22
Series of 2020

**TITLE: RESOLUTION NO. 22-2020 – A RESOLUTION APPROVING
A MEMORANDUM OF UNDERSTANDING BETWEEN THE
CITY OF WHEAT RIDGE AND ROYS MOUNTAIN HOME, LLC
REGARDING ROBB STREET REGIONAL DETENTION POND**

WHEREAS, the City of Wheat Ridge (City) has a stormwater facility Pond east of Robb Street and south of Ridge Road that provides regional detention of stormwater flows; and

WHEREAS, Roys Mountain Home has planned an industrial development (Mountain Gateway) on the west side of Robb Street that is required to provide detention of stormwater flows; and

WHEREAS, the portion of Robb Street north of W 50th Avenue is being moved to the west to provide a better alignment with Robb Street south of W 50th Avenue; and

WHEREAS, the Pond can be expanded to accommodate the required detention facilities for Mountain Gateway; and

WHEREAS, Mountain Gateway has agreed to fund the cost of the expansion of the Pond for their needs and provide an additional \$20,000 towards a future expansion of the Pond; and

WHEREAS, the Mile High Flood District will review the design and inspect the construction of the expansion of the Pond to ensure that the construction meets the minimum criteria for regional detention facilities.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wheat Ridge, Colorado, as follows:


Section 1. Memorandum of Understanding Approved.

The MOU with Roys Mountain Home regarding the expansion of the Pond east of Robb Street and south of Ridge Road, attached hereto as **Exhibit A**, is hereby approved and the Mayor and City Clerk are authorized and directed to execute the same, in form approved by the City Attorney.

Section 2. Effective Date

This Resolution shall be effective upon adoption

DONE AND RESOLVED this 27th day of April 2020.



Bud Starker, Mayor

ATTEST:


Steve Kirkpatrick, City Clerk



Exhibit A

Memorandum of Understanding Roys Mountain Home

[attached]

MEMORANDUM OF UNDERSTANDING
(Robb Street Regional Detention Pond)

This MEMORANDUM OF UNDERSTANDING (this “MOU”) is entered into as of April 27th, 2020 by and between the CITY OF WHEAT RIDGE, a home rule municipality and political subdivision of the State of Colorado (the “City”) and ROYS MOUNTAIN HOME LLC, a Delaware limited liability company (the “Landowner”). The City and the Landowner are hereinafter collectively referred to as the “Parties,” and each individually as a “Party.”

RECITALS

A. The Landowner is the owner of certain real property, which is more particularly described on the attached **Exhibit A** (the “Property”), and which is generally located west of Robb Street and north of West 50th Avenue, in the City of Arvada, Colorado (“Arvada”).

B. The Landowner is presently processing a subdivision plat application (the “Plat”) with Arvada, in anticipation of constructing an industrial project consisting of two buildings and associated parking areas, landscaping, and other improvements (the “Project”).

C. The Plat contemplates relocating the existing Robb Street right-of-way, and dividing the Property into one lot (“Lot 1”) and one tract (“Tract A”).

D. The City presently owns and maintains a regional stormwater detention pond (the “Pond”) on certain real property located east of the Property.

E. In connection with the Project and approval of the Plat, the Landowner plans to construct improvements to the Pond in order to enable the Pond to detain stormwater flows from the Project, and further intends to convey Tract A to the City to allow the City to own and maintain the portion of the Pond located thereon, with such conveyance to occur following Arvada’s approval of the Plat.

F. The Parties desire to enter into this MOU to memorialize the obligations of each Party with respect to the Pond and Tract A.

AGREEMENT

NOW THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein by reference, and the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. Stormwater Drainage Easement. Prior to conveying Tract A to the City, the Landowner will record a declaration of drainage easement in substantially the form attached hereto as **Exhibit B** (the “Drainage Easement”), allowing stormwater drainage flows from Lot 1 to drain into the Pond located on Tract A. The City consents to the recordation of such Drainage Easement.

2. Conveyance of Tract A to the City. Upon the City’s approval of this MOU, the Landowner will record a quitclaim deed, conveying Tract A to the City (the “Quitclaim Deed”). The City acknowledges that it has previously approved the form of the Quitclaim Deed.

3. Payment for Pond Improvements and Maintenance. Within two business days of mutual execution of this MOU, the Landowner will remit to the City Twenty Thousand Dollars (\$20,000) to the City, for the purpose of constructing future improvements to expand the Pond volume to meet the 100-year detention needs for the upstream basin; and

The Landowner acknowledges and agrees that the City may appropriate the payments described in this Section 3 in any manner authorized by law, and the Landowner hereby waives any right to object to the City's appropriation of such payments.

4. Release of Further Landowner Obligations. Upon the Landowner's payment to the City of the above-referenced amounts, the Landowner will have no further obligations with respect to the Pond, except as may be set forth in the Drainage Easement. Except as may otherwise be set forth in the Drainage Easement, the City hereby waives the right to object to or otherwise comment on the Plat or the Project, except: (i) in the City's role as a referral agency under the city of Arvada land use code and (ii) with respect to any adverse impacts from the Project to the Pond. .

5. Term of MOU. This MOU will remain in full force and effect until the Parties have performed all of their obligations set forth in Sections 1 through 3 above, at which point this MOU will terminate and be of no further force and effect. Notwithstanding the foregoing, the provisions of Sections 4 and 5 of this MOU will remain in full force and effect until the completion of the Project, as evidenced by Arvada's issuance of a final certificate of occupancy for the Project.

6. Successors and Assigns. This MOU will run with the Property and will bind and burden the Landowner and its successors and assigns in interest.

7. Remedies. The Parties hereto acknowledge and agree that each party may exercise all rights and remedies in law or in equity as may be available.

8. Notices. Any notice required or permitted by this MOU shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given, at the address set forth below, or at such other address as has been previously furnished in writing, to the other party. Such notice shall be deemed to have been given when deposited in the United States mail.

If to the City: City of Wheat Ridge
Attn: Public Works Director
710 Kipling Street, Suite 300
Lakewood, Colorado 80215

With a copy to: City of Wheat Ridge
Attn: City Attorney
710 Kipling Street, Suite 300
Lakewood, Colorado 80215

If to the Landowner: Roys Mountain Home LLC
Attn: Walter Cale

2001 Wilshire Boulevard, Suite 220
Santa Monica, California 90403

With a copy to: Otten Johnson Robinson Neff + Ragonetti, P.C.
Attn: Brian J. Connolly
950 17th Street, Suite 1600
Denver, Colorado 80202

9. No Appropriation of Funds; No Aid to Landowner. Pursuant to C.R.S. § 29-1-110, the financial obligations, if any, of the City contained herein which are payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. Nothing in this MOU is intended to provide a donation, grant, or aid by or on behalf of the City to the Landowner, or to establish any joint venture between the Parties, and the Parties acknowledge and agree that the activities described in this MOU are for the benefit of the public.

10. No Binding of Legislative Authority. The Parties acknowledge that this MOU does not bind the City or its governing body in any manner except as specifically described herein.

11. No Waiver of Governmental Immunity Act. The Parties hereto understand and agree that the Parties, their commissioners, councilmembers, officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the County.

12. Governing Law and Venue. This MOU shall be governed by the laws of the State of Colorado. Venue for any action hereunder shall be in the District Court in and for Jefferson County, Colorado and the Parties waive any right to remove any action to any other court, whether state or federal.


13. No Third-Party Beneficiaries. The enforcement of the terms and conditions of this MOU and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this MOU shall give or allow any such claim or right of action by any other or third person under such MOU. Any beneficiary of the terms and conditions of this MOU are not intended beneficiaries but are incidental beneficiaries only.

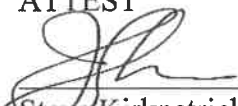
14. Severability. It is understood and agreed by the Parties hereto that if any part, term, or provision of this MOU is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the MOU did not contain the particular part, term, or provision held to be invalid.


15. Entirety. This MOU merges and supersedes all prior negotiations, representations and agreements between the Parties hereof and constitutes the entire agreement between the Parties concerning the subject matter hereof.

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto as of the date first written above.

CITY OF WHEAT RIDGE, COLORADO

By: 
Bud Starker, Mayor

ATTEST

Steve Kirkpatrick, City Clerk

Approved as to form:

Gerald Dahl, City Attorney

LANDOWNER:

ROYS MOUNTAIN HOME LLC, a Delaware
limited liability company

Walter Cale, Manager

EXHIBIT A
The Property

EXHIBIT B
Drainage Easement