

Agenda Item No: CA-f

Meeting Date: October 9, 2023

Subject: Approval of Resolution 23-90, approving a Right-of-Way agreement with D&D Ryan, LLC.

Background: The City of Dacono is interested in acquiring ROW & Easements for the construction of the York Street Improvements project.

There are currently two (2) parcels at the York St. & Grandview Blvd. intersection where ROW & Easements are necessary to construct drainage improvements to facilitate the complete construction of the intersection by implementing recommendations from the Outfall System Plan that was adopted by council earlier this year.

This resolution will allow us to acquire the ROW parcel.

Recommended Action: Staff is recommending approval of Resolution 23-90.

RESOLUTION NO. 23-90

A RESOLUTION APPROVING A RIGHT-OF-WAY AGREEMENT TO ACQUIRE RIGHT-OF-WAY AT YORK STREET AND GRANDVIEW BOULEVARD FOR THE YORK STREET PROJECT

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

Section 1. The Right-of-Way Agreement between the City and D & D Ryan, LLC is hereby approved in essentially the form that accompanies this resolution.

Section 2. The Mayor is hereby authorized to sign the Right-of-Way Agreement and is further authorized to negotiate and approve on behalf of the City such revisions to the Agreement as the Mayor determines are 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 9th day of October, 2023.

CITY OF DACONO, COLORADO

Adam Morehead, Mayor

ATTEST:

Valerie Taylor, City Clerk

RIGHT-OF-WAY AGREEMENT

This Agreement is made and entered into by and between **D & D RYAN, LLC**, a Colorado limited liability company, with a legal address of 5150 Grand View Boulevard, Dacono, Colorado (the “Owner”), and the **CITY OF DACONO**, a municipality of the State of Colorado (the “City”), with a legal address of 512 Cherry Avenue, Dacono, Colorado, for the conveyance of right-of-way on property described in the attached Exhibit A (the “Property”), which is incorporated herein by reference, for the construction of roadway improvements at the intersection of Grandview Boulevard and York Street project (“Project”).

The compensation agreed to by the Owner and City for the acquisition of the Property described herein is Twenty-Five Thousand Dollars (\$25,000.00), including the performance of the terms of this Agreement, the sufficiency of which is hereby acknowledged. This consideration has been agreed upon between the parties as the total just compensation due to Owner and the consideration shall be given and accepted in full satisfaction of this Agreement.

In consideration of the above premises and the mutual promise and covenants below, the Owner and the City agree to the following:

1. The Owner hereby warrants that the Owner is the sole Owner of the Property, that the Owner owns the Property in fee simple subject only to matters of record, and that the Owner has the power to enter into this Agreement.
2. The Owner agrees to execute and deliver to the City the conveyance document in the form attached as Exhibit B upon tender by the City of payment of the compensation described herein and as soon as possible following the execution of this Agreement.
3. The Owner hereby irrevocably grants to the City possession and use of the Property upon execution of this Agreement by the Owner and the City. This grant of possession shall remain in effect with respect to the Property until such time as the City obtains from the Owner the attached conveyance documents.
4. The Owner agrees to pay all 2022 taxes due in 2023 prior to delivery of the executed conveyance documents to the City.
5. During construction of the Project, the City, through its contractor, shall assure that reasonable access shall be maintained to the Owner’s property at all times for ingress and egress. If necessary, any full closure of access shall be coordinated between the contractor and the Owner and/or its agent.
6. The Owner has entered into this Agreement acknowledging that the City has the power of eminent domain and that the City requires the Property for a public purpose.
7. If the Owner fails to consummate this Agreement for any reason, except the City’s default, the City may, at its option, enforce this Agreement by bringing an action against the Owner for specific performance.

8. This Agreement contains all agreements, understandings, and promises between the parties relating to the Project and shall be deemed a contract binding upon the parties and extending to their successors, heirs, and assigns.
9. The Owner shall be responsible for reporting proceeds of the sale to taxing authorities, including the submittal of Form 1099-S with the Internal Revenue Service, if applicable.
10. This Agreement has been entered into in the State of Colorado and shall be governed according to the law thereof.
11. Nothing herein shall be construed as a waiver, express or implied, of the notice requirements, defenses, immunities, and limitations the City may have under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended or may be amended or replaced or supplemented by another statute providing immunity or similar protections to governmental entities (“CGIA”). To the extent that immunity may be waived by CGIA, the City asserts any limitations on the amount of recovery under the CGIA or other applicable law.

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SIGNATURE PAGE FOLLOWS.

OWNER:

D & D RYAN, LLC, a Colorado limited liability company

By: Dorothy A. Ryan
Title: President

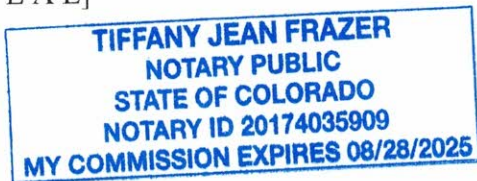
STATE OF COLORADO)
) ss.
COUNTY OF Weld)

The foregoing Right-of-Way Agreement was acknowledged before me this 27 day of September, 2023, by Dorothy A. Ryan

Witness my hand and official seal.

My commission expires: 8-28-2025

[SEAL]



Tiffany Jean Frazer
Notary Public

Approved:

CITY OF DACONO

Title:

Date

Approved as to Form:

City Attorney

EXHIBIT A – DESCRIPTION OF PROPERTY

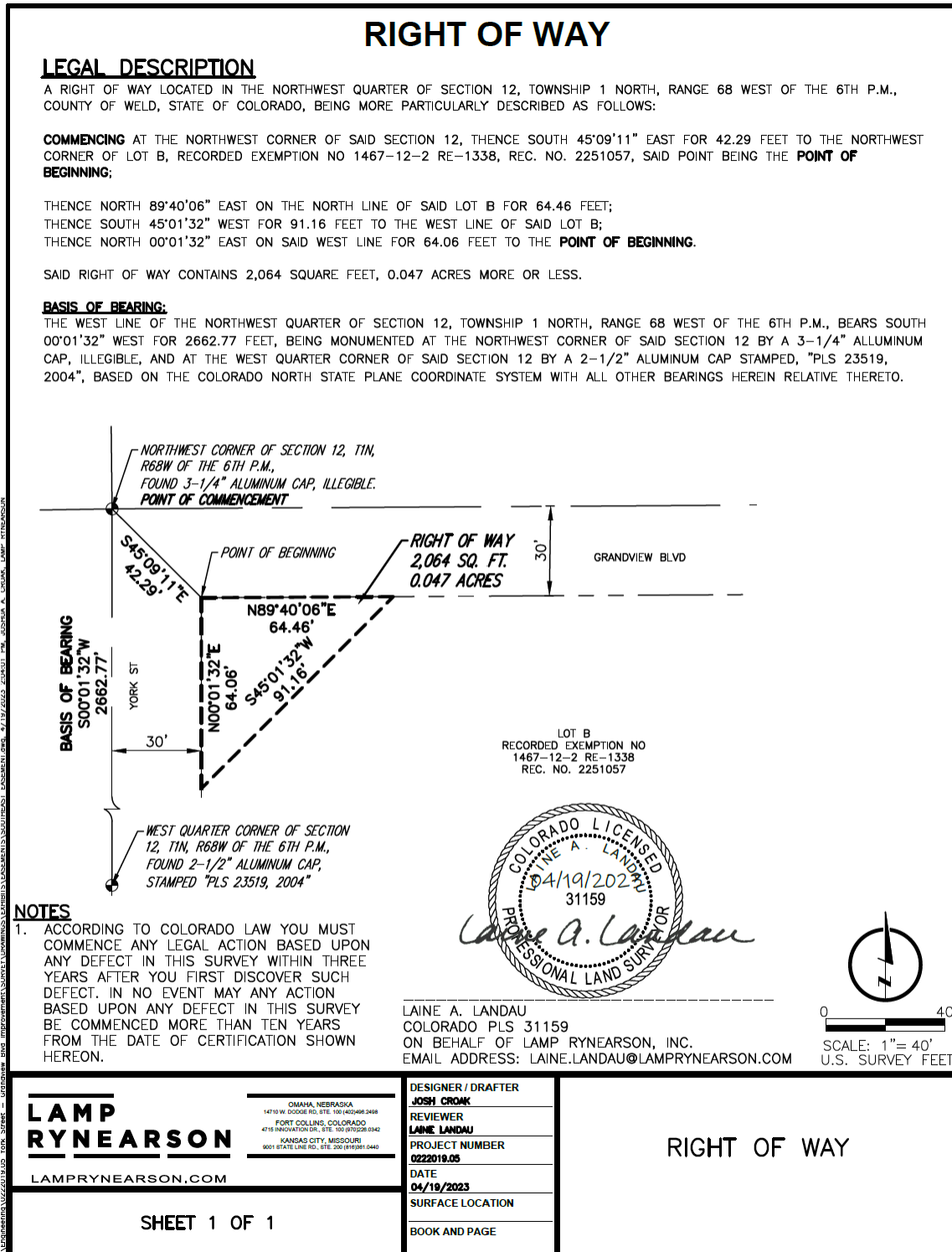


EXHIBIT B – SPECIAL WARRANTY DEED

This special warranty deed is made this ___ day of _____, 2023, by **D & D RYAN, LLC**, a Colorado limited liability company, with a legal address of 5150 Grand View Boulevard, Dacono, Colorado 80514-0177 (Grantor) and the **CITY OF DACONO**, a municipality of the State of Colorado, with a legal address of 512 Cherry Avenue, Dacono, Colorado 80514 (Grantee):

Grantor, for and in consideration of the sum of Ten and no/100 Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby sells, grants, and conveys to Grantee, its successors and assigns forever, the real property, together with improvements, if any, situate, lying and being in the County of Weld and State of Colorado, described as follows:

Legal description as set forth in Exhibit “A” attached hereto and incorporated herein by this reference.

TO HAVE AND TO HOLD the same together with all its appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the Grantor, either in law or equity, to the only proper use, benefit and behoove of the Grantee and its heirs, successors, and assigns forever. Grantor warrants the title to said property against all persons claiming the whole or any part thereof, by, through, or under Grantor except taxes and assessments for the current year.

IN WITNESS WHEREOF, the Grantor has executed this deed on the date set forth above.

GRANTOR:

D & D RYAN, LLC, a Colorado limited liability company

By: _____

Title: _____

STATE OF COLORADO)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
2023, by _____.

Witness my hand and official seal.

My commission expires: _____

[S E A L]

Notary Public