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BILL NO. R-13-05-28

RESOLUTION NO. R-54-13

A RESOLUTION APPROVING THE ACQUISITION OF CERTAIN REAL ESTATE LOCATED AT 3404 SOUTH LAFAYETTE STREET FOR THE CITY OF FORT WAYNE, BY AND THROUGH THE DIVISION OF PUBLIC WORKS.

WHEREAS, the City of Fort Wayne, through its Division of Public Works, desires to acquire property located at 3404 South Lafayette Street, specifically described in the Donation Agreement, Exhibit "A," attached hereto and made a part hereof; and

WHEREAS, Wells Fargo Bank is donating this property to the City of Fort Wayne; and

WHEREAS, the Donation Agreement for the property located at 3404 S. Lafayette Street, Fort Wayne, Indiana is submitted to the Common Council for approval.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

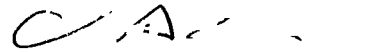
SECTION 1. The sale of real estate by the City of Fort Wayne through its Division of Public Works, located at 3404 South Lafayette Street, Fort Wayne, Indiana, specifically described in the Donation Agreement, Exhibit "A," is hereby approved and agreed to. The appropriate officials of the City are hereby authorized to execute all documents necessary to accomplish said

1 donation.

2 **SECTION 2.** This Resolution shall be in full force and effect from
3 and after its passage and any and all necessary approval by the Mayor.
4

5 
6 Council Member
7

8
9 APPROVED AS TO FORM AND LEGALITY

10
11 
12 Carol Helton, City Attorney
13



DONATION AGREEMENT

This is a Donation Agreement (the "Donation Agreement") for certain real property located at **3404 S LAFAYETTE ST, FORT WAYNE, IN 46806** ("Property"), dated and effective as of this 18th day of FEBRUARY, 2013, between Wells Fargo Bank, N.A., a national banking association ("Donor") and **CITY OF FORT WAYNE**, a ("Donee").

RECITALS

This Donation Agreement is made and entered into on the basis of the following facts and understandings of the parties hereto:

- A. Donor acquired the Property(ies) identified on Exhibit A through the foreclosure process.
- B. Donor did not originally construct any of the improvements forming part of any Property. Donor has not occupied any Property for its own use.
- C. Due to Donor's lack of familiarity with the Properties, Donor is unwilling to make any representations or warranties whatsoever regarding the Properties and Donor is only willing to grant Donee the Properties on an "as is, where is" and "with all faults" basis.
- D. Donee has been given a full and complete opportunity to conduct its own investigation as to any matter, fact or issue that might influence Donee's decision to accept the Property from Donor. Accordingly, Donee is willing to accept the Property from Donor without any representations or warranties whatsoever regarding the Property and on an "as is, where is" and "with all faults" basis.

AGREEMENT

1. DONATION.

- 1.1 **Closing Costs.** Donor shall pay all costs associated with the transfer of the Property, including but not limited to attorney's fees, agents fees and recording costs ("Closing Costs").
- 1.2 **Transfer.** Donor agrees to donate the Property to Donee and Donee agrees to accept the Property from Donor on the terms and conditions set forth herein. In consideration of Donor's transfer of the Property to Donee, Donee shall perform all of Donee's obligations hereunder including but not limited to the release and indemnity set forth in Section 2.2 of this Donation Agreement.
- 1.3 **Title.** Title shall be transferred on the Closing Date via a quit claim deed or its equivalent.

- 1.4 **Further Assurances.** Donee and Donor agree to execute all instruments and documents and to take all actions reasonably necessary and appropriate to consummate the transfer and donation of the Property and shall use their best efforts to close in a timely manner.

2. **ACKNOWLEDGMENTS, RELEASE AND INDEMNITY.**

- 2.1 **DONEE'S ACKNOWLEDGMENTS.** DONEE ACKNOWLEDGES THAT DONEE IS ACCEPTING THE PROPERTY SOLELY IN RELIANCE ON DONEE'S OWN INVESTIGATION, AND THE PROPERTY IS IN "AS IS, WHERE IS" CONDITION WITH ALL FAULTS AND DEFECTS, LATENT OR OTHERWISE. DONEE EXPRESSLY ACKNOWLEDGES THAT, IN CONSIDERATION OF THE AGREEMENT OF DONOR HEREIN, AND EXCEPT AS OTHERWISE SPECIFIED HEREIN, DONOR MAKES AND HAS MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY AS TO CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, WITH RESPECT TO ANY PROPERTY OR ANY MATTER RELATED THERETO, OR (WITHOUT LIMITATION) TO ANY OF THE FOLLOWING MATTERS:

- (a) **Soils, Etc.** Soils, seismic, hydrological, geological and topographical conditions and configurations.
- (b) **Artifacts.** Archeological, prehistoric and historic artifacts, remains and relics.
- (c) **Endangered Species.** Endangered plant, animal and insect species.
- (d) **Hazardous Materials.** Hazardous Materials and other environmental conditions, including without limitation, lead-based paint, asbestos and mold.
- (e) **Physical Defects.** Physical and mechanical defects in or on any Property, including without limitation, the plumbing, heating, air conditioning and electrical systems and the roof, floor, ceilings, walls and other internal structural components of any buildings or improvements.
- (f) **Land and Floor Area.** The area of the land and the square footage contained in any buildings or improvements.
- (g) **Utilities, Schools, Etc.** Availability of adequate utilities, water, schools, public access, and fire and police protection.
- (h) **Assessment Districts.** The status and nature of any assessment districts and the amount of any assessment liability.

- (i) **Planning and Zoning.** Present, past or future conformity of any Property with planning, building, zoning, subdivision and development statutes, ordinances, regulations and permits, the general plan and the specific plan.
- (j) **Development Fees.** The character and amount of any fee, charge or other consideration which must be paid by Donee to develop any Property.
- (k) **Title.** The condition of title to any Property, including but not limited to the existence of any easement, license or encroachment whether or not a matter of public record, and whether or not visible upon inspection of such Property.
- (l) **Taxes.** The status of any general or special real property taxes or assessments or personal property taxes or any other taxes and assessments applicable to the Property.
- (m) **Owner's Association.** The financial condition of any owner's association, including, without limitation, the adequacy of any reserves held by any owner's association.
- (n) **Other Matters.** Any other matter relating to any Property or to the development or operation of any Property, including, but not limited to, value, feasibility, cost, governmental permissions or entitlements, marketability and investment return.

2.2 RELEASE AND INDEMNITY.

- (a) **RELEASE. DONEE FULLY RELEASES AND DISCHARGES DONOR FROM AND RELINQUISHES ALL RIGHTS, CLAIMS AND ACTIONS THAT DONEE MAY HAVE OR ACQUIRE AGAINST DONOR WHICH ARISE OUT OF OR ARE IN ANY WAY CONNECTED WITH THE CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION (A) ANY MATTER SET FORTH IN SECTION 2.1 ABOVE, (B) THE PRESENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT ANY PROPERTY (INCLUDING BUT NOT LIMITED TO ANY UNDISCOVERED HAZARDOUS MATERIALS LOCATED BENEATH THE SURFACE OF THE PROPERTY) AND (C) VIOLATIONS OF ANY HAZARDOUS MATERIALS LAWS PERTAINING TO THE PROPERTY OR THE ACTIVITIES THEREON. THIS RELEASE APPLIES TO ALL DESCRIBED RIGHTS, CLAIMS AND ACTIONS, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, PRESENT OR FUTURE.**

(b) **MEANING.** FOR PURPOSES OF THIS SECTION 2.2, ALL REFERENCES TO "DONOR" SHALL INCLUDE: (A) DONOR'S PARENT, SUBSIDIARY AND AFFILIATE CORPORATIONS, (B) DONOR'S DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES AND AGENTS, AND (C) THE HEIRS, SUCCESSORS, PERSONAL REPRESENTATIVES AND ASSIGNS OF DONOR'S DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES AND AGENTS.

(c) **EFFECTIVENESS.** THE PROVISIONS OF THIS SECTION 2 SHALL BE EFFECTIVE AS OF THE CLOSING DATE AND SHALL SURVIVE THE CLOSING DATE OR TERMINATION OF THIS DONATION AGREEMENT.

3. **CLOSING DATE.** IF THE CLOSING DATE DOES NOT TIMELY OCCUR DUE TO THE DEFAULT OF DONEE, (A) DONEE SHALL HAVE NO FURTHER RIGHT TO RECEIVE THE PROPERTY AND (B) DONOR SHALL BE FREE TO DISPOSE OF THE PROPERTY IN ANY WAY IT SEES FIT.

4. **GENERAL PROVISIONS**

4.1 **Successors and Assigns.** This Donation Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties. Notwithstanding the foregoing, Donee may not transfer, assign or encumber Donee's rights under this Donation Agreement without Donor's prior written approval.

4.2 **Entire Agreement.** This Donation Agreement contains the entire agreement between the parties concerning the Donation and sale of the property, and supersedes all prior written or oral agreements between the parties to this Donation Agreement. No addition to or modification of any term or provision shall be effective unless in writing, signed by both Donor and Donee.

4.3 **Time of Essence.** Donor and Donee hereby acknowledge and agree that time is strictly of the essence with respect to each term and condition of this Donation Agreement and that the failure to timely perform any of the terms and conditions by either party shall constitute a breach and default under this Donation Agreement by the party failing to so perform.

4.4 **Partial Invalidity.** If any portion of this Donation Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from this Donation Agreement and the remaining parts shall remain in full force as fully as though the invalid, illegal or unenforceable portion had never been part of this Donation Agreement.

- 4.5 **Governing Law.** The parties intend and agree that this Donation Agreement shall be governed by and construed in accordance with the laws of the state in which the Property is located.
- 4.6 **No Third Parties Benefits.** No person other than Donor and Donee, and their permitted successors and assigns, shall have any right of action under this Donation Agreement.
- 4.7 **Waivers.** No waiver by either party of any provision shall be deemed a waiver of any other provision or of any subsequent breach by either party of the same or any other provision.
- 4.8 **Captions.** The captions and Section numbers of this Donation Agreement are for convenience and in no way define or limit the scope or intent of the Sections of this Donation Agreement.
- 4.9 **Counterparts.** To facilitate execution, this Donation Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.
- 4.10 **No Presumption.** All the parties hereto and their attorneys have had full opportunity to review and participate in the drafting of the final form of this Donation Agreement and all documents attached as exhibits. Accordingly, such documents shall be construed without regard to any presumption or other rule of construction whereby any ambiguities within this Donation Agreement would be construed or interpreted against the party causing the document to be drafted.
- 4.11 **Notices.** Any notices or other communication required or permitted under this Donation Agreement shall be in writing, and shall be (a) personally delivered, or (b) sent by certified or registered United States mail, postage prepaid, return receipt requested, or (c) by overnight delivery by a reputable courier to the address of the party set forth in this Section or (d) telecopied to the Fax number of the party set forth in this Section. Such notice or communication shall be deemed given (i) if sent by personal delivery or by overnight courier, when delivered in person, (ii) if sent by telecopier, when evidence of successful transmission by telecopier has been received by sender or, (iii) in the case of mailed notice, forty-eight (48) hours following deposit in the United States mail. Notice of change of address shall be given by written notice in the manner detailed in this Section.

If to the Donee: **CITY OF FORT WAYNE**

If to the Donor:

Wells Fargo Bank, N.A.
1 Home Campus
Des Moines, Iowa 50328-0001
Attention: Laura Krogh, MAC# X2301-049

With a copy to:

Wells Fargo Bank, N.A.
1 Home Campus
Des Moines, Iowa 50328-0001
Attention: General Counsel, MAC X9903-03K

- 4.12 **Joint and Several.** If more than one person or entity has executed this Donation Agreement as Donor, the obligations of all such persons or entities hereunder shall be joint and several.

[Signatures on the next page]

DONEE:

CITY OF FORT WAYNE

Signature: Daniel A. Brenner
Print Name: Daniel A. Brenner
Title: Property Manager

DONOR:

WELLS FARGO BANK, N.A.

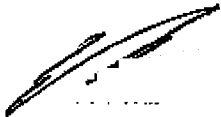
Signature: 
Print Name: Eileen Keidra-Sullivan
Title: Asset Manager

EXHIBIT "A"

PROPERTY ADDRESS
3404 S LAFAYETTE ST
FORT WAYNE, IN 46806

LEGAL DESCRIPTION
Lot 123 Ormiston Helrs Add

Exhibit A

OFAC CERTIFICATE

Pursuant to the Bank Secrecy Act and requirements specified by the Department of the Treasury's Office of Foreign Assets Control ("OFAC"), Wells Fargo Bank, N.A. will not engage in any transactions with any individual or entity that either appears on the list of Specially Designated Nationals and Blocked Persons, Specially Designated Terrorists, Specially Designated Narcotics Traffickers or that Wells Fargo Bank, N.A. suspects to be involved in a suspicious transaction or one in violation of federal law. Therefore, the following information must be provided. If Buyer fails to provide this information, Wells Fargo Bank, N.A. will not consider your offer. This information will only be used for the sole purpose of screening against OFAC and WorldCheck lists.

Please provide the following information:

Buyer 1

First Name: Middle Name: Last Name:
Address: City: State: Zip:
Country: DOB: Phone #:

Buyer 2

First Name: Middle Name: Last Name:
Address: City: State: Zip:
Country: DOB: Phone #:

Buyer 3

First Name: Middle Name: Last Name:
Address: City: State: Zip:
Country: DOB: Phone #:

Buyer's Agent Information

First Name: Last Name: Company:
Address: City: State: Zip:
Email: Phone #: Fax #:

Buyer's Company/Corporation/Partnership

If buyer is a Company/Corporation/Partnership or is not purchasing as an individual, buyer must provide full company/ corporation name and Articles of Incorporation and signing authority. Full Name of Company/ Corporation and Address:

CITY OF FORT WAYNE

List All Principal Owners of Partnership or LLC. Include individual tax ID, address and dates of birth for each. If the buyer is a non-profit organization, please list all signer's names (including non-board members) as well as all individuals with principal ownership or financial interest in the non-profit organization.

Corporation Tax ID: 35-6001029

If Wells Fargo Bank, N.A. finds in its sole and absolute discretion that any purchaser meets the criteria as described above, the offer, purchase agreement or other documents executed in connection with the purchase of the property shall be of no effect, and shall be immediately cancelled. No party shall be liable to the other party in any way, for any claims whatsoever. Any earnest money shall be returned.

ADDENDUM TO DONATION AGREEMENT

PROPERTY ADDRESS: 3404 S LAFAYETTE ST, FORT WAYNE, IN 46806

DATE OF DONATION AGREEMENT FEBRUARY 18, 2013

DONEE CITY OF FORT WAYNE

DONOR WELLS FARGO BANK, N.A

Closing date to be extended to on or before

Adjusted sales price to be

Other: **PROPERTY WILL BE DEMOLISHED, WHICH INCLUDES FINAL GRADING AND SEEDING, BY A LICENSED DEMOLITION CONTRACTOR FOLLOWING REQUIREMENTS OF THE ALLEN COUNTY BUILDING DEPARTMENT. A COPY OF THE ALLEN COUNTY INSPECTION REPORT SHALL BE PROVIDED TO AND APPROVED BY THE CITY OF FORT WAYNE BEFORE CLOSING. CITY OF FORT WAYNE BOARD OF PUBLIC WORKS AND THE COMMON COUNCIL OF THE CITY OF FORT WAYNE MUST APPROVE DONATION OF THIS PROPERTY TO THE CITY.**

DONOR:
WELLS FARGO BANK, N.A

DONEE:
CITY OF FORT WAYNE

By:



By:

Daniel A. Brenner

Its:

Asset Manager

Its:

Property Manager

Date:

3/15/13

Date:

3-13-13

DONATION AGREEMENT
3404 S. Lafayette Street

The Fort Wayne Board of Public Works:

Approves the agreement for the City of Fort Wayne to accept a donation of the property located at 3404 S. Lafayette Street from Wells Fargo Bank.

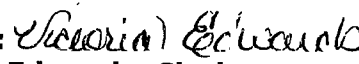
APPROVED THIS 20TH DAY OF MARCH, 2013.

**CITY OF FORT WAYNE
BOARD OF PUBLIC WORKS**

BY: 
Robert P. Kennedy, Chairman

BY: 
Kumar Menon, Member

BY: 
Mike Avila, Member

ATTEST: 
Victoria Edwards, Clerk

COUNCIL DIGEST SHEET

Enclosed with this introduction form is a tab sheet and related material from the vendor(s) who submitted bid(s). Purchasing Department is providing this information to Council as an overview of this award.

RFPs, BIDS, OTHER PROJECTS

Bid/RFP#/Name of Project	Donation Agreement between City of Fort Wayne and Wells Fargo Bank for property located at 3404 South Lafayette Street
Awarded To	Wells Fargo Bank
Amount	N/A
Conflict of interest on file?	N/A
Number of Registrants	N/A
Number of Bidders	N/A
Required Attachments	

EXTENSIONS

Date Last Bid Out	N/A
# Extensions Granted To Date	

SPECIAL PROCUREMENT

Contract #/ID (State, Federal, Piggyback--Authority)	Donation Agreement between City of Fort Wayne and Wells Fargo Bank for the acquisition of 3404 South Lafayette Street
Sole Source/ Compatibility Justification	NA

BID CRITERIA *(Take Buy Indiana requirements into consideration.)*

Most Responsible, Responsive Lowest	No <i>If no, explain below</i>
If not lowest, explain	Property donated to City by Wells Fargo Bank

COUNCIL DIGEST SHEET

COST COMPARISON

Increase/decrease amount N A
from prior years
For annual purchase
(if available).

DESCRIPTION OF PROJECT / NEED

Identify need for project & City acquiring real estate to be included in Community Development's long term
describe project; attach plans for Lafayette Street Corridor
supporting documents as
necessary.

REQUEST FOR PRIOR APPROVAL

Provide justification if N/A
prior approval is being
requested.

FUNDING SOURCE

Account Information. Cedit



CITY OF FORT WAYNE

THOMAS CORRIEN, MAYOR

May 22, 2013

City Council Members
City of Fort Wayne

RE: City of Fort Wayne/Wells Fargo Bank Donation Agreement
3404 South Lafayette Street

Dear Council Members:

The City has entered into a Donation Agreement to acquire the property located at 3404 South Lafayette Street. A copy is attached.

Wells Fargo Bank is donating this parcel to the City at no cost.

The City of Fort Wayne Board of Public Works has approved this acquisition.

We are asking for Council to approve this donation.

If you have any questions on the above, please feel free to contact me at 427-5402.

Sincerely,

A handwritten signature in cursive script that reads "Daniel A. Brenner".

Daniel A. Brenner
Property Manager

ENGAGE • INNOVATE • PERFORM

CITIZENS SQUARE

200 E. Berry St. • Fort Wayne, Indiana • 46802 • www.cityoffortwayne.org
An Equal Opportunity Employer

Public Hearing Date, if applicable

Read the first time in full and on motion by Councilman *Martin Bender*.
Read the second time by title and referred to the *Public Works Committee*
Committee. Read the third time in full and on motion by Councilman
Bender, placed on passage by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	8			1
BENDER	✓			
CRAWFORD	✓			
DIDIER	✓			
HARPER	✓			
HINES	✓			
JEHL	✓			
PADDOCK	✓			
SHOAFF				✓
SMITH	✓			

DATED: *6-11-13* *Sandra E. Kennedy*
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as
(ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (COMBINED) ORDINANCE
(RESOLUTION) NO. *R-54-13* on the *11th* day of *June*
, 2013

Sandra E. Kennedy
SANDRA E. KENNEDY,
CITY CLERK

Thomas F. Didier
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the *13th* day
of *June*, 2013, at the hour of *3:00* o'clock *PM*. E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this *17th* day of *June*
2013, at the hour of *8:30* o'clock *PM*. E.S.T.

Mark D. Becker
Mark D. Becker, Deputy Mayor

THOMAS C. HENRY, MAYOR

BILL NO. R-13-05-28

REPORT OF COMMITTEE ON PUBLIC WORKS

JUNE 4, 2013

**MARTIN BENDER, CHAIR
GEOFF PADDOCK, CO-CHAIR
ALL COUNCIL MEMBERS**

WE, YOUR COMMITTEE ON PUBLIC WORKS TO WHOM WAS REFERRED A RESOLUTION approving the Acquisition of Certain Real Estate located at 3404 South Lafayette Street for the City of Fort Wayne, by and through the Division of Public Works. COMMITTEE ON PUBLIC WORKS HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE.

DO PASS

DO NOT PASS

ABSTAIN

NO REC

Martin Bender
Geoff Paddock
John A. ...
...
...
...
Thomas F. ...

**SANDRA E. KENNEDY
CITY CLERK**