

1
2 **BILL NO. R-19-08-01**

RESOLUTION NO. 46-19

3 **A RESOLUTION APPROVING THE**
4 **SALE OF CERTAIN REAL ESTATE**
5 **LOCATED AT 7305 LEWIS ROAD –**
6 **RESOLUTION #106-7-23-19-1 FOR**
7 **THE CITY OF FORT WAYNE, DIVISION**
8 **OF CITY UTILITIES.**

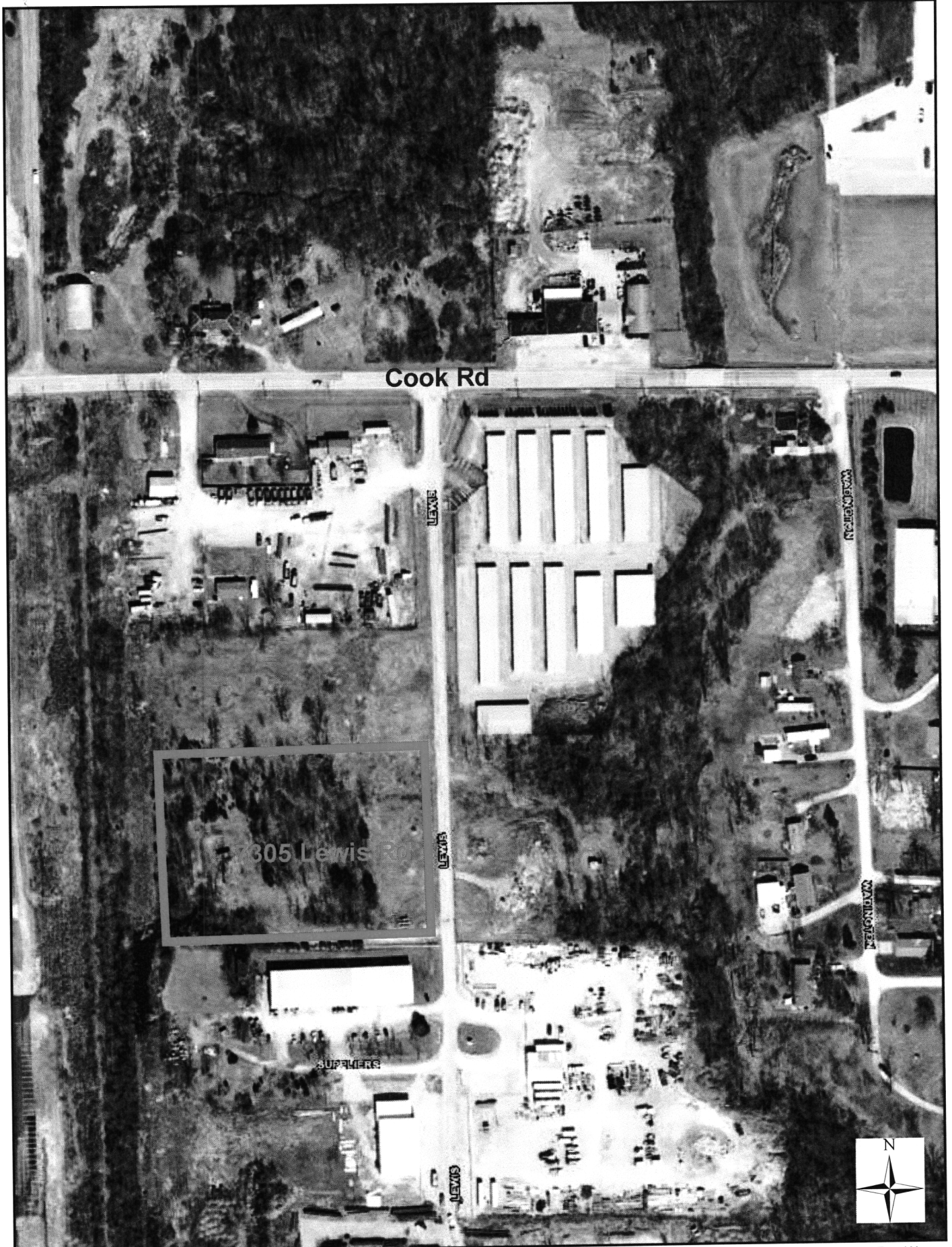
9 **WHEREAS**, the City of Fort Wayne, through its Division of City
10 Utilities, desires to sell a parcel of vacant property located at 7305 Lewis Road,
11 specifically described in the Real Property Purchase Agreement, Exhibit "1,"
12 attached hereto and made a part hereof; and

13 **WHEREAS**, the City of Fort Wayne, through its Division of City
14 Utilities, desires to sell this property for SIXTY-NINE THOUSAND THREE
15 HUNDRED AND 00/100 DOLLARS – (\$69,300.00) and

16 **WHEREAS**, IC 36-1-11-3-(c)(1) requires Common Council approval of any
17 sale of real estate by the City having an appraised value of at least \$50,000.

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

20 **SECTION 1.** The sale of real estate by the City of Fort Wayne
21 through its Division of City Utilities, located at 7305 Lewis Road is hereby approved
22 and agreed to. The appropriate officials of the City are hereby authorized to
23 execute all documents necessary to accomplish said sale.
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June 5, 2019

This map is intended for general reference purposes only. The information displayed herein is not guaranteed to be completely accurate or all inclusive.

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**A RESOLUTION OF BOARD OF PUBLIC WORKS
OF THE CITY OF FORT WAYNE, INDIANA,
APPROVING THE DISPOSAL OF A CERTAIN REAL PROPERTY
LOCATED AT 7305 LEWS ROAD IN FORT WAYNE, INDIANA**

RESOLUTION NUMBER 106-7-23-19-1

WHEREAS, Resolution no. 106-6-18-19-2 having been approved by the Board of Public Works of the City of Fort Wayne (the "Board") on June 18, 2019, stating its intent to dispose of a certain vacant real property located at 7305 Lewis Road in Fort Wayne, Indiana (the "Property") as a surplus asset; and

WHEREAS, the Board having published notice and received bids pursuant to Indiana Code section 36-1-11-4; and

WHEREAS, the sole bidder on the Property having entered into a purchase agreement to purchase the property for \$69,300.00, a true and correct copy of which agreement is attached hereto as Exhibit 1 and incorporated herein by this reference;

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF FORT WAYNE, INDIANA BOARD OF PUBLIC WORKS AS FOLLOWS:

The Board hereby approves the offer submitted by Phil Zimmerman of Zimmerman Equity ("Buyer") to purchase the Property from the City of Fort Wayne ("Seller") for the purchase price of \$69,300.00, on the terms of the purchase agreement attached as Exhibit 1.

(Remainder of the page intentionally left blank—signature page to follow.)

APPROVED this 23rd day of July, 2019.

BOARD OF PUBLIC WORKS

BY: *Shan Gunawardena*
Shan Gunawardena, Chair

BY: *Kumar Menon*
Kumar Menon, Member

BY: *Mike Avila*
Mike Avila, Member

ATTEST: *Michelle Fulk-Vondran*
Michelle Fulk-Vondran, Clerk

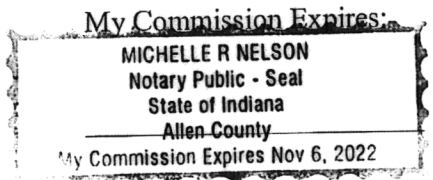
Prepared by: Seth Weinglass, City of Fort Wayne, Program Manager, Capital Project Services

ACKNOWLEDGEMENT

STATE OF INDIANA)
) SS
COUNTY OF ALLEN)

Before me, a Notary Public, in and for said County and State personally appeared Shan Gunawardena, Kumar Menon, and Mike Avila, as Members of the Board of Public Works of the City of Fort Wayne, and Michelle Fulk-Vondran, Clerk of the Board of Works, and acknowledged the execution of the foregoing contract as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this 23rd day of July, 2019.



Michelle R. Nelson
Notary Public

Resident of *Allen* County

Michelle R. Nelson
Printed Name of Notary

Exhibit 1

REAL PROPERTY PURCHASE AGREEMENT

Fort Wayne City Utilities

1 The City of Fort Wayne ("Seller") agrees to sell the fee simple title to all of the following Real
2 Property ("Property") for the consideration stated below subject to the conditions, requirements, and
3 stipulations described in the following Purchase Agreement.

4
5 **CONTACT INFORMATION and LOCATION OF PROPERTY**

6 Buyer(s) Name(s): Phil Zimmerman ("Buyer")

7 Zimmerman Equity
8 Primary Telephone: 260-451-0565
9 Facsimile: 260-451-0883 E-mail: Phil@zseptic.com

10
11 Mailing Address: 3020 Congressional Pkwy Suite B
12 City/Town: Fort Wayne
13 State: IN
14 Zip Code: 46808

15
16 Property Address: 7305 Lewis Rd.
17 City/Town: Fort Wayne, Indiana
18 Zip Code: 46818

19
20 Latest Deed of Record: Document Number 2009045108

21
22 Tax ID Number: 02-07-15-101-005.000-073

23
24 Area being purchased: entire lot (~2.95 acres)

25
26 Abbreviated Legal Description from Tax Records: 5-15-1-050
27 S 300 OF N 900 OF W 430 FT E OF ISC NW1/4 SEC 15
28 Section: 15 - Township: 31 North - Range: 12 East, 2nd Principal Meridian

29
30 Land area of total parcel: 2.95 acres

31 **PURCHASE PRICE**

32 The City agrees to accept from the Buyer the total purchase amount of \$69,300.00 (Sixty-Nine
33 Thousand Three Hundred Dollars and Zero Cents) for the Property which includes the entire
34 parcel of land. There are not any accessory buildings.

35
36 **EXPIRATION OF OFFER**

37 This Purchase Agreement shall be returned to the City no later than 12 noon, on July 26, 2019,
38 otherwise this Purchase Agreement shall be null and void and both parties shall be released from the
39 transaction.

40
41 **APPROVALS BY BOARD OF PUBLIC WORKS and COMMON COUNCIL**

42 This transaction is subject to approval by both the Board of Public Works and the Common
43 Council of the City of Fort Wayne, Indiana. In the event that either body does not approve this
44 transaction, the transaction shall be terminated and both parties shall be released from this Purchase
45 Agreement.

46
47
48

REAL PROPERTY PURCHASE AGREEMENT

Fort Wayne City Utilities

49 CLOSING

50 Closing Date:

51 The closing date for this transaction shall be on or before **September 20, 2019**, or this Agreement
52 shall terminate unless an extension of time is mutually agreed to in writing. Any change in the closing
53 date shall be agreed to in writing by both parties.

54 Location of Closing:

55 The closing shall be held at a place TBD.

56 Closing Fees:

57 All fees charged by the closing agent, including document preparation and recording fees shall be
58 paid by the City.

59 METHOD OF PAYMENT

60 The entire amount shall be paid in cash.

61 Both parties agree that all funds delivered to the closing agent's escrow account shall be such that
62 the closing agent shall be able to distribute all funds in accordance with I.C. 27-07-3.7-1 through 27-
63 07-3.7-1-10, inclusive. Furthermore, all funds sent from one source, when the amount is **\$10,000.00**
64 or greater, shall be sent in the form of an irrevocable wire transfer to the escrow account of the
65 closing agent, and all funds under **\$10,000.00** from one source shall be guaranteed to be "Good
66 Funds" as defined by the aforesaid Indiana Code.

67 POSSESSION

68 Possession of the Property shall be given to the Buyer at closing.

69 NOTICE OF DEFECTIVE CONDITIONS

70 The Seller certifies that no governmental agency has served notice ordering the repair or
71 correction of any defective conditions.

72 The Seller shall maintain the Property in its present condition until the Buyer takes possession.
73 The Buyer may inspect the Property prior to closing to determine whether there is compliance with
74 this clause. The Seller shall remove all rubbish and personal property.

75 BOUNDARY SURVEY

76 If indicated below, Seller shall furnish the Buyer with a boundary survey performed in
77 accordance with I.A.C. Title 865, Rule 12, for which the corner markers of the Property are
78 established and marked prior to the closing date. Such survey shall (i) be delivered prior to the
79 closing; (ii) certified as of the current date; (iii) be reasonably satisfactory to the Buyer; (iv) show the
80 location of all visible improvements; (v) depict recorded easements identified by the current title
81 commitment, and also items on the real property which indicate that an easement interest may have
82 become established via unwritten rights; and (vi) depict the current flood zone designation of the Real
83 Property as indicated on the current Flood Hazard Boundary Map maintained by the U.S. Department
84 of Homeland Security, Federal Emergency Management Agency.

85 _____ The expense for the survey shall be **shared equally**.

86 Or

87 _____ The requirement for a survey is **waived**.

88

REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

99 **FLOOD HAZARD AREA**

100 The Buyer may not cancel this Purchase Agreement if the Property is located in a flood hazard
101 zone.

102
103 **OTHER USE LIMITATIONS**

104 The Buyer may not terminate this Agreement if the Property is subject to building or use
105 limitations defined by local zoning ordinances which materially affect the Buyer's intended use of
106 the Property.

107
108 **INSPECTIONS**

109 The Buyer acknowledges that it has the right to obtain independent inspections disclosing the
110 condition of the Property, including any buildings, and has been given the opportunity to order those
111 inspections as a part of its due diligence efforts prior to concluding the transaction.

112
113 The Buyer reserves its right to conduct independent inspections. All inspections are at the
114 Buyer's expense and shall be performed by licensed independent inspectors or qualified independent
115 contractors that shall be chosen by the Buyer, and paid for their services by the Buyer.

116
117 The Seller shall make arrangements so that all areas of the Property, including any buildings, are
118 open and accessible for inspection.

119
120 Inspections and Response Periods:

121 All inspections that Buyer intends to undertake shall be ordered by the Buyer immediately
122 following the execution of this document. In the event that the presence of a defect is revealed, Buyer
123 shall have 10 calendar days to respond to Seller in writing with regard to any such inspection,
124 following which Buyer shall have 10 calendar days to request, obtain, and respond to Seller in
125 writing with regard to any supplementary reports.

126
127 If the Buyer does not respond in writing to Seller within the above time periods with regard to a
128 problem revealed in a report, or timely request a reasonable extension of time in writing, then the
129 Property shall be deemed to be acceptable. Should either party fail to respond to an inspection
130 response from the other within five calendar days, or timely request a reasonable extension of time in
131 writing, then that inspection response is deemed accepted. Making a timely written request for an
132 extension of time does not constitute acceptance of an inspection response, whether or not the request
133 is granted.

134
135 In the event that Buyer reasonably believes that an inspection has revealed a defect with the
136 Property, not disclosed by Seller prior to entering into this Purchase Agreement (and excluding
137 routine maintenance and minor repair items), and the Seller fails to remedy the defect to the Buyer's
138 reasonable satisfaction before closing, then Buyer may terminate this Purchase Agreement.
139 Alternatively, Buyer may waive the right to have the defect cured prior to closing, or Buyer and Seller
140 may agree to have the defect remedied following closing.

141
142 (Under Indiana law, a "defect" means a condition that would have a significant adverse effect on
143 the value of the Property, that would significantly impair the health or safety of future occupants of
144 the Property, or that if not repaired, removed, or replaced, would significantly shorten or adversely
145 affect the expected normal life of the premises.)

146
147
148

REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

149 **DISCLOSURES**

150 The "Residential Real Estate Sales Disclosure" form is **Not Applicable**.

152 The "Lead-Based Paint Certification and Acknowledgment" form is **Not Applicable**.

154 **TITLE WORK and DEED**

155 Before closing, the Buyer shall be furnished with a title insurance commitment using the most
156 current and comprehensive ALTA Owner's Title Insurance Policy available in an amount equal to the
157 purchase price. In order to proceed with the transaction, the Seller shall have marketable title to the
158 Real Property in the Seller's name. The Seller shall convey the fee simple title to the Property free
159 and clear of any encumbrances and title defects, with the exception of any restrictions or easements of
160 record not substantially interfering with the Buyer's planned use of the Property.

162 Title Insurance Fees:

163 The premium for the title insurance policy and all fees charged to prepare an Owner's Title
164 Insurance Policy shall be paid by the Seller.

166 The costs to resolve any title issues affecting the Property so that marketable title can be
167 conveyed shall be paid by the Seller.

169 Type of Deed:

170 The conveyance of the Property shall be accomplished with a Warranty Deed, subject to
171 easements, restrictive covenants, other encumbrances of record, and taxes.

173 **REAL PROPERTY TAXES**

174 All real property taxes that have been assessed for any prior calendar year that have not been paid
175 shall be paid by the Seller. Real property taxes that have been assessed for the present year, that are
176 due and payable in the year after closing, shall also be paid by the Seller prorated up to the day
177 immediately prior to the closing date.

179 For the purpose of determining the amount to be credited for accrued but unpaid taxes, the taxes
180 shall be assumed to be the same as the most recent year for which taxes were billed based upon the
181 certified tax rates. This settlement shall be final.

183 **PRORATIONS for PUBLIC UTILITIES and SPECIAL ASSESSMENTS**

184 Utilities and Garbage Services:

185 The Seller shall pay for all public utility and garbage service charges up to the last day of
186 possession.

188 Shutting Off Utilities for Buildings to be Demolished:

189 The Seller shall cancel the accounts for all public utilities and garbage services no later than the
190 last day of possession, and shall have the utilities shut off by the appropriate utility.

192 Special Assessments for Public Improvements:

193 The Seller shall pay any special assessments assessed against the Property for public
194 improvements previously made by a governmental unit that benefit the Property. The Seller certifies
195 that it has no knowledge of any proposed improvements which may result in assessments.

197

REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

198 Public improvements that will benefit the Property that are not completed as of the closing date,
199 but will result in an assessment against the Property shall be paid by the Buyer.
200

201 **LEGAL JURISDICTION**

202 This Purchase Agreement shall be interpreted under and according to the laws of the State of
203 Indiana and shall be binding upon the Buyer and Seller, their respective heirs, successors, assigns
204 administrators, executors, and legal representatives. All rights, duties and obligations of the parties
205 shall survive the passing of title to, or an interest in, the Property.
206

207 **LEGAL FEES**

208 In any dispute or legal proceeding brought in regard to this Purchase Agreement or the associated
209 transaction, each party shall bear their own attorney's fees, except as provided by law.
210

211 **SAVINGS CLAUSE**

212 If any provision contained in this Agreement is found to be illegal or unenforceable in any
213 respect, that determination shall not affect any other provision of this Purchase Agreement.
214

215 **OTHER STIPULATIONS**

- 216 A. All funds payable in this transaction shall be paid at the closing.
217 B. This Agreement constitutes the only agreement between the parties, supersedes any prior
218 arrangements, understandings, or written or oral agreements between the parties with regard
219 to this transaction, and cannot be changed without the written consent of each party.
220 C. The Seller certifies that the Seller is not a "Foreign Person" (pertains to an individual entity)
221 and, therefore, is not subject to the "Foreign Investment in Real Property Tax Act."
222 D. Seller discloses that it does not hold an Indiana Real Estate License.
223 E. Buyer discloses that it holds Indiana Real Estate License # _____.
224

225 **ADDITIONAL CONDITIONS**

226 If executed prior to July 26, 2019, this agreement is expressly contingent to no higher qualifying bids
227 being received for the Property through July 26, 2019.
228 _____
229 _____
230 _____

231
232 This Purchase Agreement may be executed concurrently in two or more counterparts, each of
233 which shall be considered as an original document, but all of which altogether shall be one and the same
234 document. The parties stipulate that this Purchase Agreement may be transmitted between them by U.S.
235 Postal Service, other service such as FedEx, courier, facsimile, or e-mail. The parties acknowledge that
236 digitally or electronically transmitted signatures shall be considered as original signatures and are binding
237 on the parties. The City shall keep possession of the original of the Purchase Agreement.
238

239 By signing below, the parties to this transaction acknowledge receipt of a copy of this Purchase
240 Agreement, and agree to the conditions, requirements, and stipulations as stated.
241

242 [Executions on following page.]
243
244

REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

245 SELLER'S SIGNATURE:

246

247



Date: 7/17/19

248

Seth Weinglass, Program Manager, Capital Project Services, Fort Wayne City Utilities

249

Telephone: 260-427-1330 Fax: 260-427-2540 E-mail: seth.weinglass@cityoffortwayne.org

250

251 BUYER'S SIGNATURE(S):

252

253

This Purchase Agreement is ACCEPTED REJECTED.

254



Phil Zimmerman President

Date: 7-17-19

255

256

Signature

Printed Name & Title, if Applicable

257

Interoffice Memo

Date: July 24, 2019
To: Common Council Members
From: Seth Weinglass, Program Manager – Capital Project Services – Telephone: 427-1330
RE: **Sale of 7305 Lewis Rd., Fort Wayne, Indiana 46805**

Council Introduction Date: August 13, 2019—Council District #: 3

Background & supporting information:

City Utilities has reached an agreement to sell a parcel of vacant, industrially-zoned land at 7305 Lewis Road, which is located south of Cook Road and west of Lima Road. The land was formerly the site of a potable water well, acquired from Aqua Indiana. That facility has been retired and removed, and the land is now a surplus asset for City Utilities.

The land was appraised and put up for public auction pursuant to Indiana Code section 36-1-11-4. A single bid was received, in the minimum bid amount of \$69,300. The winning bidder was Phil Zimmerman, the owner of Zimmerman Septic Services. Mr. Zimmerman has agreed to City Utilities' terms and conditions of the sale and has executed a purchase agreement (attached as Exhibit 1 to Board of Works resolution 106-7-23-19-1, enclosed). Since the bid amount exceeds \$50,000, Council approval is required by Indiana Code section IC 36-1-11-3(c)(1).

Implications of not being approved:

If this sale is not approved, City Utilities will not realize the negotiated proceeds of the transaction, and will continue to incur the liabilities of ownership of this surplus land.

Justification if prior approval is being requested: Not applicable

Funding source: Not applicable.

Attachments:

- Aerial map
- Board of Public Works Resolution approving purchase agreement

CC: Matthew Wirtz
Diane Brown
Project file

BILL NO. R-19-08-01

REPORT OF COMMITTEE ON CITY UTILITIES

August 20, 2019

Geoff Paddock Chair

Thomas Didier Co-Chair

All Council Members

A Resolution approving the sale of certain real estate located at 7305 Lewis Road – Resolution #106-7-23-19-1 for the City of Fort Wayne, Division of City Utilities

Involving a total cost of \$69,300.00

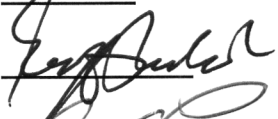

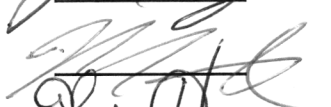
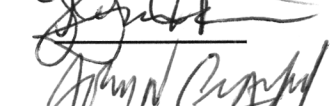
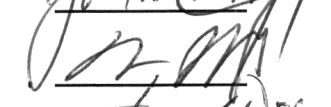
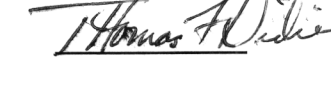
COMMITTEE ON CITY UTILITIES HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance

DO PASS

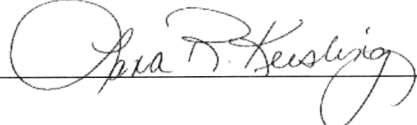
DO NOT PASS

ABSTAIN

NO REC

	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
_____	_____	_____	_____

**LANA R. KEESLING
CITY CLERK**



Public Hearing Date: N/A

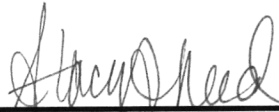
Read the first time in full and on motion by Councilman Paddock.

Read the second time by title and referred to the City Utilities Committee.

Read the third time in full and on motion by Councilman Paddock, placed on passage by the following vote:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BARRANDA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CRAWFORD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIDIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREISTROFFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
JEHL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

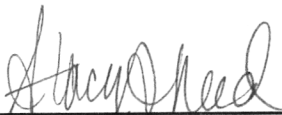
DATED: August 27, 2019



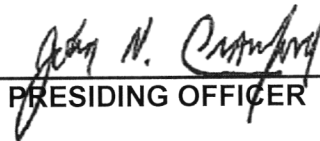
STACY A. REED, DEPUTY CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

Resolution No. R-19-08-01 on the 27th day of August, 2019



STACY A. REED
DEPUTY CITY CLERK



PRESIDING OFFICER

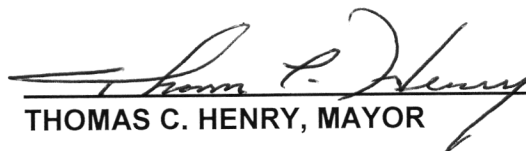
Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 28th of August 2019, at the hour of 12:15 o'clock PM. E.S.T.



STACY A. REED, DEPUTY CITY CLERK

Approved and signed by me this 29th day of AUGUST

2019, at the hour of 12:00 o'clock PM. E.S.T.



THOMAS C. HENRY, MAYOR

