

1 **BILL NO. R-21-08-12**

2 **RESOLUTION NO.** R-49-21

3  
4 **A RESOLUTION APPROVING A PURCHASE**  
5 **AGREEMENT FOR THE ACQUISITION OF REAL**  
6 **PROPERTY AT 1328 SPY RUN AVENUE, FORT**  
7 **WAYNE, INDIANA, FOR THE CITY OF FORT**  
8 **WAYNE, INDIANA (Approved and Executed by**  
9 **the Board of Public Works on August 10, 2021).**

10 **WHEREAS**, the City of Fort Wayne, by and through its Division of  
11 City Utilities ("CU"), wishes to acquire Real Property at 1328 Spy Run Avenue, Fort  
12 Wayne, Indiana, (the "Real Estate"), for a security zone around and planned future  
13 expansion of the Water Filtration Plant, and to continue to improve the reliability of  
14 our City's drinking water supply; and

15 **WHEREAS**, the City of Fort Wayne, by and through its Board of  
16 Public Works, approved and executed a purchase agreement to acquire the Real  
17 Estate in the regularly-held meeting of the Board of Public Works on August 10,  
18 2021; and

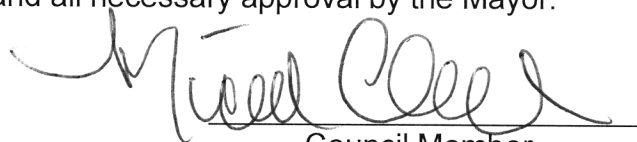
19 **WHEREAS**, the purchase price for the Real Estate is Seventy-One  
20 Thousand and 00/100 Dollars (\$71,000.00) (the "Purchase Price"); and

21 **WHEREAS**, Sec. 37.25 of the City of Fort Wayne Code of Ordinances  
22 requires the Common Council's approval of any conveyance of real estate to the  
23 City.

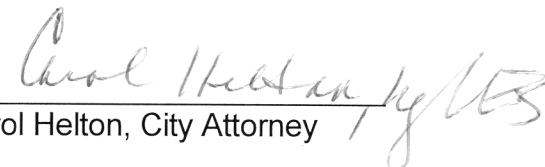
24 **NOW, THEREFORE, BE IT RESOLVED BY THE COMMON**  
25 **COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**  
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1                   **SECTION 1.** The acquisition of the Real Estate by CU, the City of  
2 Fort Wayne, by and through its Board of Public Works, in the amount of the  
3 Purchase Price, and upon such other terms and conditions as CU shall determine,  
4 is hereby agreed to and approved. The appropriate officials of the City of Fort  
5 Wayne are hereby authorized to execute all documents necessary to effectuate  
6 said purchase.  
7

8                   **SECTION 2.** This Resolution shall be in full force and effect from and  
9 after its passage and any and all necessary approval by the Mayor.  
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11   
12 Council Member

13 APPROVED AS TO FORM AND LEGALITY

14  
15   
16 Carol Helton, City Attorney  
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Interoffice Memo

Date: August 19, 2021  
To: Common Council Members  
From: Seth Weinglass, Program Manager – Capital Project Services  
RE: **Purchase of 1328 Spy Run Ave, in Fort Wayne, Indiana 46808**

**Council Introduction Date: August 24, 2021 - Council District #: 5**

Background & supporting information:

City Utilities has an ongoing, multi-year program of purchasing lots on the south side of Wagner Street, adjacent to the north side of the Water Filtration Plant, for a security zone and planned future expansion of the Water Filtration Plant, and to continue to improve the reliability of our City's drinking water supply. City Utilities would now like to acquire 1328 Spy Run Avenue, which is located south of the southeast corner of the intersection between Spy Run and Wagner Street.

There is an unoccupied residence on this lot that the City plans to demolish. The property owners agreed to sell the land to City Utilities for \$71,000, which is lower than the average of two recent appraisals. City Utilities is now seeking to have a purchase agreement in that amount approved under City Ordinance 37.25.

As an update to Council, a map is attached to this memorandum, highlighting the properties the City has acquired has along the south side of Wagner Street to date, as well as the lot presently under consideration to be purchased.

Implications of not being approved:

Any future acquisition of this property may be at a higher price than the amount presently agreed to.

Justification if prior approval is being requested: Not applicable

Funding source: Water Revenue

Attachments:

- Map
- Purchase agreement executed by Board of Public Works on August 10, 2021

CC: Matthew Wirtz  
Ben Groeneweg  
Andrew Schipper  
Stacy Ackerman



# Wagner Street Properties - Buy-outs



Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

© 2004 Board of Commissioners of the County of Allen  
 North American Datum 1983  
 State Plane Coordinate System, Indiana East



Date: 9/3/2015 1" = 200'

# REAL PROPERTY PURCHASE AGREEMENT

## Fort Wayne City Utilities

1 The City of Fort Wayne (“Buyer”) agrees to purchase the fee simple title to all of the following  
2 Real 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  
7 Address of Property to be sold: 1328 Spy Run Ave. Fort Wayne, IN 46805  
8

9 Owner(s) Name(s): Eric Todd Rhodes & James Bowman (“Seller”)

10 Primary Telephone: (260) 637-4115

11 E-mail: [jamesbowman64@gmail.com](mailto:jamesbowman64@gmail.com); [toddrhodes@outlook.com](mailto:toddrhodes@outlook.com)

12 Mailing Address: 13710 Lima Rd, Fort Wayne, IN 46818-9504  
13

#### 14 Latest Deed of Record:

15 Document Number 205036714  
16

#### 17 Platted Parcel:

18 Tax ID Number 02-12-02-233-003.000-074  
19

### 20 PURCHASE PRICE

21 The City agrees to pay to the Seller the total purchase amount of **\$71,000.00 (Seventy-One**  
22 **Thousand Dollars and Zero Cents)** for the Property which includes the entire parcel of land and  
23 **all improvements thereon.**  
24

25 NOTE: The Seller certifies that no substantial changes have occurred to the Property to reduce the  
26 value determined by the appraisals, as of the effective date of this Purchase Agreement.  
27

### 28 EXPIRATION OF OFFER

29 This Purchase Agreement shall be returned to the City no later than **9am on August 5, 2021,**  
30 otherwise this Purchase Agreement shall be null and void and both parties shall be released from the  
31 transaction.  
32

### 33 APPROVALS BY BOARD OF PUBLIC WORKS and COMMON COUNCIL

34 This transaction is subject to approval by both the Board of Public Works and the Common  
35 Council of the City of Fort Wayne, Indiana. In the event that either body does not approve this  
36 transaction, the transaction shall be terminated and both parties shall be released from this Purchase  
37 Agreement.  
38

### 39 CLOSING

#### 40 Closing Date:

41 The closing date for this transaction shall be on or before **November 5, 2021,** or this Agreement  
42 shall terminate unless an extension of time is mutually agreed to in writing. Any change in the closing  
43 date shall be agreed to in writing by both parties.  
44

#### 45 Location of Closing:

46 The closing shall be held at TBD located at TBD, **Fort Wayne, Indiana.**  
47  
48  
49

# REAL PROPERTY PURCHASE AGREEMENT

## Fort Wayne City Utilities

50 Closing Fees:

51 All fees charged by the closing agent, including document preparation and recording fees shall be  
52 paid by the **City of Fort Wayne (City is the Buyer)**.  
53

54 **EARNEST MONEY**

55 The **City** as a policy does not pay earnest money.  
56

57 **METHOD OF PAYMENT**

58 The entire amount shall be paid in **cash**.  
59

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

67 **POSSESSION**

68 Possession of the Property shall be given to the Buyer at closing. If the **Seller** does not grant  
69 possession by the date and time stated above, the **Seller** shall pay the **Buyer** the amount of **\$10 (Ten**  
70 **Dollars)** per day as liquidated damages until possession is delivered to the **Buyer**. The **Buyer** shall  
71 have all other legal remedies available for use against the **Seller**, to the extent allowed by law.  
72

73 **PROPERTY MAINTENANCE**

74 Lawn Mowing:

75 The **Seller** shall keep the lawn mowed so as to not violate tall grass/weed ordinances, and shall  
76 mow the grass within two (2) calendar days of possession by the **Buyer**, when the **Buyer** takes  
77 possession between April 1<sup>st</sup> and November 15<sup>th</sup>, subject to any drought conditions that may be  
78 present.  
79

80 Notice of Defective Conditions:

81 The **Seller** certifies that no governmental agency has served notice ordering the repair or  
82 correction of any defective conditions.  
83

84  
85 The **Seller** shall maintain the Property in its present condition until the **Buyer** takes possession.  
86 The **Buyer** may inspect the Property prior to closing to determine whether there is compliance with  
87 this clause. The **Seller** shall remove all rubbish and personal property.  
88

89 **LOSS OR DAMAGE PRIOR TO CLOSING**

90 In the event the Property is damaged by fire, flooding, storm, vandalism, earthquake, or any other  
91 cause, prior to the closing, the parties to this Purchase Agreement shall proceed as follows:  
92

93 In the event any damage or destruction occurs, prior to closing, the **Seller** shall make all  
94 necessary repairs to return the Property to the condition it was in prior to the damage or destruction.  
95 The **Seller** shall maintain adequate property casualty insurance on the Property, and shall also be  
96 responsible for the payment of any and all insurance deductible(s). If the Property is not fully  
97 repaired prior to closing, the **Buyer**, at its choosing, may terminate this Agreement and the **Seller**  
98 shall return the earnest money, if any earnest money was given, to the **Buyer** within thirty (30)  
99 calendar days.

**REAL PROPERTY PURCHASE AGREEMENT**  
**Fort Wayne City Utilities**

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**BOUNDARY SURVEY**

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

**FLOOD HAZARD AREA**

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

**OTHER USE LIMITATIONS**

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

**INSPECTIONS**

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

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

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

Inspections and Response Periods:

All inspections that Buyer intends to undertake shall be ordered by the **Buyer** immediately following the execution of this document. In the event that the presence of a defect is revealed, **Buyer** shall have 5 calendar days to respond to **Seller** in writing with regard to any such inspection, following which Buyer shall have 5 calendar days to request, obtain, and respond to **Seller** in writing with regard to any supplementary reports.

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

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

(Under Indiana law, a "defect" means a condition that would have a significant adverse effect on the value of the Property, that would significantly impair the health or safety of future occupants of

**REAL PROPERTY PURCHASE AGREEMENT**  
**Fort Wayne City Utilities**

149 the Property, or that if not repaired, removed, or replaced, would significantly shorten or adversely  
150 affect the expected normal life of the premises.)

151

152 **DISCLOSURES**

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154 The Buyer has waived the "Seller's Residential Real Estate Sales Disclosure" form.

155

156 The Buyer has waived "Lead-Based Paint Certification and Acknowledgment" form.

157

158 **TITLE WORK and DEED**

159

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

166

166 Title Insurance Fees:

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167 The premium for the title insurance policy and all fees charged to prepare an Owner's Title

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168 Insurance Policy shall be paid by the **Buyer**.

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170

170 The costs to resolve any title issues affecting the Property so that marketable title can be

171

171 conveyed shall be paid by the **Buyer**.

172

172

173 Type of Deed:

174

174 The conveyance of the Property shall be accomplished with a Warranty Deed, subject to

175

175 easements, restrictive covenants, other encumbrances of record, and taxes.

176

176

177 **REAL PROPERTY TAXES**

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178 All real property taxes that have been assessed for any prior calendar year that have not been paid

179

179 shall be paid by the **Seller**. Real property taxes that have been assessed for the present year, that are

180

180 due and payable in the year after closing, shall also be paid by the **Seller** prorated up to the day

181

181 immediately prior to the closing date.

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183 For the purpose of determining the amount to be credited for accrued but unpaid taxes, the taxes

184

184 shall be assumed to be the same as the most recent year for which taxes were billed based upon the

185

185 certified tax rates. This settlement shall be final.

186

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

188

188 Utilities and Garbage Services:

189

189 The **Seller** shall pay for all public utility and garbage service charges up to the last day of

190

190 possession.

191

192 Shutting Off Utilities for Buildings to be Demolished:

193

193 The **Seller** shall cancel the accounts for all public utilities and garbage services no later than the

194

194 last day of possession, and shall have the utilities shut off by the appropriate utility.

195

196 Special Assessments for Public Improvements:



**REAL PROPERTY PURCHASE AGREEMENT**  
**Fort Wayne City Utilities**

246 By signing below, the parties to this transaction acknowledge receipt of a copy of this Purchase  
247 Agreement, and agree to the conditions, requirements, and stipulations as stated.  
248

249 **SELLER APPROVAL and SIGNATURE(S):**

250  
251 This Purchase Agreement is   X   **ACCEPTED**        **REJECTED**.

252 Eric Todd Rhodes ERIC TODD RHODES Date: 8-3-21  
253 Signature Eric Todd Rhodes

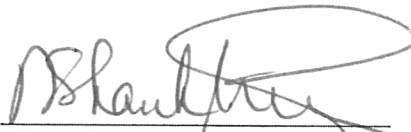
254 [Signature] JAMES M. BOWMAN Date: 8-3-21  
255 Signature James Bowman  
256  
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**REAL PROPERTY PURCHASE AGREEMENT**  
Fort Wayne City Utilities

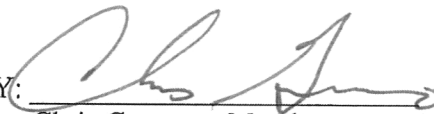
Approval of Real Property Purchase Agreement  
1328 Spy Run Avenue

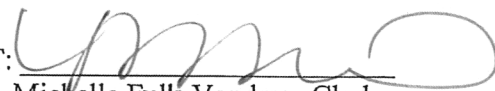
**BOARD OF PUBLIC WORKS**

Date: 8-10-2021

BY:   
Shan Gunawardena, Chair

BY: ABSENT  
Kumar Menon, Member

BY:   
Chris Guerrero, Member

ATTEST:   
Michelle Fulk-Vondran, Clerk

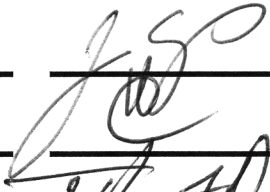
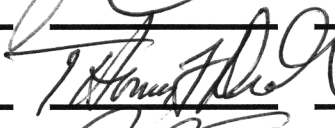
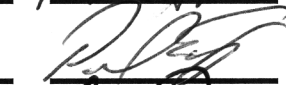
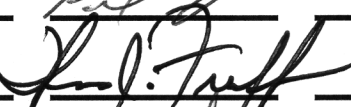


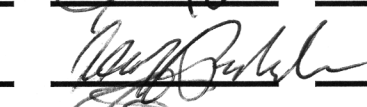

**BILL NO. R-21-08-12**

**REPORT OF COMMITTEE ON CITY UTILITIES**  
**September 14, 2021**

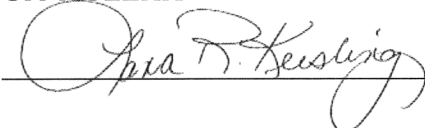
**Michelle Chambers**                      **Chair**  
**Thomas Didier**                         **Co-Chair**  
**All Council Members**

A Resolution approving a purchase agreement for the acquisition of real property at 1328 Spy Run Avenue, Fort Wayne, Indiana, for the City of Fort Wayne, Indiana – Purchase price of \$71,000.00

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

<u>COUNCIL MEMBER</u>	<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>
ARP			
CHAMBERS			
DIDIER			
ENSLEY			
FREISTROFFER			
HINES			
JEHL			
PADDOCK			
TUCKER			

**LANA R. KEESLING**  
**CITY CLERK**



Public Hearing Date: N/A

Read the first time in full and on motion by Councilperson Didier.

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

Read the third time in full and on motion by Councilperson Chambers, 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"/>
CHAMBERS	<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"/>
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HINES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input 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"/>
TUCKER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED: September 14, 2021

  
 \_\_\_\_\_  
 LANA R. KEESLING, CITY CLERK

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

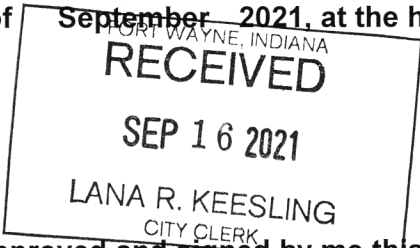
Resolution No. R-21-08-12 on the 14th day of September, 2021

ATTEST:

  
 \_\_\_\_\_  
 LANA R. KEESLING  
 CITY CLERK


  
 \_\_\_\_\_  
 PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 15th of ~~September~~ September, 2021, at the hour of 11:40 o'clock A.M. E.S.T.



  
 \_\_\_\_\_  
 LANA R. KEESLING, CITY CLERK

Approved and signed by me this 15<sup>TH</sup> day of SEPTEMBER 2021, at the hour of 5:00 o'clock PM E.S.T.

  
 \_\_\_\_\_  
 THOMAS C. HENRY, MAYOR