

1 **BILL NO. R-24-01-23**

2 **RESOLUTION NO. R-2-24**

3
4 **A RESOLUTION APPROVING A PURCHASE**
5 **AGREEMENT FOR THE ACQUISITION OF REAL**
6 **PROPERTY AT 2107 WEISSER PARK AVENUE,**
7 **FORT WAYNE, INDIANA, FOR THE CITY OF**
8 **FORT WAYNE, INDIANA (Approved and**
9 **Executed by the Board of Public Works on**
10 **January 9, 2024).**

11 **WHEREAS**, the City of Fort Wayne, by and through its Division of
12 City Utilities ("CU"), wishes to acquire Real Property at 2107 Weisser Park Avenue,
13 Fort Wayne, Indiana, (the "Real Estate"), to install a stormwater detention basin, as
14 part of a larger storm drain improvement project to reduce neighborhood flooding;
15 and

16 **WHEREAS**, the City of Fort Wayne, by and through its Board of
17 Public Works, approved and executed a purchase agreement to acquire the Real
18 Estate in the regularly-held meeting of the Board of Public Works on January 9
19 2024; and

20 **WHEREAS**, the purchase price for the Real Estate is Two
21 Thousand One Hundred Ninety-Five and 00/100 Dollars (\$2,195.00) (the
22 "Purchase Price"); and

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

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

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

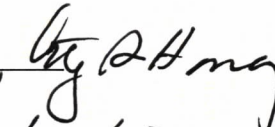



Council Member

APPROVED AS TO FORM AND LEGALITY



Malak Heiny, City Attorney

Interoffice Memo

Date: January 18, 2024
To: Common Council Members
From: Seth Weinglass, Program Manager – Capital Project Services – Telephone: 427-1330
RE: **Purchase of 2107 Weisser Park Avenue, Fort Wayne, Indiana 46803**

Council Introduction Date: January 23, 2024—Council District #: 6

Background & supporting information:

City Utilities has reached an agreement to purchase a vacant residential lot with the address of 2107 Weisser Park Avenue. The property is adjacent to several City-owned lots to the north, where City Utilities will be installing a stormwater detention basin, as part of a larger storm drain improvement project to reduce neighborhood flooding.

The property's owner, Sarah E. Manley, agreed to a purchase price of \$2,195, based on appraisals. The map is attached to this memo shows the new parcel that City Utilities intends to purchase.

Implications of not being approved:

Without the use of this property, the volume of the stormwater detention basin will be reduced, and the neighborhood drainage project will be less effective, although still beneficial.

Justification if prior approval is being requested: Not applicable

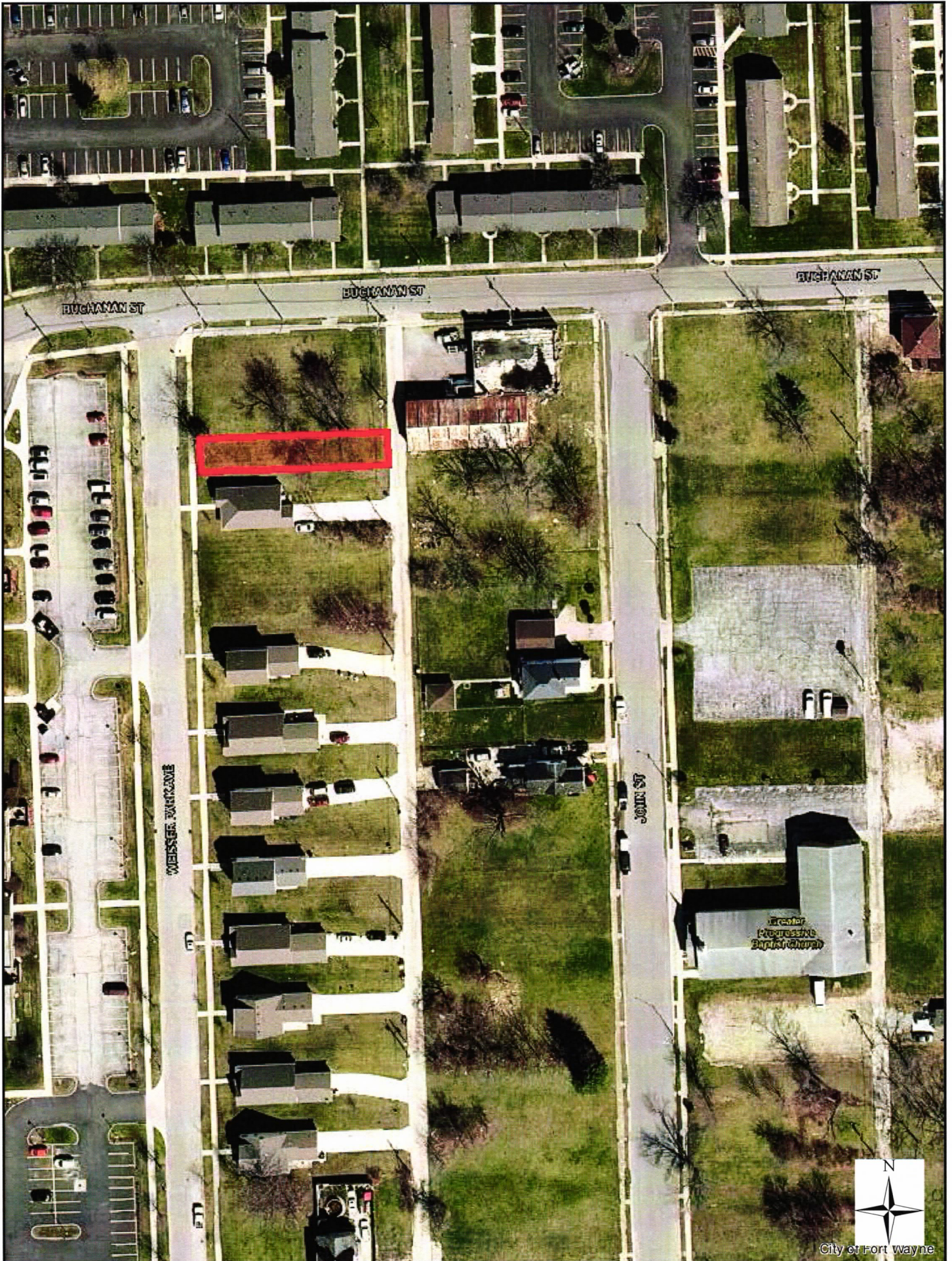
Funding source: CUE Revenue

Attachments:

- Map
- Purchase agreement

CC: Matthew Wirtz
Matthew Grieger
Jill Helfrich

2107 Weisser Park Ave



November 29, 2023

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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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 Owner(s) Name(s): Sarah E. Manley ("Seller")

7 Primary Telephone: 260-442-6142

8 Other Telephone: _____

9 E-mail: _____

10 Mailing Address: PO Box 12975, Fort Wayne, IN 46866

11 Property Address: 2107 Weisser Park Ave, Fort Wayne, IN 46803

12 Latest Deed of Record: Document Number 2022044432

13 Tax ID Number: 02-12-12-327-004.000-074

14 Lot Number: Lot 12 Bass & Hanna Addition

15 Land area of parcel: 0.09 acres (3920.40 sq. ft.)

16 PURCHASE PRICE

17 The City agrees to pay to the Seller the total purchase amount of **\$2,195.00 (Two Thousand**
 18 **One Hundred and Ninety Five Dollars and Zero Cents)** for the Property which **includes the entire**
 19 **parcel of land.** There are not any accessory buildings.

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

22 EXPIRATION OF OFFER

23 This Purchase Agreement shall be returned to the City no later than **12 noon, on January 1,**
 24 **2024,** otherwise this Purchase Agreement shall be null and void and both parties shall be released
 25 from the transaction.
 26

27 APPROVALS BY BOARD OF PUBLIC WORKS and COMMON COUNCIL

28 This transaction is subject to approval by both the Board of Public Works and the Common
 29 Council of the City of Fort Wayne, Indiana. In the event that either body does not approve this
 30 transaction, the transaction shall be terminated and both parties shall be released from this Purchase
 31 Agreement.
 32

33 CLOSING

34 Closing Date:

35 The closing date for this transaction shall be on or before **April 1, 2024,** or this Agreement shall
 36 terminate unless an extension of time is mutually agreed to in writing. Any change in the closing date
 37 shall be agreed to in writing by both parties.
 38

39 Location of Closing:

40 The closing shall be held at **TBD** located at **TBD,** in **Fort Wayne, Indiana.**
 41

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

58 **METHOD OF PAYMENT**

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

60

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

68 **POSSESSION**

69 Possession of the Property shall be given to the Buyer at closing. If the **Seller** does not grant
70 possession by the date and time stated above, the **Seller** shall pay the **Buyer** the amount of **\$50.00**
71 (**Fifty Dollars**) per day as liquidated damages until possession is delivered to the **Buyer**. The **Buyer**
72 shall have all other legal remedies available for use against the **Seller**, to the extent allowed by law.

73

74 **PROPERTY MAINTENANCE**

75 Lawn Mowing:

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

80

81 Notice of Defective Conditions:

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

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

_____ The survey shall be paid for by the **Seller / Buyer**.

Or

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

Or

X 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 10 (ten) calendar days to respond to **Seller** in writing with regard to any such inspection, following which Buyer shall have 10 (ten) 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

REAL PROPERTY PURCHASE AGREEMENT
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150 response from the other within five calendar days, or timely request a reasonable extension of time in
151 writing, then that inspection response is deemed accepted. Making a timely written request for an
152 extension of time does not constitute acceptance of an inspection response, whether or not the request
153 is granted.
154

155 In the event that Buyer reasonably believes that an inspection has revealed a defect with the
156 Property, not disclosed by Seller prior to entering into this Purchase Agreement (and excluding
157 routine maintenance and minor repair items), and the Seller fails to remedy the defect to the Buyer's
158 reasonable satisfaction before closing, then Buyer may terminate this Purchase Agreement.
159 Alternatively, Buyer may waive the right to have the defect cured prior to closing, or Buyer and Seller
160 may agree to have the defect remedied following closing.
161

162 (Under Indiana law, a "defect" means a condition that would have a significant adverse effect on
163 the value of the Property, that would significantly impair the health or safety of future occupants of
164 the Property, or that if not repaired, removed, or replaced, would significantly shorten or adversely
165 affect the expected normal life of the premises.)
166

167
168 **DISCLOSURES**
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170 The "Lead-Based Paint Certification and Acknowledgment" form is **Not Applicable**.
171

172 **TITLE WORK and DEED**

173 Before closing, the **Buyer** shall be furnished with a title insurance commitment using the most
174 current and comprehensive ALTA Owner's Title Insurance Policy available in an amount equal to the
175 purchase price. In order to proceed with the transaction, the **Seller** shall have marketable title to the
176 Real Property in the **Seller's** name. The **Seller** shall convey the fee simple title to the Property free
177 and clear of any encumbrances and title defects, with the exception of any restrictions or easements of
178 record not substantially interfering with the **Buyer's** planned use of the Property.
179

180 Title Insurance Fees:

181 The premium for the title insurance policy and all fees charged to prepare an Owner's Title
182 Insurance Policy shall be paid by the **Buyer**.
183

184 The costs to resolve any title issues affecting the Property so that marketable title can be
185 conveyed shall be paid by the **Buyer**.
186

187 Type of Deed:

188 The conveyance of the Property shall be accomplished with a Warranty Deed, subject to
189 easements, restrictive covenants, other encumbrances of record, and taxes.
190

191 **REAL PROPERTY TAXES**

192 All real property taxes that have been assessed for any prior calendar year that have not been paid
193 shall be paid by the **Seller**. Real property taxes that have been assessed for the present year, that are
194 due and payable in the year after closing, shall also be paid by the **Seller** prorated up to the day
195 immediately prior to the closing date.
196

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

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PRORATIONS for PUBLIC UTILITIES and SPECIAL ASSESSMENTS

Utilities and Garbage Services:

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

Shutting Off Utilities for Buildings to be Demolished:

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

Special Assessments for Public Improvements:

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

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

LEGAL JURISDICTION

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

LEGAL FEES

A party to this Purchase Agreement who prevails in any legal proceeding against any other party brought in regard to this Purchase Agreement or associated transaction shall be allowed to recover court costs and reasonable attorney's fees from the other party, to the extent permitted by law.

SAVINGS CLAUSE

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

OTHER STIPULATIONS

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

ADDITIONAL CONDITIONS

Buyer is purchasing the Property to serve Fort Wayne City Utilities' Buchanan Street Sewer Separation project, CU WO# 77157 (the "Project"). Seller wishes to facilitate the timely performance of such Project. Thus in the event that closing on this transaction has not occurred prior to notice to proceed on such Project, presently scheduled to occur on or about January 9, 2024, Seller hereby grants Buyer a temporary right of entry to use the Property for the Project, including construction staging and installation

REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

249 of utility facilities, while closing is pending. Any termination of this transaction shall also terminate this
250 right of entry.
251

252 This Purchase Agreement may be executed concurrently in two or more counterparts, each of
253 which shall be considered as an original document, but all of which altogether shall be one and the same
254 document. The parties stipulate that this Purchase Agreement may be transmitted between them by U.S.
255 Postal Service, other service such as FedEx, courier, facsimile, or e-mail. The parties acknowledge that
256 digitally or electronically transmitted signatures shall be considered as original signatures and are binding
257 on the parties. The City shall keep possession of the original of the Purchase Agreement.
258

259 By signing below, the parties to this transaction acknowledge receipt of a copy of this Purchase
260 Agreement, and agree to the conditions, requirements, and stipulations as stated.
261

262
263 **SELLER APPROVAL and SIGNATURE(S):**

264 This Purchase Agreement is **ACCEPTED** **REJECTED**.
265

266 Sarah E. Manley Date: 12/15/2023
267 Sarah E. Manley
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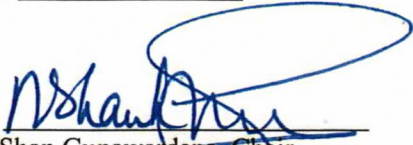
REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

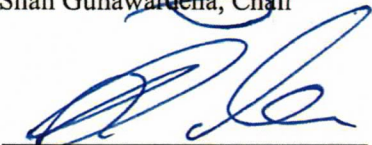
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BUYER APPROVAL AND SIGNATURES:

BOARD OF PUBLIC WORKS

Date: 1.9.24

BY: 
Shan Gunawardena, Chair

BY: 
Kumar Menon, Member

BY: ABSENT
Chris Guerrero, Member

ATTEST: 
Michelle Fulk-Vondran, Clerk

BILL NO. R-24-01-23

REPORT OF COMMITTEE ON CITY UTILITIES

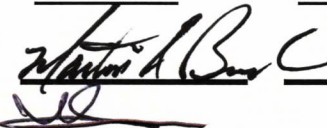



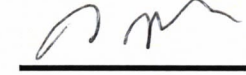


February 6, 2024

Paul Ensley Chair
Russ Jehl Co-Chair
All Council Members

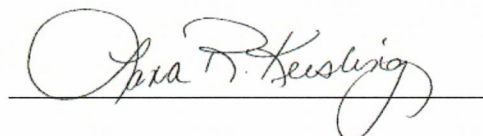
A Resolution approving a purchase agreement for the acquisition of real property at 2107 Weisser Park Avenue, Fort Wayne, Indiana, for the City of Fort Wayne, Indiana (Approved and Executed by the Board of Public Works on January 9, 2024)

Purchase price of \$2,195.00

COMMITTEE ON CITY UTILITIES 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>
<u>BENDER</u>			
<u>CHAMBERS</u>			
<u>ENSLEY</u>			
<u>FREISTROFFER</u>			
<u>HARTMAN</u>			
<u>JEHL</u>			
<u>MYERS</u>			
<u>PADDOCK</u>			
<u>TUCKER</u>			

LANA R. KEESLING
CITY CLERK



Public Hearing Date: N/A

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

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

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

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
BENDER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CHAMBERS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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"/>
HARTMAN	<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"/>
MYERS	<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"/>

Stacy Reed

DATED: February 13, 2024

STACY REED, DEPUTY CITY CLERK

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

Resolution No. R-24-01-23 on the 13th day of February, 2024

ATTEST:

Stacy Reed

STACY REED
DEPUTY CITY CLERK

Thomas J. Freistoffer

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 14th of February 2024, at the hour of 9:00 o'clock A.M. E.S.T.

Stacy Reed

STACY REED, DEPUTY CITY CLERK

Approved and signed by me this 15th day of FEBRUARY 2024, at the hour of 4:30 o'clock PM E. S.T.

Thomas C. Henry
THOMAS C. HENRY, MAYOR

