

1 **BILL NO. R-24-02-07**

2 **RESOLUTION NO. B-4-24**

3
4 **A RESOLUTION APPROVING A PURCHASE**
5 **AGREEMENT FOR THE ACQUISITION OF REAL**
6 **PROPERTY WEST OF 7730 LEESBURG RD,**
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 23, 2024.**

11 **WHEREAS**, the City of Fort Wayne, by and through its Division of
12 City Utilities ("CU"), wishes to acquire Real Property consisting of 1.56 acres of
13 vacant land west of 7730 Leesburg Road, Fort Wayne, Indiana, (the "Real Estate"),
14 to be used for a sanitary sewer lift station; 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 January 23,
18 2024; and

19 **WHEREAS**, the purchase price for the Real Estate is Twenty-Five
20 Thousand and 00/100 Dollars (\$25,000.00) (the "Purchase Price"); and

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

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

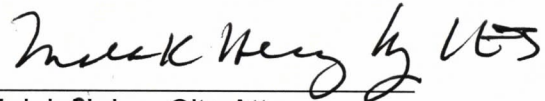
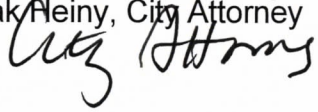
26 **SECTION 1.** The acquisition of the Real Estate by CU, the City of
27 Fort Wayne, by and through its Board of Public Works, in the amount of the
28 Purchase Price, and upon such other terms and conditions as CU shall determine,
29 is hereby agreed to and approved. The appropriate officials of the City of Fort
30

1 Wayne are hereby authorized to execute all documents necessary to effectuate
2 said purchase.

3 **SECTION 2.** This Resolution shall be in full force and effect from and
4 after its passage and any and all necessary approval by the Mayor.
5

6 
7 _____
8 Council Member

9 APPROVED AS TO FORM AND LEGALITY

10
11 
12 _____
13 Malak Reiny, City Attorney
14 

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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): Steven D. Hoyt & Janice E. Hoyt (“Seller”)
7 Primary Telephone: (260) 417-4584
8 E-mail: darevshoyt@aol.com
9

10 Mailing Address: 7730 Leesburg Rd
11 Fort Wayne, IN 46818-9766
12

13 Latest Deed(s) of Record: 910038544; 910038545; 910038546
14

15 Tax ID Number: 02-06-24-300-006.000-049
16

17 Land area being purchased: Approximately 1.56 acres lying west of Seeger Ditch, excluding rights of
18 way of Leesburg Rd and O’Day Rd, as roughly depicted below:
19



REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

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23 **PURCHASE PRICE**

24 The City agrees to pay to the Seller the total purchase amount of \$25,000.00 (Twenty Five
25 Thousand Dollars and Zero Cents) for the Property.

26
27 NOTE: The Seller certifies that no substantial changes have occurred to the Property to reduce the
28 value determined by the appraisals, as of the effective date of this Purchase Agreement.
29

30 **EXPIRATION OF OFFER**

31 This Purchase Agreement shall be returned to the City no later than 12 noon, on October 27,
32 2023, otherwise this Purchase Agreement shall be null and void and both parties shall be released
33 from the transaction.
34

35 **APPROVALS BY BOARD OF PUBLIC WORKS and COMMON COUNCIL**

36 This transaction is subject to approval by both the Board of Public Works and the Common
37 Council of the City of Fort Wayne, Indiana. In the event that either body does not approve this
38 transaction, the transaction shall be terminated and both parties shall be released from this Purchase
39 Agreement.
40

41 **CLOSING**

42 Closing Date:

43 The closing date for this transaction shall be on or before March 1, 2024, or this Agreement shall
44 terminate unless an extension of time is mutually agreed to in writing. Any change in the closing date
45 shall be agreed to in writing by both parties.
46

47 Location of Closing:

48 The closing shall be held at [TBD] located at [TBD], Fort Wayne, Indiana.
49

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 **METHOD OF PAYMENT**

55 The entire amount shall be paid in cash.
56

57 Both parties agree that all funds delivered to the closing agent's escrow account shall be such that
58 the closing agent shall be able to distribute all funds in accordance with I.C. 27-07-3.7-1 through 27-
59 07-3.7-1-10, inclusive. Furthermore, all funds sent from one source, when the amount is \$10,000.00
60 or greater, shall be sent in the form of an irrevocable wire transfer to the escrow account of the
61 closing agent, and all funds under \$10,000.00 from one source shall be guaranteed to be "Good
62 Funds" as defined by the aforesaid Indiana Code.
63

64 **POSSESSION**

65 Possession of the Property shall be given to the Buyer at closing. If the Seller does not grant
66 possession by the date and time stated above, the Seller shall pay the Buyer the amount of \$100.00
67 (One Hundred Dollars) per day as liquidated damages until possession is delivered to the Buyer.
68 The Buyer shall have all other legal remedies available for use against the Seller, to the extent
69 allowed by law.

REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

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PROPERTY MAINTENANCE

Lawn Mowing:

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

Notice of Defective Conditions:

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

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

LOSS OR DAMAGE PRIOR TO CLOSING

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

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

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 Buyer.

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

REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

119 The **Buyer** acknowledges that it has the right to obtain independent inspections disclosing the
120 condition of the Property, including any buildings, and has been given the opportunity to order those
121 inspections as a part of its due diligence efforts prior to concluding the transaction.
122

123 The **Buyer reserves its right** to conduct independent inspections. All inspections are at the
124 **Buyer's** expense and shall be performed by licensed independent inspectors or qualified independent
125 contractors that shall be chosen by the **Buyer**, and paid for their services by the **Buyer**.
126

127 The **Seller** shall make arrangements so that all areas of the Property, including any buildings, are
128 open and accessible for inspection.
129

130 Inspections and Response Periods:

131 All inspections that Buyer intends to undertake shall be ordered by the **Buyer** immediately
132 following the execution of this document. In the event that the presence of a defect is revealed, **Buyer**
133 shall have 10 calendar days to respond to **Seller** in writing with regard to any such inspection,
134 following which Buyer shall have 10 calendar days to request, obtain, and respond to **Seller** in
135 writing with regard to any supplementary reports.
136

137 If the Buyer does not respond in writing to Seller within the above time periods with regard to a
138 problem revealed in a report, or timely request a reasonable extension of time in writing, then the
139 Property shall be deemed to be acceptable. Should either party fail to respond to an inspection
140 response from the other within five calendar days, or timely request a reasonable extension of time in
141 writing, then that inspection response is deemed accepted. Making a timely written request for an
142 extension of time does not constitute acceptance of an inspection response, whether or not the request
143 is granted.
144

145 In the event that Buyer reasonably believes that an inspection has revealed a defect with the
146 Property, not disclosed by Seller prior to entering into this Purchase Agreement (and excluding
147 routine maintenance and minor repair items), and the Seller fails to remedy the defect to the Buyer's
148 reasonable satisfaction before closing, then Buyer may terminate this Purchase Agreement.
149 Alternatively, Buyer may waive the right to have the defect cured prior to closing, or Buyer and Seller
150 may agree to have the defect remedied following closing.
151

152 (Under Indiana law, a "defect" means a condition that would have a significant adverse effect on
153 the value of the Property, that would significantly impair the health or safety of future occupants of
154 the Property, or that if not repaired, removed, or replaced, would significantly shorten or adversely
155 affect the expected normal life of the premises.)
156
157

158 **DISCLOSURES**

159 The **Buyer** has **waived** the "Seller's Residential Real Estate Sales Disclosure" form.
160
161

162 The **Buyer** has **waived** the "Lead-Based Paint Certification and Acknowledgment" form.
163
164

165 **TITLE WORK and DEED**

166 Before closing, the **Buyer** shall be furnished with a title insurance commitment using the most
167 current and comprehensive ALTA Owner's Title Insurance Policy available in an amount equal to the
168 purchase price. In order to proceed with the transaction, the **Seller** shall have marketable title to the

REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

169 Real Property in the **Seller's** name. The **Seller** shall convey the fee simple title to the Property free
170 and clear of any encumbrances and title defects, with the exception of any restrictions or easements of
171 record not substantially interfering with the **Buyer's** planned use of the Property.
172

173 Title Insurance Fees:

174 The premium for the title insurance policy and all fees charged to prepare an Owner's Title
175 Insurance Policy shall be **shared equally**.
176

177 The costs to resolve any title issues affecting the Property so that marketable title can be
178 conveyed shall be paid by the **Seller**.
179

180 Type of Deed:

181 The conveyance of the Property shall be accomplished with a Warranty Deed, subject to
182 easements, restrictive covenants, other encumbrances of record, and taxes.
183

184 **REAL PROPERTY TAXES**

185 All real property taxes that have been assessed for any prior calendar year that have not been paid
186 shall be paid by the **Seller**. Real property taxes that have been assessed for the present year, that are
187 due and payable in the year after closing, shall also be paid by the **Seller** prorated up to the day
188 immediately prior to the closing date.
189

190 For the purpose of determining the amount to be credited for accrued but unpaid taxes, the taxes
191 shall be assumed to be the same as the most recent year for which taxes were billed based upon the
192 certified tax rates. This settlement shall be final.
193

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

195 Utilities and Garbage Services:

196 The **Seller** shall pay for all public utility and garbage service charges up to the last day of
197 possession.
198

199 Shutting Off Utilities for Buildings to be Demolished:

200 The **Seller** shall cancel the accounts for all public utilities and garbage services no later than the
201 last day of possession, and shall have the utilities shut off by the appropriate utility.
202

203 Special Assessments for Public Improvements:

204 The **Seller** shall pay any special assessments assessed against the Property for public
205 improvements previously made by a governmental unit that benefit the Property. The **Seller** certifies
206 that it has no knowledge of any proposed improvements which may result in assessments.
207

208 Public improvements that will benefit the Property that are not completed as of the closing date,
209 but will result in an assessment against the Property shall be paid by the **Buyer**.
210

211 **LEGAL JURISDICTION**

212 This Purchase Agreement shall be interpreted under and according to the laws of the State of
213 Indiana and shall be binding upon the **Buyer** and **Seller**, their respective heirs, successors, assigns
214 administrators, executors, and legal representatives. All rights, duties and obligations of the parties
215 shall survive the passing of title to, or an interest in, the Property.
216
217
218

REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

219 **LEGAL FEES**

220 A party to this Purchase Agreement who prevails in any legal proceeding against any other party
221 brought in regard to this Purchase Agreement or associated transaction shall be allowed to recover
222 court costs and reasonable attorney's fees from the other party, to the extent permitted by law.
223

224 **SAVINGS CLAUSE**

225 If any provision contained in this Agreement is found to be illegal or unenforceable in any
226 respect, that determination shall not affect any other provision of this Purchase Agreement.
227

228 **OTHER STIPULATIONS**

- 229 A. All funds payable in this transaction shall be paid at the closing.
230 B. This Agreement constitutes the only agreement between the parties, supersedes any prior
231 arrangements, understandings, or written or oral agreements between the parties with regard
232 to this transaction, and cannot be changed without the written consent of each party.
233 C. The Seller certifies that the Seller is not a "Foreign Person" (pertains to an individual entity)
234 and, therefore, is not subject to the "Foreign Investment in Real Property Tax Act."
235 D. Buyer discloses that it does not hold an Indiana Real Estate License.
236 E. The Seller discloses that it holds Indiana Real Estate License # _____.
237

238 **ADDITIONAL CONDITIONS:**

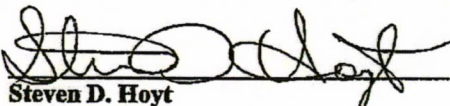
239 _____
240 _____
241

242 This Purchase Agreement may be executed concurrently in two or more counterparts, each of
243 which shall be considered as an original document, but all of which altogether shall be one and the same
244 document. The parties stipulate that this Purchase Agreement may be transmitted between them by U.S.
245 Postal Service, other service such as FedEx, courier, facsimile, or e-mail. The parties acknowledge that
246 digitally or electronically transmitted signatures shall be considered as original signatures and are binding
247 on the parties. The City shall keep possession of the original of the Purchase Agreement.
248

249 By signing below, the parties to this transaction acknowledge receipt of a copy of this Purchase
250 Agreement, and agree to the conditions, requirements, and stipulations as stated.
251

252
253 **SELLER APPROVAL and SIGNATURE(S):**

254 This Purchase Agreement is ACCEPTED REJECTED.
255

256
257  _____ Date: 10-9-23
258
259 Steven D. Hoyt

260
261  _____ Date: 10-9-23
262
263 Janice E. Hoyt
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REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

270 **BUYER APPROVAL AND SIGNATURES:**

271

272 BOARD OF PUBLIC WORKS

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275 Date: 1.23.2024

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279 BY: 

280 Shan Gunawardena, Chair

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284 BY: 

285 Kumar Menon, Member

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289 BY: ABSENT

290 Chris Guerrero, Member

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294 ATTEST: 

295 Michelle Fulk-Vondran, Clerk

Interoffice Memo

Date: January 18, 2024
To: Common Council Members
From: Seth Weinglass, Program Manager – Capital Project Services – Telephone: 427-1330
RE: **Purchase of 1.56 Acres of Vacant Land West of 7730 Leesburg Rd, Fort Wayne, IN 46818**

Council Introduction Date: February 13, 2024—Council District #: n/a

Background & supporting information:

City Utilities has reached an agreement to purchase 1.56 acres of vacant land on the east side of O'Day Road, north of its intersection with Leesburg Road. The site will be used for a sanitary sewer lift station.

Owner Steven and Janice Hoyt agreed to a purchase price of \$25,000. This purchase will create a new parcel of land, splitting off the area west of Seeger Ditch that City Utilities is purchasing, from the area of the Hoyt's lot that they use for residential purposes, east of the ditch. The map included on the attached purchase agreement shows the new parcel to be purchased.

Implications of not being approved:

If City Utilities does not purchase this land, a different area of land will need to be purchased for the lift station, likely in a less favorable area for the planned sewer main.

Justification if prior approval is being requested: Not applicable

Funding source: CUE Revenue

Attachments:

- Purchase Agreement

CC: Matthew Wirtz
Nathan Baggett
Jill Helfrich

BILL NO. R-24-02-07

REPORT OF COMMITTEE ON CITY UTILITIES

February 27, 2024

Paul Ensley Chair

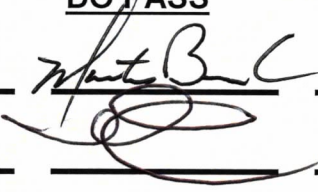
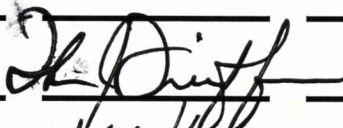
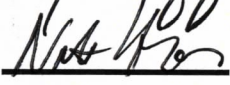


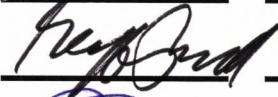

Russ Jehl Co-Chair

All Council Members

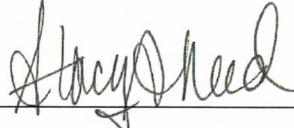
A Resolution approving a purchase agreement for the acquisition of real property west of 7730 Leesburg Rd, Fort Wayne, Indiana, for the City of Fort Wayne, Indiana (Approved and Executed by the Board of Public Works on January 23, 2024)

Purchase price for the real estate is \$25,000.00

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>			

**STACY REED
DEPUTY CITY CLERK**



Public Hearing Date: N/A

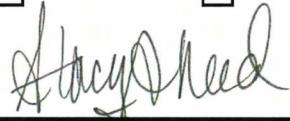
Read the first time in full and on motion by Councilperson Ensley.

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

Read the third time in full and on motion by Councilperson Jehl, 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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"/>

DATED: February 27, 2024

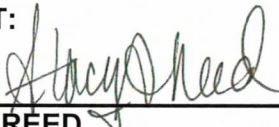


STACY REED, DEPUTY CITY CLERK

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

Resolution No. R-24-02-07 on the 27th day of February, 2024

ATTEST:

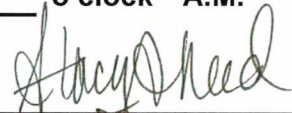


STACY REED
DEPUTY CITY CLERK



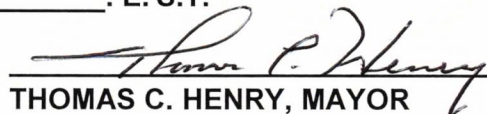
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 28th of February 2024, at the hour of 9:10 o'clock A.M. E.S.T.



STACY REED, DEPUTY CITY CLERK

Approved and signed by me this 1st day of MARCH 2024, at the hour of 9:30 o'clock AM E. S.T.


THOMAS C. HENRY, MAYOR