

1 **BILL NO. R-24-04-15**

2 **RESOLUTION NO. R15-24**

3 **A RESOLUTION APPROVING A PURCHASE**
4 **AGREEMENT FOR THE ACQUISITION OF PART**
5 **OF THAT CERTAIN REAL PROPERTY**
6 **LOCATED AT 6501 STELLHORN ROAD, IN**
7 **FORT WAYNE, INDIANA, FOR THE CITY OF**
8 **FORT WAYNE, INDIANA (Approved and**
9 **Executed by the Board of Public Works on**
10 **March 26, 2024).**

11 **WHEREAS**, the City of Fort Wayne, by and through its Division of
12 City Utilities ("CU"), wishes to acquire a part of that certain real property located at
13 6501 Stellhorn Road, in the City of Fort Wayne, Indiana, (the "Real Estate"), to be
14 used for drainage improvements to expand the capacity of Bullerman Drain, to
15 increase its capacity and alleviate neighborhood flooding; and

16 **WHEREAS**, the owner of the Real Estate is Mackids, Inc. (the
17 "Seller").

18 **WHEREAS**, the City of Fort Wayne, by and through its Board of
19 Public Works, approved and executed a purchase agreement to acquire the Real
20 Estate in the regularly-held meeting of the Board of Public Works on March 26,
21 2024; and

22 **WHEREAS**, the purchase price for the Real Estate is Three
23 Hundred Forty-Five Thousand and 00/100 Dollars (\$345,000.00) (the "Purchase
24 Price"); and

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

28 **NOW, THEREFORE, BE IT RESOLVED BY THE COMMON**
29 **COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**
30

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

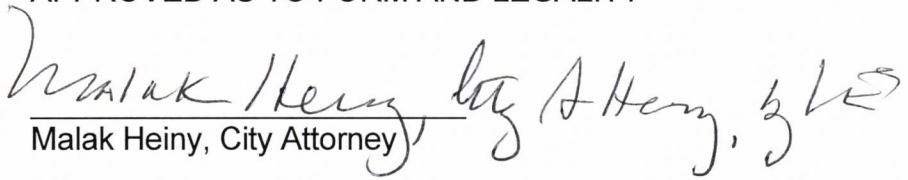
SECTION 1. The acquisition of the Real Estate by CU, the City of Fort Wayne, by and through its Board of Public Works, in the amount of the Purchase Price, and upon such other terms and conditions as CU shall determine, is hereby agreed to and approved. The appropriate officials of the City of Fort Wayne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

CU 3.26.24

REAL PROPERTY PURCHASE AGREEMENT

Fort Wayne City Utilities

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

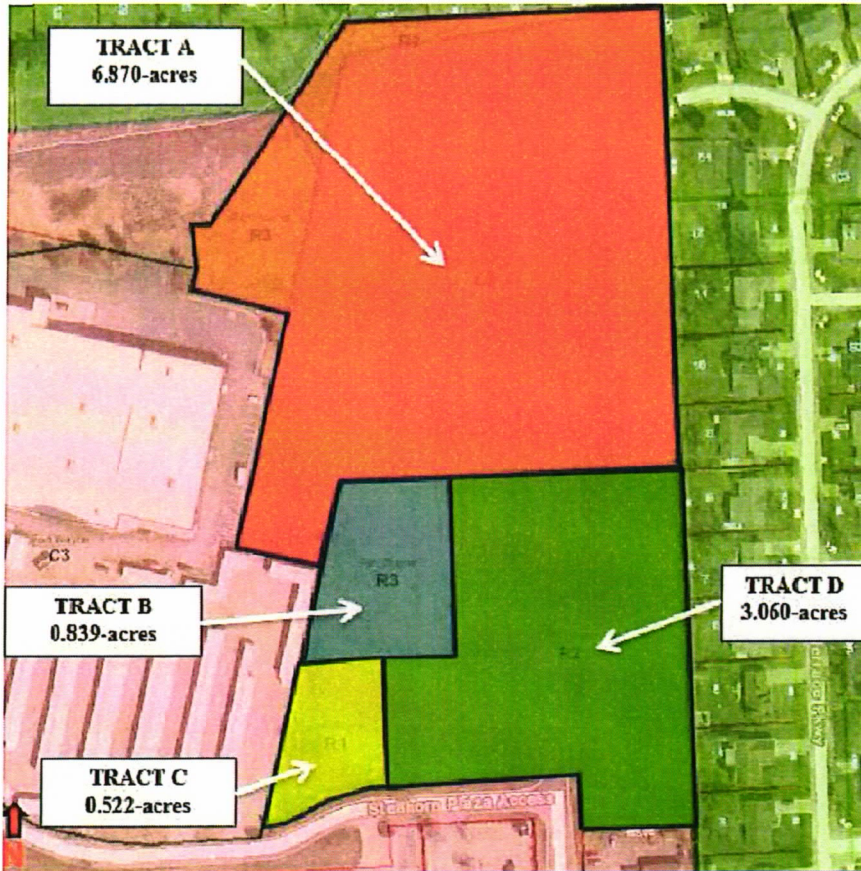
CONTACT INFORMATION and LOCATION OF PROPERTY

Owners: Mackids Inc ("Seller")
c/o Shawn Heffern, Midland Atlantic Properties (broker), (317) 597-1715

Property Address: 6501 Stellhorn Rd., Fort Wayne, Indiana 46815

Latest Deed of Record: Document Number 207020124

Land area to be purchased: Approximately 6.870 acres comprising a portions of PIN 02-08-22-351-012.000-072, depicted as "Tract A" below (final survey and legal description to follow accepted offer) (the "Property").



PURCHASE PRICE

The City agrees to pay to the Seller the total purchase amount of \$345,000.00 (Three Hundred and Forty-Five Thousand Dollars and Zero Cents) for the Property.

REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

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

26 **EXPIRATION OF OFFER**

27 This Purchase Agreement shall be returned to the City no later than 12 noon, on Monday, March
28 11, 2024, otherwise this Purchase Agreement shall be null and void and both parties shall be released
29 from the transaction.
30

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

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

37 **CLOSING**

38 Closing Date:

39 The closing date for this transaction shall be on or before July 5, 2024, or this Agreement shall
40 terminate unless an extension of time is mutually agreed to in writing. Any change in the closing date
41 shall be agreed to in writing by both parties.
42

43 Location of Closing:

44 The closing shall be held at TBD located at TBD, in Fort Wayne, Indiana.
45

46 Closing Fees:

47 All fees charged by the closing agent, including document preparation and recording fees shall be
48 paid by the Buyer.
49

50 **METHOD OF PAYMENT**

51 The entire amount shall be paid in cash.
52

53 Both parties agree that all funds delivered to the closing agent's escrow account shall be such that
54 the closing agent shall be able to distribute all funds in accordance with I.C. 27-07-3.7-1 through 27-
55 07-3.7-1-10, inclusive. Furthermore, all funds sent from one source, when the amount is \$10,000.00
56 or greater, shall be sent in the form of an irrevocable wire transfer to the escrow account of the
57 closing agent, and all funds under \$10,000.00 from one source shall be guaranteed to be "Good
58 Funds" as defined by the aforesaid Indiana Code.
59

60 **POSSESSION**

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

67 **PROPERTY MAINTENANCE**

68 Lawn Mowing:

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

REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122

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.
- Or
- The expense for the survey shall be shared equally.
- Or
- 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.

REAL PROPERTY PURCHASE AGREEMENT

Fort Wayne City Utilities

123 **INSPECTIONS**

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

127

128 The Buyer **waives its right** to conduct independent inspections and releases the Seller from any
129 and all liability.

130

131 **Or**

132

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

136

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

139

140 **Inspections and Response Periods:**

141 All inspections that Buyer intends to undertake shall be ordered by the Buyer immediately
142 following the execution of this document. In the event that the presence of a defect is revealed, Buyer
143 shall have 30 calendar days to respond to Seller in writing with regard to any such inspection,
144 following which Buyer shall have 15 calendar days to request, obtain, and respond to Seller in
145 writing with regard to any supplementary reports.

146

147 If the Buyer does not respond in writing to Seller within the above time periods with regard to a
148 problem revealed in a report, or timely request a reasonable extension of time in writing, then the
149 Property shall be deemed to be acceptable. Should either party fail to respond to an inspection
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 **DISCLOSURES**

168

169 The Buyer has received and signed / waived the "Seller's Residential Real Estate Sales
170 Disclosure" form.

171

REAL PROPERTY PURCHASE AGREEMENT

Fort Wayne City Utilities

172 N/A The Buyer has received and signed / waived the "Lead-Based Paint Certification and
173 Acknowledgment" form.

174

175 **TITLE WORK and DEED**

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

182

183 Title Insurance Fees:

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

186

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

189

190 Type of Deed:

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

193

194 **REAL PROPERTY TAXES**

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

199

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

203

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

205 Utilities and Garbage Services:

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

208

209 Shutting Off Utilities for Buildings to be Demolished:

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

212

213 Special Assessments for Public Improvements:

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

217

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

220

221

REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

222 **LEGAL JURISDICTION**

223 This Purchase Agreement shall be interpreted under and according to the laws of the State of
224 Indiana and shall be binding upon the **Buyer and Seller**, their respective heirs, successors, assigns
225 administrators, executors, and legal representatives. All rights, duties and obligations of the parties
226 shall survive the passing of title to, or an interest in, the Property.
227

228 **LEGAL FEES**

229 A party to this Purchase Agreement who prevails in any legal proceeding against any other party
230 brought in regard to this Purchase Agreement or associated transaction shall be allowed to recover
231 court costs and reasonable attorney's fees from the other party, to the extent permitted by law.
232

233 **SAVINGS CLAUSE**

234 If any provision contained in this Agreement is found to be illegal or unenforceable in any
235 respect, that determination shall not affect any other provision of this Purchase Agreement.
236

237 **OTHER STIPULATIONS**

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

246 **ADDITIONAL CONDITIONS:** _____
247 _____
248 _____

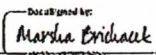
249
250 This Purchase Agreement may be executed concurrently in two or more counterparts, each of
251 which shall be considered as an original document, but all of which altogether shall be one and the same
252 document. The parties stipulate that this Purchase Agreement may be transmitted between them by U.S.
253 Postal Service, other service such as FedEx, courier, facsimile, or e-mail. The parties acknowledge that
254 digitally or electronically transmitted signatures shall be considered as original signatures and are binding
255 on the parties. The City shall keep possession of the original of the Purchase Agreement.
256

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

260
261 **SELLER APPROVAL and SIGNATURE(S):**

262
263 This Purchase Agreement is **ACCEPTED** **REJECTED**.
264

265 **MACKIDS INC**

 <small>DocuSign Envelope ID: [redacted]</small>	Marsha Brichacek president	Date: 3/14/2024
Signature	Printed Name & Title	

266
267
268
269
270
271

REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

272 BUYER APPROVAL AND SIGNATURES:

273

274

275 BOARD OF PUBLIC WORKS

276

277

278 Date: 3.26.2024

279

280

281

282 BY: 

283 Shan Gunawardena, Chair

284

285

286

287 BY: 

288 Kumar Menon, Member

289

290

291

292 BY: ABSENT

293 Chris Guerrero, Member

294

295

296

297 ATTEST: 

298 Michelle Fulk-Vondran, Clerk

299

Interoffice Memo

Date: April 4, 2024

To: Common Council Members

From: Seth Weinglass, Program Manager – Capital Project Services – Telephone: 427-1330

RE: Purchase of 6.87 Acres of Vacant Land Located at 6501 Stellhorn Rd, Fort Wayne, IN 46835

Council Introduction Date: April 9, 2024—Council District #: 1

Background & supporting information:

City Utilities has reached an agreement to purchase 6.87 acres of undeveloped land east of the Stellhorn Plaza Shopping Center, which is located at the corner of Maplecrest Road & Stellhorn Road. The site will be used for drainage improvements to expand the capacity of Bullerman Drain, to increase its capacity and alleviate neighborhood flooding.

Owner Mackkids Inc. agreed to a purchase price of \$345,000. The map included in the purchase agreement shows the area of land that City Utilities intends to purchase.

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 drain improvements, likely at higher cost.

Justification if prior approval is being requested: Not applicable

Funding source: CUE Revenue

Attachments:

- Purchase Agreement

CC: Matthew Wirtz
Anne Marie Smrcek
Kristen Buell
Jill Helfrich

BILL NO. R-24-04-15

REPORT OF COMMITTEE ON CITY UTILITIES

April 16, 2024

Paul Ensley Chair

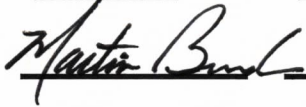

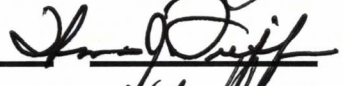


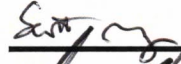
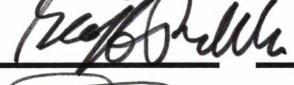

Russ Jehl Co-Chair

All Council Members

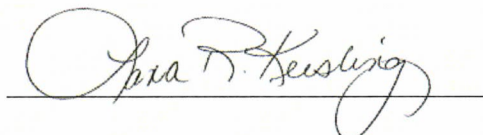
A Resolution approving a Purchase Agreement for the acquisition of part of that certain real property located at 6501 Stellhorn Road, in Fort Wayne, Indiana, for the City of Fort Wayne, Indiana (Approved and executed by the Board of Public Works on March 26, 2024)

Purchase Price of \$345,000.00

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>			

**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 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"/>
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"/>

DATED: April 23, 2024

LANA R. KEESLING, CITY CLERK

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

Resolution No. R-24-04-15 on the 23rd day of April, 2024

ATTEST:

LANA R. KEESLING
CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 24th of April 2024, at the hour of 9:10 o'clock A.M. E.S.T.

LANA R. KEESLING, CITY CLERK

Approved and signed by me this 24th day of April 2024, at the hour of 5:56 o'clock 5:56 E.S.T.

SHARON TUCKER, MAYOR