

AN ORDINANCE OF THE CITY OF FORT WAYNE COMMON COUNCIL
DECLARING PUBLIC CONVENIENCE AND NECESSITY REQUIRE
ACQUISITION OF CERTAIN UTILITY ASSETS, APPROVAL OF AN ASSET
ACQUISITION AGREEMENT AND OTHER RELATED MATTERS

WHEREAS, the City of Fort Wayne ("City") is a political subdivision and
municipality organized and operating under the laws of the State of Indiana; and

WHEREAS, it is the intent of the Common Council of the City of Fort
Wayne ("Council") to protect and advance the health, safety, welfare and wellbeing
of its citizens, utility users, and the community; and

WHEREAS, the City has a municipal utility, Fort Wayne City
Utilities ("FWCU"), that provides certain services; and

WHEREAS, pursuant to Ind. Code 8-1.5-2 and other applicable statutes, the
City may acquire and thereafter operate other existing utilities; and

WHEREAS, the Council deems it desirable and in the best interests of the
City to acquire, and thereafter own and operate certain existing water facilities of
Utility Center, Inc., an Indiana corporation doing business as Aqua Indiana, Inc.
("Aqua Indiana"), generally described as the water utility assets serving the
southwest portion of the City and nearby portions of Allen County outside the
boundaries of the City (the "Aqua Indiana Southwest Utility"), for the purpose of
providing water service within and surrounding the City's municipal limits and its
extraterritorial authority; and

WHEREAS, a public convenience and necessity will be advanced by the
acquisition of the Aqua Indiana Southwest Utility and the expansion of FWCU, and

1 that such public convenience and necessity will be advanced by thereafter owning
2 and operating those assets and facilities; and

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4 WHEREAS, the Council has caused to be delivered to Aqua Indiana notice
5 that the Council would hear public testimony regarding this Ordinance at 5:30 p.m.
6 May 6, 2014, in the Citizens Square, Room 35 (Garden Level), 200 E. Berry Street,
7 Fort Wayne, Indiana, 46802 and said notice informed Aqua Indiana that it could
8 appear in person or by counsel to testify regarding this Ordinance; and

9 WHEREAS, the Council did in fact permit public testimony on this
10 Ordinance at on May 6, 2014 in the Citizens Square, Room 35 (Garden Level), 200
11 E. Berry Street, Fort Wayne, Indiana, 46802; and

12 WHEREAS, pursuant to IC 36-1-10.5-5, the Council has determined that it is
13 interested in purchasing the land and structures comprising the Aqua Indiana
14 Southwest Utility (the "Land and Structures"); and

15
16 WHEREAS, the Board of Public Works for the City (the "Board of Works")
17 has previously engaged both NewGen Systems and Solutions and H.J. Umbaugh and
18 Associates (the "Appraisers") to appraise the fair market value of the Land and
19 Structures; and

20 WHEREAS, the Council now desires to approve and ratify the appointment
21 of the Appraisers and to accept the appraisals of the Land and Structures made by the
22 Appraisers (the "Appraisals"); and

23
24 WHEREAS, pursuant to IC 36-1-10.5-5, the Council desires to authorize the
25 purchase of the Land and Structures for a price not greater than the average of the
26 Appraisals; and

1 WHEREAS, the City has possessed and operated Aqua Indiana's northern
2 Fort Wayne water and sanitary sewer utility (the "Aqua Indiana North System")
3 since February 8, 2008 as a result of an on-going condemnation proceeding in Wells
4 County Circuit Court (the "North System Litigation"); and

5
6 WHEREAS, the Council desires to approve and authorize the execution of
7 the utility system asset acquisition agreement and all appendices, exhibits and
8 attachments therein (the "Asset Acquisition Agreement") between the City, and
9 Aqua Indiana providing for the purchase by the City of the Land and Structures,
10 other assets of the Aqua Indiana Southwest Utility and settlement of the North
11 System Litigation, in substantially the form presented to the Council at this meeting;
12 and

13 WHEREAS, the City plans to issue bonds to finance the cost of acquisition of
14 the Aqua Indiana Southwest Utility and Aqua Indiana North System; and

15 WHEREAS, pursuant to IC 8-1.5-2-13, the Council declares that the
16 principal and interest of bonds issued for the payment of the cost of the acquisition of
17 the Aqua Indiana Southwest Utility and Aqua Indiana North System shall be paid
18 exclusively from the income and revenue of the property acquired by the City
19 through the Asset Acquisition Agreement.

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21 NOW, THEREFORE, BE IT ORDAINED by the Common Council of the
22 City of Fort Wayne, Indiana, as follows:

23 SECTION 1. The above recitals are incorporated herein by this reference as
24 though fully set forth herein below.

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26 SECTION 2. The Council hereby declares that public convenience and
27 necessity requires, and the public interest will be served by, acquisition of the
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1 Aqua Indiana Southwest Utility and the addition of those utility assets and
2 facilities to FWCU, the City's existing municipal utility.

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4 SECTION 3. The Council hereby declares its interest in making a purchase
5 of the Land and Structures.

6 SECTION 4. The Council hereby ratifies and approves the appointment of
7 the Appraisers and accepts the Appraisals.

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9 SECTION 5. The Council hereby approves the price of Sixty-Seven Million
10 Dollars (\$67,000,000.00) for purchase of the Land and Structures, other
11 assets of the Aqua Indiana Southwest Utility and settlement of the North
12 System Litigation, which is not greater than the average of the Appraisals,
13 with Sixteen Million Nine Hundred Thousand Dollars (\$16,900,000) having
14 already been paid, for a total amount due at closing of Fifty Million One
15 Hundred Thousand Dollars (\$50,100,000).

16 SECTION 6. The Council hereby approves and authorizes the execution of
17 the Asset Acquisition Agreement in substantially the form presented at this
18 meeting.

19 SECTION 7. The Council hereby declares and directs that the principal and
20 interest due on bonds to be issued for the payment of the cost to acquire the
21 Aqua Indiana Southwest Utility and Aqua Indiana North System shall be paid
22 exclusively from the income and revenue of assets acquired by the City
23 through the Asset Acquisition Agreement.

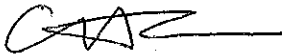
24
25 SECTION 8. The terms, paragraphs, sentences, words and actions of this
26 Ordinance are separable, and if any portion of this Ordinance or its acts is
27 found to be unconstitutional, invalid or unenforceable, any such
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determination shall not affect the remaining terms or portions of the Ordinance and related actions of the City and Council.

SECTION 9. This Ordinance is in full force and effect from and after its passage and any all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY



Carol Helton, City Attorney

RESOLUTION OF THE CITY OF FORT WAYNE BOARD OF PUBLIC WORKS
APPROVING AND AUTHORIZING THE EXECUTION OF UTILITY SYSTEM ASSET
ACQUISITION AGREEMENT AND OTHER RELATED MATTERS

WHEREAS, the Board of Public Works (the "Board") of the City of Fort Wayne, Indiana (the "City") strives to protect and advance the health, safety, welfare and well-being of its citizens, utility users, and the community; and

WHEREAS, the City has a municipal utility, Fort Wayne City Utilities ("FWCU"), that provides certain services; and

WHEREAS, pursuant to IC 8-1.5-3-3, the Board operates and controls FWCU; and

WHEREAS, pursuant to Ind. Code 8-1.5-2 and other applicable statutes, the City may acquire and thereafter operate other existing utilities; and

WHEREAS, the Board has determined that the City should acquire, own and operate certain existing water facilities of Utility Center, Inc., an Indiana corporation doing business as Aqua Indiana, Inc. ("Aqua Indiana"), generally described as the water utility assets serving the southwest portion of the City and nearby portions of Allen County outside the boundaries of the City (the "Aqua Indiana Southwest Utility"), for the purpose of providing water service within and surrounding the City's municipal limits and its extraterritorial authority; and

WHEREAS, the Board has also determined that the City should purchase certain land and structures comprising the Aqua Indiana Southwest Utility (the "Land and Structures"); and

WHEREAS, staff for the Board has previously engaged NewGen Strategies and Solutions and H. J. Umbaugh and Associates (the "Appraisers") to appraise the fair market value of the Land and Structures; and

WHEREAS, the Board now desires to approve and ratify the appointment of the Appraisers; and

WHEREAS, the City has possessed and operated Aqua Indiana's northern Fort Wayne water and sanitary sewer utility (the "Aqua Indiana North System") since February 8, 2008 as a result of an on-going condemnation proceeding in Wells County Circuit Court (the "North System Litigation"); and

WHEREAS, the Board desires to approve and authorize the execution of the utility system asset acquisition agreement and all appendices, attachments and exhibits therein, (the "Asset Acquisition Agreement") between the City, and Aqua Indiana providing for the purchase by the City of the Land and Structures, other assets of the Aqua Indiana Southwest Utility and settlement of the North System Litigation in substantially the form presented to the Board at this meeting; and

WHEREAS, the Board desires to recommend approval of the Asset Acquisition Agreement to the Common Council of the City (the "Council").

NOW, THEREFORE, BE IT RESOLVED by the Board of Public Works of the City of Fort Wayne, Indiana, as follows:

1. The above recitals are incorporated herein by this reference as though fully set forth herein below.
2. The Board hereby ratifies and approves the appointment of the Appraisers.
3. The Board hereby approves a total price of Sixty-Seven Million Dollars (\$67,000,000) for the purchase of the Land and Structures, other assets of the Aqua Indiana Southwest Utility and settlement of the North System Litigation, with Sixteen Million Nine Hundred Thousand Dollars (\$16,900,000) having already been paid, for a total amount due at closing of Fifty Million One Hundred Thousand Dollars (\$50,100,000).
4. The Board hereby approves and authorizes the execution of the Asset Acquisition Agreement in substantially the form presented at this meeting.
5. The Board hereby recommends approval of the Asset Acquisition Agreement by the Council.
6. The terms, paragraphs, sentences, words and actions of this Resolution are separable, and if any portion of this Resolution or its acts is found to be unconstitutional, invalid or unenforceable, any such determination shall not affect the remaining terms or portions of the Resolution and related actions of the Board.
7. This Resolution is effective immediately upon its adoption.

Passed and adopted this ____ day of _____, 2014.

FORT WAYNE BOARD OF PUBLIC WORKS:

Robert P. Kennedy, Chairman

Mike Avila, Member

Kumar Menon, Member

ATTEST:

Victoria Edwards, Clerk