

BILL NO. R-18-07-02

RESOLUTION NO. _____

A RESOLUTION APPROVING THE
ACQUISITION OF CERTAIN REAL
ESTATE LOCATED AT NE1/4 OF
S28, T30N, R12E IN WAYNE
TOWNSHIP, ALLEN COUNTY,
INDIANA, FOR THE CITY OF FORT
WAYNE, BY AND THROUGH THE
DIVISION OF PUBLIC WORKS.

WHEREAS, the City of Fort Wayne, through its Division of Public
Works, desires to acquire properties located at **NE1/4 OF S28, T30N, R12E IN
WAYNE TOWNSHIP, ALLEN COUNTY, INDIANA**, specifically described in the
Donation Agreement, Exhibit "A," attached hereto and made a part hereof; and

WHEREAS, the Donation Agreement for the properties located at
**NE1/4 OF S28, T30N, R12E IN WAYNE TOWNSHIP, ALLEN COUNTY,
INDIANA**, is submitted to the Common Council for approval.

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

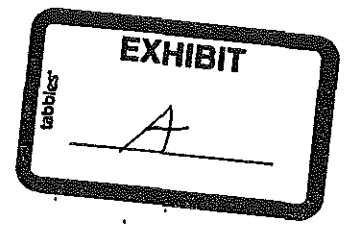
SECTION 1. The acquisition of real estate by the City of Fort
Wayne through its Division of Public Works, located at **NE1/4 OF S28, T30N,
R12E IN WAYNE TOWNSHIP, ALLEN COUNTY, INDIANA**, specifically
described in the Donation Agreement, Exhibit "A," is hereby approved and
agreed to. The appropriate officials of the City are hereby authorized to execute
all documents necessary to accomplish said donation.

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

Carol Helton, City Attorney



DONATION AGREEMENT

THIS AGREEMENT IS MADE this ____ day of ____, 2018 ("Effective Date") by and between Allen L. Poorman, individually ("Donor") and The City of Fort Wayne, an Indiana municipal corporation ("Donee").

WITNESSETH:

WHEREAS, Donor was granted by quit claim deed the Grantor's interest in certain unimproved real property in the City of Fort Wayne, Indiana, a description of which is attached hereto and made a part hereof as Exhibit A (the "Property"); and

WHEREAS, Donor desires to make a charitable contribution of Donor's interest in the Property to Donee;

NOW, THEREFORE, in and for consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

A. Conveyance of Property.

1. Donor hereby agrees to convey by quit claim deed Donor's interest in the Property to Donee as a charitable contribution and Donee hereby agrees to accept such charitable conveyance upon the terms and conditions set forth in this Agreement.
2. At closing, Donor shall convey to Donee by quit claim deed all title and interest Donor may have in the Property.

B. Closing.

1. Closing shall occur at a date mutually agreeable to the parties but not later than thirty (30) days after review and approval of this transaction by Donor's legal counsel and the City of Fort Wayne Board of Public Works and the Common Council of the City of Fort Wayne. The obtaining of such approvals shall be a condition to the closing of the subject conveyance.
2. At Closing, Donor shall deliver to Donee the following instruments:
 - (a) The said quit claim deed; and
 - (b) Such other documents as may reasonably be required to consummate the transaction.

3. At closing Donee shall pay all real estate taxes, costs of title examination, title insurance, recording fees, reimbursement to Donor of Donor's attorney fees in the maximum amount of Five Hundred and 00/100 Dollars (\$500.00) and closing costs related to the conveyance of the Property ("closing obligations").

C. Inspection Period.

1. Donor shall provide copies of the following documents to Donee (to the extent such documents are in Donor's possession) (the "Property Documents") within ten (10) days after execution of this Agreement;
 - (a) Surveys, plat and specifications for the Property;
 - (b) All documents, agreements and written information and reports related to the Property including service contracts, permits and licenses applicable to the Property, environmental reports and all maintenance records;
 - (c) Notices of any zoning, safety, building, fire, environmental, health code or other violations affecting or relating to the Property;
 - (d) Such other documents as Donee may reasonably request.
2. Donee shall have thirty (30) days to examine the Property Documents after receipt thereof (the "Inspection Period"), during which Donee shall have the right in its sole discretion to terminate this Agreement upon written notice to Donor. In the event of such termination, this Agreement shall be null and void and neither party shall have any further obligation to the other with respect to the Property, provided, however, that Donee shall pay Donor's closing obligations theretofore incurred.
3. Donor shall grant to Donee, its designees, representatives, agents, engineers and contractors access to all portions of the Property during normal business hours during the Inspection Period for the purpose of inspecting the condition of the Property. Donee retains the right to terminate this Agreement, in its sole discretion, during the Inspection Period if Donee does not accept the condition of the Property, provided, however, that Donee shall pay Donor's closing obligations theretofore incurred.

D. Representations and Warranties of Donor.

Donor hereby represents and warrants to the best of Donor's actual knowledge and belief to Donee as of the date of this Agreement (all of which shall be true as of the Closing):

1. Title. Donor is conveying to Donee any and all interest Donor may have in the Property by quit claim deed. To the best of Donor's actual knowledge and belief, all water and sewer charges and other utility and municipal charges, and real estate taxes, to the extent due and owing, have been paid in full.
2. Compliance with Laws and Regulations. Donor has received no notices of any action or governmental proceeding in eminent domain, zoning change or nonconformity with any fire, zoning, health, environmental, subdivision or other federal or local codes, laws, rules and regulations, or otherwise, which would affect the Property.
3. No Encroachments. To the best of Donor's actual knowledge and belief, no part of the Property encroaches upon any property adjacent thereto or upon any easements, nor are there any encroachments upon the Property.
4. Leases. To the best of Donor's actual knowledge and belief, the Property is not subject to any lease or occupancy rights held by any third party.
5. Contracts and Agreements. To the best of Donor's actual knowledge and belief, there are no written or oral contracts or agreements affecting the Property which may be binding on Donee, as Donor's successor in title, which are not terminable by Donee without penalty, upon not more than thirty (30) days advance written notice.
6. Permits. To the best of Donor's actual knowledge and belief, there are no permits or licenses required by regulatory authorities for the operation and use of the Property.
7. Litigation. To the best of Donor's actual knowledge and belief, there is no litigation or claim pending or raised against or involving the Property.
8. No Encumbrances. Except for liens for real estate taxes not yet due and except as may have been otherwise expressly provided herein, Donor, prior to Closing, shall not encumber the Property or any of the improvements or personal property thereon, without the prior written consent of Donee.
9. Environmental. (i) To the best of Donor's actual knowledge and belief, there are no Environmental Perils or Hazardous Materials (as defined below) at, on, about, or under the Property.

(ii) Donor and Donee agree that, unless the context otherwise specifies

or requires, the following terms shall have the meaning herein specified:

- (a) "Governmental Authority" shall mean the United States, the state, the county, the city, and any other political subdivision in which the Property is located, and any court, political subdivision, agency, or instrumentality with jurisdiction over Donor or the Property.
- (b) "Governmental Requirements" shall mean all statutes, laws, decisions, ordinances, rules and regulations of any Governmental Authority applicable to Donor or the Property.
- (c) "Hazardous Materials" shall mean, among others, any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C.A. §§ 6901 et seq. ("RCRA"), and regulations promulgated thereunder; any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability.

E. Donee's Right to Cancel.

In the event the title report of Donee's report or Donee's inspection discloses unmarketability of title to the Property, Donee shall have the right exercisable in its sole and absolute discretion, to cancel the Agreement, whereupon it shall be null and void, except as provided hereinabove in paragraph C.

F. Binding Effect; Limitation of Remedy.

Donor acknowledges that Donee will expend extensive time and resources, e.g., in conducting due diligence, in reliance upon this Agreement. Accordingly, Donor specifically acknowledges this Agreement may be enforced by Donee in equity and at law. If Donee shall breach this Agreement, default, or fail to close, the exclusive remedy of Donor shall be to retain the Property, except as provided hereinabove in paragraphs B3, C2 and C3, all other remedies at law or in equity are waived by Donor.

G. Notices.

Any notice, demand, request, consent or other instrument which may be or is required to be given shall be served personally or sent by United States mail, postage prepaid, and addressed to the party entitled thereto at its address set forth below or at such other place as either party may designate by written notice to the other or by electronic mail or facsimile. Any written notice served personally shall be deemed served on the date of its receipt. Any written notice sent by mail shall be deemed served on three (3) days after the date it is placed in the possession of the United States Postal Service. Any notice sent by electronic mail or facsimile shall be deemed served on the date of its receipt. For purposes of this Agreement, notice shall be sent to Seller and Purchaser as follows:

To Donor: via U.S. Mail
Allen L. Poorman
12408 Ernst Road
Roanoke, IN 46783

via FAX
(260) 747-4706

with copy to:
David L. Peters
via email:
dpeters@skbw.com

To Donee: The City of Fort Wayne
Citizens Square
200 East Berry, Suite 470
Attn: Daniel A. Brenner
Property Manager
Fort Wayne, IN 46802

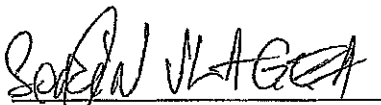
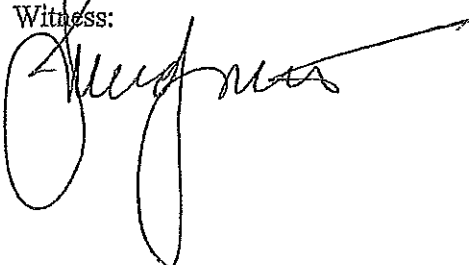
with copy to:
Daniel A. Brenner
via email:
dan.brenner@cityoffortwayne.org

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.


Witness:

Donor:

Allen L. Poorman


Witness:


Donee:

City of Fort Wayne
By: Daniel A. Brenner
Its: Property Manager

EXHIBIT "A"**Parcel I:**

Lots Number 52, 53 and 54 in Elmhurst Gardens Addition to the City of Fort Wayne, as recorded in Plat Record 8, page 33, in the Office of the Recorder of Allen County, Indiana.

Parcel II:

Part of the Northeast quarter, Section 28, Township 30 North, Range 12 East, Wayne Township, Allen County, Indiana, and further described as follows:

Beginning at a point on the East line of the former Indiana Service Corporation Right-of-way and the South line of Elmhurst Gardens Addition extended, thence running in an Easterly direction a distance of 279.5 feet to the center of Fairfield Ditch; thence running in a South Westerly direction along the center of said Fairfield Ditch to the East line of said former Indiana Service Corporation right-of-way; thence in a North Easterly direction along said right-of-way line to the place of beginning.

Parcel III:

A part of the Northeast Quarter (1/4) of Section Twenty-eight (28), Township Thirty (30) North, Range Twelve (12) East and a part of the Southeast Quarter (1/4) of Section Twenty-one (21), Township Thirty (30) North, Range Twelve (12) East, the same being a strip of land Seventy (70) feet wide, Thirty (30) feet in width on the West and Forty (40) feet in width on the East side of the Survey line for the Fort Wayne, Bluffton and Marion Traction Company's Interurban Railroad as now located over said lands, said line being described as follows:

Beginning at a point on the East line of said lands Four Hundred and Twenty-seven (427) feet Northwestwardly from the Southeast corner of Section Twenty-one (21); thence South (25) Degrees and (54) Minutes West parallel to the Northwest line of the Richardville Reserve for a distance of Eleven Hundred and Sixty-eight (1168) feet to the South line of the lands formerly owned by William Smith and Anna A. Smith, containing One and Eighty-Nine Hundredth (1.89) Acres, being the same premises conveyed by William Smith and Anna A. Smith, his wife, to Henry C. Paul, Trustee, by deed bearing date of September 27, 1905 and recorded in Deed Record Book 186, Page 280 of the records of said County.

ALSO:

A part of the West One-half (1/2) of the Northeast (1/4) of Section Twenty-eight (28), Township Thirty (30) North, Range Twelve (12) East, the same being a strip of land Seventy (70) feet in width and Nine hundred and eleven (911) feet long, Thirty (30) feet wide on the West and Forty (40) feet wide on the East side of the Survey line of the Fort Wayne, Bluffton and Marion Traction Company's Railway as surveyed and located over said lands, said line being located as follows:

Beginning at the intersection of the said line with the East line of the land formerly owned by Joe Mason, Six Hundred Twenty-seven (627) feet South of the North line of said Mason's Lands; thence South (25) Degrees and (54) Minutes West parallel to the Northwest line of the Richardville Reserve for a distance of Six Hundred and Eighty-five (685) feet to a point of Curve; thence by a (2) Degree Curve to the left for a distance of Two Hundred Twenty-six (226) feet to the center of a certain ditch, the South line of said Mason's lands, containing One and Forty-seven Hundredth (1.47) Acres, being the same premises conveyed by Joseph Mason and Annie Mason, his wife, to Henry C. Paul, Trustee, by deed dated September 21st, 1905 and recorded in Deed Record Book 183, page 487 of the records of said County.

ALSO:

A strip of land Seventy (70) feet wide, Thirty (30) feet wide on the west side and Forty (40) feet wide on the East side of

the Survey line as now surveyed and located, said line being described as follows:

Beginning at a point about One Hundred Sixty (160) feet North of the center Section line, and Sixty (60) feet East at right angles from the center of the Lake Erie and Western Railway at the point of tangent in said survey line; thence by a (2) Degree Curve to the right for a distance of Ten Hundred and Seventy (1070) feet to the center of a ditch, the North line of the lands formerly owned by G. E. Mason, containing in all Four and Fifty-six Hundredths (4.56) Acres of land, being the same premises conveyed by G. E. Mason and Kate Mason, his wife, to Henry C. Paul, Trustee, by deed dated September 14th, 1905 and recorded in Deed Record Book 183, Page 486 of the records of said County.

ALSO:

All that part of the South One-half (1/2) of the Southwest Quarter (1/4) of Section Twenty-eight (28), Township Thirty (30) North, Range Twelve (12) East lying East of the Right-of-Way of the Lake Erie and Western Railway and North of the Public Highway running Eastwardly and Westwardly through said South Half (1/2), being Three Hundred Eighty-seven (387) feet long and Ninety (90) feet wide, also a strip sixty (60) feet wide and Fourteen Hundred and Eighty (1480) feet long in the South Half (1/2) of said Section, lying adjacent to and parallel with the East Right-of-Way line of the Lake Erie and Western Railway, extending from the North Line of the South Half (1/2) of the Southwest Quarter (1/4) of said Section to the point of tangent for the curve of the final location of the Fort Wayne, Bluffton and Marion Traction Railway about One Hundred Sixty (160) feet North of the center line of said Section.

EXCEPTING THEREFROM:

Part of the right-of-way of the former Fort Wayne & Northern Indiana Traction Company, situated in the south half of Section 28, Township 30 north, Range 12 east, Allen County, Indiana; in particular described as follows, to wit:

Commencing on the east line of the aforesaid right-of-way, at a point situated 600 feet north of north line of the public road known as Lower Huntington Road, as defined by the southwest corner of lot 75 in the plat of Abner S. Elzeys Third Addition to Waynedale; the said point being 10 feet west, and 13 feet north of the southwest corner of lot 66 in said Addition; thence north along the east line of the aforesaid right-of-way, a distance of 712 feet to the northwest corner of lot 78 in the plat of Waynedale Gardens Second Addition; thence west on the north line, produced westward, of said lot 78, a distance of 56.6 feet to the east line of the right-of-way of the Lake Erie & Western Rail Road; thence south along the aforesaid Rail Road right-of-way line a distance of 711.8 feet; thence east 58.2 feet to the place of beginning; containing 0.938 acres of land.

NOTE: The width of the former Traction Line right-of-way is described in conveyances as 60 feet in width, lying next east of and adjoining the right-of-way of the L.E. & W. R.R.

The average actual width is 57.4 feet as defined by old R/W fence trace and the established lines of the plats referred to.

ALSO EXCEPTING THEREFROM:

All that part of the south 1/2 of the southwest quarter (1/4) of section 28, township 30 north, range 12 east lying east of the right-of-way of the Lake Erie and Western Railway and north of the public highway running eastwardly and westwardly through said south 1/2, being three hundred eighty-seven (387) feet long and ninety (90) feet wide, also a strip sixty (60) feet wide and two hundred and thirteen (213) feet long in the south half (1/2) of said section lying adjacent to and parallel with the east right-of-way line of Lake Erie and Western Railway, extending from the north line of the south half (1/2) of the Southwest quarter (1/4) of said section to a point about eleven hundred and seven (1107) feet south of the centerline of said section.

COUNCIL DIGEST SHEET

Enclosed with this introduction form is a tab sheet and related material from the vendor(s) who submitted bid(s). Purchasing Department is providing this information to Council as an overview of this award.

RFPs, BIDS, OTHER PROJECTS

Bid/RFP#/Name of Project	Donation Agreement between City of Fort Wayne and Allen L. Poorman for property located in NE ¼ of S28, T30N, R12E in Wayne Township, Allen County, Indiana
Awarded To	Allen L. Poorman
Amount	N/A
Conflict of interest on file?	N/A
Number of Registrants	N/A
Number of Bidders	N/A
Required Attachments	

EXTENSIONS

Date Last Bid Out	N/A
# Extensions Granted To Date	

SPECIAL PROCUREMENT

Contract #/ID (State, Federal, Piggyback--Authority)	Donation Agreement between City of Fort Wayne and Allen Poorman for the acquisition of three vacant tracts of real estate located in NE ¼ of S28, T30N, R12E in Wayne Township, Allen County, Indiana
Sole Source/ Compatibility Justification	NA

BID CRITERIA (Take Buy Indiana requirements into consideration.)

Most Responsible, Responsive Lowest	No If no, explain below
If not lowest, explain	Property donated to City by Allen L. Poorman

COUNCIL DIGEST SHEET

COST COMPARISON

<i>Increase/decrease amount from prior years For annual purchase (if available).</i>	N/A
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DESCRIPTION OF PROJECT / NEED

<i>Identify need for project & describe project, attach supporting documents as necessary.</i>	City acquiring real estate to be included as a part of City's ongoing plan to convert flood prone areas to green space

REQUEST FOR PRIOR APPROVAL

<i>Provide justification if prior approval is being requested.</i>	N/A

FUNDING SOURCE

<i>Account Information.</i>	Flood acquisition funds



CITY OF FORT WAYNE

THOMAS C. HENRY, MAYOR

June 21, 2018

City Council Members
City of Fort Wayne

RE: City of Fort Wayne/Allen L. Poorman Donation Agreement
3404 South Lafayette Street

Dear Council Members:

The City has entered into a Donation Agreement to acquire three vacant tracts of real estate located in a part of the NE ¼ of S28, T30N, R12E in Wayne Township, Allen County, Indiana. A copy is attached.

The City of Fort Wayne Board of Public Works has approved this acquisition.

We are asking for Council to approve this donation.

If you have any questions on the above, please feel free to contact me at 427-5402.

Sincerely,

Daniel A. Brenner
Property Manager

ENGAGE • INNOVATE • PERFORM

CITIZENS SQUARE

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