

**A RESOLUTION APPROVING THE DONATION OF CERTAIN
REAL ESTATE LOCATED AT 2337 ELYETTA STREET IN
WAYNE TOWNSHIP, ALLEN COUNTY, INDIANA, FOR THE
CITY OF FORT WAYNE, BY AND THROUGH THE DIVISION
ON PUBLIC WORKS.**

WHEREAS, the City of Fort Wayne, through its Division of Public Works, passed Resolution #106-2-26-19-1, approving the donation of property located at **2337 Elyetta Street WAYNE TOWNSHIP, ALLEN COUNTY, INDIANA**, specifically described in the Donation Agreement, attached hereto and made a part hereof; and

WHEREAS, the Donation Agreement for the property located at **2337 ELYETTA STREET 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 donation of real estate to City of Fort Wayne through its Division of Public Works, located at **2337 ELYETTA STREET IN WAYNE TOWNSHIP, ALLEN COUNTY, INDIANA**, specifically described in the Donation Agreement, 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. That this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

Council Member

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APPROVED AS TO FORM AND LEGALITY:

Carol T. Helton, City Attorney

DONATION AGREEMENT

THIS AGREEMENT IS MADE this 26th day of February 2019 ("Effective Date") by and between Carl S. & Naureen P Ehinger, collectively ("Donor") and The City of Fort Wayne, an Indiana municipal corporation ("Donee").

WITNESSETH:

WHEREAS, Donor owns certain 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 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 the Property to Donee as a charitable contribution ("Conveyance") and Donee hereby agrees to accept such charitable Conveyance upon the terms and conditions set forth in this Agreement.
2. Donor shall convey to Donee, by quit claim deed, all title and interest Donor may have in the Property.

B. **Conveyance.**

1. Conveyance 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 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 precedent to the subject Conveyance.
2. At Conveyance, Donor shall deliver to Donee the following instruments:
 - (a) The quit claim deed; and
 - (b) Such other documents as may be reasonably required to consummate the Conveyance.
3. At Conveyance, Donee shall pay the pro-rated real estate taxes up to the date of Conveyance, and recording fees, and transfer fees related to the Conveyance of the Property.

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, and plats 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.

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.

D. Representations, Warranties and Indemnities of Donor.

Donor hereby represents and warrants to Donee as of the date of this Agreement (all of which shall be true as of the Conveyance):

1. **Title.** Donor is conveying to Donee any and all interest Donor may have in the Property by quit claim deed. To Donor's knowledge, all water and sewer charges and other utility and municipal charges, other than real estate taxes, to the extent due and owing, have been paid in full.

3. **No Encroachments.** To Donor's knowledge, 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 Donor's knowledge the Property is not subject to any lease or occupancy rights held by any third party.

5. **Contracts and Agreements.** To Donor's knowledge, 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 nor more than thirty (30) days advance written notice.

6. **Permits.** To Donor's knowledge, there are no permits or, licenses, required by regulatory authorities are required for the operation and use of the Property.

7. Litigation. To Donor's knowledge, there is no litigation or claim pending or raised against or involving the Property. (There may be an order to demolish, Donee is to confirm).

8. No Encumbrances. Except as may have been otherwise expressly provided herein, Donor, prior to Conveyance, 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 Donor's knowledge 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 Donee has ordered and received a title report or Donee's inspection discloses unsatisfactory conditions or restrictions, Donee shall have the right exercisable in its sole and absolute discretion, to cancel the Agreement, whereupon it shall be null and void. All costs for a title search and/or inspection shall be paid by Donee.

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. 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 such party at its address set forth below or at such other place as either party may designate by written notice to the other or by 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 the date it is placed in the possession of the United States Postal Service. For purposes of this Agreement, notice shall be sent to Seller and Purchaser as follows:

To Donor:

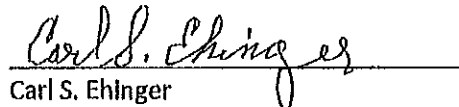
Carl S. & Naureen P. Ehinger
136 N West St.
New Haven, IN 46774

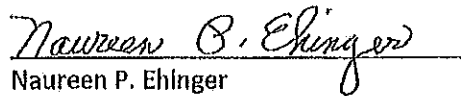
To Donee:

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

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

Donor:


Carl S. Ehinger


Naureen P. Ehinger

Donee:


City of Fort Wayne
By: Patrick Zaharako
Its: Flood Control Manager

Approval of Resolution #106-2-26-19-1, To Accept Donation of property located at 2337 Elyetta St for demolition and creation of green space.

BOARD OF PUBLIC WORKS

Date: 2.26.19

BY: 
Shan Gunawardena, Chair

BY: 
Kumar Menon, Member

BY: ABSENT
Mike Avila, Member

ATTEST: 
Michelle Fulk, Clerk



CITY OF FORT WAYNE

THOMAS C. HENRY, MAYOR

February 28, 2019

City Council Members
City of Fort Wayne

RE: City of Fort Wayne/Carl S. Ehinger and Naureen P. Ehinger Donation Agreement
2337 Elyetta Street

Dear Council Members:

The City has entered into a Donation Agreement to acquire approximately 2337 Elyetta Street 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 purchase.

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

Sincerely,

A handwritten signature in cursive script that reads "Daniel A. Brenner".

Daniel A. Brenner
Property Manager

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CITIZENS SQUARE

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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 Carl S. Ehinger and Naureen P. Ehinger for property located 2337 Elyetta Street in Wayne Township, Allen County, Indiana
Awarded To	Carl S. Ehinger and Naureen P. Ehinger
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 Carl S. Ehinger and Naureen P. Ehinger for property located 2337 Elyetta Street in Wayne Township, Allen County, Indiana
Sole Source/ Compatibility Justification	NA

BID CRITERIA (Take Buy Indiana requirements into consideration.)

Most Responsible, Responsive Lowest	No <i>If no, explain below</i>
If not lowest, explain	Property donated to City by Carl S. Ehinger and Naureen P. Ehinger

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>	N/A