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2 **BILL NO. R-19-08-01**

**RESOLUTION NO. \_\_\_\_\_**

3 **A RESOLUTION APPROVING THE**  
4 **SALE OF CERTAIN REAL ESTATE**  
5 **LOCATED AT 7305 LEWIS ROAD –**  
6 **RESOLUTION #106-7-23-19-1 FOR**  
7 **THE CITY OF FORT WAYNE, DIVISION**  
8 **OF CITY UTILITIES.**

9 **WHEREAS,** the City of Fort Wayne, through its Division of City  
10 Utilities, desires to sell a parcel of vacant property located at 7305 Lewis Road,  
11 specifically described in the Real Property Purchase Agreement, Exhibit "1,"  
12 attached hereto and made a part hereof; and

13 **WHEREAS,** the City of Fort Wayne, through its Division of City  
14 Utilities, desires to sell this property for SIXTY-NINE THOUSAND THREE  
15 HUNDRED AND 00/100 DOLLARS – (\$69,300.00) and

16 **WHEREAS,** IC 36-1-11-3-(c)(1) requires Common Council approval of any  
17 sale of real estate by the City having an appraised value of at least \$50,000.

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

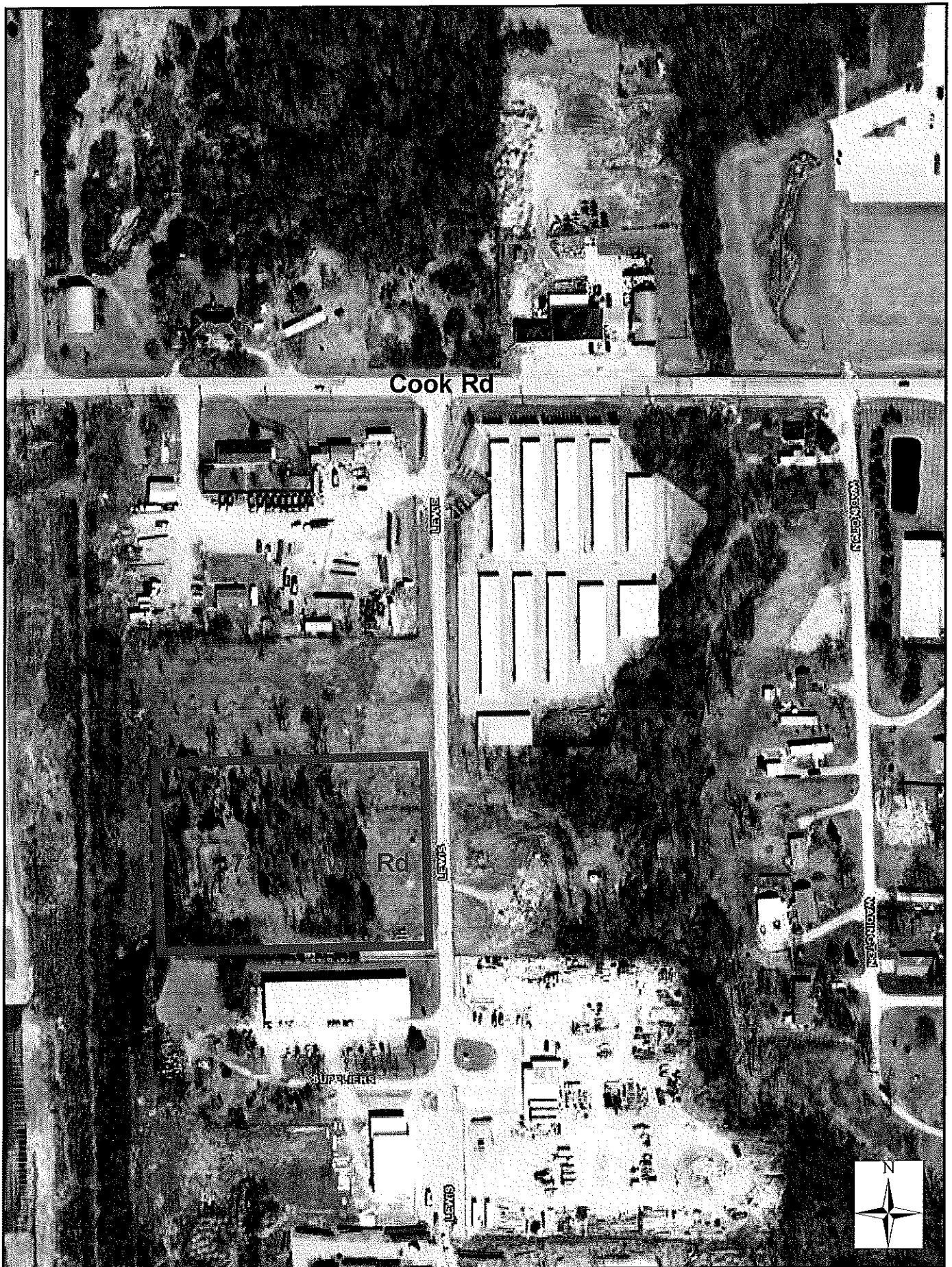
20 **SECTION 1.** The sale of real estate by the City of Fort Wayne  
21 through its Division of City Utilities, located at 7305 Lewis Road is hereby approved  
22 and agreed to. The appropriate officials of the City are hereby authorized to  
23 execute all documents necessary to accomplish said sale.  
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**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



**A RESOLUTION OF BOARD OF PUBLIC WORKS  
OF THE CITY OF FORT WAYNE, INDIANA,  
APPROVING THE DISPOSAL OF A CERTAIN REAL PROPERTY  
LOCATED AT 7305 LEWS ROAD IN FORT WAYNE, INDIANA**

**RESOLUTION NUMBER 106-7-23-19-1**

WHEREAS, Resolution no. 106-6-18-19-2 having been approved by the Board of Public Works of the City of Fort Wayne (the "Board") on June 18, 2019, stating its intent to dispose of a certain vacant real property located at 7305 Lewis Road in Fort Wayne, Indiana (the "Property") as a surplus asset; and

WHEREAS, the Board having published notice and received bids pursuant to Indiana Code section 36-1-11-4; and

WHEREAS, the sole bidder on the Property having entered into a purchase agreement to purchase the property for \$69,300.00, a true and correct copy of which agreement is attached hereto as Exhibit 1 and incorporated herein by this reference;

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF FORT WAYNE, INDIANA BOARD OF PUBLIC WORKS AS FOLLOWS:

The Board hereby approves the offer submitted by Phil Zimmerman of Zimmerman Equity ("Buyer") to purchase the Property from the City of Fort Wayne ("Seller") for the purchase price of \$69,300.00, on the terms of the purchase agreement attached as Exhibit 1.


(Remainder of the page intentionally left blank—signature page to follow.)

APPROVED this 23<sup>rd</sup> day of July, 2019.

**BOARD OF PUBLIC WORKS**

BY:   
Shan Gunawardena, Chair

BY:   
Kumar Menon, Member

BY:   
Mike Avila, Member

ATTEST:   
Michelle Fulk-Vondran, Clerk

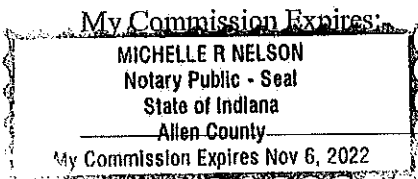
Prepared by: Seth Weinglass, City of Fort Wayne, Program Manager, Capital Project Services

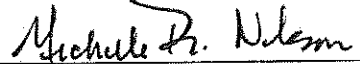
**ACKNOWLEDGEMENT**

STATE OF INDIANA     )  
                                      )   SS  
COUNTY OF ALLEN     )

Before me, a Notary Public, in and for said County and State personally appeared Shan Gunawardena, Kumar Menon, and Mike Avila, as Members of the Board of Public Works of the City of Fort Wayne, and Michelle Fulk-Vondran, Clerk of the Board of Works, and acknowledged the execution of the foregoing contract as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this 23<sup>rd</sup> day of July, 2019.



  
Notary Public

Resident of Allen County

Michelle R. Nelson  
Printed Name of Notary

## Exhibit 1

## REAL PROPERTY PURCHASE AGREEMENT

Fort Wayne City Utilities

The City of Fort Wayne ("Seller") agrees to sell 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

Buyer(s) Name(s): Phil Zimmerman ("Buyer")

Zimmerman Equity

Primary Telephone: 260-451-0565

Facsimile: 260-451-0883 E-mail: Phil@zseptic.com

Mailing Address: 3020 Congressional Pkwy Suite B

City/Town: Fort Wayne

State: IN

Zip Code: 46808

Property Address: 7305 Lewis Rd.

City/Town: Fort Wayne, Indiana

Zip Code: 46818

Latest Deed of Record: Document Number 2009045108

Tax ID Number: 02-07-15-101-005.000-073

Area being purchased: entire lot (~2.95 acres)

Abbreviated Legal Description from Tax Records: 5-15-1-050

S 300 OF N 900 OF W 430 FT E OF ISC NW1/4 SEC 15

Section: 15 - Township: 31 North - Range: 12 East, 2<sup>nd</sup> Principal Meridian

Land area of total parcel: 2.95 acres

### PURCHASE PRICE

The City agrees to accept from the Buyer the total purchase amount of \$69,300.00 (Sixty-Nine Thousand Three Hundred Dollars and Zero Cents) for the Property which includes the entire parcel of land. There are not any accessory buildings.

### EXPIRATION OF OFFER

This Purchase Agreement shall be returned to the City no later than 12 noon, on July 26, 2019, otherwise this Purchase Agreement shall be null and void and both parties shall be released from the transaction.

### APPROVALS BY BOARD OF PUBLIC WORKS and COMMON COUNCIL

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

# REAL PROPERTY PURCHASE AGREEMENT

Fort Wayne City Utilities

## CLOSING

### Closing Date:

The closing date for this transaction shall be on or before September 20, 2019, or this Agreement shall terminate unless an extension of time is mutually agreed to in writing. Any change in the closing date shall be agreed to in writing by both parties.

### Location of Closing:

The closing shall be held at a place TBD.

### Closing Fees:

All fees charged by the closing agent, including document preparation and recording fees shall be paid by the City.

## METHOD OF PAYMENT

The entire amount shall be paid in cash.

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

## POSSESSION

Possession of the Property shall be given to the Buyer at closing.

## 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.

## BOUNDARY SURVEY

If indicated below, 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. Such 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 expense for the survey shall be shared equally.

Or

\_\_\_\_\_ The requirement for a survey is waived.

**REAL PROPERTY PURCHASE AGREEMENT**  
Fort Wayne City Utilities

**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**

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

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

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

Inspections and Response Periods:

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

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

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

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



**REAL PROPERTY PURCHASE AGREEMENT**  
Fort Wayne City Utilities

**DISCLOSURES**

The "Residential Real Estate Sales Disclosure" form is Not Applicable.

The "Lead-Based Paint Certification and Acknowledgment" form is Not Applicable.

**TITLE WORK and DEED**

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

Title Insurance Fees:

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

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

Type of Deed:

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

**REAL PROPERTY TAXES**

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

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

**PRORATIONS for PUBLIC UTILITIES and SPECIAL ASSESSMENTS**

Utilities and Garbage Services:

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

Shutting Off Utilities for Buildings to be Demolished:

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

Special Assessments for Public Improvements:

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

**REAL PROPERTY PURCHASE AGREEMENT**  
**Fort Wayne City Utilities**

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

**LEGAL JURISDICTION**

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

**LEGAL FEES**

In any dispute or legal proceeding brought in regard to this Purchase Agreement or the associated transaction, each party shall bear their own attorney's fees, except as provided by law.

**SAVINGS CLAUSE**

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

**OTHER STIPULATIONS**

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

**ADDITIONAL CONDITIONS**

If executed prior to July 26, 2019, this agreement is expressly contingent to no higher qualifying bids being received for the Property through July 26, 2019.

\_\_\_\_\_

\_\_\_\_\_

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

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

[Executions on following page.]

REAL PROPERTY PURCHASE AGREEMENT  
Fort Wayne City Utilities

245 SELLER'S SIGNATURE:

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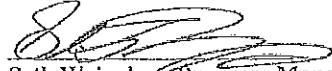
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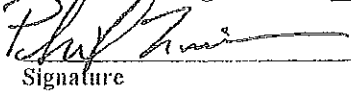
Date: 7/17/19

Seth Weinglass, Program Manager, Capital Project Services, Fort Wayne City Utilities

Telephone: 260-427-1330 Fax: 260-427-2540 E-mail: seth.weinglass@cityoffortwayne.org

BUYER'S SIGNATURE(S):

This Purchase Agreement is X ACCEPTED        REJECTED.



Signature

Phil Zimmerman

President

Date: 7-17-19

Printed Name & Title, if Applicable

Interoffice Memo

Date: July 24, 2019  
To: Common Council Members  
From: Seth Weinglass, Program Manager – Capital Project Services – Telephone: 427-1330  
RE: Sale of 7305 Lewis Rd., Fort Wayne, Indiana 46805

**Council Introduction Date: August 13, 2019—Council District #: 3**

Background & supporting information:

City Utilities has reached an agreement to sell a parcel of vacant, industrially-zoned land at 7305 Lewis Road, which is located south of Cook Road and west of Lima Road. The land was formerly the site of a potable water well, acquired from Aqua Indiana. That facility has been retired and removed, and the land is now a surplus asset for City Utilities.

The land was appraised and put up for public auction pursuant to Indiana Code section 36-1-11-4. A single bid was received, in the minimum bid amount of \$69,300. The winning bidder was Phil Zimmerman, the owner of Zimmerman Septic Services. Mr. Zimmerman has agreed to City Utilities' terms and conditions of the sale and has executed a purchase agreement (attached as Exhibit 1 to Board of Works resolution 106-7-23-19-1, enclosed). Since the bid amount exceeds \$50,000, Council approval is required by Indiana Code section IC 36-1-11-3(c)(1).

Implications of not being approved:

If this sale is not approved, City Utilities will not realize the negotiated proceeds of the transaction, and will continue to incur the liabilities of ownership of this surplus land.

Justification if prior approval is being requested: Not applicable

Funding source: Not applicable.

Attachments:

- Aerial map
- Board of Public Works Resolution approving purchase agreement

CC: Matthew Wirtz  
Diane Brown  
Project file