

1 **BILL NO. R-19-10-04**

2 **RESOLUTION NO. _____**

3 **A RESOLUTION APPROVING THE PURCHASE**
4 **OF CERTAIN REAL ESTATE FOR THE CITY OF**
5 **FORT WAYNE, DIVISION OF CITY UTILITIES –**
6 **BOARD OF WORKS RESOLUTION NO. 106-10-**
7 **8-19-1 - \$190,000.00.**

8 **WHEREAS**, the City of Fort Wayne, Division of City Utilities, desires
9 to purchase property located at 2502 Dwenger Ave., Fort Wayne, Indiana, for
10 equipment and vehicle storage and office space and planned future expansion of
11 the Water Pollution Control Plant; and

12 **WHEREAS**, the City of Fort Wayne, through its Board of Public
13 Works, has approved the purchase of the property pursuant to Board of Public
14 Works Resolution Number 106-10-8-19-1, Exhibit "A" attached hereto and made a
15 part hereof; and

16 **WHEREAS**, the purchase price for the property is ONE HUNDRED
17 NINETY THOUSAND AND 00/100 DOLLARS – (\$190,000.00); and

18 **WHEREAS**, Sec. 37-25 of the City of Fort Wayne Code of
19 Ordinances, requires the Common Council approval of any purchase of real estate
20 by the City.

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

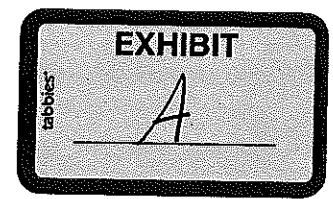
23 **SECTION 1.** The purchase of real estate by the City of Fort Wayne
24 by its Division of City Utilities, located at 2502 Dwenger Ave., Fort Wayne Indiana,
25 specifically described in the Board of Public Works Resolution, Exhibit "A," is
26 hereby approved and agreed to. The appropriate officials of the City are hereby
27 authorized to execute all documents necessary to accomplish said purchase.
28
29
30

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 THE CITY OF FORT WAYNE, INDIANA
BOARD OF PUBLIC WORKS
APPROVING THE PURCHASE OF CERTAIN REAL PROPERTY
LOCATED AT 2502 DWENGER AVE**

RESOLUTION NUMBER 106-10-8-19-1

WHEREAS, the City of Fort Wayne (the "City") wishes to purchase that certain improved real property located at 2502 Dwenger Avenue, more fully described in Exhibit "1" attached hereto, incorporated herein by this reference (the "Real Estate");

WHEREAS, the purchase of the Real Estate is in the best interest of the public health, safety, and welfare, and will facilitate City Utilities' needs for office space, equipment and vehicle storage, and future expansion of the Water Pollution Control Plant, and for other purposes; and

WHEREAS, the owner of the Real Estate, Scherer Realty, LLC, wishes to voluntarily sell the Real Estate to the City for an agreed-upon purchase price of One Hundred and Ninety Thousand Dollars and Zero Cents (\$190,000.00), pursuant to the terms of the purchase agreement attached as Exhibit "2" hereto, incorporated herein by this reference.

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

The purchase of the Real Estate by the City of Fort Wayne, Indiana, for the purchase price of One Hundred and Ninety Thousand Dollars and Zero Cents (\$190,000.00) is hereby approved.

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

APPROVED this 8th day of October, 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 8th day of October, 2019.

My Commission Expires:

Notary Public

Resident of _____ County

Printed Name of Notary

EXHIBIT 1

PROPERTY OWNER NAME AND MAILING ADDRESS:

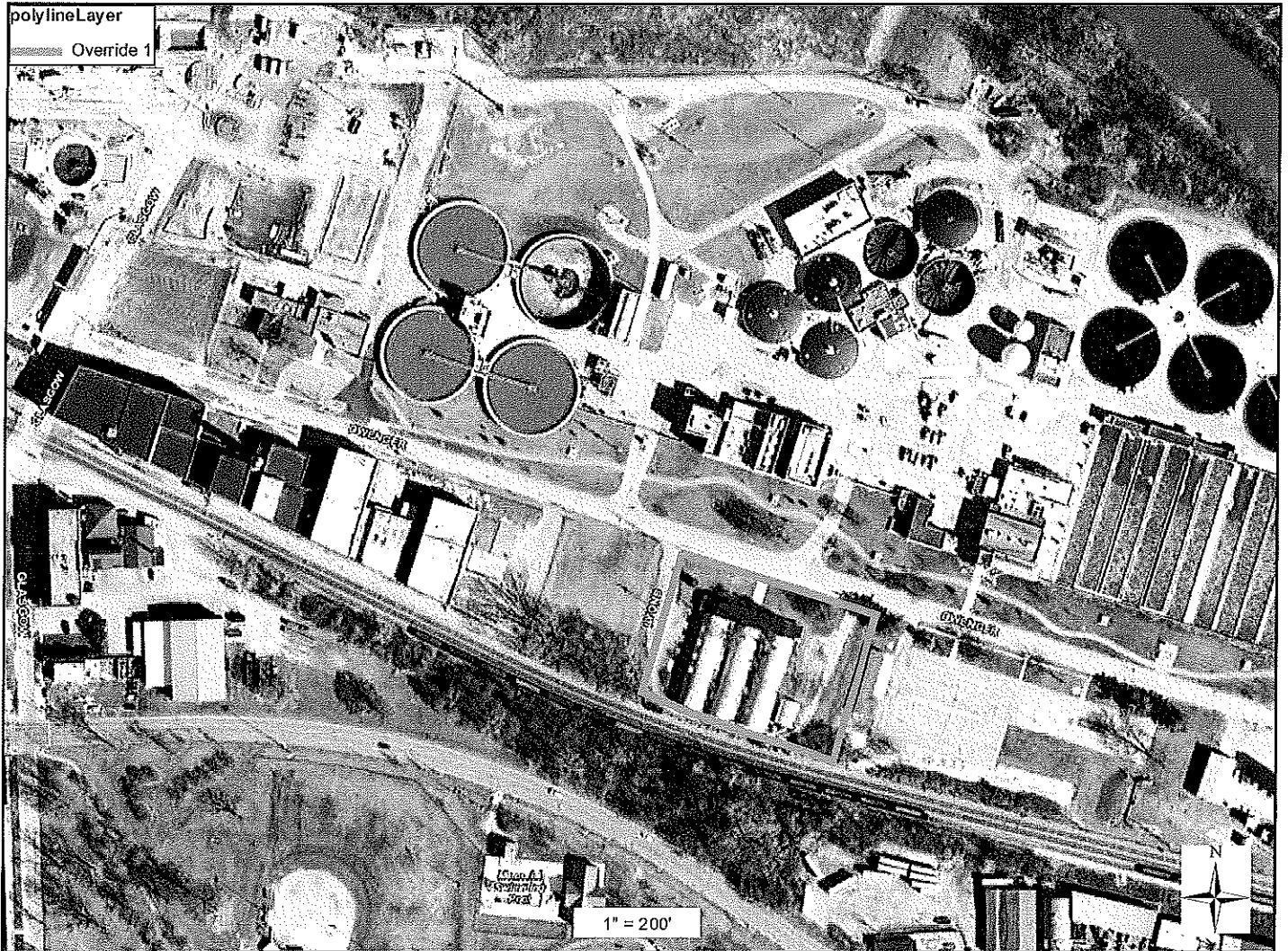
Landowner: Scherer Realty, LLC
Mailing Address: 107 N Hadley Rd
Fort Wayne, IN 46804

AFFECTED PROPERTY:

Address: 2505 Dwenger Avenue
Parcel ID Number: 02-13-06-402-001.000-074
Legal Description: Lots 23 through 30 of Whites 4th Addition
Last Deed: Document number 204003001

INTEREST TO BE ACQUIRED: Fee simple in the entire parcel, comprising 1.755 acres, including all appurtenances and structural improvements.

2502 Dwenger Ave



October 2, 2019

This map is intended for general reference purposes only. The information displayed herein is not guaranteed to be

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EXHIBIT 2

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

Owner(s) Name(s): Scherer Realty, LLC ("Seller")

Primary Telephone: 260-609-3710

E-mail: pamelagleason@aol.com

Mailing Address: 107 North Hadley Road

City/Town: Fort Wayne, State: Indiana Zip Code: 46804

Property Address: 2502 Dwenger Avenue

City/Town: Fort Wayne, Indiana (Zip Code): 46803

Latest Deed of Record:

Document Number: 204003001

Platted Parcel:

Tax ID Number: 02-13-06-402-001.000-074

Lot Number: 23-30 Subdivision Name: Whites 4th Addition

Land area of total parcel: 1.76 acres

PURCHASE PRICE

The City agrees to pay to the Seller the total purchase amount of **\$190,000.00 (One Hundred Ninety Thousand Dollars and Zero Cents)** for the Property which includes the entire parcel of land and the accessory buildings.

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

EXPIRATION OF OFFER

This Purchase Agreement shall be returned to the City no later than **12 noon, on April 12, 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.

CLOSING

Closing Date:

The closing date for this transaction shall be on or before **September 9, 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.

REAL PROPERTY PURCHASE AGREEMENT

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Location of Closing:

The closing shall be held at TBD

Closing Fees:

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

EARNEST MONEY

If the City of Fort Wayne is the Purchaser:

The **City** as a policy does not pay earnest money.

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**. If the **Seller** does not grant possession by the date and time stated above, the **Seller** shall pay the **Buyer** the amount of **\$100** per day as liquidated damages until possession is delivered to the **Buyer**. The **Buyer** shall have all other legal remedies available for use against the **Seller**, to the extent allowed by law.

PROPERTY MAINTENANCE

Lawn Mowing:

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

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.

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

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REAL PROPERTY PURCHASE AGREEMENT

Fort Wayne City Utilities

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.

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

REAL PROPERTY PURCHASE AGREEMENT

Fort Wayne City Utilities

the Property, or that if not repaired, removed, or replaced, would significantly shorten or adversely affect the expected normal life of the premises.)

DISCLOSURES

The **Buyer** has waived the "Lead-Based Paint Certification and Acknowledgment" form.

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 **Buyer**.

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

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.

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.

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**.

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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

A party to this Purchase Agreement who prevails in any legal proceeding against any other party brought in regard to this Purchase Agreement or associated transaction shall be allowed to recover court costs and reasonable attorney's fees from the other party, to the extent permitted 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. The **Seller** discloses that it holds Indiana Real Estate License # _____.

ADDITIONAL CONDITIONS:

Purchase is conditional on satisfactory result of environmental inspection, ongoing as of the date of this agreement. Cost of environmental inspection is being shared by Buyer and Seller outside of this agreement, thus no cost adjustment shall be due to or from either party at closing by reason of such environmental inspection.

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.

BUYER'S SIGNATURE:



Date: 3/22/19

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

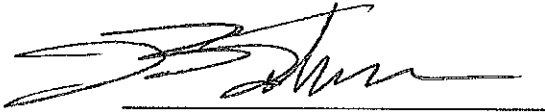
Telephone: 260-427-1330 Fax: 260-427-2540 E-mail: seth.weinglass@cityoffortwayne.org

SELLER APPROVAL and SIGNATURE(S):

This Purchase Agreement is  ACCEPTED _____ REJECTED.

REAL PROPERTY PURCHASE AGREEMENT

Fort Wayne City Utilities



Signature

David B Scherer
Printed Name & Title, if Applicable

Date: 3/22/2019

Interoffice Memo

Date: October 3, 2019
To: Common Council Members
From: Seth Weinglass, Program Manager – Capital Project Services – Telephone: 427-1330
RE: **Purchase of 2502 Dwenger Ave., Fort Wayne, Indiana 46803**

Council Introduction Date: October 8, 2019—Council District #: 5

Background & supporting information:

City Utilities has reached an agreement to purchase 2502 Dwenger Avenue from its owner Scherer Realty, LLC. In the short term, the site will be used for equipment and vehicle storage and office space; in the long-term it will be used for expansion of the Water Pollution Control Plant, located across the street. City Utilities conducted environmental investigations of the site and worked with Indiana Brownfields Program to obtain limits to the City's liability for any existing environmental conditions. The agreed-upon purchase price is \$190,000.00, the average of two appraisals.

Implications of not being approved:

If this purchase is not approved, it is likely that City Utilities will need to seek other land at a higher price for its current operations and future plant expansion.

Justification if prior approval is being requested: Not applicable

Funding source: CUE Revenue

Attachments:

- Map
- Resolution for purchase submitted for approval by the Board of Public Works.

CC: Matthew Wirtz
John Clark
Mark Gensic
Mike Kiester
Project file