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2 **BILL NO. R-19-11-26**

3 **RESOLUTION NO. _____**

4 **A RESOLUTION APPROVING THE ACQUISITION/DONATION**
5 **OF TWO (2) PARCELS OF CERTAIN REAL ESTATE**
6 **LOCATED ON THE NORTH SIDE AND SOUTH SIDE OF**
7 **DEFOREST AVENUE BETWEEN SANDPOINT ROAD AND**
8 **WILLOW OAKS DRIVE, WAYNE TOWNSHIP, FORT WAYNE,**
9 **INDIANA, FOR THE CITY OF FORT WAYNE, BY AND**
10 **THROUGH THE DIVISION OF PUBLIC WORKS -**
11 **RESOLUTION #106-11-12-19-3.**

12 **WHEREAS,** the City of Fort Wayne, through its Division of Public
13 Works – Resolution #106-11-12-19-3, desires to acquire properties located on **THE**
14 **NORTH SIDE AND SOUTH SIDE OF DEFOREST AVENUE BETWEEN**
15 **SANDPOINT ROAD AND WILLOW OAKS DRIVE, WAYNE TOWNSHIP, FORT**
16 **WAYNE, INDIANA,** specifically described in the Donation Agreement, Exhibit "A,"
17 attached hereto and made a part hereof; and

18 **WHEREAS,** the Donation Agreement for the properties located on **THE**
19 **NORTH SIDE AND SOUTH SIDE OF DEFOREST AVENUE BETWEEN**
20 **SANDPOINT ROAD AND WILLOW OAKS DRIVE, WAYNE TOWNSHIP, FORT**
21 **WAYNE, INDIANA,** is submitted to the Common Council for approval.

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

24 **SECTION 1.** The acquisition of two (2) parcels of real estate by the
25 City of Fort Wayne through its Division of Public Works, located on **THE NORTH**
26 **SIDE AND SOUTH SIDE OF DEFOREST AVENUE BETWEEN SANDPOINT**
27 **ROAD AND WILLOW OAKS DRIVE, WAYNE TOWNSHIP, FORT WAYNE,**
28 **INDIANA,** specifically described in the Donation Agreement, Exhibit "A," is hereby
29 approved and agreed to. The appropriate officials of the City are hereby authorized
30

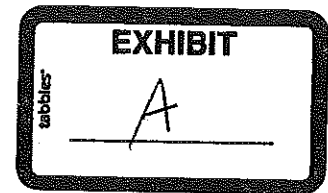
1 to execute all documents necessary to accomplish said donation.

2 **SECTION 2.** This Resolution shall be in full force and effect from and
3 after its passage and any and all necessary approval by the Mayor.
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6 _____
7 Council Member

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9 APPROVED AS TO FORM AND LEGALITY

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11 _____
12 Carol Helton, City Attorney
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DONATION AGREEMENT

THIS AGREEMENT IS MADE this 17th day of Nov, 2019 ("Effective Date") by and between Allen L. Poorman, ("Donor") and The City of Fort Wayne, an Indiana municipal corporation ("Donee")

WITNES SETH:

WHEREAS, Donor owns certain unimproved real property in the City of Fort Wayne, Indiana, a partial description of which is attached hereto and made a part hereof as Exhibit A. (the "Property"); said final legal description shall be provided by a land survey.

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 the City of Fort Wayne Board of Public Works and the Common Council of the City of Fort Wayne. The obtaining of such approval 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 beginning in May of 2020, the costs of title examination, title insurance, survey, recording fees, 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 record;
 - (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
2. Compliance with Laws and Regulations. Donor has received no notices of any action or governmental proceeding in eminent domain, zoning charge 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 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

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.

Sheryl K. Poorman
Witness:
Sheryl K. Poorman

Donor:
Allen L. Poorman
Allen L. Poorman

Sheryl K. Poorman
Witness:
Sheryl K. Poorman

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

Exhibit A

LEGAL DESCRIPTION:

TRACT 1

Part of the East Half of Section 21 and Part of the West Half of Section 22 all in Township 30 North, Range 12 East, Allen County, Indiana being a parcel of land surveyed by Gregory L. Roberts, Professional Surveyor #60040548 and shown on a PLAT OF SURVEY certified on June 18, 2019 as Donovan Engineering, Inc. Job Number 19-3440 more particularly described as follows:

Beginning at the intersection of the West line of the Northwest Quarter of Section 22, Township 30 North, Range 12 East, Allen County, Indiana and the Northwest right of way line of the former Fort Wayne-Buffton Electric Railway (former Fort Wayne, Buffalo and Marion Interurban Railroad), said point being the Easement corner of Lot Number 38 in Sand Point Gardens an addition to the City of Fort Wayne, according to the plat recorded in Plat Book 11, page 67 in the Office of the Recorder of Allen County, Indiana; thence South 25 degrees 04 minutes 44 seconds West (NAD83 INCOGS GPS datum and basis for this description) along said West right of way line and along the East line of Sand Point Gardens Extended, Southwesterly a distance of 982.89 feet to a point on the North right of way line of Willow Oaks Drive; thence North 88 degrees 38 minutes 00 seconds East along the North right of way line of Willow Oaks Drive Extended a distance of 11.17 feet to a point on the West right of way line of DeForest Avenue; thence North 25 degrees 04 minutes 44 seconds East along right of way line a distance of 977.74 feet; thence North 24 degrees 52 minutes 12 seconds East along said right of way line a distance of 1008.35 feet to the Southeast corner of a tract of land conveyed to M. M. & M. J. Baker as recorded in Document 2015035597 as recorded in the Office of the Recorder of Allen County, Indiana; thence North 85 degrees 07 minutes 48 seconds West a distance of 10.0 feet to a point on the West right of way line of the former Fort Wayne-Buffton Electric Railway; thence South 24 degrees 52 minutes 12 seconds West along said right of way line a distance of 1008.35 feet to the point of beginning, containing 0.457 acres.

TRACT 2

Part of the East Half of Section 21 and Part of the West Half of Section 22 all in Township 30 North, Range 12 East, Allen County, Indiana being a parcel of land surveyed by Gregory L. Roberts, Professional Surveyor #60040548 and shown on a PLAT OF SURVEY certified on June 18, 2019 as Donovan Engineering, Inc. Job Number 19-3440 more particularly described as follows:

Commencing at the intersection of the West line of the Northwest Quarter of Section 22, Township 30 North, Range 12 East, Allen County, Indiana and the Northwest right of way line of the former Fort Wayne-Buffton Electric Railway (former Fort Wayne, Buffalo and Marion Interurban Railroad), said point being the Easement corner of Lot Number 38 in Sand Point Gardens an addition to the City of Fort Wayne according to the plat recorded in Plat Book 11, page 67 in the Office of the Recorder of Allen County, Indiana; thence South 25 degrees 04 minutes 44 seconds West (NAD83 INCOGS GPS datum and basis for this description) along said West right of way line and along the East line of Sand Point Gardens Extended, Southwesterly a distance of 982.89 feet to the point on the North right of way line of Willow Oaks Drive; thence North 88 degrees 38 minutes 00 seconds East along the North right of way line of Willow Oaks Drive, Extended a distance of 11.17 feet to the point on the West right of way line of DeForest Avenue, said point being the POINT OF BEGINNING; thence North 25 degrees 04 minutes 44 seconds East along said right of way line a distance of 977.74 feet; thence North 24 degrees 52 minutes 12 seconds East along said right of way line a distance of 1008.35 feet to a point on the Southeast corner of a tract of land conveyed to M. M. & M. J. Baker as recorded in Document 2015035597 as recorded in the Office of the Recorder of Allen County, Indiana; thence North 85 degrees 07 minutes 48 seconds West a distance of 10.0 feet to a point on the West right of way line of the former Fort Wayne-Buffton Electric Railway; thence South 24 degrees 52 minutes 12 seconds West along said right of way line a distance of 1008.35 feet to the point of beginning, containing 0.555 acres.

**A RESOLUTION OF THE CITY OF FORT WAYNE, INDIANA
BOARD OF PUBLIC WORKS
APPROVING THE DONATION OF TWO 10' STRIPS OF LAND**

RESOLUTION #106-11-12-19-3

WHEREAS, the City of Fort Wayne (the "City") wishes to acquire two parcels of real estate, located on the north side and south side of DeForest Avenue between Sandpoint Road and Willow Oaks Drive; and

WHEREAS, the City wishes to acquire from Allen L. Poorman those two parcels of real estate located on the north side and south side of DeForest Avenue between Sandpoint Road and Willow Oaks Drive ; and

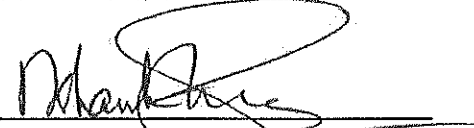
WHEREAS, Allen L. Poorman, wishes to voluntarily donate the Real Estate to the City for an agreed-upon purchase price of Zero Dollars (\$0,000.00).

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

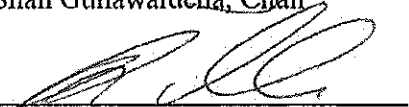
The purchase of the Real Estate by the City of Fort Wayne, Indiana, in the amount of Zero (\$0,000.00) is hereby approved.

APPROVED this 12th day of November 2019.

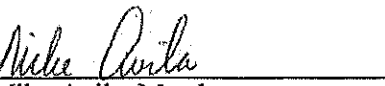
BOARD OF PUBLIC WORKS

BY: 

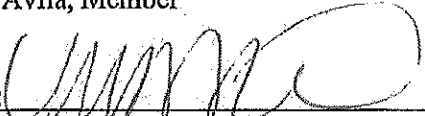
Shan Gunawardena, Chair

BY: 

Kumar Menon, Member

BY: 

Mike Avila, Member

ATTEST: 

Michelle Fulk-Vondran, Clerk

Prepared by: Dan Brenner, City of Fort Wayne, Property Manager

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 on the north side and south side of DeForest Avenue between Sandpoint Road and Willow Oaks Drive 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 L. Poorman for property located on the north side and south side of DeForest Avenue between Sandpoint Road and Willow Oaks Drive 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 for future Right Of Way purposes

REQUEST FOR PRIOR APPROVAL

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

FUNDING SOURCE

<i>Account Information.</i>	N/A



CITY OF FORT WAYNE

THOMAS C. HENRY, MAYOR

November 18, 2019

City Council Members
City of Fort Wayne

RE: City of Fort Wayne/Allen L. Poorman Donation Agreement of property located on the north side and south side of DeForest Avenue between Sandpoint Road and Willow Oaks Drive

Dear Council Members:

The City has entered into a Donation Agreement to acquire property located on the north side and south side of DeForest Avenue between Sandpoint Road and Willow Oaks Drive 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 acquisition.

If you have any questions on the above, please feel free to contact me at 427-2317.

Sincerely,

A handwritten signature in cursive script, appearing to read "Chris Carmichael".

Christopher Carmichael
Assistant Property Manager

ENGAGE • INNOVATE • PERFORM

CITIZENS SQUARE

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