

1 **BILL NO. R-21-11-27**

2 **RESOLUTION NO. _____**

3
4 **A RESOLUTION APPROVING THE**
5 **SALE OF CERTAIN REAL ESTATE**
6 **LOCATED AT 14511 COVINGTON**
7 **ROAD – RESOLUTION #108-7-20-21-1**
8 **FOR THE CITY OF FORT WAYNE,**
9 **DIVISION OF CITY UTILITIES.**

10 **WHEREAS,** the City of Fort Wayne, through its Division of City
11 Utilities, desires to sell the site of a former Aqua water treatment facility located at
12 14511 Covington Road, specifically described in the Real Property Purchase
13 Agreement attached hereto and made a part hereof; and

14 **WHEREAS,** the City of Fort Wayne, through its Division of City
15 Utilities, desires to sell this property for TWO HUNDRED THOUSAND AND 00/100
16 DOLLARS – (\$200,000.00) and

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

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

21 **SECTION 1.** The sale of real estate by the City of Fort Wayne
22 through its Division of City Utilities, located at 14511 Covington Road is hereby
23 approved and agreed to. The appropriate officials of the City are hereby authorized
24 to 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
CERTAIN REAL ESTATE
LOCATED AT 14511 COVINGTON ROAD
IN ABOITE TOWNSHIP, INDIANA**

RESOLUTION NUMBER 108-7-20-21-1

WHEREAS, the City of Fort Wayne (the "City") holds fee simple title to certain real property located at 14511 Covington Road in Aboite Township, Indiana, comprising some 10.21 acres of land, and including certain structural improvements and fixtures formerly used as potable water treatment facilities, as more particularly described and depicted in Exhibit 1 attached hereto, incorporated herein by this reference (the "Property"); and

WHEREAS, the City intends the Property, including said improvements and fixtures thereon, to be sold on an "AS-IS" basis; and

WHEREAS, aside from one remaining active underground water main that will be protected by a 20' easement along the eastern property boundary as a condition of the sale, the City has no present use for such Property, and future use by the City is unlikely, as all valuable equipment has been removed and the water treatment facilities decommissioned; and

WHEREAS, pursuant to Indiana Code 36-1-11-4, the Property has been appraised by two licensed, professional appraisers, and the disposing agent has determined a minimum bid for the property based on the appraisals and the disposing agent's knowledge of the property.

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

The City hereby resolves to sell the Property pursuant to the Indiana Code.

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

APPROVED this this 20th day of July, 2021.

BOARD OF PUBLIC WORKS

BY: [Signature]
Shan Gunawardena, Chair of Public Works

BY: [Signature]
Kumar Menon, Member

BY: [Signature]
Chris Guerrero, Member

ATTEST: [Signature]
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 Chris Guerrero, 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 20th day of July, 2021.



Michelle R. Nelson
Notary Public

Resident of Allen County
Michelle R. Nelson
Printed Name of Notary

EXHIBIT 1

PROPERTY OWNER NAME AND MAILING ADDRESS:

Landowner: City of Fort Wayne, Indiana
Mailing Address: 200 E Berry St. Ste. 250
Fort Wayne, IN 46802

AFFECTED PROPERTY:

PIN: 02-11-18-206-017.000-038
Address: 14511 Covington Road
Last Deed: 2014058234 [Parcel "III"]
Prior Deed: 86-042701 [Contains restrictive covenants]

Legal description:

Part of the Northwest Quarter of the Northeast Quarter of Section 18, Township 30 North, Range 11 East, Allen County, Indiana, more particularly described as follows:

Beginning at the Northeast corner of the Northwest Quarter of the Northeast Quarter of Section 18, Township 30 North, Range 11 East, Allen County, Indiana; thence South along the East line of the Northwest Quarter of the Northeast Quarter of Section 18, Township 30, Range 11, a distance of 1200.00 feet; thence West with a deflection angle to the right of 88 degrees 23 minutes 00 seconds and parallel to the North line of the Northwest Quarter of Northwest Quarter of Section 18, Township 30, Range 11, a distance of 600.0 feet; thence North with a deflection angle to the right of 91 degrees 3 7 minutes 00 seconds and parallel to the East line of the Northwest Quarter of the Northeast Quarter of Section 18, Township 30, Range 11, a distance of 700.0 feet; thence East with a deflection angle to the right of 88 degrees 23 minutes 00 seconds and parallel to the North line of the Northwest Quarter of the Northeast Quarter of Section 18, Township 30, Range 11, a distance of 550.0 feet to a point 50.0 feet West of the East line of the Northwest Quarter of the Northeast Quarter of Section 18, Township 30, Range 11; thence North with a deflection angle to the left of 88 degrees 23 minutes 00 seconds and parallel to the East line of the Northwest Quarter of the Northeast Quarter of Section 18, Township 30, Range 11 a distance of 500.0 feet to a point on the North line of the Northwest Quarter of the Northeast Quarter of Section 18, Township 30, Range 11; thence East with a deflection angle to the right of 88 degrees 23 minutes 00 seconds along the North line of the Northwest Quarter of the Northeast Quarter of Section 18, Township 30, Range 11, a distance of 50.0 feet to the point of beginning, containing 10.21 acres, more or less.

INTEREST TO BE SOLD: Fee simple in the entire 10.21-acre parcel, including improvements and fixtures, to be sold "AS-IS," reserving a 20' utility easement along the eastern property boundary.

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 Property (as hereinafter defined) for the consideration stated below subject to the conditions, requirements, and stipulations described in the following Purchase Agreement ("Purchase Agreement").

CONTACT INFORMATION and LOCATION OF PROPERTY

Buyer's Name: Bunn Real Estate Holdings, LLC ("Buyer")

Primary Telephone: 260-417-5222

E-mail: bart@bunninc.com

Mailing Address: 3204 Lower Huntington Rd

City/Town: Fort Wayne, IN 46809

Property Location/General Description:

Parcel Number: 02-11-18-206-017.000-038

Latest Deed of Record: Doc no. 2014058234 (the "Property")

Land area of total parcel: 10.21 acres

PURCHASE PRICE

The Buyer agrees to pay to the City the total purchase amount of Two Hundred Thousand Dollars (\$200,000.00) for the Property, including the land and all fixtures thereon.

EXPIRATION OF OFFER

This Purchase Agreement shall be returned to the City no later than 5pm on November 5, 2021, 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 within 5 days of Buyer informing the City of its intent to close, but in no event later than December 10, 2021, or this Agreement shall terminate unless an extension of time is mutually agreed to in writing. Any extension of the closing date shall be agreed to in writing by both parties.

Location of Closing:

The closing shall be held at TBD located at TBD in accordance with the foregoing.

Closing Fees:

All fees charged by the closing agent, including document preparation and recording fees, shall be paid by the Buyer, unless expressly provided otherwise herein.

REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

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.

PROPERTY MAINTENANCE

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, either party to this Purchase Agreement may terminate this agreement.

BOUNDARY SURVEY

Any surveying costs shall be paid for by the Buyer.

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.

DISCLOSURES

The "Seller's Residential Real Estate Sales Disclosure" form is **Not Applicable**.

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

TITLE WORK and DEED

REAL PROPERTY PURCHASE AGREEMENT

Fort Wayne City Utilities

Title Insurance Fees:

Before closing, the **Buyer** shall be responsible to obtain a title insurance commitment in an amount equal to the purchase price. The premium for the Owner's Title Insurance Policy shall be paid by the **Buyer**, along with all other fees charged to prepare and issue such policy, and any costs and fees to resolve any title issues affecting the Property.

Type of Deed:

The conveyance of the Property shall be accomplished with a Special 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 prior to closing. 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

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.

REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

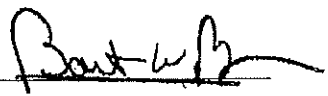
OTHER STIPULATIONS

- A. All funds payable in this transaction shall be paid at the closing.
- B. This Agreement constitutes the only agreement between the parties related to the subject matter herein and 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 does not hold an Indiana Real Estate License.
- E. Sale of the land will be conditioned on the reservation of a 20' utility easement along the eastern property boundary.
- F. Buyer acknowledges that the property is subject to restrictive covenants found in deed number 86-042701 in the Office of the Recorder of Allen County, Indiana.
- G. The property, including all fixtures, equipment, and improvements thereon, are being sold "AS IS," "WHERE-IS," and "WITH ALL FAULTS," without warranty of any kind from Seller, either express or implied.

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:
BUNN REAL ESTATE HOLDINGS, LLC

By: 
Its: President

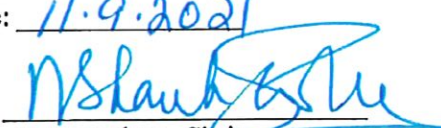
Date: 10/27/2021

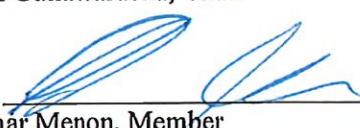
REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

SELLER:

BOARD OF PUBLIC WORKS

Date: 11.9.2021

BY: 
Shan Gunawardena, Chair

BY: 
Kumar Menon, Member

BY: 
Chris Guerrero, Member

ATTEST: 
Michelle Fulk-Vondran, Clerk

Interoffice Memo

Date: November 18, 2021
To: Common Council Members
From: Seth Weinglass, Program Manager – Capital Project Services – Telephone: 427-1330
RE: Sale of 14511 Covington Rd., Aboite Township, Indiana 46814

Council Introduction Date: November 23, 2021 — Council District #: n/a

Background & supporting information:

City Utilities has reached an agreement to sell the site of a former Aqua water treatment facility, located at 14511 Covington Road, which is about a half-mile east of the border between Allen County and Whitley County, in Aboite Township. The water treatment facility has been retired, and all valuable equipment removed. The land will be sold on an “AS-IS” basis including the remaining structural improvements and fixtures, which are all surplus assets 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 \$200,000. The winning bidder was Bart Bunn, the owner of Bunn, Inc. Mr. Bunn has agreed to City Utilities’ terms and conditions of the sale and has executed a purchase agreement (attached, along with Board of Works resolution 108-7-20-21-1). 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
Jill Hefrich
Project file