

BILL NO. R-23-03-25

RESOLUTION NO. _____

A RESOLUTION APPROVING A PURCHASE AGREEMENT FOR THE ACQUISITION OF PART OF THAT CERTAIN REAL PROPERTY LOCATED AT 5200 OLD MILL ROAD, IN FORT FORT WAYNE, INDIANA, FOR THE CITY OF FORT WAYNE, INDIANA (Approved and Executed by the Board of Public Works on March 21, 2023).

WHEREAS, the City of Fort Wayne, by and through its Division of City Utilities ("CU"), wishes to acquire a part of that certain real property located at 5200 Old Mill Road, in the City of Fort Wayne, Indiana, (the "Real Estate"), for a storm and sanitary improvement project in the area around Foster Park and the Woodhurst neighborhood; and

WHEREAS, the owner of the Real Estate is Achduth Vesholom Congregation (the "Seller").

WHEREAS, the City of Fort Wayne, by and through its Board of Public Works, approved and executed a purchase agreement to acquire the Real Estate in the regularly-held meeting of the Board of Public Works on March 21, 2023; and

WHEREAS, the purchase price for the Real Estate is Eleven Thousand Nine Hundred Fifty and 00/100 Dollars (\$11,950.00) (the "Purchase Price"); and

WHEREAS, Sec. 37.25 of the City of Fort Wayne Code of Ordinances requires the Common Council's approval of any conveyance of real estate to the City.

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

SECTION 1. The acquisition of the Real Estate by CU, the City of Fort Wayne, by and through its Board of Public Works, in the amount of the Purchase Price, and upon such other terms and conditions as CU shall determine, is hereby agreed to and approved. The appropriate officials of the City of Fort Wayne are hereby authorized to execute all documents necessary to effectuate said purchase.

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

Malak Heiny, City Attorney

REAL PROPERTY PURCHASE AGREEMENT

Fort Wayne City Utilities

The City of Fort Wayne ("Buyer") agrees to purchase the fee simple title to 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): Achduth Vesholom Congregation ("Seller")
Primary Telephone: (260) 744-4245
E-mail: cavadmin@templecav.org

Property/Mailing Address: 5200 Old Mill Road, Fort Wayne, Indiana 46807

Latest Deed of Record: Deed Book: 505, pages 326-327

Tax ID Number: 02-12-22-430-001.000-074

Land area of total parcel: 9.64 acres (inclusive of south ½ of unimproved Roxbury Dr R/W)

Land area of part being purchased: 0.305 acres, identified as "Tract 1" on attached lot split plat boundary survey.

PURCHASE PRICE

The City agrees to pay to the Seller the total purchase amount of \$11,950.00 (Eleven Thousand, Nine Hundred and Fifty Dollars and Zero Cents) for the Property which includes part of the parcel of land. There are not any 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 February 24, 2023, 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 April 28, 2023, 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 TBD located at TBD, Fort Wayne, Indiana.

REAL PROPERTY PURCHASE AGREEMENT

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Closing Fees:

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

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 \$100.00 (One Hundred Dollars and Zero Cents) 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. The Seller shall remove all rubbish and personal property.

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 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.

REAL PROPERTY PURCHASE AGREEMENT

Fort Wayne City Utilities

BOUNDARY SURVEY

Buyer has obtained 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, and which is reasonably satisfactory to the Buyer and the Seller.

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 ten calendar days to respond to Seller in writing with regard to any such inspection, following which Buyer shall have ten 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

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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 "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 Buyer.

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.

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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.

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. Buyer discloses that it does not hold an Indiana Real Estate License.
- E. The Seller discloses that it holds Indiana Real Estate License # _____.

ADDITIONAL CONDITIONS

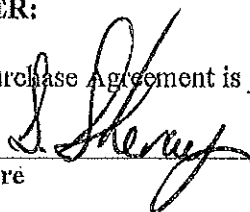
This Purchase Agreement may be executed concurrently in two or more counterparts, each of which shall be considered as an original document, but all of which altogether shall be one and the same document. The parties stipulate that this Purchase Agreement may be transmitted between them by U.S. Postal 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.

SELLER:

This Purchase Agreement is X ACCEPTED _____ REJECTED.

Signature



Printed Name & Title, if Applicable

Samara Sheray Executive Director

Date: 3/14/23

REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

BUYER:

BOARD OF PUBLIC WORKS

Date: _____

BY: _____
Shan Gunawardena, Chair

BY: _____
Kumar Menon, Member

BY: _____
Chris Guerrero, Member

ATTEST: _____
Michelle Fulk-Vondran, Clerk

described in Document No. 20543 Deed Book 505, page 326-7 within the Southeast Quarter of Section 22 and the Southwest Quarter of Section 23, Township 30 North, Range 12 East of the Second Principal Meridian in Wayne Township, Allen County, Indiana, and being depicted as Tract 2 on the Plat, more particularly described as follows:

Beginning at a 5/8 inch rebar with a cap stamped "Abnomarche Firm #0050" and being the northeast corner of grantor's tract lying on the west right-of-way of Old Mill Road and designated as 301 in said Plat; thence along grantor's north line and the centerline of vacated Roxbury Drive, South 88 degrees 12 minutes 42 seconds West, [bearings based upon the Indiana State Plane Coordinate System, East Zone, NAD 83(2011)] a distance of 260 feet, to a point on the extended east right-of-way of Southwood Avenue and designated as 210 in said Plat; thence south along grantor's line and said extended right-of-way, South 01 degree 32 minutes 28 seconds East, a distance of 30 feet to a point designated as 207 in said Plat; thence west along grantor's north line and said right-of-way, South 88 degrees 12 minutes 42 seconds West, a distance of 233 feet to a 5/8" iron pin set with a cap stamped "A&Z ENG LLC FIRM #0115" and being the northeast corner of Tract 1 and designated as 201 in said Plat; thence South 01 degrees 32 minutes 19 seconds East, a distance of 97 feet to a 5/8" iron pin set with a cap stamped "A&Z ENG LLC FIRM #0115" and designated as 203 in said Plat; thence South 88 degrees 12 minutes 42 seconds West, a distance of 137 feet to a 5/8" iron pin set with a cap stamped "A&Z ENG LLC FIRM #0115" and lying on the west line of the grantor's land and designated as 205 in said Plat; thence along grantor's west line, S 01 degree 32 minutes 28 seconds East, a distance of 537.60 feet to a point being the southwest corner of the grantor's land and designated as 209 in said Plat; thence along grantor's south line, North 88 degrees 35 minutes 04 seconds East, a distance of 630 feet to the southeast corner of the grantor's land, lying on the west right-of-way of Old Mill Road and designated as 213 in said Plat; thence along grantor's east line and west right-of-way of Old Mill Road, North 01 degrees 32 minutes 28 seconds West, a distance of 668.70 feet to the POINT OF BEGINNING of this Tract described herein and containing 9.08 acres (395,599.72 S.F.), more or less.

a Administrative code, the following opinion is
 ners established on this parcel as a result of; A)
 us and plats; C) inconsistencies in the lines of

tipper HR connected to the INDOT CORS Network.

land. This creation was requested by the City of Fort

end.

and reestablish the deed location of the parent tract.

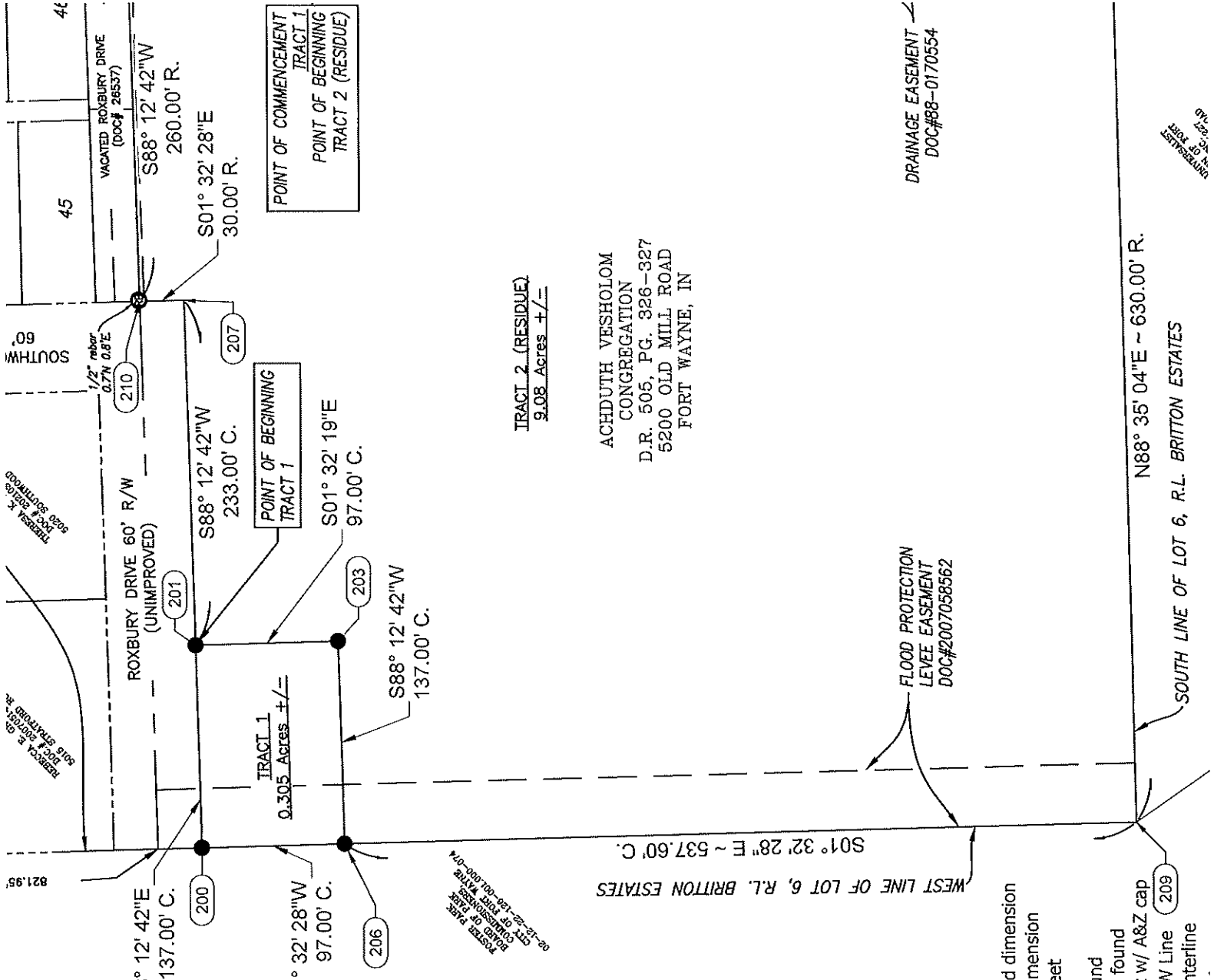
at both corners of the parent tract. Additional monuments to reestablish the north line of the parent tract. The monument at the corner of the grantor's land.

the parent tract. The parent tract and adjacent plats, created from the original plat of R.L. Britton Estate, as in County, Indiana. Said plats have no reference to

(2011)

lines.

winners documents used include:



LEGEND

C. $\equiv$ calculated dimension

R. = record dimension

S.F. = square feet

AC. = acres

Ⓢ = rebar found

Ⓟ = iron pipe found

● = rebar set w/ A&Z cap

—— = Road R/W Line

— = Road Centerline

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ACHDUTH VESHOLOM
CONGREGATION
D.R. 505, PG. 326-327
5200 OLD MILL ROAD
FORT WAYNE, IN

DRAINAGE EASEMENT ✓
DOC#88-0170554

UNIVERSALIST
HOT 10 OF FORT
V.C. 327
OVD 04D

Interoffice Memo

Date: March 22, 2023
To: Common Council Members
From: Seth Weinglass, Program Manager – Capital Project Services – Telephone: 427-1330
RE: **Purchase of Vacant Land From Achduth Vesholom Congregation**

Council Introduction Date: March 28, 2023 - Council District #: 5

Background & supporting information:

City Utilities is undertaking a storm and sanitary improvement project in the area around Foster Park and the Woodhurst neighborhood. The project will help with neighborhood drainage issues during wet weather and high river level events, as well as diverting combined sewer overflows to the Three Rivers Protection and Overflow Reduction Tunnel, in furtherance of the City's obligations under its Consent Decree and Long Term Control Plan. The project will necessitate constructing a new stormwater pump station, to improve flood protection behind the existing flood wall.

City Utilities has reached an agreement with Achduth Vesholom Congregation, to purchase a 0.305-acre area of vacant land that they own, on the present northwest corner of the site of their synagogue facility. The agreed-upon purchase price for this new lot is \$11,950, based on two independent appraisals of the land. The map attached to this memo shows the area of land that will be purchased.

Implications of not being approved:

If this land purchase is not approved, the project will need to be redesigned, causing delays to the flood and CSO relief that the project is intended to bring about, and necessitating the purchase of different properties, all at additional cost, as well as potential consequences for any noncompliance with the Consent Decree.

Justification if prior approval is being requested: Not applicable

Funding source: Storm Revenue

Attachments:

- Map
- Purchase Agreement approved by Board of Public Works on March 21, 2021

CC: Jill Helfrich
Matthew Wirtz
Chris Ravenscroft

