

BILL NO. R-24-01-23

RESOLUTION NO. _____

A RESOLUTION APPROVING A PURCHASE AGREEMENT FOR THE ACQUISITION OF REAL PROPERTY AT 2107 WEISSER PARK AVENUE, FORT WAYNE, INDIANA, FOR THE CITY OF FORT WAYNE, INDIANA (Approved and Executed by the Board of Public Works on January 9, 2024).

WHEREAS, the City of Fort Wayne, by and through its Division of City Utilities ("CU"), wishes to acquire Real Property at 2107 Weisser Park Avenue, Fort Wayne, Indiana, (the "Real Estate"), to install a stormwater detention basin, as part of a larger storm drain improvement project to reduce neighborhood flooding; and

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 January 9 2024; and

WHEREAS, the purchase price for the Real Estate is Two Thousand One Hundred Ninety-Five and 00/100 Dollars (\$2,195.00) (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

Interoffice Memo

Date: January 18, 2024
To: Common Council Members
From: Seth Weinglass, Program Manager – Capital Project Services – Telephone: 427-1330
RE: Purchase of 2107 Weisser Park Avenue, Fort Wayne, Indiana 46803

Council Introduction Date: January 23, 2024—Council District #: 6

Background & supporting information:

City Utilities has reached an agreement to purchase a vacant residential lot with the address of 2107 Weisser Park Avenue. The property is adjacent to several City-owned lots to the north, where City Utilities will be installing a stormwater detention basin, as part of a larger storm drain improvement project to reduce neighborhood flooding.

The property's owner, Sarah E. Manley, agreed to a purchase price of \$2,195, based on appraisals. The map is attached to this memo shows the new parcel that City Utilities intends to purchase.

Implications of not being approved:

Without the use of this property, the volume of the stormwater detention basin will be reduced, and the neighborhood drainage project will be less effective, although still beneficial.

Justification if prior approval is being requested: Not applicable

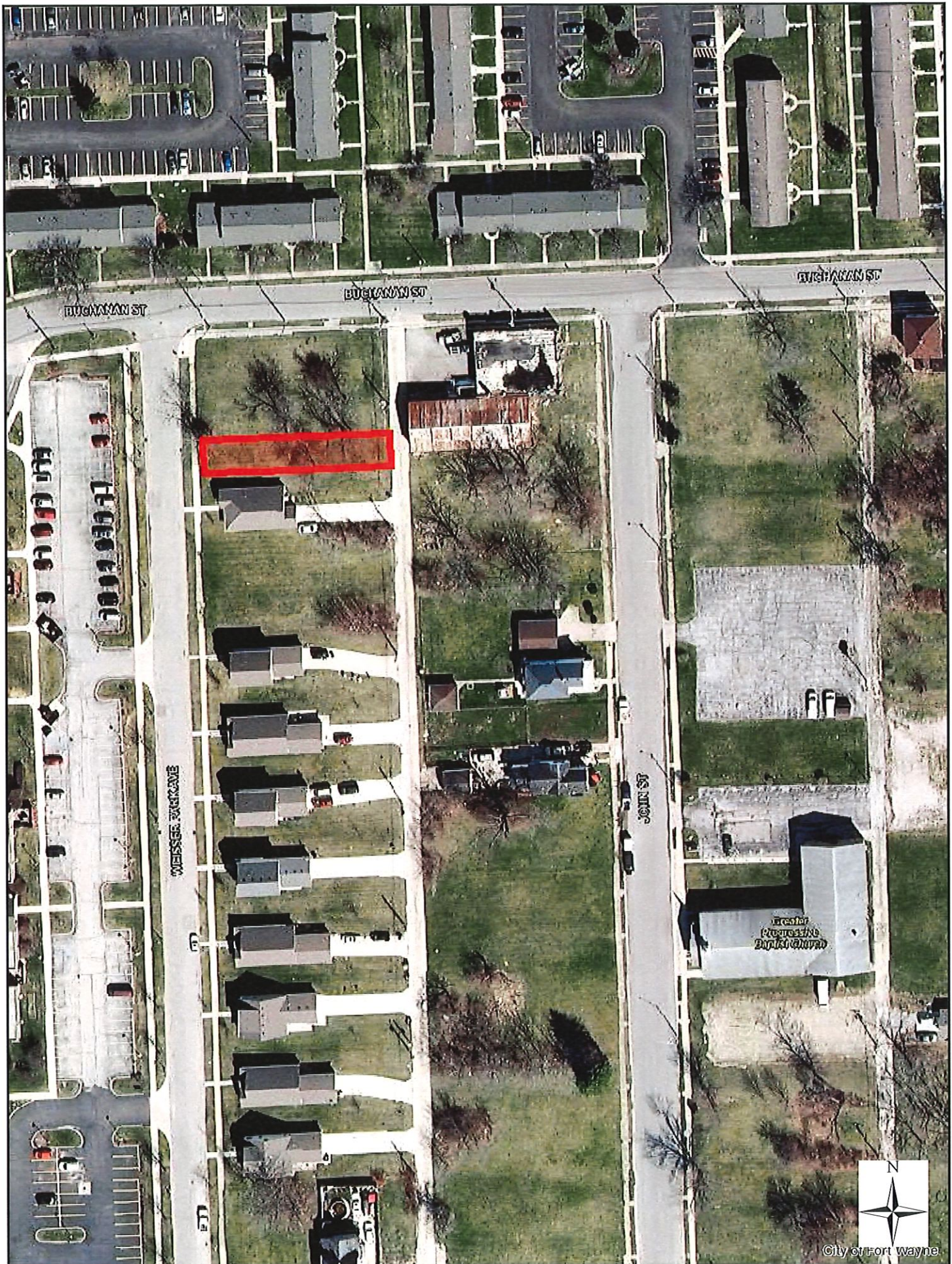
Funding source: CUE Revenue

Attachments:

- Map
- Purchase agreement

CC: Matthew Wirtz
Matthew Grieger
Jill Helfrich

2107 Weisser Park Ave



November 29, 2023

This map is intended for general reference purposes only. The information displayed herein is not guaranteed to be completely accurate or all inclusive.

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

1 The City of Fort Wayne ("Buyer") agrees to purchase the fee simple title to all of the following
2 Real Property ("Property") for the consideration stated below subject to the conditions, requirements, and
3 stipulations described in the following Purchase Agreement.

CONTACT INFORMATION and LOCATION OF PROPERTY

6 Owner(s) Name(s): Sarah E. Manley ("Seller")

7 Primary Telephone: 260-442-6142

8 Other Telephone: _____

9 E-mail: _____

11 Mailing Address: PO Box 12975, Fort Wayne, IN 46866

13 Property Address: 2107 Weisser Park Ave, Fort Wayne, IN 46803

15 Latest Deed of Record: Document Number 2022044432

17 Tax ID Number: 02-12-12-327-004.000-074

19 Lot Number: Lot 12 Bass & Hanna Addition

21 Land area of parcel: 0.09 acres (3920.40 sq. ft.)

PURCHASE PRICE

23 The City agrees to pay to the Seller the total purchase amount of **\$2,195.00 (Two Thousand**
24 **One Hundred and Ninety Five Dollars and Zero Cents)** for the Property which includes the entire
25 **parcel of land.** There are not any accessory buildings.

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

EXPIRATION OF OFFER

31 This Purchase Agreement shall be returned to the City no later than **12 noon, on January 1,**
32 **2024,** otherwise this Purchase Agreement shall be null and void and both parties shall be released
33 from the transaction.

APPROVALS BY BOARD OF PUBLIC WORKS and COMMON COUNCIL

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

CLOSING

42 Closing Date:

43 The closing date for this transaction shall be on or before **April 1, 2024,** or this Agreement shall
44 terminate unless an extension of time is mutually agreed to in writing. Any change in the closing date
45 shall be agreed to in writing by both parties.

47 Location of Closing:

48 The closing shall be held at **TBD** located at **TBD,** in Fort Wayne, Indiana.

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Closing Fees:

All fees charged by the closing agent, including document preparation and recording fees shall be paid by the City of Fort Wayne (City is the Buyer).

EARNEST MONEY

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 **\$50.00 (Fifty Dollars)** 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.

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BOUNDARY SURVEY

The 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. The 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 survey shall be paid for by the Seller / Buyer.

Or

_____ The expense for the survey shall be shared equally.

Or

X The requirement for a survey is waived.

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 (ten) calendar days to respond to Seller in writing with regard to any such inspection, following which Buyer shall have 10 (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

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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.)

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 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.

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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.

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

Buyer is purchasing the Property to serve Fort Wayne City Utilities' Buchanan Street Sewer Separation project, CU WO# 77157 (the "Project"). Seller wishes to facilitate the timely performance of such Project. Thus in the event that closing on this transaction has not occurred prior to notice to proceed on such Project, presently scheduled to occur on or about January 9, 2024, Seller hereby grants Buyer a temporary right of entry to use the Property for the Project, including construction staging and installation

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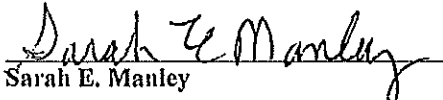
of utility facilities, while closing is pending. Any termination of this transaction shall also terminate this right of entry.

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 APPROVAL and SIGNATURE(S):

This Purchase Agreement is ☒ ACCEPTED ☐ REJECTED.

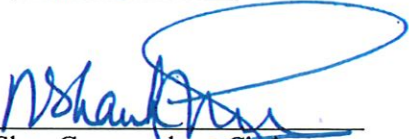
 Date: 12/15/2023
Sarah E. Manley

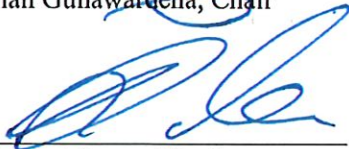
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BUYER APPROVAL AND SIGNATURES:

BOARD OF PUBLIC WORKS

Date: 1.9.24

BY: 
Shan Gunawardena, Chair

BY: 
Kumar Menon, Member

BY: ABSENT
Chris Guerrero, Member

ATTEST: 
Michelle Fulk-Vondran, Clerk