

**A RESOLUTION APPROVING A PURCHASE
AGREEMENT FOR THE ACQUISITION OF PART
OF THAT CERTAIN REAL PROPERTY
LOCATED AT 6501 STELLHORN ROAD, IN
FORT WAYNE, INDIANA, FOR THE CITY OF
FORT WAYNE, INDIANA (Approved and
Executed by the Board of Public Works on
March 26, 2024).**

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 6501 Stellhorn Road, in the City of Fort Wayne, Indiana, (the "Real Estate"), to be used for drainage improvements to expand the capacity of Bullerman Drain, to increase its capacity and alleviate neighborhood flooding; and

WHEREAS, the owner of the Real Estate is Mackids, Inc. (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 26, 2024; and

WHEREAS, the purchase price for the Real Estate is Three Hundred Forty-Five Thousand and 00/100 Dollars (\$345,000.00) (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

CU 3.26.24

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

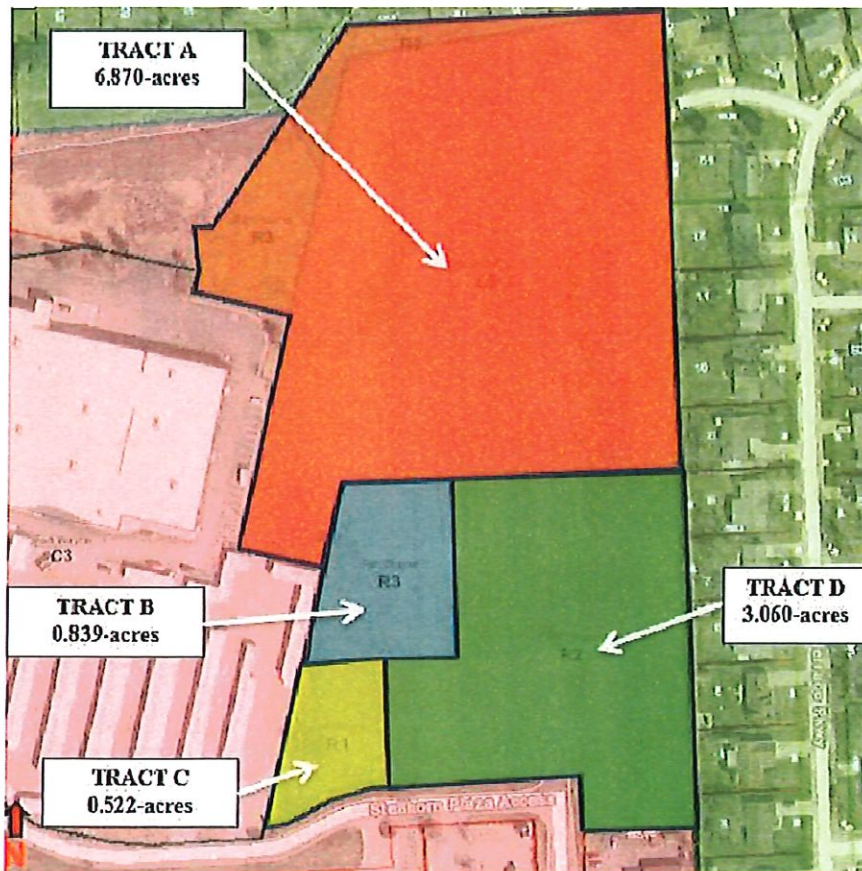
Owners: Mackids Inc ("Seller")

c/o Shawn Heffern, Midland Atlantic Properties (broker), (317) 597-1715

Property Address: 6501 Stellhorn Rd., Fort Wayne, Indiana 46815

Latest Deed of Record: Document Number 207020124

Land area to be purchased: Approximately 6.870 acres comprising a portions of PIN 02-08-22-351-012.000-072, depicted as "Tract A" below (final survey and legal description to follow accepted offer) (the "Property").



PURCHASE PRICE

The City agrees to pay to the Seller the total purchase amount of \$345,000.00 (Three Hundred and Forty-Five Thousand Dollars and Zero Cents) for the Property.

REAL PROPERTY PURCHASE AGREEMENT

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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 Monday, March 11, 2024, 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 July 5, 2024, 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, in Fort Wayne, Indiana.

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) 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.

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Fort Wayne City Utilities

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.

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 Buyer.

Or

☐ The expense for the survey shall be shared equally.

Or

☐ 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.

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Fort Wayne City Utilities

123 INSPECTIONS

124 The Buyer acknowledges that it has the right to obtain independent inspections disclosing the
125 condition of the Property, including any buildings, and has been given the opportunity to order those
126 inspections as a part of its due diligence efforts prior to concluding the transaction.

127
128 The Buyer waives its right to conduct independent inspections and releases the Seller from any
129 and all liability.

130
131 Or

132
133 X The Buyer reserves its right to conduct independent inspections. All inspections are at the
134 Buyer's expense and shall be performed by licensed independent inspectors or qualified independent
135 contractors that shall be chosen by the Buyer, and paid for their services by the Buyer.

136
137 The Seller shall make arrangements so that all areas of the Property, including any buildings, are
138 open and accessible for inspection.

139 Inspections and Response Periods:

140 All inspections that Buyer intends to undertake shall be ordered by the Buyer immediately
141 following the execution of this document. In the event that the presence of a defect is revealed, Buyer
142 shall have 30 calendar days to respond to Seller in writing with regard to any such inspection,
143 following which Buyer shall have 15 calendar days to request, obtain, and respond to Seller in
144 writing with regard to any supplementary reports.

145
146
147 If the Buyer does not respond in writing to Seller within the above time periods with regard to a
148 problem revealed in a report, or timely request a reasonable extension of time in writing, then the
149 Property shall be deemed to be acceptable. Should either party fail to respond to an inspection
150 response from the other within five calendar days, or timely request a reasonable extension of time in
151 writing, then that inspection response is deemed accepted. Making a timely written request for an
152 extension of time does not constitute acceptance of an inspection response, whether or not the request
153 is granted.

154
155 In the event that Buyer reasonably believes that an inspection has revealed a defect with the
156 Property, not disclosed by Seller prior to entering into this Purchase Agreement (and excluding
157 routine maintenance and minor repair items), and the Seller fails to remedy the defect to the Buyer's
158 reasonable satisfaction before closing, then Buyer may terminate this Purchase Agreement.
159 Alternatively, Buyer may waive the right to have the defect cured prior to closing, or Buyer and Seller
160 may agree to have the defect remedied following closing.

161
162 (Under Indiana law, a "defect" means a condition that would have a significant adverse effect on
163 the value of the Property, that would significantly impair the health or safety of future occupants of
164 the Property, or that if not repaired, removed, or replaced, would significantly shorten or adversely
165 affect the expected normal life of the premises.)

166 DISCLOSURES

167 N/A The Buyer has received and signed / waived the "Seller's Residential Real Estate Sales
170 Disclosure" form.

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N/A The Buyer has received and signed / 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 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.

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.

REAL PROPERTY PURCHASE AGREEMENT

Fort Wayne City Utilities

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:

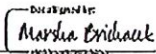
This Purchase Agreement may be executed concurrently in two or more counterparts, each of which shall be considered as an original document, but all of which altogether shall be one and the same document. The parties stipulate that this Purchase Agreement may be transmitted between them by U.S. Postal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

This Purchase Agreement is ☒ ACCEPTED ☐ REJECTED.

MACKIDS INC


Signature

Marsha Brichacek president
Printed Name & Title

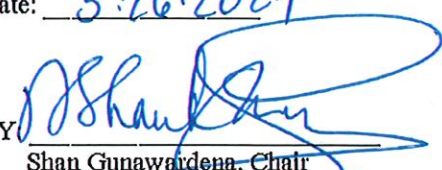
Date: 3/14/2024

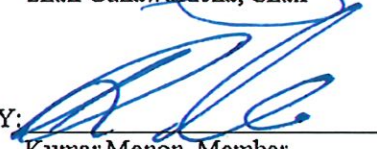
REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

BUYER APPROVAL AND SIGNATURES:

BOARD OF PUBLIC WORKS

Date: 3.26.2024

BY: 
Shan Gunawardena, Chair

BY: 
Kumar Menon, Member

BY: ABSENT
Chris Guerrero, Member

ATTEST: 
Michelle Fulk-Vondran, Clerk

Interoffice Memo

Date: April 4, 2024
To: Common Council Members
From: Seth Weinglass, Program Manager – Capital Project Services – Telephone: 427-1330
RE: Purchase of 6.87 Acres of Vacant Land Located at 6501 Stellhorn Rd, Fort Wayne, IN 46835

Council Introduction Date: April 9, 2024—Council District #: 1

Background & supporting information:

City Utilities has reached an agreement to purchase 6.87 acres of undeveloped land east of the Stellhorn Plaza Shopping Center, which is located at the corner of Maplecrest Road & Stellhorn Road. The site will be used for drainage improvements to expand the capacity of Bullerman Drain, to increase its capacity and alleviate neighborhood flooding.

Owner Mackids Inc. agreed to a purchase price of \$345,000. The map included in the purchase agreement shows the area of land that City Utilities intends to purchase.

Implications of not being approved:

If City Utilities does not purchase this land, a different area of land will need to be purchased for the drain improvements, likely at higher cost.

Justification if prior approval is being requested: Not applicable

Funding source: CUE Revenue

Attachments:

- Purchase Agreement

CC: Matthew Wirtz
Anne Marie Smrchek
Kristen Buell
Jill Helfrich