

A RESOLUTION APPROVING A PURCHASE AGREEMENT FOR THE ACQUISITION OF CERTAIN REAL PROPERTY LOCATED AT 9019 STELLHORN ROAD, IN FORT WAYNE, INDIANA, FOR THE CITY OF FORT WAYNE, INDIANA (Approved and Executed by the Board of Public Works on November 5, 2024).

WHEREAS, the City of Fort Wayne, by and through its Division of City Utilities ("CU"), wishes to acquire certain real property located at 9019 Stellhorn Road, in the City of Fort Wayne, Indiana, (the "Real Estate"), for drainage improvements to expand the capacity of Bullerman Drain and alleviate neighborhood flooding; and

WHEREAS, the owner of the Real Estate is Harvest Bible Chapel of Fort Wayne (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 November 5, 2024; and

WHEREAS, the purchase price for the Real Estate is Five Hundred Fifty-Nine Thousand Seven Hundred Fifty and 00/100 Dollars (\$559,750.00) (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

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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

Owner Name: Harvest Bible Chapel of Fort Wayne Inc. ("Seller")
Primary Telephone: (260) 627-2720

Contact: Executive Pastor Adam Boylan
Cell: (260) 415-4085
E-mail: adam.boyland@redemptionfw.org

Mailing Address: 9019 Stellhorn Road
City/State/Zip: Fort Wayne, IN 46815

PARCEL DETAILS

Street Address: 9019 Stellhorn Road
City/State/Zip: Fort Wayne, IN 46815

Latest Deed of Record: Allen County Recorder's document number 2019028839
Tax ID Number: 02-08-23-482-009.000-072
Size (per tax card): 4.38 acres

PURCHASE PRICE

The City agrees to pay to the Seller the total purchase amount of \$559,750.00 (Five Hundred Fifty Nine Thousand, Seven Hundred Fifty Dollars and Zero Cents) for the Property, which includes the entire parcel of land and 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 executed and returned to the City no later than 12 noon on November 1, 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 December 17, 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.

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Location of Closing:

The closing shall be held at Titan Title located at 209 W. Wayne St, Fort Wayne, Indiana 46802.

Closing Fees:

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

EARNEST MONEY

If the City of Fort Wayne is the Purchaser:

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 approximately three (3) months after closing. During the free rent period of 3 months, Seller shall maintain and upkeep the facility. 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.

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

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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**.

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 5 calendar days to respond to **Seller** in writing with regard to any such inspection, following which **Buyer** shall have 5 calendar days to request, obtain, and respond to **Seller** in writing with regard to any supplementary reports.

146 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

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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 Buyer has waived the "Seller's Residential Real Estate Sales Disclosure" form.

The Buyer has 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 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: Seller shall grant Buyer a permanent easement on the southerly 40 feet of neighboring residential parcels 02-08-23-482-007.000-072 and 02-08-23-482-008.000-072, for use as a public right of way for trails and public utilities, in a form to be provided by Buyer. Buyer shall be paid on a separate bill of sale for the easement in the amount of \$4,439.32 (or \$38.27 per linear foot of easement right). Buyer will furnish the legal description, easement plat, and other surveying deliverables needed for such easement.

In addition, the Seller shall retain full ownership and all rights to remove, replace, or alter any and all currently installed on the property, prior to or at the time of closing. The Seller shall have the right to disconnect and remove any such systems or equipment at their discretion without providing replacements

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or adjustments unless otherwise stipulated in a separate agreement. The Buyer acknowledges that all HVAC mechanical items, and fixtures shall remain the property of the Seller and agrees not to contest this ownership in any subsequent claims or actions.

Buyer reserves the right to terminate this Purchase Agreement solely in the event that Buyer is unable to complete the purchase of the property located at 9600 St. Joe Road (the "New Facility") for any reason beyond Buyer's reasonable control. Should the purchase of the New Facility not proceed to closing, Buyer may, at its sole discretion, terminate this Agreement by providing written notice to Seller immediately following the failure of the New Facility transaction.

Upon termination under this provision, neither party shall have any further obligation or liability to the other under this Agreement. This shall be the Buyer's only termination right, and no other conditions shall entitle Buyer to terminate this Agreement.

[EXECUTIONS AND ATTESTATIONS ON FOLLOWING PAGES]

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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**.

HARVEST BIBLE CHAPEL OF FORT WAYNE INC.

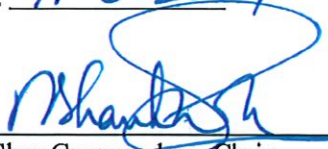
Signed by: <i>Adam Boylan</i> OFFICER/EXECUTIVE _____ Signature	Adam Boylan _____ Printed Name & Title	Executive Pastor, 10/31/2024 Date: _____
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BUYER APPROVAL AND SIGNATURES:

BOARD OF PUBLIC WORKS

Date: 11-5-2024

BY: 
Shan Gunawardena, Chair

BY: 
Kumar Menon, Member

BY: 
Chris Guerrero, Member

ATTEST: 
Michelle Fulk-Vondran, Clerk



Interoffice Memo

Date: November 4, 2024
To: Common Council Members
From: Seth Weinglass, Program Manager – Capital Project Services – Telephone: 427-1330
RE: **Purchase of 4.38 Acre Property Located at 9019 Stellhorn Rd, Fort Wayne, IN 46815**

Council Introduction Date: November 12, 2024—Council District #: 1

Background & supporting information:

City Utilities has reached an agreement to purchase 4.38 acres of land at the northwest corner of Stellhorn Road and Wheelock 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 Harvest Bible Chapel of Fort Wayne agreed to a purchase price of \$559,750.

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
Eric Ruppert
Anne Marie Smrcek
Kristen Buell
Jill Helfrich