

A RESOLUTION APPROVING A PURCHASE AGREEMENT FOR THE ACQUISITION OF REAL PROPERTY LOCATED AT 816 WAGNER ST, FORT WAYNE, INDIANA, FOR THE CITY OF FORT WAYNE, INDIANA (Approved and Executed by the Board of Public Works on September 30, 2025).

WHEREAS, the City of Fort Wayne, by and through its Division of City Utilities ("CU"), wishes to acquire Real Property consisting of 0.39 acres of land located at 816 Wagner St., Fort Wayne, Indiana, (the "Real Estate"), to be used for a security zone and planned future expansion of the Water Filtration Plant, and to continue to improve the reliability of our City's drinking water supply; 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 September 30, 2025; and

WHEREAS, the purchase price for the Real Estate is Two Hundred Thousand Five Hundred and 00/100 Dollars (\$200,500.00) (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

BOPW # 112-9-30-25-5

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

Seller: Thomas J. Kelly, III, as Personal Representative of the Estate of Henrietta T. McCullough

Mailing address: Kelly Box, 2801 Covington Road, Fort Wayne IN, 46802

Email: tkelly@kellybox.com

Property Address: 816 Wagner Street, Fort Wayne, IN 46805

Parcel ID Number: 02-12-01-108-009.000-074

Total land area: 0.39 acre

Deeds & legal description:

760023997: Lot 25 in Baltes and Romy's Addition

together with

DB707-P164: Lot 26 and West 15 Feet of Lot 27 in Baltes and Romy's Addition Deed, except that part of Lot 27 conveyed to City of Fort Wayne by Deed dated January 27, 1934, recorded in Deed Record 341 page 321.

PURCHASE PRICE

The City agrees to pay to the Seller the total purchase amount of **\$200,500.00 (Two Hundred Thousand Five Hundred Dollars and Zero Cents)** for the Property which includes the entire parcel of land, the house, 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 returned to the City no later than **12 noon, on October 17, 2025**, otherwise this Purchase Agreement shall be null and void and both parties shall be released from the transaction.

MUNICIPAL APPROVALS

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.

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CLOSING

Closing Date:

The closing date for this transaction shall be on or before January 31, 2026, 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.

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

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 \$134.00 (One Hundred Thirty Four 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.

Removal of Fixtures:

Tk

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As an additional incentive to induce the Seller to sell the Property to the Buyer, the Buyer shall allow the Seller to remove attached fixtures and other items, prior to possession by the Buyer, including, but not limited to, artwork, stained glass windows, sinks, doors, and wood trim and/or paneling. The Seller shall be responsible to cover in any openings caused by removal of windows or doors with plywood or other suitable material. Furthermore, the Seller shall ensure that the removal of attached fixtures does not result in water leaks or any live, exposed electrical wiring within the 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 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 calendar days to respond to Seller in writing with regard to any such inspection, following which Buyer shall have 10 calendar days to request, obtain, and respond to Seller in writing with regard to any supplementary reports.

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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 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 Seller.

Type of Deed:

The conveyance of the Property shall be accomplished with a Personal Representative's 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.

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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**.

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:

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After closing but prior to May 1, 2026, the **Buyer** shall allow the **Seller** to remove attached fixtures and other items including, but not limited to, artwork, stained glass windows, sinks, doors, and wood trim and/or paneling. The **Seller** shall be responsible to cover in any openings caused by removal of windows or doors with plywood or other suitable material. Furthermore, the **Seller** shall ensure that the removal of attached fixtures does not result in water leaks or any live, exposed electrical wiring within the property.

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.

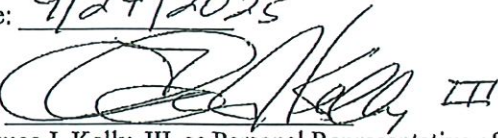
[Executions on Following Page]

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Fort Wayne City Utilities

SELLER APPROVAL and SIGNATURE(S):

This Purchase Agreement is ☒ **ACCEPTED** ☐ **REJECTED**.

Date: 9/24/2025

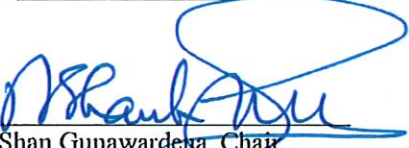
BY:  

Thomas J. Kelly, III, as Personal Representative of the Estate of Henrietta T. McCullough

BUYER APPROVAL AND SIGNATURES:

BOARD OF PUBLIC WORKS

Date: 9.30.25

BY: 

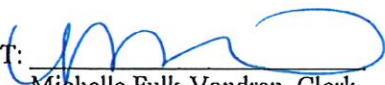
Shan Gunawardena, Chair

BY: ABSENT

Kumar Menon, Member

BY: 

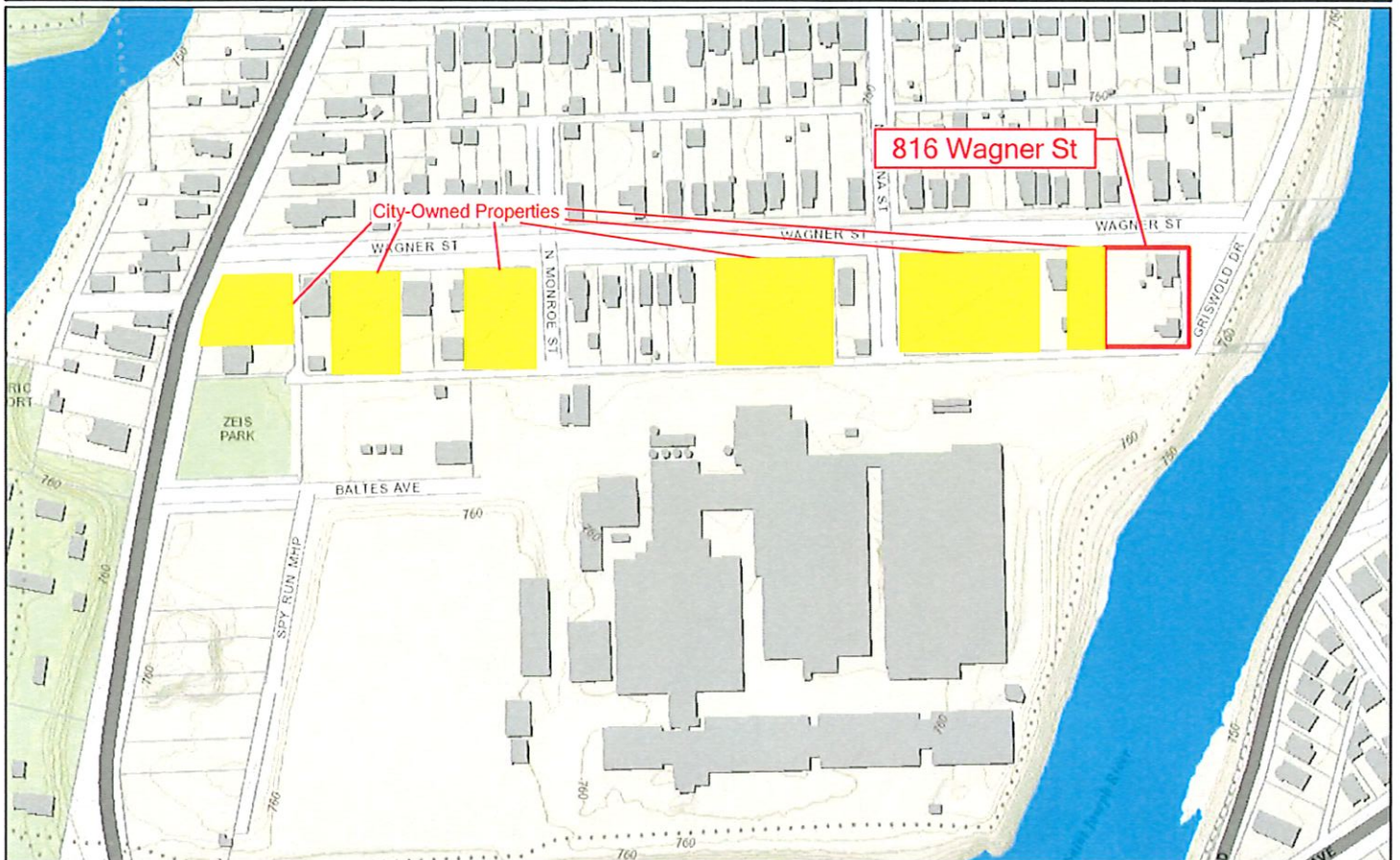
Chris Guerrero, Member

ATTEST: 

Michelle Fulk-Vondran, Clerk



Wagner Street Properties - Buy-outs



Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

© 2004 Board of Commissioners of the County of Allen
North American Datum 1983
State Plane Coordinate System, Indiana East



Date: 9/3/2015 1" = 200'

Interoffice Memo

Date: October 9, 2025
To: Common Council Members
From: Seth Weinglass, Program Manager – Capital Project Services
RE: Purchase of 816 Wagner St, in Fort Wayne, Indiana 46805

Council Introduction Date: October 14, 2025 - Council District #: 5

Background & supporting information:

City Utilities has an ongoing, multi-year program of purchasing lots on the south side of Wagner Street, adjacent to the north side of the Water Filtration Plant, for a security zone and planned future expansion of the Water Filtration Plant, and to continue to improve the reliability of our City's drinking water supply. City Utilities would now like to acquire 816 Wagner Street, which is located on the far east end of Wagner Street.

There is an unoccupied residence on this lot that the City plans to demolish. The property owner agreed to sell the land to City Utilities for \$200,500, based on the average of two recent appraisals. City Utilities is now seeking to have a purchase agreement in that amount approved under City Ordinance 37.25.

As an update to Council, a map is attached to this memorandum, highlighting the properties the City has acquired has along the south side of Wagner Street to date, as well as the lot presently under consideration to be purchased.

Implications of not being approved:

Any future acquisition of this property may be at a higher price than the amount presently agreed to.

Justification if prior approval is being requested: Not applicable

Funding source: Water Revenue

Attachments:

- Map
- Purchase agreement executed by Board of Public Works on September 30, 2025

Cc: Matthew Wirtz
Andrew Schipper