

Board of Park Commissioners Project Summary

Vesey Park

Fort Wayne City Utility Easement Agreement

Project No: n/a

Project Approval Request

Scope of Work:

This request for approval is for an easement agreement from the City of Fort Wayne Utilities Department associated with a parcel in Vesey Park. The purpose of the easement area is to allow Fort Wayne City Utilities Department access to an underground sewer utility line in the area depicted in Exhibit "A" and Exhibit "B" attached hereto and made part of this Agreement by this reference. The easement area is located within Vesey Park, just north of Young Drive. The area is approximately 20' wide by 285' in length. See attached Exhibits A and B for more detailed information.

Board Approval:

The **City of Fort Wayne, Board of Park Commissioners**, does hereby grant and convey to Fort Wayne City Utilities access rights to said facilities, in, on, along, under, over, across and through the describe area within the described Premises.

At this time, I would like to request approval of this easement with Fort Wayne City Utilities. Please see the attached easement document and maps for details.

The Fort Wayne Parks and Recreation and the Board of Park Commissioners met to host their regularly scheduled monthly Board meeting on **August 8, 2024**, to approve the above-referenced project and easement agreement.

We, the Board of Park Commissioners, on the date stated, do ATTEST and sign to the above-referenced and attached document, and approve as presented.

Justin Shurley, President

Cory Miller Vice President

Rick Briley, Commissioner

Jenna Jauch, Commissioner

Steve McDaniel, Director / Board Secretary

UTILITY EASEMENT AGREEMENT

Project Number: 76418;
Project Name: Spy Run Interceptor Relief – St. Joe River Crossing;
Cross Reference Document: 203097438

THIS UTILITY EASEMENT AGREEMENT (“Agreement”) is entered into this _____ day of _____, 20____, by and between **Fort Wayne Board of Park Commissioners**, (“Grantor”) and the **City of Fort Wayne, Indiana** (“Grantee”).

RECITALS

- A. Grantor is the owner in fee simple of certain real property (“Real Estate”) located in the City of Fort Wayne, Indiana, described in the deed(s) recorded at the Cross Reference Document(s) listed above in the Office of the Recorder of Allen County, Indiana.
- B. Grantor has agreed to grant permanent easement and right-of-way (the “Easement”) to Grantee, across, over, under, through, and on top of the Real Estate, as described and depicted in Exhibit “A” and Exhibit “B,” attached hereto and made part of this Agreement by this reference, for the purposes set out in this Agreement.

AGREEMENT

In consideration of the foregoing and the mutual covenants and agreements set forth in this Agreement, and for valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor, the parties hereto agree as follows:

1. Permanent Easement Grant: Grantor hereby grants, warrants, and conveys to Grantee a permanent, non-exclusive utility easement across, over, under, through and on top of the Easement for use by Grantee in constructing, installing, operating, maintaining, repairing, and reconstructing, within, under, or on top of the Easement, sewer pipes, manholes, valves, surface drains, storm sewers, drains, potable water lines, valves and valve boxes, meters and meter boxes, and any other related utility equipment, structures or materials which are designated by

Grantee as public utility improvements (collectively "Public Utility Improvements") to be placed under the Grantee's jurisdiction, control, and supervision.

2. Access Rights: Grantee, including Grantee's agents, employees, contractors, sub-contractors, and assigns, have the rights of ingress and egress within the Easement at all times for the purposes described in Paragraph 1 herein. Grantee shall provide reasonable notice of entry when practicable to Grantor prior to entering upon the Easement for such purposes, and when entering on the Easement the Grantee shall use Grantee's best efforts to minimize interference with Grantor's use of the Real Estate.
3. Permissible Improvements Within Easement: Grantor may install asphalt, concrete, blacktop, and other pavement, curbs, grass, and plantings with shallow root systems. Small temporary structures are permissible within the Easement. Grantee shall have the right to remove any temporary structure, asphalt, concrete, blacktop, other pavement, or any impediment that is present within or on top of the Easement, if Grantee finds it reasonably necessary to do so in order to access the Public Utility Improvements. Grantee agrees to repair or pay the Grantor for actual damages sustained by Grantor in accordance with Paragraph 6.
4. Non-Permissible Improvements Within Easement: Except as provided in paragraph 3 above, nothing shall be placed in, on, over or under the Easement, whether by Grantor, with Grantor's knowledge, or after Grantor's ratification after the fact, which will obstruct or interfere with the purpose of the Easement, or with Grantee's access to the Easement, or with Grantee's access to the Public Utility Improvements, unless such placement has been authorized in writing in advance by Grantee. Whether or not an action, the placement of, or the construction of an item or material obstructs or interferes with the purpose of or access to the Easement or Public Utility Improvements is a fact to be determined by the Grantee. This restriction also applies to actions, materials, and/or other items placed outside of the Easement that affect Grantee's access to the Easement or the Public Utility Improvements.

5a. Grantee may remove any unauthorized obstruction or impediment placed in, on, over, under, or outside of the Easement without obligation to

restore or replace said unauthorized obstruction or impediment. Grantee shall have no duty to restore any disturbance or damage caused to the Real Estate that may occur during the removal of any such unauthorized obstruction or impediment. If Grantee removes any such unauthorized obstruction or impediment, Grantor shall reimburse Grantee for Grantee's reasonable costs and fees associated with said removal.

5b. Grantee may choose to have Grantor remove any unauthorized obstruction or impediment solely at Grantor's cost and expense.

5. Maintenance: Grantee shall provide and shall pay all costs in connection with functional maintenance of the Public Utility Improvements within the Easement as determined by the Grantee in order to assure adequate functioning of the Public Utility Improvements. Grantee shall not be liable for general maintenance of the Easement. Grantor shall be liable for general maintenance of the Easement, including mowing and compliance with paragraphs 3 and 4 above.
6. Damages Caused by Grantee: Grantee agrees to repair or pay the Grantor for actual damages sustained by Grantor to fences, gates, irrigation and drainage systems, curbs, drives, parking areas, sidewalks, lawns, signs, and crops that are permitted herein, when such damages arise out of Grantee's exercise of the rights herein granted.

7a. Grantee agrees to restore the surface of the Easement to substantially the condition in which the surface of the Easement was found immediately prior to Grantee's entry onto the Easement for purposes of this Agreement, subject to paragraph 7 below.

7b. In the event of any damage to any land, crops, livestock, improvements, or the environment, within or outside of the Easement, caused by Grantee's assigns, agents, contractors, or sub-contractors [hereinafter referred to as "Independent Contractor(s)"], Grantee shall make prompt and diligent efforts to hold accountable such Independent Contractor(s) that is/are responsible for the damage or claim. In the event of non-performance by the Grantee's Independent Contractor(s) within thirty (30) days, Grantee, shall, at Grantee's discretion, either (1) take action to

cure the damage or claim, or (2) request action by the Independent Contractor(s)' performance bond agent(s) to cure the damage or claim. Otherwise, Grantee shall not be responsible or liable for any such claims.

7. Construction Plan Compliance: Grantor understands that any construction, installation, operation, maintenance, repairs, or reconstruction of the Public Utility Improvements may be performed by an employee, contractor, or sub-contractor of Grantee, and as such, any such work, including restoration of the Easement after the aforementioned work is complete, shall comply with the drawings, specifications, and plans that Grantee possesses for said work. Upon written request from Grantor, Grantee shall submit a copy of said drawings, specifications, or plans to Grantor.
8. Indemnity
 - 9a. Grantor's Indemnity of Grantee: Grantor agrees to indemnify and hold harmless the Grantee, including Grantee's agents, employees, contractors and assigns, from and against any and all claims against the Grantee for direct damages, injuries, losses, demands or costs arising out of or in any manner associated with Grantor's possession, control, operation, use or maintenance of the Real Estate and/or the Easement, except for any claims arising as a result of Grantee's negligent or intentional acts or omissions, to the extent permitted by law.
 - 9b. Grantee's Indemnity of Grantor: Grantee agrees to indemnify and hold harmless the Grantor, including Grantor's agents, employees, contractors and assigns, from and against any and all claims against the Grantor for direct damages, injuries, losses, demands or costs arising as a result of Grantor's negligent or intentional acts or omissions, to the extent permitted by law.
9. Limitation of Indemnity: The indemnification provided herein pursuant to paragraph 8 is limited to indemnity for direct damages and expressly excludes indemnification for special, consequential, punitive, and incidental damages.

10. Continuing Effect: The terms and provisions of this Agreement shall be binding upon the Grantor, including the Grantor's heirs, legal representatives, successors, nominees and assigns, and shall run with the Real Estate. Any subsequent sale or transfer of the Real Estate shall be subject to this Agreement. This Agreement is subject to all prior easements and other encumbrances of record.
11. Grantor's Use: Except as to the rights granted in this Agreement, Grantor shall have the full use and control of the Easement.
12. Amendments: This Agreement may only be amended by prior written consent signed by Grantor and Grantee.
13. Notices: All notices to either party shall be sent to the following addresses:

If to the Grantor: **Fort Wayne Board of Park Commissioners**
 705 E. State Blvd
 Fort Wayne, Indiana 46805

If to the Grantee: City Utilities Engineering
 200 E. Berry St., Suite 250
 Fort Wayne, Indiana
 46802
14. Either party to this Agreement may change their respective address by mailing notice of same to the other party via certified mail.
15. Governing Law: The laws of the State of Indiana shall govern this Agreement.
16. Grantor's Covenant of Ownership: Grantor covenants that Grantor is the lawful owner of the Real Estate, that Grantor is freely and lawfully granting the easement rights herein, and that Grantor has full right and power to convey the same.
17. Incorporation of Recitals: All recitals set forth at the outset of this Agreement are incorporated herein by this reference and are true.

18. Entire Agreement: The eight (8) pages of this Agreement, along with the attached Exhibit(s) "A," and "B," comprise the entire Agreement made between the City of Fort Wayne, Indiana, and **Fort Wayne Board of Park Commissioners**, on this date.

My County of Residence: _____

GRANTEE: City of Fort Wayne, Indiana

Date: _____

Seth Weinglass, Program Manager
Capital Project Services – Fort Wayne City Utilities, on behalf of the City of Fort Wayne,
Indiana, Board of Public Works

CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, a Notary Public in and for said County and State, personally appeared **Seth Weinglass**, Program Manager – Capital Project Services – Fort Wayne City Utilities, on behalf of the City of Fort Wayne, Indiana, Board of Public Works, and acknowledged the execution of the foregoing **Utility Easement Agreement**.

WITNESS my hand and seal this ____ day of _____, 20__.

Notary Public Signature

Notary Public Printed Name

My County of Residence: _____

My Commission Expires: _____

Prepared by Seth Weinglass, Program Manager, Capital Project Services, Fort Wayne City Utilities,
Citizens Square, Suite 250, 200 E. Berry Street, Fort Wayne, Indiana 46802 / Telephone: 260-427-1330.

I affirm, under penalties for perjury, that I have taken reasonable care to redact each Social Security
number in this document, unless required by law. Seth Weinglass

EASEMENT PLAT

200 East Berry Street, Suite 250
Fort Wayne, IN 46802
Phone: (260) 427-5088
Fax: (260) 427-5738



PREPARED BY:
FORT WAYNE CITY UTILITIES
ENGINEERING DEPARTMENT

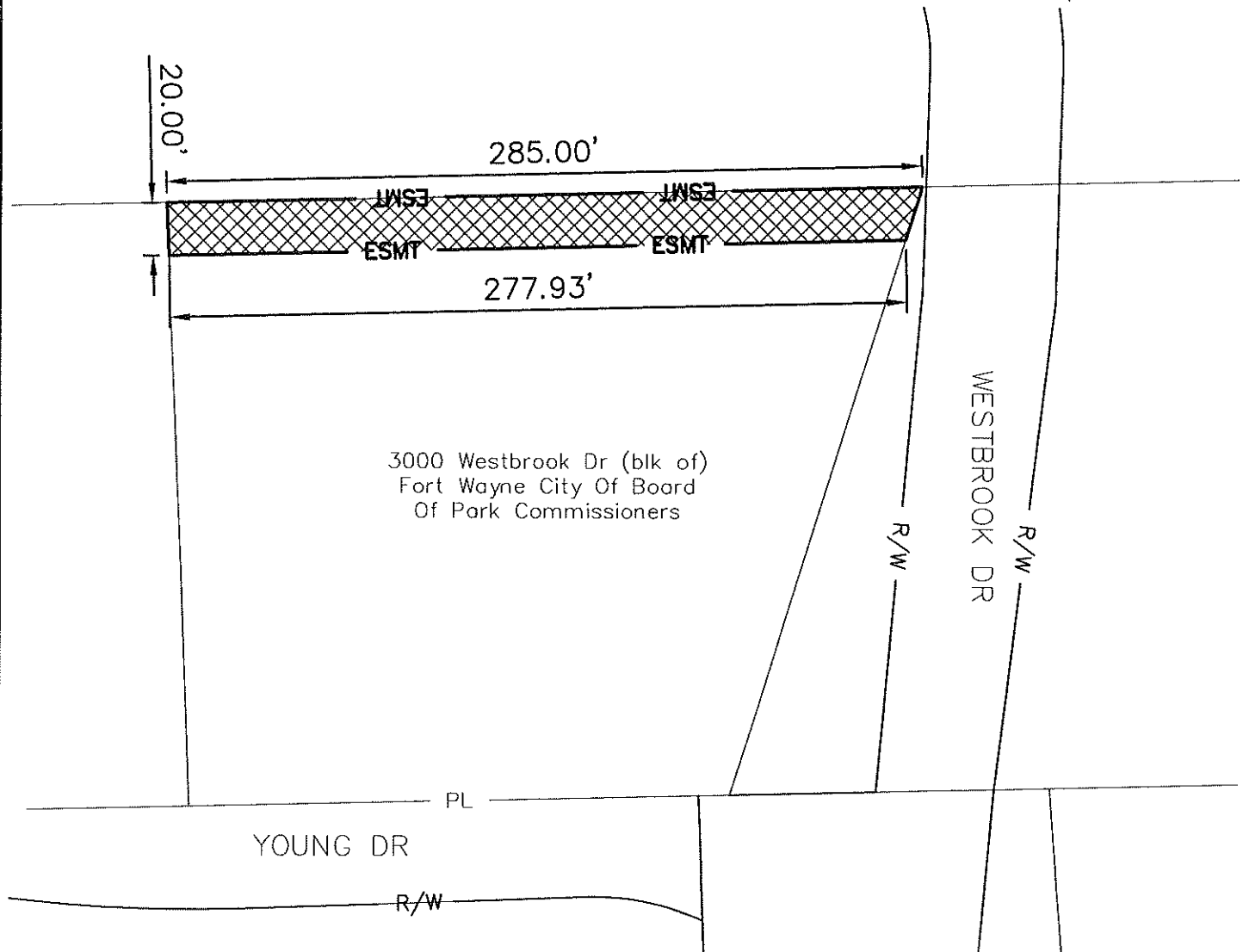
EXHIBIT A

WASHINGTON TOWNSHIP
County: Allen Section 35
Township 31N Range 12E
Parcel 02-07-35-201-003.000-074

PERMANENT EASEMENT



5629 S.F., 0.13 Acres



PERMANENT EASEMENT LEGAL DESCRIPTION:

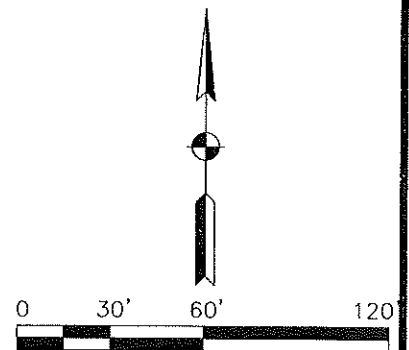
A permanent easement on that certain parcel of real property conveyed to Fort Wayne city of board of park commissioners by that instrument recorded in deed record 203097438, in the office of the recorder of Allen County, Indiana, more particularly described as follows:

The north 20 feet of the north property line, adjoining and parallel to the north property line.

Property Address:

3000 Westbrook Dr (blk of)
Fort Wayne, IN 46805

Existing property and easement lines shown for spatial reference only.
Existing dimensions shown from property line to property line and
obtained from the recorded plat.



EASEMENT PLAT

200 East Berry Street, Suite 250
Fort Wayne, IN 46802
Phone: (260) 427-5066
Fax: (260) 427-5738



PREPARED BY:
FORT WAYNE CITY UTILITIES
ENGINEERING DEPARTMENT

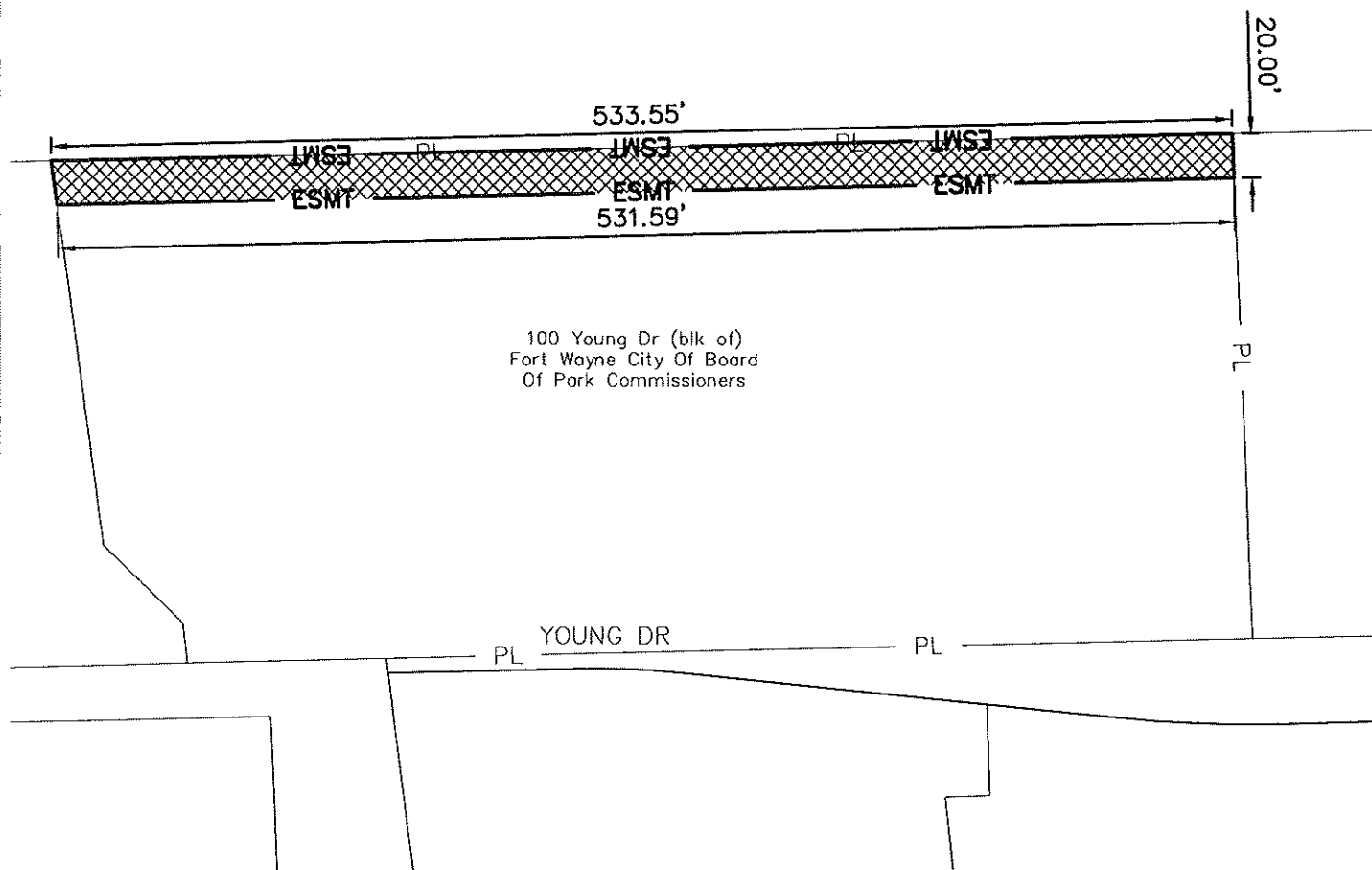
EXHIBIT B

WASHINGTON TOWNSHIP
County: Allen Section 35
Township 31N Range 12E
Parcel 02-07-35-201-002.000-074

PERMANENT EASEMENT



10651 S.F., 0.24 Acres



PERMANENT EASEMENT LEGAL DESCRIPTION:

A permanent easement on that certain parcel of real property conveyed to Fort Wayne city of board of park commissioners by that instrument recorded in deed record 203097438, in the office of the recorder of Allen County, Indiana, more particularly described as follows:

The north 20 feet of the north property line, adjoining and parallel to the north property line.

Property Address:

100 Young Dr (blk of)
Fort Wayne, IN 46805

Existing property and easement lines shown for spatial reference only.
Existing dimensions shown from property line to property line and
obtained from the recorded plat.

