

Land Acquisition Strategy Michigan City

Introduction

This Land Acquisition Strategy will facilitate Michigan City in acquiring land for the sustainable management of stormwater through nature-based solutions and the protection of high-value natural areas by documenting institutional knowledge on land acquisition deals for conservation purposes and creating an easy-to-implement acquisition process.

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Acknowledgements

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Tipping Points Planning Analysis

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I. Land Acquisition Strategy

A. How to Navigate the Land Acquisition Strategy

The Michigan City Land Acquisition Strategy (LAS) was developed with the intention of providing city staff with the tools needed to navigate the land acquisition process easily and efficiently. Our aim was to help Michigan City and other municipalities avoid mistakes that can be costly monetarily, in terms of excess staff time and in the opportunity cost of failing to acquire a parcel critical to the city's plans.

Please note that the LAS should not be considered a tool for municipal use of eminent domain to seize land. Eminent domain is an entirely separate process with different legal constraints and requirements.

The LAS outlines a model process for a municipality to acquire land through a willing seller. Key decision points within this model process are called out for deeper consideration by city staff. The LAS can be read sequentially at the start of a land acquisition process or as a reference tool to navigate challenging situations as they arise. Land Acquisition Strategy occurs in two phases – SELECTION of the parcel and ACQUISITION of the parcel.

- *Skip to Section III (page 4) if you need to acquire land for a public purpose, but have not yet identified which parcels would address such a purpose.*
- *Skip to Section IV (page 8) if you already have identified a parcel for acquisition.*

The SELECTION phase is how the municipality prioritizes and chooses parcels for acquisition. An example of how Michigan City has prioritized land acquisition is used to illustrate how a methodological process provides a coherent need to spend public funds for acquisition.

The ACQUISITION Phase is a standardized process for how a municipality would acquire parcels through fee-simple purchase. The process and legal templates have been tailored to Michigan City. To do this, a group of Land Acquisition Advisors were solicited for input and feedback on the acquisition process they have experienced in Northwestern Indiana.

II. Selection Phase: Determine Purpose and Identify Partnerships

A. Purpose Overview

Purchasing land or “Real Property” is a complex undertaking with financial ramifications. Whether the purchaser is a resident, a private business or a public entity, purchasing land typically requires expertise from the legal, engineering, environmental, and financial fields. Moreover, when the acquisition is performed by a public entity, such as a municipality, there are political considerations as well. Therefore, it is imperative that municipalities identify a purpose for acquisition and clearly communicate why acquiring a specific parcel will advance

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a municipal initiative. This can be done through embedding the land acquisition purpose within a Comprehensive Plan, other planning documents (i.e. natural resource management plan, watershed management plan), or through a resolution passed by a public board, commission, or council.

Determining Purpose

A city should never start a land acquisition planning process from the position of “we need to acquire land” and then determine what it should want to do with that land. Utilizing the LAS to embark on a thoughtful land acquisition prioritization and acquisition process should only occur after the City has identified a coherent need for what it must do on land it does not already possess.

Embarking on a prioritization process takes time and staff capacity. It should only be performed in order to achieve long-term objectives.

B. Case Study: Michigan City’s Model for Identifying Purpose

Below is the step-by-step process Michigan City’s Project Team used to determine its purpose for acquiring land.

1. Determine impetus for public sector action
 - Michigan City Sanitary District and Trail Creek Watershed Partnership members seek to improve Trail Creek water quality. It is determined that within the boundaries of Michigan City, the best way to improve it is through installing green infrastructure to absorb and filter stormwater runoff before it reaches Trail Creek.
2. Gather potential partners (City staff, Alliance for the Great Lakes, Delta Institute)
 - Michigan City Sanitary District meets with Alliance for the Great Lakes and Delta Institute to discuss methods to increase green infrastructure and create Project Team.
 - See page # for list of Internal and External Project Team Members
3. Determine whether the action requires public acquisition of land
 - Partners determine that as the Sanitary District’s stormwater pipes flow into Trail Creek, it is their responsibility to install green infrastructure on-site in order to clean it prior to reaching Trail Creek

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4. Develop formal land acquisition purpose

- Michigan City Sanitary Board drafted and passed Sanitary Board Resolution #1353-14 stating the purpose of land acquisition.
- Resolution excerpt: “Acquiring title to... prioritized parcels in the City of Michigan City for the purpose of conserving high quality natural areas as well as increasing the Sanitary District’s ability to reduce the adverse impacts of stormwater runoff to the City’s water resources.”

From Sanitary District Board Resolution #1353-14 we have since developed a more complete narrative of the two purposes for land acquisition which drove the development of the Land Acquisition Strategy.

1. In order to improve Trail Creek water quality, the Michigan City Sanitary District had been interested in increasing green infrastructure to clean stormwater runoff using plants and soils before it reaches Trail Creek and Lake Michigan. Without an ordinance requiring private developers to install green infrastructure on their properties, increasing green infrastructure would have to be performed by the City. This is an impetus or why for the City to acquire land as the City must own land in order to install green infrastructure practices on site.
2. Additionally, the City and the Trail Creek Watershed Partnership, a membership group working to implement the Trail Creek Watershed Management Plan, had planned for increasing the recreation opportunities on and along Trail Creek like fishing, kayaking and hiking. This is an impetus or why for the City to acquire land as the City must own land on Trail Creek in order to provide physical access to the Creek.

C. Identify Partnerships

Determine who needs to be at the table generally and who has the knowledge and capacity to lead the work of the Project Team. There are several types of actors recommended to be included:

- Leaders from municipal department(s) that oversee or are responsible for the actions the city will undertake on acquired land; *for example, as Michigan City wants to install more green infrastructure, the Sanitary District, which is responsible for stormwater management, is a necessary partner*
- Municipal legal expertise; *for example, legal guidance for this project was provided by Attorney Jim Meyer, Sanitary Board Attorney*
- External capacity in the form of nonprofit partners who can coordinate the prioritization process; *for example, coordination for this project was provided by Alliance for the Great*

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Lakes and Delta Institute. More than five years have transpired between the approval of the Sanitary District's original Board Resolution #1353-14 on November 12, 2014 to the completion of the Land Acquisition Strategy. It is challenging for municipal staff to manage such a long-term planning exercise in addition to their day-to-day duties and responsibilities.

Decision Point

Partnering with a nonprofit provides benefits including:

- Additional time - limited capacity which municipal staff may not have
- Municipal staff may appreciate the political benefits of parcel prioritization being performed by an objective third party

III. Selection Phase: Prioritize Parcels

A. Why Develop a Prioritization Process

Cities have many ways they can acquire land. They can:

Purchase land from a private party or public entity;

- Acquire delinquent properties through a tax-sale transfer through their county government;
- Be gifted or donated land by another entity or person;
- Participate in a land swap with another public entity or land trust; or
- Acquire land through enacting eminent domain.

All of these are options can be boiled down to either acquiring land due to happenstance (i.e. tax sale or gifted/donated) or due to a previous planning prioritization process that identified a need for the municipality to take ownership over a parcel. A documented planning process for land acquisition provides many advantages to the municipality:

1. The municipality is less likely to acquire unnecessary parcels it cannot use effectively.

Example: By determining a need for green infrastructure management on acquisition targets parcels with poor drainage, lack of adjacency to a waterway or stormwater pipe, or other features necessary for effective green infrastructure will not be selected for acquisition.

2. Conveys transparent reasons for acquisition to the public which builds trust in public institutions.

Example: Passing a resolution by public boards, commission, or city councils to develop an acquisition plan or strategy

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3. The municipality can strategically acquire land in coordination with other planning initiatives for greater impact.

Example: Interdepartmental prioritization process for acquisition

4. Facilitates grant seeking for acquisition or evaluation.

Example: To leverage local dollars to achieve the aims of the planning process, a documented planning process and public resolutions strengthens grant applications for acquisition or activity funding.

Cities manage many thousands of individual parcels within their municipal boundaries. Michigan City contains over 17,000 parcels. Evaluating all potential parcels for land acquisition, even if geographic constraints such as within the central business district are imposed, is still too daunting to be done through qualitative means alone. A blend of quantitative and qualitative analysis utilizing weighted indexing is recommended. The Land Acquisition Strategy utilized both in order to select a manageable number of parcels for in-depth evaluation.

Step 1: Rank Parcels Using Quantitative Spatial Analysis

Step 2: Evaluate the Top Parcels Group

It is recommended to develop iterative prioritization processes starting with quantitative data analysis for list narrowing and then evaluate with local knowledge to further narrow the list of acquisition targets to a small enough number for deeper evaluation.

B. Step 1 - Rank Parcels Using Quantitative Spatial Analysis

The first step is to perform a quantitative assessment to winnow out a parcel list to a manageable number of acquisition targets to consider. The Project Team utilized spatial analysis for the initial evaluation of municipal parcels to create ranked scores for each parcel. Before evaluating parcels, the Project Team split the two types of purposes for land acquisition into two tracks:

1. green infrastructure for stormwater management,
2. conserving high-quality natural areas for passive recreation and ecosystem habitat.

A long list of potential criteria that might factor in selection for either of the two tracks were identified through multiple project team meetings.

Initial Criteria List

| | |
|----------------------------|--|
| Ownership | Floodplain |
| Improved vs. unimproved | Outfalls |
| Wetlands | Trail Creek Corridor |
| TIF district | Managed Lands |
| Waterways | Fishing access points |
| Stormwater Area of Concern | Existing and planned recreational trails |
| | Ecosystem Service Value |

The original Land Acquisition Criteria project (2015-2016) was performed by Delta Institute with coordination support by Alliance for the Great Lakes prior to the Land Acquisition Strategy project. It is included within the LAS as it was integral to its development.

Each variable was scored as determined by a scoring schema developed and refined by the project team. These criteria or variables were grouped into relevant subcategories.

| Site Readiness | Stormwater Management | Recreation & Conservation |
|-------------------------|------------------------------|--|
| Ownership | Waterways | Trail Creek Corridor |
| Improved vs. unimproved | Stormwater Area of Concern | Managed Lands |
| Wetlands | Floodplain | Fishing access points |
| TIF district | Outfalls | Existing and planned recreational trails |
| | | Ecosystem Service Value (From GIV 2) |

Each criteria had its own internal weighting methodology as can be seen by variables within the sub-category of Site Readiness on the next page.

Site Readiness

| | | |
|--------------|---|---|
| Ownership | Public Ownership - Michigan City or MCSD | 4 |
| | Public Ownership - Other MC Department | 3 |
| | Public Ownership - Other local, county, or state agencies | 2 |
| | Private - Commissioners Tax Sale | 1 |
| | Private - Land Trust | 0 |
| | Public - Land Trust | 0 |
| Status | Unimproved / vacant | 4 |
| | Improved / Not vacant | 0 |
| Surroundings | Adjacent to Public Ownership | 1 |
| | Within TIF District | 1 |

All parcels were scored using GIS Spatial analysis based on the variables. Using the framework outlined above, Delta scored all parcels within Michigan City and normalized all values to a 0-100 scale. Each subcategory was weighted in percent form to represent the different needs or perspectives of the Sanitary District or open space planning. The higher the value, the more suitable a parcel is deemed for acquisition. A total of 17,617 parcels were analyzed and scored.

| Weighting for Land Acquisition Tracks | Site Readiness | Stormwater Management | Recreation & Conservation |
|--|----------------|-----------------------|---------------------------|
| Land acquisition for green infrastructure: | 50% | 30% | 20% |
| Land acquisition for natural areas | 50% | 10% | 40% |

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C. Step 2 – Evaluate the Top Parcels Group

The second step was to perform a qualitative assessment to provide feedback and confirm a list of the highest scoring parcels for more in-depth evaluation. Parcels were given two scores according to suitability for use as either a site for green infrastructure or natural area. The top 20 parcels with the highest combined scores were identified as the Top Parcels group. The basic concept was that if the City were to purchase a parcel, it would be suitable for both uses.

However, in general it was understood that while there are certain green infrastructure practices that support ecosystem quality (i.e. rain gardens), it would be a mistake to assume that both green infrastructure or conveyance of stormwater to the green infrastructure would take place on the same footprint as conserved high-value natural areas or passive recreation trails. Therefore, the Project Team separated the anticipated footprints of each use within each parcel.

The Project Team evaluated each of the top 20 parcels with municipal partners. First, they confirmed whether each parcel should be within the top 20 list based on local knowledge of external circumstances. For instance, one parcel was dismissed due to its owner's unwillingness to sell.

Second, the municipal partners determined the footprint for each parcel which would be dedicated to natural areas or passive recreation. Often this was determined by presence of wetlands, dense forest with high potential for native species, or proximity to existing trails. This was done through physically drawing on maps and then digitizing the boundary lines of the natural areas or passive recreation areas. The remainder of the footprint on each parcel was to be designated for green infrastructure.

GIS files related to environmental information and existing infrastructure near the top 20 parcels were sent to partner experts at Illinois-Indiana Sea Grant (IISG) and Purdue University to take into account additional factors in evaluation of the prioritized parcels.

IV. Selection Phase: Evaluate Prioritized Parcels

The next step of our model prioritization process was a quantitative assessment using modeling to evaluate the value of acquisition toward achieving our green infrastructure stormwater management goals. The Project Team partnered with Illinois-Indiana Sea Grant (IISG)/ Purdue University's Tipping Point Planner program. Tipping Point Planner supports Great Lakes communities as they plan sustainable futures by directly linking data to the local decision-making processes. The Tipping Point Planner extension and community

engagement efforts are led by IISG's Kara Salazar, Assistant Program Leader & Extension Specialist for Sustainable Communities. It contains multiple modules that discuss issues of water quality through models and data. The program is implemented through a facilitated workshop series in which communities engage with a broad range of stakeholders to identify issues and develop action plans that can be integrated into community plans and policies.

Dr. Jingqiu Chen of Purdue University adapted a Planner hydrologic model named Long-Term Hydrologic Impact Assessment-Low Impact Development (L-THIA-LID). The L-THIA-LID 2.1 model assesses the return on investment (ROI) in terms of monetary value and ecosystem services for implementing various green infrastructure practices on specific parcels by grounding the analysis in local data. Collaboration between the Project Team and Tipping Point Planner was an iterative process which consisted of multiple in-person meetings, calls and extensive communication via telephone and email.

Tipping Points' L-THIA-LID Process

- Gather data and necessary inputs into model
- Initial screening based on site characteristics
- Model the top 6 parcels with the four scenarios of suitable Green infrastructure BMPs implemented

A. Gather Data and Necessary Inputs into L-THIA-LID Model

This model builds upon local spatial data for land use (i.e. residential, commercial, industrial, agricultural) and soil permeability (hydrologic soil group) to assign a runoff curve number and calculate runoff depth by using long-term daily precipitation. Other data required to determine site suitability for green infrastructure practices include digital elevation model, streams, and imperviousness. This model can be used to estimate the expected impacts to the watershed in terms of stormwater and nutrients captured given whether specific green infrastructure practices are implemented.

B. Initial Screening Based on Site Characteristics

Based on the location of each of the top 20 parcels within the Trail Creek watershed, the parcels were grouped into seven groups. For each group, an initial screening was performed based on criteria including (1) nearby conditions (whether there are existed green infrastructure practices nearby or not), (2) size of the contributing drainage areas, and (3) the suitable areas for green infrastructure practices that could be installed on each parcel – wet pond, dry pond, wetlands. The highest scoring parcel within each group was selected for further analysis. Since the municipalities have limited means to acquire land and since parcels near each other could interchangeably increase the local stormwater management capacity, only the highest scoring parcel within each group would make sense to acquire.

C. Model Top 6 parcels with Four GI BMP Scenarios

Only six of the original top 20 parcels reached the final modeling analysis with the L-THIA-LID model. For each of these six parcels, only contiguous areas (excluding the natural areas set aside in the Step 2 of the Prioritization Process and any current wetlands areas) were modeled as suitable area for implementation of green infrastructure. Due to Return on Investment (ROI) advantages, only three green infrastructure practices were considered: wet pond, dry pond, and wetlands. Four scenarios were modeled for the suitable area for each of the six parcels.

Scenario 1: All suitable areas implement a wet pond

Scenario 2: All suitable areas implement a dry pond

Scenario 3: All suitable areas implement wetlands

Scenario 4: All three practices are implemented equally within suitable areas (1/3 dry pond, 1/3 wet pond, 1/3 wetlands)

The L-THIA-LID model utilized construction and maintenance assumptions for installation of the three practices. For each of the six parcels, all four scenarios were modeled to deliver the outcomes below. The information was presented to the Project Team and municipal partners to help them understand the potential impacts, costs, and advantages of implementing green infrastructure practices.

- Total cost over a 20-year period
- Annual cost over that 20-year period
- Annual reduction in runoff (m³)
- Annual reduction in total suspended solids (TSS in kg)
- Cost effectiveness of runoff reduction (\$/m³/yr)
- Cost effectiveness of runoff reduction (\$/kg/yr)

D. Groundtruth Top Parcels to Identify First Acquisition Targets

The last step of our model prioritization process was a qualitative assessment where local project partners digested the results of the detailed modeling to further winnow the top parcel list to an actionable list of immediate targets for acquisition. On May 14th, 2019, a final project team meeting was held to review the modeling results from Tipping Point Planner. Dr. Jingqiu Chen presented the results on the modeling process and each of the final six parcels' ROI in the four implementation scenarios. A facilitated decision-making process was then enacted to support the City in acquiring each parcel. Multiple city departments with separate

funding sources, budgets, staff capacity and expertise, and goals for acquisition were represented at this meeting. One of the goals for this project was to make acquisition actionable for the City. This included a preliminary discussion on roles and responsibilities for each of the final six parcels. For each parcel, project partners discussed answers to the *Acquisition Roles and Responsibilities Form* below.

Acquisition Roles and Responsibilities Form

1. Best use(s): [Stormwater management, fishing access on Trail Creek, trails]
2. Department best suited to acquire it: [Sanitary, Parks, Planning, Redevelopment]
3. Potential funding sources for acquisition:
4. Maintenance/management activities for the best use(s): [Which required maintenance tasks would be needed for which uses]
5. Department responsible for long-term management/maintenance:
6. Considerations:
 - Within a TIF (Tax Increment Financing District): [If yes, which one?]
 - Fishing Access: [Yes, no, provides road or trail access to a site]
 - Trail Access: [Yes, no, potentially yes via planned trails]
 - Coastal Acquisition: [Would this qualify as a coastal ecosystems acquisition]
 - Miscellaneous: [i.e. Adjacent to School, Golf Course, or public transit]

E. Prioritization Process Conclusions

It is critical for a prioritization process to be based in both quantitative analysis and local knowledge. Through this prioritization process, the project team identified multiple parcels that, if acquired and green infrastructure practices were installed, would have measurable benefits for Trail Creek. One parcel in particular, which was not on any of the Project Partners' radar for acquisition, was identified as the top target and will be evaluated by staff for acquisition utilizing the Information gathering process as described in the subsequent Chapter. Beyond this top acquisition target, the City has identified many parcels that the City may act to acquire, fund, and install green infrastructure on in the future.

Tipping Point Planner's Takeaway

- Dry ponds are the most cost-effective option for runoff reduction which achieving the greatest volume as well.
- Generally, the parcels with the larger suitable areas for BMPs and larger drainage areas that flow through them provide the most significant opportunities to address runoff and water quality issues as the amount of flow and pollutants that could be mitigated with green infrastructure (GI) practices or even larger scale best management practices is larger.

- Connecting parcels with adjacent ditches could increase the potential of runoff and TSS reductions for BMPs
- Engineers will need to visit the sites to collect more information.

V. Acquisition Phase: Evaluate Parcel Prior to Legal Documents

It is imperative that city staff acquiring parcels have institutional knowledge at their disposal. Parcel acquisition, if coordinated by inexperienced staff, can be needlessly costly in terms of 1) excessive staff hours, 2) high expenses from hiring external capacity (i.e. real estate agent, attorneys, inspection, etc.), or, most problematically, 3) in acquiring the parcels that are not a good fit for the City's needs or goals. One of the central goals of this document is to provide context, steps, and considerations for less experienced staff to navigate acquisition.

City Staff and partners identified as the project team can all play a critical role in gathering the necessary information to better understand parcel characteristics, inform prioritization, and determine what additional technical expertise may be necessary when obtaining ownership. In addition to gathering data made available online or over the phone, conducting a site visit to the parcels and contacting the landowner early in the process is an important step to gather information about the site.

All of these can be performed sequentially or concurrently depending on the context of the parcel, ownership, and available information. There are four main components of work to perform prior to drafting or signing a Letter of Intent or Purchase Agreement for acquisition:

- Information Gathering
- Contact Landowner
- Investigate Environmental History
- Consider Potential Acquisition Red Flags

A. Information Gathering

Once a desired parcel has been identified, research into the parcels is crucial for determining what has already happened on the land and understanding the site's history, ownership, and physical characteristics. The County Assessor's Office, Recorder of Deeds, or Surveyor's Office may be good sources of information. Please see Appendix A for the full Land Acquisition Decision Guide. Below is the list of information gathering questions to be answered by municipal staff. For many of these topics additional context is provided in italics.

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Information Gathering Checklist

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|--|---|
| | What is the parcel number? |
| | <i>Consider: Parcel number can be found in Indiana's Beacon website (https://beacon.schneidercorp.com/) or more updated version</i> |
| | What is the acreage? |
| | <i>Consider: Some parcels are too small or oddly shaped to be traditionally buildable lots. For instance, in Michigan City there are many small traingle shaped parcels.</i> |
| | What is the estimated value of land? |
| | What is the estimated value of improvements? |
| | What is the total estimated purchase price? |
| | <i>Consider: Quick online searches with real estate platforms can provide rough estimates.</i> |
| | How is the parcdel divided? |
| | <i>Consider: If large enough, could it be divided so that both the City and current owner can use their separate sections of the parcel?</i> |
| | Is there a map of the parcel? |
| | Is there a legal survey of the property? |
| | Is there a contract for purchases, sales, or options agreements? |
| | Is there a willing seller letter? |
| | Does the site have infrastructure amenities, such as water/sewer, electricity, or transportation? |
| | Does the property have a building on it? |
| | Is the parcel in any of the following? |
| | <u>Indiana Department of Natural Resources Area of Particular Concern or Coast Advisory Board Priorities</u> |
| | <u>Tax Increment Financing (TIF) District</u> |
| | Who is the site owner? |
| | <i>Consider: Parcels may have unresponsive owners who are not local. It can sometimes require investigative work to track down the owner.</i> |
| | What is the parceled zone? |
| | What is the current land use? |
| | What was the previous land use? |
| | <i>Consider: Previous land uses may be potential sources of environmental contamination.</i> |
| | Are there wetlands on the property? |
| | Are there any liens or easements? |
| | Are there any issues with liens from other jurisdictional entities or utilities? |

B. Contact Landowner

Interviews with the landowners or neighboring owners can be a way to learn more about the site. The purchaser may need an access agreement from the landowner to investigate the environmental history. Perform a site walk-thru prior to seeking board or commission approval.

Site Walk-Thru Considerations

- Before walking the site, draft a checklist based on potential problems the parcel might possess.
- Look for evidence of past dumping activities like unearthed trash, concrete, etc.
- Walk boundary to determine potential problems or contamination from adjacent property
- If the parcel is to be acquired for conservation purposes, a site walk-thru is needed prior to any negotiations to assess ecosystem quality. Farmland can be converted back into prairie, for instance, but would require additional funding and time. At least one local land trust only considers acquiring parcels with high quality habitat already present. They set a threshold of a floristic quality index (FQI) of 35 or higher for acquisition but are flexible depending on what is seen during the site walk-thru.

Obtain a Willing Seller Letter from the landowner stating that they would enter negotiations if the municipality obtains funding and authorization to purchase.

Willing Seller Letters can be valuable, if not required, for grant applications or for board or commission authorization to purchase.

C. Investigate Environmental History

Conducting an initial site visit and gathering background information on the site environmental history can help identify red flags about a particular property. A Phase I environmental site assessment (and possibly a Phase II environmental site assessment) may be advisable prior to taking title to a brownfield site so that the purchaser has some understanding of environmental risk of a site and obtains protection against potential federal liability.

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Under certain circumstances, it may also be necessary to conduct a Phase I environmental site assessment prior to gaining title for the purchaser to be eligible for federal (and possibly state) grants and to meet private lender requirements. Due to the cost of Phase I and II environmental assessments they should occur only after signed LOI if not PA. However, preliminary investigation of environmental history can be performed by city staff of past land uses, adjacent land's past uses, and review of parcel's title history.

Consider Potential Acquisition Red Flags

Once basic information is gathered on the parcel, City Staff will be able to assess whether it is suitable for acquisition. There are many potential challenges to acquiring a specific parcel which may cause staff to reconsider.

Title Challenges

- Conservation easements on a parcel may come with legal strings attached to management in perpetuity which the municipality may not be interested in accepting.
- Utility or other underlying easements like access rights, mineral rights, or overhead lines can pose challenges in potential uses of the property. For instance, there could be restrictions on reforestation needed for restoration.
- Liens on the property, by an entity which is not a department of the municipality, can pose problems in acquisition. This can increase the purchase costs.
- Title description issues including scrivener's errors may extend the acquisition timeline for clearance.
- Quitclaim deeds may provide opportunities and challenges to a municipality. It may be a good first step toward land acquisition; however, it may also pose risk. Check with your municipal lawyer if there is a quitclaim deed.

Seller Challenges

- For parcels priced above \$25,000, municipalities cannot pay above market value as determined by an average of two appraisals. Speculative sellers, when approached by the municipality to sell the parcel, may seek a higher price from municipality or another buyer. Seller could find another buyer, or it could extend the acquisition timeline for the seller to determine the municipality's offer is sufficient. Though this is typical of the marketplace, bad faith acting can string along a municipality when the seller has no intention to sell to them.

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- An unresponsive owner can extend the acquisition timeline beyond the parcel's usefulness to the municipality. An example of an unresponsive seller may be of a parcel may be held by a family trust controlled by out-of-state family members with incorrect publicly available contact information.
- For parcels owned by a family trust, or similar governance structures where it is not owned by a single person, it is recommended that the municipality obtain proof of the seller's authority to sell the property prior to the LOI.
- A very willing seller should be seen as a red flag that there may be underlying issues or liabilities associated with the parcel.

Environmental Contamination

- Certain past land uses like heavy industrial or natural resource processing are almost assuredly signs of future brownfield designation.
- If the owner of the past environmentally contaminating land use was a company which has since been closed down due to bankruptcy or of similar conditions in which seeking remediation costs may prove fruitless, then it should be understood that remediation expenses would fall upon the municipality to perform.
- If there is reason for environmental contamination concern, call Indiana Department of Environmental Management (IDEM) to determine if any actions have been taken on the property or adjacent parcels.

VI. Acquisition Phase: Negotiate & Prepare Letter of Intent

Once a parcel has been evaluated by City Staff and considered a suitable acquisition target, the next phase of work is to negotiate and secure the Letter of Intent (LOI) and Purchase Agreement (PA). These legal documents should be reviewed and modified by City Staff and Attorneys based on the Templates under Appendix B and C were developed by this project by Attorney Margaret A. Williford with the support of City Attorneys. Additionally, Appendix D details *Protocols for Acquiring Land from Private Landowners*.

By drafting and editing these documents in-house, the City can lower its transaction costs than if it were to hire external legal support. While site and transaction specific conditions may require additional legal review for completion of the PA, City Staff should be sufficient to complete the LOI.

A. Appraisals

During the LOI or PA negotiation process, appraisals of the fair market value of the real estate should be obtained from two appraisers licensed in the State of Indiana, pursuant to the requirements of Ind. Code 36-1-10.5-5. The purchase price for any real estate acquired by the municipality may not exceed the average of the two appraisals of the real estate disclosed in the appraisals.

General appraisals usually take 6-8 weeks but can be done in 2-3 weeks if expedited. Consider the timing of when to solicit appraisals as they will expire after six (6) months if used for purpose of soliciting federal grant assistance.

B. Letter of Intent Negotiation Process

LOI's, which are non-binding expressions of intent, are utilized so that the buyer can indicate to the seller its interest in purchasing the property on certain terms. They might state a specific purchase price, while at the same time binding the seller to remove the property from the market for a period of time so that the parties can negotiate a Purchase Agreement.

The buyer's goals for the LOI are that the seller agrees to negotiate a PA on the general terms proposed by the buyer, including possibly the purchase price, and that the seller agrees to take the property off the market for a sufficient time to allow the negotiation of a PA.

If the proposed purchase price is supported by the appraisals, the suggested next step is an LOI. Below are topics to consider in LOI negotiations and drafting:

- Letters of intent may or may not define purchase price. If not, it must be subject to obtaining appraisals. However, the best practice is to obtain appraisals before LOI
- The purpose of the LOI is to set out the parties' general intent to enter into a purchase agreement.
- The terms of the LOI are not binding except for exclusivity and confidentiality provisions.
- Exclusivity provision of the LOI binds the seller of the real estate to not offer the real estate to any other person for a period of time, allowing the buyer and seller the opportunity to negotiate a purchase agreement during the exclusivity period.

- The confidentiality provision is also binding in that the existence of the LOI and the purchase price set out in the letter of intent are confidential.
- A feasibility period section describing the length (e.g. 30 days) of a likely feasibility period can be added, but if negotiations on the timeline will take a while, it may be better to negotiate as part of the PA.
- Letters of Intent are designed to control the timetable of purchasing property. In cases in which the buyer wants to enter PA negotiations sooner rather than later, consider the timetable to acquire two appraisals. If it takes too long, then parties may want to continue with a signed LOI prior to receiving the appraisals. This would make the purchase price indicated in the LOI less indicative of what it will be in the PA.
- The LOI may be dispensed with, although it does afford the advantage of having the property taken off the market while the purchase agreement is being negotiated.

VII. Acquisition Phase: Negotiate & Prepare Purchase Agreement

Purchase Agreements (PAs) or Definitive Agreements are legally binding documents for the transfer of real property from one entity to another. Purchase Agreements must be reviewed by city attorneys. The PA should set realistic timetables for all phases leading to closing, with specific attention to Feasibility Period, Seller's Materials, and Financing Contingency.

A. Clarification of Purchase Agreement Key Elements

Due diligence period/environmental inspection

For a defined period of time following the execution of the PA, the City will have the opportunity to conduct any due diligence it deems necessary relating to the real estate, including environmental due diligence, soil borings, inspections of structures, and the like. Depending on the prior uses of the property, a Phase I Environmental Survey may be necessary and, if warranted, a Phase II Environmental Survey may be advisable.

Since each parcel of real estate is unique, the duration of the due diligence period will need to be customized in each transaction, and the technical expertise required to assist the City in its due diligence will also need to be customized. The PA template is drafted in such a way that the City can terminate the PA without legal consequence at the end of the "Feasibility Period" for any reason if it deems the results of its due diligence to be unsatisfactory for any reason, in its sole discretion.

Thus, it is of great importance for due diligence to be conducted and the City to utilize all necessary tools available to it, including outside consultants, if necessary, to assure that, for example, the environmental condition of the property is acceptable.

Title Investigation

The PA is contingent upon the seller providing good title to the real estate to the City, subject only to permitted exceptions which are defined to be those exceptions shown on a title commitment to which the City does not object. The PA provides a procedure for the seller to provide a commitment for title insurance ordered from the title company and the City to make objections to the condition of the title. Title is to be conveyed by warranty deed at closing, and seller is to deliver a title policy to the City and legal counsel is to review the title commitment to advise on acceptable permitted exceptions for each transaction.

Survey

The PA is contingent upon the seller providing the City with a survey, which, depending upon the circumstances, can be either a boundary survey or ALTA/ACSM survey. If there are no improvements on the land, subject to the approval of legal counsel, a boundary survey may be satisfactory to determine the property's boundaries. However, if improvements are located on the land or if there are easements or any access issues relating to the land, a survey that meets the current ALTA/ACSM standards may be necessary to protect the City's interest.

It will be a matter of negotiation under the PA whether the seller or buyer will pay for the cost of the survey. The PA also sets out the procedure for objections to any defects or encroachments shown on the survey. Any survey obtained must show that legal access is available to the real estate. As with the title commitment, it will be necessary for the City's legal counsel to review any survey and advise on its acceptability.

B. Key Selections for Consideration

Feasibility Period [1] timetable should consider past land use history of the parcel and adjacent parcels. History of industrial land uses or age of structures on the property could be indicative of environmental hazards which may need to be remediated. Phase 1 and possible Phase 2 environmental assessment may require a longer timetable for Feasibility Period to complete.

Escrow costs [3(a)] are negotiable and should reflect the purchase price. Escrow is typically 5-10% of the purchase price.

ALTA Survey Endorsements [4(a)] if purchasing funds are obtained from grants or bonds, check for whether any ALTA endorsements are required by the funding source. Include all endorsements in the PA prior to signatures.

Financing Contingency [5(g)] timetable may be challenging if utilizing grant or bond funds to purchase. Grant funds are most applicable for the acquisition of parcels for conservation. A realistic timetable from grant application to receipt of funds should be conveyed to the Seller during PA negotiations as such grant program cycles can span a year or longer.

Transaction Approval [5(h)] timetable should consider the meeting calendar of the approval Board or Commission. If their regularly scheduled meetings will not occur too far from the Effective Date for either parties' liking, consider whether email or written approval by the Board or Commission is acceptable.

Public Street Access [8(k)] may not be applicable for parcels intended for conservation as there are some parcels within Michigan City, like some abutting Trail Creek, which do not have public street access.

Hazardous Substances [8(n)] should always be considered during acquisition process, but not necessarily grounds for automatic rejection. There are circumstances in which a municipality intentionally acquires parcels with environmental hazards, such as to remediate land adjoining a water body or waterway for the purpose of future public access.

Signatures should indicate the municipal department responsible for the use and maintenance of the parcel.

VIII. Closing and Record Keeping

A. Conditions Precedent to Closing

The City's obligation to close on the purchase of the real estate is conditioned on the occurrence of certain things happening, all of which are set out in Section 5 of the Purchase Agreement Template. For example, the acquisition may be conditioned upon the following:

City obtaining financing, such as grant funding of the purchase of the property (see Section 5(g)).

If an appraisal has not, for some reason, been obtained prior to the execution of the purchase agreement, an appraisal may be a condition precedent to the closing.

Land Acquisition Strategy

Final Sanitary or other City Board, as applicable, and, if required, City Council approval, is a condition precedent to all acquisitions.

Any other conditions, such as the cleanup of the property, removal of personal property, or the like.

B. Day of Closing

The Purchase Agreement Template contemplates the use of a title company for facilitating the closing of all land acquisition transactions. The Template names, as a suggestion, Meridian Title Insurance Company as a title company to use as the closing agent and as the escrow agent to hold any earnest money deposit. Any other title company the City or its legal counsel desires to use would be acceptable.

The use of a third-party title company to issue a title commitment evidencing the state of the title, to hold the earnest money deposit, and to facilitate the closing is highly recommended to simplify and facilitate the land acquisition process. City attorneys should review title work completed by the title company for accuracy.

C. Record Keeping

The title company will record the deed immediately after the closing of the acquisition transaction. The staff of the appropriate agency, such as the Sanitary District or the City, will need to keep the originals of all documents relating to the land acquisitions, including the documentation of the purposes for which the land was acquired, surveys, deeds, reports regarding due diligence efforts, and all background documents relating to the acquisition of the real estate.

Appendix A

LAND ACQUISITION DECISION GUIDE

Land Acquisition Decision Guide Key
The LAOG has a number of components that are organized as follows:

Common acquisition tasks: Includes a checklist or questions to ask as moving through the acquisition process.

Issues that require decisions to move forward: Includes the investigation of the environmental history, and additional questions for the municipality.

Items to be produced/ gathered: Includes documents needed to move the acquisition process forward.

1. Purpose & Partnerships

State Purpose for Acquiring Land

Why acquire the parcel? Below are examples of reasons for acquiring land:

- ☐ For public purpose such as green space or parkland?
- ☐ To fulfill economic development goals?
- ☐ To satisfy watershed management plan?
- ☐ To implement existing plans?
- ☐ For historic/cultural/natural resource?
- ☐ To improve connectivity of stream corridors or habitats?
- ☐ To improve public access to natural areas or open space?
- ☐ For green infrastructure/stormwater management?
- ☐ For hazard mitigation?

Prioritization

- ☐ What criteria can be used to prioritize the land's suitability for acquisition?
 - This can also help inform what parcel information should be gathered

For a list of potential criteria to use, visit the [Brownfield Marketability Scoring Tool](#)

Partnership Development

- ☐ Who is on your leadership team?
- ☐ Who are your long-term partners?
- ☐ How do partnership align with the purpose of acquiring land?

Long-term and Maintenance Planning

- ☐ Once the land is acquired, how will the intervention be implemented?
- ☐ How will the improvement be maintained?

Think about long-term planning early in the process. This will also guide funding opportunities and partnership development.

2. Information Gathering

Gather Parcel Information

- ☐ What is the parcel number?
- ☐ What is the acreage?
- ☐ What is the estimated value of land?
- ☐ What is the estimated value of improvements?
- ☐ What is the total estimated purchase price?
- ☐ How is the parcel divided?
- ☐ Is there a map of the parcel?
- ☐ Is there a legal survey of the property?
- ☐ Is there a contract for purchases, sales, or options agreement?
- ☐ Is there a willing seller letter?
- ☐ Does the site have infrastructure amenities, such as water/ sewer, electricity, or transportation?
- ☐ Does the property have a building on it?
- ☐ Is the parcel in any of the following:
 - ☐ [Indiana Department of Natural Resources Area of Particular Concern or Coast Advisory Board Priorities?](#)
 - ☐ Tax Increment Financing (TIF) District?
- ☐ Who is the site owner?

☐ Does the acquisition have board approval to move forward?

Investigate Environmental History

- ☐ Does the municipality always need to do an environmental assessment when acquiring land?
- ☐ Has a Phase I been completed?
- ☐ Who is responsible for conducting an environmental assessment?
- ☐ Can the municipality accept a modified Phase I/II?
- ☐ Is a Phase II needed?
- ☐ What are the environmental liabilities?

A Phase I environmental site assessment provides important information about possible contamination on a property and will likely be required by a private lender. It can provide some protections against potential federal environmental liability and may be required to be eligible for state and federal funding needed to further assess or cleanup the property if contamination is identified. Consult a Qualified Environmental Professional for specific information regarding your site.

Make Contact with Landowner

- ☐ Is there a willing seller?
- ☐ Can you interview the landowner?
- ☐ Can you interview neighboring landowners?

Establish a relationship early with the current landowner, if possible. Both the landowner and neighbors can provide vital sources of information about the property.

3. Forms & Legal Work

Complete Appraisals

- ☐ Is the appraisal consistent with all legal requirements and guidelines?
- ☐ What type of appraisal is most appropriate for the purpose of the acquisition?

Indiana municipalities must comply with the following procedures: [Indiana Code 36-1-1-10.5](#)

There are three types of appraisals. [Learn more here:](#)

Sign Letter of Intent

- ☐ Is the proposed purchase price supported by the appraisal?

If the answer to the above question is "yes" then a letter of intent may be the municipality's next step. The purpose of the letter of intent is to set out the parties' general intent to enter into a purchase agreement.

Secure Realtor's Purchase Agreement

- ☐ Does a purchase agreement template already exist?
- ☐ Are there escrow requirements?
- ☐ Are there due diligence issues?
- ☐ Are there contingencies on financing for longer timeframes (ie: 6-12 months)?

If purchasing state land, the [State of Indiana has a standardized purchase agreement](#)

Gather Title Work and Survey

- ☐ Is there an existing conservation easement?
- ☐ Is there an existing utility easement?
- ☐ Is there an existing non-public/utility entity's easement?
- ☐ Is a survey required for bonding to fund the acquisition?

For additional information on gaining title to property, see [Gaining Title to Abandoned Commercial Properties](#).

Additional Considerations

- ☐ Any issues that come from purchasing farm land?
- ☐ What funding sources are available for acquisition?
- ☐ Is bonding an option?
- ☐ Is Tax Increment Financing (TIF) an option?

The Indiana Department of Natural Resources compiled a [list of over 100 grant programs](#), some of which cover acquisition.

To be completed by staff

Appendix B

LETTER OF INTENT

_____, 20____

[Insert name and address of Seller]

Re: [Insert address of Property]

Dear **Sir or Madam:**

The purpose of this Letter of Intent (“Letter”) is to set forth certain nonbinding understandings and certain binding agreements with respect to a proposed transaction in which the undersigned, **City of Michigan City, Indiana**, an Indiana municipal corporation (the “Purchaser”) is prepared to purchase from _____ **[insert name of Seller]**, **[if Seller is an LLC or corporation, enter state of organization/incorporation]**, (the “Seller”) the real property commonly known as **[insert address and parcel number(s) of real estate]**, including all structures located thereon, together with all rights-of-way, easements, use restrictions, and all other rights appurtenant thereto (the “Real Estate”).

The following paragraphs reflect proposed terms of the purchase and sale of the Real Estate but do not constitute a complete statement of those terms and are not a legally binding or enforceable commitment on the part of either party with respect to the matters described in them.

1. Real Estate Purchase and Sale. On the terms and subject to the conditions set forth in a definitive, legally binding, written real estate purchase and sales agreement to be negotiated and entered into by Seller and Purchaser (“Definitive Agreement”), Purchaser will purchase and Seller will sell the Real Estate. Title and possession of the Real Estate will be transferred to the Purchaser on the date of closing, which will occur on a mutually satisfactory date as soon as reasonably possible upon the satisfaction of all conditions of the parties’ obligations under the Definitive Agreement (“Closing Date”).

2. Purchase Price for Real Estate. The purchase price (“Purchase Price”) to be paid by Purchaser to Seller for the Real Estate on the Closing Date will be set out in the Definitive Agreement and will be the fair market value of the Real Estate, as determined by the average of two (2) appraisals obtained by the Buyer, as required by IC 36-1-10.5-5, of \$ _____. The Purchase Price shall be adjusted by such prorations as the Definitive Agreement provides. The Purchase Price shall be paid in cash at Closing.

3. Title. At Closing, Seller will convey title to the Real Estate subject only to the exceptions permitted in the Definitive Agreement and will provide Purchaser such title insurance commitment as is set out in the Definitive Agreement.

4. Customary Provisions/Conditions. The Definitive Agreement will contain the usual and customary covenants, contingencies, and representations on behalf of Seller and Purchaser as will be set out in the Definitive Agreement, and the Closing will be subject to the usual and customary conditions, including financing, as the Purchaser deems necessary.

5. Closing Conditions of Purchaser. Purchaser's obligation to proceed with and consummate the purchase of the Real Estate is subject to, among other things, the following conditions.

- (i) completion of, and Purchaser's satisfaction in its sole discretion, with the results of its due diligence review as will be described in the Definitive Agreement;
- (ii) negotiation and execution of the Definitive Agreement;
- (iii) compliance by the Seller with its obligations hereunder; and
- (iv) satisfaction of all conditions and contingencies set out in the Definitive Agreement.

6. Closing Conditions of Seller. The obligation of the Seller to consummate the sale of the Real Estate contemplated herein will be subject to, among other things, the following conditions:

- (i) negotiation and execution of the Definitive Agreement; and
- (ii) compliance by the Purchaser with all of its obligations under the Definitive Agreement.

Upon execution of counterparts of this Letter by or on behalf of Seller, the following terms shall constitute the legally binding and enforceable agreement of Purchaser and Seller in recognition of the cost to be borne by Purchaser and Seller in pursuing this transaction and, further, in consideration of their mutual undertakings as to the matter described herein:

7. Exclusivity. Seller agrees that for () days following the date of this Letter, neither the Seller nor any of its agents or representatives, will, directly or indirectly:

- (i) submit, solicit, initiate, encourage, or discuss with any person or entity, other than the Purchaser, any proposal or offer from any person or entity relating to, or make any agreement with respect to, the sale of the Real Estate; or
- (ii) furnish any information with respect to, assist or participate in, or facilitate in any other manner, any effort or attempt by any person to do or seek the foregoing.

8. Confidentiality. Pursuant to IC 5-14-3-4(b)(5), the existence and terms of this

Letter and information exchanged between Seller and Purchaser and their representatives related to the purchase of the Real Estate shall be maintained in confidence by the parties hereto and their respective members, officers, directors, employees, and agents, except as and to the extent otherwise required by law.

9. Governing Law. This Letter shall be governed by the laws of the State of Indiana.

10. Best Efforts. The Purchaser and Seller shall negotiate in good faith and use their best efforts to arrive at a mutually acceptable Definitive Agreement for approval, execution, and delivery on the earliest practicable date. Purchaser and Seller shall thereupon use their best efforts to effect Closing and to proceed with the transaction contemplated by the Definitive Agreement as promptly as is reasonably practicable.

If you agree with the foregoing terms, please sign and date this Letter and return a signed copy to the undersigned (via facsimile, email, or personal delivery). By signing this Letter, you are representing the Seller's acceptance of all of the terms and conditions in this Letter.

Sincerely,

THE CITY OF MICHIGAN CITY

By: _____

_____, its _____

Accepted and Agreed to this _____ day of _____
20____.

SELLER

By: _____

_____, its _____

To be completed by staff

Appendix C

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

This **AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY** (this “**Agreement**”) is entered into this _____ day of _____, 201_, by and between _____ (the “**Seller**”), and the **CITY OF MICHIGAN CITY, INDIANA**, an Indiana municipal corporation (for the benefit of the Michigan City Parks Department/Sanitary District) (the “**Purchaser**”).

WHEREAS, Seller is the owner of certain **[CHECK APPROPRIATE BOX] []** improved [] unimproved real property in the County of LaPorte (“**County**”), State of Indiana (“**State**”), containing approximately _____ acres, together with all improvements, rights and appurtenances thereto, including, without limitation, all of Seller’s right, title and interest in and to adjacent streets, alleys, rights-of-way, easements and any adjacent strips of real estate (collectively, the “**Property**”), as more particularly described in Exhibit “A” attached hereto and made a part hereof; and

WHEREAS, Seller desires to sell and Purchaser wishes to purchase the Property pursuant to the terms and conditions hereinafter set forth (“**Agreement**”).

NOW, THEREFORE, in consideration of the mutual promises, assurances, and commitments of the parties as set forth herein, Seller does hereby agree to sell to Purchaser and Purchaser agrees to purchase from Seller in fee simple the Property pursuant to the following covenants, conditions, terms, and obligations:

1. **FEASIBILITY PERIOD.** Purchaser shall have the period commencing upon the Effective Date (as hereinafter defined) and ending _____ (____) days after the Effective Date, which date shall be _____, 201_, or such earlier date as Purchaser may elect (the “**Feasibility Period**”), to undertake, at Purchaser’s sole expense, such engineering, soil, environmental, and other studies as Purchaser may desire. If Purchaser is not satisfied with the Property or the transaction evidenced by this Agreement for any reason or no reason at all, Purchaser may, as a matter of right, terminate this Agreement by written notice to Seller at any time prior to the end of the Feasibility Period, in which case the Deposit (as hereinafter defined) shall be returned to Purchaser within five (5) days of such termination (less \$100.00 paid to Seller as consideration for entering into this Agreement). Thereafter, the parties shall be relieved of further liability hereunder, except for the parties’ obligations that survive any termination of this Agreement as provided for herein. If such notice is not given prior to the end of the Feasibility Period, Purchaser’s right to terminate pursuant to this Paragraph 1 shall expire at the end of the Feasibility Period. Time is of the essence with respect to the giving of any such notice by Purchaser. Seller agrees to not market the Property from and after the Effective Date until the earlier of Closing or termination of this Agreement. Purchaser shall pay the costs of all tests, inspections, examinations, investigations, and reviews conducted pursuant to this Section.

2. DUE DILIGENCE MATERIALS. In order to assist Purchaser in the completion of Purchaser's inspections, testing, examinations, and studies during the Feasibility Period, the parties acknowledge and agree that Seller shall, within ten (10) days of the Effective Date, deliver to Purchaser all materials and documents materially related to Purchaser's reasonable decision to purchase the Property of which Seller has possession or control and knowledge of, including, but not limited to, the following documents ("**Seller's Materials**"): (i) copies of all documents relating to any use restrictions, rights or declarations of easements, covenants, and restrictions affecting the Property; (ii) existing plans for the Property locating all utilities, roads, buildings, structures, parking areas, and other improvements located on the Property and any existing topographical or engineering drawing of the Property; (iii) copies of existing licenses, permits, or other federal, state, or local authorizations issued or required to be issued in connection with the Property; (iv) any written notices, reports, citations, orders, decisions, correspondence, or memoranda from any governmental authority and all agreements with, or applications to, any governmental authority with respect to any zoning, planned development, use, development, or platting of the Property, or environmental or physical condition of the Property; (v) copies of all title reports and all public or private utility, sign and other easements, access agreements, special assessment arrangements, tap-in or connection fee agreements or procedures, and any public financial assistance relating to the Property; (vi) any geotechnical reports, compaction reports, soil boring reports, environmental studies and remediation plans, hydrological studies, engineering studies, percolation tests or sewer permits, or other permits issued by any governmental authority in connection with the Property; and (vii) copies of tax bills and documents relating to tax and assessment proceedings, abatements, notices, and appeals.

3. PURCHASE PRICE AND CLOSING. The purchase price for the Property is _____ and No/100 Dollars (\$ _____) (the "**Purchase Price**"), subject to the adjustments and prorations required herein.

The Purchase Price shall be paid by Purchaser as follows:

3(a) Within three (3) business days after the Effective Date, Purchaser shall deposit the sum of _____ and No/100 Dollars (\$ _____) (the "**Deposit**") with Meridian Title Insurance Corporation located at 241 Medical Plaza, Michigan City, Indiana 46360 (the "**Escrow Agent**").

3(b) The Deposit shall be held by Escrow Agent for Purchaser's benefit and (i) applied to the Purchase Price and disbursed to Seller at the Closing (as hereinafter defined) if the transaction contemplated hereby (the "**Transaction**") is consummated; (ii) returned immediately to Purchaser if this Agreement terminates or is terminated pursuant to any provision hereof, other than by reason of a Purchaser's Default (as defined herein), provided, however, that, if such termination is by reason of a Seller's Default (as hereinafter defined), then such return shall be in addition to and not in exclusion of, all other rights and remedies available to Purchaser at law or in equity; or (iii) disbursed and forfeited to Seller as liquidated damages, which shall be Seller's sole remedy at law or in equity, if this Agreement is terminated by Seller by reason of Purchaser's Default.

3(c) Upon Closing (as defined below), the Deposit shall be applied against the Purchase Price, and the balance of the Purchase Price, subject to the adjustment and

prorations provided for in this Agreement, shall be paid to Seller in immediately available funds.

3(d) The closing (the “**Closing**”) shall occur on or before the date that is () days after the expiration of the Feasibility Period. The Closing shall be held at the () offices of the Escrow Agent or such other location as the parties shall mutually designate. Time is of the essence with respect to the date of Closing (the “**Closing Date**”).

4. TITLE AND SURVEY.

4(a) Within fifteen (15) business days following the Effective Date, Seller shall obtain and deliver to Purchaser a title insurance commitment (“**Commitment**”) issued by the Escrow Agent for a standard ALTA Form B owner’s title insurance policy in the amount of the Purchase Price (“**Title Policy**”), containing such ALTA endorsements thereto as Purchaser may deem necessary or desirable, in which Title Insurer shall agree to insure good, merchantable, and marketable title to the fee simple estate in the Property, subject only to the Permitted Exceptions (defined herein). Seller shall deliver all documents referred to in the Commitment at the same time Seller delivers the Commitment to Purchaser. The Title Policy shall be issued without the standard general exceptions for (i) rights or claims of parties in possession not shown by the public records, (ii) easements, or claims of easements, not shown by the public records, (iii) encroachments, overlaps, boundary line disputes or other matters which would be disclosed by an accurate survey or inspection of the Property, and (iv) any lien, or right of lien, for services, labor or material theretofore or thereafter furnished, imposed by law and not shown by the public records. Seller shall pay the cost of the Commitment and Title Policy. Within twenty (20) business days following the receipt by Purchaser of the Commitment, Purchaser shall notify Seller in writing as to Purchaser's disapproval of any of the title exceptions set forth in such Commitment. The exceptions to title which are disclosed by the Commitment and are not objected to by Purchaser shall be deemed to be the “**Permitted Exceptions**”. Seller shall have ten (10) business days thereafter (“**Seller Response Period**”) to elect whether or not to remove said objected to exceptions at Seller's expense at or prior to the Closing. In the event Seller does not give written notice to Purchaser and Escrow Agent within the Seller Response Period that Seller will remove such disapproved exception(s) at or prior to the Closing, then Purchaser may, by delivery of written notice to Seller and Escrow Agent within ten (10) business days following expiration of the Seller Response Period, elect to (i) terminate this Agreement, in which case Purchaser shall be entitled to a return of the Deposit within two (2) days after Escrow receives written notice of the termination by Purchaser, or (ii) approve the previously disapproved title exceptions reflected in the Commitment (in which case such exceptions shall become Permitted Exceptions) and waive Purchaser's right of cancellation. In the event Purchaser fails to give timely written notice of its election to terminate this Agreement following expiration of the Seller Response Period, Purchaser shall be deemed to have expressly approved the Commitment and shall take title to the Property at Closing subject to all Permitted Exceptions.

4(b) At the Closing, Seller shall convey fee title to the Property by providing a Warranty Deed (the “**Deed**”) to Purchaser, subject only to the Permitted Exceptions and

shall cause the Escrow Agent to deliver to the Purchaser the Title Policy insuring fee simple title to the Property in the Purchaser as of the Closing Date, subject only to the Permitted Exceptions.

4(c) Within ten (10) days of the Effective Date, Seller shall order a survey of the Property by a registered surveyor satisfactory to Purchaser, certified to Purchaser and Title Insurer as of a current date (the “Survey”), that **[CHECK APPLICABLE BOX] [] complies with current ALTA/ACSM standards []** is a boundary survey that determines the property lines of the Property. The cost of the Survey shall be borne solely by the **[CHECK THE APPLICABLE BOX] [] Seller [] Purchaser**. Purchaser shall have a period of ten (10) days after receipt of the Survey to notify Seller of any objections to the Survey. If such objection is not delivered to Seller within such ten (10) day period, the Survey shall be deemed approved by the Purchaser. If an objection notice is timely delivered by Purchaser, Seller shall have twenty (20) days to attempt to cure any such objections. If any objection has not been cured within such twenty (20) day period, Purchaser, at its election, may elect either: (i) to waive its objections and accept the Survey as is; or (ii) terminate this Agreement by delivering a notice of termination within ten (10) days following the expiration of the Seller’s twenty (20) day cure period. Upon any such termination, the Deposit shall be refunded to Purchaser within two (2) business days following such Termination Notice being received from Purchaser by Escrow.

5. CONDITIONS PRECEDENT TO CLOSING. The obligation of Purchaser to purchase the Property shall be conditioned upon satisfaction of the following at or prior to Closing, any of which may be waived by Purchaser in its sole and absolute discretion (the “**Conditions Precedent to Closing**”):

5(a) Delivery to Purchaser, at Closing, of the Deed, executed and acknowledged by Seller.

5(b) Delivery to Purchaser at Closing of the Commitment, as re-dated to the Closing Date, disclosing good and marketable title to the Property vested in Seller free and clear of all encumbrances except the Permitted Exceptions and the Escrow Agent’s commitment to issue the Title Policy to Purchaser in the form required by Section 4 immediately upon the recording of the Deed, all in conformance with this Agreement.

5(c) All conditions of title have been met pursuant to Paragraph 6(a) hereof.

5(d) Seller is not in default of this Agreement.

5(e) **[list any other contingencies, such as cleanup of property, removal of personal property.]**

5(f) The representations and warranties by Seller contained in this Agreement must be true.

5(g) **[APPLICABLE IF FINANCING IS CONTINGENCY]**. Within **[]** days of the Effective Date, the Purchaser shall have obtained, upon terms and conditions satisfactory to it, a commitment to finance or grant funding to finance the

purchase of the Property; provided, that all the costs and expenses of obtaining such commitment shall be borne solely by the Purchaser.

5(h) Within [REDACTED] days of the Effective Date, the Purchaser shall have obtained the approval of the Transaction and this Agreement by the appropriate fiscal bodies of the City of Michigan City, Indiana, as required by law or as Purchaser deems appropriate.

5(i) Seller shall have executed and delivered, or caused to be executed and delivered, to Purchaser and/or the Escrow Agent, all documents, instruments, and information reasonably required to be delivered by Seller pursuant to the terms of this Agreement.

5(j) **[DELETE IF APPRAISALS ARE OBTAINED PRIOR TO NEGOTIAION OF PURCHASE AGREEMENT]** Within [REDACTED] days of the Effective Date, the Purchaser shall have procured, at its cost and expense, two (2) appraisals of the Property in compliance with I.C. 36-1-10.5-5 and such appraisals shall demonstrate to Purchaser's satisfaction that the Purchase Price for the Property does not exceed the average of the two appraisals.

In the event that any of the foregoing Conditions Precedent to Closing are not satisfied on or prior to the date of Closing, then Purchaser may either (i) waive the applicable unsatisfied Conditions Precedent to Closing and proceed to Closing on the scheduled Closing Date or (ii) in addition to any other right or remedy it may have under this Agreement, immediately terminate this Agreement by written notice to Seller, in which case the Deposit shall be returned to Purchaser within two (2) days of Escrow receiving written notice of such termination from Purchaser.

Seller's obligation to transfer the property to Purchaser shall be conditioned on delivery of the Purchase Price to Seller at Closing.

6. CLOSINGS, CONVEYANCE AND TITLE.

6(a) Title to the Property is to be conveyed hereunder subject to the Permitted Exceptions.

6(b) Preparation of and recording fees for the Deed are to be at the cost of Seller. Any escrow fee shall be shared equally by Purchaser and Seller. Any filing fees and/or costs associated with the acceptance of the Deed and Purchaser's financing shall be at Purchaser's expense.

6(c) Seller shall be responsible for all real estate taxes, assessments or other charges accruing prior to the date of the Closing and Purchaser shall be responsible for such real estate taxes, assessments, and other charges accruing on or after the date of the Closing. At Closing, real estate taxes and other charges payable on an annual or periodic basis shall be prorated to the date of Closing based on the most recent available tax

information and Seller's share are to be paid by Seller prior to Closing or credited to Buyer against the Purchase Price at Closing.

6(d) At or prior to Closing, Seller shall deliver to Purchaser a "Certification of Non-Foreign Status" which meets the requirements of Section 1445 of the Internal Revenue Code and Internal Revenue Regulations, for the purpose of informing the transferee that withholding of Federal taxes is not required.

7. DEFAULT; LIABILITY OF PARTIES.

7(a) If Seller fails in any respect to comply with, fulfill, or perform any covenant, term, or condition to be complied with, performed, or fulfilled by it hereunder, and does not cure such failure within ten (10) days after receipt of written notice thereof from Purchaser to Seller, or if Seller fails or refuses to consummate the Transaction in accordance with the terms and conditions hereof other than by reason of a non-fulfillment of Seller's Condition Precedent to Closing (any such event being referred to herein as a "**Seller Default**"), or any Purchaser's Condition Precedent to Closing, is not fulfilled within the time period herein (or, if no period is specified therein, on the Closing Date) or waived by Purchaser, then, in any such event, Purchaser shall have a right, at its election, and in addition to any other rights and remedies it may have hereunder, to terminate this Agreement by written notice from Purchaser to Seller, in which event all liabilities and obligations of the parties hereunder shall cease, and the Deposit be returned immediately to Purchaser upon receipt of written notice of such termination by Escrow from Purchaser. In the event of a Seller's Default, in addition to its right to terminate as provided herein, Purchaser shall have all other rights and remedies available at law or in equity, specifically including, but not limited to, the right of specific performance.

7(b) If Purchaser fails in any respect to comply with, fulfill, or perform any covenant, term, or condition to be complied with, fulfilled, or performed by it hereunder, and does not cure such failure within ten (10) days after receipt of written notice thereof from Seller to Purchaser, or Purchaser fails or refuses to consummate the Transaction in accordance with the terms and conditions hereof, other than by reason of non-fulfillment of any Purchaser's Conditions Precedent to Closing (any such event being hereinafter referred to as a "**Purchaser's Default**"), or any other Seller Condition Precedent to Closing is not fulfilled on the Closing Date or waived by the Seller, then, and in any such event, Seller shall have the right, at its election (which right shall be Seller's sole right and remedy), to terminate this Agreement by written notice from Seller to Purchaser, in which event all liabilities and obligations of the parties hereunder shall cease, and the Deposit shall be returned immediately to Purchaser unless such termination is by reason of a Purchaser default, in which event the Deposit shall be disbursed and forfeited to Seller as liquidated damages, which shall be Seller's sole remedy at law or in equity.

7(c) **[CHECK IF APPLICABLE] []** Seller and Purchaser acknowledge and represent that **(the "Seller's Broker")**, has acted as listing agent and Seller's broker concerning the Property and is the only broker Seller has dealt with concerning this Property and Agreement. Seller shall be responsible for payment to Seller's Broker of all compensation due Seller's Broker, if and when Closing occurs,

pursuant to a separate agreement between Seller and Seller's Broker. Should any other claim for commission be asserted or established, the party in breach of its representation in this Paragraph 7(c) hereby expressly agrees to hold the other harmless with respect to all costs relating thereto (including reasonable attorneys' fees) to the extent that the breaching party is shown to have been responsible for the creation of such claim. Anything to the contrary in this Agreement notwithstanding, such agreement of each party to hold the other harmless shall survive the Closing and any termination of this Agreement.

7(d) No failure(s) or default(s) by Purchaser or Seller shall result in the termination or limitation of any right hereunder, or the exercise of any rights or remedies with respect to such failure(s) or default(s), unless and until the defaulting party shall have been notified in writing of such default and shall have failed to remedy the specified failure(s) or default(s) within ten (10) days after the receipt of said written notice (or, if the cure thereof cannot be completed within ten (10) days, then a reasonable period of time, not to exceed an additional thirty (30) days, provided the party diligently and continuously pursues such cure).

8. SELLER'S REPRESENTATIONS AND WARRANTIES. Seller hereby represents and warrants to Purchaser as set forth in this Section 8. All such representations and warranties shall be deemed made by Seller as of the Effective Date. Seller shall reaffirm, or, as necessary, update the following representations and warranties as of the Closing Date and such representations and warranties shall survive the Closing: **[DELETE ANY INAPPLICABLE REPRESENTATIONS AND WARRANTIES]**

8(a) **[Applicable only if Seller is corporation or LLC]** Seller is an [corporation/limited liability company], duly organized, validly existing and in good standing with the laws of the State of Indiana.

8(b) Except as may be required by law or agreed to by Purchaser, during the term of this Agreement, Seller will not make any written commitments to the applicable governmental authorities, or to adjoining or surrounding property owners, which would materially interfere with Purchaser's ability to improve the Property.

8(c) Seller has granted no person any contract right or other right to possession and/or use of any portion of the Property.

8(d) Except as may be required by law or agreed to by Purchaser, Seller shall not materially alter the condition of the Property during the term of this Agreement.

8(e) Seller has full authority and power to execute this Agreement and to close the sale of the Property. This Agreement has been duly executed and delivered by Seller and constitutes the valid and legally binding obligation of Seller, enforceable in accordance with its terms.

8(f) Seller has good, merchantable, and marketable title to the fee simple estate in the Property, free and clear of any and all encumbrances except Permitted Exceptions.

8(g) There is no existing violation of or nonconformity with, and neither the Seller nor Property is under investigation with respect to, has been charged with, or has received any notice of any alleged violation of or nonconformity with, any law relating to, or any restriction, covenant, condition, commitment, contract, or agreement concerning the Seller or the Property, or the conduct, construction, ownership, operation, use or occupancy thereof.

8(h) There is no governmental or other action, suit, claim, investigation, or proceeding pending or threatened by or against Seller or the Property before any court, governmental authority, or other public or private body or person; and no judgment, order, writ, injunction, decree (including, but not limited to, a consent decree), ruling or any similar command of any court, governmental authority, or other public or private body or person, that has been entered against or served upon the Seller or the Property and is presently in effect.

8(i) The Property is not subject to any encumbrances not of record, other than any Permitted Exceptions.

8(j) All of the Property is in the exclusive possession of the Seller, and no other person has a right to possess or use, or claims the right to possess or use, all or any part of the Property.

8(k) The Property has free, unrestricted, direct access, ingress, and egress to and from open and improved public streets abutting the Property.

8(l) All approvals which are required to have been obtained by Seller from any governmental authority, or other public or private body or person, to comply with all laws relating to, and all restrictions, covenants, conditions, commitments, contracts and agreements concerning, the Seller and the Property, and the conduct, development, construction, ownership, operation, use, and/or occupancy thereof, have been obtained, have become final and unappealable, and are valid and in full force and effect in accordance with their terms. There is no existing violation of or default under, nor has Seller or the Property been charged with or received any notice of any alleged existing violation of or default under, any such approval. There is no pending, proposed, or threatened proceedings or investigations concerning possible limitation or revocation of any such approvals; and no such approval will be subject to limitation or revocation, or otherwise effected, because of consummation of the transaction contemplated by this Agreement.

8(m) Neither the execution or delivery of this Agreement, nor the consummation of the Transaction, will: (i) violate any law, code, statute or ordinance, or any regulation, rule, injunction, judgment, order, decree, ruling, charge or other restriction of any authority to which Seller is subject; (ii) violate any provision of Seller's articles of incorporation or by-laws; or (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, give any person the right to accelerate, terminate, modify or cancel, or require any notice under, any agreement, license, permit, authorization, instrument, or other arrangement to which Seller is a party or by which it is bound or to which any of its assets are subject.

8(n) Seller has not received written notice from any government agency requiring any remedial action at the Property to respond to a release of Hazardous Substances (as defined below) into the soil or groundwater. Seller further warrants and represents that there are no underground storage tanks located on the Property. No Hazardous Substances have been produced, used, stored, handled, or disposed of in or upon the Property. There are no surface or subsurface conditions upon the Property which constitute, or with the passage of time, may constitute a public or private nuisance. "Hazardous Substances" shall be defined as any waste, pollutant, or contaminant regulated by any environmental law, including, but not limited to, (i) all materials, wastes, and substances now designated as hazardous or toxic by the United States Environmental Protection Agency, the United States Department of Labor, the United States Department of Transportation or any other governmental authority; (ii) all materials, wastes, and substances now designated or defined as hazardous, extremely hazardous, or toxic pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6901, et. seq.), or other environmental law; and (iii) friable asbestos, urea formaldehyde, polychlorinated biphenyls, and petroleum products; provided, however, that the definition of Hazardous Substances shall not include *di minimis* amounts of cleaning and maintenance supplies or products which have been used at the Property in accordance with customary usage of such supplies or products. Seller has delivered to Purchaser all environmental studies, reports, claims, and notices relating to the Property in Seller's possession or control.

9. ASSIGNMENT; SURVIVAL. Purchaser may assign this Agreement to another political subdivision or municipal body of the City of Michigan City, Indiana without the prior approval to the Seller. This Agreement shall be binding upon the parties hereto and each of their respective heirs, executors, administrators, successors, and assigns. The provisions of this Agreement and the obligations of the parties shall survive the execution and delivery of the Deed executed hereunder and shall not be merged therein.

10. ESCROW AGENT. The terms and conditions set forth in this Agreement shall constitute both an agreement between Seller and Purchaser and instructions for Escrow Agent, which Escrow Agent shall acknowledge and agree to be bound by, as evidenced by its execution of this Agreement. Seller and Purchaser shall promptly execute and deliver to Escrow Agent any separate or additional escrow instructions requested by Escrow Agent which are consistent with the terms of this Agreement. Any separate or additional instructions shall not modify or amend the provisions of this Agreement unless otherwise expressly agreed by mutual written consent of Purchaser and Seller. Purchaser and Seller both hereby acknowledge and agree that Escrow Agent shall hold and deliver the Deposit in accordance with the terms of this Agreement and that Escrow Agent shall be relieved of all liability and held harmless by both Seller and Purchaser in the event Escrow Agent makes any disbursement of such monies in accordance with the terms and provisions of this Agreement. Escrow Agent shall be relieved from any responsibility or liability and held harmless by both Purchaser and Seller in connection with the discharge of Escrow Agent's duties hereunder provided that Escrow Agent exercises ordinary and reasonable care in the discharge of such duties.

11. EFFECTIVE DATE. This Agreement shall become effective on the date signed by the last of Purchaser and Seller ("**Effective Date**").

12. MISCELLANEOUS.

12(a) All notices and other communications hereunder shall be in writing, and be deemed duly given: (i) when given, if personally delivered; (ii) three (3) days after mailing, if mailed by certified mail, return receipt requested, postage prepaid; and (iii) one business (1) day after shipping via FedEx or other nationally recognized overnight courier service, to the following addresses:

If to Purchaser:

with a copy to:

If to Seller:

With Copy to:

If to Escrow Agent:

Title Insurance Company

Attention:

The parties hereto shall be responsible for notifying each other in writing of any change of address.

12(b) If any term, covenant, or condition of this Agreement, or the application thereof to any party or circumstance, shall be invalid or unenforceable, the remainder of the Agreement shall not be affected thereby, and each term shall be valid and enforceable to the fullest extent permitted by law.

12(c) It is the intention of the parties hereto that all questions with respect to the construction of this Agreement, and the rights or liabilities of the parties hereunder, shall be determined in accordance with the laws of the State of Indiana, without regard to its conflicts of law rules. Time is hereby declared to be of the essence in the performance of each of Seller's and Purchaser's obligations hereunder.

12(d) Any deadline date specified in this Agreement which falls on a Saturday, Sunday, or legal holiday on which banks are closed for business in the United States (any

days other than the foregoing to be considered “business days” for all purposes hereunder) shall be extended to the first regular business day after such deadline date.

12(e) This Agreement, together with the Exhibits attached hereto, contains the final and entire agreement between the parties hereto. The recitals set forth in the beginning of this Agreement are incorporated herein as if restated in full. No change or modification of this Agreement or any waiver of the provisions hereof, shall be valid unless the same is in writing and signed by the parties hereto. Waiver from time to time of any provision hereunder will not be deemed to be a full waiver of such provision or a waiver of any other provisions hereunder. The terms of this Agreement are mutually agreed to be clear and unambiguous, shall be considered the workmanship of all of the parties, and shall not be construed against the drafting party. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall, nonetheless, remain in full force and effect.

12(f) Titles to Paragraphs and Subparagraphs are for convenience only and are not intended to limit or expand the covenants and obligations expressed thereunder.

12(g) This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

12(h) In addition to any other relief to which it may be entitled, the prevailing party in any dispute or controversy relating to this Agreement shall be entitled to recover its attorneys’ fees and costs incurred regarding such dispute or controversy.

12(i) Neither this Agreement, nor a memorandum thereof, shall be recorded by Seller or Purchaser.

12(j) This Agreement shall, in all respects, be governed by, and construed in accordance with, the substantive laws of the State of Indiana. Purchaser and Seller hereby irrevocably submit to the jurisdiction of any state court sitting in LaPorte County, Indiana or to any federal court sitting in Hammond, Indiana, if jurisdiction exists, in any action or proceeding arising out of or relating to this Agreement and hereby irrevocably agree that all claims in respect of such action or proceeding shall be heard and determined in such state court sitting in LaPorte County, Indiana or federal court sitting in Hammond, Indiana. Purchaser and Seller agree that the provisions of this Section shall survive the closing of the Transaction contemplated by this Agreement.

(SIGNATURES FOLLOW ON NEXT PAGE)

WITNESS, the following signatures.

SELLER:

By: _____

Name: _____

Title: _____

Date: _____

(SIGNATURES CONTINUE ON NEXT PAGE)

PURCHASER:

_____, an Indiana [municipal]
corporation

By: _____

Name: _____

Title: _____

Date: _____

(SIGNATURES CONTINUE ON NEXT PAGE)

Escrow Agent executes this Agreement for the sole purpose of evidencing its agreement to the matters set forth in Paragraph 11 hereof.

ESCROW AGENT:

_____ TITLE INSURANCE COMPANY

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT “A”

PROPERTY

Appendix D

MICHIGAN CITY LAND ACQUISITION PROJECT

PROTOCOLS FOR ACQUIRING LAND FROM PRIVATE LANDOWNERS

The following protocols assume that the staff of the Sanitary District and other responsible municipal body utilizing these protocols and the accompanying Purchase Agreement and Letter of Intent templates have identified a specific parcel of real estate owned by a private landowner that meets the municipality's overall land use strategy, such as storm water management, conservation, or public recreation uses. These protocols, and the accompanying Purchase Agreement and Letter of Intent templates, have no applicability in other contexts, such as tax sales, abandonment proceedings, eminent domain, or lien purchases.

1. Legal Review and Technical Expertise.

The acquisition process should be subject to the overall supervision by legal counsel for the Sanitary District or the City of Michigan City (collectively, the "City"), as applicable. In addition, as dictated by the project, appropriate technical expertise, such as environmental consulting advice, should be obtained as needed.

2. Site Visit.

A parcel should be acquired only after staff responsible for the acquisition have inspected the property and completed appropriate screening questionnaires documenting the condition of the property and the purposes for which it is being acquired.

3. Preliminary Board Approval.

Following the staff site visit, and on the recommendation of staff justifying the purpose for which the acquisition is to be made, preliminary approval of the acquisition should be obtained from the Sanitary District Board (or other applicable municipal body) before incurring the cost of appraisals of any parcel of real estate.

4. Appraisals.

Appraisals of the fair market value of the real estate should be obtained from two appraisers licensed in the State of Indiana, pursuant to the requirements of Ind. Code 36-1-10.5-5. The purchase price for any real estate acquired by the municipality may not exceed the average of the two (2) appraisals of the real estate disclosed in the appraisals.

5. Letter of Intent (Letter of Intent Template Attached). If the proposed purchase price is supported by the appraisals, the suggested next phase is a Letter of Intent, as follows:

- Letter of intent may or may not define purchase price. If not, it must be subject to obtaining appraisals. However, the best practice is to obtain appraisals before Letter of Intent.
- The purpose of the letter of intent is to set out the parties' general intent to enter into a purchase agreement.
- The terms of the letter of intent are not binding except for exclusivity and confidentiality provisions.
- Exclusivity provision of the letter of intent binds the seller of the real estate to not offer the real estate to any other person for a period of time, allowing the buyer and seller the opportunity to negotiate a purchase agreement during the exclusivity period.
- The confidentiality provision is also binding in that the existence of the letter of intent and the purchase price set out in the letter of intent are confidential.
- The letter of intent may be dispensed with, although it does afford the advantage of having the property taken off the market while the purchase agreement is being negotiated.

6. Negotiation of Purchase Agreement (Purchase Agreement Template Attached). Key elements of Purchase Agreement Template's structure are described below:

- Due diligence period/environmental inspection.

For a defined number of days or months following the execution of the Purchase Agreement, the City will have the opportunity to conduct any due diligence it deems necessary relating to the real estate, including environmental due diligence, soil borings, inspections of structures, and the like. Depending on the prior uses of the property, a Phase I Environmental Survey may be necessary and, if warranted, a Phase II Environmental Survey may be advisable. Since each parcel of real estate is unique, the duration of the due diligence period will need to be customized in each transaction, and the technical expertise required to assist the City in its due diligence will also need to be customized. The Purchase Agreement Template is drafted in such a way that the City can terminate the Purchase Agreement without legal consequence at the end of the "Feasibility Period" for any reason if it deems the results of its due diligence to be unsatisfactory for any reason, in its sole discretion. Thus, it is of great importance for due diligence to be conducted and the City to utilize all necessary tools available to it, including outside consultants, if necessary, to assure that, for example, the environmental condition of the property is acceptable.

- Title Investigation.

The Purchase Agreement is contingent upon the seller providing good title to the real estate to the City, subject only to permitted exceptions which are defined to be those exceptions shown on a title commitment to which the City does not object. The Purchase Agreement provides a procedure for the seller to provide a commitment for title insurance ordered from the title company and the City to make objections to the condition of the title. Title is to be conveyed by warranty deed at closing, and seller is to deliver a title policy to the City and legal counsel is to review the title commitment to advise on acceptable permitted exceptions for each transaction.

- Survey.

The Purchase Agreement is contingent upon the seller providing the City with a survey, which, depending upon the circumstances, can be either a boundary survey or ALTA/ACSM survey. If there are no improvements on the land, subject to the approval of legal counsel, a boundary survey may be satisfactory to determine the property's boundaries. However, if improvements are located on the land or if there are easements or any access issues relating to the land, a survey that meets the current ALTA/ACSM standards may be necessary to protect the City's interest. It will be a matter of negotiation under the Purchase Agreement whether the seller or buyer will pay for the cost of the survey. The Purchase Agreement also sets out the procedure for objections to any defects or encroachments shown on the survey. Any survey obtained must show that legal access is available to the real estate. As with the title commitment, it will be necessary for the City's legal counsel to review any survey and advise on its acceptability.

- Conditions Precedent to Closing.

The City's obligation to close on the purchase of the real estate is conditioned on the occurrence of certain things happening, all of which are set out in Section 5 of the Purchase Agreement Template. For example, the acquisition may be conditioned upon the following:

- City obtaining financing, such as grant funding of the purchase of the property (see Section 5(g)).
- If an appraisal has not, for some reason, been obtained prior to the execution of the purchase agreement, an appraisal may be a condition precedent to the closing.
- Final Sanitary or other City Board, as applicable, and, if required, City Council approval, is a condition precedent to all acquisitions.
- Any other conditions, such as the cleanup of the property, removal of personal property, or the like.

7. Closing.

The Purchase Agreement Template contemplates the use of a title company for facilitating the closing of all land acquisition transactions. The Template names, as a suggestion, Meridian Title Insurance Company as a title company to use as the closing agent and as the escrow agent to hold any earnest money deposit. Any other title company the City or its legal counsel desires to use would be acceptable. The use of a third-party title company to issue a title commitment evidencing the state of the title, to hold the earnest money deposit, and to facilitate the closing is highly recommended to simplify and facilitate the land acquisition process.

8. Recording/Record Keeping.

The title company will record the deed immediately after the closing of the acquisition transaction. The staff of the appropriate agency, such as the Sanitary District or the City, will need to keep the originals of all documents relating to the land acquisitions, including the documentation of the purposes for which the land was acquired, surveys, deeds, reports regarding due diligence efforts, and all background documents relating to the acquisition of the real estate.