

MEMORANDUM

TO: **Real Estate & Transportation Committee**
Commissioner Bill Read, Chairman
Commissioner Justin Troller
Commissioner Phillip Walker

FROM: City Attorney's Office

DATE: December 18, 2017

RE: **Right-of-Way Purchase – North Wabash Avenue – Parcel 109**

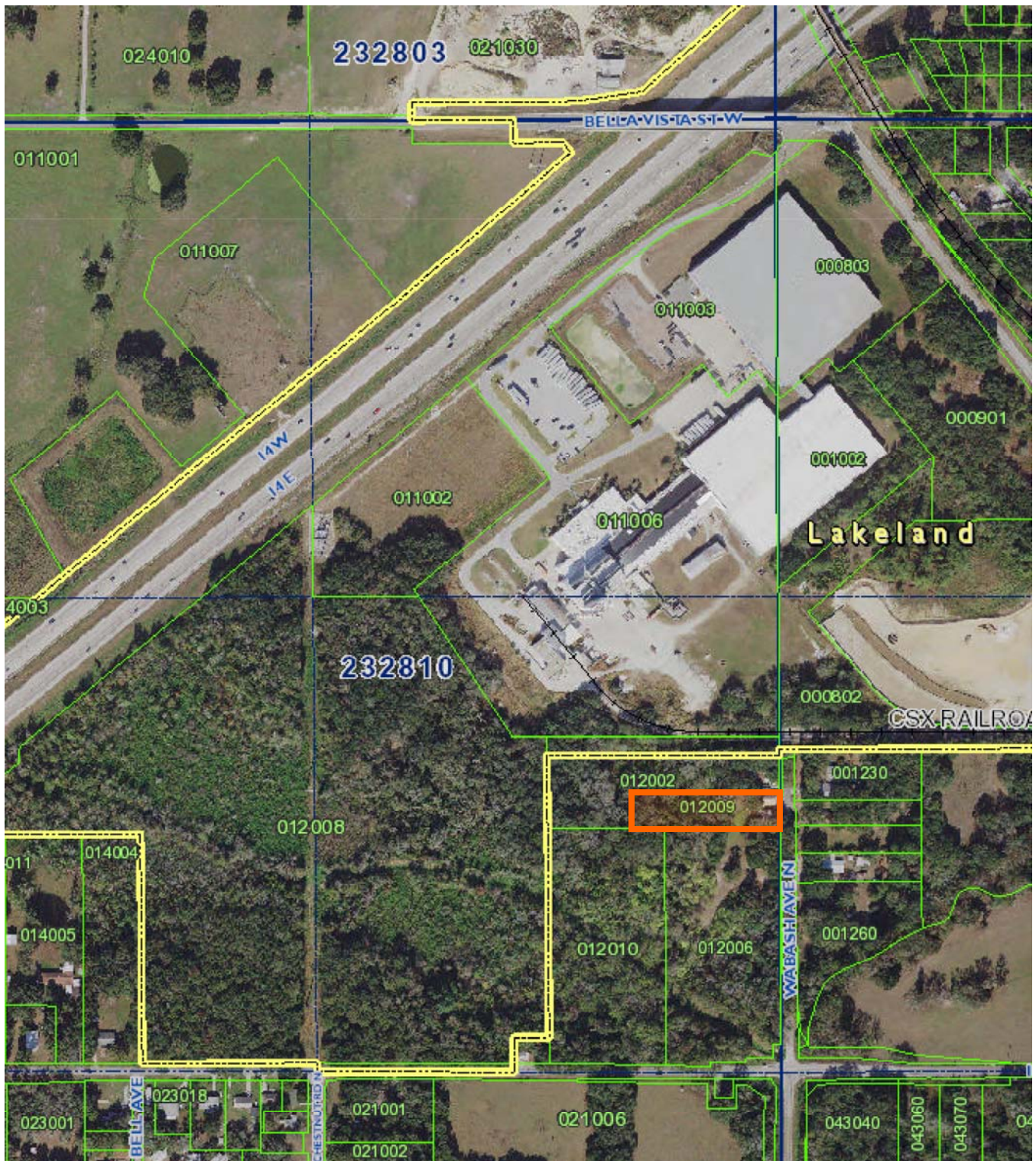
Attached for your consideration is a right-of-way purchase agreement for the purchase of Parcel 109, which is required for the North Wabash Avenue Extension Project (from 10th Street to Fairbanks Street). The property is residential and is located on the west side of N. Wabash Avenue, north of 10th Street. The owners are Paul and Rosemary Prebor.

The proposed settlement reflected in the purchase agreement is for a whole taking of the subject property after extensive negotiations with the owners. The required right-of-way needed from this parcel is a partial taking of 11,276 square feet along the Wabash Avenue frontage and 2,239 square feet for a temporary construction easement. The partial taking would include all site and building improvements.

The City's appraiser, Burl Wilson, MAI, performed a direct sales analysis of other comparable properties sold in the same market and found that sales ranged from \$45,000 to \$199,000. After making qualitative adjustments for differences in transactional and property characteristics to the subject property, Mr. Wilson reconciles to a value of \$124,300 for the subject property. Staff has reached a proposed global settlement purchase price of \$180,000. This sum represents an all-inclusive settlement that estimates a payment of \$160,000 to the owners of the parcel and \$20,000 in statutory attorney fees and costs.

Transportation Impact Fee revenue is allocated for this project in the FY 2018 Transportation Fund's North Wabash Avenue Extension Right of Way Acquisition project budget. Taking into consideration the appraisal report and the potential expenses related to eminent domain litigation (estimated to be \$142,000) should an agreement not be reached, it is recommended that the City Commission authorize the purchase of parcel 109 for the North Wabash Avenue Extension Project per the terms stated above and authorize the appropriate City officials to execute all necessary documents to finalize the transaction.

attachments



CITY OF LAKELAND
PURCHASE AND SALE AGREEMENT

THIS AGREEMENT, is made and entered into as of the Effective Date (as defined in paragraph 1 below), by and between **PAUL E. PREBOR AND ROSEMARY M. PREBOR**, his wife, whose principal address is 1446 N. Wabash Avenue, Lakeland FL. 33805-3991 (hereinafter referred to as the “Seller”), and the **CITY OF LAKELAND, a municipal corporation existing under the laws of the State of Florida**, by and through its City Commission, whose address is 228 South Massachusetts Avenue, Lakeland, FL 33801, (hereinafter referred to as the “Buyer” or the “City of Lakeland”)(collectively referred to as the “Parties”).

Now, therefore, in consideration of ten dollars and no cents (\$10.00) paid by the Buyer to the Seller and the mutual covenants contained herein, together with other good and valuable consideration, the receipt of which is hereby acknowledged, the Seller agrees to sell to the Buyer, and the Buyer agrees to buy from the Seller, that certain real property and real property interest situated in Polk County, Florida, more specifically described in **Exhibit “A”** (hereinafter referred to as the “Property”) upon the following terms and conditions:

1. The effective date of this Agreement shall be the date when the last one of the Parties has signed this Agreement (hereinafter the “Effective Date”).
2. The total purchase price for all property and property interests acquired by the Buyer, inclusive of all fees and costs of any kind, shall be **\$180,000.00**, payable at closing, in cash or other immediately available funds, by the Buyer to the Seller.
3. THIS AGREEMENT SHALL BE SUBJECT TO APPROVAL BY THE CITY OF LAKELAND CITY COMMISSION OR ITS DESIGNEE (“CLCC”). If the CLCC does not approve this Agreement and all the terms and conditions hereof, the Buyer shall notify the Seller thereof promptly in writing and this Agreement shall be null and void and all rights and liabilities arising hereunder shall terminate.
4. Upon payment of the purchase price as provided herein, the Seller shall convey the Property by Warranty Deed in a form acceptable to the Buyer, free and clear of all leases, liens, mortgages and other encumbrances. The Seller shall not be required to pay documentary stamp tax on the Deed because the sale of the Property by Seller is taking place under threat condemnation. The Buyer shall pay for recording the Deed in the Public Records of Polk County.
5. The Seller shall deliver to the Buyer, at Closing (as defined in paragraph 7 below), marketable title to the Property free and clear of all leases, liens, mortgages and other encumbrances. The Buyer, at its expense, shall provide a title insurance policy issued by a title insurance company acceptable to the Buyer, insuring the Buyer’s title to the Property in the full amount of the purchase price upon Closing. If (i) the Buyer finds the title to be unmarketable or objects to any encumbrance on the Property which is not a

permitted exception shown by a title commitment or if (ii) the Buyer cannot obtain a commitment for the issuance of a title insurance policy on the Property, the Buyer shall notify the Seller in writing prior to Closing, specifying the defects which exist with respect to the title of the Property (collectively, the "Title Defect"). The Seller shall have twenty (20) days after receipt of such written notice (the "Title Cure Period") to cure the Title Defect to the reasonable satisfaction of the Buyer, its attorney, and the Buyer's title insurance company. Should the Seller cure such Title Defect during the Title Cure Period but after Closing date set forth under paragraph 7 below, Closing shall take place within ten (10) days after the Seller has cured the Title Defect to the Buyer's reasonable satisfaction and delivered written notice of such cure to the Buyer or its attorney. The Seller shall be required to make best efforts to cure the Title Defect. If the Seller shall fail to remove or cure the Title Defect during the Title Cure Period, the Buyer, at its option, may (i) terminate this Agreement, whereby all obligations and representations herein shall terminate and cease to bind either the Buyer or the Seller, (ii) proceed to Closing (as defined in paragraph 7 below), accepting title to the Property subject to the Title Defect or (iii) condemn the Property through a Petition in Eminent Domain, wherein Seller shall stipulate to an Order of Taking and to a Final Judgment which will be based upon the same terms and conditions as set forth in this Agreement.

6. Taxes and assessments on the Property being purchased in fee shall be prorated through the date of Closing (as defined in paragraph 7 below), except if Closing (as defined in paragraph 7 below) occurs between November 1 and the end of the applicable calendar year, in which event Seller shall pay the entire amount of real property taxes due as determined by the County Tax Collector as set forth below. The proceeds shall be increased or decreased as may be required by the proration of said items. If the amount of taxes and assessments for the year in which Closing (as defined in paragraph 7 below) occurs cannot be ascertained, rates, mileages and assessed valuations of the previous year, with known changes, shall be used, with allowance for homestead or other exemptions if allowed for either year. All real estate taxes and assessments which are or which may become a lien against the Property shall be satisfied of record by Seller at Closing (as defined in paragraph 7 below). In the event Buyer acquires fee title to the Property between January 1 and November 1, Seller shall, in accordance with Section 196.295, Florida Statutes, place in escrow with the County Tax Collector an amount equal to the current taxes prorated to the date of Closing (as defined in paragraph 7 below). In the event Buyer acquires fee title to the Property on or after November 1, Seller shall pay to the County Tax Collector an amount equal to the taxes that are determined to be legally due and payable by the County Tax Collector.
7. Subject to the Title Cure Period provided in paragraph 5 and any other closing contingencies or extensions provided under this Agreement, the sale shall be closed, the Deed shall be delivered to the Buyer and the Seller shall deliver occupancy and possession of the Property to the Buyer, within thirty (30) days after approval of this Agreement by the CLCC ("Closing"). During the period from the execution of this Agreement until Closing, neither the Seller nor anyone under the Seller's control or direction shall commit or permit to be committed any act which alters or diminishes the

value of the Property in any way. If, after the date of execution of this Agreement but before Closing, the Property or any of the improvements thereon shall be altered, burned, damaged, or destroyed by man-made or natural act or event, regardless of the fault, then the Buyer, at its sole discretion, shall have the option of (i) proceeding to Closing with the total purchase price provided herein being reduced by the reduction in value of the Property thereon altered, burned, damaged, or destroyed as appraised by an independent appraiser mutually acceptable to the parties or (ii) terminating this Agreement, whereby all obligations and representations herein shall terminate and cease to bind either the Buyer or the Seller.

8. At Closing, the Seller shall furnish the Buyer with the Seller's Affidavit, stating that neither the Seller nor anyone under the Sellers' control or direction have taken any action to encumber the Property or otherwise adversely affect the status of the title thereto between the date of execution of this Agreement and Closing and stating either that there have been no improvements made to the Property during the one hundred twenty (120) days immediately preceding Closing, or, if there have been any such improvements, that all contractors, materialmen, suppliers and potential lienors in connection with said improvements have been paid in full.
9. At Closing, the distribution of the purchase amount will be made by the Buyer to the closing agent specified by the Buyer in the form of a City Warrant or by wire transfer of closing proceeds. Final distribution of the Seller's proceeds will be made to the Seller by the closing agent.
10. At the Buyer's option, the Property may be surveyed at the expense of the Buyer prior to Closing. If the survey shows any encroachments on the Property or that any improvements located on the Property encroach on other lands, written notice thereof shall be given to the Seller to remove such encroachments within fifteen (15) days after the Seller's receipt of such written notice. If the Seller shall fail to remove or cure said encroachments within said time, the Buyer, at its option, may (i) terminate this Agreement, whereby all obligations and representations herein shall terminate and cease to bind either the Buyer or the Seller or (ii) proceed to Closing in the same manner as if no such encroachments had been found.
11. The covenants herein contained shall bind, and the benefits and advantages hereof shall inure to, the respective heirs, personal representatives, successors and assigns of the parties hereto; provided, however, that neither party shall assign this Agreement without the prior approval of the other party, unless required by law. Whenever used herein, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include the other. No agreement or understanding, verbal or in writing, unless incorporated herein, shall be binding upon the parties.
12. The Buyer shall not be liable to the Seller or to the Seller's agents or representatives for any commissions, costs, or fees arising from or for the sale of the Property to the Buyer (the "Sales Commission"), and the Seller shall defend, indemnify and hold harmless the

Buyer and its agents, employees and officers from any and all actions, awards, causes, claims, damages, judgments, losses, payments, recoveries and suits therefore arising from or out of the Sales Commission.

13. If the Buyer fails or refuses to perform its obligations under this Agreement, and such failure or refusal is not cured within ten (10) days after receipt of written notice from the Seller, then the Seller may, as their sole and exclusive remedy, sue for specific performance of this Agreement. In addition to the Buyer's right to pursue the Seller for damages arising from the Seller's breach of the terms set forth under paragraph 5, if the Seller fails or refuses to convey the Property in accordance with the terms of this Agreement or otherwise perform the Seller's obligations hereunder, and such failure or refusal is not cured within ten (10) days after receipt of written notice from the Buyer, then the Buyer may sue for specific performance of this Agreement.
14. The Seller represents and warrants that there are no hazardous materials, wastes or substances, toxic wastes or substances, pollutants or contaminants, including but not limited to those as defined by the Resource Conservation and Recovery Act, 42 U.S.C. Section 9601-9674, as amended by the Superfund Amendments and Reauthorization Act of 1986, or any Florida Statute defining hazardous materials, wastes or substances, toxic wastes or substances, pollutants or contaminants (hereinafter collectively referred to as "Contaminants") deposited, located, placed or released on the Property by the Seller. The Seller's representations and warranties under this paragraph 14 shall survive closing. If at any time between execution hereof and the closing the Buyer determines in its sole discretion that there are Contaminants affecting the Property, the Buyer may, at its sole discretion, elect to (i) terminate this Agreement, whereby all obligations and representations herein shall terminate and cease to bind either the Buyer or the Seller or (ii) close the sale in the same manner as if no such Contaminants had been found. If at any time after the closing, the Buyer determines in its sole discretion that there have been Contaminants deposited, located, placed or released on the Property by the Seller prior to closing, the Seller shall be obligated to pay all reasonable costs for immediate removal of all such Contaminants deposited, located, placed or released on the Property prior to closing. Notwithstanding any other provision under this Agreement, Seller shall defend, indemnify and hold harmless the Buyer and its agents, employees and officers from any and all actions, awards, causes, claims, damages, judgments, losses, payments, recoveries and suits therefore arising from or out of the existence of Contaminants deposited, located, placed or released by the Seller on the Property taking place prior to closing. Seller's indemnification obligation under this paragraph 14 shall survive closing and/or termination of this Agreement.
15. In the event that any provision of this Agreement shall, for any reason, be determined invalid, illegal or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree to such amendments, modifications or supplements of this Agreement or such other appropriate actions as shall, to the maximum extent practicable in the light of such determination, implement and give effect to the intentions of the Parties as reflected


herein, and the other provisions of this Agreement, as amended, modified, supplemented or otherwise affected by such action, shall remain in full force and effect.

16. The Parties agree to cooperate, adjust, initial, deliver, execute, re-execute and re-deliver any and all documents deemed necessary to the execution and closing of this Agreement and to otherwise effectuate the purposes and terms of this Agreement.
17. This Agreement may be amended in writing executed by both Parties in the same manner as this Agreement.
18. The laws of the State of Florida shall govern the validity, interpretation, construction and performance of this Agreement and venue for any suit involving this Agreement shall be in Polk County, Florida.
19. Nothing herein shall be deemed to constitute any Party as a partner or joint venturer, or to create any fiduciary relationship among the Parties. No right or cause of action shall accrue upon or by reason hereof, or for the benefit of any person not expressly named as a Party in this Agreement.
20. To the extent the consent of any Party to this Agreement is required as a condition to the action of other Parties, such consent shall not be unreasonably withheld.
21. The Parties agree to exercise good faith and fair dealing in respect to all matters relating to this Agreement.
22. This Agreement shall constitute the entire agreement between the Parties regarding the subject matter hereof.
23. Seller agrees not to contest or in any way object to the Buyer's application for a state environmental resource permit, SWFWMD drainage permit, or any other permit for any City of Lakeland project which intends to utilize the Property, or any subsequent application for a modification thereto. Seller's restrictive covenant under this paragraph shall survive Closing.
24. Buyer agrees to grant to seller extended possession for a time period from closing to . The seller agrees to provide a homeowner's insurance policy with the City as co insured.

[signatures on the following page]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names as of the day and year first above written.

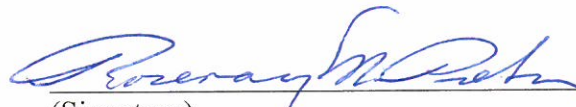
Seller:
Paul E. Prebor


(Signature)

Paul E. Prebor

(Typed/Printed Name)

Seller:
Rosemary M. Prebor


(Signature)

Rosemary M. Prebor

(Typed/Printed Name)

Buyer:
CITY OF LAKELAND, a municipal corporation existing under the laws of the State of Florida.

ATTEST:

BY: _____
Tony Delgado, City Manager

BY: _____
Kelly S. Koos, City Clerk

DATED: _____

BY: _____
Greg James, Assistant Director
Public Works

Approved as to form and correctness:

BY: _____
Timothy J. McCausland, City Attorney

EXHIBIT "A"

PARCEL 109

The south 105 feet of the east 420 feet of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ in Section 10, Township 28 South, Range 23 East;