

**A RESOLUTION APPROVING THE ACQUISITION/DONATION
OF LAND AND SPOILS REMOVAL AT 6565 STELLHORN RD,
FORT WAYNE, INDIANA, FOR THE CITY OF FORT WAYNE,
BY AND THROUGH THE BOARD OF PUBLIC WORKS**

WHEREAS, Fort Wayne City Utilities for the City of Fort Wayne ("City"), by and through its Board of Public Works, is planning to construct a stormwater detention basin on City-owned land behind Stellhorn Road and Maplecrest Road (parcel number 02-08-22-351-012.001-072, the "Basin Site"), to alleviate neighborhood flooding by expanding the capacity of the Bullerman Drain;

WHEREAS, Schmucker Building Services, LLC ("Schmucker"), owns 6565 Stellhorn Road (the "Development Site"), which abuts the southern border of the Basin Site, and has obtained development approval for a complex of storage facilities on the Development Site;

WHEREAS, the City wishes to defray spoils hauling costs for the upcoming detention basin project by 1) paying Schmucker to remove 20,000 cubic yards of spoils from the Basin Site, and 2) acquiring 0.699 acres of the Development Site ("the Eastern Berm") for additional spoils placement; and

WHEREAS, Schmucker has agreed 1) to remove 20,000 cubic yards of spoils from the Basin Site onto the Development Site for a sum of \$150,000; and 2) to donate the Eastern Berm to the City at no cost, by the terms of that Agreement for Spoils Removal and Land Donation by and between Schmucker and the City, attached hereto as Exhibit "A" and made a part hereof by this reference (the "Agreement"), which Agreement, and the conveyance of the Eastern Berm as contemplated therein, have been submitted to the Common

Council of the City for approval.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMON
COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**

SECTION 1. The donation of the Eastern Berm parcel to the City, and the terms of the Agreement, are hereby agreed to and approved. The appropriate officials of the City are hereby authorized to execute all documents necessary to accomplish the transaction and conveyance contemplated therein.

SECTION 2. This Resolution shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Malak Heiny, City Attorney

Board of Public Works Resolution no. 112-8-12-25-2
AGREEMENT FOR SPOILS REMOVAL AND LAND DONATION
between
Fort Wayne City Utilities
and
Schmucker Building Services LLC

This binding Agreement for Spoils Removal and Land Donation (the "Agreement") is entered into as of the 12 day of August, 2025, between Fort Wayne City Utilities, by and through the Board of Public Works for the City of Fort Wayne, Indiana ("CU") and Schmucker Building Services LLC, ("Developer"), as follows:

RECITALS

WHEREAS, Developer is the owner in fee simple of that certain 4.421-acre parcel of real estate located in Allen County Indiana described and depicted on Exhibit "A" attached hereto and incorporated herein by this reference, designated tax parcel 02-08-22-351-012.000-072, (the "Development Site"); and

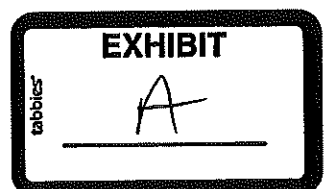
WHEREAS, CU is the owner in fee simple of that certain 6.870-acre parcel of real estate located in Allen County Indiana described and depicted on Exhibit "B" attached hereto and incorporated herein by this reference, designated tax parcel 02-08-22-351-012.001-072, (the "Basin Site"), which lies immediately to the north of the Development Site; and

WHEREAS, Developer has designed, has obtained or is obtaining permitting for, and will imminently construct a complex of storage facilities on the Development Site (the "Development"); and

WHEREAS, CU is designing, and plans to construct, a stormwater detention basin on the Basin Site, as part of the Upstream Bullerman Drain Improvements project, CU work order number 83770 (the "Storm Project"); and

WHEREAS, CU wishes to dispose of excess spoils from the Storm Project onto the Development Site, and Developer is willing to assist CU and to facilitate the Storm Project by taking approximately 20,000 cubic yards or more of spoils from the Basin Site as part of Developer's site work, in exchange for the negotiated monetary compensation set forth herein; and

WHEREAS, CU further wishes to obtain ownership and title of the eastern portion of the Development Site, comprising a raised berm that will not be improved as part of the Development (the "Eastern Berm"), for use in the Storm Project, and Developer having no use for such Eastern Berm and wishing to alienate its liabilities for maintenance and ownership of such area, is willing to donate such land to CU; and



NOW, THEREFORE, for and in consideration of the mutual Agreements, terms and conditions set forth herein, CU and Developer agree as follows:

1. The recitals set forth hereinabove are incorporated herein by this reference and are true.
2. CU and Developer hereby set forth their mutual understandings and Agreements relating to their respective projects, and to their use and ownership of the real property identified herein.

WORK TO BE PERFORMED

3. Developer shall perform the following work, as part of its site work, and in accordance with plans to be provided by CU respecting the Basin Site to ensure Developer's work is consistent with CU's planned project, and in coordination with CU staff and agents for inspection and verification purposes as set forth hereinbelow:
 - a. Strip the top 6" of topsoil from the approximately 40,000 square-foot "Excavation Area" on the Basin Site (as roughly depicted on Exhibit A) and store it within the "Topsoil Storage Area" (id.) located on the southwest corner of the CU site. This topsoil remains CU's property and shall not count toward the volume of spoils removed.
 - b. Excavate and relocate at least 20,000 cubic yards of spoils (excluding topsoil) from the Excavation Area to the Development Site.

SPOILS REMOVAL COMPENSATION AND SCHEDULE

4. In consideration of Developer's work described hereinabove, CU shall pay Developer the total sum of \$150,000, according to the following milestones:
 - a. \$5,000 within 30 days following execution of this Agreement by both Developer and the Board of Public Works;
 - b. \$5,000 upon verification by CU of the completion of topsoil removal and storage, and delivery of an invoice for such work to CU;
 - c. \$140,000 upon verification by CU of the completion of 20,000 cubic yards of spoils being removed from the Basin Site, and delivery of an invoice for such work to CU.
5. For any additional spoils removed from the Excavation Area by Developer over and above 20,000 cubic yards, CU shall compensate Developer at a rate of \$4.00 per cubic yard, up to a maximum of \$80,000 for 20,000 additional cubic yards, payable in a single lump sum upon

completion of Developer's site work and verification by CU, and supported by a final invoice from Developer to CU.

6. All spoils removal shall be completed no later than December 31, 2026. In the event that less than 20,000 cubic yards of spoils are removed from the Basin Site by Developer by such date, or upon any termination of this Agreement, Developer shall provide an invoice for such work that has been completed, which upon verification by CU staff shall be paid by CU at a rate of \$4.00 per cubic yard.

7. Other than the above, no additional monetary or other compensation shall be owed to Developer by CU.

DOCUMENTATION, INSPECTION, AND VERIFICATION

8. To ensure transparency and timely payment, Developer shall maintain daily logs of the work performed under this Agreement, including records of spoils volumes removed and the schedule of related site work. Such documentation shall be provided to CU along with the invoice for the payment contemplated in paragraph 4.c. hereinabove, as a condition precedent to such payment.

9. CU staff shall have the right to visit and inspect the worksite at reasonable times during regular business hours, to observe progress and verify quantities. CU's confirmation of spoils volumes removed from the Basin Site will serve as the ultimate basis for payment.

10. No payment shall be due unless and until the applicable work has been documented by Developer and verified by CU. CU shall not unreasonably withhold such verification or delay inspection.

STORMWATER DETENTION WAIVER

11. As additional consideration to Developer, CU shall waive on-site stormwater detention volume requirements for the Development. Developer shall remain responsible for stormwater quality compliance in accordance with all applicable laws.

DONATION OF EASTERN BERM

12. Developer shall donate to CU, via quitclaim deed, the portion of the Development Site known as the Eastern Berm (roughly depicted on Exhibit "A"), in the following manner and under the following conditions:

- a. CU shall obtain a boundary survey of the Eastern Berm, subject to Developer's approval.

- b. Developer shall execute a quitclaim deed conveying the Eastern Berm to CU, following approvals by the Board of Public Works and the Common Council.
- c. Conditioned on such municipal approvals, CU will accept the Eastern Berm as-is, and Developer shall have no further responsibility for its use or condition.

13. The donation of the Eastern Berm shall proceed independently of any payments or performance obligations under this Agreement. CU and Developer each acknowledge and agree that such donation is not contingent upon any payment from CU to Developer or the completion of any specific work described herein. Developer acknowledges that Developer is entitled to just compensation based on an independent appraisal of said real estate, and Developer knowingly waives all its rights to be remunerated for the Property, wishing to donate such land to CU, in consideration only of goodwill, and of CU's assumption of maintenance and other liabilities of ownership. By executing below, Developer represents that this donation is made freely and without any undue influence or any manner of coercion.

14. Following closing of the land transfer, CU shall be responsible for the obligation to re-plant trees in place of removed vegetation on the Eastern Berm, as set forth as part of Condition number 4 in the approved Findings of Fact regarding Primary Development Plan PDP-2025-0007, executed by the Fort Wayne Planning Commission on March 17, 2025.

15. CU agrees to pay all closing and recording fees and all other costs whatsoever associated with the transfer of title to CU.

16. Developer agrees to pay all property taxes owed through December 31, 2025.

17. Both parties agree to cooperate in good faith and with reasonable diligence to complete the land transfer at the earliest practicable opportunity, including securing all necessary approvals and executing required documentation, and to execute all necessary conveyance instruments and otherwise cooperate in full to transfer clear title to the Eastern Berm to CU. CU's assumption of maintenance and other liabilities of ownership, including the particular liability set forth in paragraph 14 hereinabove, shall not begin until the transfer is closed.

OTHER PROVISIONS

18. Developer hereby grants CU and its agents a temporary right of entry onto the Development Site, and CU hereby grants Developer and its agents a temporary right of entry onto the Basin Site, for the purposes contemplated herein.

19. Each party shall indemnify and hold harmless the other from any liability arising from its respective acts or omissions in connection with the matters contemplated herein.

20. In the event of a dispute, the parties agree to first attempt resolution through informal negotiations, and if unsuccessful, through mediation by a mediator chosen by agreement of the parties, prior to litigation.

21. The parties shall comply with all applicable federal, state, and local laws, including environmental and permitting requirements.

22. Either party may terminate this Agreement upon 30 days' written notice if the other materially breaches its obligations and fails to cure such breach within the notice period. In the event of any termination, the provisions for the donation of the Eastern Berm to CU shall survive and remain enforceable, including by specific performance.

23. Performance delays caused by force majeure events shall not constitute a breach of this Agreement.

24. This Agreement shall be binding upon CU and Developer, inclusive of their affiliates, agents, subsidiaries, parent companies, franchisors/ees, and their respective successors and assigns, and shall be construed in accordance with the laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto agree to the terms hereinabove stated, effective as of the date first above written.

[Executions and attestations on following pages.]

Schmucker Building Services LLC

By: Allan Schmucker

Name: ALLAN SCHMUCKER

Title: OWNER

ACKNOWLEDGEMENT

STATE OF INDIANA)

SS

COUNTY OF ALLEN)



Truc Nguyen, Notary Public
Allen County, State of Indiana
Commission No: NP0718293
My Commission Expires 01/31/2027

Before me, a Notary Public, in and for said County and State personally appeared Allan Schmucker on behalf of Schmucker Building Services LLC, and acknowledged the execution of the foregoing **Memorandum of Understanding** as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this 4 day of August, 2025.

My Commission Expires:

Notary Public

01/31/2027
Resident of Allen

Truc Nguyen
County

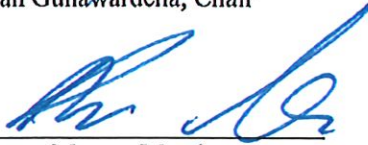
Printed Name of Notary

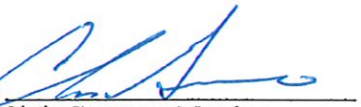
Truc Nguyen

Board Of Public Works for the City of Fort Wayne, Indiana

Date: 8-12-25

BY: 
Shan Gunawardena, Chair

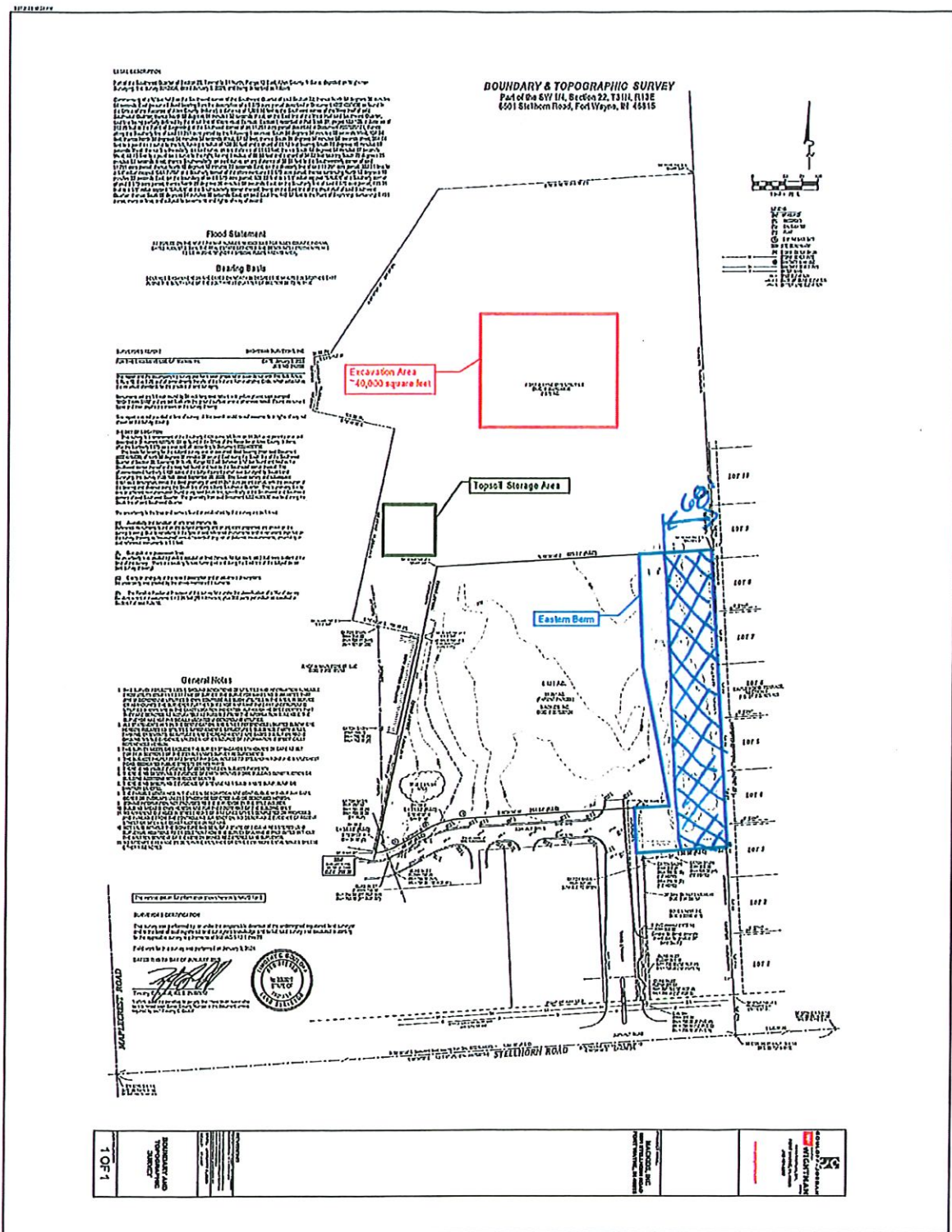
BY: 
Kumar Menon, Member

BY: 
Chris Guerrero, Member

ATTEST 
Michelle Fulk-Vondran, Clerk

Exhibit "A"

Survey of Development Site. Interior boundary locations approximate and not drawn to scale.



V001

Boundary and Topographic
Survey

NO SET

0100

1/1/2011

1 OF 1

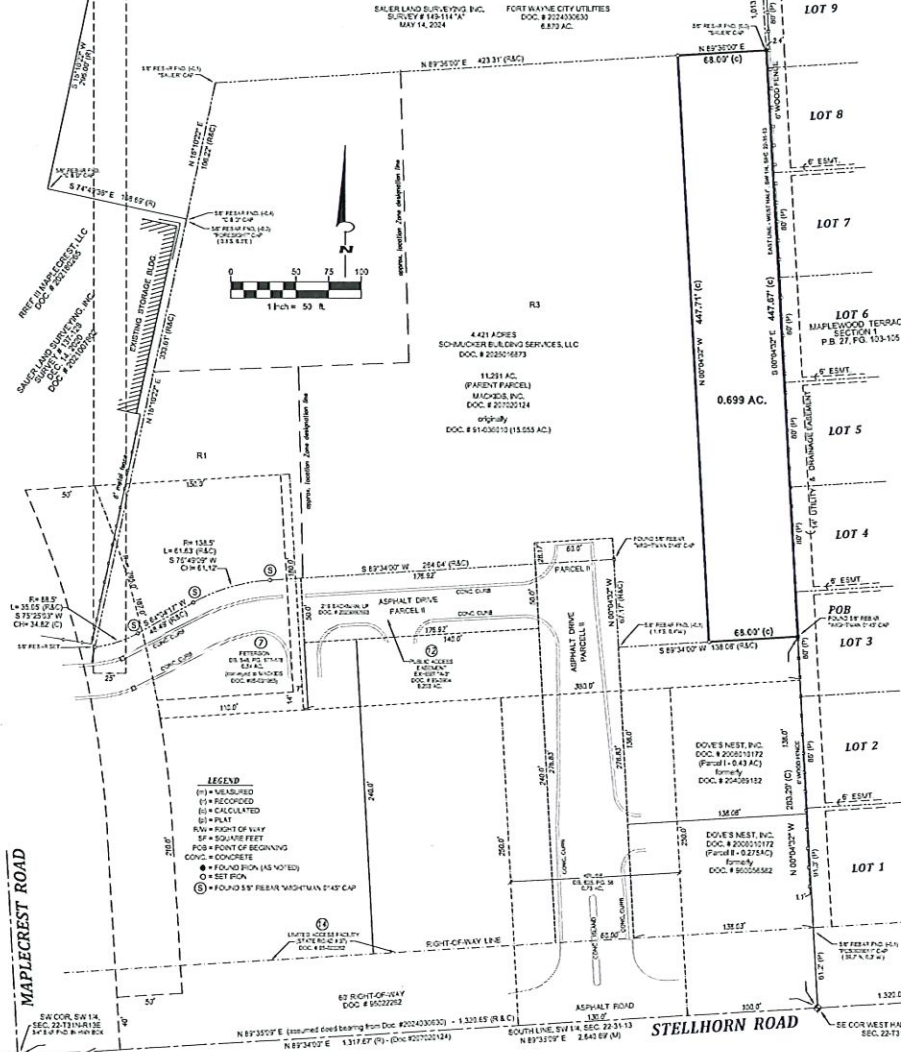
Exhibit "A"

Survey of Development Site. Interior boundary locations approximate and not drawn to scale.

Exhibit "B"

Survey of Basin Site.

Survey of Land Donation Area



BOUNDARY SURVEY PART OF THE SOUTHWEST 1/4, SECTION 22 - TOWNSHIP 31 NORTH - RANGE 13 EAST ALLEN COUNTY, FORT WAYNE, INDIANA

LEGAL DESCRIPTION

PART OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 31 NORTH, RANGE 13 EAST, ALLEN COUNTY, INDIANA, DEPICTED ON JORDAN B. SURVEY, INC. SURVEY #145, DATED OCTOBER 24, 2023, AND CERTIFIED BY TROY D. G. GOLF, L.S. #2030017. BEING DESCRIBED AS FOLLOWS:

COMMENCING AT A 1/2" BARRIER BEING THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 22; THENCE NORTH 88 DEGREES 38 MINUTES 00 SECONDS EAST (ASSUMED BEARING) FROM THE DESCRIPTION OF A 8.872-ACRE PARCEL DESCRIBED IN DOCUMENT #202403030 AS FOUND IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA; A DISTANCE OF 1,320.65 FEET TO THE SOUTHEAST CORNER OF THE WEST HALF OF SAID SOUTHWEST QUARTER THENCE NORTH 10 DEGREES 14 MINUTES 30 SECONDS WEST, ON THE EAST LINE OF THE WEST HALF SAID SOUTHWEST QUARTER, SAID LINE BEING PARTIALLY DEPICTED BY THE WEST LINE OF MAPLEWOOD TERRACE, SECTION 1, PRECIPITATED PLAT BOOK 27, PAGES 129-130, A DISTANCE OF 283.29 FEET TO THE POINT OF BEGINNING AT THE SOUTHWEST CORNER OF AN 11.291-ACRE PARCEL DESCRIBED IN DOCUMENT #202302124, THENCE SOUTH 88 DEGREES 38 MINUTES 00 SECONDS WEST, ALONG THE SOUTHERLY LINE OF SAID 11.291-ACRE PARCEL, 68.00 FEET TO A 5/8" BARRIER CAPPED "WIGHTMAN 5145" THENCE NORTH 10 DEGREES 14 MINUTES 30 SECONDS WEST, 447.87 FEET TO A 5/8" BARRIER CAPPED "WIGHTMAN 5145" ON THE SOUTHERLY LINE OF THE ABOVE-MENTIONED 8.872-ACRE PARCEL THENCE NORTH 88 DEGREES 38 MINUTES 00 SECONDS EAST, ON SAID SOUTHERLY LINE, 68.00 FEET TO A 5/8" BARRIER CAPPED "WIGHTMAN 5145" AT THE SOUTHEAST CORNER THEREOF, BEING ON THE EAST LINE OF THE WEST HALF OF SAID SOUTHWEST QUARTER THENCE SOUTH 10 DEGREES 14 MINUTES 30 SECONDS EAST, ON SAID EAST LINE, 447.87 FEET TO THE POINT OF BEGINNING, CONTAINING 8.88 ACRES, MORE OR LESS, AND SUBJECT TO EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

SURVEYOR'S REPORT

FOR THE EXCLUSIVE USE OF: CITY UTILITIES WIGHTMAN & ASSOCIATES, INC. DATE: OCTOBER 24, 2023 JOB NO: 23232

THIS REPORT AND THE ACCOMPANYING SURVEY PLAT HAVE BEEN PREPARED IN ACCORDANCE WITH TITLE 15, ARTICLE 1, RULE 12, SEC. 1-23, AND ALL AMENDMENTS THERETO, OF THE INDIANA ADMINISTRATIVE CODE, WHICH ESTABLISHES THE MINIMUM STANDARDS FOR THE PRACTICE OF LAND SURVEYING. MONUMENTS SET ARE 8-INCH ROUND BY 24-INCH LONG STEEL PEGS WITH YELLOW PLASTIC CAPS STAMPED "WIGHTMAN 5145" AND ARE SET FLUSH WITH THE GROUND SURFACE UNLESS OTHERWISE NOTED. FOUND MONUMENT TYPES AND THEIR DEPTHS ARE SHOWN ON THE SURVEY DRAWING.

TITLE REPORT WAS NOT PROVIDED AT TIME OF SURVEY. A TITLE SEARCH COULD REVEAL EASEMENTS OR RIGHTS OF WAY NOT SHOWN ON THE SURVEY DRAWING.

THEORY OF LOCATION

THIS SURVEY IS OF A 8.88-ACRE PORTION OF A RETIREMENT OF THE SOUTHERLY 4.41 ACRES LEFT FROM AN 11.291-ACRE PARENT PARCEL LAST DESCRIBED IN DOCUMENT #202302124 AS FOUND IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA. AFTER THE NORTHERLY 8.872-ACRE WAS SPLIT OFF, ACCORDING TO DOCUMENT #202403030, THE BASIS FOR BEARING FOR THE SUBJECT SURVEY WAS AN ASSUMED BEARING FROM SAID DOCUMENT #202403030 OF NORTH 88 DEGREES 38 MINUTES 00 SECONDS EAST ALONG THE SOUTHERLY LINE OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 31 NORTH, RANGE 13 EAST, BETWEEN A 1/2" BARRIER BEING THE SOUTHWEST CORNER THEREOF AND A 5/8" BARRIER BEING THE SOUTHWEST CORNER THEREOF. THE ABOVE-MENTIONED NORTHERLY 4.41 ACRES OF THE SUBJECT PARENT PARCEL, WAS SURVEYED BY SALTER LAND SURVEYING, INC. SURVEY #145, DATED SEPTEMBER 25, 2020. THE SAID SURVEY AND SUBSEQUENT 4.41-ACRE DESCRIPTION, MAINTAIN THE GEOMETRICITY OF SAID 11.291-ACRE PARENT PARCEL, WITH THE EXCEPTION OF THE BEARING AND DISTANCE ALONG THE SOUTHERLY LINE OF THE SOUTHWEST QUARTER. THIS IS PROBABLY DUE TO NEARLY DIFFERENT MONUMENTATION FOUND ALONG SAID SOUTHERLY LINE, SPECIFICALLY AT THE SOUTHWEST AND SOUTHEAST CORNERS OF SAID SOUTHWEST QUARTER. THE GEOMETRY FROM SAID DOCUMENT #202403030 WAS HELD ALONG THE SOUTHERLY LINE OF SAID SOUTHWEST QUARTER.

THE UNCERTAINTY IN THE LINES AND CORNERS FOUND OR ESTABLISHED BY THIS SURVEY ARE AS FOLLOWS:

- AVAILABILITY AND CONCEPTION OF REFERENCE MONUMENTS: REFERENCE MONUMENTS FOUND ON THE SUBJECT PROPERTY AND ON ADJACENT PROPERTIES ARE SHOWN ON THE SURVEY DRAWING, DUE TO VARIATIONS IN THE TYPE OF REFERENCE MONUMENTS AND/OR VARIATIONS EXISTING ON THE SURVEY DRAWING AS NEARLY DIFFERENT "RECORDED" ANGULAR OR DISTANCE MEASUREMENTS, UNCERTAINTY IN SAID REFERENCE MONUMENTS IS 1.1 FEET.
- OCCUPATION OR POSSESSION LINES: NO UNCERTAINTY WAS CREATED BY VISIBLE OCCUPATION LINES (FENCES, HEDGE ROWS, ETC.) THAT WERE EVIDENT AT THE TIME OF THE SURVEY. THERE ARE EXISTING FENCES RUNNING ON AND ALONG THE EAST LINE OF THE SUBJECT PARCEL (SEE SURVEY DRAWING).
- CLARITY OR AMBIGUITY OF THE RECORD DESCRIPTION AND/OR ADJACENT DESCRIPTIONS: NO UNCERTAINTY WAS CREATED BY THE ABOVE-MENTIONED DOCUMENTS.
- THE RELATIVE POSITIONAL PRECISION OF THIS SURVEY FALLS UNDER THE CLASSIFICATION OF A "PLURAL" SURVEY, RANDOM ERRORS IN MEASUREMENT ± 0.30 FEET (79 MILLIMETERS) PLUS 200 PARTS PER MILLION, AS SPECIFIED IN SECTION 17 OF SAID RULE 12.

SURVEYOR'S CERTIFICATION

THIS SURVEY WAS PERFORMED BY OR UNDER THE RESPONSIBLE DIRECTION OF THE UNDERSIGNED REGISTERED LAND SURVEYOR AND TO THE BEST OF SAID REGISTERED LAND SURVEYOR'S KNOWLEDGE AND BELIEF, SAID SURVEY WAS EXECUTED ACCORDING TO THE APPLICABLE SURVEY REQUIREMENTS OF ISS-1-101-T-70-23.

FIELD WORK FOR THIS SURVEY WAS PERFORMED ON OCTOBER 26, 2024.

DATED THIS 24TH DAY OF OCTOBER, 2023.

Troy D. G. Golf
TROY D. G. GOLF, L.S. #2030017
REGISTERED LAND SURVEYOR
STATE OF INDIANA
I AM HEREBY UNDER THE PENALTIES FOR PERJURY, DECEIT, FRAUD, AND OTHER ILLEGAL ACTS, EACH SOON, SECURITY NUMBER IN THIS DOCUMENT, UNLESS REPEATED BY LHM, TROY D. G. GOLF.



6415 MUTUAL DR.
FORT WAYNE, IN 46825
260.424.5362

www.wightman.com

PROJECT NAME:
BOUNDARY
6663 STELLHORN ROAD
FORT WAYNE, INDIANA

FORT WAYNE CITY UTILITIES
200 E. BERRY STREET, ST. 200
FORT WAYNE, INDIANA

REVISIONS

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Interoffice Memo

Date: November 19, 2025
To: Common Council Members
From: Seth Weinglass, Program Manager – Capital Project Services – Telephone: 427-1330
RE: **Approval of Spoils Removal and Land Donation Agreement with Schmucker Building Services, LLC - 6565 Stellhorn Rd, Fort Wayne, IN 46815**

Council Introduction Date: November 18, 2025—Council District #: 1

Background & supporting information:

City Utilities reached an agreement for spoils removal and donation of land with a neighboring developer whose land abuts City-owned property. City Utilities owns some 8.9 acres of land behind the Stellhorn Plaza shopping center at Stellhorn and Maplecrest Road, which will be used to construct a stormwater detention basin, expanding the capacity of the Bullerman Drain, to increase its capacity and alleviate neighborhood flooding.

Schmucker Building Services, LLC owns a 4.4 acre parcel immediately south of CU's land, which is being developed into commercial storage units. To help defray CU's soil hauling costs on its upcoming project, Schmucker agreed to 1) donate a 0.7 acre area of land to CU, for additional spoils placement; and 2) remove approximately 20,000 cubic yards of spoils from CU's land, to be used in site work for Schmucker's development. CU will pay a sum of \$150,000 to Schmucker for removing spoils onto the development parcel, plus \$4.00 per cubic yard for any additional removed spoils.

Implications of not being approved:

If this agreement is not approved, CU will be responsible for excess spoils hauling costs on its upcoming project, at an anticipated cost of over \$500,000.

Justification if prior approval is being requested: Not applicable

Funding source: Stormwater Revenue

Attachments:

- Agreement for Spoils Removal and Land Donation
- Survey of Land Donation Area

CC: Matthew Wirtz
Eric Ruppert
Kristen Buell
Jill Helfrich