

1 BILL NO. S-16-05-11

2 SPECIAL ORDINANCE NO. S-_____

3 AN ORDINANCE APPROVING THE CREATION OF A
4 DEBT SERVICE RESERVE FUND FROM THE CITY OF
5 FORT WAYNE COMMUNITY LEGACY FUND AND
6 APPROVING AN ELIGIBLE PROJECT FOR FUNDING
7 FROM THE LEGACY FUND (Amends and Restates
8 Ordinance No. S-37-16)

9 WHEREAS, the Fort Wayne Municipal Building Corp. ("Corporation")
10 has issued its First Mortgage Bonds, Series 2006 ("Original Bonds") in the
11 original principal amount of \$20,825,000 and now outstanding in the principal
12 amount of \$11,995,000;

13 WHEREAS, the Corporation, as lessor, entered into a lease with the
14 City of Fort Wayne, Indiana ("City"), as lessee, dated as of February 1, 2006
15 ("Lease");

16 WHEREAS, pursuant to the Lease, the City pays lease rental
17 payments to the Corporation which, in turn, are used to pay the principal of
18 and interest on the Original Bonds;

19 WHEREAS, the Original Bonds were sold to the Indiana Bond Bank
20 ("Bond Bank") which funded the purchase with the issuance of its Indiana
21 Bond Bank Special Program Bonds, Series 2006 C (Fort Wayne Regional
22 Public Safety Academy Project) ("Bond Bank Bonds");

23 WHEREAS, the Bond Bank is proposing to refund the Bond Bank
24 Bonds to achieve a savings ("Refunding Program");

25 WHEREAS, the Bond Bank has requested that the City and the
26 Corporation take certain actions to permit the Original Bonds to receive a
27 credit and share in the savings to be generated under the Refunding
28 Program;

1 WHEREAS, the City has determined to participate in the Refunding
2 Program and provide the authority for all required actions of the City under
3 the Refunding Program;

4 WHEREAS, in connection with the Refunding Program, the
5 Corporation will authorize a form of amendment to the Original Bonds to
6 reflect the changes effectuated as a result of the Refunding Program
7 ("Amended Bonds");

8 WHEREAS, in connection with the Refunding Program, the City and
9 the Corporation have an opportunity to release the funds held in the reserve
10 fund established for the Original Bonds and replace it with funds already on
11 hand in the Legacy Fund (as hereinafter defined);

12 WHEREAS, the City has created the City of Fort Wayne Community
13 Legacy Fund ("Legacy Fund") to invest in projects that will have a collective
14 impact that leads to transformational change within the community (each, a
15 "Legacy Project");

16 WHEREAS, the City through the Legacy process has received
17 unprecedented public input from across the community and has worked with
18 citizens, business leaders and elected officials to develop implementation
19 priorities;

20 WHEREAS, the City seeks to advance transformational projects for
21 our community with a focus on economic development, downtown and
22 riverfront development, and youth development/prep sports;

23 WHEREAS, each Legacy Project provides our community with an
24 opportunity to make our City stronger and better positioned for growth;

25 WHEREAS, the City has been advised that the Original Bonds were
26 issued pursuant to a Trust Indenture (as may be amended or supplemented
27 from time to time, the "Indenture") between the Corporation and LaSalle
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1 Bank National Association, succeeded by U.S. Bank ("Trustee"), and that
2 under the Indenture, the Fort Wayne Municipal Building Corp. Reserve Fund
3 ("Reserve Fund") was created for the Original Bonds and said Reserve Fund
4 contains \$2,086,241.50;

5 WHEREAS, the City has been advised that in connection with the
6 Refunding Program, the amount required to be on deposit in the Reserve
7 Fund as a source of security for the payment of the Amended Bonds will be
8 an amount which equals but does not exceed the least of: (i) maximum
9 annual principal and interest payable on the Amended Bonds; (ii) one
10 hundred twenty five percent (125%) of average annual principal and interest
11 due on the Amended Bonds; or (iii) ten percent (10%) of the proceeds of the
12 Amended Bonds ("Reserve Requirement");

13 WHEREAS, the City has been advised that the Reserve Requirement
14 may be satisfied by using funds already on hand in the Legacy Fund which
15 will release funds on deposit in the Reserve Fund to increase the savings
16 realized by the City and provide funds that can be used for other necessary
17 capital projects;

18 WHEREAS, the City would like to utilize funds from the Legacy Fund,
19 in an amount equal to the Reserve Requirement, in order to fulfill such
20 Reserve Requirement for the Amended Bonds;

21 WHEREAS, the Mayor of the City has recommended to the Common
22 Council that the use of moneys in the Legacy Fund to satisfy the Reserve
23 Requirement with respect to the Amended Bonds is an eligible Legacy
24 Project, and, upon the adoption of this ordinance by the affirmative vote of at
25 least six (6) members of this Common Council and the execution hereof by
26 the Mayor, this ordinance shall constitute the full and complete approval of
27 the Common Council and the Mayor to use moneys in the Legacy Fund, in
28 amount equal to the Reserve Requirement, for the purpose of satisfying the
29 Reserve Requirement for the Reserve Fund and using such moneys to pay
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1 debt service on the Amended Bonds in the event that other Pledged Funds
2 (as defined in the Indenture) are insufficient for such purpose;

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4 WHEREAS, the Common Council has previously adopted Ordinance
5 No. S-37-16 on April 26, 2016; this ordinance will amend and restate
6 Ordinance No. S-37-16 to incorporate provisions required by the Bond Bank
7 and provide other changes recommended by counsel;

8 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON
9 COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, THAT:

10 Section 1. The Common Council hereby authorizes and requests
11 that the Board of Trustees of the Legacy Fund instruct the financial institution
12 serving as the trustee of the Legacy Fund to establish a subaccount within
13 the Legacy Fund ("Legacy Fund Subaccount") as follows:

14 Reserve Fund for the Fort Wayne Municipal Building Corp. First
15 Mortgage Bonds, Series 2006 (Amended)

16 Funds in an amount equal to the Reserve Requirement will be held
17 and restricted in the Legacy Fund Subaccount to serve as the Reserve Fund
18 containing the Reserve Requirement for the Amended Bonds. The Common
19 Council, on behalf of the City and the beneficiaries of the Legacy Fund,
20 hereby pledges the funds held as the Reserve Fund in the Legacy Fund
21 Subaccount to the payment of the Amended Bonds, agrees that the Legacy
22 Fund Subaccount and the funds contained therein shall be considered part of
23 the trust estate securing the Amended Bonds under the Indenture, and
24 hereby grants and perfects, in favor of the Trustee, a security interest in the
25 Legacy Fund Subaccount. Such funds held as the Reserve Fund in the
26 Legacy Fund Subaccount shall be used in accordance with the Indenture
27 only to pay principal and interest on the Amended Bonds to the extent the
28 Sinking Fund (as defined in the Indenture) does not contain sufficient funds
29 for such payments, and may not be used for any other purpose. If any
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1 portion of the Legacy Fund Subaccount is used to pay the Amended Bonds
2 under the Indenture, the Legacy Fund Subaccount will be replenished to a
3 level equal to the Reserve Requirement from available funds held under the
4 Indenture. If the Legacy Fund Subaccount is still in need of funds to attain a
5 balance equal to the Reserve Requirement, the Common Council shall
6 consider an appropriation of funds from the Legacy Fund to attain a balance
7 in the Legacy Fund Subaccount equal to the Reserve Requirement. Such
8 deficiency and an appropriation from the Legacy Fund shall be considered by
9 the Common Council within six (6) months after the deficiency is created.

10 If the Trustee for the Amended Bonds requires funds from the Legacy
11 Fund Subaccount, which represents the Reserve Fund for the Amended
12 Bonds, in order to provide for the payment of principal of or interest on the
13 Amended Bonds, a request shall be filed by the Trustee with the City's
14 Controller. The City agrees to make funds available to the Trustee, from the
15 Legacy Fund Subaccount, within four (4) business days of the filing of such
16 request. The request filed with the City's Controller may be made in writing,
17 via e-mail or by phone, followed up either in writing or via e-mail. The
18 request shall state the amount needed from Legacy Fund Subaccount, which
19 represents the Reserve Fund for the Amended Bonds, and the instructions
20 for wiring the funds to the Trustee.

21 Any final payments made on the Amended Bonds, whether at maturity
22 or upon earlier redemption, shall not be made from the Legacy Fund
23 Subaccount if the Pledged Funds under the Indenture are available and
24 sufficient to make such final payments. When the Amended Bonds are no
25 longer outstanding or defeased under the terms of the Indenture, the Legacy
26 Fund Subaccount which satisfies the Reserve Requirement for the Reserve
27 Fund shall cease to exist, and such funds shall remain a part of the Legacy
28 Fund and shall no longer be subject to the lien of the Indenture or this
29 ordinance.
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If the City determines that the Reserve Requirement for the Amended Bonds can be satisfied with another source of funds permitted under the Indenture and such alternative source is indeed used to satisfy all or a part of the Reserve Requirement for the Amended Bonds, the Common Council shall authorize the Board of Trustees of the Legacy Fund to provide instructions to the trustee of the Legacy Fund to modify as necessary, including elimination, the Legacy Fund Subaccount serving as the Reserve Fund for the Amended Bonds.

Section 2. All ordinances and resolutions in conflict with the provisions of this ordinance are hereby repealed. This ordinance amends and restates Ordinance No. S-37-16 adopted on April 26, 2016.

Section 3. This ordinance shall be in full force and effect from and after its passage and execution by the Mayor.

Councilmember

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

ORDINANCE NO. _____

AN ORDINANCE APPROVING THE CREATION OF A DEBT SERVICE RESERVE FUND FROM THE CITY OF FORT WAYNE COMMUNITY LEGACY FUND AND APPROVING AN ELIGIBLE PROJECT FOR FUNDING FROM THE LEGACY FUND (Amends and Restates Ordinance No. S-37-16)

WHEREAS, the Fort Wayne Municipal Building Corp. ("Corporation") has issued its First Mortgage Bonds, Series 2006 ("Original Bonds") in the original principal amount of \$20,825,000 and now outstanding in the principal amount of \$11,995,000;

WHEREAS, the Corporation, as lessor, entered into a lease with the City of Fort Wayne, Indiana ("City"), as lessee, dated as of February 1, 2006 ("Lease");

WHEREAS, pursuant to the Lease, the City pays lease rental payments to the Corporation which, in turn, are used to pay the principal of and interest on the Original Bonds;

WHEREAS, the Original Bonds were sold to the Indiana Bond Bank ("Bond Bank") which funded the purchase with the issuance of its Indiana Bond Bank Special Program Bonds, Series 2006 C (Fort Wayne Regional Public Safety Academy Project) ("Bond Bank Bonds");

WHEREAS, the Bond Bank is proposing to refund the Bond Bank Bonds to achieve a savings ("Refunding Program");

WHEREAS, the Bond Bank has requested that the City and the Corporation take certain actions to permit the Original Bonds to receive a credit and share in the savings to be generated under the Refunding Program;

WHEREAS, the City has determined to participate in the Refunding Program and provide the authority for all required actions of the City under the Refunding Program;

WHEREAS, in connection with the Refunding Program, the Corporation will authorize a form of amendment to the Original Bonds to reflect the changes effectuated as a result of the Refunding Program ("Amended Bonds");

WHEREAS, in connection with the Refunding Program, the City and the Corporation have an opportunity to release the funds held in the reserve fund established for the Original Bonds and replace it with funds already on hand in the Legacy Fund (as hereinafter defined);

WHEREAS, the City has created the City of Fort Wayne Community Legacy Fund ("Legacy Fund") to invest in projects that will have a collective impact that leads to transformational change within the community (each, a "Legacy Project");

WHEREAS, the City through the Legacy process has received unprecedented public input from across the community and has worked with citizens, business leaders and elected officials to develop implementation priorities;

WHEREAS, the City seeks to advance transformational projects for our community with a focus on economic development, downtown and riverfront development, and youth development/prep sports;

WHEREAS, each Legacy ~~project~~Project provides our community with an opportunity to make our City stronger and better positioned for growth;

WHEREAS, the City has been advised that the Original Bonds were issued pursuant to a Trust Indenture (as may be amended or supplemented from time to time, the "Indenture") between the Corporation and LaSalle Bank National Association, succeeded by U.S. Bank ("Trustee"), and that under the Indenture, the Fort Wayne Municipal Building Corp. Reserve Fund ("Reserve Fund") was created for the Original Bonds and said Reserve Fund contains \$2,086,241.50;

WHEREAS, the City has been advised that in connection with the Refunding Program, the amount required to be on deposit in the Reserve Fund can be satisfied for as a source of security for the payment of the Amended Bonds ~~in~~will be an amount which equals but does not exceed the least of: (i) maximum annual principal and interest payable on the Amended Bonds; (ii) one hundred twenty five percent (125%) of average annual principal and interest due on the Amended Bonds; or (iii) ten percent (10%) of the proceeds of the Amended Bonds ("Reserve Requirement");

WHEREAS, the City has been advised that the Reserve Requirement may be satisfied by using funds already on hand in the Legacy Fund which will release funds on deposit in the Reserve Fund to increase the savings realized by the City and provide funds that can be used for other necessary capital projects;

WHEREAS, the City would like to utilize funds from the Legacy Fund, in an amount equal to fulfill the Reserve Requirement, in order to fulfill such Reserve Requirement for the Amended Bonds;

WHEREAS, the Mayor of the City has recommended to the Common Council that the use of moneys in the Legacy Fund to satisfy the Reserve Requirement with respect to the Amended Bonds is an eligible Legacy Project, and, upon the adoption of this ordinance by the affirmative vote of at least six (6) members of this Common Council and the execution hereof by the Mayor, this ordinance shall constitute the full and complete approval of the Common Council and the Mayor to use moneys in the Legacy Fund, in amount equal to the Reserve Requirement, for the purpose of satisfying the Reserve Requirement for the Reserve Fund and using such moneys to pay debt service on the Amended Bonds in the event that other Pledged Funds (as defined in the Indenture) are insufficient for such purpose;

WHEREAS, the Common Council has previously adopted Ordinance No. S-37-16 on April 26, 2016; this ordinance will amend and restate Ordinance No. S-37-16 to incorporate provisions required by the Bond Bank and provide other changes recommended by counsel;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, THAT:

Section 1. The Common Council hereby authorizes and requests that the Board of Trustees of the Legacy Fund ~~to instruct the financial institution serving as the trustee of the~~ Legacy Fund to establish a subaccount within the Legacy Fund ("Legacy Fund Subaccount") as follows:

Reserve Fund for the Fort Wayne Municipal Building Corp. First Mortgage Bonds, Series 2006 (Amended)

Funds in an amount equal to the Reserve Requirement will be held and restricted in a ~~subaccount of the Legacy Fund Subaccount~~ to serve as the Reserve Fund containing the Reserve Requirement for the Amended Bonds. The Common Council, on behalf of the City and the beneficiaries of the Legacy Fund, hereby pledges the funds held as the Reserve Fund in the ~~subaccount~~ Legacy Fund Subaccount to the payment of the Amended Bonds ~~and such funds,~~ agrees that the Legacy Fund Subaccount and the funds contained therein shall be considered part of the trust estate securing the Amended Bonds under the Indenture, and hereby grants and perfects, in favor of the Trustee, a security interest in the Legacy Fund Subaccount. Such funds held as the Reserve Fund in the ~~subaccount~~ Legacy Fund Subaccount shall be used in accordance with the Indenture only to pay principal and interest on the Amended Bonds to the extent the Sinking Fund (as defined in the Indenture) does not contain sufficient funds for such payments, and may not be used for any other purpose. If any portion of the ~~subaccount~~ Legacy Fund Subaccount is used to pay the Amended Bonds under the Indenture, ~~such subaccount~~ the Legacy Fund Subaccount will be replenished to a level equal to the Reserve Requirement from available funds held under the Indenture. If the ~~Reserve~~ Legacy Fund Subaccount is still in need of funds to attain a balance equal to the Reserve Requirement, the Common Council shall consider an appropriation of funds from the Legacy Fund to attain a balance in the Legacy Fund Subaccount equal to the Reserve Requirement. Such deficiency and an appropriation from the Legacy Fund shall be considered by the Common Council within six (6) months after the deficiency is created.

If the Trustee for the Amended Bonds requires funds from the Legacy Fund Subaccount, which represents the Reserve Fund for the Amended Bonds, in order to provide for the payment of principal of or interest on the Amended Bonds, a request shall be filed by the Trustee with the City's Controller. The City agrees to make funds available to the Trustee ~~within three, from the Legacy Fund Subaccount,~~ within four (4) business days of the filing of such request. The request filed with the City's Controller may be made in writing, via e-mail or by phone, followed up either in writing or via e-mail. The request shall state the amount needed from Legacy Fund Subaccount, which represents the Reserve Fund for the Amended Bonds, and the instructions for wiring the funds to the Trustee.

Any final payments made on the Amended Bonds, whether at maturity or upon earlier redemption, shall not be made from the ~~subaccount if funds pledged~~ Legacy Fund Subaccount if the Pledged Funds under the Indenture are available and sufficient to make such final payments. When the Amended Bonds are no longer outstanding or defeased under the terms of the Indenture, the ~~subaccount serving as~~ Legacy Fund Subaccount which satisfies the Reserve Requirement for the Reserve Fund shall cease to exist, and such funds shall remain a part of the Legacy Fund and shall no longer be subject to the lien of the Indenture or this ordinance.

If the City determines that the Reserve Requirement for the Amended Bonds can be satisfied with another source of funds permitted under the Indenture and such alternative source is indeed ~~funded~~used to ~~serve as~~satisfy all or a part of the Reserve Requirement for the Amended Bonds, the Common Council shall authorize the Board of Trustees of the Legacy Fund to provide instructions to the trustee of the Legacy Fund to modify as necessary, including elimination, the ~~subaccount~~Legacy Fund Subaccount serving as the Reserve Fund for the Amended Bonds.

Section 2. All ordinances and resolutions in conflict with the provisions of this ordinance are hereby repealed. This ordinance amends and restates Ordinance No. S-37-16 adopted on April 26, 2016.

~~Section 2.~~ Section 3. This ordinance shall be in full force and effect from and after its passage and execution by the Mayor.

Councilmember

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

Summary report: Litéra® Change-Pro 7.5.0.185 Document comparison done on 5/4/2016 2:25:56 PM	
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Intelligent Table Comparison: Active	
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Modified DMS: dm://INDY/10009923/3	
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Delete	21
Move From	0
Move To	0
Table Insert	0
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Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
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