

**AN ORDINANCE OF THE COMMON COUNCIL OF
THE CITY OF FORT WAYNE, INDIANA
AMENDING GENERAL ORDINANCE G-35-12
AMENDING THE "CITY OF FORT WAYNE
COMMUNITY TRUST"**

WHEREAS, on July 22, 1975, the Common Council of the City of Fort Wayne passed General Ordinance G-21-75 authorizing the establishment of a trust with the purposes of administering monies to be received from the Lease of the City of Fort Wayne Light and Power Utility to the Indiana and Michigan Electric Company ("I&M") and providing for the use of such monies; and

WHEREAS, General Ordinance G-21-75 directed the proper officers of the City of Fort Wayne ("City") to execute the Trust Agreement establishing the City of Fort Wayne Community Trust ("Trust"), which Trust Agreement was attached as "Exhibit A" in said Ordinance; and

WHEREAS, such Trust Agreement was thereafter duly executed; and

WHEREAS, on May 4, 1978, the City of Fort Wayne executed a Light Lease Agreement ("Lease Agreement") with Lincoln National Bank and Trust Company of Fort Wayne for the purposes of administering and investing the assets of the Trust; and

WHEREAS, to facilitate a greater return on the investments of the Trust and to increase the growth of the assets of the Trust, on August 10, 1994, the Common Council of the City of Fort Wayne passed General Ordinance G-16-94, amending the Trust Agreement and the Lease Agreement to change the investment policy of the Trust; and

WHEREAS, on October 11, 1994, the Allen Superior Court, in Cause No. 89TR2, issued an order approving the amendment to the Trust, and authorizing the Lease Agreement to be amended to reflect the change to the investment policy of the Trust; and

WHEREAS, on November 13, 2012, the Common Council of the City of Fort Wayne passed General Ordinance G-35-12 authorizing the settlement funds resulting from negotiations between the City and I&M to be placed in the Trust and amending the

Trust to provide for the distribution of the funds placed in the Trust for purposes and activities deemed to be in the public interest; and

WHEREAS, the Common Council of the City of Fort Wayne and the Mayor desire to further amend the Trust to further clarify the process by which the Common Council of the City of Fort Wayne and the Mayor shall approve the distribution of such funds for the benefit of the residents of the City of Fort Wayne.

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

SECTION 1. That the Trust Agreement, attached as "Exhibit A" to General Ordinance No. G-21-75, as amended by General Ordinance G-16-94, as amended by General Ordinance No. G-35-12 is further amended by interlineated revisions as provided in "Exhibit A" attached to this Ordinance.

SECTION 2. That the Mayor shall authorize legal counsel for the City to submit the aforesaid amendment to the City of Fort Wayne Community Trust to the Allen Superior Court in Cause No. 89TR2 for the Court's approval.

SECTION 3. That the Mayor is authorized and directed to take all other appropriate legal action to cause the Settlement Funds to be placed in the Trust.

SECTION 4. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Councilmember

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

EXHIBIT "A"

TRUST AGREEMENT (AS AMENDED BY GENERAL ORDINANCE NO. G-16-94 AND BY GENERAL ORDINANCE NO. G-XX-12)

1. Name. The trust hereby provided shall be known as "The City of Fort Wayne Community Trust."
2. Beneficiaries. This trust shall be administered for the general welfare and in the best interests of the citizens and residents of the City of Fort Wayne, Indiana. Although they are the beneficiaries hereof, the citizens and residents of the City of Fort Wayne, Indiana, do not acquire any personal or individual legal interest in, or any right to anticipate, alienate, assign, or otherwise encumber the income or principal of this trust, the trust being intended for the benefit of the citizens and residents as a whole City rather than for the benefit of any individuals. However, this provision does not impair the statutory liability of the trustees to the beneficiaries per Indiana Code 30-4-3-11, or the statutory remedies of the beneficiary against the trustee per Indiana Code 30-4-3-22.
3. Board of Trustees. The Board of Trustees of The City of Fort Wayne Community Trust shall consist of the duly elected or appointed persons holding the following public offices at any given time:
 - a) President of the Common Council of the City of Fort Wayne, Indiana;
 - b) Chairperson of the Finance Committee of the Common Council of the City of Fort Wayne, Indiana;
 - c) Chairperson of the Public Works Committee of the Common Council of the City of Fort Wayne, Indiana;
 - d) Chairperson of the City Utilities Committee of the Common Council of the City of Fort Wayne, Indiana;
 - e) Mayor of the City of Fort Wayne, Indiana;
 - f) Deputy Mayor of the City of Fort Wayne, Indiana;
 - g) Controller of the City of Fort Wayne, Indiana;
 - h) Corporation Counsel of the City of Fort Wayne, Indiana; and
 - i) Director of Community Development of the City of Fort Wayne, Indiana.

The Chairperson of the Board of Trustees shall be the Mayor of the City of Fort Wayne, Indiana. The Mayor shall exercise a vote only in the event of a tie vote of the other members of the Board of Trustees.

All members of the Board of Trustees shall serve without compensation in other than salary and benefits to which they are legally entitled as holders of the respective public offices.

4. Responsibilities of Trustees. To accomplish the purposes of this trust, the Board of Trustees shall:

- a) Fulfill all of its duties in the administration of this trust, according to the provisions set forth herein;
- b) Consult with, and where necessary employ, the best qualified and most able investment specialists from the Fort Wayne banking and investment communities for guidance in the investment of the Corpus of this trust; and
- c) Prepare and publish, on a semi-annual basis, a full report and accounting of this trust, indicating all income, distributions and all Legacy Projects approved in the immediately preceding six (6) month period pursuant to Section 9. a) hereof.

5. Investment of Trust Funds and Authority of Board of Trustees. Subject to the restrictions set forth in subsection 9 or as otherwise noted herein, the Trustees shall have the power with regard to all property in the Trust and all income therefrom from time to time or at any time:

- a) To invest and reinvest the same in such tangible and intangible property as may be from time to time authorized by the Investment Policy of the Trust.
- b) To sell, exchange, convey, transfer, mortgage, pledge, borrow, lease, or otherwise dispose of any tangible or intangible property held by it, without the necessity of approval of any court therefor or notice to any person. No person dealing with the Board of Trustees shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety or any such sale or other disposition.
- c) To vote, either in person or by proxy, any share of stock held as part of Corpus of the trust; to exercise any and all rights or options pertaining thereto and to enter into agreements and consent to or oppose the reorganization, consolidation, merger, readjustment of financial structure or sale of assets of any corporation or organization of the securities of which may be held in the Corpus of the trust.
- d) To collect the principal and income of such property as the same shall become due and payable and to give binding receipt therefor.

e) To take such action, whether by legal proceedings, compromise, abandonment or otherwise, as the Board of Trustees, in its discretion, shall deem to be in the best interests of the Trust.

f) To retain in, or convert to, cash or readily marketable securities without liability for interest or any other return thereon except as shall be actually realized. To lend money to the City of Fort Wayne at a reasonable rate of interest.

6. In all other respects except as herein specifically provided this Trust Agreement shall be governed by the trust laws of the State of Indiana.

7. Income of the Trust. The income of the trust to be administered by the Board of Trustees, shall be the payments ("Settlement Funds") made from Indiana and Michigan Electric Company to the City of Fort Wayne pursuant to terms of the settlement agreement between those parties executed on October 28, 2010, and approved by General Ordinance No. G-18-10, resolving, among other things, the case in the Allen Superior Court filed under Cause No. 02D01-0910-PL-400.

8. Purposes of the Trust. The Board of Trustees shall in each calendar year distribute the income of the trust in such manner as to:

a) Distribute the Settlement Funds into the Corpus of the trust, in accordance with the provisions of Section 9 below; and

b) Pay the reasonable and necessary expenses incurred by the Board of Trustees in administering the trust.

9. Corpus of the Trust. The Corpus of the trust shall be (i) the monies existing in the Corpus as of the date of the first distribution under Section 8(a) of this trust, which is the sum of the annual payments segregated into the trust from the lease of the Fort Wayne Light and Power Utility to the Indiana & Michigan Electric Company pursuant to General Ordinance No. G 18 74, and the income derived from the investment of the Corpus prior to that date; (ii) the monies distributed according to Section 8(a) of this Trust Agreement; and (iii) the income derived from the investment of the Corpus funds. The Corpus shall remain secure from invasion and distribution by the Board of Trustees, with the following exception: that the Corpus shall be made available to the City of Fort Wayne, Indiana, to be utilized in accordance with the following:

Legacy Fund:

The balance of the existing Corpus (which shall include that portion of the Corpus formerly denominated as the Community Trust Fund Corpus (Fund A) and that portion of the Corpus formerly denominated as the Legacy Fund (Fund B)) shall be known as the Legacy Fund. Any investment earnings thereon, all additional settlement payments made by Indiana and Michigan Electric Company to the City of Fort Wayne, together with any investment earnings on such settlement payments shall become part of the Legacy Fund and subject to the terms hereof.

All projects funded with distributions from the Legacy Fund (each, a "Legacy Project") shall consider and, to the extent possible, incorporate the Guiding Principles set forth in attached Schedule 1. Each Legacy Project shall be initially recommended by the Mayor or the Common Council. The Mayor shall consult with members of the Common Council regarding the various components of a proposed Legacy Project prior to recommending such Project to the Common Council for funding. The Common Council shall consult with the Mayor and members of the Mayor's administrative staff regarding the major components of a proposed Legacy Project prior to recommending such Project for funding.

The funding of a Legacy Project with Legacy Funds shall require the prior approval of: (a) the major components of such Legacy Project; and (b) the maximum amount of Legacy Funds which may be expended on such Legacy Project. Funding for each Legacy Project shall be approved by the Mayor and not less than six (6) members of the Common Council. Upon obtaining such approval by the Mayor and the Common Council, the City of Fort Wayne may proceed with the funding and implementation of such Legacy Project in accordance with the major components previously presented without additional approval from the Mayor or the Common Council with respect to the specific components of such Legacy Project. Notwithstanding, should a proposed spending provision of this Corpus balance dipping below \$30 million, the spending proposal will disclose such when presented to the Common Council.

10. Severability. If any section of this trust agreement or part thereof is for any reason held invalid, such invalidity shall not affect the validity of the remaining portion or portions of this trust agreement, which shall remain in full force and valid.

11. Payment of Expenses and Taxes. The Board of Trustees shall be reimbursed for any reasonable expenses, including reasonable accounting and reasonable counsel fees, incurred by it in the administration of the Trust. Such compensation and expenses may be paid by the City of Fort Wayne but until paid shall constitute a charge upon the Corpus of the trust. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws, upon, or in respect of, the Trust or the income thereof shall be paid from income of the trust.

SCHEDULE 1

Guiding Principles

- The collective impact of Legacy Fund distribution should provide **transformational investment** and **leverage additional resources**. Candidates for investment should be projects, programs or policies that will have positive long-term community impacts, and support or acts as catalysts for other positive and desired change.
- Legacy Fund investments should:
 - be used in the **long term best interest of the community**;
 - be a catalyst for private investment;
 - be committed to align with the City of Fort Wayne Comprehensive Plan; and
 - not be used for any debt incurred by the City of Fort Wayne prior to the effective-date of this Ordinance, unless funds saved by such retirement of debt would be spent on projects that meet the guiding principles outline above.
 - Be used to maintain or increase property values.