**BILL NO. G-19-05-47** **Ordinance No.___________**

**A RESOLUTION CREATING A STUDY COMMITTEE REGARDING THE FUTURE ALLOCATION AND USAGE OF THE CITY OF FORT WAYNE LEGACY FUND**

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 to administer monies received from the Lease of the City of Fort Wayne Light and Power Utility to the Indiana 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 at “Exhibit A” in said Ordinance; and

WEREAS, such Trust Agreement was thereafter duly executed; and

WHEREAS, on May 4, 1978, the City of Fort Wayne executed a Light Lease Agreement with Lincoln National Bank and Trust Company of Fort Wayne for the purposes of administering and investing 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, Common Council passed General Ordinance G-16-94, amending the Trust Agreement and Least Agreement; and

WHEREAS, on October 11, 1994, Allen Superior Court issued an order approving the amendment to the Trust Agreement, and authorizing the Lease Agreement to be amended to reflect the change to the investment policy of the trust; and

WHEREAS, on October 15, 2009, I&M filed a Complaint for Declaratory and Injunctive Relief in Allen Superior Court (the Lawsuit), requesting certain relief with respect to the Lease Agreement; and

WHEREAS, on November 20, 2009, the City filed with Allen Superior Court a counterclaim against I&M in the Lawsuit; and

WHEREAS, the City and I&M thereafter began negotiations to resolve their respective disputes and differences arising in the litigation then pending in Allen Superior Court; and

WHEREAS, as a result of those negotiations and mediation, the City and I&M reached a settlement agreement (Settlement Agreement) resolving all disputes and other matters between the parties relating to the Lease Agreement; and

WHEREAS, in November 2010, the Common Council passed General Ordinance G-18-10, which approved the settlement agreement; and

WHEREAS, the Settlement Agreement was approved by the Indiana Utility Regulatory Commission on August 10, 2011; and

WHEREAS, the Settlement Agreement provides, among other things, for continuing payments (Settlement Funds) to the City over a fifteen year period; and

WHEREAS, the Common Council of the City of Fort Wayne and the Mayor believe it is in the best interests of the City of Fort Wayne that the Settlement Funds be placed into the Trust, for reasons including, but not limited to, the benefit to residents of the City of Fort Wayne from permitting the Settlement Funds to be administered by the Trustees of the Trust according to the investment policies adopted by General Ordinance G-16-94; and

WHEREAS, the Common Council Fort Wayne and the Mayor also believe that funds placed in the trust should henceforth be distributed for purposes and activities determined to be in the public interest according to duly enacted resolutions of the Common Council of Fort Wayne; and

WHEREAS, by General Ordinance G-35-12, the Trust Agreement was further amended by “Exhibit A’, modifying and further defining the income derived from the Trust and the purpose of the Trust; and

WHEREAS, in General Ordinance G-35-12, defined the Corpus of the Trust as 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 G-18-74 and the income derived from the investment of the corpus prior to that date; and

WHEREAS, General Ordinance G-35-12 further defined two funds, Fund A – the Community Trust Fund Corpus, defined as $30,000,000 from the existing corpus, which requires approval by the Mayor and six members of Common Council to distribute, and Fund B – the Legacy Fund, defined as all monies above the $30,000,000 corpus, additional investment earnings, and all additional settlement payments, which requires approval by the Mayor, the majority of Common Council and must be consistent with the guiding principles; and

WHEREAS, General Ordinance G-35-12 defined the Guiding Principles in Schedule 1 that the Legacy Fund should provide transformational investment and leverage additional resources and 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 prior to the effective date of the ordinance; and

WHEREAS, General Ordinance G-26-13 further clarified the process by which the Common Council and the Mayor shall approve the distribution of funds from Trust by combining Fund A and Fund B into a single fund called the “Legacy Fund”, to include all future payments and investment earnings; and

WHEREAS, the Legacy Fund and projects funded by distributions (Legacy Projects), shall incorporate the guiding principles set forth previously, and require approval by the Mayor and six members of Common Council; and

WHEREAS, any distribution that proposes spending the corpus balance below $30,000,000 must be disclosed when presented to Common Council; and

WHEREAS, Resolution R-74-14 created the Legacy Funding Program Review Policy and Application Process, affirming the Guiding Principles set forth previously, and establishing the Legacy Joint Funding Committee (LJFC) made up of three Administration officials, three City Council members, and three citizens, once selected each by the Mayor and City Council and one by the eight appointed members of the LJFC; and

WHEREAS, Resolution R-19-17 confirms the preference of Common Council to preserve the corpus of the Legacy Fund by providing loans from the fund as opposed to grants, and sets forth a process and procedure to be undertaken in evaluating and approving loans, including, but not limited to, the creating of the Community Trust Investment Committee, and the LJFC, as it relates to the evaluation and approval of loans; and

WHEREAS, as stated by the Chair of the LJFC, the Committee “is only allowed to review a request and determine if it is Legacy worthy”, after funding reviews conducted by a team of Administration staff and it is then returned to the LJFC to receive approval and if approved, move on to City Council; and

WHEREAS, at recent LJFC discussions and Common Council meetings there have been ongoing discussions about the current balance of the Legacy Fund, as it approaches the $30,000,000 set forth previously as the balance to remain untouched, which has made continuing to fund Legacy Projects more difficult and has brought into question the current status of the Fund; and

WHEREAS, there are currently several projects at different stages of the approval process, and the Chair of the LJFC recently canceled a meeting citing a lack of clarity on how to move forward without the potential of delays; and

WHEREAS, the Chair requested that while there is not a sufficient balance within the Fund to grant requests without dipping into the Corpus, “City Council takes up the initiative to review and amend as they see fit”; and

WHEREAS, as it has been nearly a decade since the creation of the Trust, several years since the adoption of the policies and procedures, and since the community looks very different and has made significant strides during this time, it is time to evaluate this process to ensure that the community is receiving the greatest benefit for these investments; and

WHEREAS, there is a desire by members of the community and the Common Council of Fort Wayne to protect the Corpus of the Trust and ensure that there are resources for future generations, that monies distributed are abiding by all appropriate guidelines, that loans are being given appropriate and proper attention as a viable option, and to provide direction for several regularly occurring discussions:

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

**SECTION 1.** This resolution indicates Council’s desire to comprehensively evaluate policies and procedures related to the Legacy process. Council hereby creates a study committee of the LJFC (“LJFC Study Committee”) to be comprised of those members of Council which have been appointed to serve on the LJFC. The LJFC Study Committee will meet with interested parties from the LJFC, the Administration, members of the Community Trust Investment Committee, Legacy grant and loan recipients, and community members.

**SECTION 2.** The purpose of the LJFC Study Committee will be to answer questions about the future of the Legacy Fund posed by the LJFC, City Council, and community members. These questions include, but are not limited to, the following:

1. Should the Common Council approve a grant or loan that ultimately takes the balance of the Legacy Fund below $30,000,000? Are there any situations in which this is acceptable?
2. What should the role of the LJFC be moving forward? Currently acting in a granting capacity, should the Committee have an advisory role, be a decision making body, take on a fiduciary role, or act in some other way entirely?
3. Who should be on the Committee? Is the current membership structure the correct structure for the Committee moving forward?
4. What is the proper role of the Administration and staff in bringing projects before the Committee? Are there different processes for loans versus grants? How should that determination be made?

5. Are the Guidelines, as approved previously, still relevant and appropriate? Should the LJFC further define catalytic or transformational? Have these definitions changed as the community has changed?

**SECTION 3.** The LJFC Study Committee will review the current process and come forth with a recommendation to be made to the Common Council of the City of Fort Wayne for discussion and possible adoption by the Common Council in 2020.

_______________________________________

Michael A. Barranda, Council Member

_______________________________________

Paul Ensley, Council Member

APPROVED AS TO FORM AND LEGALITY

_______________________________________

Joseph G. Bonahoom, Attorney for Common Council