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

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

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

17 WEREAS, such Trust Agreement was thereafter duly executed; and

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

21 WHEREAS, to facilitate a greater return on the investments of the Trust and to
22 increase the growth of the assets, Common Council passed General Ordinance G-16-
23 94, amending the Trust Agreement and Least Agreement; and

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

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

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

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

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

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

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

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

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

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

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

23 WHEREAS, in General Ordinance G-35-12, defined the Corpus of the Trust as
24 the sum of the annual payments segregated into the trust from the lease of the Fort
25 Wayne Light and Power Utility to the Indiana & Michigan Electric Company pursuant to
26 General Ordinance G-18-74 and the income derived from the investment of the corpus
27 prior to that date; and

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

35 WHEREAS, General Ordinance G-35-12 defined the Guiding Principles in
36 Schedule 1 that the Legacy Fund should provide transformational investment and
37 leverage additional resources and should be used in the long term best interest of the

1 community, be a catalyst for private investment, be committed to align with the City of
2 Fort Wayne Comprehensive Plan, and not be used for any debt incurred prior to the
3 effective date of the ordinance; and

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

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

11 WHEREAS, any distribution that proposes spending the corpus balance below
12 \$30,000,000 must be disclosed when presented to Common Council; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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15 Michael A. Barranda, Council Member
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20 Paul Ensley, Council Member
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24 APPROVED AS TO FORM AND LEGALITY
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28 _____
29 Joseph G. Bonahoom, Attorney for Common Council