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3 **A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF FORT WAYNE,**
4 **STATING THE INTENTION TO UTILIZE THE INVESTIGATORY POWERS OF THE**
5 **LEGISLATIVE BODY OF THE CITY OF FORT WAYNE**
6

7 **WHEREAS,** the Fort Wayne Common Council of the serves as the legislative
8 body of the City of Fort Wayne as codified in IC 36-4-4-4 (a); and

9 **WHEREAS,** as the legislative body, the Fort Wayne Common Council has all
10 powers and responsibilities granted the legislative body by Indiana Code and the Fort
11 Wayne Code of Ordinances; and

12 **WHEREAS,** in IC 36-4-6-21 it is stated that the legislative body may investigate
13 departments, officers, and employees of the city and the affairs of a person with whom
14 the city has entered or is about to enter into a contract, and in conducting such an
15 investigation the legislative body is entitled to access to all records pertaining to the
16 investigation and may compel the attendance of witnesses and the production of
17 evidence by subpoena and attachment served and executed in Allen County; and

18 **WHEREAS,** as stated in IC 36-4-6-21 if a person refuses to testify or produce
19 evidence during this investigation, the matter may be referred to the court system for
20 proper judgment; and

21 **WHEREAS,** the City of Fort Wayne is currently engaged in a contractual relationship
22 with Red River Waste Solutions LP (Red River), which contract was approved and
23 effective beginning in 2017 and pertains to garbage collection for all of the residents of
24 the City of Fort Wayne (hereinafter referred to as "Red River Garbage Contract");
25

26 **WHEREAS,** City Council invited James Smith, CEO of Red River and signatory
27 on behalf of Red River, to the Red River Garbage Contract between Red River and the
28 City of Fort Wayne, to appear before and address Council at the Council meeting on
29 November 16, 2021; and

30 **WHEREAS,** no response has been provided by Red River leadership to
31 Council's request to appear and speak at the November 16, 2021 Council meeting, nor
32 has there been any significant communication from Red River leadership to Council in
33 the last two years; and

34 **WHEREAS,** Red River has now declared bankruptcy and has continued their
35 limited communication with Council; and

1 **WHEREAS**, Common Council has an obligation to protect the interests of its
2 citizens, including investigating matters that may have legal ramifications and result in
3 costs funded by ratepayer dollars; and

4 **WHEREAS**, the investigatory ability of Common Council facilitates transparency
5 and limits exposure of the City and its citizens by identifying facts pertinent to the matter
6 at hand.

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

9 **SECTION 1.** The members of Common Council voting in the affirmative to this
10 resolution wish to pursue an investigation into Red River Garbage Contract and the
11 departments, officers, employees of Red River and the City, and all persons, agent and
12 employees of any nature involved with the Red River Garbage Contract, and otherwise
13 related to or regarding the handling of and involvement related to all aspects of the City
14 of Fort Wayne's trash and recycling contracts. By this resolution, Council desires to
15 invoke authority granted to it under IC 36-4-6-21 to subpoena, if necessary, any persons
16 or parties involved or invested in this contract who may be subpoenaed under IC 36-4-
17 6-21. Council asserts its entitlement to all records pertaining to Red River all contracts
18 between the City of Fort Wayne and Red River and this investigation provided under IC
19 36-4-6-21.

20 **SECTION 2.** Council will create a three-member sub-committee to direct any
21 investigation started under authority of this Resolution and IC 36-4-6-21 ("Investigation
22 Committee"). The Investigation Committee will be tasked with reviewing the information
23 requested and must report its findings to all Members of Council no later than 60 days
24 after the passage of this resolution. There is an expectation that testimony will be given
25 publicly at a regular Common Council meeting or an appropriately noticed special
26 meeting of Council. The members of this sub-committee will be the President of Council
27 and the Council-appointed members of the Solid Waste Advisory Board.

28 **SECTION 3.** Council fully intends to exercise all authority granted under IC 36-4-
29 6-21. If a person refuses to testify or produce evidence during the investigation
30 conducted under this section, the legislative body may order its clerk to immediately
31 present to the circuit court, superior court, or probate court of the county a written report
32 of the facts relating to the refusal. The court shall hear all questions relating to the
33 refusal to testify or produce evidence, and shall also hear any new evidence not
34 included in the clerk's report. If the court finds that the testimony or evidence sought
35 should be given or produced, it shall order the person to testify or produce the evidence,
36 or both.

1 **SECTION 4.** This resolution shall be in full force and effect from and after its
2 approval by the members of Common Council.

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6 Paul Ensley, Council Member
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11 Russell Jehl, Council Member
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16 APPROVED AS TO FORM AND LEGALITY
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19 _____
20 Joseph G. Bonahoom, Attorney for City Council