

**A RESOLUTION OF THE
COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA,
APPROVING THE DISTRIBUTION OF FUNDS
FROM THE CITY OF FORT WAYNE COMMUNITY LEGACY FUND**

WHEREAS, the City of Fort Wayne has established 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; and

WHEREAS, the City of Fort Wayne and surrounding community members have a long history of investing in small businesses in order to expand capacity and build our economy in such a way that encourages entrepreneurs; and

WHEREAS, Brightpoint has a proven success in running a small business loan program, having partnered with organizations like the Small Business Association (SBA) and others; and

WHEREAS, Brightpoint is a Community Development Financial Institution (CDFI), which is defined by the United States Office of the Comptroller of the Currency as a mission-driven financial institution that creates economic opportunity for individuals and small businesses...and essential community services in the United States.

WHEREAS, there is demand for small business loans within the community and using Legacy funds as seed money for loans allows for the possibility of other groups or organizations participating in this or comparable loan programs, creating greater impact; and

WHEREAS, the Common Council has previously created and directed other economic development programs focused on growing businesses in Fort Wayne and this is an extension of those, a separate tool to enhance the Fort Wayne economy; and

WHEREAS, the Common Council finds it imperative to invest into all areas of the community, the purpose of this project is to focus on areas of the community not serviced by other economic investment tools, including, but not limited to those in a qualified census tracts, low-income populations, and otherwise underserved populations; and

WHEREAS, notwithstanding the forgoing, this funding represents a fraction of the interest income generated by the Corpus; and it is expressly understood that Council

1 affirms the need to preserve the Legacy Corpus, to steward the fund as a trust, and this
2 investment represents the use of the Legacy Fund's anticipated investment income rather
3 than Corpus."

4 WHEREAS, the Common Council voices support for the Brightpoint Small
5 Business Loan Project ("Project") through the pledge of available funds from the Legacy
6 Fund, as provided in this Resolution.

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

9 **SECTION 1.** The Common Council finds, determines, ratifies and confirms that
10 the Project will have a collective impact that leads to transformational change in the
11 community and is worthy of investment from the Legacy Fund.

12 **SECTION 2.** The Common Council directs the Community Development
13 Division to create and manage a Memorandum of Understanding (MOU) with
14 Brightpoint, outlining all aspects of the project, including the authority of the Economic
15 Development Department of the Community Development Division to be the conduit
16 between the City of Fort Wayne and Brightpoint.

17 **SECTION 3.** The Common Council does hereby confirm and ratify its
18 commitment of Two and One Half Million and No/100 Dollars (\$2,500,000.00) to be
19 used by Brightpoint to facilitate the Project, with an amount of Five Hundred Thousand
20 and No/100 Dollars (\$500,000) to be committed annually. The first installment of
21 \$500,000 shall be facilitated for disbursement by Community Development within 30
22 days of the MOU being signed. Subsequent installments of \$500,000 shall be dispersed
23 by Community Development to Brightpoint provided that all of the following criteria
24 have been met: (i) annually Brightpoint shall submit written requests for an additional
25 installment of \$500,000; (ii) Brightpoint shall provide written verification that at least
26 ninety percent (90%) of the funds received from the previous installment have been
27 distributed to chosen recipients in accord with the Brightpoint Project; and (iii) at least
28 ten (10) months shall have passed since disbursement of the previous installment by
29 Community Development to Brightpoint..

30 **SECTION 4.** The Common Council does hereby authorize the Board of Trustees
of the City of Fort Wayne Community Trust Fund to make the distribution set forth in
Section 3 above and directs the Community Development Division of the City of Fort
Wayne to administer this grant in a timely and appropriate manner.

SECTION 5. Brightpoint shall be required to deliver a written report to the Common Council, updating, summarizing and outlining, the status of the Project and use of the funds that it has received pursuant to this resolution and the MOU, sufficient to assure compliance with the MOU and in enough detail to show the specific use of the funds. This written report shall be delivered to Common Council no later than September 1 of each calendar year from 2025-2029. Additionally, Brightpoint and Community Development staff will present an update at a Common Council meeting before September 1, 2026, and September 1, 2028.

SECTION 6. The passage of this Resolution requires six (6) votes in the affirmative from members of Common Council.

SECTION 7. This Resolution shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Russell Jehl, Council Member

Geoff Paddock, Council Member

APPROVED AS TO FORM AND LEGALITY

Joseph Bonahoom, City Council Attorney

**CITY OF FORT WAYNE
LEGACY FUND
AGREEMENT
WITH BRIGHTPOINT**

This Agreement (the "Agreement") is entered as of the Effective Date (as hereinafter defined) by the City of Fort Wayne, Indiana (the "City") and Brightpoint ("Recipient") (the City and Recipient being collectively referred to herein as the "Parties"). The Parties, in consideration of the mutual covenants, obligations and agreements set forth herein, agree as follows:

WHEREAS, Fort Wayne Common Council Resolution R-23-11-26 (the "Resolution") authorized the expenditure of funds from the Legacy Fund to invest in projects that will have an impact and change within the community; and

WHEREAS, the Parties desire to enter into this Agreement to enhance access to support a targeted small-business loan program in Fort Wayne and specifically but not limited to the southeast quadrant of the city; and

WHEREAS, the City will invest \$2.5 million over five years (\$500,000 each year) in Brightpoint's existing small business loan program to provide loan capital, loan loss reserve, and technical assistance services within Fort Wayne but additionally targeted at southeast Fort Wayne entrepreneurs; and

Whereas, the Recipient will collaborate with neighborhood networks and business associations to make encourage participation in the small business loan program; and

WHEREAS, the Parties desire to enter into this Agreement in order to achieve the purpose stated herein in accordance with and subject to the terms and conditions hereof;

NOW, THEREFORE, for and in consideration of the mutual considerations hereinafter set forth, the parties hereto agree as follows:

1. Purpose of the Agreement. The purpose of this Agreement is to provide small business loans to new or existing businesses. Loan underwriting criteria, guidelines, and terms will generally follow those currently being used by Brightpoint. Businesses can borrow \$500-\$200,000 at interest rates of +/- 1% of Prime with terms of up to 60 months. Brightpoint will grant up to 3 months of deferred initial payment, reduce the collateral requirement of 20%, reduce the credit score requirement by 50 points and consider applicants with bankruptcies older than 12 months. In addition to capital resources, businesses will be provided with training and technical assistance from Brightpoint. This includes business plan development, financial literacy, and business consulting. In furtherance thereof, the City has agreed to award to the Recipient, subject to the terms and conditions hereof, certain financial assistance herein to invest in Brightpoint's existing small business loan program.

2. Definitions.

- a. The "Concept Letter" means the Legacy Fort Wayne Concept Letter Fact Sheet, a copy of which is attached hereto as Exhibit 1 and incorporated hereby by reference.
- b. "Project" means the enhancement of Brightpoint's current small business loan program to provide loan capital, loan loss reserve, and technical assistance services within Fort Wayne but additionally targeted at southeast Fort Wayne entrepreneurs.
- c. "Grant" means the amount of funds described in Section 6, hereof which the City may award to Recipient to pay for a portion of the costs to develop those components of the Project described in attached Exhibit 1, subject to Recipient's performance in all respects of the terms and conditions of this Agreement.
- e. "Fund" means the Legacy Fort Wayne Fund, as provided by the Resolution.
- f. "Effective Date" means the date on which the second of the Parties executes the Agreement.

3. **Term of the Agreement.** This Agreement shall commence on the Effective Date and shall continue until the _____ (the "Term").

4. **Investment in the Project.** Recipient will invest the sum of One Million Eight Hundred Seventy-seven Thousand, Five Hundred Dollars (\$1,877,500) in the development and administration of the small business loan program.

5. **Timing of the Grant.** Annual payment of Five Hundred Thousand Dollars (\$500,000) will commence on _____ 2024. The draw of subsequent years can be initiated two months prior to the annual date, and after 90 percent of the previous draw was expended.

6. **The Grant.** The Grant shall not, in any event, exceed the maximum sum of Two Million Five Hundred Thousand Dollars (\$2,500,000).

7. **Responsibilities of Recipient.** Recipient has made certain representations and covenants to the City in the Concept Letter Fact Sheet and Project Proposal, including the amount of investment, the community-based programs and community engagement activities to be created and administered and the economic and community impact to be generated by the Project during the Term. Recipient represents and covenants that it will use its best efforts during the Term to continuously maintain, update, and improve in all material respects of the small business loan program to provide loan capital, loan loss reserve, and technical assistance services within Fort Wayne but additionally targeted at southeast Fort Wayne entrepreneur all as described in the Concept Letter Fact Sheet. Recipient's representations and covenants are a material inducement to City agreeing to award the Grant to Recipient. In the event Recipient breaches any of the representations or covenants contained in the Application or this Agreement, or otherwise defaults in the performance of any other provision

of this Agreement, as determined by City in its sole discretion, the Grant shall be repaid by Recipient pursuant to Section 9 hereof. Without limiting the foregoing, examples of Recipient's default which shall require a repayment of the Grant to City shall include:

- a. The Recipient shall fail to provide small business loans to new or existing businesses as well as business plan development, financial literacy, and business consulting as described in the Concept Letter.
- b. The Recipient's community outreach programs and activities described in the Concept Letter are not developed or are materially reduced, modified or are eliminated during the Term.

The terms and provisions of this Section 7 notwithstanding, Recipient may from time to time during the Term request the City to permit a material change in the direction or focus of Recipient's community-based programs and/or community engagement activities. Any such request shall be in writing and shall provide a detailed description of the reason for such request and the program and/or proposed modification or activity changes that will result from such requested. Each such request shall be considered in good faith by the City which shall take into consideration the reason for Recipient's request and the impact on the community of such change to the program and/or activity changes or modifications. The City may grant or deny any such request by the Recipient in the City's absolute discretion and the City's decision in each instance shall be binding upon the Recipient.

8. Obligations of Recipient.

- a. The Recipient shall submit to the Community Development Division of the City of Fort Wayne during the Term, no later than December 31st, commencing in 2025, and annually thereafter following the close of the Recipient's most recent fiscal year the information for such preceding fiscal year listed below, in a format acceptable to the City:
 1. A description of all programs, activities and loans granted during the immediately preceding fiscal year as well as a description of the loans not granted. The report shall include on a monthly basis the number and description of the aforementioned programs, activities and loans.
 2. An in-person update to City Council before September 1, 2026 and September 1, 2028.
 2. Such supplemental and/or clarifying information and data which the City may request in writing after reviewing the information submitted by Recipient pursuant to Section 8.a.1, within fifteen (15) days following City's request.
 4. Such other data and information regarding matters relating to Concept Letter, the Grant, and the Project as City may reasonably request in writing within thirty (30) days following City's request.

5. Appoint a member of Fort Wayne Common Council to the Brightpoint Development Fund Advisory Board.

Recipient shall certify under oath the accuracy of all information in each report submitted to the City under this Section 8.

9. **Non-Compliance:** If the City determines in its sole discretion that the Recipient is not in compliance with the requirements of this Agreement in any material respect, the City may, upon thirty (30) days written notice to Recipient which shall include a reasonably detailed description of such non-compliance and which shall provide Recipient the opportunity to explain the reasons for and an opportunity to cure the noncompliance, take any action the City deems appropriate in City's sole discretion, including the termination of this Agreement. In the event of such termination prior to the award of the Grant, the Recipient shall waive and relinquish the right hereunder to request the Grant and the City in its sole discretion shall have no obligation to award the Grant to the Recipient. If the Grant has been paid to the Recipient prior to termination of the Agreement under this Section 9, the Recipient shall repay the Grant to City within one hundred eighty (180) days of City's written request for repayment. The amount to be repaid to the City by the Recipient shall be:

- a) a pro-rated share of the Grant received by the Recipient, based upon the date of non-compliance date during the five (5) years of the Term.

10. **Notice to Parties.** Any notice, statement or other communications sent to the City or the Recipient shall be sent to the following addresses, unless otherwise specifically advised.

To the City of Fort Wayne:

Malak Heiny
City Attorney – City of Fort Wayne
200 East Berry St., Suite 430
Fort Wayne, IN 46802
PH: (260) 427-1395
e-mail: Malak.Heiny@cityoffortwayne.org

To Brightpoint:

Stephen T. Hoffman
President/CEO – Brightpoint
227 E. Washington Blvd
Fort Wayne, IN 46802
PH: (260) 399-4102
e-mail: stevehoffman@mybrightpoint.org

11. **Authority to Bind.** Notwithstanding anything in this Agreement to the contrary, the signatory for the Recipient represents that he/she has been duly authorized by the Recipient to execute this Agreement and to bind the Recipient to each of the representations, covenants, and obligations of Recipient contained herein.

12. **Amendment of this Agreement.** This Agreement or any portion hereof may only be amended by a writing executed by the Parties.

13. **Assignability.** The Recipient shall not assign this Agreement or any portion thereof without the prior written consent of the City, which consent may be withheld at the City's discretion.

14. **Remedies not Impaired.** No delay or omission of any party in exercising any right or remedy available under this Agreement shall impair any such right or remedy, or constitute a waiver of any default or acquiescence thereto.

15. **Compliance with Laws.** The Recipient agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances and all provisions required thereby, whether now existing or hereafter enacted, which are included and incorporated by reference herein, in the design, development and construction of the Project, in the management and operation of the Facility, in the community outreach programs and activities, and in Recipient's performance under this Agreement.

Pursuant to I.C. '22-9-1-10 and the Civil Rights Act of 1964, Recipient shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to the hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of such person's race, color, religion, sex, disability, national origin, handicap or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

The Recipient affirms under the penalties of perjury that the Recipient does not knowingly employ an unauthorized alien. The Recipient affirms under the penalties of perjury that the Recipient has enrolled and is participating in the E-Verify program as defined in IC 22-5-1.7-3. The Recipient agrees to provide documentation to the State of Indiana that the Recipient has enrolled and is participating in the E-Verify program. Additionally, the Recipient is not required to participate if the Recipient is self-employed and does not employ any employees. The City may terminate for default if the Recipient fails to cure a breach of this provision no later than thirty (30) days after being notified by the City.

16. **Governing Laws.** This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana, notwithstanding its choice of law rules to the contrary or any other state's choice of law rules. Suit, if any, shall be brought in a court of applicable jurisdiction situated in Allen County, Indiana.

17. **Entire Agreement.** This Agreement, entered into of even date herewith, and any attachments hereto, contain the entire understanding of the Parties and this Agreement supersedes all prior agreements and understandings, oral or written, with respect to the subject matter enclosed herein and contemplated hereby.

18. **Release and Indemnification.** The Recipient hereby forever releases, acquits and discharges and agrees to indemnify, defend and hold harmless the City, its divisions, departments, officers, employees, representatives and agents (individually, an "Indemnatee" and collectively, the "Indemnitees"), to the extent permitted by law, from and against all claims, demands, charges, causes of action, lawsuits, costs and expenses (including legal costs and attorney's fees) of every kind and nature, both known and unknown and whether now existing or hereafter arising, caused by, related to or in any way associated with (a) the execution, administration, operation or termination of this Agreement, (b) the failure of the City to award or pay the Grant; (c) the repayment of the Grant or any portion thereof to the City, and (d) any act or omission of the Recipient, Recipient's contractors, subcontractors, vendors, suppliers, employees, representatives, licensees, invitees, authorized agents, or the act or omission of any third party in connection with: (i) the design, development, of a targeted small-business loan program in Fort Wayne and specifically but not limited to the southeast quadrant of the city In no event shall the City be liable to any party for or provide indemnification to any party for any direct, indirect, special, incidental, consequential or punitive damages, costs or expenses arising directly or indirectly from any act or omission to act by any party relating in any manner to this Agreement, the Application or the activities described herein or therein or contemplated hereby or thereby. The covenants contained in this Section 18 shall survive indefinitely following the expiration or termination of the Agreement for any reason.

19. **Severability.** The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses, or provisions of this Agreement.

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IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement on the dates entered below.

The City of Fort Wayne

By: _____ Date: _____, 2024
Sharon Tucker, Mayor

Brightpoint

By: _____ Date: _____, 2024
Stephen Hoffman, President/CEO

DIGEST SHEET

TITLE OF RESOLUTION. Approving the distribution of funds from the City of Fort Wayne Community Legacy Fund, Reference Resolution R-24-06-29

DEPARTMENT REQUESTING RESOLUTION. Community Development

SYNOPSIS OF RESOLUTION. Approves the distribution of funds the City of Fort Wayne Community Legacy Fund to Brightpoint.

EFFECT OF PASSAGE. Passage of the resolution would allow for Brightpoint to begin enhancing their Small Business Loan Program. Brightpoint will receive \$500,000 over the course of five years for a maximum amount of \$2,500,000. This money will be used to augment their existing small business loan program which will provide loan capital, loan loss reserve, and technical assistance services targeted, but not limited to southeast Fort Wayne entrepreneurs.

EFFECT OF NON-PASSAGE. Brightpoint will not be able to expand their loan program for small business, thereby negatively impacting entrepreneurs looking to launch or expand their business.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS). The total maximum Legacy Grant is \$2,500,000 is the same amount as approved in Resolution R-24-06-09, no additional funds are being requested.

ASSIGNED TO COMMITTEE (PRESIDENT). _____



COMMUNITY DEVELOPMENT

Vibrant. Prosperous. Growing.

City of Fort Wayne
Community Development
200 East Berry Street, Suite 320
Fort Wayne, IN 46802

260 427-1127 fwcommunitydevelopment.org

October 11, 2024

MEMO

To: City of Fort Wayne Common Council

From: Andrea Robinson, PhD, Economic Development Administrator

Re: **Approving the distribution of funds from the City of Fort Wayne Community Legacy Fund, Reference Resolution R-24-06-29**

It is hereby requested that the Common Council consider and approve the terms of the Legacy Grant Agreement for the Brightpoint Small Business Loan Program.

The Legacy Grant for the Brightpoint Small Business Loan Program was approved on July 9, 2024 pending an agreement outlining how the loan program is to be created and implemented. The amendment for consideration includes the agreement which includes terms of administration, length of grant program, reporting criteria, and future City Council in-person updates.

If approved, this agreement will provide the funding for Brightpoint to enhance their existing small business loan program which will provide loan capital, loan loss reserve, and technical assistance services targeted, but not limited to southeast Fort Wayne entrepreneurs.

An Equal Opportunity Employer

