

1 **BILL NO. S-12-12-13**

2 **SPECIAL ORDINANCE NO. S-132-12**

3
4 **AN ORDINANCE ESTABLISHING THE CITY OF**
5 **FORT WAYNE COMMUNITY TRUST FUND.**

6
7 **WHEREAS**, on November 13, 2012, the Common Council of the City of Fort
8 Wayne passed General Ordinance No. G-35-12 which amended the
9 Trust Agreement which was attached as "Exhibit A" to General
10 Ordinance No. G-21-75, which was amended by General Ordinance
11 G-16-94; and,

12 **WHEREAS**, the Trust Agreement is further amended by interlineated revisions
13 as provided in Exhibit "A" attached to this Ordinance; and,

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

21 **WHEREAS**, the Common Council of the City of Fort Wayne and the Mayor
22 also believe the funds placed in the Trust should henceforth be
23 distributed for purposes and activities determined to be in the public
24 interest according to duly enacted resolutions of the Common Council
25 of the City of Fort Wayne.

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

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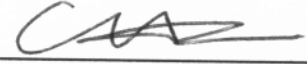
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SECTION 1. The City of Fort Wayne Community Trust Fund shall be established for the purpose of holding, accounting for, administering and appropriating all funds held by the Community Trust pursuant to attached "Exhibit A".

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.


Council Member

APPROVED AS TO FORM AND LEGALITY



Carol Helton, City Attorney

Read the first time in full and on motion by Bender, and duly adopted, read the second time by title and referred to the Committee on Regulations, (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at Room 030 - Council Discussion Garden Level - Citizens Square, Fort Wayne, Indiana, on the 12 day of December, 2012, at 7 o'clock P, M., E.S.T.

DATED: 12-11-12

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Bender placed on its passage. (PASSED) by the following vote:

Bender, and duly adopted, LOST

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>9</u>			
BENDER	<u>✓</u>			
CRAWFORD	<u>✓</u>			
DIDIER	<u>✓</u>			
HARPER	<u>✓</u>			
HINES	<u>✓</u>			
JEHL	<u>✓</u>			
PADDOCK	<u>✓</u>			
SHOAFF	<u>✓</u>			
SMITH	<u>✓</u>			

DATED: 12-18-12

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING) ORDINANCE (RESOLUTION) NO.. S-132-12 on the 18th day of December, 2012

ATTEST:
Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

SEAL
[Signature]
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 19th day of December, 2012, at the hour of One o'clock P M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 20th day of December, 2012, at the hour of 9:00 o'clock

Thomas C. Henry
THOMAS C. HENRY, MAYOR

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 investments thereof. This report shall be a matter of public record.

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:

a) Community Trust Fund Corpus; Fund A

Thirty Million Dollars (\$30,000,000) of the existing Corpus ("Fund A") shall be distributed in accordance with this Section 9(a). Any use of Fund A must be introduced by the Mayor or Common Council for purposes that take into consideration the Guiding Principals set forth on Schedule 1 attached hereto, described below, and must be approved by the Mayor and not less than six (6) members of Common Council.

b) Legacy Fund; Fund B

The balance of the current Corpus (i.e., the amount in excess of Thirty Million Dollars (\$30,000,000) (approximately Seventeen

Million Dollars (\$17,000,000)) shall be distributed in accordance with this Section 9(b) as part of "Fund B". Any investment earnings thereon, all additional settlement payments made by Indiana and Michigan Electric Company to the City of Fort Wayne, along with any investment earnings on such settlement payments shall be distributed in accordance with Fund B.

Any distributions from Fund B must be approved by the Mayor or Common Council for purposes that take into consideration the Guiding Principles set forth on Schedule I and must be approved by the Mayor and not less than six (6) members of 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.

BILL NO. S-12-12-13

REPORT OF COMMITTEE ON REGULATIONS

DECEMBER 18, 2012

MARTY BENDER - CHAIR
JOHN CRAWFORD - CO-CHAIR
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON _____ REGULATIONS TO WHOM WAS REFERRED AN ORDINANCE ESTABLISHING THE CITY OF FORT WAYNE COMMUNITY TRUST FUND. COMMITTEE ON REGULATIONS HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE

DO PASS

DO NOT PASS

ABSTAIN

NO REC

Marty Bender
Thomas Stutz
John Crawford
Ken A.
Mike
John
Bluff
John
John

SANDRA E. KENNEDY
CITY CLERK