

**ORDINANCES AND RESOLUTIONS
UP FOR INTRODUCTION
NOVEMBER 9, 2010**

CITY UTILITIES COMMITTEE

*Glynn A. Hines - Chair
Thomas F. Didier - Co-Chair
All Council Members*

ACTION

G-10-11-05

AN ORDINANCE approving and authorizing the execution of an Agreement with Indiana Michigan Power Company ("I&M") setting all disputes and other matters relating to the 19874 Lease Agreement between the City of Fort Wayne and I&M

PUBLIC HEARING 11-16-10 - 5:30 P.M.

S-10-11-04

**AN ORDINANCE approving Professional Services Agreement - Pond 1 First Flush, Bleedback, and Hydraulic Improvements - Res. #2382-2010 W.O. #75580 between Symbiont Science, Engineering & Construction, Inc. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works
Total cost of \$224,061**

FINANCE COMMITTEE

*Thomas E. Smith - Chair
Tim Pape - Co-Chair
All Council Members*

ACTION

S-10-11-06

AN ORDINANCE fixing the compensation of elected officials for the City of Fort Wayne, Indiana, for the year 2011

Discussion and passage 12-14-10

REGULATIONS COMMITTEE

*Mitch Harper - Chair
Karen E. Goldner - Co-Chair
All Council Members*

R-10-11-02

A RESOLUTION of the Common Council of Fort Wayne, Indiana, renewing and extending the term of the Fort Wayne Urban Enterprise Zone

It is intent of the City to extend the current Term of the Enterprise Zone to continue for an additional five (5) years until December 31, 2018

**REGULATIONS COMMITTEE
CONTINUED**

ACTION

R-10-11-03

**A RESOLUTION initiating the amendment of Fort Wayne's
Comprehensive Plan, Plan-it-Allen, to adopt the Walk Fort Wayne
Plan**

**This Resolution initiates an amendment to
the City's Comprehensive Plan, Plan-it-
Allen, to incorporate the goals and policies
of the Walk Fort Wayne Plan**

G-10-11-01

**AN ORDINANCE amending the Thoroughfare Plan of the City
Comprehensive ("Master") Plan by vacating public right-of-way
A request to vacate an abandoned portion
of Winchester Road right-of-way**

PUBLIC HEARING 11-23-10 - 5:30 P.M.

PUBLIC WORKS COMMITTEE

No Ordinances or Resolutions up for introduction

**AN ORDINANCE approving and authorizing
the execution of an Agreement with
Indiana Michigan Power Company ("I&M")
settling all disputes and other matters
relating to the 1974 Lease Agreement between
the City of Fort Wayne and I&M**

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WHEREAS, in 1908, the City of Fort Wayne, Indiana (the "City") began providing electric service to Fort Wayne residents and other customers through a municipally owned electric utility, known as Fort Wayne City Light and Power Works ("City Light"), and

WHEREAS, at and following that time, Indiana Michigan Power Company ("I&M"), which was then known as Indiana & Michigan Electric Company, also operated an electric utility within the limits of the City, and

WHEREAS, because I&M also provided electric service to customers in and around the City, there were areas within the City where both City Light and I&M had assets and equipment that served customers in overlapping areas, and

WHEREAS, in 1973, the City and I&M began negotiating the terms of a Lease Agreement under which I&M would lease from the City the assets and equipment used to operate City Light and thereafter provide service to the customers of City Light, and

WHEREAS, on March 12, 1974, the Common Council of the City of Fort Wayne adopted Declaratory Resolution No. R-13-74, which included and made a part thereof, a form of the negotiated Lease Agreement, and provided for "a special election to consider voter approval of the lease," and

WHEREAS, on March 29, 1974 in Cause No. 33638, the predecessor to the Indiana Utility Regulatory Commission, the Public Service Commission of Indiana, approved the lease of the City Light municipal electric utility system to I&M under the terms of the Lease Agreement, and

WHEREAS, on May 7, 1974, a majority of those voting at the special election voted in favor of the Declaratory Resolution and accordingly, the Common Council adopted General

Ordinance No. G-18-74 on June 11, 1974 authorizing the Mayor of the City of Fort Wayne to execute the Lease Agreement, and

WHEREAS, on September 13, 1974, the City and I&M entered into the Lease Agreement and it became effective on March 1, 1975, and

WHEREAS, in accordance with the terms of the Lease Agreement, beginning on March 1, 1975, I&M leased from the City the entirety of City Light's electric utility system assets previously used to render electric service for an original term of thirty-five (35) years, provided service in the areas previously served by City Light and made rental payments to the City, which increased from \$1,440,000 per year during the first 5 years of the term of the Lease Agreement to \$1,740,000 per year during the final 5 years, and

WHEREAS, during the term of the Lease Agreement, I&M had "full and complete control of the leased property," including the ability to "at its own cost and expense, . . . make such betterments, enlargements, extensions and retirements" of the leased property as it deemed "necessary, advisable and economically feasible," and

WHEREAS, over the original thirty-five (35) year term of the Lease Agreement, I&M estimates that it has retired over ninety-five percent (95%) of the original leased property and replaced such property with a single, modern electric system that serves customers both inside and outside the City, and

WHEREAS, in 1980, the Indiana General Assembly enacted the Electricity Suppliers' Service Area Assignments Act, Ind. Code § 8-1-2.3 *et seq.* (the "Act"), which established a procedure by which the Indiana Utility Regulatory Commission would assign service areas for Indiana electricity suppliers, and

WHEREAS, the Act further provided for the exclusive right of the assigned electricity supplier to serve customers within the boundaries of its assigned service area in order to further the explicit legislative policy to "eliminate or avoid unnecessary duplication of electric utility facilities" (Ind. Code § 8-1-2.3-1), and

WHEREAS, the Act further provided that, in the event two or more electricity suppliers were rendering electric service within existing municipal limits on January 1, 1979, "[t]he electricity supplier serving a plurality of electric meters within the municipality on January 1, 1979, may purchase the electric utility property of any other electricity supplier . . . within the existing

municipal limits, at its then reproduction cost new depreciated value plus severance damages” (Ind. Code § 8-1-2.3-3(b)(1)), and

WHEREAS, in 1985 in Cause No. 36299-S-209(X), the Indiana Utility Regulatory Commission adopted an Order which assigned to I&M among other areas, an exclusive service area within Allen County that includes the City of Fort Wayne, Indiana and the territories previously served by City Light, but I&M did not pay the City either the reproduction cost new depreciated value of the City Light facilities nor severance damages as the City contends was contemplated under Section 3(b)(1) of the Act, and

WHEREAS, upon expiration of the original term of the Lease Agreement, I&M had the option to extend the Lease Agreement “upon the same terms and conditions, excluding the provision for rent, for an extended term of fifteen (15) years” by providing timely written notice of its intent to do so, which I&M provided to the City on August 19, 2009, and

WHEREAS, upon expiration of the original term of the Lease Agreement, the City had the option to purchase the “betterments, enlargements and extensions” (the “Betterments”) of the leased property at their “original cost depreciated” by providing timely written notice of its intent to do so, which the City provided to I&M on May 29, 2009, and

WHEREAS, by letter dated August 20, 2009, the City informed I&M of certain alleged defaults under the Lease Agreement and demanded that I&M cure such defaults by October 19, 2009, and

WHEREAS, on October 15, 2009, I&M filed a Complaint for Declaratory and Injunctive Relief in the Allen County Superior Court requesting that the Court enter a declaratory judgment finding, among other things, that I&M was not in default under the Lease Agreement, the City is not entitled to obtain the leased property or Betterments and that the Lease Agreement does not provide the City with any right to serve prior customers of City Light, and

WHEREAS, on November 20, 2009, the City filed with the Allen County Superior Court a Counterclaim for Breach of Contract, Declaratory Judgment and Specific Performance, and

WHEREAS, the City and I&M thereafter began negotiations to resolve their respective disputes and differences arising in the litigation pending before the Allen County Superior Court, which negotiations included participating in mediation, and

WHEREAS, as a result of those negotiations and mediation, the City and I&M reached an Agreement, which is attached hereto as Exhibit A and incorporated herein by reference (the "Agreement"), resolving all disputes and other matters between the parties relating to the Lease Agreement, and

WHEREAS, the Agreement provides for continuing payments to the City over the next fifteen (15) years in exchange for the City's relinquishment of any option it may have under the Lease Agreement to acquire the Betterments or provide electric service in the City and other consideration, and

WHEREAS, it is the opinion of the Common Council that it is in the best interest of the City to approve the Agreement and that taking such action is further consistent with Declaratory Resolution No. R-13-74, the outcome of the May 7, 1974 special election, General Ordinance No. G-18-74, the purpose of the Act as stated in Ind. Code § 8-1-2.3-1 to "eliminate or avoid unnecessary duplication of electric utility facilities," and the avoidance of costly and uncertain litigation.

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

SECTION 1. The Agreement attached hereto and made a part of this General Ordinance as Exhibit A is hereby approved by the Common Council as contemplated under Section 12.1 thereof.

SECTION 2. The Mayor is hereby authorized to execute, and the City Clerk to attest, the Agreement in the form attached hereto as Exhibit A, and the Mayor is further authorized to execute and the City Clerk to attest, all other instruments, documents and papers supplemental or incidental to said Agreement and all instruments, documents and papers necessary or proper in connection with the execution and implementation of the Agreement by the City.

SECTION 3. The proper officers of the City as provided by law and the Agreement, be and they are hereby, authorized and empowered to execute any and all instruments, documents and papers, and do or cause to be done any and all other acts or things, necessary or proper in order to perform and comply with all obligations and undertakings of the City under the Agreement, and to obtain compliance and performance by I&M of all of its obligations and undertakings under the Agreement.

SECTION. 4. The proper officers of the City be and they are hereby authorized and empowered to take any actions necessary to obtain Indiana Utility Regulatory Commission (“Commission”) approval of the Agreement, as provided in Section 10 thereof, including the filing of a petition to intervene and be made a party to the proceeding to be initiated by I&M, preparation of such testimony and exhibits as may be necessary to support the relief requested by I&M and taking such other actions as they may determine to be advisable in order to successfully obtain Commission approval of the Agreement.

SECTION. 5. If any section, clause, sentence, paragraph or part or provisions of this Ordinance be found invalid or void by a Court of competent jurisdiction, it shall be conclusively presumed that this Ordinance would have passed by the Common Council without such invalid section, clauses, paragraph, part or provisions, and the remaining parts of the Ordinance will remain in effect.

SECTION 6. Any conflict between the terms and conditions hereof and any previous ordinance shall be resolved in favor of the most recently enacted ordinance.

SECTION 7. Two copies of Exhibit A to this Ordinance shall be kept on file with the City Clerk for the purpose of public inspection.

SECTION 8. This Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Taylor, City Attorney

BILL NO. S-10-11-04

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving PROFESSIONAL SERVICES AGREEMENT - POND 1 FIRST FLUSH, BLEEDBACK, AND HYDRAULIC IMPROVEMENTS - RES. #2382-2010, W.O. #75580 between SYMBIONT SCIENCE, ENGINEERING & CONSTRUCTION, INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

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

SECTION 1. That the PROFESSIONAL SERVICES AGREEMENT - POND 1 FIRST FLUSH, BLEEDBACK, AND HYDRAULIC IMPROVEMENTS - RES. #2382-2010, W.O. #75580 by and between SYMBIONT SCIENCE, ENGINEERING & CONSTRUCTION, INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

All labor, insurance, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for engineering services for Resolution #2382-2010, Pond #1 First Flush, Bleedback and Hydraulic Improvements:

involving a total cost of TWO HUNDRED TWENTY-FOUR THOUSAND, SIXTY-ONE AND NO/100 DOLLARS - (\$224,061.00). A copy said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

WHEREAS, the City of Fort Wayne does not have the capability of performing this work with in-house forces; and

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 Taylor, City Attorney

BILL NO. S-10-11-06

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE fixing the compensation of elected officials for the City of Fort Wayne, Indiana, for the year 2011.

WHEREAS, the Common Council of the City of Fort Wayne, Indiana, is required to pass an ordinance fixing the salaries of elected officials in accordance with I.C. 36-4-7-2;

WHEREAS, this Ordinance applies to all elected officials of the City of Fort Wayne, Indiana, to wit: The Mayor; all members of the Common Council; and the City Clerk; and

WHEREAS, this Ordinance has been published in accordance with I.C. 5-3-1-2, et seq., with the first publication having been at least thirty (30) days before final passage by Common Council.

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

SECTION 1. That the following salaries are hereby fixed for the year 2011 with respect to the City's elected officials:

THE MAYOR	\$123,600.00
COMMON COUNCIL MEMBERS	\$ 21,414.00
CITY CLERK	\$ 73,451.00

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 Taylor, City Attorney

**A RESOLUTION OF THE COMMON COUNCIL OF
FORT WAYNE, INDIANA, RENEWING AND EXTENDING THE
TERM OF THE FORT WAYNE URBAN ENTERPRISE ZONE**

WHEREAS, the Common Council of the City of Fort Wayne, Indiana, (the “Common Council”) has a continuing interest in the economic and community development of the City of Fort Wayne, Indiana (the “City”) and its residents; and

WHEREAS, the Fort Wayne Urban Enterprise Zone (the “Enterprise Zone”), which is governed by Indiana Code 5-28-15 (the “Act”), was established on January 1, 1984, and was redesignated for a second 10-year period effective on January 1, 2004, and has been active in enhancing and promoting economic and community development within the Enterprise Zone and the City; and

WHEREAS, the current designation term of the Enterprise Zone is scheduled to expire on December 31, 2013; and

WHEREAS, Indiana Code 5-28-15-10(b) of the Act authorizes the Common Council to extend the current term of the Enterprise Zone for an additional five (5) years without affecting the eligibility of the Enterprise Zone to be renewed for two (2) additional renewal periods by the Board of the Indiana Economic Development Corporation; and

WHEREAS, it is the desire and intent of the City to extend the current term of the Enterprise Zone to continue for an additional five (5) years until December 31, 2018; and

WHEREAS, after being fully advised in the matter,

NOW THEREFORE, BE IT HEREBY RESOLVED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, ALLEN COUNTY, INDIANA THAT:

Section 1. The Common Council finds that the Enterprise Zone facilitates and promotes economic and community development in the City and for its residents and hereby reaffirms its support of the Enterprise Zone.

Section 2. The Common Council hereby renews and extended the current expiration date of the Enterprise Zone from December 31, 2013 until December 31, 2018 pursuant to and in accordance with Indiana Code 5-28-15-10(b) of the Act.

Section 3. This Resolution and the actions of the Common Council do not limit or restrict the statutory ability of the Enterprise Zone to seek and be renewed by the Board of

the Indiana Economic Development Corporation pursuant to Indiana Code 5-28-15-10(c) and -10(d) of the Act.

Section 4. The City Clerk of the City is hereby directed to file an executed copy of this Resolution with the Board of the Indiana Economic Development Corporation on or before December 1, 2010, pursuant to the Act, and to file this Resolution with the permanent minutes of this meeting.

Section 5. This Resolution shall be in full force and effect immediately upon its adoption.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Taylor, City Attorney

**A RESOLUTION INITIATING THE AMENDMENT
OF FORT WAYNE'S COMPREHENSIVE PLAN,
PLAN-IT-ALLEN, TO ADOPT THE WALK
FORT WAYNE PLAN.**

WHEREAS, the City of Fort Wayne, through its Common Council, desires the development of Transportation plans to implement the goals, policies, and recommendations of its Comprehensive Plan, Plan-It-Allen, in order to: Encourage and plan for fully accessible and safe alternative transportation options and infrastructure; determine the need for safe pedestrian improvements; encourage the development of rights-of-way that can accommodate all users; educate the public about benefits of active transportation; and encourage safe accessibility and connectivity to primary destinations to and along major thoroughfares;

WHEREAS, I.C. 36-7-4-511 allows the legislative body to initiate an amendment of the Comprehensive Plan by adopting a resolution to amend it, and direct the Plan Commission to prepare the amendment and submit it in the same manner as any other amendment to the comprehensive plan.

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

SECTION 1. To initiate the amending of the City of Fort Wayne's Comprehensive Plan, Plan-It-Allen, to include the Walk Fort Wayne Plan and for the Plan Commission to prepare and submit the amendment within 90 days after the formal written request by the

legislative body.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Taylor, City Attorney

#1223

BILL NO. G-10-11-01

Deed Record: 52
Page No: 54-55

GENERAL ORDINANCE NO. G-_____

**AN ORDINANCE amending the Thoroughfare
Plan of the City Comprehensive ("Master")
Plan by vacating public right-of-way.**

WHEREAS, a petition to vacate public right-of-way within the City of Fort Wayne, Indiana, (as more specifically described below) was duly filed with the City Clerk of the City of Fort Wayne, Indiana; and

WHEREAS, Common Council of the City of Fort Wayne, Indiana, duly held a public hearing and approved said petition, as provided in I.C. 36-7-3-12.

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

SECTION 1. That the petition filed herein to vacate a public right-of-way within the City of Fort Wayne, Indiana, more specifically described as follows, to-wit:

THE PORTION OF WINCHESTER ROAD LOCATED BETWEEN THE EASTERN EDGE OF THE RIGHT-OF-WAY OF THE RELOCATED WINCHESTER ROAD AND THE WESTERN EDGE OF THE RIGHT-OF-WAY OF AIRPORT EXPRESSWAY, AS RECORDED IN DEED RECORD 52, PAGES 54 AND 55 IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA.

and which vacating amends the Thoroughfare Plan of the City Comprehensive ("Master") Plan and is hereby approved in all respects.

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

COUNCILMEMBER

APPROVED AS TO FORM AND LEGALITY:

Carol T. Taylor, City Attorney

