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**BILL NO. S-14-02-02**

**ORDINANCE NO. S- 11-14**

**ORDINANCE OF THE FORT WAYNE  
COMMON COUNCIL PLEDGING THE CITY'S  
SHARE OF COUNTY ECONOMIC  
DEVELOPMENT INCOME TAX, APPROVING A  
LEASE AGREEMENT AND ALL MATTERS  
RELATED TO THE FINANCING OF ROAD  
IMPROVEMENTS**

**WHEREAS**, the Common Council ("Council") of the City of Fort Wayne, Indiana ("City") has determined that providing for the acquisition, construction and reconstruction of public road improvements, including costs related to the acquisition of the necessary equipment and appurtenances (collectively, "Project") by the Fort Wayne Infrastructure Corporation ("Corporation") and the leasing of the same to the City is in the public interest of the citizens of the City;

**WHEREAS**, preliminary plans and estimates for the completion of the Project have been or will be prepared and submitted to the Board of Works of the City for approval;

**WHEREAS**, it is deemed desirable to proceed with the necessary negotiations and all other steps looking toward the completion of the Project by the Corporation and the lease of the Project to the City;

**WHEREAS**, a proposed lease for the completion of the Project ("Lease") with the Corporation has been drafted and submitted; components of the Project are described in more detail in said Lease;

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1           **WHEREAS**, notice of a hearing on the proposed Lease was given by  
2 publication in the *News-Sentinel* and *Journal Gazette*, newspapers published in the  
3 City, and said hearing has been held in accordance with said notice;  
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5           **WHEREAS**, Allen County has imposed the county economic development  
6 income tax ("CEDIT") pursuant to IC 6-3.5-7;

7           **WHEREAS**, the City is a recipient of a distributive share of CEDIT  
8 ("CEDIT Revenues") and receives CEDIT Revenues semiannually each year;

9           **WHEREAS**, the Council has determined to pledge CEDIT Revenues to the  
10 payment of lease rentals under the Lease;

11           **WHEREAS**, the Lease provides that lease rentals will be payable solely  
12 from CEDIT Revenues;

13           **WHEREAS**, the estimated total cost of financing the Project, including  
14 issuance expenses, capitalized interest and funding a debt service reserve, is now  
15 estimated to be approximately \$30,000,000, plus investment earnings on the bond  
16 proceeds;  
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18           **WHEREAS**, by statute the Corporation is required to own the real estate or  
19 other property rights on which the Project will be completed and leased to the City;  
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21           **WHEREAS**, the City intends to sell the real estate or other property rights on  
22 which the Project is to be located to the Corporation which will acquire the real  
23 estate or other property rights and complete the Project;

24           **WHEREAS**, it now appears to this Council that the Project provides the  
25 necessary facilities for the citizens of the City, and that the proposed Lease with the  
26 Corporation, as lessor, provides for fair and reasonable rentals;  
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1                   **WHEREAS**, the Corporation is expected to adopt a resolution approving the  
2 issuance and sale of its Economic Development Income Tax Lease Rental Bonds of  
3 2014 in an aggregate principal amount not to exceed \$30,000,000 ("Bonds") to  
4 finance the Project;  
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6                   **NOW, THEREFORE, BE IT ORDAINED BY THE FORT WAYNE**  
7 **COMMON COUNCIL, THAT:**

8                   **Section 1.**     In consideration of the Council's desire to proceed with the  
9 financing of the Project, the Council hereby pledges CEDIT Revenues for the  
10 payment of lease rentals due under the Lease to finance the Project. Based on  
11 reports of the City's financial advisor, the pledge of CEDIT Revenues shall rank on a  
12 parity with the pledge of CEDIT Revenues to the Outstanding Obligations (as  
13 defined in the Lease). The Council also hereby approves the use of CEDIT  
14 Revenues to replenish the debt service reserve, if it falls below its required balance,  
15 that is established for the Bonds.  
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17                   **Section 2.**     The Council covenants that it will not take any action to  
18 repeal, rescind or reduce the pledge of CEDIT Revenues so long as the Bonds are  
19 outstanding or lease rentals are payable under the Lease. The Council will take no  
20 action to rescind the CEDIT or to reduce the CEDIT rate below a rate that would  
21 produce CEDIT Revenues of at least one and twenty-five hundredths (1.25) times the  
22 highest annual debt service on the Bonds to their final maturity based upon a study  
23 by a qualified public accountant or financial advisor. Other than the pledges  
24 hereinbefore mentioned, the City has not pledged or otherwise encumbered its  
25 CEDIT Revenues, and there are no prior liens, encumbrances or other restrictions on  
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1 the CEDIT Revenues or on the City's ability to pledge CEDIT Revenues to the  
2 payment of lease rentals.

3 **Section 3.** The City reserves the right to enter into leases or other  
4 obligations entitled to the pledge of CEDIT Revenues on a parity with the Lease in  
5 accordance with the requirements set forth in Section 15 of the Lease.  
6

7 **Section 4.** Providing for the financing of the Project by the Corporation  
8 and the leasing of same to the City is in the public interest of the citizens of the City  
9 and it is a proper public purpose for which this Council agrees to cooperate with the  
10 Corporation and to assist it in fulfilling the requirements of all agencies of the  
11 federal, state and county governments.  
12

13 **Section 5.** The Articles of Incorporation and By-Laws of the  
14 Corporation, presented to and now before this Council, are hereby approved.

15 **Section 6.** The Council hereby approves the following to act as initial  
16 Directors of the Corporation: John Brandt, Nelson Coats and Rebecca Karcher.

17 **Section 7.** The Lease will be for a maximum term of eight (8) years with  
18 a maximum annual lease rental of \$5,400,000. Should the Project be completed in  
19 phases, the use of interim lease rental payments is permitted, and the maximum  
20 annual interim lease rental shall be \$4,700,000. The purpose of the Lease is to  
21 provide for the financing and completion of the Project.  
22

23 **Section 8.** Based on all reports presented, the Council hereby finds that  
24 the proposed Lease with the Corporation, as lessor, provides for a fair and reasonable  
25 rental, the execution of the Lease is necessary and wise, and the service to be  
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1 provided by the leased premises will serve the public purpose of the City and is in  
2 the best interests of its residents.

3 **Section 9.** The Clerk is authorized and directed to initial and date a copy  
4 of the proposed Lease and to place the same in the minute book immediately  
5 following the minutes of this meeting and the Lease is made a part of this ordinance  
6 as fully as if the same were set forth herein.  
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8 **Section 10.** The Mayor and the Controller are hereby authorized and  
9 directed to execute the aforesaid Lease on behalf of the City, including any required  
10 addendums to the Lease.  
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12 **Section 11.** The construction bids for the Project will be received and will  
13 be awarded to the lowest responsible and responsive bidder, subject to receiving  
14 funds for the financing of the Project with the Corporation's Bonds. Such bids shall  
15 be assigned to the Corporation. The Corporation will use bond proceeds to fund  
16 such contracts and complete the Project. The Council approves the conveyance of  
17 the Project site or sites to the Corporation upon issuance of the Bonds to finance the  
18 Project.  
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20 **Section 12.** The Council hereby approves the sale of the Bonds in the  
21 amount not to exceed \$30,000,000 to be issued by the Corporation. The Mayor, the  
22 Controller and the Clerk may take such actions or deliver certificates as are  
23 necessary or desirable in connection with the issuance of the Bonds, the execution of  
24 the Lease and other documents needed for the financing as they deem necessary or  
25 desirable in connection therewith based on the advice of bond counsel and counsel to  
26 the City. The Council hereby approves the execution and delivery of a Continuing  
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1 Disclosure Undertaking Certificate by the City in connection with the sale and  
2 issuance of the Bonds and authorizes the Mayor and the Controller to execute such  
3 certificate. Notwithstanding any other provision of this ordinance, failure of the City  
4 to comply with the Continuing Disclosure Undertaking Certificate shall not be  
5 considered an event of default under the Bonds or this ordinance.  
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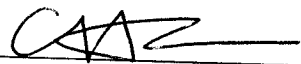
7 **Section 13.** Upon the redemption or retirement of the Bonds issued by the  
8 Corporation, the City will accept from the Corporation title to the Project, free and  
9 clear of any and all liens and encumbrances thereon.  
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11 **Section 14.** This ordinance shall be in full force and effect immediately  
12 upon its passage and approval by the Mayor.  
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\_\_\_\_\_  
Councilmember

APPROVED AS TO FORM AND LEGALITY

  
\_\_\_\_\_  
Carol Helton, City Attorney

Public Hearing Date, if applicable \_\_\_\_\_

Read the first time in full and on motion by Councilman Russell Jehl  
Read the second time by title and referred to the Finance  
Committee. Read the third time in full and on motion by Councilman  
Jehl, placed on passage by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
<u>TOTAL VOTES</u>	<u>7</u>	_____	_____	<u>2</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: 2-25-14 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-11-14 on the 25<sup>th</sup> day of  
February, 2014

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

Robert A. Bender  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 26<sup>th</sup> day  
of February, 2014, at the hour of 2:00 o'clock P.M. E.S.T.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 3<sup>rd</sup> day of MARCH  
2014, at the hour of 8:00 o'clock A.M. E.S.T.

Thomas C. Henry  
THOMAS C. HENRY, MAYOR

LEASE AGREEMENT

Between

FORT WAYNE INFRASTRUCTURE CORPORATION  
LESSOR

and

CITY OF FORT WAYNE, INDIANA  
LESSEE

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2014

## LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, between the Fort Wayne Infrastructure Corporation, an Indiana not-for-profit corporation ("Lessor"), and the City of Fort Wayne, Indiana, a municipality existing under the laws of the State of Indiana ("Lessee" and "City").

### WITNESSETH:

WHEREAS, the Lessor has been organized under the Indiana Non-Profit Corporation Act of 1991 and in pursuance of the provisions of Indiana Code 5-1-14 and Indiana Code 6-3.5-7 (collectively, "Act") for the purpose of financing, acquiring, constructing, renovating and leasing to the Lessee the herein defined Project;

WHEREAS, the Lessee has requested the Lessor to acquire and construct the Project;

WHEREAS, the Lessor has acquired or will acquire interests in the real estate or other property rights, as described in Exhibit A, on which the Project will be constructed before the issuance of bonds by the Lessor and such interests shall be for a term no less than the term of this Lease;

WHEREAS, at the request of the Lessee, the Lessor has agreed to undertake the Project and the Lessor will purchase the plans and specifications for the Project;

WHEREAS, plans and specifications for the Project have been or will be prepared by engineers employed by the Lessee for the Project, which plans and specifications have been or will be adopted by the Lessor and approved by the Lessee;

WHEREAS, the Lessor, after advertising and receiving bids pursuant to applicable law, has entered or will enter into contracts with one or more general contractors for the construction of the Project in accordance with such plans and specifications;

WHEREAS, the total cost of the Project, including, but not limited to, costs of acquisition, construction, demolition, reconstruction, improvements, necessary equipment, architects' and engineers' fees, consultants' services, legal and financing expenses, certain expenses of operation of the Lessor during construction, interest during construction, funding a debt service reserve fund and repayment of funds advanced by the Lessee to meet preliminary expenses necessary to be paid prior to the issuance of bonds by the Lessor, is estimated to be not greater than \$30,000,000;

WHEREAS, the term of the Lease is based on the value of the Project;

WHEREAS, the expected economic life of the Project is at least eight (8) years;

WHEREAS, the Lessor will own the Project for the same period or periods of years that the Lessee proposes to lease the Project from the Lessor;

WHEREAS, the annual rentals to be paid under this Lease by the Lessee will be pledged by the Lessor to repay funds borrowed by the Lessor to finance the Project;

WHEREAS, Allen County, Indiana ("County") has imposed the county economic development income tax ("CEDIT") pursuant to IC 6-3.5-7;

WHEREAS, the City is a recipient of a distributive share of CEDIT ("CEDIT Revenues") and receives CEDIT Revenues semiannually;

WHEREAS, the City's Capital Improvement Plan with respect to the CEDIT Revenues includes the Project;

WHEREAS, the annual rentals to be paid under the Lease by the Lessee will be derived from the CEDIT Revenues;

WHEREAS, the City has previously issued its: (i) County Economic Development Income Tax Revenue Bonds of 2005 ("2005 Bonds") on April 14, 2005 pursuant to Ordinance

No. S-97-04, and (ii) County Economic Development Income Tax Revenue Bonds of 2009 ("2009 Bonds", and collectively with the 2005 Bonds, "CEDIT Bonds") on May 13, 2009 pursuant to Ordinance No. S-109-08;

WHEREAS, the City has previously pledged a portion of its CEDIT Revenues to the payment of lease rentals pursuant to a: (i) lease between the Fort Wayne Redevelopment Authority and the Fort Wayne Redevelopment Commission ("2003 Lease") dated as of December 1, 2002, (ii) lease between the City and the Fort Wayne Municipal Building Corporation ("2005 Lease") dated as of March 1, 2005, pursuant to Ordinance No. S-31-05; and (iii) lease between the City and the Fort Wayne Municipal Building Corporation ("2006 Lease" and, collectively with the 2003 Lease and the 2005 Lease, "CEDIT Leases") dated as of February 1, 2006, pursuant to Ordinance No. S-20-06;

WHEREAS, the County has previously issued its Allen County Redevelopment District Revenue Bonds of 1999 ("1999 Bonds") on December 1, 1999; and the City's Redevelopment Commission has previously issued its (i) Redevelopment District Revenue Bonds, Series 2005 A-1 ("2005A-1 Bonds") on May 17, 2005, (ii) Redevelopment District Taxable Revenue Bonds, Series 2005 A-2 ("2005 A-2 Bonds) on May 17, 2005, and (iii) Redevelopment District Revenue Bonds, Series 2005 B ("2005 B Bonds" and, collectively with the 1999 Bonds, 2005 A-1 Bonds and 2005 A-2 Bonds, "Other CEDIT Pledges") on April 14, 2005;

WHEREAS, the CEDIT Bonds, CEDIT Leases and Other CEDIT Pledges are herein collectively referred to as the "Outstanding Obligations" and the City has pledged all or a portion of its CEDIT Revenues to the Outstanding Obligations;

WHEREAS, the Outstanding Obligations permit the issuance of additional obligations payable from CEDIT Revenues on a parity with the Outstanding Obligations under certain

conditions and the City, based on the advice of its financial advisor, has determined that such conditions can be met;

WHEREAS, the annual rentals to be paid under the Lease by the Lessee will be derived solely from the CREDIT Revenues and shall rank on a parity with the Outstanding Obligations;

WHEREAS, the Lessee has determined, after a public hearing held pursuant to the Act after notice given pursuant to IC 5-3-1, that the lease rentals provided for in this Lease are fair and reasonable, that the execution of the Lease is necessary and wise and that the services provided by the Project will serve the public interest of the City and are in the best interests of its residents, and the Common Council has by ordinance approved the Lease, and the ordinance has or will be entered in the official records of the Common Council;

WHEREAS, the Lessor has duly authorized the execution of this Lease by resolution, and the resolution has been entered in the official records of the Lessor;

WHEREAS, the Lessee and the Lessor have obtained all necessary approvals required by law for the execution of this Lease and issuance of bonds to finance the Project, and all other approvals required by law for the execution of this Lease and issuance of such bonds;

1. Premises, Term and Warranty. The Lessor does hereby lease, demise and let to Lessee the interests in real estate in the City of Fort Wayne, Indiana, more particularly described in Exhibit A attached hereto and made a part hereof, and the Project constructed thereon by Lessor according to the plans and specifications described above, with such Project consisting of the acquisition, construction and reconstruction of public road improvements, as more fully set forth in Exhibit B attached hereto and made a part hereof (collectively, "Project"). The real estate described in Exhibit A and the Project described in Exhibit B shall be referred to herein as the "Leased Premises".

The above-mentioned plans and specifications may be changed, additional construction work may be performed and equipment may be acquired by Lessor, but only with the approval of Lessee, and only if such changes or modifications or additional construction work or equipment do not alter the character of the improvements or reduce the value thereof. Any such additional construction work shall be part of the property covered by this Lease. The above-mentioned plans and specifications have been or will be filed with and approved by Lessee.

TO HAVE AND TO HOLD the Leased Premises with all rights privileges, easements and appurtenances thereunto belonging, unto Lessee, for a term of eight (8) years, beginning on the date or dates on which the Leased Premises are ready for use and occupancy, and ending on the day prior to such date eight (8) years thereafter. However, the term of this Lease will terminate at the earlier of: (a) the exercise by the Lessee of the option to purchase the Leased Premises and the payment of the option price; or (b) the payment or defeasance of all bonds issued: (i) to finance the cost of the Leased Premises, (ii) to refund such bonds; (iii) to refund such refunding bonds; or (iv) to improve the Leased Premises; provided that no bonds or other obligations of the Lessor issued to finance or refinance the Project remain outstanding at the time of such payment or defeasance.. The date or dates the Lessor acquires the interests in real estate described in Exhibit A shall be endorsed on this Lease at the end hereof by the parties to this Agreement, and such endorsement shall be recorded as an addendum to this Lease. The Lessor hereby represents that it is possessed of, or will acquire the Leased Premises and Lessor warrants and will defend the same against all claims whatsoever not suffered or caused by the acts or omissions of Lessee or its assigns.

2. Rental Payments. The Lessor and the Lessee expect the Project to be completed in phases, with the first phase to be completed in approximately twelve (12) months, the second

phase in approximately twenty-four (24) months, and the final and third phase to be completed in approximately thirty-six (36) months. The Lessee agrees to pay rental for the Leased Premises as each of the three phases of the Project is completed. After completion of the first phase, the lease rental shall be in the maximum amounts of \$1,800,000 due on December 1, 2014 and \$2,000,000 due on June 1, 2015; after completion of the second phase, the lease rental shall be in the maximum amounts of \$2,000,000 due on December 1, 2015 and \$2,700,000 due on June 1, 2016; and after completion of the final and third phase, the annual rental shall be in a maximum amount of \$5,400,000, payable in equal semiannual installments on June 1 and December 1, during the remaining term of the Lease.

The first rental installment after completion of the first phase of the Project shall be due on the day that the Leased Premises which comprise the first phase of the Project are completed and ready for use and occupancy or December 1, 2014, whichever is later. The first rental installment after completion of the second phase of the Project shall be due on the day that the Leased Premises which comprise the second phase of the Project are completed and ready for use and occupancy or December 1, 2015, whichever is later. The first rental installment after completion of the final and third phase of the Project shall be due on the day that the Leased Premises which comprise the third phase of the Project are completed and ready for use and occupancy or December 1, 2016, whichever is later. The date or dates that each of the phases of the Leased Premises are completed and ready for use and occupancy shall be endorsed on this Lease at the end hereof by the parties hereto as soon as the same can be done after such completion, and such endorsement shall be recorded as an addendum to this Lease. If the completion date for the Project is later than December 1, 2014 for the first phase, later than December 1, 2015 for the second phase, and later than December 1, 2016 for the third and final

phase, the first corresponding rental payment shall be in an amount calculated at the annual rate from the date of payment to the next June 1 or December 1. Thereafter, rental shall be payable in advance equal semiannual installments on June 1 and December 1 of each year. The last semiannual rental payment due before the expiration of this Lease shall be adjusted to provide for rental at the annual rate specified above from the date such installment is due to the date of the expiration of this Lease.

All rentals payable under the terms of this Lease (collectively, "Lease Rentals") shall be paid by the Lessee to the bank selected as Trustee ("Trustee") under the Trust Indenture between it and the Lessor ("Indenture") or to such other bank or trust company as may from time to time succeed such bank as Trustee under the Indenture securing the bonds to be issued by the Lessor to finance the construction of the Leased Premises. All payments so made by the Lessee shall be considered as payment to the Lessor of the Lease Rentals payable hereunder. The bank selected as Trustee shall be endorsed on this Lease at the end hereof by the parties hereto as soon as the same can be done after selection, and such endorsement shall be recorded as an addendum to this Lease.

After the sale of the bonds issued to finance the completion of the Leased Premises, the annual rental amount for each year for the completed phases of the Project provided for in the first paragraph of this Section 2 shall be reduced to an amount equal to the multiple of \$1,000 next higher than the sum of principal and interest due on such bonds in each twelve-month period ending on any bond payment date, plus Three Thousand Dollars (\$3,000), payable in semiannual installments commencing no earlier than the later of the date or dates the Leased Premises are ready for use or December 1, 2014 for the first phase of the Project, December 1, 2015 for the second phase of the Project and December 1, 2016 for the third and final phase of

the Project. Capitalized interest may be taken into account in calculating the lease rentals due in 2014, 2015 and 2016. Such amount of reduced semiannual rental shall be endorsed on this Lease at the end hereof by the parties hereto as soon as the same can be done after the sale of said bonds and such endorsement shall be recorded as an addendum to this Lease.

3. Additional Rental Payments. The Lessee shall pay as further rental for the Leased Premises all taxes and assessments levied against or on account of the Leased Premises or the receipt of lease rental payments and to reimburse the Lessor for any insurance payments made by it under Section 7. Any and all such payments shall be made and satisfactory evidence of such payments in the form of receipts shall be furnished to the Lessor by the Lessee, at least three (3) days before the last day upon which the same must be paid to avoid delinquency. If the Lessee shall in good faith desire to contest the validity of any such tax or assessment, and shall so notify the Lessor, and shall furnish bond with surety to the approval of the Lessor conditioned for the payment of the charges so desired to be contested and all damages or loss resulting to the Lessor from the nonpayment thereof when due, the Lessee shall not be obligated to pay the same until such contests shall have been determined. The Lessee shall pay as further rental the amount calculated by or for Lessor as the amount required to be rebated or paid as a penalty in lieu of rebate to the United States Treasury, after taking into account other available moneys, to prevent the bonds issued to finance the construction of the Leased Premises from becoming arbitrage obligations under Section 148 of the Internal Revenue Code of 1986, as amended and in effect on the issue date of the bonds ("Code").

4. Abatement of Rent. If any part of the Leased Premises shall be partially or totally destroyed or rendered unusable, whether by fire or any other casualty, or are taken under the exercise of the power of eminent domain, so as render them unfit, in whole or part, for use or

occupancy by the Lessee, it shall then be the obligation of the Lessor to restore and rebuild the Leased Premises as promptly as may be done, unavoidable strikes and other causes beyond the control of the Lessor excepted; provided, however, that the Lessor shall not be obligated to expend on such restoration or rebuilding more than the amount of the proceeds received by the Lessor from the insurance provided for in Section 7, the condemnation proceeds received by the Lessor or any funds provided specifically for this purpose in the Indenture, whichever is applicable.

If there is in force on the date of partial or total destruction or taking, insurance on the Leased Premises and the rental value thereof in accordance with the provisions of Section 7 hereof, the rent shall be abated for the period during which the Leased Premises or any part thereof are unfit or unavailable for occupancy. Such abatement shall be in proportion to the percentage of Leased Premises which is unfit or unavailable for occupancy.

In the event no such insurance is in force on the date of partial or total destruction or taking, and rent is required for any reason to be abated notwithstanding the provisions of this Section, leasable property and improvements of substantially equal value to the Leased Premises shall be transferred to the Lessor by the City and/or the Lessee in substitute thereof, and the Lease Rentals and Additional Rentals provided for herein shall continue to be paid as provided by this Lease without interruption or abatement upon completion of the procedures required for substitution pursuant to Section 8.02 of the Trust Indenture. In the event of such substitution, the substituted property shall become a part of the Leased Premises for all purposes herein and shall in all ways be subject to the terms of this Lease.

5. Source of Payment of Rentals; Pledge of CEDIT Revenues; Covenant Not to Repeal Tax

(a) CEDIT Revenues. The Lease Rentals shall be payable out of CEDIT Revenues, on a parity with the Outstanding Obligations. Upon receipt of each semiannual distribution of CEDIT Revenues, the Lessee shall deposit with the Trustee, for deposit into the Lease Rental Fund hereby created, the lesser of: (a) an amount at least equal to the next lease rental payment due under the Lease; or (b) all of the CEDIT Revenues. Any CEDIT Revenues not needed to make the current lease payment shall be set aside in a separate fund held by the City pursuant to the Act ("CEDIT Fund"). Any excess in the CEDIT Fund after redemption of the bonds or the final lease rental payment due under this Lease shall be used by the Lessee as set forth in the Act. Prior to each rental payment date, the Trustee shall notify the Lessee of the amount needed to make the lease rental payment after taking into account all prior deposits and earnings thereon.

(b) The Lessee, in consideration of the execution of this Lease by the Lessor, in order to secure the payment of the rentals due hereunder and to secure the performance and observance by the Lessee of all covenants expressed or implied in this Lease does hereby pledge the CEDIT Revenues, on a parity with the Outstanding Obligations, and investment earnings on the CEDIT Revenues to secure the payment of the rentals due hereunder, such pledge to be effective as set forth in IC 5-1-14-4 without filing or recording of this Lease or any other instrument. This pledge shall be effective only to the extent and for the term that the Lessee is obligated to pay rentals under this Lease. The obligation to pay any lease rentals under this Lease shall not be considered debt of the Lessee for purposes of the Constitution of Indiana or the Act. Other than the Outstanding Obligations, the Lessee has not pledged or otherwise encumbered the CEDIT Revenues, and there are no other prior liens, encumbrances or other restrictions on the CEDIT Revenues, or on the Lessee's ability to pledge the CEDIT Revenues.

The Lessee hereby covenants that it will not take any action to repeal, rescind or reduce the pledge of the CREDIT Revenues under this Lease so long as this Lease remains in effect. This pledge shall be effective only to the extent and for the term that the Lessee is obligated to pay rentals under this Lease.

6. Maintenance, Leasehold Improvements, Alterations and Repairs. The Lessee assumes all responsibility for maintenance, repairs and alterations to the Leased Premises. At the end of the term, Lessee shall deliver the Leased Premises to Lessor in as good condition as at the beginning of the term, reasonable wear and tear only excepted. Equipment or other personal property which becomes worn out or obsolete may be discarded or sold by Lessee. The proceeds of the sale of any personal property shall be paid to the Trustee. Lessee may trade in any obsolete or worn out personal property on replacement property which replacement property will belong to Lessee upon payment to the Trustee of an amount equal to the trade-in value of such property. Lessee need not replace worn out or obsolete personal property, but may replace such property at its own expense, and the replacement property shall belong to Lessee.

7. Insurance. (a) Lessee, at its own expense and to the extent available for leased premises such as the Leased Premises, will, during the full term of the Lease, keep the Leased Premises insured against physical loss or damage caused by earthquake and other standard specified perils designated by the Lessor with good and responsible insurance companies acceptable to Lessor and duly qualified to issue insurance policies in Indiana. Such insurance shall be in an amount equal to the outstanding principal amount of the bonds on or before the beginning of the Lease Term and on or before the first day of April of each year thereafter.

(b) During the full term of this Lease, Lessee will also, at its own expense, carry combined bodily injury insurance, including accidental death and property damage with

reference to the Leased Premises in an amount not less than One Hundred Thousand Dollars (\$100,000) per occurrence for property damage; Seven Hundred Thousand Dollars (\$700,000) for injury or death per person; and Five Million Dollars (\$5,000,000) for injury or death to all persons per occurrence with one or more good and responsible insurance companies. The public liability insurance required herein may be by blanket insurance policy or policies. As an alternative to maintaining such insurance, the Lessee may maintain a self-insurance program with catastrophic or similar coverage so long as such program meets the requirements of this Lease and any applicable laws or regulations and is maintained in a manner consistent with programs maintained by similarly situated municipalities.

(c) The proceeds of the public liability insurance required herein (after payment of expenses incurred in the collection of such proceeds) shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds are paid.

(d) Such policies shall be for the benefit of persons having an insurable interest in the Leased Premises, and shall be made payable to the Lessor or to such other person or persons as the Lessor may designate. Such policies shall be countersigned by an agent of the insurer who is a resident of the State of Indiana, and such policies (or certificates of insurance for each policy) hereinbefore referred to shall be deposited with the Lessor and the Trustee. If, at any time, the Lessee fails to maintain insurance in accordance with this Section, such insurance may be obtained by the Lessor and the amount paid therefor shall be added to the amount of rental payable by the Lessee under this Lease; provided, however, that the Lessor shall be under no obligation to obtain such insurance and any action or non-action of the Lessor in this regard shall not relieve the Lessee of any consequence of its default in failing to obtain such insurance,

including its obligation to continue the rental payments in case of total or partial destruction of the improvements as provided in Section 4.

8. Eminent Domain. If title to or the temporary use of the Leased Premises, or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, any net proceeds received from any award made in such eminent domain proceedings (after payment of expenses incurred in such collection) shall be paid to and held by Lessor.

Such proceeds shall be applied in one or more of the following ways:

(a) The restoration of the Leased Premises to substantially the same condition as it existed prior to the exercise of said power of eminent domain, or

(b) The acquisition, by construction or otherwise, of other improvements suitable for the Lessee's operations on the Leased Premises and which are in furtherance of the purposes of Indiana Code, Title 6, Article 3.5, Chapter 7 (which improvements shall be deemed a part of the Leased Premises and available for use and occupancy by the Lessee without the payment of any rent other than as herein provided, to the same extent as if such other improvements were specifically described herein and demised hereby).

Within ninety (90) days from the date of entry of a final order in any eminent domain proceedings granting condemnation, the Lessee shall direct Lessor in writing as to which of the ways specified in this Section the Lessee elects to have the net proceeds of the condemnation award applied. Any balance of the net proceeds of the award in such eminent domain proceedings not required to be applied for the purposes specified in subsections (a) or (b) above shall be deposited by Lessor in the separate account of EDIT Revenues held by the Trustee under the Indenture.

Lessor shall cooperate fully with the Lessee in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Leased Premises or any part thereof and will to the extent it may lawfully do so permit the Lessee to litigate in any such proceedings in its own name or in the name and on behalf of the Lessor. In no event will Lessor voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Leased Premises or any part thereof without the written consent of the Lessee, which consent shall not be unreasonably withheld.

9. General Covenants. The Lessee shall not assign this Lease or sublet the Leased Premises herein described without the written consent of Lessor. Lessee shall use and maintain the Leased Premises in accordance with the laws and ordinances of the United States of America, the State of Indiana, and all other proper governmental authorities. The Lessee covenants that in any contracts entered into by the Lessee providing for the use of the Leased Premises, which involve the conduct of a separate trade or business, (a) the Leased Premises would be used only (i) by a governmental unit within the meaning of Section 141 of the Code, or (ii) by non-governmental units on the same basis as other members of the general public or (b) would not in the aggregate result in payments to the Lessee in an amount in excess of 5% of the principal of and interest on the bonds issued under the Indenture.

The covenants of this subsection are based solely on current law in effect and in existence on the date of issuance of the bonds. It shall not be an event of default under this Lease if interest on any bonds is not excludable from gross income pursuant to any provision of the Code which is not in existence and in effect on the issue date of the bonds.

Notwithstanding any other provisions of this Lease, the covenants and authorizations contained in this Lease ("Tax Sections") which are designed to preserve the exclusion of interest

on the bonds from gross income for federal tax purposes ("Tax Exemption") need not be complied with if the Lessee receives an opinion of nationally recognized bond counsel satisfactory to the Trustee and the Lessor that any Tax Section is unnecessary to preserve the Tax Exemption.

10. Option to Renew. Lessor hereby grants to Lessee the right and option to renew this Lease for a further like or lesser term upon the same or like conditions as herein contained, and applicable to the portion of the premises for which the renewal applies, and Lessee shall exercise this option by written notice to Lessor given upon any rental payment date prior to the expiration of this Lease.

11. Option to Purchase. Lessor hereby grants to Lessee the right and option, on any rental payment date, upon sixty (60) days' written notice to Lessor, to purchase the Leased Premises at a price equal to the amount required to enable Lessor to liquidate by paying all indebtedness relating to the Leased Premises, including all premiums payable on the redemption thereof and accrued and unpaid interest and by paying the expenses and charges of liquidation. In no event, however, shall such purchase price exceed the capital actually invested in such property by Lessor represented by outstanding securities or existing indebtedness plus the cost of transferring the property and liquidating the Lessor. The phrase "capital actually invested" as used herein shall be construed to include, but not by way of limitation, the following amounts expended by the Lessor: organization and incorporation expenses, financing costs, carry charges, legal fees, architect and engineering fees and reasonable costs and expenses incidental thereto.

Upon request of the Lessee made not less than sixty (60) days prior thereto, the Lessor agrees to furnish an itemized statement setting forth the amount required to be paid by the Lessee

on the next rental payment date in order to purchase the Leased Premises in accordance with the preceding paragraph. Upon the exercise of the option to purchase granted herein, Lessor will upon payment of the option price deliver, or cause to be delivered, to the Lessee documents conveying to the Lessee all of the Lessor's title to the property being purchased, as such property then exists, subject to the following: (i) those liens and encumbrances (if any) to which title to said property was subject when conveyed to Lessor; (ii) those liens and encumbrances created by the Lessee or to the creation or suffering of which the Lessee consented, and liens for taxes or special assessments not then delinquent; and (iii) those liens and encumbrances on its part contained in this Lease.

In the event of purchase of the Leased Premises by the Lessee or conveyance of the same to the Lessee, the Lessee shall procure and pay for all surveys, title searches, abstracts, title policies and legal services that may be required, and shall furnish at the Lessee's expense all documentary stamps or tax payments required for the transfer of title.

Nothing contained herein shall be construed to provide that Lessee shall be under any obligation to purchase the Leased Premises, or under any obligation in respect to the creditors, members, or security holders of the Lessor.

12. Transfer to Lessee. In the event the Lessee has not exercised its option to renew in accordance with the provisions of Section 10, and has not exercised its option to purchase the Leased Premises in accordance with the provisions of Section 11, and upon the full discharge and performance by the Lessee of its obligations under this Lease, the Leased Premises shall thereupon become the absolute property of the Lessee and upon the Lessee's request, Lessor shall execute proper instruments conveying to the Lessee all of Lessor's title thereto.

13. Defaults. If the Lessee shall default (a) in the payment of any rentals or other sums payable to the Lessor hereunder, or in the payment of any other sum herein required to be paid for the Lessor; or (b) in the observance of any other covenant, agreement or condition hereof, and such default shall continue for sixty (60) days after written notice to correct the same; then, in any or either of such events, the Lessor may proceed to protect and enforce its rights by suit or suits in equity or at law in any court of competent jurisdiction, whether for specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy; or the Lessor, at its option, without further notice, may terminate the estate and interest of the Lessee hereunder, and it shall be lawful for the Lessor forthwith to resume possession of the Leased Premises and the Lessee covenants to surrender the same forthwith upon demand.

The exercise by the Lessor of the above right to terminate this Lease shall not release the Lessee from the performance of any obligation hereof maturing prior to the Lessor's actual entry into possession. No waiver by the Lessor of any right to terminate this Lease upon any default shall operate to waive such right upon the same or other default subsequently occurring.

14. Notices. Whenever either party shall be required to give notice to the other under this Lease, it shall be sufficient service of such notice to deposit the notice in the United States mail, in an envelope duly stamped, registered and addressed to the other party or parties at the following addresses: (a) to Lessor: Fort Wayne Infrastructure Corporation, Attention: President, c/o Clerk, Citizens Square, 200 East Berry Street, Suite 110, Fort Wayne, IN 46802; (b) to Lessee: City of Fort Wayne, Attention: Clerk, Citizens Square, 200 East Berry Street, Suite 110, Fort Wayne, IN 46802 or (c) to Trustee: at the address shown on the Addendum referred to in Section 2.

Lessor and Lessee may by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

15. Parity Obligations. The Lessee reserves the right to enter into leases or other obligations entitled to the pledge of CEDIT Revenues on a parity with this Lease and the Outstanding Obligations in accordance with the requirements set forth below ("Parity Obligations") for the purpose of raising money for future projects of the Lessee authorized under the Act or to refund outstanding obligations. The authorization and issuance of Parity Obligations shall be subject to the following conditions precedent:

- (i) Any such Parity Obligations shall not cause the City to exceed its debt limitation under Article 13, Section 1, of the Indiana Constitution as of the date of issuance;
- (ii) All rental payments due under the Lease, and all payments of principal and interest on the Outstanding Obligations payable from the CEDIT Revenues shall have been paid in accordance with their terms; provided, however, this condition shall be deemed satisfied if any required amount is to be provided from the proceeds of the Parity Obligations or other funds of the City;
- (iii) For Parity Obligations without a property tax backup, either: (1) the CEDIT Revenues in the fiscal year immediately preceding the issuance of the Parity Obligations shall be at least equal to one hundred thirty-five percent (135%) of the lease rental and debt service requirements with respect to the outstanding Lease, the Outstanding Obligations and the proposed Parity Obligations, or (2) the CEDIT Revenues for the first full fiscal year immediately succeeding the issuance of any such Parity Obligations shall be projected by a certified public accountant to be at least equal to one hundred thirty-five percent (135%) of the lease rental and

debt service requirements with respect to the outstanding Lease, the Outstanding Obligations and the proposed Parity Obligations; provided, however, annual principal and interest requirements for any of the Outstanding Obligations or the annual lease rental under this Lease may be reduced in inverse order of maturity for purposes of this subsection by the balance in any reserve account allocable thereto. For purposes of this subsection, the records of the City shall be analyzed and all showings prepared by a certified public accountant or independent financial adviser employed by the City for that purpose; and

(iv) Payments of any Parity Obligations or junior obligations shall be payable semiannually on June 1 and December 1.

The terms and conditions of any Parity Obligations shall be set forth in the resolution or ordinance authorizing such Parity Obligations.

16. Successors or Assigns. All covenants of this Lease, whether by Lessor or Lessee, shall be binding upon the successors and assigns of the respective parties hereto.

17. Construction of Covenants. Lessor was organized for the purpose of acquiring, constructing and reconstructing public road improvements and leasing the same to Lessee under the provisions of Indiana Code, Title 6, Article 3.5, Chapter 7. All provisions herein contained shall be construed in accordance with the provisions of said statutes, and to the extent of inconsistencies, if any, between the covenants and agreements in this Lease and the provisions of said statutes, said statutes shall be deemed to be controlling and binding upon Lessor and Lessee.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed for and on their behalf the day and year first hereinabove written.

LESSOR

FORT WAYNE INFRASTRUCTURE  
CORPORATION

By: \_\_\_\_\_  
President

Attest:

By: \_\_\_\_\_  
Secretary

LESSEE

CITY OF FORT WAYNE, INDIANA

By: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
Controller

This instrument was prepared by Patricia A. Zelmer, Ice Miller LLP, One American Square, Suite 2900, Indianapolis, Indiana 46282.

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF ALLEN        )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me to be the President and Secretary, respectively, of Fort Wayne Infrastructure Corporation, and acknowledged the execution of the foregoing Lease for and on behalf of said Corporation.

WITNESS my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Name)

(Seal)

Notary Public

My Commission Expires:

My County of Residence:

\_\_\_\_\_

\_\_\_\_\_

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF ALLEN        )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Tom Henry and Pat Roller, personally known to me to be the Mayor and the Controller, respectively, of the City of Fort Wayne, Indiana, and acknowledged the execution of the foregoing Lease for and on behalf of said City.

WITNESS my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Name)

(Seal)

Notary Public

My Commission Expires:

My County of Residence:

\_\_\_\_\_

\_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE ON  
WHICH PROJECT WILL BE LOCATED

**[to be provided]**

## EXHIBIT B

### PROJECT DESCRIPTION

#### **Project #1 – East State Blvd**

The public right of way for East State Blvd from 300 feet west of Reed Road to 300 feet east of Maplecrest Road including all public improvements located within said right of way including but not limited to a five lane roadway, commercial and residential approaches and right of ways, curbs, gutters, storm structures, underground storm sewers, landscaping, lighting, traffic signals, and sidewalk on both sides of the road. Also including intersection improvements of East State Blvd at Reed Road, Berkley Ave, Swayne Avenue, Buckhurst Run, Voors Drive, Grandeur Drive and Maplecrest Road.

#### **Project #2 – Vance Avenue**

The public right of way for Vance Avenue from 300 feet west of Sherborne Blvd to Coliseum Blvd including all public improvements located within said right of way including but not limited to a three lane roadway, commercial and residential approaches and right of ways, curbs, gutters, storm structures, underground storm sewers, landscaping, lighting, traffic signals, and sidewalk on both sides of the road. Also including intersection improvements of Vance Avenue at Sherborne Blvd, and Farnsworth Drive.

#### **Project #3 – Hobson Road**

The public right of way for Hobson Road from 300 feet south of State Blvd to 300 feet north Stellhorn Road including all public improvements located within said right of way including but not limited to a four lane roadway with auxiliary lanes, commercial and residential approaches and right of ways, curbs, gutters, storm structures, underground storm sewers, landscaping, lighting, traffic signals, and sidewalk on both sides of the road. Also including intersection improvements of Hobson Road at State Blvd, Dodge Avenue, Charlotte Ave, Kenwood Ave, Vance Ave, Eastwood Dr, Varsity Ln, Whitegate Dr, Ivy League Dr, Coliseum Blvd, Rupp Dr, Trier Rd, Croix Dr, Sanibel Dr, Timberhill Dr, College Park Blvd, and Stellhorn Road.

#### **Project #4 – North Clinton Street**

The public right of way for North Clinton Street from intersection of Washington Center Rd 500 feet north of Auburn Road including all public improvements located within said right of way including but not limited to a four lane boulevard style roadway with median, auxiliary lanes, commercial and residential approaches and right of ways, storm structures, underground storm sewers, shoulders, side ditches, landscaping, lighting, traffic signals, and some sidewalk. Also including intersection improvements of North Clinton Street at Washington Center Rd, Colony Dr, Wendmere Ln, Bethany Ln, Martin Luther Dr, Red Haw Dr, Fox Chase Run, and Auburn Rd/Garden Park Dr.

#### **Project #5 – North Anthony Blvd**

The public right of way for North Anthony Blvd from 300 feet south of Crescent Ave to intersection of Coliseum Blvd including all public improvements located within said right of way including but not limited to a four lane boulevard style roadway with median, auxiliary lanes, commercial and residential

approaches and right of ways, curbs, gutters, storm structures, underground storm sewers, landscaping, lighting, traffic signals, and sidewalk/multi use trail. Also including intersection improvements of North Anthony at Crescent Ave, Saint Joe River Dr and Cadet Dr.

**Project #6 – North Clinton Street**

The public right of way for North Clinton Street from intersection of Coliseum Blvd to intersection of Washington Center Rd including all public improvements located within said right of way including but not limited to a four lane boulevard style roadway with median, auxiliary lanes, commercial and residential approaches and right of ways, curbs, gutters, storm structures, underground storm sewers, landscaping, lighting, traffic signals, shoulders and side ditches. Also including intersection improvements of North Clinton Street at California Rd, Parnell Ave, Fairington Dr, and Medical Parkway/ Wakefield Ave and Washington Center Rd.

**Project #7 – Coldwater Road**

The public right of way for Coldwater Road from intersection of Coliseum Blvd to intersection of Washington Center Rd including all public improvements located within said right of way including but not limited to a four lane roadway with auxiliary lanes, commercial and residential approaches and right of ways, curbs, gutters, storm structures, underground storm sewers, landscaping, lighting, traffic signals, and sidewalk on both sides of the road. Also including intersection improvements of Coldwater Road at Noble Dr, Collins Dr, English Ln, Northeast Dr, Essex Ln, Stratton Rd, and Washington Center Rd

**Project #8 – Airport Expressway**

The public right of way for Airport Expressway from 300 feet east of Airport Dr to the Fort Wayne corporation limit (located a distance of approximately 4,600 feet northeast of Bluffton Rd) including all public improvements located within said right of way including but not limited to a four lane roadway with auxiliary lanes, storm structures, underground storm sewers, drainage ditches, lighting, traffic signals, guardrail, and shoulders on both sides of the road. Also including intersection improvements of Airport Expressway at Bluffton Rd.

**Project #9 – Airport Drive**

The public right of way for Airport Drive from intersection of Ferguson Rd to intersection of Airport Expressway including all public improvements located within said right of way including but not limited to a two lane roadway with auxiliary lanes, commercial driveways, curbs, gutters, storm structures, underground storm sewers, landscaping, lighting, traffic signals. Also including intersection improvements of Airport Drive at Ferguson Rd, Piper Dr, Vanguard Dr, Covewood Dr, and Clearbrook Dr.

**Project # 10 – Airport Expressway**

The public right of way for Airport Expressway from 500 feet west of intersection of Lower Huntington Rd to the St. Mary's river bridge including all public improvements located within said right of way including but not limited to a four lane roadway with auxiliary lanes, storm structures, underground storm

sewers, side ditches, shoulders and lighting. Also including intersection improvements of Crescent Avenue.

**Project # 11 – Lower Huntington Road**

The public right of way for Lower Huntington Road from 500 feet west of Airport Expressway to the intersection of Fairfield Ave including all public improvements located within said right of way including but not limited to a four lane roadway with auxiliary lanes, sidewalk, curb, new trail connection across the St. Mary's bridge to the Rivergreenway including a board walk, storm structures, underground storm sewers, drainage ditches, lighting, traffic signals, and shoulders on both sides of the road. Also including intersection improvements of Lower Huntington Road at Airport Expressway, Penmoken Drive, Mill Run Road, Winchester Rd, Mill Run Dr, Lakeridge Dr and Fairfield Ave.

**Project # 12 – Oxford Street**

The public right of way for Oxford Street from the intersection of Anthony Blvd to a point 300 feet east of Hessen Cassel Rd including all public improvements located within said right of way including but not limited to a four lane roadway with auxiliary lanes, sidewalk, curb, storm structures, underground storm sewers, lighting, and traffic signals. Also including intersection improvements of Oxford Street at Anthony Blvd, Turpie Dr, Queen St, Autumn Ln, McMillen Park entrance, Fruehauf Dr, Abbott Dr, Alexander St, Plaza Dr, Central Dr, Euclid Ave, and Hessen Cassel Rd.

**Project # 13 – McKinney Ave**

The public right of way for McKinney Ave from the intersection of Anthony Blvd to a point 300 feet east of Hessen Cassel Rd including all public improvements located within said right of way including but not limited to a four lane roadway with auxiliary lanes, sidewalk, curb, storm structures, underground storm sewers, lighting, and traffic signals. Also including intersection improvements of McKinney Avenue at Anthony Blvd, Plaza Dr, Euclid Ave, Central Dr, Queen St, McMillen Park entrance, McMillen Park Dr, and Hessen Cassel Rd.

**Project # 14 – Pettit Avenue**

The public right of way for Pettit Avenue 1000 feet west of Anthony Blvd to the intersection Werling Dr including all public improvements located within said right of way including but not limited to a two lane roadway with auxiliary lanes, sidewalk, curb, storm structures, underground storm sewers, lighting, and traffic signals. Also including intersection improvements of Pettit Avenue at Anthony Blvd, Euclid Ave, Plaza Dr, Standish Dr, and Werling Dr.

**Project # 15 – Reed Road**

The public right of way for Reed Road 150 feet south of Vance Ave to 150 feet north of Evard Road including all public improvements located within said right of way including but not limited to a two lane roadway with auxiliary lanes, sidewalk, curb, storm structures, underground storm sewers, lighting, shoulders, side ditches and traffic signals. Also including intersection improvements of Reed Road at Evard Rd, Pepperille Ridge, Druid Hills Dr, Starwood Dr, Elsdale Dr, Ivy Brook Dr, Furge Dr, Greenfield Dr, Jason Dr, St Joe Ctr Rd, Windemere Ln/Chaucer Rd, Midlothian Dr, Mosskey Ct, Janet Dr, Doenges

Dr, Southlane, Northlane, Lancelot Ct, Beckstein Dr, Sandridge Rd, Brandwood Terrace, Trierwood Park, Highwood Dr, Woodmark Dr, and Fairlawn Pass.

**Project # 16 – Wheelock Road**

The public right of way for Wheelock Road 150 feet south of Stellhorn Rd to 150 feet north of Rothman Road including all public improvements located within said right of way including but not limited to a two lane roadway with auxiliary lanes, sidewalk, curb, storm structures, underground storm sewers, lighting, shoulders, side ditches and traffic signals. Also including intersection improvements of Wheelock Road at Lockwood Dr, Stellhorn Rd, Shackelford Rd, Mill Ridge Run, St Joe Center Rd, Greyhawk Dr, Treasure Cove, Monique Dr, and Rothman Rd/Rothman Ln.

**Project # 17 – Crescent Avenue**

The public right of way for Crescent Avenue 150 feet south of East Coliseum Blvd to 150 feet east of Hobson Road including all public improvements located within said right of way including but not limited to a four lane with boulevard style roadway with median, auxiliary lanes, sidewalk, curb, storm structures, underground storm sewers, lighting, shoulders, side ditches and traffic signals. Also including intersection improvements of Crescent Avenue at Lawshe Dr, and Hobson Rd.

**Project # 18– Hadley Road**

The public right of way for Hadley Road 150 feet south of Covington Road to intersection of Illinois Road including all public improvements located within said right of way including but not limited to a two lane roadway with auxiliary lanes, storm structures, underground storm sewers, lighting, shoulders, side ditches and traffic signals. Also including intersection improvements of Hadley Road at Covington Rd, Inverness Lakes Dr, Inverness Dr, Ridgeknoll Dr, and Pointe Inverness Way.

**Project # 19 – Homestead Road**

The public right of way for Homestead Road 150 feet south of Aboite Center Road to intersection of Covington Road including all public improvements located within said right of way including but not limited to a two lane roadway with auxiliary lanes, storm structures, underground storm sewers, lighting, shoulders, side ditches, multi-use trail and traffic signals. Also including intersection improvements of Homestead Rd at Lake Shasta Ct, Lake Tahoe Dr, Mohave Ct, Deep Creek Ct, North Westlakes Dr, Homestead Hills Dr, and Covington Rd.

**Project # 20 – Lower Huntington Road**

The public right of way for Lower Huntington Road 300 feet west of Bluffton Road to intersection of 300 feet east of Corline Street including all public improvements located within said right of way including but not limited to a four lane roadway with auxiliary lanes, storm structures, underground storm sewers, lighting, curbs, sidewalk on both sides, and traffic signals. Also including intersection improvements of Lower Huntington Road at Bluffton Rd, Koester Dr, and Corline Street.

ADDENDUM NO. 1 TO LEASE

Between Fort Wayne Infrastructure Corporation  
and  
City of Fort Wayne, Indiana  
Dated \_\_\_\_\_, 2014

WHEREAS, the Fort Wayne Infrastructure Corporation ("Corporation"), an Indiana corporation, entered into a lease with the City of Fort Wayne, Indiana dated \_\_\_\_\_, 2014 ("Lease"); and

WHEREAS, it is provided in the Lease that there shall be endorsed thereon the name of the financial institution selected to serve as Trustee under the Trust Indenture between it and the Corporation; and

WHEREAS, it is provided in this Lease that there shall be endorsed thereon the reduced rental; now therefore,

IT IS HEREBY CERTIFIED AND STIPULATED by all of the undersigned that the financial institution selected by the Corporation to be the Trustee under the Trust Indenture between it and the Corporation is \_\_\_\_\_, and its address for notices is Attention: Corporate Trust Department, \_\_\_\_\_.

IT IS HEREBY FURTHER CERTIFIED AND STIPULATED by all of the undersigned that the Corporation acquired the interest in the real estate described in the Lease on \_\_\_\_\_, 2014, which interests are more particularly described in Exhibit A to the Lease.

IT IS HEREBY FURTHER CERTIFIED AND STIPULATED by all of the undersigned that the sum of principal and interest due in each calendar year, the reduced annual rental and the semiannual installments are shown on Schedule I.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2014.

FORT WAYNE INFRASTRUCTURE  
CORPORATION

By: \_\_\_\_\_  
President

Attest:

By: \_\_\_\_\_  
Secretary

CITY OF FORT WAYNE, INDIANA

By: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
Controller

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

\_\_\_\_\_  
Carol Helton, City Attorney

This instrument was prepared by Patricia A. Zelmer, Ice Miller LLP, One American Square, Suite 2900, Indianapolis, Indiana 46282.

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF ALLEN        )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me to be the President and Secretary, respectively, of Fort Wayne Infrastructure Corporation, and acknowledged the execution of the foregoing Lease for and on behalf of said Corporation.

WITNESS my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Name)

(Seal)

Notary Public

My Commission Expires:

My County of Residence:

\_\_\_\_\_

\_\_\_\_\_

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF ALLEN        )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Tom Henry and Pat Roller, personally known to me to be the Mayor and the Controller, respectively, of the City of Fort Wayne, Indiana, and acknowledged the execution of the foregoing Lease for and on behalf of said City.

WITNESS my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Name)

(Seal)

Notary Public

My Commission Expires:

My County of Residence:

\_\_\_\_\_

\_\_\_\_\_

ADDENDUM NO. 2 TO LEASE

Between Fort Wayne Infrastructure Corporation  
and  
City of Fort Wayne, Indiana  
Dated \_\_\_\_\_, 2014

WHEREAS, the Fort Wayne Infrastructure Corporation, an Indiana corporation, entered into a lease with the City of Fort Wayne dated \_\_\_\_\_, 2014, which lease was recorded on \_\_\_\_\_, 2014, in the Office of the Recorder of Allen County, Indiana, as Document Number \_\_\_\_\_; and

WHEREAS, it is provided in Section 2 of the lease that the date or dates that each phase of the Project is completed and ready for occupancy shall be endorsed thereon by the parties thereto; now therefor

IT IS HEREBY FURTHER CERTIFIED AND STIPULATED by all of the undersigned that the [first, second, third] phase of the Project is completed and ready for occupancy on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

LESSOR

FORT WAYNE INFRASTRUCTURE  
CORPORATION

By: \_\_\_\_\_  
President

Attest:

By: \_\_\_\_\_  
Secretary

LESSEE

CITY OF FORT WAYNE, INDIANA

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Controller

This instrument was prepared by Patricia A. Zelmer, Ice Miller LLP, One American Square, Suite 2900, Indianapolis, Indiana 46282.

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF ALLEN        )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me to be the President and Secretary, respectively, of Fort Wayne Infrastructure Corporation, and acknowledged the execution of the foregoing Lease for and on behalf of said Corporation.

WITNESS my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Name)

(Seal)

Notary Public

My Commission Expires:

My County of Residence:

\_\_\_\_\_

\_\_\_\_\_

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF ALLEN        )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me to be the Mayor and the Controller, respectively, of the City of Fort Wayne, Indiana, and acknowledged the execution of the foregoing Lease for and on behalf of said City.

WITNESS my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Name)

(Seal)

Notary Public

My Commission Expires:

My County of Residence:

\_\_\_\_\_

\_\_\_\_\_

NOTICE OF HEARING ON PROPOSED LEASE  
FORT WAYNE, INDIANA

You are hereby notified that a public hearing will be held before the Common Council of the City of Fort Wayne, Indiana on February 25, 2014 at the hour of 5:30 p.m. (local time) in Room 35, Garden Level, Citizens Square, 200 East Berry Street, Fort Wayne, Indiana 46802, upon a proposed lease to be entered into between the Fort Wayne Infrastructure Corporation ("Corporation"), as lessor, and the City of Fort Wayne, Indiana ("City"), as lessee.

The proposed lease upon which hearing will be held is for a term of eight (8) years, commencing with the completion of the public road improvements ("Project") to be acquired and constructed by the Corporation. The lease provides for interim lease rental payments of no more than \$1,800,000 on December 1 2014, \$2,000,000 on June 1, 2015 and December 1, 2015, and \$2,700,000 on June 1, 2016. Thereafter, a maximum annual rental, payable in equal semiannual installments, of \$5,400,000 payable on June 1 and December 1 of each year during the remaining term of the lease, commencing no earlier than the later of December 1, 2016 or the date or dates the Project is completed and available for use. Lease rentals will be payable from CEDIT Revenues (as defined in the lease). As additional rental, the lessee shall pay or cause to be paid all taxes and assessments against such property, as well as the cost of alterations and repairs, and shall pay rebate amounts to the United States Treasury. The lease requires the lessee to maintain insurance on the Project and to bear all cost of alterations and repairs. After the sale by the Corporation of its bonds to pay for the cost of the Project, and other expenses incidental thereto, including capitalized interest on the bonds, funding of a debt service reserve and costs of issuance, the annual rental shall be reduced to an amount equal to the multiple of \$1,000 next higher than the sum of principal and interest due on such bonds in each twelve-month period ending on any bond payment date, plus an amount not to exceed \$3,000, payable in equal semiannual installments.

The lease gives an option to the lessee to purchase the Project on any rental payment date. The estimates for the cost of the Project as well as a copy of the proposed lease, are available for inspection by the public on all business days, during business hours, at the office of the Clerk, in Fort Wayne, Indiana.

At such hearing, all persons interested shall have a right to be heard upon the necessity for the execution of such lease, and upon whether the lease rental provided for therein to be paid to the Corporation is a fair and reasonable rental for the proposed Project. Such hearing may be adjourned to a later date or dates, and following such hearing the Common Council may either authorize the execution of such lease as originally agreed upon or may make modifications therein as may be agreed upon with the Corporation.

Dated this 15<sup>th</sup> day of February, 2014.

CITY OF FORT WAYNE, INDIANA

/s/ Sandra E. Kennedy  
Clerk, Fort Wayne, Indiana

**BILL NO. S-14-02-02**

**REPORT OF COMMITTEE ON FINANCE**

**FEBRUARY 18, 2014**

*Russell Jehl, Chair  
John Crawford, Co, Chair  
All Council Members*


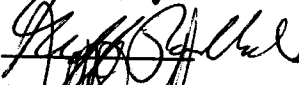
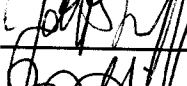
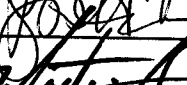
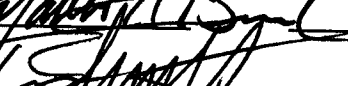

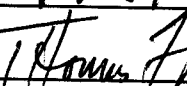
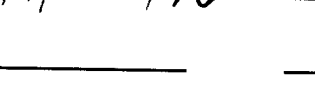
**AN ORDINANCE** of the Fort Wayne Common Council pledging the City's share of County Economic Development Income Tax, approving a Lease Agreement and all matters related to the financing of road improvements. **COMMITTEE ON FINANCE HAVE HAD SAID** Ordinance under consideration and beg leave to report back to the Common Council that said ordinance

DO PASS

DO NOT PASS

ABSTAIN

NO REC

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**SANDRA E. KENNEDY  
CITY CLERK**