

ORDINANCE NO. 2006-14

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ROCKPORT, INDIANA, APPROVING AND AUTHORIZING THE EXECUTION OF A LEASE, PLEDGING COUNTY ECONOMIC DEVELOPMENT INCOME TAX REVENUES TO THE PAYMENT OF RENTALS THEREUNDER AND REGARDING CERTAIN RELATED MATTERS

WHEREAS, the City of Rockport Redevelopment Commission (the "Commission"), at a meeting on December 14, 2006, after a public hearing in which all interested parties were provided the opportunity to be heard, adopted its Resolution, approving a proposed lease (the "Lease") between the City of Rockport Redevelopment Authority (the "Authority") and the Commission, under Section 25.2 of Indiana Code 36-7-14 (the "Act"), of certain public improvements consisting of a portion of River Road in the City of Rockport, Indiana (the "City"), in connection with the acquisition, construction and installation of a riverfront protection project (collectively, the "Project"), determining that the annual lease rentals to be paid thereunder not in excess of Seventy-Three Thousand Dollars (\$73,000), for a Lease term not to exceed sixteen (16) years beginning on the later of (i) the date that the Project is completed; or (ii) August 1, 2007, are fair and reasonable and finding, pursuant to the Act, that the use of the Project throughout the term of the Lease will serve the public purpose of City of Rockport, Indiana (the "City"), and is in the best interests of its residents; and

WHEREAS, the lease rental payments under the Lease will secure the payment of the principal of and interest on the Authority's County Economic Development Income Tax Lease Rental Revenue Bonds, Series 2006 (the "Bonds"), to be issued to finance the acquisition, construction, installation and equipping of the Project; and

WHEREAS, pursuant to the Act, the Common Council of the City (the "Common Council") desires to approve the execution and delivery of the Lease by the Authority and the Commission; and

WHEREAS, the Spencer County Economic Development Income Tax (the "CEDIT") has been previously imposed in Spencer County, Indiana (the "County"), pursuant to Indiana Code 6-3.5-7, as amended (the "CEDIT Act"), on the adjusted gross income of taxpayers in the County; and

WHEREAS, the CEDIT Act provides that revenue derived from the imposition of the CEDIT shall be distributed to the County semiannually on the first day of May and November (the City's distributive share of each such semiannual distribution, a "Semiannual Distribution"); and

WHEREAS, Section 25.5 of the Act authorizes the City to pledge its Semiannual Distributions of CEDIT revenues (collectively, the "CEDIT Revenues") to pay lease rental obligations under Section 25.2 of the Act and the Common Council desires to pledge the CEDIT

Revenues, beginning with the Semiannual Distribution to be received on or about May 1, 2007; and

WHEREAS, the Commission contemplates that the lease rental payments under the Lease shall be payable from the CEDIT Revenues pledged to the Commission by the Common Council; and

WHEREAS, the Common Council now desires to pledge the CEDIT Revenues to the lease rental payments to be made under the Lease;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF ROCKPORT, INDIANA, AS FOLLOWS:

1. The Common Council hereby finds that the rental payments, as approved by the Commission, are fair and reasonable, and further finds that the use of the Project throughout the term of the Lease will serve the public purpose of the City and is in the best interests of its residents. Accordingly, the Common Council hereby approves the Lease, as approved by the Commission, pursuant to the Act, in substantially the form provided at this meeting.

2. Pursuant to Section 25.5 of the Act, the Common Council, on behalf of the City, hereby pledges and assigns the City's Semiannual Distributions of CEDIT Revenues, beginning with the Semiannual Distribution to be received on or about May 1, 2007, to the Commission in amounts necessary to make all payments required under the Lease.

3. The City reserves the right to issue obligations payable in whole or in part from the CEDIT Revenues or to pledge the CEDIT Revenues to the payment of bonds, notes or other obligations or lease rentals, in whole or in part, on a parity with the pledge of the CEDIT Revenues toward rentals under the Lease ("Parity Obligations") in accordance with the requirements set forth below for the purpose of financing economic development projects or raising money for future local public improvements. The authorization to pledge CEDIT Revenues on a parity basis to such Parity Obligations shall be subject to the following conditions precedent:

(a) All rental payments due under the Lease and all payments on any Parity Obligations payable from the CEDIT Revenues shall be current to date in accordance with the terms thereof, with no payment in arrears.

(b) Either: (i) the sum of the Semiannual Distributions in the calendar year immediately preceding the calendar year in which such Parity Obligation is to be created was not less than one hundred twenty-five percent (125%) of the maximum interest, principal, rental or other amounts payable under the Lease, the proposed Parity Obligation and any other then outstanding Parity Obligations in any future calendar year; or (ii) the sum of the Semiannual Distributions in the calendar year immediately succeeding the calendar year in which such Parity Obligation is to be created is projected to be equal to at least one hundred twenty-five percent (125%) of the maximum interest, principal, rental or other amounts

payable under the Lease, the proposed Parity Obligation and any other then outstanding Parity Obligations in any future calendar year.

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 advisor employed by the City for that purpose.

(c) The interest, principal, rental or other amount payable under such Parity Obligation is payable on February 1 and August 1 in the years in which such Parity Obligation is outstanding.

Any pledge of CEDIT Revenues that does not satisfy the foregoing conditions precedent shall be junior and subordinate to the pledge of the CEDIT Revenues to rentals made under the Lease and to any other outstanding Parity Obligations.

4. The provisions hereof shall be construed to create a trust in the CEDIT Revenues pledged herein and this Ordinance shall not be repealed or amended in any manner which would serve to adversely affect the application of the CEDIT Revenues to the payment of the rentals under the Lease. The Mayor of the City and the Clerk-Treasurer of the City are hereby authorized to execute such documents as may be necessary in connection with the execution of the Lease to evidence the pledge of such CEDIT Revenues for the purposes set forth herein.

5. (a) The Common Council may, from time to time and at any time, without the consent of or notice to any obligees under the Bonds or any Parity Obligations, adopt a supplemental ordinance to modify or amend this Ordinance for any one or more of the following purposes:

(i) to cure any ambiguity or formal defect or omission in this Ordinance or in any supplemental ordinance;

(ii) to grant to or confer upon any obligees under the Bonds or any Parity Obligations any additional benefits, rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon such obligees under the Bonds or any Parity Obligations;

(iii) to modify or amend this Ordinance to permit the qualification of the Bonds or any Parity Obligations for sale under the securities laws of the United States of America or any of the states of the United States of America;

(iv) to provide for the refunding or advance refunding of the Bonds or any Parity Obligations;

(v) to procure a rating on the Bonds or any Parity Obligations from a nationally recognized securities rating agency, designated in such supplemental ordinance if such supplemental ordinance will not materially adversely affect the interests of any obligees under the Bonds or any Parity Obligations; and

(vi) any other purpose which, in the judgment of the Common Council, does not materially adversely affect the interests of any obligees under the Bonds or any Parity Obligations.

(b) This Ordinance, and the rights and obligations of the City and any obligees under the Bonds or any Parity Obligations, may be modified or amended from time to time at any time by a supplemental ordinance adopted by the Common Council with the consent of the obligees under the Bonds and any Parity Obligations affected by such modification or amendment, holding at least a majority in aggregate principal amount of the Bonds and any such Parity Obligations then outstanding (exclusive of Parity Obligations, if any, owned by the City); provided, however, that no such modification or amendment shall, without the express consent of all of the obligees under the Bonds and any Parity Obligations affected by such modification or amendment, permit a privilege or priority of any of the Bonds or any such Parity Obligations over the Bonds or any other Parity Obligations, or create a lien securing the Bonds or any Parity Obligations other than a lien ratably securing the Bonds and all Parity Obligations, nor shall any such modification or amendment reduce the percentage of consent required for amendment or modification of this Ordinance.

Any act done pursuant to a modification or amendment so consented to shall be binding upon all the obligees under the Bonds and any Parity Obligations and shall not be deemed an infringement of any of the provisions of this Ordinance, and may be done and performed as fully and freely as if expressly permitted by the terms of this Ordinance, and, after such consent relating to such specified matters has been given, no obligees under the Bonds or any Parity Obligations shall have any right or interest to object to such action or in any manner to question the propriety thereof or to enjoin or restrain the City of any officer thereof from taking any action pursuant thereto.

If the City shall desire to obtain any such consent to any modification or amendment of this Ordinance, it shall mail or cause to be mailed a notice, postage prepaid, to the respective obligees under the Bonds and any Parity Obligations affected by such modification or amendment. Such notice shall briefly set forth the nature of the proposed supplemental ordinance and shall state that a copy thereof is on file for inspection by all obligees under the Bonds and any Parity Obligations. The City shall not, however, be subject to any liability to any obligees under the Bonds or any Parity Obligations by reason of its failure to mail the notice described in this Section 5, and any such failure shall not affect the validity of such supplemental ordinance when consented to and approved as provided in this Section 5.

Whenever, at any time within one year after the date of the mailing of such notice, the City shall receive an instrument or instruments purporting to be executed by the obligees under the Bonds and any Parity Obligations of not less than a majority in aggregate principal amount of the Bonds and any such Parity Obligations then outstanding (exclusive of Parity Obligations, if any, owned by the City), which instrument or instruments shall refer to the proposed supplemental ordinance described in such notice, and shall specifically consent to and approve the adoption thereof in substantially the form of the copy thereof referred to in such notice as on file, thereupon, but not otherwise, the Common Council may adopt such supplemental ordinance in substantially such form, without liability or responsibility to any obligees under the Bonds or any Parity Obligations, whether or not such obligee shall have consented thereto.

(c) Upon the adoption of any supplemental ordinance pursuant to the provisions of this Section 5, this Ordinance shall be, and is deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Ordinance shall thereafter be determined, exercised and enforced hereunder, subject in all respects to such modifications and amendments.

6. If any part of this Ordinance shall be adjudged to be invalid by a court of proper jurisdiction, it shall be conclusively presumed that the Common Council would have passed the remainder of this Ordinance without such invalid part.

7. All ordinances, resolutions and orders, or parts thereof, in conflict with the provisions of this Ordinance, are, to the extent of such conflict, hereby repealed.


8. This Ordinance shall be in full force and effect from and upon compliance with the procedures required by law.

* * *

The foregoing was passed by the Common Council this 14th day of December,
2006, at _____.




Mayor of the City of Rockport, Indiana

ATTEST:


Clerk-Treasurer

Presented by me to the Mayor this 14 day of December, 2006, at 8:35.m.



Clerk-Treasurer of the City of Rockport, Indiana.

Approved and signed by me this 14 day of December, 2006.



Mayor of the City of Rockport, Indiana