

1 **BILL NO. R-12-04-04**

2 **RESOLUTION NO. _____**

3 **A RESOLUTION APPROVING A LEASE**
4 **AGREEMENT BETWEEN THE CITY OF FORT**
5 **WAYNE AND J.D. VENTURES, II, LLC BY AND**
6 **THROUGH ITS BOARD OF PUBLIC WORKS.**

7 **WHEREAS,** the City of Fort through the Board of Public Works desires to lease a
8 building located at 3220 Ciera Court to store City vehicles; and

9 **WHEREAS,** the term of lease is for five (5) years with a clause granting one (1) five
10 (5) year option to renew; and

11 **WHEREAS,** the annual lease payment is FIFTY-SEVEN THOUSAND, SEVENTY-
12 SIX AND 92/100 DOLLARS – (\$57,076.92); and

13 **WHEREAS,** said lease agreement requires the approval of the Common Council
14 of the City of Fort Wayne.

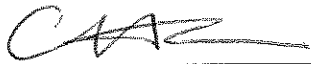
15 **NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE**
16 **CITY OF FORT WAYNE, INDIANA:**

17 **SECTION 1.** That said lease agreement between the City of Fort Wayne, Indiana,
18 and J.D. VENTURES, II, LLC, (Exhibit "A" attached hereto and made a part hereof), is hereby
19 approved by the Common Council of the City of Fort Wayne, Indiana.

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

22 _____
23 Council Member

24 APPROVED AS TO FORM AND LEGALITY

25 
26 Carol Helton, City Attorney
27
28
29
30

THIS INDENTURE witnesseth that J.D. Ventures, II, LLC (hereinafter referred to as "Landlord"), in consideration of the rent herein reserved and the covenants to be performed by City of Fort Wayne (hereinafter referred to as "Tenant"), does hereby grant, demise, and lease to Tenant the following described premises upon the terms and conditions hereinafter set out:

ARTICLE I Premises

1.1 Landlord hereby leases to Tenant and Tenant hereby leases from Landlord an office warehouse building (containing 10,000 sq.ft.) as shown on Exhibit A (County GIS Map and Property Record Card) attached hereto and made a part hereof which part so leased is hereinafter referred to as "Leased Premises", situated at 3220 Ciera Court, Fort Wayne, Allen County, Indiana (the entire building with its appurtenances is hereinafter referred to as "Real Estate").

1.2 Landlord also grants to Tenant, the right to use the common areas adjoining the building of which the Leased Premises are a part, including, but not limited to the access drive to a secured parking area; provided, however, that the entrance drive from Ciera Court and parking lot in front of the neighboring premises sharing the entrance driveway, commonly known as 3218 Ciera Court, shall be kept free and open for ingress and egress at all times. Vehicles shall not be parked thereon nor shall there be any parking in the entrance from the entrance drive from Ciera Court and the parking lot in front of the neighboring premises sharing the entrance driveway which in any manner or way interferes with or prevents the maneuvering of trucks or vehicles making use of neighboring premises.

ARTICLE II Term

2.1 The term of this Lease shall be for five (5) years (or until sooner terminated as herein provided), commencing on the 1st day of May, 2012 and ending on the 30th day of April, 2017. The commencement date will not be effective until Tenant's requested improvements have been completed by Landlord and approved by Tenant. In the event Landlord is unable to deliver possession of the Premises at the commencement of the term, Landlord shall not be liable for any damage thereby and Tenant shall not be liable for any rent until either (i) the day Tenant's personnel first occupy a part of the Premises for carrying on the normal functions of Tenant's business in the Premises, or (ii) In the event the lease commencement is a day other than the 1st day of a month, the lease commencement date shall be the first day of the following month.

2.2 Subject to the terms hereafter set forth, the anticipated commencement date of this Lease Agreement is the 1st day of May, 2012.

ARTICLE III Use of Leased Premises

3.1 The Leased Premises are to be used by Tenant for storage of city vehicles and related activities and for no other purposes without the prior written consent of Landlord. Tenant shall not use the Leased Premises (or fail to maintain them) in any manner constituting a violation of any ordinance, statute, regulation, or order of any governmental authority or environmental laws, including, but not limited to zoning ordinance and protective covenants, restrictions, limitations, and easements for the Leased Premises.

3.2 Tenant agrees not to use or suffer or permit any person to use, in any manner whatsoever, the Leased Premises for any purpose calculated to injure the reputation of the premises or to impair the value of the Leased Premises, not for any purpose or use in violation of any federal, state, county or municipal law or ordinance. Tenant will neither commit nor permit waste upon the Leased Premises.

3.3 Tenant will make a reasonable effort not to maintain or permit any nuisance to occur on the Leased Premises. Tenant shall make a reasonable effort not to disturb any of the neighboring occupants. Tenant covenants and agrees that Tenant will use, maintain, and occupy the Leased Premises in a careful, safe, and proper manner and will not commit waste thereon.

ARTICLE IV

Rent

4.1 Tenant shall pay as rent for said Premises without relief from valuation and appraisalment laws in accordance with the schedule below:

Years 1 – 5	Base Rent	\$3,333.33/mth	\$39,999.96/ year
Years 1 – 5	Amortized Improvements	<u>\$1,423.08/mth</u>	<u>\$17,076.96/ year</u>
	Total Rent	\$4,756.41/mth	\$57,076.92/ year

All rental payments are due in advance on the first day of each calendar month to J.D. Ventures II, LLC, P.O. Box 8398, Fort Wayne, Indiana 46898-8398, or at any such other place or places as Landlord may designate from time to time. In the event the tenancy commences on a day other than the first day of any calendar month, Tenant shall pay the pro rata share of rent due for the unexpired time in the month in addition to the rent for the full month following such part of a month at the commencement of the term.

4.2 The net rent shall be paid to the Landlord without notice or demand and without abatement, deduction, or setoff. The net rent shall be paid in equal monthly installments in advance on the first day of each calendar month during the term of this Lease, but Landlord shall also provide Tenant with a grace period for the payment of the installments of rent of 5 days. Each installment of rent and all other sums of money payable under this Lease shall bear interest at the rate of eighteen percent (18%) per annum from the expiration of the grace period until paid and are payable without relief from evaluation, stay or appraisalment laws.

4.3 It is the intention of the Landlord and the Tenant that the rent herein specified shall be net to the Landlord in each year during the term of this Lease, that all costs, expenses and obligations of each kind relating to the leased property which may arise or become due during the term of this Lease shall be paid by the Tenant, and that the Landlord shall be indemnified by the Tenant against such costs, expenses and obligations.

4.4 Tenant shall make all payments at the times provided for in this Lease, without relief from valuation or appraisalment laws.

ARTICLE V

Security Deposit

5.1 INTENTIONALLY DELETED

ARTICLE VI

Utility Services, Maintenance and Repairs

6.1 Tenant shall pay for all utilities and rubbish removal based upon or in connection with the Leased Premises. After completion of initial construction by Landlord, Tenant agrees that it shall, at its own cost and expense, make all repairs of whatever kind and nature, foreseen or unforeseen, as may be required to keep the Leased Premises and fixtures thereon in good condition and repair. Without limiting the generality of the foregoing, Tenant shall be responsible for at its sole expense:

- (a) To keep the Leased Premises in a clean, sightly and healthful condition and to make all repairs which are necessary to maintain the Leased Premises in good repair and condition.
- (b) To repair and maintain the exterior, with the exception of the foundations and roof, and the interior of the Leased Premises including the heating, ventilation and air-conditioning systems.

- (c) Tenant agrees to have the heating, ventilation and air-conditioning systems (HVAC) serviced by a license mechanical contractor a minimum of two (2) times per year. Copies of the service records are to be sent to the Landlord. Within the first year of this lease agreement, the Landlord will agree to replace the HVAC system in the event of a total failure unless such failure is the result of negligence on behalf of the Tenant, Tenant's HVAC contractor or failure to make any necessary repairs when needed.
- (d) To paint the Leased Premises as needed.
- (e) To keep the parking lot and the adjoining sidewalks in good repair and free from snow, ice, and all obstructions.
- (f) To pay all charges of public or utility companies for utilities including charges for gas, electricity, sewage, water and storm water assessments.
- (g) To comply with all laws and ordinances relating to the use by Tenant of the Leased Premises.
- (h) To pay all association dues and assessments.

6.2 Tenant agrees that no representations, except such as are contained herein or endorsed herein, have been made to the Tenant respecting the condition of said Leased Premises. The taking possession of said Leased Premises by the Tenant shall be conclusive evidence as against the Tenant that said Leased Premises were in good and satisfactory condition when possession of the same was so taken; and the Tenant will, at the termination of this Lease, by lapse of time or otherwise, return said Leased Premises to the Landlord in as good condition as when received, loss by fire not due to the fault of the Tenant and ordinary wear excepted.

6.3 Landlord to keep in good repair and working order (except to the extent damage by Tenant's negligence) foundations, and roof.

ARTICLE VII Taxes and Assessments

7.1 Landlord shall pay all real estate taxes and assessments due and payable on the Leased Premises or any part thereof during the term of this Lease or any renewal thereof before such real estate taxes and assessments become delinquent and a charge assessed against the Leased Premises is levied. Landlord shall provide notice, including an itemized breakdown and calculation the Tenant's pro rata share of real estate taxes and assessments paid, within thirty (30) days of said payment. Tenant shall be responsible for reimbursement of its pro rata share of real estate taxes and assessments that are due and payable during the term of this Lease or any renewal thereof.

7.2 Real estate taxes, as herein described, shall mean any real estate taxes actually paid by the owner in a given lease year, not the actual year of assessment, as taxes are paid one year in arrears. Said additional rental for real estate taxes, assessments shall be paid to Landlord within thirty (30) days of the receipt of notice from Landlord of said pro rata share of real estate taxes and assessments.

7.3 Landlord agrees to pay all mortgage payments or other payments required to discharge liens and encumbrances and installments thereof affecting the Leased Premises before any of the same become in arrears. In the event Landlord fails to pay such payments and to discharge such liens and encumbrances, Tenant may, at its option in the event Tenant deems it necessary to protect its occupancy and right of possession to the Leased Premises, make such payments on Landlord's behalf and thereafter deduct the amount of any such payments made by Tenant from rent due or to become due hereunder.

ARTICLE VIII
Insurance

8.1 Landlord's obligations under this Article are conditioned upon the satisfaction of all of the following:

- (a) Tenant shall procure and keep in effect public liability insurance in the sum of One Million and no/100 Dollars (\$1,000,000.00) for damages resulting to one person and Two Million and no/100 Dollars (\$2,000,000.00) for damages resulting from one casualty and shall designate Landlord as an additional insured and provide Landlord with evidence of such insurance.
- (b) Tenant agrees to carry, at Tenant's expense, building insurance on an "Special Form Type" in an amount equal to 100% of the replacement value, with a standard co-insurance endorsement of not more than 90%. If such form does not provide sprinkler leakage coverage, the policy or policies shall be endorsed to cover the same in an amount equal to 10% of the replacement value of the building. The insurance policy or policies shall be in a form reasonably satisfactory to the Landlord and shall carry an endorsement that before changing or cancelling any policy the insurance company shall give the Landlord at least fifteen (15) days written notice, and the Tenant shall be required to furnish the Landlord with an acceptable replacement policy before the effective date of any such cancellation. Duplicate originals or certificates of all such insurance policies shall be delivered to the Landlord. The policy shall be issued prior to or on the effective date, and all renewals thereof shall be issued at least ten (10) days prior to the expiration of the then existing policy or evidence that insurance has been bound shall be provided.
- (c) Tenant shall procure and have in effect during the term of this Lease, and any extension hereof, fire and extended coverage insurance on property of Tenant.
- (d) Each party agrees to use its best efforts to include in each of its policies insuring against loss, damage or destruction by fire or other casualty (insuring the Leased Premises and Landlord's Property therein and rental value thereof, in the case of Landlord, and insuring Tenant's Property and business interest in the Leased Premises (business interruption insurance) in the case of Tenant, a waiver of the insurer's right of subrogation against the other party, or if such waiver should be unobtainable or unenforceable (i) an express agreement that such policy shall not be invalidated if the insured waives the right of recovery against any party responsible for a casualty covered by the Policy before the casualty, or (ii) any other form of permission for the release of the other party. If such waiver, agreement or permission shall not be, or shall cease to be, obtainable without additional charge or at all, the insured party shall so notify the other party promptly after learning thereof. In such case, if the other party shall so elect and shall pay the insurer's additional charge therefore, such waiver, agreement or permission shall be included in the policy, or the other party shall be named as an additional insured in the policy. Each such policy which shall so name a party hereto as an additional insured shall contain, if obtainable, agreements by the insured that the policy will not be canceled without at least thirty (30) days prior notice to both insureds and that the act or omission of one insured will not invalidate the policy as to the other insured. The failure by Tenant, if named as an additional insured, promptly to endorse to the order of Landlord, without recourse, any instrument for the payment of money under or with respect to the policy of which Landlord is the owner or primary insured, shall be deemed a default under this Lease.
- (e) Tenant will not use or permit upon said Leased Premises anything that will invalidate any policies of insurance now or hereafter carried on said building or that will increase the rate of insurance on said Leased Premises or on the building of which said Leased Premises are a part; and should it do so then the Tenant will pay all extra insurance premiums on the said building which may be caused by the use which said Tenant shall make of said Leased Premises; that the Tenant will not use or permit upon said Leased Premises anything that may be dangerous to life or limb; that the Tenant will not in any manner deface or injure said building or any part thereof, nor overload the floors of said Leased Premises; that the Lease will not permit any

objectionable noise or odor to escape or be emitted from said Leased Premises in any way tending to create a nuisance, or tending to disturb the occupants of neighboring property, or tending to injure the reputation of the said building; and that the Tenant will comply with all governmental, health, and police requirements and regulations respecting said Leased Premises.

- (f) That the Landlord shall not be liable for any damage either to person or property, sustained by the Tenant or by other persons due to the building or any part thereof or any appurtenance thereof becoming out of repair, or due to the happening of any accident in or about said building, or due to any act or neglect of any other occupant in said building, or of any other person, except as may be caused by Landlord's action or negligent inaction. This provision shall apply especially (but not exclusively) to damages caused by water, snow, frost, steam, sewerage, illuminating gas, sewer gas or odors or by the bursting or leaking of pipes or plumbing works, and shall apply equally whether such damage be caused by or occasioned by anything or circumstances above mentioned or referred to or by any other thing or circumstances whether of a like nature or of a wholly different nature. In the event any damage shall be caused by the acts or neglect of the Tenant, the Landlord may, at its option, repair such damage, and the Tenant shall on demand reimburse the Landlord for any amount expended. The Tenant further agrees that all personal property upon the Leased Premises belonging to Tenant shall be at the risk of the Tenant only and that the Landlord shall not be liable for any damage thereto or theft thereof.

8.2 Tenant shall pay all insurance premiums for the insurance coverage provided herein and within ten (10) days of the annual renewal of such insurance coverage, Tenant shall provide to Landlord evidence of payment of such insurance premiums.

ARTICLE IX

Mutual Waiver of Subrogation

9.1 Landlord and Tenant hereby expressly waive any and all claims against each other for loss or damage due to fire or the perils, risks, or hazards ordinarily insured against the Indiana standard form of Fire Insurance Policy with extended Coverage Endorsement, regardless of the cause of such loss or damage resulting from negligence of the respective parties, their agents, servants, employees or invitees.

ARTICLE X

Hazardous Substances

10.1 Tenant covenants and warrants to Landlord that Tenant, its licensees and invitees, will not cause or permit the contamination of the Leased Premises or any surrounding properties by any "Hazardous Substances" during the term hereof. Tenant agrees to indemnify and hold Landlord harmless against any liabilities, costs, expenses (including reasonable attorney's fees and costs) arising out of any contamination, leakage, seepage or emission of Hazardous Substances from the Leased Premises by Tenant, its licensees, invitees or employees during the term hereof. In the event of a need for cleanup or removal of any such contamination, Tenant shall immediately pay for and cause such removal in accordance with the directives and requirements of all governmental agencies having jurisdiction thereof. For purposes of this paragraph, "Hazardous Substances" shall mean those substances defined as toxic pollutants and hazardous substances by the United States E.P.A. and any other governmental agencies having jurisdiction over the Leased Premises and the building wherein the Leased Premises are located. This indemnification and hold harmless agreement set forth herein shall survive the termination of this Lease Agreement.

ARTICLE XI

Assignment and Sublease

11.1 The Tenant shall not assign this Lease in whole or in part or sublet the Leased Premises in whole or in part without the prior written consent of Landlord, which consent shall not be unreasonably withheld. In the event Landlord consents to such assignment or subletting, Tenant shall remain primarily liable to perform all of the covenants and conditions contained in this Lease, including, but not limited to, payment of rent and additional rent as provided herein.

ARTICLE XII
Default and Remedy

12.1 Each of the following shall be deemed to constitute a default by Tenant:

- a. Failure to pay the rent as herein provided when due.
- b. Failure to pay any additional rent, costs or expenses as may be provided in this Lease when due.
- c. Failure to perform any other acts to be performed by Tenant hereunder or to comply with any condition or covenant contained herein upon the continuance of a default after ten (10) days written notice given by Landlord to Tenant.

12.2 In the event of any default by Tenant, Landlord shall give Tenant ten (10) days written notice to cure any default, and if said default is not cured, this Lease shall terminate at the option of the Landlord. In the event of termination of this Lease, Landlord may re-enter the Leased Premises, take possession of all or any part thereof, and remove all property and persons therefrom and shall not be liable for any damage therefore or for trespass. No such re-entry shall be deemed an acceptance of the surrender of this Lease or a satisfaction of Tenant's obligation to pay the rent as provided herein or any other obligations of Tenant hereunder.

12.3 In the event of any default by Landlord, Tenant shall give Landlord ten (10) days written notice to cure any default, and if said default is not cured, this Lease shall terminate at the option of the Tenant.

12.4 The failure of Landlord to exercise any option herein provided on account of any default shall not constitute a waiver of the same or any subsequent default, and no waiver of any condition or covenant of this Lease by either party shall be deemed to constitute a waiver by either party or any default of the same or any other condition or covenant.

ARTICLE XIII
Alterations

13.1 Tenant shall make no alterations, additions or improvements to the Leased Premises or any part thereof without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld.

13.2 All alterations and additions to the Leased Premises (whether performed with or without Landlord's consent as provided herein), shall be deemed a part of the real estate and the property of Landlord and shall remain upon and be surrendered with the Leased Premises as a part thereof without molestation, disturbance or injury at the end of said term, whether by lapse of time or otherwise, unless Landlord, by notice given to Tenant no later than fifteen (15) days prior to the end of the term, shall elect to remove or to have Tenant remove all or any of such alterations or additions (excluding standard Tenant finish work and non-movable office walls), and in such event, Tenant shall promptly remove, at its sole cost and expense, such alterations and additions and restore the Leased Premises to the condition in which the Leased Premises were prior to the making of the same, reasonable wear and tear excepted. Any such removal, whether required or permitted by Landlord, shall be at Tenant's sole cost and expense, and Tenant shall restore the Leased Premises to the condition in which the Leased Premises were prior to making of the same, reasonable wear and tear accepted. All movable partitions, machines and equipment which are installed in the Leased Premises by or for the account of Tenant, without expense to Landlord, and can be removed without permanent structural damage to or defacement of the Leased Premises, and all furniture, furnishings and other equipment (all of which are herein called "Tenant's Property") shall be and remain the property of Tenant and may be removed by it at any time during the term of this Lease. However, if any of Tenant's property is removed, Tenant shall repair or pay the cost of repairing any damage to the Leased Premises resulting from such removal. All additions or improvements which are to be surrendered with the Leased Premises shall be surrendered with the Leased Premises, as a part thereof, at the end of the term or the earlier termination of this Lease.

13.3 Tenant, at its sole cost and expense, shall cause any permitted alterations, decorations, installations, additions or improvements in or about the Leased Premises to be performed in compliance with all applicable legal requirements.

13.4 The Landlord hereby covenants and agrees to join with the Tenant in applying for and securing from any governmental authority having jurisdiction thereof, any permits or licenses which may be necessary in connection with the making of any alterations, additions, changes or repairs and the Landlord agrees, upon request by the Tenant, to execute or join in the execution of any application for such licenses or permits.

13.5 No person shall be entitled to any lien directly or indirectly derived through or under the Tenant or through or by virtue of any act or omission of the Tenant upon the Leased Premises for any improvements or fixtures made thereon or installed therein or for or on account of any labor or material furnished to the Leased Premises or for or on account of any matter or thing whatsoever; and nothing in this Lease contained shall be construed to constitute a consent by Landlord to the creation of any lien.

ARTICLE XIV

Inspection and Showing of Premises

14.1 Landlord or Landlord's agent shall be permitted to inspect or examine the Leased Premises by giving Tenant twenty-four (24) hours written notice, and Landlord shall have the right to make any repairs to the Leased Premises which Landlord may deem desirable and necessary for its preservation; provided, however, that any repairs made by Landlord shall be at Tenant's expense.

ARTICLE XV

Fire and Other Casualty

15.1 If the Leased Premises shall be damaged or destroyed by any cause during the term of this Lease, this Lease will terminate; however, Tenant shall as rapidly and as reasonably practical repair such damage at its expense. Such repair or restoration of said building by Tenant shall be at least to the condition of the building immediately prior to such damage or destruction, and in accordance with plans and specifications mutually agreed upon at the time; or if such plans cannot be agreed upon, then in accordance with the original plans and specifications. The work of restoration or rebuilding shall be in full compliance with all laws and regulations and governmental ordinances applicable thereto. All insurance proceeds received from the fire and extended coverage insurance shall be used and applied toward such rebuilding and restoration, but in the event such insurance proceeds are not sufficient, Tenant shall be solely responsible for any further costs and charges of any type or nature to complete such restoration and rebuilding.

ARTICLE XVI

Eminent Domain

16.1 If not more than fifteen percent (15%) of the building constituting the Leased Premises or not more than twenty-five percent (25%) of the parking area shall be taken under the power of eminent domain, then the term of this Lease shall cease only on the part so taken from the date possession shall be taken for any public purpose, and the minimum rent shall be paid up to that date.

If in such event any part of the Leased Premises is taken, Tenant shall rebuild and restore said Leased Premises at its expense and as rapidly as possible, and Tenant shall be entitled to an equitable abatement of the fixed minimum rent until the premises are restored, and thereafter said rent shall be equitably reduced on account of any floor space taken by such eminent domain proceedings.

16.2 If more than fifteen percent (15%) of the building constituting the Leased Premises or more than twenty-five percent (25%) of the parking area shall be taken under the power of eminent domain, then from that date Tenant shall have either the right to terminate this Lease as of the date possession of the part condemned is so taken, by written notice to Landlord within thirty (30) days after such date, or to continue in possession of the Leased Premises under all of the terms, covenants and conditions of this Lease, except that the fixed rent shall be proportionately and equitably reduced.

16.3 Each party may, as permissible by applicable law, prosecute at their option their respective

claims, against the public or private bodies designated as the taking authority, on the account of any taking or appropriation of the Leased Premises. Any and all sums received by Landlord and attributable to Tenant's interest hereunder shall be payable at Tenant's direction for the purpose of satisfaction of Tenant's obligation to rebuild and restore the Leased Premises. For the purpose of this paragraph, acquisition of all or part of the Leased Premises by governmental or quasi-governmental authority by means of voluntary negotiations and contracts in lieu of condemnation shall be deemed to be acquisition by the exercise of the power of eminent domain.

ARTICLE XVII

Surrender

17.1 Upon the expiration or other termination of this Lease, Tenant shall surrender to Landlord the Leased Premises, together with all other property affixed to the Leased Premises (with the exception of trade fixtures), broom clean, and in good order and condition (ordinary wear and tear excepted). Any damage caused to the Leased Premises by removal of any property shall be promptly repaired by Tenant to the satisfaction of Landlord.

17.2 Tenant shall remove all property of Tenant, as directed by Landlord and failing to do so the parties hereto agree that in the event said property is not removed within seven (7) days it shall be deemed abandoned. Landlord at its option may cause all of said property to be removed at the expense of Tenant. Tenant shall remove any and all signs and shall restore the walls and other portions of the Leased Premises to their former condition. Tenant's obligation to observe or perform these covenants shall survive the expiration or other termination of this Lease.

ARTICLE XVIII

Waiver

18.1 No waiver of any covenant or condition or the breach of any covenant or condition of this Lease shall be taken to constitute a waiver of any subsequent breach of such covenant or condition nor justify or authorize a nonobservance on any other occasion of such covenant or condition or any other covenant or condition. Nor shall the acceptance of rent by the Landlord at any time when Tenant is in default of any covenant or condition hereof be construed as a waiver of such default.

ARTICLE XIX

Covenant of Quiet Enjoyment

19.1 Landlord agrees that if Tenant shall perform all the covenants and agreements herein provided to be performed on Tenant's part, the Tenant shall at all times during the term of this Lease, have the peaceable and quiet enjoyment of possession of the Leased Premises without any manner of hindrance from Landlord or any persons lawfully claiming under Landlord, except as provided for in Article XIII above.

ARTICLE XX

Notice

20.1 All notices which are to be made by either party to the other shall be made by depositing such notice in the registered or certified mail of the United States of America, and such notice shall be deemed to have been served on the date of such depositing in the registered or certified mail unless otherwise provided herein. All notices to Landlord shall be made at:

J.D. Ventures II, LLC
P.O. Box 8398
Fort Wayne, IN 46898-8398

or at such other address as Landlord may from time to time designate in writing to Tenant, and all notices to Tenant shall be made at:

City of Fort Wayne
Dan Brenner
Citizens Square
200 East Berry Street, Suite 470
Fort Wayne, Indiana 46802

or at such other address as Tenant may from time to time designate in writing to Landlord.

ARTICLE XXI
Benefit of Landlord and Tenant

21.1 This Lease and all of the terms and provisions hereof shall inure to the benefit of and be binding upon Landlord and Tenant and their respective heirs, successors, assigns, and legal representatives.

ARTICLE XXII
Governing Law

22.1 This Lease shall be governed in accordance with the laws of the State of Indiana.

ARTICLE XXIII
Indemnification

23.1 Landlord or Tenant shall be liable for and hereby agree to pay any and all expenses (including reasonable attorney's fees) incurred by either in connection with any default by either of the terms, covenants, and conditions contained in this Lease, without relief from valuation or appraisal laws.

ARTICLE XXIV
Signage

24.1 Landlord reserves the right to approve the content, color, size, number and placement of exterior signs located on the Leased Premises. All exterior signage should comply with all applicable codes and ordinances.

ARTICLE XXV
Holding Over

25.1 Tenant shall pay Landlord for each day Tenant retains possession of the Leased Premises or part thereof after termination hereof, by lapse of time or otherwise, double the amount of the daily fixed rental, based upon the rent in effect on the last day prior to the date of such termination, as adjusted in accordance with the terms of this Lease, and also pay all damages sustained by Landlord by reason of such retention, including reasonable attorneys' fees, or, if Landlord gives notice to Tenant of Landlord's election thereof, such holding over shall constitute renewal of this Lease for a period from month to month, but if the Landlord does not so elect, acceptance by Landlord of rent after such termination shall not constitute a renewal; this provision shall not be deemed to waive Landlord's right of re-entry or any other right hereunder or at law.

ARTICLE XXVI
Miscellaneous Provisions

26.1 Subordination. The rights and interest of Tenant under this Lease shall be subject and subordinate to any protective land covenants, mortgages or trust deeds that may hereafter be placed upon the Real Estate and the Leased Premises and to any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements and extensions thereof, if the mortgagee or trustee named in said mortgage or trust deed shall elect to subject and subordinate the rights and interest of Tenant under this Lease to the lien of its mortgage or deed of trust and shall agree to recognize this Lease of Tenant in the event of foreclosure if Tenant is not in default. In the event any mortgagee or trustee may elect to give the rights and interest of Tenant under this Lease priority over the lien of its mortgage or deed of trust and upon notification by such mortgagee or trustee to Tenant to the effect, the rights and interests of Tenant under this Lease shall be deemed to be subordinate to, or to have priority over, as the case may be, the lien of said mortgage or trust deed, whether this Lease is dated prior to or subsequent to the date of said mortgage or trust deed. Tenant shall execute and deliver whatever instruments may be reasonably required for such purposes within ten (10) days after written request therefore.

26.2 Estoppel Certificates. At any time and from time to time, Tenant agrees, upon request in writing from Landlord, to execute, acknowledge and deliver to Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect (or that there have been modification, and that the same is in full force and effect as modified and stating the modification) and the dates to which the fixed minimum rental and other charges have been paid.

26.3 Writing Controls. It is agreed that Landlord has not made any statement, promise or agreement or taken upon itself any engagement whatever verbally or in writing in conflict with the terms of this Lease or that in any way modifies, varies, alters, enlarges, or invalidates any of its provisions and that no obligations of Landlord shall be implied in addition to the obligations herein stated.

26.4 Air and Light. This Lease does not grant or guarantee Tenant a continuance of light and air over any property adjoining the Leased Premises.

26.5 No Option. Submission of the Lease for examination or signature by Tenant does not constitute a reservation or option for the Leased Premises. This instrument becomes effective as a Lease only upon execution and delivery by both Landlord and Tenant.

26.6 Entire Agreement. Tenant acknowledges that it has read this entire Lease and understands and agrees to all of the terms and conditions contained herein. Landlord and Tenant acknowledge that the preparation of this Lease has been a joint effort of each party, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one party over the other. This Lease, exhibits, addendums, and modifications hereto, constitute the entire agreement between Landlord and Tenant, and no prior agreement and understanding shall be effective. No provision of this Lease may be amended except by written agreement signed by Landlord and Tenant.

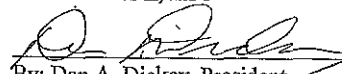
26.7 Option to Purchase. Provided Tenant is not in default of this Lease Agreement, Tenant shall have the option, at its sole discretion, to purchase the Leased Premises from the Landlord anytime during the 5th year of the Lease with sixty (60) days written notice to Landlord. In the event the Tenant exercises this option, the purchase price of the building will be negotiated at the time the option is exercised.

26.8 Option to Renew. Provided Tenant is not in default of this Lease Agreement, Landlord hereby grants tenant a one (1) - 5 year option to renew the lease with 180 days prior written notice. The renewal rate of the base rent of \$4.00/ square foot would be calculated at the fair market rate at the time the notice is provided and any increase would be based on the original base rent of \$4.00/square foot and not including any amortized improvement.

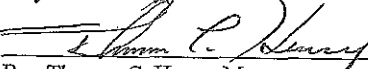
26.9. Tenant Improvements. The Landlord has agreed at Landlord's sole cost and expense to provide the building improvements requested by the City of Fort Wayne to install floor drains, exterior overhead door and exterior secured storage. The total cost of the improvements will amount to a total of \$85,385.00. The improvements are itemized in the scope of work attached to and made a part hereof identified as "Exhibit B" and "Exhibit C". All improvements will be completed prior to the Tenant taking occupancy. The cost of the improvements will be amortized monthly over the sixty (60) month term of the Lease at no interest to the Tenant. This additional monthly cost is itemized in Section 4.1 above. The Landlord is taking sole responsibility for all necessary permitting and completion of work.

IN WITNESS WHEREOF, the parties have executed this Indenture of Lease
this 4th day of April, 20 12.

J.D. Ventures II, LLC


By: Dan A. Dickey, President
Landlord

City of Fort Wayne


By: Thomas C. Henry, Mayor
Tenant

Board of Public Works

By: 

By: 

By: _____


Victoria, Edwards, Clerk

NOTARY

STATE OF Indiana)
) SS:
COUNTY OF Allen)

Before me, the undersigned, a Notary Public in and for said county and state, this 5th day of April, 20 12, personally appeared Dan A. Dickey, President of J.D. Ventures II, LLC, the corporation which executed the foregoing instrument, signed the same and acknowledged to me that they did so sign the same in the name and on behalf of said corporation as such officers, respectively; that the same is their free act and deed as such officers, respectively, and the free and corporate act and deed of said corporation; and that they were duly authorized thereunto by the Board of Directors of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the date above written.

Amanda K. Cross
Notary Public

My commission expires: March 19, 2016

(ABOVE ACKNOWLEDGMENT FOR LANDLORD)

STATE OF INDIANA)
) SS:
COUNTY OF)

Before me, the undersigned, a Notary Public in and for said county and state, this 4th day of April, 2012, personally appeared Thomas C. Henry, with whom I am personally acquainted, and who, upon his oath, acknowledges himself to be the Mayor of the City of Fort Wayne, Indiana, and that he, as such Mayor being authorized so to do, executed the foregoing instrument for purposes contained therein for and on behalf of said City in his capacity as Mayor and who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the date above written.

Margorie Enders
My commission expires: April 13, 2016

(ABOVE ACKNOWLEDGMENT FOR TENANT)

STATE OF Indiana)
) SS:
COUNTY OF Allen)

Before me, the undersigned, a Notary Public in and for said county and state, this 4th day of April, 2012, personally appeared Kumar Menon, John Urbahn, and John Urbahn, with all of whom I am personally acquainted, and who, upon their oaths, acknowledge themselves to be the Chair, Members and Clerk, respectively of the Board of Public Works of the City of Fort Wayne, Indiana, and that they, as such Chair, Members and Clerk, respectively are authorized so to do, executed the foregoing instrument for purposes contained therein for and on behalf of said City in their capacities as Chair, Members and Clerk, respectively and who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed.

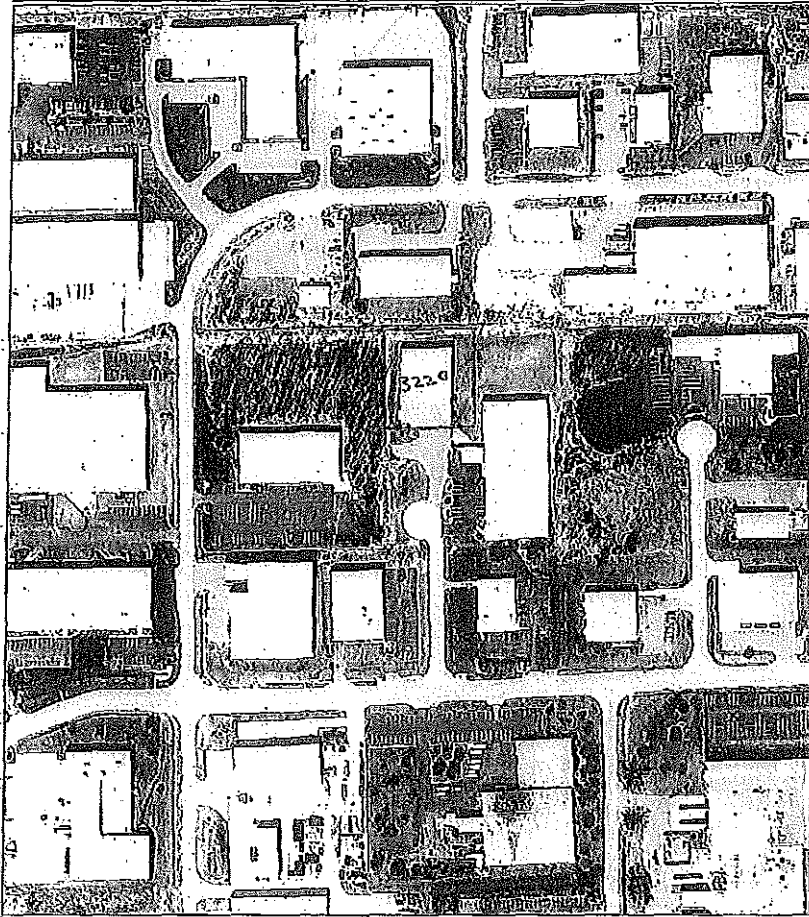
IN WITNESS WHEREOF, I have hereunto subscribed my name and fixed my notarial seal, this 4th day of April, 20 12.

Margorie Enders
My commission expires: April 13, 2016

(ABOVE ACKNOWLEDGMENT FOR THE BOARD OF PUBLIC WORKS)



3220 Ciera Court - Exhibit A



Although this survey is for the purpose of showing the location of the property, it is not a warranty of the accuracy of the information contained herein and is not to be used for any other purpose. The survey is based on the information provided by the owner and is not to be used for any other purpose. The survey is based on the information provided by the owner and is not to be used for any other purpose.



Date: 3/8/2012 1" = 204'

EXHIBIT B

Below is the scope of work and cost associated with the tenant improvements at 3220 Ciera Court:

1)	Surveying	\$ 1,540.00
2)	Civil Engineering drawings and City Plan submissions	\$ 5,500.00
3)	Site:	\$41,525.00
	<u>Site Excavation:</u>	
	• Excavation and removal of existing trees for new drive	
	• Excavation and removal of existing topsoils +/- 8" depth	
	• Excavation of existing asphalt pavement for pavement repair and Drainage improvements, +/-2,140 SF	
	• All cuts and compacted fills to meet proposed elevations	
	• Fine grading of sub grades	
	• Rough grading of all disturbed areas in preparation of seeding work	
	<u>Site utilities:</u>	
	• Installation of +/-20 LF of 12" CMP for culvert pipe extension	
	• Reroute existing down spout and trench drain outlets	
	• Placement and compaction of stone material for pipe backfill	
	<u>Stone and Asphalt Pavement:</u>	
	• Placement and compaction of 10" stone base for new asphalt pavement	
	• Placement and compaction of 3" HAC binder and 1" HAC surface for new drive +/-3,820 SF	
	<u>Concrete Preparation:</u>	
	• Placement and compaction of 6" #53 limestone for new bull pin, +/-2,000 SF	
4)	Supply and install a 6'0" high chain link fence with colored fence fabric slats. Install cantilever barb wire. Install a 14'0" slide gate with rollers and bumper posts	\$ 4,660.00
5)	Remove existing steel siding, wall girts and base plate for the installation of one (1) new 16'0" wide x 14'0" tall insulated overhead door with automatic operator.	\$ 7,100.00
6)	Concrete:	
	• Fine grade existing stone, form, and pour a 42'x 50" bull pen slab, 6" thick w/ 6x6 10/10 w.w.m, saw and seal	\$ 8,680.00
	• Strip forms and clean up	
	• Wintertime concrete included	
7)	Wintertime Blanketing	\$ 900.00
8)	Cut existing interior concrete slab for the installation of two (2) 12" round floor drains with piping. Install one (1) oil/water separator tied into sanitary sewer per code.	\$ 7,580.00
9)	Landscaping	\$ 2,000.00
10)	Permit, supervision, trash hauling and clean-up	\$ 5,900.00
	Total Cost	\$85,385.00

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$$\text{The Hilbert space } \mathcal{H} \text{ is the space of square-integrable functions on } \mathbb{R}^n$$


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2. Remove and insert Mylar as needed to correct color, contrast, and resolution. Remove all other elements and replace with identical one.
3. Remove or adjust exposure time, as per calibration.
4. Remove completed section.

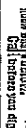
14. **STREET ADDRESS** For route, street, compass direction, city, state, zip code, and telephone number. If the location is not a street address, use the following: **LANDMARK** (e.g., intersection, highway exit, etc.) **LOCALITY** (e.g., city, town, etc.) **STATE** (e.g., CA, TX, etc.) **ZIP CODE** (e.g., 94024, 75201, etc.) **TELEPHONE NUMBER** (e.g., 415/555-1234, etc.)

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SHEET INDEX	
SHEET NO.	SHEET TITLE
C-0	CANTONED MAPS
C-1	916 PENTAGON & TAILOR PLAN
C-2	612 OUTLINE, PROTON SPHERE, & TAILOR PLAN
C-3	612 OUTLINE, PROTON

SITE DESCRIPTION & LAYOUT PLAN
C1.0

PRELIMINARY
NOT FOR
CONSTRUCTION

9335 Auburn Road, Fort Wayne, IN 46825
Ph: (260) 490-1025 Fax: (260) 490-1028
www.engineeringresourcesinc.com

COUNCIL DIGEST SHEET

Enclosed with this introduction form is a tab sheet and related material from the vendor(s) who submitted bid(s). Purchasing Department is providing this information to Council as an overview of this award.

RFPs , BIDS, OTHER PROJECTS

Bid/RFP#/Name of Project	Lease Agreement between City of Fort Wayne (Tenant) and JD Ventures, II, LLC (Landlord) for property located at 3220 Ciera Court
Awarded To	JD Ventures, II, LLC
Amount	\$57,076.92
Conflict of interest on file?	☒ Yes ☐ No
Number of Registrants	N/A
Number of Bidders	N/A
Required Attachments	

EXTENSIONS

Date Last Bid Out	N/A
# Extensions Granted To Date	

SPECIAL PROCUREMENT

Contract #/ID (State, Federal, Piggyback--Authority)	Lease Agreement between City of Fort Wayne and JD Ventures, II, LLC for property located at 3220 Ciera Court
Sole Source/ Compatibility Justification	NA

BID CRITERIA *(Take Buy Indiana requirements into consideration.)*

Most Responsible, Responsive Lowest	No <i>If no, explain below</i>
If not lowest, explain	Negotiated Lease

COUNCIL DIGEST SHEET

COST COMPARISON

<i>Increase/decrease amount from prior years For annual purchase (if available).</i>	Increase of \$57,076.92
--	-------------------------

DESCRIPTION OF PROJECT / NEED

<i>Identify need for project & describe project; attach supporting documents as necessary.</i>	City leasing a building containing 10,000 square feet to store City vehicles

REQUEST FOR PRIOR APPROVAL

<i>Provide justification if prior approval is being requested.</i>	N/A

FUNDING SOURCE

<i>Account Information.</i>	Police Budget



CITY OF FORT WAYNE

THOMAS C. HENRY, MAYOR

April 5, 2012

City Council Members
City of Fort Wayne

RE: City of Fort Wayne/JD Ventures, II, LLC Lease – 3220 Ciera Court

Dear Council Members:

The City negotiated a new lease agreement with JD Ventures, II, LLC to lease a building located at 3220 Ciera Court to store City vehicles.

A copy of the lease is attached.

It is a five year lease with a clause granting one five year option to renew.

The annual lease payment is \$57,076.92.

We are asking for Council to approve the lease and funding of the annual payments during the first five years.

If you have any questions on the above, please feel free to contact me at 427-5402.

Sincerely,

A handwritten signature in cursive script that reads "Daniel A. Brenner".

Daniel A. Brenner
Property Manager

ENGAGE • INNOVATE • PERFORM

CITIZENS SQUARE

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An Equal Opportunity Employer