

Your Committee, to which this proposal was referred, has amended the proposal by substitution to read as follows and recommends its adoption as amended.

CITY COUNTY COUNCIL PROPOSAL NO. 292, 2010
CITY OF INDIANAPOLIS-MARION COUNTY, INDIANA

INTRODUCED: 11/15/2010

REFERRED TO: Economic Development Committee

SPONSOR: Councillor Cardwell

DIGEST: authorizes the issuance of one or more series of Economic Development Revenue Bonds in a maximum aggregate principal amount not to exceed \$98,000,000 for North of South (NOS) Innovation Partners, LLC for the acquisition, construction and equipping of certain projects, additions or improvements in a mixed-use development including residential, retail, commercial office or laboratory space, hotel and conference center, to be located south of Conseco Fieldhouse (Council District 19)

SOURCE:

Initiated by: Economic Development Commission
Drafted by: James Crawford, Esq., bond counsel

LEGAL REQUIREMENTS FOR ADOPTION:

Subject to approval or veto by Mayor

PROPOSED EFFECTIVE DATE:

Adoption and approvals

GENERAL COUNSEL APPROVAL: _____ Date: November 11, 2010

CITY-COUNTY SPECIAL ORDINANCE NO. , 2011

A SPECIAL ORDINANCE authorizing the City of Indianapolis to issue one or more series of its City of Indianapolis, Indiana Economic Development Revenue Bonds, Series 2010C (with such further series or other designation as determined to be necessary, desirable or appropriate), in a maximum aggregate principal amount not to exceed Ninety-Eight Million Dollars (\$98,000,000) (the "Bonds") and approving and authorizing other actions in respect thereto.

WHEREAS, Indiana Code 36-7-11.9 and 12 (collectively, the "Act") declares that the financing and refinancing of economic development facilities constitutes a public purpose; and

WHEREAS, pursuant to the Act, the City of Indianapolis, Indiana (the "City") is authorized to issue revenue bonds and lend the proceeds thereof to a developer for the purpose of financing, reimbursing or refinancing the costs of acquisition, construction, renovation, installation and equipping of economic development facilities in order to foster diversification of economic development and creation or retention of opportunities for gainful employment in or near the City; and

WHEREAS, NOS Innovation Partners, LLC, or one or more subsidiaries, affiliates or joint ventures thereof (collectively, the "Company") desires to finance certain projects, additions or improvements within the City, including all or any portion of: (a) the acquisition (by purchase, lease or other method), design, construction, renovation, improvement and equipping of a new mixed-use development project, including but not limited to one or more buildings comprising approximately 600,000 total square feet, which will provide (i) approximately 320 residential rental units, (ii) approximately 30,000 square feet of retail space, (iii) approximately 10,000 square feet of commercial office and/or laboratory space, and (iv) a new independent hotel consisting of approximately 152 rooms which will be connected to a new conference center consisting of approximately 18,000 square feet; (b) all acquisition, design, construction, demolition, renovation, improvement and equipping projects related to the projects described in clause (a); and (c) any costs related thereto (clauses (a) through and including (c), collectively, the "Project"); and

WHEREAS, the Project will be located (i) in an area of the City southeast of the existing Conseco Fieldhouse, and generally described as being north of Henry Street, east of Delaware Street, west of Alabama, north of Louisiana, west of Virginia and south of the existing CSX railway, (ii) in City-County Council District 19, and (iii) in, or physically connected to, the Consolidated Redevelopment Project Allocation Area (the "Allocation Area") previously created by the Metropolitan Development Commission of Marion County, acting as the Redevelopment Commission of the City; and

WHEREAS, the Company has advised the Indianapolis Economic Development Commission (the "Economic Development Commission") and the City concerning the Project, and requested that the City issue one or more series of its taxable or tax-exempt Economic Development Revenue Bonds, Series 2010C (with such further series or other designation as determined to be necessary, appropriate or desirable), in an aggregate principal amount not to exceed Ninety-Eight Million Dollars (\$98,000,000) (the "Bonds") under the Act and lend all or a portion of the proceeds of such Bonds to the Company for the purpose of financing the Project; and

WHEREAS, the Economic Development Commission has rendered a report concerning the proposed financing or refinancing of economic development facilities for the Company and the Metropolitan Development Commission of Marion County, Indiana, has been given the opportunity to comment thereon; and

WHEREAS, the Economic Development Commission after a public hearing held on November 3, 2010, pursuant to Section 24 of the Act and certain provisions of the Internal Revenue Code of 1986, and the rules promulgated thereunder, as amended (the "Code"), found that the financing of the Project complies with the purposes and provisions of the Act and that such financing will be of benefit to the health and welfare of the City; and

WHEREAS, the Economic Development Commission has determined that the financing will not have an adverse competitive effect or impact on any similar facility or facility of the same kind already constructed or operating in the same market area or in or about Marion County, Indiana (the "County"); and

WHEREAS, pursuant to and in accordance with the Act, the City desires to provide funds necessary to finance all or a portion of the Project by issuing the Bonds; and

WHEREAS, the Act provides that such bonds may be secured by a trust indenture between an issuer and a corporate trustee; and

WHEREAS, the City intends to issue the Bonds consistent with the terms of this Ordinance and pursuant to a Trust Indenture, to be dated the first day of the month in which the Bonds are sold or delivered (or such other date as the officers of the City may hereafter approve) (the "Indenture"), by and between the City and a corporate trustee to be selected by the City (the "Trustee"), in order to obtain funds to lend to the Company for the purpose of financing all or a portion of the Project in accordance with the terms of one or more Loan Agreements, each to be dated the first day of the month in which the Bonds are sold or delivered (or such other date as the officers of the City may hereafter approve) (collectively, the "Loan Agreement"), by and between the City and the Company with respect to Bonds and the Project; and

WHEREAS, pursuant to the Loan Agreement and the note issued thereunder, the Company will make certain representations, warranties and commitments with respect to the Project and will agree to make payments sufficient to pay all principal of, premiums, if any, and interest on the Bonds as the same becomes due and payable, and to pay administrative expenses in connection with the Bonds, to the extent that incremental property tax revenues derived by the Redevelopment Commission (as defined herein) from the Company's site of operations within the Allocation Area and pledged to the repayment of the Bonds is insufficient for such purpose; and

WHEREAS, no member of the City-County Council has any pecuniary interest in any employment, financing agreement or other contract made under the provisions of the Act and related to the Bonds authorized herein, which pecuniary interest has not been fully disclosed to the City-County Council and

no such member has voted on any such matter, all in accordance with the provisions of Indiana Code 36-7-12-16; and

WHEREAS, the Economic Development Commission approved the terms of the following documents in the form presented at such meeting of the Economic Development Commission: (i) a form of the Indenture with respect to the Bonds between the City and a corporate trustee to be selected (including a form of the Bonds), (ii) a form of the Loan Agreement between the City and the Company with respect to the Project and the Bonds (clauses (i) and (ii), collectively, the "Financing Documents"), and (iii) a form of this proposed Ordinance, each of which were incorporated by reference in the Economic Development Commission's Resolution adopted on November 3, 2010, which Resolution has been transmitted hereto; and

WHEREAS, the City expects to pay for certain costs of the Bonds or costs related to the Project (collectively, the "Expenditures") prior to the issuance of the Bonds, and to reimburse the Expenditures with proceeds received by the City upon the issuance of the Bonds; and

WHEREAS, the City-County Council desires to declare its intent to reimburse the Expenditures pursuant to Treas. Reg. §1.150-2 and Indiana Code §5-1-14-6(c); and

WHEREAS, based upon the resolution adopted by the Economic Development Commission pertaining to the Project, the City-County Council hereby finds and determines that the funding approved by the Economic Development Commission for all or a portion of the Project will be of benefit to the health and general welfare of the citizens of the City, complies with the provisions of the Act and the amount necessary to finance all or a portion of the costs of the Project will require the issuance, sale and delivery of one or more series of taxable or tax-exempt economic development revenue bonds in an aggregate combined principal amount not to exceed Ninety-Eight Million Dollars (\$98,000,000); now, therefore:

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. It is hereby found, determined, ratified and confirmed that the financing of the economic development facilities referred to in the Financing Documents consisting of the Project, the issuance and sale of the Bonds, and the loan of the proceeds thereof to the Company for the purpose of financing all or a portion of the Project (i) will result in the diversification of industry, the creation or retention of business opportunities and the creation or retention of opportunities for gainful employment within the jurisdiction of the City, (ii) will serve a public purpose, and will be of benefit to the health and general welfare of the City, (iii) complies with the purposes and provisions of the Act and it is in the public interest that the City take such lawful action as determined to be necessary or desirable to encourage the diversification of industry, the creation or retention of business opportunities, and the creation or retention of opportunities for gainful employment within the jurisdiction of the City, and (iv) will not have a material adverse competitive effect on any similar facilities already constructed or operating in or near Marion County, Indiana.

SECTION 2. The forms of the Financing Documents presented herewith are hereby approved and all such documents shall be kept on file by the Clerk of the City-County Council or City Controller. In compliance with Indiana Code 36-1-5-4, two (2) copies of the Financing Documents are on file in the office of the Clerk of the City-County Council for public inspection.

SECTION 3. The City shall issue its Bonds in one or more series, any series of which may be taxable or tax-exempt for federal income tax purposes, in the maximum aggregate principal amount not to exceed Ninety-Eight Million Dollars (\$98,000,000), with a maximum term not to exceed twenty-five (25) years and with a maximum interest rate not to exceed six and one-half percent (6.5%) per annum, for the purpose of procuring funds to loan to the Company in order to finance all or a portion of the Project, which Bonds will be payable as to principal and interest solely from (i) incremental property tax revenues derived by the Redevelopment Commission from the Company's site of operations within the Allocation Area, (ii) payments made by the Company pursuant to the Loan Agreement and the note issued thereunder, (iii) a project reserve account funded by the Company, and (iv) incremental property taxes derived from the Allocation Area (but only to the extent revenues identified in clauses (i), (ii) and (iii) are insufficient for such purpose), and upon such terms and conditions as otherwise provided in the Financing Documents

and this Ordinance. The Bonds shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the City.

SECTION 4. The Mayor and City Controller are authorized and directed to sell such Bonds to the purchaser or purchasers thereof at a price not less than 98.5% of the aggregate principal amount thereof plus accrued interest, if any, at a rate of interest not to exceed six and one-half percent (6.5%) per annum, and with a final maturity no later than twenty-five (25) years from the date of the issuance of any series of Bonds. A bond purchase agreement or a qualified entity purchase agreement in form and substance acceptable to the Mayor and the Controller (the "Purchase Agreement"), be, and hereby is, approved, and the Mayor and the Controller are hereby authorized and directed to execute and deliver the Purchase Agreement in form and substance acceptable to them and consistent with the terms and conditions set forth in this Ordinance. If necessary or desirable in connection with the sale of the Bonds, the Mayor, the Controller and any other officer of the City are authorized to enter into a continuing disclosure undertaking agreement, in compliance with Rule 15c2-12 of the Securities and Exchange Commission, which will be in such a form as may be deemed necessary, appropriate or desirable by the Mayor, the Controller and any other officer of the City, with such to be conclusively evidenced by their execution thereof.

SECTION 5. The Mayor, the Controller and any other officer of the City are authorized and directed to execute the Financing Documents, such other documents approved or authorized herein and any other document which may be necessary, appropriate or desirable to consummate the transaction contemplated by the Financing Documents and this Ordinance, and their execution is hereby confirmed on behalf of the City. The signatures of the Mayor, the Controller and any other officer of the City on the Bonds which may be necessary or desirable to consummate the transaction, and their execution is hereby confirmed on behalf of the City. The signatures of the Mayor, the Controller and any other officer of the City on the Bonds may be facsimile signatures. The Mayor, the Controller and any other officer of the City are authorized to arrange for the delivery of such Bonds to the purchaser, payment for which will be made in the manner set forth in the Financing Documents. The Mayor, the Controller and any other officer of the City may, by their execution of the Financing Documents requiring their signatures and imprinting of their facsimile signatures thereon, approve any and all such changes therein and also in those Financing Documents which do not require the signature of the Mayor, the Controller or any other officer of the City without further approval of this City-County Council or the Economic Development Commission if such changes do not affect terms set forth in Sections 27(a)(1) through and including (a)(10) of the Act.

SECTION 6. The provisions of this Ordinance and the Financing Documents shall constitute a contract binding between the City and the holder or holders of the Bonds and after the issuance of said Bonds, this Ordinance shall not be repealed or amended in any respect which would adversely affect the right of such holder or holders so long as said Bonds or the interest thereon remains unpaid.

SECTION 7. Subject to the provisions of Sections 5 and 13 of this Ordinance, if necessary or desirable, a Preliminary Official Statement of the City relating to the Bonds (the "Preliminary Official Statement"), in a form acceptable to the Mayor, is hereby (a) authorized and approved, together with such changes in form and substance as may be deemed necessary or appropriate by the Mayor pursuant to Sections 5 and 13 of this Ordinance, (b) authorized and approved, as the same may be appropriately confirmed, modified and amended pursuant hereto, for distribution as the Preliminary Official Statement of the City, (c) authorized to be deemed and determined by the Mayor on behalf of the City, as of its date, to constitute the "final" official statement of the City with respect to the Bonds to be offered thereby, subject to completion as permitted by and otherwise pursuant to the provisions of Rule 15c2-12 of the Securities and Exchange Commission (the "SEC Rule"), and (d) authorized and approved, consistent with the provisions of any bond purchase agreement and the SEC Rule, to be placed into final form and distributed and delivered to purchasers and potential purchasers of the Bonds offered thereby as the final official statement of the City, as of the date thereof, with respect to the Bonds (the "Official Statement").

SECTION 8. Subject to the obligations of the Company set forth in the Loan Agreement and/or the tax representation certificate or other agreements of the Company to be executed upon the issuance of the Bonds, the City will use its best efforts to restrict the use of the proceeds of the Bonds in such a manner and to expectations at the time the Bonds are delivered to the purchasers thereof, so that they will not constitute "arbitrage bonds" under Section 148 of the Code and the regulations promulgated thereunder, or to preserve any other desired tax status of any series of Bonds under the Code, if necessary. The

Mayor, the Controller and the Clerk, or any other officer having responsibility with respect to the issuance of the Bonds, are authorized and directed, alone or in conjunction with any of the foregoing, or with any other officer, employee, consultant or agent of the City, to deliver a certificate for inclusion in the transcript of proceedings for the Bonds, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the Bond proceeds as of the date of issuance thereof.

SECTION 9. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this ordinance, the Financing Documents or under any judgment obtained against the City, including without limitation its Economic Development Commission or Redevelopment Commission, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, under or independent of the Loan Agreement, shall be had against any member, director, or officer or attorney, as such, past, present, or future, of the City, including without limitation its Economic Development Commission or its Redevelopment Commission, either directly or through the City, or otherwise, for the payment for or to the City or any receiver thereof or for or to any holder of the Bonds secured thereby, or otherwise, of any sum that may remain due and unpaid by the City upon any of such Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, director, or officer or attorney, as such, to respond by reason of any act or omission on his or her part or otherwise for, directly or indirectly, the payment for or to the City or any receiver thereof, or for or to any owner or holder of the Bonds, or otherwise, of any sum that may remain due and unpaid upon the Bonds hereby secured or any at them, shall be expressly waived and released as a condition of and consideration for the execution and delivery of the Loan Agreement and the issuance, sale and delivery of the Bonds.

SECTION 10. The Company will indemnify and hold the City, including its officials, attorneys, employees and agents, free and harmless from any loss, claim, damage, tax, penalty, liability, disbursement, litigation expenses, attorneys' fees and expenses and other court costs arising out of, or in any way relating to, the execution or performance of the Financing Documents or other documents in connection therewith or any other cause whatsoever pertaining to the Project or the Bonds, including the issuance and sale of the Bonds or failure to issue or sell the Bonds or other actions taken under the Financing Documents or other documents in connection therewith or any other cause whatsoever pertaining to the Project or the Bonds arising out of a failure or breach of performance by the Company, all as further described in the Loan Agreement, except in any case as a result of the intentional misrepresentation or willful misconduct of the City or its agents.

SECTION 11. The City-County Council does hereby acknowledge that the Bond Bank may issue one or more series of bonds (the "Bond Bank Bonds") for the purpose of providing funds to purchase the Bonds, and that the Bond Bank Bonds may be supported by one or more debt service reserve funds that will be subject to the provisions of IC 5-1.4-5-4 and Special Ordinance 67,85 of this City-County Council.

SECTION 12. [RESERVED]

SECTION 13. The Mayor, the Controller, the Clerk and any other officer of the City are each hereby authorized and directed to execute, attest and deliver such further instruments and documents and to take such further actions, in the name and on behalf of the City, as in their judgment shall be necessary, desirable or appropriate in order to fully consummate the transaction and to effect the purposes of this Ordinance, and any such instruments or documents heretofore executed and delivered and any such actions heretofore taken, be, and hereby are, ratified and approved. The Mayor or his designee is hereby authorized to enter into one or more project agreements with the Company, on terms and conditions acceptable to the Mayor, together with any all changes as may be necessary, desirable or appropriate, which shall be evidenced by his execution thereof. Provided, however, that the financing terms of the project agreement shall include the terms in the draft submitted to the council and shall not be amended to change those terms in any substantial manner that would increase city financial commitments to the Project.

SECTION 14. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 15. 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.

SECTION 16. It is hereby determined that all formal actions of the City-County Council relating to the adoption of this Ordinance were taken in one or more open meetings of the Council, that all deliberations of the City-County Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, and that all such meetings were convened, held and conducted in compliance with applicable legal requirements, including Indiana Code 5-14-1.5, as amended.

SECTION 17. The City-County Council hereby declares its official intent, to the extent permitted by law, to issue the Bonds in one or more series or issues, not to exceed the maximum aggregate principal amount authorized herein, and to reimburse costs of the Project consisting of the Expenditures from proceeds of the sale of such Bonds.

SECTION 18. This Ordinance shall be in full force and effect upon adoption and compliance with Indiana Code 36-3-4-14.

The foregoing was passed by the City-County Council this _____ day of _____, 2010, at _____ p.m.

ATTEST:

Ryan Vaughn
President, City-County Council

Melissa Thompson
Clerk, City-County Council

Presented by me to the Mayor this _____ day of _____, 2010, at 10:00 a.m.

Melissa Thompson
Clerk, City-County Council

Approved and signed by me this _____ day of _____, 2010.

Gregory A. Ballard, Mayor