

INTRODUCED: 07/08/2013

REFERRED TO: Metropolitan and Economic Development Committee

SPONSOR: Councillors Simpson and Osili

DIGEST: approves the final bond ordinance authorizing the issuance of up to \$33,500,000 in Indiana Economic Development Tax Increment Revenue Bonds to assist in the financing of the Massachusetts Avenue Fire Station Redevelopment Project (Districts 9 and 15)

SOURCE:

Initiated by: Economic Development Commission

Drafted by: James T. Crawford, Jr., Bond Counsel

LEGAL REQUIREMENTS FOR ADOPTION:

Subject to approval or veto by Mayor

PROPOSED EFFECTIVE DATE:

Adoption and approvals

GENERAL COUNSEL APPROVAL: _____

Date: July 3, 2013

CITY-COUNTY SPECIAL ORDINANCE NO. , 2013

A SPECIAL ORDINANCE authorizing the City of Indianapolis to issue one or more series of its City of Indianapolis, Indiana Economic Development Tax Increment Revenue Bonds, Series 2013 (with such further series or other designation as determined to be necessary, desirable or appropriate), in a maximum aggregate principal amount not to exceed Thirty-Three Million Five Hundred Thousand Dollars (\$33,500,000) (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 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, J.C. Hart Company, Inc., (ii) Paul Kite Company, (iii) 500 Mass LLC, (iv) Shiel Sexton Company, Inc., (v) RC7HQ LLC and/or (vi) one or more subsidiaries, affiliates or joint ventures thereof (collectively, the "Companies") desire 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) of the property upon which the existing Indianapolis Fire Department (the "IFD") Headquarters, the existing Indianapolis Fire Station Number 7 (the "Fire Station 7") and the existing Firefighters Credit Union (the "Credit Union") are all located in a portion of the downtown area of the City along Massachusetts Avenue and the construction, renovation, improvement and equipping thereon of a new mixed-use development project, consisting of one or more buildings which will provide approximately 235 apartments and ground-floor retail and will include substantial infrastructure improvements, including, but not limited to, one or more parking garage facilities, street relocation and reconstruction, and utility relocation and expansion, all to accommodate and support such facilities and other facilities related thereto (clause (a), collectively, the "Mass Avenue Development Project"); (b) the acquisition (by purchase, lease or other method) of the real property upon which the existing headquarters of the American Red Cross of Greater Indianapolis (the "Red Cross") is located in a portion of the downtown area of the City near the intersection of 10th Street, Ft. Wayne Avenue and East Street and the relocation, construction, renovation, improvement and equipping thereon of facilities for all or a portion of (i) the new IFD Headquarters, (ii) the new Fire Station 7, and/or (iii) the new Credit Union, as well as substantial infrastructure improvements, including but not

limited to any necessary street relocation and reconstruction and/or utility relocation and expansion, to accommodate and support such facilities and other facilities related thereto, all of which will replace the existing IFD Headquarters, the existing Fire Station 7 and the existing Credit Union which will be displaced by the Mass Avenue Development Project (clause (b), collectively, the "Public Infrastructure Relocation Project"); (c) the acquisition (by purchase, lease or other method) of certain real property along Meridian Street and the relocation, construction, renovation, improvement and equipping thereon of a new headquarters for the Red Cross to replace the existing Red Cross headquarters which will be displaced by the Mass Avenue Development Project and the Public Infrastructure Relocation Project (clause (c), collectively, the "Red Cross Relocation Project"); and (d) all acquisition, construction, demolition, renovation, improvement and equipping projects related to the projects described in clauses (a) through and including (c), together with any costs related thereto (clauses (a) through and including (d), collectively, the "Projects"); and

WHEREAS, (i) the Mass Avenue Development Project will be located in an area of the City upon which the existing IFD Headquarters, the existing Fire Station 7 and the existing Credit Union are all currently located, that is generally described as north of Massachusetts Avenue, east of North New Jersey Street and south of East North Street, (ii) the Public Infrastructure Relocation Project will be located in an area of the City upon which the existing Red Cross headquarters is currently located, that is generally described as south of the intersection of 10th Street, Ft. Wayne Avenue and East Street, (iii) the Red Cross Relocation Project will be located at or near 1440 North Meridian Street and/or 1510 North Meridian Street, Indianapolis, Indiana 46202, (iv) all of the Projects will be located in City-County Council Districts 9 and 15, and (v) each of the Projects are, or will be, located in or physically connected to the Consolidated Redevelopment Allocation Area (the "Allocation Area") previously created by the Metropolitan Development Commission of Marion County, Indiana (the "Metropolitan Development Commission"), acting as the Redevelopment Commission of the City; and

WHEREAS, the Companies have advised the Indianapolis Economic Development Commission (the "Economic Development Commission") and the City concerning the Projects, and have requested that the City issue one or more series of its taxable or tax-exempt Economic Development Tax Increment Revenue Bonds, Series 2013 (with such further series or other designation as determined to be necessary, desirable or appropriate), in an aggregate principal amount not to exceed Thirty-Three Million Five Hundred Thousand Dollars (\$33,500,000) (the "Bonds") under the Act and make the proceeds of such Bonds available to one or more of the Companies for the purpose of financing all or a portion of the Projects; and

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

WHEREAS, following a public hearing held on June 12, 2013, pursuant to Section 24 of the Act, the Economic Development Commission found that the financing of the Projects 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 of facility of the same kind already constructed or operating in the same market area or in or about Marion County, Indiana; 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 Projects 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 necessary to provide for the financing of all or a portion of the Projects in accordance with the terms of one or more Financing 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 "Financing Agreements"), by and between the City and one or more of the Companies with respect to Bonds and the Projects; and

WHEREAS, pursuant to the Financing Agreements, one or more of the Companies will make certain representations, warranties and commitments with respect to the Projects which will permit the City to derive incremental property tax revenues from the Companies' site of operations within the Allocation Area which, together with additional incremental property tax revenues derived from the Allocation Area, if necessary, will be sufficient to pay principal of and interest on the Bonds as the same becomes due and payable, and to pay administrative expenses in connection with the Bonds, as further described herein; 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, there has been submitted to the Economic Development Commission for its approval the forms of the Bonds, the Indenture and the Financing Agreements (collectively, the "Financing Documents"), and a form of this proposed Ordinance, which were incorporated by reference in the Economic Development Commission's Resolution adopted on June 12, 2013, which Resolution has been transmitted hereto; and

WHEREAS, the City expects to pay for certain costs of the Bonds or costs related to the Projects (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 Projects, the City-County Council hereby finds and determines that the funding approved by the Economic Development Commission for all or a portion of the Projects 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 Projects will require the issuance, sale and delivery of one or more series of economic development tax increment revenue bonds in an aggregate combined principal amount not to exceed Thirty-Three Million Five Hundred Thousand Dollars (\$33,500,000); 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 Projects, the issuance and sale of the Bonds, and the use of the net proceeds thereof by one or more of the Companies to finance all or a portion of the Projects will: (i) 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) serve a public purpose, and will be of benefit to the health and general welfare of the City; (iii) comply 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) 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 is authorized to 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 Thirty-Three Million Five Hundred Thousand Dollars (\$33,500,000), with a maximum term not to exceed twenty-five (25) years and with a maximum interest rate not to exceed five and one-half percent (5.5%) per annum, for the purpose of procuring funds to finance all or a portion of the Projects, which Bonds shall be payable as to principal and interest solely from incremental property taxes derived from the Allocation Area, upon such terms and conditions as otherwise provided in the Financing Documents and this Ordinance. Pending the issuance of the Bonds, the City may issue, if necessary, one or more series of bond anticipation notes (the "BANs"), with a maximum aggregate principal amount not to exceed Thirty-Three Million Five Hundred Thousand Dollars (\$33,500,000), with a maximum term of any series of BANs not to exceed two (2) years after the date of delivery thereof, subject to renewal up to the five (5) years from the date of delivery of the initial BANs, and with a maximum interest rate not to exceed five and one-half percent (5.5%) per annum, all for the purpose of procuring interim financing to pay all or a portion of the Projects, which BANs shall be payable as to principal and interest solely from the proceeds of the Bonds or from incremental property taxes derived from the Allocation Area, upon such terms and conditions as otherwise provided in the Financing Documents and this Ordinance. Neither the Bonds nor the BANs shall ever 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 five and one-half percent (5.5%) 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. One or more bond purchase agreements and/or one or more qualified entity purchase agreements, each in form and substance acceptable to the Mayor and the Controller (collectively, the "Purchase Agreements"), be, and hereby are, approved, and the Mayor and the Controller are hereby authorized and directed to execute and deliver the Purchase Agreements 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 one or more continuing disclosure undertaking agreements, 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 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 one or more of the Companies set forth in the Financing Agreements and/or the certificates or agreements of such Companies 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 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 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 Financing Agreements, 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, 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 Financing Agreements and the issuance, sale and delivery of the Bonds.

SECTION 10. 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 11. 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 12. 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 13. The Mayor, the Controller, the Clerk and any other officer of the City are hereby authorized and directed, in the name and on behalf of the City, to execute, attest and deliver such further instruments and documents, and to take such further actions, in the name of the City as in their judgment shall be necessary or advisable in order fully to consummate the transactions described herein and carry out the purposes of this Ordinance, and any such 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 one or more of the Companies, 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.

SECTION 14. The City-County Council does hereby acknowledge that the Bonds may be purchased with the proceeds of bonds to be issued by The Indianapolis Local Public Improvement Bond Bank (the "Bond Bank 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 15. 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 Projects consisting of the Expenditures from proceeds of the sale of such Bonds.

SECTION 16. This ordinance shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

The foregoing was passed by the City-County Council this _____ day of _____, 2013, at _____ p.m.

ATTEST:

Maggie A. Lewis
President, City-County Council

NaTrina DeBow
Clerk, City-County Council

Presented by me to the Mayor this _____ day of _____, 2013, at 10:00 a.m.

NaTrina DeBow
Clerk, City-County Council

Approved and signed by me this _____ day of _____, 2013.

Gregory A. Ballard, Mayor