

INTRODUCED: 03/17/2014

REFERRED TO: Metropolitan and Economic Development Committee

SPONSOR: Councillor Gooden

DIGEST: authorizes the issuance of economic development tax increment revenue bonds not to exceed \$7,750,000 to assist in the financing of the Broad Ripple Associates Canal Pointe Project (District 3) and the issuance of up to \$1,500,000 in redevelopment district bonds to fund certain improvements to Tarkington Park (District 8)

SOURCE:

Initiated by: Indianapolis 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: March 13, 2014

CITY-COUNTY SPECIAL ORDINANCE NO. , 2014

A SPECIAL ORDINANCE authorizing the City of Indianapolis, Indiana, to issue one or more series of its City of Indianapolis, Indiana, Economic Development Tax Increment Revenue Bonds, Series 2014 (with such further series or other designation as determined to be necessary, desirable or appropriate), in a maximum aggregate principal amount not to exceed Seven Million Seven Hundred Fifty Thousand Dollars (\$7,750,000), approving the issuance of special taxing district bonds of the Redevelopment District of the City of Indianapolis, Indiana (the "District"), to be issued in one or more series or issues, for the purpose of providing funds to pay the costs of the Tarkington Park Project (as defined herein) 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, Broad Ripple Associates, LLC, and/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) of the property upon which an abandoned gasoline service station facility and a deteriorating apartment complex are currently located and the design, construction, renovation, improvement and/or equipping thereon of (i) a new mixed-use development building, consisting of (A) approximately 35,000 square feet of retail space to be used for purposes of a specialty grocery store, (B) approximately 155,500 square feet of residential space containing approximately 119 apartment units, and (C) a parking garage facility containing approximately 350 spaces, and (ii) a public canal walkway and pedestrian plaza; (b) all acquisition, construction, demolition, renovation, improvement, excavation, utility relocation and/or equipping projects related to the projects described in clause (a), including, but not limited to certain streetscape and landscape projects and improvements; and (c) any costs related thereto (clauses (a) through and including (c), collectively, the "Broad Ripple Project"); and

WHEREAS, the Broad Ripple Project will be located at approximately 6349 North College Avenue, Indianapolis, Indiana, which is in City-County Council District 3, and is, or will be, located in or physically connected to an allocation area, known as the North Midtown 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 Company has advised the Indianapolis Economic Development Commission (the "Economic Development Commission") and the City concerning the Broad Ripple Project, and has requested that the City issue one or more series of its taxable or tax-exempt Economic Development Tax Increment Revenue Bonds, Series 2014 (with such further or different series designation as may be necessary, desirable or appropriate, including such series designation to indicate the year in which the bonds are issued)(the "City Bonds"), in an aggregate principal amount not to exceed Seven Million Seven Hundred Fifty Thousand Dollars (\$7,750,000), for the purpose of providing funds for (i) paying all or a portion of the costs of the Broad Ripple Project by making a portion of the proceeds of the City Bonds available to the Company, (ii) paying capitalized interest on the City Bonds (if necessary), (iii) funding a debt service reserve fund (if necessary), and (iv) paying all incidental expenses incurred on account of the issuance of the City Bonds and acquiring any credit enhancement with respect thereto (if necessary); 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 has been given the opportunity to comment thereon; and

WHEREAS, pursuant to Section 24 of the Act, following a public hearing held on February 26, 2014, the Economic Development Commission found that the financing of the Broad Ripple 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; 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 Broad Ripple Project by issuing the City Bonds; and

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

WHEREAS, the City intends to issue the City 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 City 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 Broad Ripple Project in accordance with the terms of one or more Financing Agreement, each to be dated the first day of the month in which the City Bonds are sold or delivered (or such other date as the officers of the City may hereafter approve) (collectively, the "Financing Agreement"), by and between the City and the Company with respect to the City Bonds and the Broad Ripple Project; and

WHEREAS, pursuant to the Financing Agreement, the Company will make certain representations, warranties and commitments with respect to the Broad Ripple Project and the use of the proceeds of the City Bonds to be provided to the Company in accordance with the terms thereof; 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 City 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 City Bonds, the Indenture and the Financing Agreement (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 February 26, 2014, which Resolution has been transmitted hereto; and

WHEREAS, the City expects to pay for certain costs of the City Bonds or costs related to the Broad Ripple Project (collectively, the "Expenditures") prior to the issuance of the City Bonds, and to reimburse the Expenditures with proceeds received by the City upon the issuance of the City 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 Broad Ripple 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 Broad Ripple 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 Broad Ripple Project, together with incidental expenses incurred in connection therewith, 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 Seven Million Seven Hundred Fifty Thousand Dollars (\$7,750,000); and

WHEREAS, the Metropolitan Development Commission, being the governing body of the Redevelopment District of the City of Indianapolis, Indiana (the "District"), has adopted a final bond resolution (the "Bond Resolution"), authorizing the issuance of special taxing district bonds of the District, in one or more series or issues, in an aggregate principal amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000) (the "District Bonds"), for the purpose of providing funds to: (a) pay a portion of the costs of the demolition, design, construction, renovation, improvement, installation, upgrading and/or equipping of certain public infrastructure and/or other local public improvements to the existing Tarkington Park and its related facilities, including without limitation, asphalt paving, upgrade of site utilities, sidewalks, streetscapes and landscaping projects, interactive fountain system, basketball courts, construction of shelters and café building, lighting and security improvements, installation of back racks and miscellaneous park facility improvements, (ii) all acquisition, construction, demolition, remediation, renovation, improvement, excavation, utility relocation, upgrading and equipping projects related to the items described in clause (i), and (iii) any costs related thereto; (b) fund a debt service reserve account or pay the premium on a debt service reserve fund surety policy, if necessary; (c) pay capitalized interest on the District Bonds, if necessary; and (d) pay costs and expenses incurred in connection with or on account of the issuance of the District Bonds, including paying the premium for a municipal bond insurance policy, if necessary (clauses (a) through and including (d), collectively, the "Tarkington Park Project"); and

WHEREAS, the City Bonds and the District Bonds will be payable from the incremental property tax revenues derived from the Allocation Area, and will issued pursuant to a common plan of finance; and

WHEREAS, the Metropolitan Development Commission has requested the approval of the City-County Council for the issuance of the District Bonds pursuant to Indiana Code 6-1.1-17-20.5 and Indiana Code 36-3-5-8, and the City-County Council now finds that the issuance of the District Bonds should be approved; 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 Broad Ripple Project, the issuance and sale of the City Bonds, and the use of the net proceeds thereof by the Company to finance all or a portion of the Broad Ripple Project, 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 (the "Clerk") or the Controller of the City (the "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 for public inspection.

SECTION 3. The City is authorized to issue the City 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 Seven Million Seven Hundred Fifty Thousand Dollars (\$7,750,000), 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 (i) pay all or a portion of the costs of the Broad Ripple Project by making a portion of the proceeds of the City Bonds available to the Company, (ii) pay capitalized interest on the City Bonds (if necessary), (iii) fund a debt service reserve fund (if necessary), and (iv) pay all incidental expenses incurred on account of the issuance of the City Bonds and acquiring any credit enhancement with respect thereto (if necessary). The City 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 City 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 Seven Million Seven Hundred Fifty Thousand Dollars (\$7,750,000), 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 date which is five (5) years from the date of delivery of the initial BANs, and with a maximum interest rate not to exceed six and one-half percent (6.5%) per annum, all for the purpose of procuring interim financing to pay all or a portion of the Broad Ripple Project, together with any incidental expenses related thereto or incurred on account of the issuance of the BANs, which BANs shall be payable as to principal and interest solely from the proceeds of the City Bonds or from any legally available 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 City 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 the Controller are authorized and directed to sell the City 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 date no later than twenty-five (25) years from the date of the issuance of any series of the City 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"), are hereby authorized and 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 City 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 and the Clerk are authorized and directed to execute the Financing Documents, and the Mayor, the Controller, the Clerk and any other officer of the City are authorized and directed to execute 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 and the Clerk on the City 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 and the Clerk on the City Bonds may be facsimile signatures. The Mayor, the Clerk, the Controller and any other officer of the City are authorized to arrange for the delivery of the City Bonds to the purchaser, payment for which will be made in the manner set forth in the Financing Documents. The Mayor and the Clerk 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 or the Clerk 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 City Bonds and after the issuance of said City 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 City 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 City 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 City 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 City Bonds offered thereby as the final official statement of the City, as of the date thereof, with respect to the City Bonds (the "Official Statement").

SECTION 8. Subject to the obligations of the Company set forth in the Financing Agreement and/or the certificates or agreements of such Company to be executed upon the issuance of the City Bonds, if any of the City Bonds are issued on a tax-exempt basis for purposes of federal income taxation, the City will use its best efforts to restrict the use of the proceeds of the City Bonds in such a manner and to expectations at the time the City 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. The Mayor, the Controller and the Clerk, or any other officer having responsibility with respect to the issuance of the City 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 City Bonds, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the City 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 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, 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 City Bonds secured thereby, or otherwise, of any sum that may remain due and unpaid by the City upon any of the City 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 City Bonds, or otherwise, of any sum that may remain due and unpaid upon the City 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 Agreement and the issuance, sale and delivery of the City 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 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.

SECTION 14. The City-County Council does hereby approve the issuance of the District Bonds, in one or more series or issues, for the purpose of providing funds to pay the costs of the Tarkington Park Project, all upon the following conditions, notwithstanding anything in the Bond Resolution to the contrary: (a) the maximum aggregate principal amount of the District Bonds shall not exceed One Million Five Hundred Thousand Dollars (\$1,500,000); (b) the maximum interest rate on the District Bonds shall not exceed six and one-half percent (6.50%) per annum; and (c) the District Bonds shall have a final maturity date no later than twenty-five (25) years from the date of the issuance of any series of District Bonds. This ordinance shall constitute the resolution of the City-County Council approving the issuance of the District Bonds in accordance with Indiana Code 6-1.1-17-20.5 and Indiana Code 36-3-5-8(b).

SECTION 15. The City-County Council does hereby acknowledge that the City Bonds and/or the District Bonds may be purchased with the proceeds of one or more series of bonds to be issued by The Indianapolis Local Public Improvement Bond Bank (collectively, 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 16. The City-County Council hereby declares its official intent, to the extent permitted by law, to issue the City Bonds in one or more series or issues, not to exceed the maximum aggregate principal amount authorized herein, and to reimburse costs of the Broad Ripple Project consisting of the Expenditures from proceeds of the sale of the City Bonds.

SECTION 17. 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 _____, 2014, 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 _____, 2014, at 10:00 a.m.

NaTrina DeBow
Clerk, City-County Council

Approved and signed by me this _____ day of _____, 2014.

Gregory A. Ballard, Mayor