

CITY-COUNTY SPECIAL ORDINANCE NO. 1, 2021
Proposal No. 56, 2021

A SPECIAL ORDINANCE authorizing the City of Indianapolis to issue one or more series of its City of Indianapolis, Indiana Economic Development Revenue Refunding Bonds, Series 2021 (CityWay 1 Project) (with such further series or other designation as determined to be necessary, desirable or appropriate), in a maximum aggregate principal amount not to exceed Eighty-Two Million Five Hundred Thousand Dollars (\$82,500,000) (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 and lend the proceeds thereof to a developer or a user 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, pursuant to Special Ordinance No. 2, 2011, adopted by the City-County Council of the City of Indianapolis and of Marion County, Indiana (the "City-County Council") on February 28, 2011, and a Trust Indenture, dated as of March 1, 2011 (the "Original Indenture"), between the City and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), the City previously issued its Economic Development Revenue Bonds, Series 2011 A (North of South Project) (the "2011A Bonds"), dated April 7, 2011, in the original aggregate principal amount of \$81,640,000, currently outstanding in the aggregate principal amount of \$78,915,000 and with a final maturity date of February 1, 2036, and loaned the proceeds thereof to NOS Innovation Partners, LLC (the "Borrower"), which is a subsidiary, affiliate or joint venture of Buckingham Property Holdings, LLC, pursuant to the Loan Agreement, dated as of March 1, 2011, between the City and the Borrower (the "Original Loan Agreement"), for the purpose of financing: (a) certain projects, additions or improvements within the City, commonly referred to as the initial phase of the "CityWay project", including all or any portion of: (1) the acquisition, design, construction, renovation, improvement and equipping of a mixed-use development project, including but not limited to one or more buildings comprising approximately 600,000 total square feet, which provided (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) an independent hotel (commonly known as The Alexander) consisting of approximately 152 rooms which are connected to a conference center consisting of approximately 18,000 square feet; (2) all acquisition, design, construction, demolition, renovation, improvement and equipping projects related to the projects described in clause (1); and (3) any costs related thereto (clauses (a)(1) through and including (a)(3), collectively, the "CityWay 1 Project"); (b) capitalized interest on the 2011A Bonds; (c) the premium for a debt service reserve fund credit facility; and (d) costs of issuance of the 2011A Bonds; and

WHEREAS, pursuant to Section 30 of the Act, if the City-County Council finds that a refunding of outstanding bonds issued under the Act would be of benefit to the health and general welfare of the City and would comply with the Act, the City-County Council may authorize the issuance of refunding bonds in accordance with the Act and Indiana Code 5-1-5 to refund those outstanding obligations; and

WHEREAS, in light of currently prevailing low market interest rates and the material adverse local, regional, national and global economic and social impacts caused by the COVID-19 pandemic, including, in particular, the negative impact upon the hospitality industry, the Borrower has requested that the City-County Council issue one or more series of its taxable or tax-exempt Economic Development Revenue Refunding Bonds, Series 2021 (CityWay 1 Project) (with such further series or other designation as determined to be necessary, desirable or appropriate) (collectively, the "Bonds"), in an aggregate principal amount not to exceed Eighty-Two Million Five Hundred Thousand Dollars (\$82,500,000) under the Act and lend all or a portion of the proceeds of such Bonds to the Borrower for the purpose of refunding the outstanding 2011A Bonds and paying all incidental expenses incurred in connection therewith and paying the costs of selling and issuing the Bonds; and

WHEREAS, the CityWay 1 Project is located (i) in an area of the City southeast of the existing Bankers Life 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 "Consolidated Allocation Area") previously created by the Metropolitan Development

Commission of Marion County, acting as the Redevelopment Commission of the City (the "Redevelopment Commission"); and

WHEREAS, pursuant to and in accordance with the Act, the City desires to provide funds necessary to refund the 2011A Bonds by issuing the Bonds, thereby assisting the Borrower in refinancing the CityWay 1 Project; 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 the Original Indenture, as supplemented and amended by the First Supplemental 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 "Supplemental Indenture" and, together with the Original Indenture, the "Indenture"), by and between the City and the Trustee, in order to obtain funds to lend to the Borrower for the purpose of refinancing the CityWay 1 Project in accordance with the terms of the Amended and Restated Loan Agreement, which amends and restates the terms of the Original Loan Agreement, 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 "Loan Agreement"), by and between the City and the Borrower with respect to Bonds and the CityWay 1 Project; and

WHEREAS, pursuant to the Loan Agreement and the note to be issued thereunder, the Borrower will make certain representations, warranties and commitments with respect to the CityWay 1 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, together with administrative expenses in connection with the Bonds (collectively, the "Loan Payments"); 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; 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 refinancing of the economic development facilities referred to in the Indenture and the Loan Agreement (collectively, the "Financing Documents") consisting of the CityWay 1 Project, the issuance and sale of the Bonds, and the loan of the proceeds thereof to the Borrower for the purpose of refunding the 2011A Bonds, thereby refinancing the CityWay 1 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 (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 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 Eighty-Two Million Five Hundred Thousand Dollars (\$82,500,000), with a final maturity date no later than February 1, 2036 and with a maximum interest rate not to exceed six and one-half percent (6.50%) per annum, for the purpose of procuring funds to loan to the Borrower in order to (a) effect a current refunding of the 2011A Bonds as authorized herein, thereby refinancing all or a portion of the CityWay 1

Project, (b) fund a debt service reserve fund (including, if determined to be advantageous by the Controller, purchasing a debt service reserve fund surety policy), and (c) pay all incidental expenses on account of the issuance of the Bonds and acquiring any credit enhancement with respect thereto (if deemed necessary or advantageous as determined by the Controller). The Bonds shall be issued in fully registered form in denominations of \$5,000 and any integral multiple in excess thereof or as otherwise provided in the Indenture, or, upon the advice of bond counsel, denominations of \$100,000, plus integral multiples of \$1 in excess thereof. The Bonds may be subject to redemption at such times and upon such terms as determined by the Controller at the time of sale of the Bonds. The Bonds shall be special and limited obligations of the City, payable as to principal and interest solely from the trust estate created and established under the Indenture, which includes: (i) Loan Payments made by the Borrower pursuant to the Loan Agreement and the note issued thereunder, (ii) a project reserve account funded by the Borrower and held by the Trustee, (iii) incremental property taxes derived from the Consolidated Allocation Area (but only to the extent revenues identified in clauses (i) and (ii) are insufficient for such purpose), and (iv) funds on deposit, if any, in a debt service reserve fund (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 the 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 (6.50%) per annum, and with a final maturity no later than February 1, 2036. 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 Clerk, the Controller and any other officer of the City are authorized and directed to execute the Financing Documents as may be required by the Act, 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 Clerk, 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 Clerk, the Controller and any other officer of the City on the 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 such Bonds to the purchaser, payment for which will be made in the manner set forth in the Financing Documents. The Mayor, the Clerk, 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 Clerk, 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 12 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 12 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 Borrower set forth in the Loan Agreement and/or the tax representation certificate or other agreements of the Borrower to be executed upon the issuance of the Bonds, the City will use its best efforts to restrict the use of the proceeds of any series of the Bonds, the interest on which is excludable from federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended and in effect on the date of issuance thereof (the "Code"), 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 this Ordinance or the Financing Documents, 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 Financing Documents and the issuance, sale and delivery of the Bonds.

SECTION 10. The Borrower 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 CityWay 1 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 CityWay 1 Project or the Bonds arising out of a failure or breach of performance by the Borrower, 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. 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 or amendments to existing project agreements with the Borrower, 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 the Mayor's execution thereof. Provided, however, that the financing terms of the CityWay 1 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 CityWay 1 Project.

SECTION 13. 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 14. 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 15. 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.

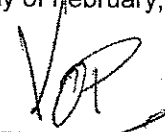
SECTION 16. This Ordinance shall be in full force and effect upon adoption and compliance with Indiana Code 36-3-4-14.

The foregoing was passed by the City-County Council this 22nd day of February, 2021, at 8:31 p.m.

ATTEST:

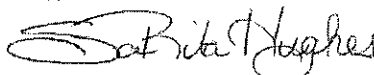


SaRita Hughes
Clerk, City-County Council

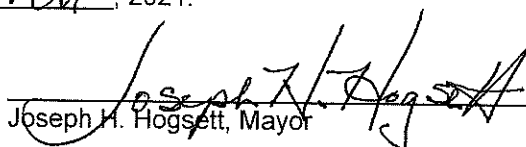


Vop Osili
President, City-County Council

Presented by me to the Mayor this 23rd day of February, 2021.


SaRita Hughes
Clerk, City-County Council

Approved and signed by me this 1st day of March, 2021.


Joseph H. Hogsett, Mayor

CITY OF INDIANAPOLIS

) SS:

WITNESS my hand and the official seal of the City of Indianapolis, Indiana, this 1st day of March, 2021.

Sabrina Hughes

SaRita Hughes
Clerk, City-County Council

(SEAL)

INDIANAPOLIS-MARION COUNTY CITY-COUNTY COUNCIL
(Via Webex)

Date: February 22, 2021

Time: 8:31 p.m.

PROPOSAL NO: PROP21-056

ORDINANCE NO: (S.O.) 1

SPONSOR: Jones, Adamson, Annee

ACTION: ADOPT

Yea: 22 Nay: 1 Abstain: 1 Not Voting: Excused: 1

<u>Adamson</u>	Y	<u>J. Evans</u>	Y	<u>Mascari</u>	Y
<u>Annee</u>	Y	<u>Graves</u>	Y	<u>McCormick</u>	Y
<u>Bain</u>	Y	<u>Gray</u>	Y	<u>Mowery</u>	Y
<u>Barth</u>	Y	<u>Hart</u>	Y	<u>Oliver</u>	Y
<u>Boots</u>	Abs	<u>Jackson</u>	Y	<u>Osili</u>	Y
<u>Brown</u>	Y	<u>Jones</u>	Y	<u>Potts</u>	Y
<u>Carlino</u>	Y	<u>Larrison</u>	Y	<u>Ray</u>	<u>Exc</u>
<u>Dilk</u>	Y	<u>Lewis</u>	Y	<u>Robinson</u>	Y
<u>E. Evans</u>	N				