

INTRODUCED: 10/15/2018

REFERRED TO: Administration and Finance Committee

SPONSOR: Councillors Osili, Simpson and Gray

DIGEST: makes a preliminary determination to enter into a lease with the Building Authority for purposes of financing the Assessment and Intervention Center Project

SOURCE:

Initiated by: Office of Public Health and Safety

Drafted by: Faegre Baker Daniels LLP

LEGAL REQUIREMENTS FOR ADOPTION:

Published Notice of Public Hearing

Subject to approval or veto by Mayor

PROPOSED EFFECTIVE DATE:

Adoption and approvals

GENERAL COUNSEL APPROVAL: _____ Date: October 11, 2018

CITY-COUNTY GENERAL RESOLUTION NO. , 2018

A GENERAL RESOLUTION approving the execution of a certain lease with the Indianapolis-Marion County Building Authority, establishing certain funds and accounts related to such lease, and other related matters.

WHEREAS, the Indianapolis-Marion County Building Authority (the "Building Authority") has been created pursuant to Indiana Code 36-9-13, as amended, an independent municipal corporation for the purpose of, among other things, financing government buildings and systems for lease to "eligible entities" (as such term is defined in Indiana Code 36-9-13-1, as amended) within Marion County, Indiana; and

WHEREAS, the Consolidated City of Indianapolis, Indiana, as such term is defined in Indiana Code 36-3-1-4 (the "City") and Marion County, Indiana, as established in Indiana Code 36-2-1-1 (the "County"), are eligible entities pursuant to Indiana Code 36-9-13-1, as amended; and

WHEREAS, the Building Authority intends to issue a series of bonds pursuant to Indiana Code 36-9-13-30, as amended, to be known as the "Indianapolis-Marion County Building Authority Lease Rental Revenue Bonds, Series 2019A (Jail and Courthouse Project)" (or such other series designation as determined by the Building Authority) (the "Series 2019A Bonds"), the proceeds of which are to be used to finance the acquisition, construction, installation and equipping of correctional facilities and courthouse facilities, together with functionally related and subordinated facilities, appurtenances and improvements, as more particularly described in Exhibit B-1 of the form of Lease attached hereto (as hereinafter defined), including the refinancing of certain currently outstanding notes issued in anticipation of the issuance of the Series 2019A Bonds (collectively, the "Jail and Courthouse Project"), together with expenses incurred in connection therewith, including capitalized interest, if necessary, the funding of a debt service reserve, if necessary, and the costs of the issuance of the Series 2019A Bonds therefor; and

WHEREAS, the Building Authority intends to issue a series of bonds pursuant to Indiana Code 36-9-13-30, as amended, to be known as the "Indianapolis-Marion County Building Authority Lease Rental Revenue Bonds, Series 2019B (Assessment and Intervention Center Project)" (or such other series designation as determined by the Building Authority) (the "Series 2019B Bonds," and together with the Series 2019A Bonds, the "Bonds"), the proceeds of which are to be used to finance the acquisition, construction, installation and equipping of an assessment and intervention center, as more particularly described in Exhibit B-2 of the form of Lease attached hereto (collectively, the "Assessment and Intervention Center Project"), together with expenses incurred in connection therewith, including capitalized interest, if

necessary, the funding of a debt service reserve, if necessary, and the costs of the issuance of the Series 2019B Bonds therefor; and

WHEREAS, the Building Authority intends to lease the Jail and Courthouse Project and the Assessment and Intervention Center Project (collectively, the "Projects") to the City and/or the County pursuant to a lease (which may be one lease or multiple separate leases) to be dated on or after the date of final adoption of this Resolution, as the same may be hereafter amended from time to time (collectively, the "Lease"), the form of which Lease is attached hereto in substantially final form and is being approved by this Resolution; and

WHEREAS, the City-County Council of Marion County, Indiana (the "City-County Council") has previously approved the need for and procurement methods for the Projects in General Resolution No. 1, 2018; and

WHEREAS, a notice of public hearing on the proposed Lease was given by publication in the Indianapolis Star, the Court & Commercial Record and the Indianapolis Recorder, and said hearing has been held in accordance with said notice; and

WHEREAS, preliminary drawings, plans, specifications and cost estimates for the Projects have been submitted to the City and County; and

WHEREAS, there is attached to this Resolution and presented to the City-County Council at this meeting a substantially final form of the Lease; and

WHEREAS, the County has previously acted to impose a county option income tax on the adjusted gross income of County taxpayers pursuant to Indiana Code 6-3.5-6, which law has been repealed and codified at Indiana Code 6-3.6 for the purpose of consolidating the provisions related to various local income tax laws; and

WHEREAS, the City-County Council has determined to pledge the City's and County's distributive shares of public safety and certified shares components of the County local income tax revenues pursuant to Indiana Code 6-3.6-6, as amended (the "LIT Revenues"), to the lease rental payments due under the Lease attributable to the Jail and Courthouse Project (the "Jail and Courthouse Project Rental Payments"); and

WHEREAS, the City-County Council has determined that the lease rental payments due under the Lease attributable to the Assessment and Intervention Center Project (the "Assessment and Intervention Center Project Rental Payments") shall be payable from an ad valorem property tax to be levied on all taxable property located within the boundaries of the County; and

WHEREAS, the City-County Council hereby finds that the Assessment and Intervention Center Project is an independently desirable end in itself without reference to the Jail and Courthouse Project or any other project of the County and will not cost the County more than Fifteen Million Dollars (\$15,000,000); and

WHEREAS, Indiana Code 6-1.1-20-3.1 requires that the City-County Council conduct two public hearings for the purpose of receiving public input prior to considering the adoption of a resolution making a preliminary determination to enter into a lease with the Building Authority for purposes of financing of the Assessment and Intervention Center Project, together with expenses incurred in connection therewith, including capitalized interest, if necessary, the funding of a debt service reserve, if necessary, and the costs of the issuance of the Series 2019B Bonds therefor, and notices of the hearings held on October 24, 2018, November 13, 2018 and November 19, 2018 were published in the Indianapolis Star, the Court & Commercial Record and the Indianapolis Recorder as required by law, and copies of such notices were also mailed to the Marion County Circuit Court Clerk as required by Indiana Code 6-1.1-20-3.1; and

WHEREAS, the City-County Council has held two public hearings in accordance with the provisions of Indiana Code 6-1.1-20-3.1(b)(1) and has received public input concerning the Assessment and Intervention Center Project; and

WHEREAS, the City-County Council has concluded, following the public hearings described above, that the Jail and Courthouse Project is necessary and desirable and will be of general benefit to the

residents of the City and County, separate and apart from the Assessment and Intervention Center Project; and

WHEREAS, the City-County Council has concluded, following the public hearings described above, that the Assessment and Intervention Center Project is itself necessary and desirable and will be of general benefit to the residents of the County, separate and apart from the Jail and Courthouse Project; and

WHEREAS, the Projects and the entering into the Lease with the Building Authority for purposes of financing the Projects, together with expenses incurred in connection therewith, including capitalized interest, if necessary, the funding of a debt service reserve, if necessary, and the costs of the issuance of the Bonds therefor, are necessary and will be of general benefit to the City and the County and their taxpayers; and

WHEREAS, the City and County do not have sufficient funds available or provided for in the existing budgets or tax levies that may be applied to the costs of the Projects, together with expenses incurred in connection therewith, including capitalized interest, if necessary, the funding of a debt service reserve, if necessary, and the costs of the issuance of the Bonds therefor, making it necessary for the City and/or the County to enter into the Lease with the Building Authority to provide for the financing of the Projects; and

WHEREAS, it is necessary for the City and County to (i) establish certain funds and accounts for the payment of the rentals owed by the City and County pursuant to the Lease, (ii) pledge the LIT Revenues to be received by the City and County to make the Jail and Courthouse Project Rental Payments due under the Lease, and (iii) covenant to levy an ad valorem property tax to make all required Assessment and Intervention Center Project Rental Payments due under the Lease; now, therefore:

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

SECTION 1. A need exists for the Projects and the funds needed therefor exceed the funds presently available to the City and County.

SECTION 2. The City-County Council hereby makes and confirms the findings described in the preambles to this Resolution.

SECTION 3. The proposed Lease with the Building Authority, as lessor, provides for a fair and reasonable basis for determining the lease rentals thereunder, and, further, the execution of the Lease is necessary and in the best interests of the City and/or the County.

SECTION 4. The Clerk of the City-County Council is authorized and directed to initial and date a copy of the proposed Lease and to place the same in the minute book of the City-County Council immediately following the minutes of this meeting, and the Lease is made a part of this Resolution as fully as if it were set forth herein. One copy of the Lease shall be kept on file for public inspection at the office of the Clerk of the City-County Council.

SECTION 5. As soon as can be done after the passage of this Resolution, the Lease (either in the form of one lease or multiple separate leases), in substantially the form submitted to the City-County Council at this meeting, shall be executed by the Mayor, as executive of the City and/or County (the "Mayor"), and attested by the Clerk of the City-County Council (the "Clerk") and/or the Auditor of the County (the "Auditor"), and notice of the approval of the Lease under Indiana Code 36-9-13-28 shall be published according to law. The Mayor is authorized to approve such modifications to the substantially final form of the Lease as the Mayor deems necessary and appropriate prior to the execution of the Lease, with the execution of the Lease by the Mayor, as conclusive evidence of the Mayor's approval thereof.

SECTION 6. The term of the lease of the Jail and Courthouse Project under the Lease shall not exceed forty (40) years, commencing on the date the Jail and Courthouse Project is completed and ready for occupancy, and the maximum annual Jail and Courthouse Project Rental Payments due under the Lease shall not exceed Thirty-Eight Million Seven Hundred Thousand Dollars (\$38,700,000). The term of the lease of the Assessment and Intervention Center Project under the Lease shall not exceed forty (40) years, commencing on the date the Assessment and Intervention Center Project is completed and ready for

occupancy, and the maximum annual Assessment and Intervention Center Project Rental Payments due under the Lease shall not exceed Two Million Three Hundred Fifteen Thousand Dollars (\$2,315,000).

SECTION 7. The City-County Council hereby authorizes the City and/or the County to enter into one or more agreements with the Building Authority, or such other entity or entities as deemed advisable, to provide for any of the operations, maintenance and management of the Projects.

SECTION 8. The City-County Council hereby approves and ratifies the preliminary drawings, plans, specifications and cost estimates for the Projects and authorizes the submission of such plans and specifications to the various governmental agencies as required by law upon their final approval by the Mayor.

SECTION 9. There is hereby created and established a Bond Fund to consist of a Series 2019A Lease Payment Account (the "Series 2019A Lease Payment Account") and a Series 2019B Lease Payment Account (the "Series 2019B Lease Payment Account") and such other accounts as the City and/or the County shall from time to time establish. From the Series 2019A Lease Payment Account, all required Jail and Courthouse Project Rental Payments due under the Lease shall be made by the City and County, as applicable, to the Building Authority. From the Series 2019B Lease Payment Account, all required Assessment and Intervention Center Project Rental Payments due under the Lease shall be made by the County to the Building Authority.

SECTION 10. The Jail and Courthouse Project Rental Payments to be paid from the Series 2019A Lease Payment Account under the Lease shall be payable from the LIT Revenues. Notwithstanding the foregoing, in lieu of paying the Jail and Courthouse Project Rental Payments to the Building Authority, the City and County may agree to deposit with the corporate trustee for the Series 2019A Bonds, funds to meet the City's and County's Jail and Courthouse Project Rental Payment obligations.

The City and County, in consideration of the lease of the Jail and Courthouse Project, in order to secure the payment of rentals due thereunder and the performance and observance of the covenants thereunder, hereby pledges to the Building Authority, and the holders of the Series 2019A Bonds, the LIT Revenues received by the City and County, along with any investment earnings thereon, such pledge to be effective as set forth in Indiana Code 5-1-14-4 without filing or recording of the Lease, this Resolution or any other instrument. The pledge of LIT Revenues shall be effective only to the extent and for the term that the City and County are obligated to make Jail and Courthouse Project Rental Payments under the Lease. The obligation of the City and County to make Jail and Courthouse Project Rental Payments under the Lease is limited to LIT Revenues, and investment earnings thereon, and shall not be considered a debt of the City or County for purposes of the Constitution or laws of the State of Indiana.

SECTION 11. The City and County reserve the right to authorize and issue bonds, enter into leases or incur other obligations entitled to the pledge of LIT Revenues, in whole or in part, or any combination thereof, and otherwise pledge the City's and County's LIT Revenues to secure bonds, lease rental payments or other obligations, whether for the Jail and Courthouse Project, or any other purpose, or to refund any Parity Obligations, ranking on a parity with the pledge of the LIT Revenues to the payment of the Jail and Courthouse Project Rental Payments due under the Lease (such additional bonds, lease rental payments or other obligations, the "Parity Obligations"). The authorization and issuance of Parity Obligations shall be subject to the following conditions precedent:

(a) All Jail and Courthouse Project Rental Payments due under the Lease and all payments on any outstanding Parity Obligations payable from LIT Revenues shall be current to date in accordance with the terms thereof, with no payment in arrears.

(b) The City and County shall have received a certificate prepared by a certified public accountant, financial advisor or feasibility consultant certifying that the amount of the LIT Revenues received in any twelve (12) consecutive month period within the prior eighteen (18) calendar months immediately preceding the date of issuance of the Parity Obligations proposed to be issued shall be at least equal to three hundred percent (300%) of the combined maximum annual debt service and lease rental requirements of (i) the Jail and Courthouse Project Rental Payments due under the Lease, (ii) all then outstanding Parity Obligations, and (iii) the Parity Obligations proposed to be issued, for each respective year, during the remaining term of the Lease.

(c) Payments of any Parity Obligations payable from the LIT Revenues shall be payable on dates consistent with the lease rental payment dates of the Lease of the Jail and Courthouse Project.

Notwithstanding the foregoing, the City and County may issue obligations payable from LIT Revenues on a junior and subordinate basis to the pledge of LIT Revenues to the payment of the Jail and Courthouse Project Rental Payments due under the Lease. However, any such junior and subordinate obligations payable from LIT Revenues shall be payable on dates consistent with the lease rental payment dates of the Lease of the Jail and Courthouse Project.

SECTION 12. For purposes of providing additional security for the Series 2019A Bonds or otherwise further securing the pledge of the LIT Revenues to the payment of the Jail and Courthouse Project Rental Payments due under the Lease, the Mayor and the Controller of the City (the "Controller") are specifically authorized by the City-County Council to enter into a revenue deposit or pledge agreement providing for the direct deposit of LIT Revenues and/or any other legally available revenues with a deposit trustee into a segregated account and/or containing such other terms as the Mayor and the Controller may determine to be necessary or desirable to carry out the provisions of this Resolution.

SECTION 13. The City-County Council authorizes the Mayor, the Controller and the Auditor to create separate, segregated funds or accounts, from legally available funds of the City and/or County, to provide for a debt service reserve for the payment of lease rentals, the payment of operations and maintenance for the Projects, and for life-cycle repair and replacement costs for the Projects. Upon issuance of the Series 2019A Bonds, the Mayor, Controller and Auditor are authorized to transfer funds from a debt service reserve fund or account created pursuant to this Resolution to the trustee for the Series 2019A Bonds, after such appropriation by the City-County Council in 2019 (or the year of issuance of the Series 2019A Bonds) of an amount not exceeding the maximum annual debt service due on the Series 2019A Bonds, as required by applicable law.

SECTION 14. **ASSESSMENT AND INTERVENTION CENTER PROJECT:** The City-County Council hereby determines that this Resolution shall constitute the preliminary determination of the County required by Indiana Code 6-1.1-20-3.1(b) to enter into a lease to provide for the financing of the Assessment and Intervention Center Project, together with expenses incurred in connection therewith, including capitalized interest, if necessary, the funding of a debt service reserve, if necessary, and the costs of the issuance of the Series 2019B Bonds therefor.

SECTION 15. **ASSESSMENT AND INTERVENTION CENTER PROJECT:** The City-County Council hereby authorizes and directs the Controller of the Consolidated City and/or the Auditor, in conjunction with counsel to give such notice as required by the provisions of Indiana Code 6-1.1-20-3.1(b)(2) and (b)(3) of the preliminary determination to enter into the Lease for purposes of financing the costs of the Assessment and Intervention Center Project.

SECTION 16. **ASSESSMENT AND INTERVENTION CENTER PROJECT:** The County shall levy in each calendar year beginning in the year prior to the first calendar year in which the County is required to pay Assessment and Intervention Center Project Rental Payments due under the Lease, an ad valorem property tax upon all of the taxable property located within the boundaries of the County, in a total amount sufficient, together with all other funds in the Series 2019B Lease Payment Account deposited into such account from any other sources (other than such property taxes) during the previous twelve (12) months prior to August 1 of such calendar year, to pay all Assessment and Intervention Center Project Rental Payments due under the Lease in the twelve (12)-month period beginning on July 1 of the following calendar year.

The County, in consideration of the lease of the Assessment and Intervention Center Project, in order to secure the payment of rentals due thereunder and the performance and observance of the covenants thereunder, hereby pledges to the Building Authority, and the holders of the Series 2019B Bonds, the ad valorem property tax revenues described in this Section received by the County, along with any investment earnings thereon, such pledge to be effective as set forth in Indiana Code 5-1-14-4 without filing or recording of the Lease, this Resolution or any other instrument. The pledge of such ad valorem property tax revenues shall be effective only to the extent and for the term that the County is obligated to make the Assessment and Intervention Center Project Rental Payments under the Lease. The obligation of the County to make Assessment and Intervention Center Project Rental Payments under the Lease is limited to such ad valorem property tax revenues, and investment earnings thereon, and shall not be considered a debt of the City or County for purposes of the Constitution or laws of the State of Indiana.

SECTION 17. Actions with respect to the Projects required to be undertaken by officials of the City and/or County under applicable law performed by designees or agents of such officials are hereby ratified.

SECTION 18. The Mayor, the Controller, the Clerk, the Auditor and any other City or County official as may be necessary are, and each of them is, hereby authorized to take all such actions and to execute or attest all such instruments as are necessary and desirable to carry out the transactions contemplated by this Resolution, including, without limitation, an addendum to the Lease reducing lease rentals based on the results of the sale of the Bonds, a continuing disclosure undertaking agreement, and a letter of representations to the underwriters regarding a bond purchase agreement, a preliminary official statement or an official statement, in such forms as the Mayor, the Controller, the Clerk, the Auditor, and any other City or County official executing or attesting the same shall deem proper, to be evidenced by the execution or attestation thereof.

SECTION 19. The City-County Council agrees not to rescind this Resolution for so long as any of the Bonds are outstanding. The City-County Council further agrees not to amend this Resolution in any manner that will affect or impair any of the rights of the holders of any outstanding Bonds.

SECTION 20. This Resolution shall be in full force and effect after its adoption by the City-County Council and compliance with Indiana Code 36-3-4-14, Indiana Code 36-3-4-15 and Indiana Code 36-3-4-16.

The foregoing was passed by the City-County Council this _____ day of _____, 2018, at _____ p.m.

ATTEST:

Vop Osili
President, City-County Council

SaRita Hughes
Clerk, City-County Council

Presented by me to the Mayor this _____ day of _____, 2018, at 10:00 a.m.

SaRita Hughes
Clerk, City-County Council

Approved and signed by me this _____ day of _____, 2018.

Joseph H. Hogsett, Mayor