

ORDINANCE OF COMMON COUNCIL OF CITY OF EVANSVILLE

Authorizing the Issuance and Sale of  
City of Evansville, Indiana Taxable Economic Development Revenue Bonds,  
Series 2012 (Earthcare Project), and the  
Lending of Proceeds Thereof to Earthcare Energy, LLC and  
Authorizing and Approving Other Actions in Respect Thereto

WHEREAS, the City of Evansville, Indiana (the "City") is a municipal corporation and political subdivision of the State of Indiana and by virtue of IC 36-7-11.9 and IC 36-7-12 (collectively, the "Act"), is authorized and empowered to adopt this ordinance (this "Bond Ordinance") and to carry out its provisions;

WHEREAS, Earthcare Energy, LLC (the "Borrower") desires to (i) finance all or a portion of certain economic development facilities situated within the corporate limits of the City (namely within the former Whirlpool plant, now called Park 41), and (ii) pay certain costs of issuance (as more fully described in the Loan Agreement hereinafter defined, the "Project");

WHEREAS, the Borrower has advised the City of Evansville Economic Development Commission (the "Commission") and the City that it proposes that the City issue revenue bonds under the Act in an amount not to exceed Five Million Dollars (\$5,000,000) (the "Bonds") and loan the proceeds of the Bonds to the Borrower for the financing of the Project;

WHEREAS, the financing of the Project is expected to result in the diversification of industry, the creation of approximately 121 jobs within three years of the completion of the Project, and the creation of business opportunities in the City;

WHEREAS, pursuant to IC 36-7-12-24, the Commission published notice of a public hearing (the "Public Hearing") on the proposed issuance of the Bonds to finance the Project;

WHEREAS, on March 12, 2012, the Commission held the Public Hearing on the Project and received uncontroverted evidence that the Project will have no adverse competitive effect on similar facilities already constructed or operating in the City; and

WHEREAS, the Commission has performed all actions required of it by the Act preliminary to the adoption of this Bond Ordinance and has approved and forwarded to the Common Council of the City (the "Common Council") the forms of: (1) the Loan Agreement, between the City and the Borrower (including a Note, Series 2012) (collectively, the "Loan Agreement"); (2) the Trust Indenture, with respect to the Bonds, between the City and German American Investment Advisors and Trust Company, as Trustee (the "Indenture"); (3) the Bonds;

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*Alberta Matlock*  
CITY CLERK

and (4) this Bond Ordinance (the Loan Agreement and the Indenture, collectively, the "Financing Agreements").

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF EVANSVILLE, INDIANA, THAT:

Section 1. Findings; Public Benefits. The Common Council hereby finds and determines that the Project involves the acquisition, construction and equipping of an "economic development facility" as that phrase is used in the Act; that the Project will create employment opportunities and diversification of economic development in the City, will improve and promote the economic stability, development and welfare in the City, will encourage and promote the expansion of industry, trade and commerce in the City and the location of other new industries in the City; that the public benefits to be accomplished by this Bond Ordinance, in tending to overcome insufficient employment opportunities and insufficient diversification of industry, are greater than the cost of any public services (as that phrase is used in the Act) which might be required by the Project; and, therefore, that the financing of the Project by the issue of the Bonds under the Act: (i) will be of benefit to the health and general welfare of the City; and (ii) complies with the Act.

Section 2. Approval of Financing. The proposed financing of the Project by the issuance of the Bonds under the Act, in the form that such financing was approved by the Commission, is hereby approved.

Section 3. Authorization of Bonds. The issuance of the Bonds, payable solely from revenues and receipts derived from the Financing Agreements, is hereby authorized.

Section 4. Terms of Bonds. The Bonds, in one or more series and in the aggregate principal amount not to exceed Five Million Dollars (\$5,000,000), shall (i) be executed at or prior to the closing date by the manual or facsimile signatures of the Mayor and the Clerk of the City; (ii) be dated as of the date of issuance; (iii) mature on the first day of the month immediately following the second anniversary of the date of issuance of the Bonds; (iv) bear interest at a taxable rate not to exceed one and one-half percent (1.5%) *per annum* with such interest to be payable as provided in the Financing Agreements; (v) be issuable in such denominations as set forth in the Financing Agreements; (vi) be issuable only in fully registered form; (vii) be subject to registration on the bond register as provided in the Indenture; (viii) be payable in lawful money of the United States of America; (ix) be payable at an office of the Trustee named above as provided in the Indenture; (x) be subject to optional redemption prior to maturity and subject to redemption as otherwise provided in the Financing Agreements; and (xi) contain such other terms and provisions as may be provided in the Financing Agreements.

The Bonds and the interest thereon do not and shall never constitute an indebtedness of, or a charge against the general credit or taxing power of, the City, but shall be special and limited obligations of the City, payable solely from revenues and other amounts derived from the Financing Agreements. Forms of the Financing Agreements are before this meeting and are by this reference incorporated in this Bond Ordinance, and the Clerk of the City is hereby directed, in the name and on behalf of the City, to insert them into the minutes of the Common Council and to keep them on file.

Section 5. Sale of Bonds. The Mayor and the City Controller are hereby authorized and directed, in the name and on behalf of the City, to sell the Bonds to The Evansville Local Public Improvement Bond Bank at such prices as are determined on the date of sale and approved by the Mayor and the City Controller. The Mayor and the City Controller are hereby authorized and directed, in the name and on behalf of the City, to execute or endorse and deliver a purchase agreement between the City and such Bond Bank (or a purchase agreement among the City, such Bond Bank and the Borrower), in such form as deemed desirable by the Mayor and the City Controller and consistent with the terms and conditions set forth in this Ordinance.

Section 6. Execution and Delivery of Financing Agreements. The Mayor and the Clerk of the City are hereby authorized and directed, in the name and on behalf of the City, to execute or endorse and deliver the Financing Agreements, including such Note, Series 2012, and the Bonds, submitted to the Common Council, which are hereby approved in all respects.

Section 7. Changes in Financing Agreements. The Mayor and the Clerk of the City are hereby authorized, in the name and on behalf of the City, without further approval of the Common Council or the Commission, to approve such changes in the Financing Agreements, including such Note, Series 2012, and the Bonds as may be permitted by the Act, such approval to be conclusively evidenced by their execution thereof.

Section 8. Public Approval. The Common Council hereby approves the issue of the Bonds and the Project to be financed by the Bonds, which facilities are described in the published notice of the Public Hearing and in the Financing Agreements.

Section 9. General. The Mayor, the Clerk of the City and the City Controller are, and each of them is, hereby authorized and directed, in the name and on behalf of the City, to execute or endorse any and all agreements, documents and instruments, perform any and all acts, approve any and all matters, and do any and all other things deemed by them, or either of them, to be necessary or desirable in order to carry out and comply with the intent, conditions and purposes of this Bond Ordinance (including the preambles hereto and the documents mentioned herein), the Project, the issuance and sale of the Bonds, and the securing of the Bonds under the Financing Agreements and such other documentation to further secure the Bonds and the loan of proceeds of the Bonds thereof as may be necessary or desirable, and any such execution, endorsement, performance or doing of other things heretofore effected be, and hereby is, ratified and approved.

Section 10. Binding Effect. The provisions of this Bond Ordinance and the Financing Agreements and the Bonds shall constitute a binding contract between the City and the holders of the Bonds, and after issuance of the Bonds this Bond Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of the holders of the Bonds as long as the Bonds or interest thereon remains unpaid.

Section 11. Repeal, Invalidity. All ordinances or parts of ordinances in conflict herewith are hereby repealed. 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 provisions shall not affect any of the remaining provisions of this Ordinance.

Section 12. Effective Date. This Bond Ordinance shall be in full force and effect from and after its passage and approval by the Mayor in accordance with law.

Section 13. Financing Agreements on File. Two copies of the Financing Agreements, including forms of such Notes, Series 2012, and the Bonds incorporated into this Bond Ordinance were duly filed in the office of the Clerk of the City and in the office of the City Controller, and are available for public inspection in accordance with IC 36-1-5-4.

Passed and adopted this \_\_\_\_\_ day of March, 2012.

CITY OF EVANSVILLE  
COMMON COUNCIL

\_\_\_\_\_  
Presiding Officer

Attest:

\_\_\_\_\_  
Clerk

Presented by me, the Clerk of the City of Evansville, to the Mayor of the City of Evansville, on the \_\_\_\_\_ day of March, 2012.

\_\_\_\_\_  
Clerk

Presented to and approved by me, the Mayor of the City of Evansville, and signed this \_\_\_\_\_ day of March, 2012.

\_\_\_\_\_  
Mayor