GIBSON COUNTY COUNCIL
ORDINANCE NO. 2012-2

ORDINANCE AUTHORIZING GIBSON COUNTY, INDIANA TO ISSUE ITS "ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 2012" AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, the Gibson County Economic Development Commission ("Commission") conducted a public hearing and adopted a resolution on June 6, 2012, which resolution has been transmitted hereto, finding that the financing of certain economic development facilities of Gibson County Coal, Inc. and Gibson County Coal, LLC (collectively, "User") complies with the purposes and provisions of IC 36-7-11.9 and -12 and that such financing will be of benefit to the health and welfare of the Gibson County, Indiana ("County") and its citizens; and

WHEREAS, the Redevelopment Commission of the County has determined to pledge TIF Revenues (as defined in the hereinafter defined Financing Agreement) to be used to pay debt service on the Bonds pursuant to a Financing and Covenant Agreement between the User and the County, dated as of June 1, 2012 ("Financing Agreement"). The County shall issue its Economic Development Revenue Bonds, Series 2012 (Gibson County Coal Project) ("Bonds") pursuant to this ordinance to finance all or a portion of the repair and reconstruction of existing road and utility infrastructure and the construction of additional infrastructure necessary to support coal operations, including new road infrastructure in or physically connected to the Owensville North Economic Development Area (collectively, "Project"), costs of issuance and related expenses, including funding a dispute resolution fund created herein; and

WHEREAS, the Commission has heretofore approved and recommended the adoption of this form of ordinance by this County Council, has considered the issue of adverse competitive effect and has approved the forms of and has transmitted for approval by the County Council the Financing Agreement; the Trust Indenture (including form of Bonds) between the Issuer and the

Trustee, dated as of June 1, 2012 ("Indenture"); and the Bond Purchase Agreement between the Issuer and the purchaser of the Bonds;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF GIBSON COUNTY, INDIANA, THAT:

Section 1. It is hereby found that: (i) the financing of the Project referred to in the Financing Agreement approved by the Commission and presented to this County Council; (ii) the issuance and sale of the County's Economic Development Revenue Bonds, Series 2012 (Gibson County Coal Project) ("Bonds"); (iii) the payment of the Bonds from TIF Revenues under the Financing Agreement; and (iv) the securing of the Bonds by granting a security interest in the Trust Estate (as defined in the Indenture) to the Trustee under the Indenture; complies with the purposes and provisions of IC 36-7-11.9, -12, -14 and -25 (collectively, "Act"), and will be of benefit to the health and welfare of the County and its citizens.

Section 2. The economic development facilities will consist of the Project as permitted by the Act and the utility infrastructure that is included in the Project is vital and necessary utility infrastructure.

Section 3. At the public hearing held before the Commission, the Commission considered, after consideration of the evidence represented, including testimony of B. Todd Mosby, President/CEO of the Gibson County Economic Development Corporation, whether the Project would have an adverse competitive effect on any similar facilities located in the County as required by IC 36-7-12-21. The Commission also considered, after consideration of the evidence represented, including testimony of Mr. Mosby whether the Project would be of benefit to the public health and welfare of the County and found that financing the Project would be of

benefit to the public health and welfare of the County and the County Council hereby confirms that finding.

Section 4. The substantially final forms of the Financing Agreement; the Indenture; and the Bond Purchase Agreement approved by the Commission are hereby approved (collectively, "Financing Agreements," referred to in the Act), and the Financing Agreements shall be incorporated herein by reference and shall be inserted in the minutes of the County Council and kept on file by the Auditor. In accordance with the provisions of IC 36-1-5-4, two (2) copies of the Financing Agreements are on file in the office of the Auditor for public inspection.

Section 5. The County may issue its Bonds, maturing no later than twenty two (22) years from their date of issuance, in the aggregate principal amount not to exceed $15,000,000. The Bonds are to be issued for the purpose of procuring funds to pay a portion of the costs of construction of the Project, all as more particularly set out in the Indenture and the Financing Agreement, incorporated herein by reference, which Bonds will be payable as to principal, premium, if any, and interest from TIF Revenues pursuant to the Financing Agreement or as otherwise provided in the above-described Indenture. Payment on the Bonds may be made in installments. The Bonds shall be issued in fully registered form in denominations of $5,000 and integral multiples thereafter or as provided in the above-described Indenture. The Bonds shall be subject to optional redemption prior to maturity at the option of the County, on any date, upon twenty (20) days' written notice, at face value, plus in each case accrued interest to the date fixed for redemption, with no premium, as further provided in the Indenture. The Bonds may be issued as term bonds subject to mandatory sinking fund redemption. Payments on the Bonds are payable in lawful money of the United States of America by check mailed or delivered to the

registered owners or by wire transfer as provided in the Indenture. The Bonds shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the County as described in the Indenture.

Section 6. The Board of Commissioners and the Auditor are authorized and directed to sell the Bonds to the purchaser thereof at a price not less than the par value thereof and shall accrue interest at a rate not to exceed 5% per annum.

Section 7. The Board of Commissioners and the Auditor are authorized and directed to execute, attest, affix or imprint by any means the County seal to the documents constituting the Financing Agreements approved herein on behalf of the County and any other document which may be necessary or desirable to consummate the transaction, including the Bonds authorized herein. The Board of Commissioners and the Auditor are hereby expressly authorized to approve any modifications or additions to the documents constituting the Financing Agreements which take place after the date of this ordinance with the review and advice of the counsel; it being the express understanding of this County Council that the terms of the Financing Agreements are in substantially final form as of the date of this ordinance. The approval of said modifications or additions shall be conclusively evidenced by the execution and attestation thereof and the affixing of the seal thereto or the imprinting of the seal thereon; provided, however, that no such modification or addition shall change the maximum issuance amount of, interest rate on or term of the Bonds as approved by the County Council by this ordinance without further consideration by the County Council. The signatures of the Board of Commissioners and the Auditor on the Bonds may be either manual or facsimile signatures. The Auditor is authorized to arrange for delivery of such Bonds to the trustee named in the Indenture. Payment for the Bonds will be made to the trustee named in the Indenture, and after such

payment the Bonds will be delivered by the Trustee to the purchasers thereof. The Bonds shall be originally dated as of the issue date.

Section 8. The provisions of this ordinance and the Indenture securing the Bonds shall constitute a contract binding between the County and the holders of the Bonds, and after the issuance of the Bonds, this ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holders so long as the Bonds or the interest thereon remains unpaid.

Section 9. This ordinance shall be in full force and effect from and after its passage.

Passed and adopted by the County Council of Gibson County, Indiana this 28th day of June, 2012.

GIBSON COUNTY COUNCIL

Attest:

C T Montgomery
Auditor

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