

ORDINANCE NO. 2013-85-02

ORDINANCE OF THE COUNCIL OF WABASH COUNTY, INDIANA, AUTHORIZING THE ISSUANCE OF ITS "EDUCATIONAL FACILITIES REFUNDING REVENUE BONDS, SERIES 2013A (MANCHESTER UNIVERSITY PROJECT)," AND ITS "EDUCATIONAL FACILITIES REVENUE BONDS, SERIES 2013A (MANCHESTER UNIVERSITY PROJECT)," EACH OF WHICH IS TO BE ISSUED IN ONE OR MORE SERIES AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, Wabash County, Indiana (the "County"), is a municipal corporation and political subdivision of the State of Indiana and by virtue of I.C. 36-7-11.9 and I.C. 36-7-12, each as amended (collectively, the "Act"), is authorized and empowered to issue revenue bonds designated as educational facilities revenue bonds for the financing and refinancing of educational facilities, the funds for said bonds to be used for the acquisition, development, construction and equipping of such educational facilities or the refinancing thereof; and

WHEREAS, Manchester College, Inc., doing business as Manchester University, an Indiana nonprofit corporation (the "Borrower"), has proposed that the County (a)(i) issue and sell its economic development revenue bonds under the Act designated as educational facilities refunding revenue bonds in one or more series in an original aggregate principal amount not to exceed Four Million Dollars (\$4,000,000)(the "Refunding Bonds") and (ii) lend the proceeds of the Refunding Bonds to the Borrower under the Loan Agreement (as hereinafter defined) in a form substantially similar to that presented to the Council of the County (the "Council") whereby the proceeds of the Refunding Bonds will be utilized to refinance the Indiana Educational Facilities Authority Educational Facilities Refunding Revenue Bonds, Series 2002 (Manchester College Project), dated as of April 1, 2002, currently outstanding in the aggregate principal amount of Three Million Five Hundred Forty-Five Thousand Dollars (\$3,545,000), and subject to optional redemption with at least thirty (30) days written notice to the holders of such outstanding bonds, all of which in turn will create a debt service savings for the Borrower (clause (a), the "Refunding Project"); and (b)(i) issue and sell its economic development revenue bonds under the Act designated as educational facilities revenue bonds in one or more series in an original aggregate principal amount not to exceed Five Million Dollars (\$5,000,000)(the "New Money Bonds") and (ii) lend the proceeds of the New Money Bonds to the Borrower under the Loan Agreement whereby the proceeds of the New Money Bonds will be utilized to pay for a portion of the costs of the recently completed renovations of certain facilities which upon completion are now serving as the Borrower's new Academic Center, including, but not limited to, the repayment of the construction loan or other loan obtained by the Borrower for such renovations (clause (b), the "Academic Center Project"); and

WHEREAS, the principal of, premium, if any, and interest on the Refunding Bonds and the New Money Bonds (collectively, the "Bonds") shall be payable solely from the payments made by the Borrower as set forth in the Loan Agreement; and

WHEREAS, the Wabash County Economic Development Commission (the "EDC") has rendered a Report concerning the financing costs of the Refunding Project and the Academic Center Project, published notice of a public hearing (the "Public Hearing") on the proposed issuance of the Bonds to finance the Refunding Project and the New Money Project (collectively, the "Projects") pursuant to I.C. § 36-7-12-24, as amended, and, after conducting the Public Hearing on February 25, 2013, adopted a resolution on that date, which resolution has been transmitted hereto, finding that the financing of the costs of the educational facilities of the Borrower complies with the purposes and provisions of the Act and that such financings will be of benefit to the health, prosperity, economic stability, general welfare and public interest of the County and its citizens; and

WHEREAS, the Commission also 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 Council the forms of: (1) a Loan Agreement between the County and the Borrower relating to the Bonds (the "Loan Agreement"); (2) a Trust Indenture with respect to the Bonds between the County and a trustee to be selected (the "Indenture"); (3) the Bonds; and (4) this Bond Ordinance (the Loan Agreement, the Indenture, the Bonds, and this Bond Ordinance, collectively, the "Financing Agreements"); and

WHEREAS, no public works or services not already existing or available, or for which provision has not been made, will be necessary or desirable on account of the Projects as such facilities will be provided either by the Borrower, private utilities, or existing public facilities; and

WHEREAS, no member of the 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 Council.

NOW, THEREFORE, BE IT ORDAINED BY THE WABASH COUNTY COUNCIL, THAT:

Section 1. Findings; Public Benefits. It is hereby found that the financing of each of the Projects referred to in the Financing Documents previously approved by the Commission and presented to the Council, the issuance and sale of the Bonds, the loan of the net proceeds thereof to the Borrower for the Projects (collectively, the "Loans") and the repayment of the Loans by the Borrower will be of benefit to the health, prosperity, economic stability and general welfare of the County and its citizens and complies with the purposes and provisions of the Act.

Section 2. Approval of Financing. The proposed financing and the forms of the Financing Agreements approved by the Commission are hereby approved, and all such documents are incorporated herein by reference and shall be inserted in the minutes of the Council and kept on file by the Auditor of the County.

Section 3. Authorization of the Bonds. The issuance of the Bonds, payable solely from the Borrower in accordance with the Financing Agreements, is hereby authorized.

Section 4. Terms of the Bonds. (a) The Bonds, in the original aggregate principal amount not to exceed Four Million Dollars (\$4,000,000), with respect to the Refunding Bonds,

and in the original aggregate principal amount not to exceed Five Million Dollars (\$5,000,000), with respect to the New Money Bonds, shall (i) be executed at or prior to the closing date by the manual or facsimile signatures of the Board of Commissioners of the County (the "County Commissioners"); (ii) be dated as of the date of their delivery; (iii) mature no later than October 1, 2028; (iv) bear interest at such rates as determined through negotiation with the purchaser thereof, with such interest 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 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.

(b) In addition to the foregoing, the Council designates the Bonds as qualified tax-exempt obligations for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended and in effect on the date hereof (the "Code"). In connection with this designation, the Council certifies as follows: (i) the Bonds are qualified 501(c)(3) bonds and not any other type of private activity bonds as defined in Section 141 of the Code; (ii) the County has designated the Bonds as qualified tax-exempt obligations for the purposes of Section 265(b) of the Code; and (iii) the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds that are not qualified 501(c)(3) bonds) which will be issued by the County, together with all entities issuing bonds on behalf of the County, all entities subordinate to the County and all entities created or availed by the County to avoid the requirements of this limitation during the calendar year 2013 will not exceed \$10,000,000. Therefore, the Bonds qualify for the exception provided in Section 265(b)(3) of the Code.

(c) The Bonds shall not constitute a debt or pledge of the faith and credit of the County, the State or any political subdivision thereof, and the holders, or owners thereof shall have no right to have taxes levied by the County, the State or of any political subdivision, for the payment of the principal thereof or interest thereon. Moneys raised by taxation shall not be obligated or pledged for the payment of principal of or interest on the Bonds, and the Bonds shall be payable solely from the revenues and security interests pledged for their payment as authorized by the Trust Indenture. Forms of the Financing Agreements are before this meeting and are by this reference incorporated in this Bond Ordinance, and the Auditor of the County is hereby directed, in the name and on behalf of the County, to insert them into the minutes of the Council and to keep them on file.

(d) No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Bond Ordinance, or in any of the Financing Agreements, or under any judgment obtained against the County 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 Loan Agreement, shall be had against any member, director, or officer or attorney, as such, past, present, or future, of the County, either directly or through the County, or otherwise, for the payment for or to the County or any receiver thereof, or for or to any holder of the Bonds secured thereby, or otherwise, of any sum that may be due and unpaid by the County 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 County 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 of them, shall be expressly waived and released as a condition of and consideration for the execution and delivery of the Financing Agreements, and the issuance of the Bonds.

Section 5. Sale of the Bonds. The County Commissioners and the Auditor of the County are hereby authorized and directed, in the name and on behalf of the County, to sell the Bonds to First Financial Bank, National Association (the "Original Purchaser") at such prices and on such terms as may be determined by the Borrower and the Original Purchaser at the time of sale and consistent to the terms set forth in this Bond Ordinance.

Section 6. Execution and Delivery of Financing Agreements. The County Commissioners and the Auditor of the County are hereby authorized and directed, in the name and on behalf of the County, to execute or endorse and deliver the Loan Agreement, one or more Notes from the Borrower to the County, the Indenture and the Bonds, substantial forms of which are submitted to the Council and are hereby approved in all respects.

Section 7. Changes in Financing Agreements. The County Commissioners and the Auditor are hereby authorized, in the name and on behalf of the County, without further approval of the Council or the Commission, to approve such changes in the Financing Agreements as may be permitted by Act, such approval to be conclusively evidenced by their execution thereof.

Section 8. General. The County Commissioners and the Auditor of the County, and each of them, are hereby authorized and directed, in the name and on behalf of the County, 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 any 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 Projects, the issuance and sale of the Bonds, and the securing of the Bonds under the Financing Agreements, and any such execution, endorsement, performance or doing of other things heretofore effected be, and hereby is, ratified and approved.

Section 9. Binding Effect. The provisions of this Bond Ordinance and the Financing Agreements shall constitute a binding contract between the County 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 10. Severability. If any section, paragraph or provision of this Bond 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 Bond Ordinance

Section 11. Repeal. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Passed and adopted by the Wabash County Council on this 25<sup>th</sup> day of February, 2013.

  
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Presiding Officer

Attest:  
  
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Auditor, Wabash County, Indiana