

ORDINANCE NO. 12-09

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF FRANKLIN, INDIANA, AUTHORIZING THE ISSUANCE OF THE CITY OF FRANKLIN, INDIANA ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 2012 (METRO FIBERNET PROJECT), AND THE USE OF THE PROCEEDS THEREOF TO SUPPORT METRO FIBERNET PROJECTS, AND AUTHORIZING AND APPROVING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, the City of Franklin, Indiana (the "City"), 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 (collectively, the "Act"), is authorized and empowered to adopt this ordinance (this "Bond Ordinance") and to carry out its provisions; and

WHEREAS, the City of Franklin, Indiana (the "City"), the Town of Whiteland, Indiana (the "Town") and the County of Johnson, Indiana (the "County") (the City, the Town and the County together described as the "Joint Municipalities"), which Joint Municipalities are in contiguous areas, desire to jointly undertake an economic development project that will assist the Joint Municipalities in a project by Metro FiberNet, LLC to construct facilities to house electronics and to install fiber optic cable that will provide high speed internet, telephone and television services for the Joint Municipalities (collectively, the "Metro FiberNet Project"); and

WHEREAS, pursuant to Indiana Code 36-7-25-4, if two (2) or more units desire to jointly undertake economic development projects in contiguous areas in the units' respective jurisdictions that benefit or serve the units' jurisdictions, then the legislative body of the unit may determine to assign an area within the units' jurisdiction to the redevelopment commission of another unit to allow the creation of an allocation area for the purpose of the allocation of property tax proceeds even though the allocation area will be outside the jurisdiction of the commission to which the new area is assigned; and

WHEREAS, the Town Council of the Town has adopted its resolution on October 11, 2011 (the "Town Resolution"), assigning an allocation area in the Town to the City's Redevelopment Commission known in the Town Resolution as the "Town Allocation Area;" and

WHEREAS, the Board of Commissioners of the County has adopted its resolution on October 17, 2011 (the "County Resolution"), assigning an allocation area in the County to the City's Redevelopment Commission known in the County Resolution as the "County Allocation Area;" and

WHEREAS, the Company will complete the Projects in an area that is in the Metro FiberNet Project Economic Development Area; and

WHEREAS, the Company has advised the City of Franklin Economic Development Commission (the "Commission") and the City that it proposes that the City issue its Economic Development Revenue Bonds, Series 2012 (Metro FiberNet Project) in an amount not to exceed Two Million Seven Hundred Fifty Thousand Dollars (\$2,750,000) (the "Series 2012 Bonds") under the Act and provide the proceeds of such Series 2012 Bonds to the Company for the

purpose of financing the Projects as described in the Financing Agreement between the City and the Company dated as of April 1, 2012 (the "Financing Agreement"); and

WHEREAS, the completion of the Projects results in the diversification of industry and the creation of business opportunities in the Joint Municipalities; and

WHEREAS, pursuant to I.C. § 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 Projects; and

WHEREAS, on the date specified in the notice of the Public Hearing, the Commission held the Public Hearing on the Projects; 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 the forms of: (1) the Financing Agreement; (2) a Trust Indenture between the City and a trustee to be selected by the Clerk-Treasurer of the City (the "Trustee") (the "Indenture"); (3) the Bonds; and (4) this Bond Ordinance (the Financing Agreement, the Indenture, the Bonds, and this Bond Ordinance, collectively, the "Financing Agreements").

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

Findings; Public Benefits. The Common Council hereby finds and determines that the Projects involve the acquisition, construction and equipping of an "economic development facility" as that phrase is used in the Act; that the Projects will increase employment opportunities and increase diversification of economic development in the Joint Municipalities, will improve and promote the economic stability, development and welfare in the Joint Municipalities, will encourage and promote the expansion of industry, trade and commerce in the Joint Municipalities and the location of other new industries in the Joint Municipalities; 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 public services (as that phrase is used in the Act) which will be required by the Projects; and, therefore, that the financing of the Projects by the issue of the Bonds under the Act: (i) will be of benefit to the health and general welfare of the Joint Municipalities; and (ii) complies with the Act.

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

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

Terms of the Bonds. (a) The Series 2012 Bonds, in the aggregate principal amount not to exceed Two Million Seven Hundred Fifty Thousand Dollars (\$2,750,000) shall (i) be executed at or prior to the closing date by the manual or facsimile signatures of the Mayor and the Clerk-Treasurer of the City; (ii) be dated as of the date of their delivery; (iii) mature on a date not later than twenty-five (25) years after the first interest payment date on the Bonds; (iv) bear interest at

such rates as determined with the purchaser thereof (the "Purchaser") (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; (xi) be issued in one or more series; and (xii) contain such other terms and provisions as may be provided in the Financing Agreements.

(b) 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-Treasurer 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.

Sale of the Bonds. The Mayor and the Clerk-Treasurer of the City are hereby authorized and directed, in the name and on behalf of the City, to sell the Bonds to the Purchaser at such prices as are determined on the date of sale and approved by the Mayor and the Clerk-Treasurer of the City.

Execution and Delivery of Financing Agreements. The Mayor and the Clerk-Treasurer 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 Agreement, the Indenture, and the Bonds, submitted to the Common Council, which are hereby approved in all respects.

Changes in Financing Agreements. The Mayor and the Clerk-Treasurer 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 as may be permitted by the Act, such approval to be conclusively evidenced by their execution thereof.

General. The Mayor and the Clerk-Treasurer of the City, and each of them, are 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 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.

Binding Effect. The provisions of this Bond Ordinance and the Financing Agreements 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.

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

Effective Date. This Bond Ordinance shall be in full force and effect immediately upon adoption and compliance with I.C. § 36-4-6-14.

Introduced and Filed on the _____ day of _____, 2012.

DULY PASSED on this _____ day of _____, 2012, by the Common Council of the City of Franklin, Johnson County, Indiana, having been passed by a vote of _____ in Favor and _____ Opposed.

City of Franklin, Indiana, By its Common Council:

Voting Affirmative:

Voting Opposed:

Stephen Barnett, Council President

Stephen Barnett, Council President

Joseph P. Abban

Joseph P. Abban

Joseph R. Ault

Joseph R. Ault

Kenneth W. Austin

Kenneth W. Austin

Robert D. Henderson

Robert D. Henderson

Stephen D. Hougland

Stephen D. Hougland

Richard Wertz

Richard Wertz

Attest:

Janet P. Alexander
City Clerk-Treasurer

Presented by me to the Mayor of the City of Franklin for his approval or veto pursuant to Indiana Code § 36-4-6-15, 16, this _____ day of _____, 2012 at _____ o'clock a.m./p.m.

Janet P. Alexander,
City Clerk-Treasurer

This ordinance having been passed by the legislative body and presented to me [Approved by me and duly adopted, pursuant to Indiana Code § 36-4-6-16(a)(1)] [Vetoed, pursuant to Indiana Code § 36-4-6-16(a)(2)], this _____ day of _____, 2012 at _____ o'clock a.m./p.m.

Joseph E. McGuinness
Mayor

Attest:

Janet P. Alexander,
City Clerk-Treasurer

Prepared by: Richard C. Starkey, Esq. Barnes & Thornburg LLP