

ORDINANCE NO. 2019-01

**ORDINANCE OF THE WARRICK COUNTY COUNCIL
AUTHORIZING WARRICK COUNTY TO ISSUE ITS TAXABLE
ECONOMIC DEVELOPMENT REVENUE BONDS
(BROADBAND PROJECT), AND AUTHORIZING AND APPROVING
OTHER ACTIONS IN RESPECT THERETO**

WHEREAS, Warrick County, Indiana (the "County") is a political subdivision of the State of Indiana and, by virtue of Indiana Code 36-7-11.9 and 36-7-12, each as amended (collectively, the "Act"), is authorized and empowered to adopt this ordinance (the "Bond Ordinance") and to carry out its provisions; and

WHEREAS, Mainstream Fiber Networks, LLC (or an affiliate thereof) ("Mainstream") desires to finance the design, acquisition, construction, installation and equipping of an approximately 105-mile fiber backbone throughout the County (the "Mainstream Project"), which project is an "economic development facility" (as defined in the Act); and

WHEREAS, the Warrick County Economic Development Commission (the "Commission") is also interested in pursuing the design, acquisition, construction, installation and equipping of a wireless system to provide rural broadband coverage to rural areas not likely to be served by the Mainstream Project (the "Rural Broadband Project"), to be undertaken by a company to be selected by the Warrick County Department of Economic Development, which project is an "economic development facility" (as defined in the Act); and

WHEREAS, Mainstream has requested that the Commission and the County cause to be issued by the County a series of its Taxable Economic Development Revenue Bonds (Broadband Project), in an amount not to exceed Five Million Four Hundred Fifty Thousand Dollars (\$5,450,000) (the "Mainstream Bonds"), pursuant to the Act, and provide a portion of the proceeds of the Mainstream Bonds to Mainstream for the purpose of financing a portion of the

costs of the Mainstream Project that is to be located in the unincorporated portions of the County (the "County Broadband Project"); and

WHEREAS, the Warrick County Council (the "County Council") has determined to further authorize the issuance by the County of a series of its Taxable Economic Development Revenue Bonds (Broadband Project), in an amount not to exceed Eight Hundred Thousand Dollars (\$800,000) (the "Rural Broadband Bonds"), pursuant to the Act, and provide a portion of the proceeds of the Rural Broadband Bonds to the company selected to construct and install the Rural Broadband Project (such company and Mainstream are collectively referred to herein as the "Companies") for the purpose of financing a portion of the costs of the Rural Broadband Project; and

WHEREAS, the Commission has determined and found that the financing of the County Broadband Project and the Rural Broadband Project (collectively, the "Projects") complies with the purposes and provisions of the Act, and that such financing will be of benefit to the health, prosperity, economic stability and general welfare of the County and its citizens, and has rendered a report regarding the financing of a portion of the Projects consistent with those findings (the "Report"), and said Report has been submitted to the Warrick County Plan Commission; and

WHEREAS, the Commission has heretofore (a) published notice of a public hearing (the "Public Hearing") on the proposed issuance of the Mainstream Bonds and the Rural Broadband Bonds (collectively, the "Bonds"), in accordance with Indiana Code 36-7-12-24, (b) conducted the Public Hearing in accordance with Indiana Code 36-7-12-24, and (c) adopted a resolution subsequent to the Public Hearing (the "Resolution") and approved the Report of even date of such Resolution, the same having been transmitted hereto; and

WHEREAS, the Commission has performed all actions required of it by the Act preliminary to and heretofore approved, recommended and forwarded the Bond Ordinance for a vote to the County Council, together with the substantially final forms of: (1) a form of Financing Agreement between the County and the respective Companies (the "Financing Agreement"); (2) a form of Trust Indenture (the "Indenture") between the County and a trustee (the "Trustee") to be selected by the Board of Commissioners of the County (the "Board of Commissioners"); and (3) the Bonds (the Financing Agreement, the Indenture and the Bonds, collectively, referenced herein as the "Financing Documents"); and

WHEREAS, the County has previously acted to impose the county economic development income tax ("CEDIT") pursuant to Indiana Code 6-3.5-7, 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, including, without limitation, CEDIT; and

WHEREAS, the revenues generated from the local income tax imposed under Indiana Code 6-3.6 (formerly known as the CEDIT revenues) in the County are allocated to economic development purposes, with a portion of such revenues allocated to the Warrick County Highway Department for County roads and the remaining portion of such revenues available for other economic development purposes of the County (such remaining portion of the local income tax revenues available for other economic development purposes of the County shall be hereinafter referred to as the "LIT Revenues"); and

WHEREAS, pursuant to Ordinance No. 2018-04, adopted by the County Council on May 3, 2018 (the "Prior Ordinance"), the County has previously pledged the LIT Revenues, in the amount of \$200,000 per year, for the payment of a portion of the principal of and interest on bonds designated "Warrick County, Indiana, General Obligation Bonds, Series 2018" (the "Prior

Bonds"), currently outstanding in the aggregate principal amount of Seven Million Ten Thousand Dollars (\$7,010,000) with a final maturity date of January 15, 2024 (the "Prior LIT Pledge"); and

WHEREAS, pursuant to the Prior Ordinance, the County reserves the right to authorize and issue additional bonds or other obligations payable out of the LIT Revenues, ranking on a parity with the Prior LIT Pledge, subject to the satisfaction of certain conditions precedent as set forth in the Prior Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE WARRICK COUNTY COUNCIL, AS FOLLOWS:

SECTION 1. Findings; Public Benefits. The County Council hereby confirms the findings set forth in the Resolution and Report and hereby finds and determines (a) that each of the Projects involves the design, acquisition, construction, installation and equipping of "economic development facility," as that phrase is used in the Act; and (b) that the public benefits to be accomplished by the Bond Ordinance through (i) the financing of a portion of the Projects referred to in the Financing Documents, through the issuance and sale of the Bonds, (ii) the provision of a portion of the proceeds of the Bonds to the Companies for the financing of a portion of the costs of the respective Projects, (iii) the payment of the Bonds from the LIT Revenues, and (iv) the securing of the Bonds under one or more Indentures, are greater than the cost of public services which will be required by the Projects. Based on the findings and determinations set forth in this Section 1, the County Council hereby finds that the financing of a portion of the Projects by the issuance of the Bonds under the Act (A) will be of benefit to the health, prosperity, economic stability and general welfare of the County and its citizens and (B) complies with the Act.

SECTION 2. Terms of the Bonds; Pledge of LIT Revenues.

(a) The Bonds shall (i) be issued in a combined aggregate principal amount not to exceed Six Million Two Hundred Fifty Thousand Dollars (\$6,250,000); (ii) mature on a date or dates not later than January 15, 2024; (iii) bear interest at a taxable rate or rates as determined with the purchaser or purchasers of the Bonds not exceeding five percent (5.0%) per annum; and (iv) contain such other terms and provisions as may be provided in the Financing Documents and subsection (b) below.

(b) Notwithstanding anything in this Bond Ordinance to the contrary and in addition to the terms in subsection (a) above, the Bonds shall: (i) be issued in one or more series (with the series designation to reflect the calendar year of issuance, together with a letter designation in the event multiple series of Bonds are issued in a single calendar year); (ii) be executed at or prior to the closing date by the manual or facsimile signatures of the Board of Commissioners and the Auditor of the County (the "Auditor"); (iii) be dated as of the date of their delivery; (iv) be issued in fully registered form in denominations of One Hundred Thousand Dollars (\$100,000) and integral multiples of One Thousand Dollars (\$1,000) in excess thereof or as otherwise provided in the respective Indentures; (v) be subject to redemption or prepayment as provided in the Financing Documents; (vi) be payable in lawful money of the United States of America; (vii) be subject to registration on the bond register as provided in the Financing Documents; (viii) be payable at the office of the Trustee or as provided in the Financing Documents; and (ix) contain such other terms and provisions as may be provided in the Financing Documents.

(c) The Bonds shall never constitute a general obligation of or a charge against the general credit or taxing power of the County, nor are the Bonds payable in any manner from revenues raised by taxation (except to the extent of the pledge of LIT Revenues), but the Bonds

shall be special and limited obligations of the County, payable solely from the LIT Revenues and other amounts derived from the Financing Documents. The LIT Revenues are hereby pledged to the payment of principal of and interest on the Bonds, on a parity basis with the Prior LIT Pledge.

(d) Any series of the Bonds may be issued as "draw down" bonds such that the principal of such series of Bonds shall not be payable and the interest thereon shall not accrue until such principal amount has been advanced pursuant to disbursements made pursuant to the respective Indentures.

SECTION 3. Approval of Financing. The proposed financing of the Projects by the issuance of the Bonds, in the form that such financing was approved by the Commission, is hereby approved.

SECTION 4. Authorization of the Bonds; Use of Proceeds. The issuance of the Bonds is hereby authorized. The Bonds shall be payable as to principal and interest solely from the LIT Revenues or as otherwise provided in the respective Indentures. The Bonds are to be issued for the purpose of procuring funds to pay the costs of a portion of the design, acquisition, construction, installation and equipping of the Projects, as more particularly set out in the Financing Documents, and to pay other financing costs and costs of issuance in connection with the issuance of the Bonds.

SECTION 5. Financing Documents. The substantially final forms of the Financing Documents before this meeting are hereby approved and are by this reference incorporated in this Bond Ordinance and the Auditor is hereby directed, in the name and on behalf of the County, to insert them into the minutes of the County Council and to keep two copies of the Financing Documents in the office of the Auditor and available for public inspection in accordance with Indiana Code 36-1-5-4.

SECTION 6. Execution and Delivery of Financing Documents. The Board of Commissioners and the Auditor are, and each of them is, authorized and directed to execute, attest and affix or imprint by any means the seal of the County to the Financing Documents approved herein on behalf of the County and any other document which may be necessary or desirable prior to, on or after the date hereof to consummate or facilitate the transaction, including the Bonds, authorized herein. 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 the Bonds to the Trustee and payment for the Bonds will be made to the Trustee, and after such payment, the Bonds will be delivered by the Trustee to the respective purchasers thereof.

SECTION 7. Sale of the Bonds. The Board of Commissioners and the Auditor are authorized and directed to sell the Bonds to the original purchasers of the Bonds at a price of not less than ninety-nine and five-tenths percent (99.5%) of the principal amount thereof.

SECTION 8. Changes in Financing Documents. The Board of Commissioners and the Auditor are hereby authorized, in the name and on behalf of the County, without further approval of the County Council or the Commission, to approve such changes in the Financing Documents as may be permitted by the Act, such approval to be conclusively evidenced by their execution thereof. The Board of Commissioners and the Auditor are, and each of them is, hereby expressly authorized to approve any modifications or additions to the documents constituting the Financing Documents which take place after the date of this Bond Ordinance with the review and advice of counsel to the Board of Commissioners, it being the express understanding of the County Council that the Financing Documents are in substantially final form as of the date of adoption of this Bond 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 principal amount of, maximum interest rate on, or terms of the Bonds described in Indiana Code 36-7-12-27 as approved by the County Council by this Bond Ordinance without further consideration by the County Council.

SECTION 9. General. The Board of Commissioners and the Auditor, 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 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 Documents, and any such execution, endorsement, performance or doing of other things heretofore effected be, and hereby is, ratified and approved.

SECTION 10. Issuance of Parity Obligations. The County reserves 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 County's LIT Revenues to secure bonds, lease rental payments or other obligations, ranking on a parity with the pledge of the LIT Revenues to the payment of the Bonds (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 payments due on the Bonds and the Prior Bonds (to the extent then outstanding) 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 County shall have received a certificate prepared by an independent, qualified accountant or feasibility consultant certifying that the amount of the LIT Revenues estimated to be received in each succeeding year shall be at least equal to one hundred twenty-five percent (125%) of the combined principal and interest due on the Bonds and the Prior Bonds (to the extent of the Prior LIT Pledge, and to the extent then outstanding) and debt service or lease rental requirements of any outstanding Parity Obligations and of the proposed Parity Obligations for each respective year, during the remaining term of the Bonds. Notwithstanding the foregoing, any proposed Parity Obligations secured by a property tax levy may be issued or entered into without meeting the foregoing coverage requirements of this subsection (b).

(c) Payments of any Parity Obligations payable from the LIT Revenues shall be payable semiannually on January 15 and July 15 of each year.

Notwithstanding the foregoing, the 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 Bonds. However, any such junior and subordinate obligations payable from LIT Revenues shall be payable semiannually on January 15 and July 15.

SECTION 11. Binding Effect. The provisions of this Bond Ordinance and the Indenture securing the respective series of the Bonds shall constitute a contract binding between the County and the holders of such series of the Bonds, and after the issuance of the Bonds, this Bond 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 12. Repeal. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 13. Effective Date. This Bond Ordinance shall be effective upon its passage by the County Council, in accordance with procedures as required by law.

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DULY PASSED and ADOPTED on this 10 day of JAN, 2019, by the
Warrick County Council, as fiscal body of Warrick County, Indiana, by a vote of 5 in favor,
1 opposed, and _____ abstaining.

WARRICK COUNTY COUNCIL

(not present)
Charles R. Christmas

Brad Overton
Brad Overton

David Hachmeister (NAY)
David Hachmeister

Richard Reid
Richard Reid

Cindy Ledbetter
Cindy Ledbetter

Greg Richmond
Greg Richmond

Ted Metzger
Ted Metzger

ATTEST:

Deborah K. Stevens
Deborah K. Stevens, Auditor,
Warrick County, Indiana