

**ORDINANCE NO. 3602**

**ORDINANCE OF THE COMMON COUNCIL OF THE  
CITY OF NEW CASTLE, INDIANA, AUTHORIZING THE  
CITY TO ISSUE ITS TAXABLE ECONOMIC  
DEVELOPMENT REVENUE BONDS, SERIES 2010  
(CINERGY METRONET PROJECT), AND APPROVING  
OTHER ACTIONS IN RESPECT THERETO**

WHEREAS, the City of New Castle Economic Development Commission (the "Commission") has rendered its Report (the "Report") regarding the financing of a portion of certain proposed economic development facilities for a certain Project (as hereinafter defined) to be undertaken thereon by Cinergy MetroNet, Inc. (the "Borrower"), and said Report has been submitted to the City of New Castle Plan Commission; and

WHEREAS, the Commission has heretofore (i) conducted a public hearing in accordance with Indiana Code 36-7-12-24; and (ii) adopted a resolution subsequent to such public hearing and approved a report of even date of such resolution, the same having been transmitted hereto, finding that the financing of a portion of certain economic development facilities of the Borrower complies with the purposes and provisions of Indiana Code 36-7-11.9 and Indiana Code 36-7-12 (collectively, the "Act") and that such financing will be of benefit to the health, prosperity, economic stability and general welfare of the City of New Castle, Indiana (the "City") and its citizens; and

WHEREAS, the Commission has heretofore approved and recommended the adoption of this form of Ordinance by the Common Council of the City (the "Common Council"), has considered the issue of adverse competitive effect and has approved the forms of and has transmitted for approval by the Common Council, a certain Loan Agreement, Note, Bond Purchase Agreement and Trust Indenture;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF NEW CASTLE, INDIANA, AS FOLLOWS:

SECTION 1. It is hereby found that the financing of a portion of the economic development facilities referred to in the Loan Agreement approved by the Commission and presented to the Common Council, the issuance and sale of the City of New Castle, Indiana, Taxable Economic Development Revenue Bonds, Series 2010 (Cinergy MetroNet Project) (the "Bonds"), the loan of the net proceeds of the Bonds to the Borrower for the financing of a portion of the costs of the Project, the payment of the Bonds from TIF Revenues (as defined in the Trust Indenture) and, to the extent that TIF Revenues are insufficient for such purpose, from note payments of the Borrower under the Loan Agreement and the Note, and the securing of said Bonds under the Trust Indenture complies with the purposes and provisions of the Act and will be of benefit to the health, prosperity, economic stability and general welfare of the City and its citizens.

SECTION 2. The proceeds of the Bonds will be used for the financing of a portion of the construction, installation and equipping of certain infrastructure improvements, including, without limitation, broadband service in the Areas (as hereinafter defined) and throughout the City, which will provide enhanced broadband to homes and businesses within the City, thereby attracting and retaining businesses in the downtown business district and throughout the City which will encourage job creation and retention (collectively, the "Project"), to be constructed in and surrounding the areas within the City heretofore designated as (i) the "Indiana Avenue Allocation Area" located within the Indiana Avenue Economic Development Area (the "Indiana Avenue Economic Development Area") and (ii) the "Southeast-Downtown Allocation Area" located with the Southeast-Downtown Economic Development Area (the "Southeast-Downtown

Economic Development Area" and, together with the Indiana Avenue Economic Development Area, the "Areas").

SECTION 3. At the public hearing held before the Commission, the Commission considered whether the Project would have an adverse competitive effect on any similar facilities located in or near the City, and subsequently found, based on the findings of fact approved in connection with the report of the Commission, that the Project would not have an adverse competitive effect because there are no other similar facilities located in the proximity of the Areas. The Common Council hereby confirms the findings set forth in the Commission's resolution and Report, and concludes that the Project will not have an adverse competitive effect on any other similar facilities in or near the City, and the facilities will be of benefit to the health, prosperity, economic stability and general welfare of the citizens of the City.

SECTION 4. The substantially final forms of the Loan Agreement, the Note, the Bond Purchase Agreement and the Trust Indenture approved by the Commission are hereby approved (herein collectively referred to as the "Financing Agreement" referred to in the Act), and the Financing Agreement shall be incorporated herein by reference and shall be inserted in the minutes of the Common Council and kept on file by the Clerk-Treasurer of the City (the "Clerk-Treasurer"). In accordance with the provisions of Indiana Code 36-1-5-4, two (2) copies of the Financing Agreement are on file in the office of the Clerk-Treasurer for public inspection.

SECTION 5. The City shall issue its Bonds in an aggregate principal amount not to exceed Five Hundred Thousand Dollars (\$500,000). The Bonds shall finally mature not later than February 1, 2028. Said Bonds are to be issued for the purpose of procuring funds to pay the costs of a portion of the construction, installation and equipping of the Project, as more particularly set out in the Trust Indenture and the Loan Agreement, incorporated herein by

reference, which Bonds will be payable as to principal and interest from TIF Revenues and, to the extent that TIF Revenues are insufficient for such purpose, from the note payments made by the Borrower under the Loan Agreement and the Note or as otherwise provided in the above-described Trust Indenture. The Bonds shall 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 Trust Indenture, and shall be redeemable as provided in the Trust Indenture. Payments of principal and interest are payable in lawful money of the United States of America by check mailed or delivered to the registered owners as provided in the Trust Indenture. The Bonds shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the City nor are the Bonds payable in any manner from revenues raised by taxation (except to the extent of the pledge of the TIF Revenues).

SECTION 6. The Mayor and the Clerk-Treasurer are authorized and directed to sell the Bonds to the original purchasers thereof at a price of not less than one hundred percent (100%) of the principal amount thereof. The Bonds shall bear interest at a taxable rate or rates not exceeding eight percent (8.0%) per annum.

SECTION 7. The Mayor and the Clerk-Treasurer are, and each of them is, authorized and directed to execute, attest and affix or imprint by any means the seal of the City to the documents constituting the Financing Agreement approved herein on behalf of the City 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 Mayor and the Clerk-Treasurer are, and each of them is, hereby expressly authorized to approve any modifications or additions to the documents constituting the Financing Agreement which take

place after the date of this Ordinance with the review and advice of City's attorney, it being the express understanding of the Common Council that said Financing Agreement is 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 principal amount of, interest rate on, or terms of the Bonds described in Indiana Code 36-7-12-27 as approved by the Common Council by this Ordinance without further consideration by the Common Council. The signatures of the Mayor and the Clerk-Treasurer on the Bonds may be either manual or facsimile signatures. The Clerk-Treasurer is authorized to arrange for delivery of such Bonds to the Trustee named in the Trust Indenture, and payment for the Bonds will be made to the Trustee named in the Trust Indenture and after such payment, the Bonds will be delivered by the Trustee to the purchasers thereof. The Bonds shall be originally dated the date of issuance and delivery thereof.

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

SECTION 9. This Ordinance shall be effective upon compliance with procedures as required by law.

Adopted by the Common Council of the City of New Castle, Indiana, on the 7th day of  
September, 2010.

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Jim Small, Presiding Officer  
Common Council, City of New  
Castle, Indiana

ATTEST:

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Janice Lavarney  
Clerk-Treasurer

This Ordinance approved and signed by me on the 7th day of September, 2010.

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Jim Small, Mayor of the City of  
New Castle, Indiana