WARRICK COUNTY, INDIANA
ORDINANCE NO. 2026-17

AN ORDINANCE AMENDING SECTION 92.27 AND APPENDIX A OF THE WARRICK COUNTY CODE OF ORDINANCES TO CLARIFY RIGHT-OF-WAY PERMIT FEES AND ESTABLISH A TEMPORARY, UNIFORM PROCESS FOR ADJUSTING FEES FOR QUALIFYING PUBLICLY FUNDED BROADBAND PROJECTS

WHEREAS, the Board of Commissioners of Warrick County, Indiana (the "Board") is the County executive and transacts the business of the County under Indiana Code Section 36-2-2-2;

WHEREAS, the Board has authority under Indiana Code Chapter 36-1-3 and other applicable law to manage County road rights-of-way, protect County infrastructure and the traveling public, and establish reasonable regulatory fees and conditions;

WHEREAS, Warrick County Code Section 92.27 presently requires permit applications to be accompanied by the applicable fee, incorporates the activity-based fees in Appendix A as binding on all applicants, and separately imposes a $250 processing fee for each application or separately reviewed location;

WHEREAS, the current Code does not authorize an officer, employee, or the Board to waive those fees on an ad hoc basis, and any fee-adjustment authority should be created by ordinance and administered under objective standards;

WHEREAS, competitively awarded federal or State of Indiana broadband projects serving documented unserved or underserved locations provide a public benefit, but any fee adjustment must be available on the same terms to similarly situated providers and must not impair the County's right-of-way management or road-protection responsibilities;

WHEREAS, the Board finds it appropriate to temporarily authorize the project-specific reduction or waiver of all or a portion of the $250 processing fee, the Appendix A activity-based fees, or both, for qualifying projects, subject to written findings and full preservation of all permit, bonding, restoration, inspection, maintenance, indemnification, and enforcement requirements; and

WHEREAS, this Ordinance does not impose or increase a fee and does not prescribe a new penalty or forfeiture.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of Warrick County, Indiana, as follows:

SECTION 1. REPLACEMENT OF SECTION 92.27.

Section 92.27 of the Warrick County Code of Ordinances is repealed and replaced in its entirety with the following:

§ 92.27 APPLICATION; FEES; QUALIFYING PUBLICLY FUNDED BROADBAND PROJECT ADJUSTMENTS.

(A) Application and processing fee. A permit application shall be filed on the form required by the County and shall identify the proposed method of satisfying all security requirements. Except to the extent expressly reduced or waived by a project-specific resolution adopted under subsection

(D), each separate permit application or separately reviewed project location shall be accompanied by a processing fee of Two Hundred Fifty Dollars ($250.00) to defray the County's reasonable administrative cost of receiving, reviewing, coordinating, processing, and maintaining the permit record. Any portion of the processing fee that is paid is nonrefundable and may not be credited, rebated, offset, or treated as a deposit against another fee or obligation.

(B) Activity-based fees. In addition to the processing fee in subsection (A), the applicant shall pay the activity-based fees stated in Appendix A for each type and quantity of work proposed within the County right-of-way. Appendix A and the fees stated therein are incorporated into this Chapter and are binding on all applicants, except to the extent an activity-based fee is adjusted by a resolution adopted under subsection (D).

(C) Definitions. For purposes of this section: (1) "Eligible Application" means a complete permit application first received by the County after the effective date stated in a project-specific resolution adopted under subsection (D), for work and a location that were not the subject of the same or a substantially similar application submitted before that date; and (2) "Qualifying Publicly Funded Broadband Project" means a wireline broadband infrastructure project that is undertaken by or for a communications service provider holding a current Indiana Utility Regulatory Commission certificate of territorial authority or other legally sufficient authority; is covered by a competitively awarded federal or State of Indiana broadband grant; is designed to serve documented unserved or underserved locations in Warrick County; is within the approved grant area and project maps; and satisfies the documentation and approval requirements of this section.

(D) Project-specific fee adjustment by resolution. The Board may, by resolution adopted at a public meeting, reduce or waive all or a portion of the processing fee imposed by subsection (A), the Appendix A activity-based fees, or both, for Eligible Applications within one or more Qualifying Publicly Funded Broadband Projects. A resolution adjusting the processing fee must expressly state whether the processing fee is waived in full, reduced to a stated amount, or remains due. If the resolution is silent regarding the processing fee, the processing fee remains due in full. The Board may approve an adjustment conditionally and provide that it becomes operative upon written confirmation by the County Attorney and County Highway Engineer that specified objective conditions have been satisfied. That confirmation is ministerial and does not require further Board action, but it may not expand the project or projects, alter eligibility, reduce required security, or change the amount or scope of the adjustment approved by the Board. A resolution under this subsection must identify each covered project and the eligibility date; state the amount or method of adjustment for each affected fee; make written findings that the adjustment serves a public purpose, is competitively neutral and nondiscriminatory, and will not impair the County's right-of-way management or road-protection responsibilities; require payment or reimbursement of extraordinary project-specific costs; state the effective period and applicable project deadlines; and apply criteria available to every similarly situated provider.

(E) Required supporting information and permit administration. Before a conditionally approved adjustment becomes operative, the applicant shall provide the items that the project-specific resolution expressly identifies as conditions to activation. At the time required by the resolution, a project agreement, or the permit process, the applicant shall also provide, in form satisfactory to the County Highway Engineer and County Attorney: the applicant's legal name

and authority to operate; the grant award and grant agreement; grant-area maps and route descriptions; County-road and County-right-of-way mileage; construction methods and work quantities; permit schedules and calculations of otherwise applicable fees; contractor and subcontractor information; construction schedules; insurance and performance or maintenance security; identification of the unserved or underserved locations to be served; and other information reasonably required to evaluate cost, risk, public benefit, competitive neutrality, and compliance. The Board may conditionally approve an adjustment before all permit-level materials are complete, but no affected permit may be issued and no work may begin until the materials required for that permit have been accepted.

(F) No waiver of substantive requirements. A fee adjustment does not waive, reduce, or modify any permit requirement, engineering or plan review, bond or other security, inspection, testing, traffic-control requirement, restoration standard, drainage or utility-protection requirement, maintenance or warranty obligation, insurance requirement, indemnification obligation, recordkeeping requirement, enforcement right, or other condition imposed by law, ordinance, permit, agreement, or the Board.

(G) Prospective application; exclusions; no refunds or credits. A fee adjustment may apply only to an Eligible Application first submitted after the eligibility date stated in the project-specific resolution. It does not apply to an application previously submitted, pending, held, withdrawn and refiled, or materially amended for substantially the same work or location; a permit previously issued; work previously commenced or completed; an expired permit; or a fee previously paid or incurred. No fee previously paid may be refunded, credited, rebated, offset, or treated as a deposit against future charges. Nothing in this section retroactively imposes a fee on a permit lawfully issued without charge before the applicable fee requirement took effect.

(H) Extraordinary project-specific costs. A project-specific resolution shall require the applicant to pay or reimburse the County for actual extraordinary outside engineering, inspection, testing, legal, traffic-control, restoration-administration, or enforcement costs reasonably attributable to the project and not covered by the processing fee.

(I) Deposit of collected amounts. Fees collected under this section shall be deposited in the County Highway Maintenance Fund, Fund 1176, or its successor fund, and may be used for lawful purposes of that fund. Reimbursements of project-specific costs shall be deposited and accounted for as directed by the County Auditor.

(J) Uniform administration. The County Highway Engineer, County Administrator, and other County personnel shall administer this section consistently. No employee or officer may grant a fee adjustment except through a resolution adopted by the Board under subsection (D). Ordinary privately funded utility work and projects not satisfying subsection (C) remain subject to the full fee schedule.

(K) Sunset. The authority to adopt a new fee-adjustment resolution under subsection (D) expires on December 31, 2028, unless extended by ordinance. A resolution adopted before that date may remain effective for the period stated in the resolution. Subsections (A), (B), and (F) through (J) remain in effect after the sunset.

SECTION 2. AMENDMENT OF APPENDIX A.

SIGNATURE PAGE TO ORDINANCE NO. 2026-17

BOARD OF COMMISSIONERS OF THE COUNTY OF WARRICK, INDIANA

Sarah Seaton, President

Stacey Franz, Member

Terry Phillippe, Member

ATTEST:

Michael Dietsch, Warrick County Auditor

APPROVED AS TO FORM:

Clifford R. Whitehead, County Attorney