

ORDINANCE NO. 2015-10

**AN ORDINANCE AMENDING ORDINANCE NO. 2007-11
AUTHORIZING THE EXECUTION AND DELIVERY OF
JUNIOR LIEN INSTALLMENT PAYMENT CONTRACT,
SERIES 2015B FOR THE PURPOSE OF ENTERING INTO
A GUARANTEED SAVINGS CONTRACT AND
ADDRESSING OTHER MATTERS CONNECTED
THEREWITH**

WHEREAS, on October 24, 2007, the Town Council of Fort Branch, Indiana (the "Council") adopted Ordinance No. 2007-11 (the "Original Ordinance") which authorized the issuance of revenue bonds to pay all or any portion of the costs of improvements to the sewage works system of Fort Branch, Indiana (the "Town"), and related and incidental expenses to be incurred in connection therewith and on account of the issuance of bonds therefor; and

WHEREAS, the Town intends, to the extent permitted by law, to enter into a Guaranteed Savings Contract, dated as of November 1, 2015 (or other date as determined by the Town) (the "GSC"), in accordance with Indiana Code 36-1-12.5, as amended, by and between the Town and Johnson Controls Inc. (the "Qualified Provider"), for the purpose of making the improvements to those facilities identified in the Qualified Provider Agreement, executed and delivered on or before the execution and delivery of the GSC (the "QPA"), by and between the Town and the Qualified Provider (such improvements, the "GSC Project"); and

WHEREAS, in accordance with Indiana Code 36-1-12.5-7, as amended, the Town intends to execute and deliver an Installment Payment Contract entitled Fort Branch, Indiana Junior Lien Installment Payment Contract, Series 2015B, to be dated as of the date of its execution and delivery (the "Installment Payment Contract"), in the aggregate principal amount not to exceed \$500,000, the proceeds of which will be used to pay for the costs of (a) a portion of the GSC Project, and (b) executing and delivering the Installment Payment Contract, the GSC, the QPA and related documents and costs related thereto (clauses (a) through and including (b), collectively, the "Sewage Works GSC Expenditures"); and

WHEREAS, the Town will deposit the proceeds of the Installment Payment Contract into an escrow account established under an Escrow Agreement, dated as of the date of its execution (the "Escrow Agreement"), by and among the Town, the Qualified Provider, the initial purchaser of the Installment Payment Contract (the "Lender") and a financial institution to be determined by the President of the Council (the "President") to serve as the escrow agent (the "Escrow Agent"), and disbursed to pay the Sewage Works GSC Expenditures in the manner set forth in the Escrow Agreement; and

WHEREAS, the Council, being duly advised, finds that it is in the best interests of the Town and its citizens for the purpose of financing all or any portion of the GSC Project to enter into the Installment Payment Contract, the GSC, the Escrow Agreement and the QPA in order to better serve the residents of the Town; and

WHEREAS, the Council expects to pay for certain of the Sewage Works GSC Expenditures prior to the execution and delivery of the Installment Payment Contract, and to

reimburse the Sewage Works GSC Expenditures with proceeds received by the Town upon the execution and delivery of the Installment Payment Contract; and

WHEREAS, the Town desires to declare its intent to reimburse the Sewage Works GSC Expenditures pursuant to Treas. Reg. §1.150-2 and Indiana Code §5-1-14-6(c); and

WHEREAS, the Town now desires to (i) approve the execution and delivery of the QPA, the GSC, the Installment Payment Contract, the Escrow Agreement and documents related to any of these foregoing documents, and (iii) authorize certain actions in connection therewith; and

WHEREAS, based upon the above described clauses, the Council desires to amend certain provisions of the Original Ordinance as more fully described below and in accordance with Section 23 of the Original Ordinance finds that such amendments do not adversely impact the interests of the owners of the Town's Sewage Works Revenue Bonds, Series 2007 issued in the original aggregate principal amount of \$4,500,000 on November 7, 2007 (the "Prior Bonds").

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF FORT BRANCH, INDIANA THAT:

Section 1. Authorization of Project. The projected cost of the GSC Project paid from the Sewage Works GSC Expenditures will not exceed \$500,000, including all fees, equipment and financing costs, and the estimated completion date of the GSC Project is December 31, 2016. All or a portion of the Sewage Works GSC Expenditures will be funded from the Installment Payment Contract, which will provide for annual principal payments on January 1 and semi-annual interest payments on January 1 and July 1 from the Net Revenues (herein defined as gross revenues of the System (herein defined as the Town's sewage works system, including all real estate, equipment and appurtenances thereto used in connection therewith, and all extension, additions and improvements thereto and replacements thereof, now or at any time hereafter constructed or acquired) remaining after the payment of the reasonable expenses of operation, repair and maintenance of the System) junior and subordinate to the Prior Bonds and to the extent required by law, if any, subject to annual appropriation.

The GSC, the Installment Payment Contract, the QPA and the Escrow Agreement, substantially in the form and substance submitted at this meeting, be, and hereby are, approved, and the President is hereby authorized to engage a financial institution to serve as the Escrow Agent under the Escrow Agreement upon the terms and conditions acceptable to the President.

The President or any other member of the Council, be, and hereby are, authorized and directed to execute and deliver the GSC, the Installment Payment Contract, the QPA and the Escrow Agreement, with such changes to the form thereof as such officer and the President deem necessary or advisable, in the name and on behalf of the Town, and the Clerk-Treasurer of the Town or any other officer of the Council be, and hereby is, authorized and directed to attest such execution, and any such execution and delivery and any such attestation heretofore effected be, and hereby are, approved.

The maximum principal amount of the Installment Payment Contract executed and delivered to pay the Sewage Works GSC Expenditures shall not exceed \$500,000, shall have a term no longer than twenty years from the date of execution and delivery, and shall have a net

maximum yield not to exceed 5.00% per annum. The Council hereby designates the Installment Payment Contract as a "qualified tax-exempt obligation" in accordance with Section 265(b)(3) of the Internal Revenue Code of 1986, as amended and in effect on the date of execution and delivery of the Installment Payment Contract.

A term sheet or such other offering documents used in connection with the marketing of the Installment Payment Contract (the "Term Sheet/Offering Document"), substantially in the form and substance approved by the President and executed by the President or any other officer of the Council, be, and hereby is approved, with such changes as are approved by the President. The President or any other officer of the Council is hereby authorized and directed, in the name and on behalf of the Council, to place the Term Sheet/Offering Document into final form. The President or any other officer of the Council is authorized to sign such document in its final form and by such signature approve its distribution.

The Council hereby declares its official intent that to the extent permitted by law, to execute and deliver the Installment Payment Contract for the purpose of paying the Sewage Works GSC Expenditures which Installment Payment Contract will not exceed an original aggregate principal amount of \$500,000, and to reimburse the Sewage Works GSC Expenditures from proceeds received by the Town from the execution and delivery of the Installment Payment Contract.

Any officer of the Town be, and hereby is, authorized and directed to execute and deliver such documents and take such other actions as such officer deems necessary or desirable to effect the foregoing resolutions, and any such documents heretofore executed and delivered and any such other actions heretofore taken be, and hereby are, ratified and approved.

In connection with the execution and delivery of the Installment Payment Contract, the Board hereby engages D.A. Davidson & Co. to serve as the underwriter/placement agent, Callahan CPA Group, P.C. to serve as the financial advisor to the Town and Barnes & Thornburg LLP to serve as the bond counsel.

Section 1. Addition to Section 12 of the Original Ordinance. In accordance with Section 23 of the Original Ordinance, Section 12(b) of the Original Ordinance is hereby amended by adding at the end thereof the following paragraph:

"Junior Bond and Interest Account. There is hereby created a Junior Bond and Interest Account (the "Junior Bond and Interest Account") within the Sinking Fund. Beginning as of the date of execution and delivery of the Installment Payment Contract, there shall be transferred from the Revenue Fund and credited on the first day of each month after making all required deposits for such month in the Bond and Interest Account and the Reserve Account to the Junior Bond and Interest Account an amount of the Net Revenues equal to at least (i) one-sixth (1/6) of the interest on all the then outstanding Installment Payment Contract and all obligations payable from the Net Revenues on a junior and subordinate basis to the Prior Bonds or the Parity Bonds issued to refund the Prior Bonds (the Installment Payment Contract and all such junior and subordinate obligations hereafter issued, collectively, the "Junior Revenue Obligations") on the next succeeding interest payment date and (ii) one-twelfth (1/12) of the principal on all the outstanding Junior Revenue Obligations payable on the next succeeding principal payment date.

until the amount of interest and principal payable on the next succeeding interest and principal payment date shall have been so credited. There should similarly be credited to the account any amount necessary to pay the bank fiscal agency charges on the outstanding Junior Revenue Obligations as the same becomes payable. The Town shall, from the sums deposited in the Sinking Fund and credited to the Junior Bond and Interest Account, remit promptly to the registered owner or bank fiscal agent sufficient moneys to pay the principal and interest on the due date thereof together with the amount of bank fiscal agency charges.

In no event shall any part of the Sewage Works Sinking Fund be used in calling obligations payable from the Sewage Works Sinking Fund for redemption prior to their respective maturities, except to the extent that the amount then in the Sewage Works Sinking Fund exceeds the amount required to pay such obligations which will mature within a period of twelve (12) calendar months next following the date of such redemption, together with all interest on such obligations payable in such period. Any such excess of funds above such required level may also be used in purchasing outstanding obligations payable from the Sewage Works Sinking Fund at a price less than the then-applicable redemption price, with the prior approval of the Town. Moneys in the Sewage Works Sinking Fund shall not be used for any other purpose whatsoever except as provided in this Ordinance.”

“Section 2. Addition to Section 18 of the Original Ordinance. In accordance with Section 23 of the Original Ordinance, Section 18 of the Original Ordinance is hereby amended by adding at the end thereof the following two paragraphs:

“(f) Notwithstanding the foregoing, the Town may not issue additional Parity Bonds, except for the refunding of the Prior Bonds which provides a net present value debt service savings for the Prior Bonds (for purposes of this requirement, such calculation shall be prepared by a certified public accountant employed by the Town for that purpose), without the consent of the owner of the Installment Payment Contract.

(g) The Town may issue additional obligations on a parity with the Installment Payment Contract but junior and subordinate to the Prior Bonds and any Parity Bonds issued to refund all or any portion of the Prior Bonds as described in Section 18(f) hereof (the junior and subordinate obligations on a parity with the Installment Payment Contract, the “Junior Parity Bonds”) so long as prior to the issuance of such Junior Parity Bonds, the sewage rates and charges shall be increased sufficiently so that such increased rates and charges applied to the previous year’s operations would have produced Net Revenues for such year equal to not less than one hundred twenty percent (120%) of the maximum annual principal and interest requirements of the then outstanding Prior Bonds, all outstanding Parity Bonds issued to refund all or any portion of the Prior Bonds as described in Section 18(f) hereof, the then outstanding Installment Payment Contract, the then outstanding Junior Parity Bonds and the additional Junior Parity Bonds proposed to be issued. For purposes of this subsection, the records of the System shall be analyzed and all showings shall be prepared by a certified public accountant employed by the Town for that purpose.”

Section 3. Other Provisions of the Original Ordinance. All other provisions and terms of the Original Ordinance shall remain in full force and effect.

Section 4. Effective Date. This Ordinance shall be in full force and effect immediately upon adoption.

Passed and adopted by the Town Council of Fort Branch on the 27th day of October, 2015.

TOWN COUNCIL FOR THE TOWN OF
FORT BRANCH, INDIANA

Jan Wallace

Harold Woy

Adam Bedne

ATTEST:

Jacy H. Elpers
Clerk-Treasurer