

ORDINANCE NO. 2011-1

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FORT BRANCH, INDIANA, SUPPLEMENTING AND AMENDING ORDINANCE NO. 1992-4 ADOPTED ON MAY 6, 1992, AS PREVIOUSLY AMENDED BY ORDINANCE NO. 2000-15 ADOPTED ON DECEMBER 18, 2000, FOR THE PURPOSE OF AUTHORIZING THE EXECUTION AND DELIVERY OF AMENDED REVENUE BONDS OF THE TOWN AND REGARDING CERTAIN RELATED MATTERS**

WHEREAS, the Town of Fort Branch, Indiana (the "Town"), has heretofore established and constructed and currently owns and operates a waterworks system (the "Municipal Utility"), pursuant to the provisions of Indiana Code 8-1.5; and

WHEREAS, on January 30, 2001, the Town authenticated and delivered its Waterworks Refunding Revenue Bonds of 2001, dated as of January 1, 2001, in the aggregate principal amount of One Million Eight Hundred Eighty Thousand Dollars (\$1,880,000) (the "2001 Bonds"), to provide funds for refunding certain bonds previously issued by the Town to finance the acquisition and construction of certain extensions and improvements to the Municipal Utility and to pay incidental charges in connection therewith, all pursuant to Ordinance No. 1992-4 adopted by the Town Council of the Town (the "Town Council") on May 6, 1992, as amended by Ordinance No. 2000-15 adopted by the Town Council on December 18, 2000 (collectively, the "Original Bond Ordinance"); and

WHEREAS, as of the date hereof, the 2001 Bonds are outstanding in the aggregate principal amount equal to \$925,000; and

WHEREAS, pursuant to the terms of the 2001 Bonds and the Qualified Entity Purchase Agreement, dated as of January 30, 2001 (the "2001 Purchase Agreement"), between the Town and the Indiana Bond Bank (the "Bond Bank"), the Town has the right to redeem its 2001 Bonds maturing on or after January 1, 2012 prior to the stated maturity thereof on any date on or after January 1, 2011 (the "Call Rights"); and

WHEREAS, the Bond Bank previously issued its Indiana Bond Bank Special Program Refunding Bonds, Series 2001 A (the "Prior Bond Bank Bonds"), a portion of the proceeds of which were used to purchase the 2001 Bonds from the Town; and

WHEREAS, the Bond Bank has authorized and issued its Indiana Bond Bank Special Program Multipurpose Bonds, Series 2010 A-1 and its Indiana Bond Bank Taxable Special Program Multipurpose Bonds, Series 2010 A-2 (collectively, the "Refunding Bond Bank Bonds") for the purpose of refunding all or a portion of the Prior Bond Bank Bonds, and, as a condition to sharing a portion of the savings associated with the Refunding Bond Bank Bonds with the Town, the Bond Bank has requested that the Town sell the Call Rights to the Bond Bank and evidence the waiver of such rights and sale thereof to the Bond Bank by executing and delivering its Amended 2001 Bonds (as hereinafter defined) and, following the issuance of the Refunding Bond Bank Bonds, exchange the Amended 2001 Bonds for the outstanding 2001 Bonds; and

WHEREAS, pursuant to the terms of the Original Bond Ordinance, the Town may grant or confer upon the owners of the 2001 Bonds any additional benefits, rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the owners of the 2001 Bonds, or to make any change which, in the judgment of the Town, is not to the prejudice of the owners of the 2001 Bonds; and

WHEREAS, pursuant to the terms of the Original Bond Ordinance, the Town may, from time to time and at any time, without consent of, or notice to, any of the owners of the 2001 Bonds, amend the Original Bond Ordinance for any purpose if in the judgment of the Town such amendment does not adversely affect the interests of the owners of the outstanding 2001 Bonds; and

WHEREAS, on the date hereof, the Bond Bank is the owner of all of the outstanding 2001 Bonds; and

WHEREAS, the Town Council now desires to adopt this Ordinance (the "Supplemental Ordinance") to supplement and amend the Original Bond Ordinance (the Original Bond Ordinance, as supplemented and amended by this Supplemental Ordinance, collectively, the "Ordinance"), and to authorize the sale of the Call Rights and the execution and delivery of the Amended 2001 Bonds and the exchange thereof for the outstanding 2001 Bonds, all in consideration for the Bond Bank paying to the Town a portion of the savings associated with the Refunding Bond Bank Bonds in an amount equal to \$41,503.75 (the "2011 Savings"); and

WHEREAS, the Town Council has determined that a significant benefit to the Town in the amount of the 2011 Savings will be effected by the issuance of the Refunding Bond Bank Bonds and that the sale of the Call Rights and the execution and delivery of the Amended 2001 Bonds will not adversely affect the owners of the 2001 Bonds upon the execution and delivery of the Amended 2001 Bonds; and

WHEREAS, the Town Council now finds that all conditions precedent to the adoption of this Supplemental Ordinance have been complied with in accordance with the provisions of Indiana Code 5-1-5, as amended, and Indiana Code 8-1.5, as amended (collectively, the "Act"), to the extent each is applicable hereto;

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

Section 1. Authorization of 2011 Transaction; Sale of Call Rights. The Town Council hereby determines that the receipt of the 2011 Savings in exchange for the sale of the Call Rights and the execution and delivery by the Town of the Amended 2001 Bonds to the Bond Bank in exchange for the outstanding 2001 Bonds now held by the Bond Bank (the "2011 Transaction"), is in the best interests of the Town and is consistent with and in furtherance of the purposes for which the Town was created and exists. The Town is hereby authorized to sell the Call Rights to the Bond Bank in accordance with the terms and conditions of this Supplemental Ordinance.

Section 2. The Amended 2001 Bonds. In accordance with the Act and for the purpose of the 2011 Transaction, the Town shall execute and deliver its amended waterworks revenue

bonds, designated "Town of Fort Branch, Indiana, Amended Waterworks Refunding Revenue Bonds of 2001," in an aggregate principal amount not to exceed the aggregate principal amount of the 2001 Bonds which are currently outstanding (the "Amended 2001 Bonds"), and exchange the Amended 2001 Bonds for all of the outstanding 2001 Bonds. Except where inconsistent with the provisions of this Supplemental Ordinance, the terms and conditions of the Amended 2001 Bonds shall be the same as those of the outstanding 2001 Bonds as provided in the Original Bond Ordinance. The form of the Amended 2001 Bonds shall be substantially in the form of Exhibit A attached hereto, and shall be executed and delivered in the same manner and in accordance with the terms and conditions of the Original Bond Ordinance.

Section 3. No Optional Redemption Prior to Maturity. Notwithstanding anything in the Original Bond Ordinance, the 2001 Purchase Agreement or the 2001 Bonds to the contrary, the Amended 2001 Bonds shall not be subject to optional redemption prior to maturity.

Section 4. Use of 2011 Savings. The 2011 Savings shall be deposited by the Clerk-Treasurer of the Town into the Waterworks Sinking Fund or the Waterworks Improvement Fund, each as established by the Original Bond Ordinance. Such proceeds shall be used by the Town for the purposes of such Fund or Funds, or as otherwise permitted by law.

Section 5. Purchase Agreement. The Qualified Entity Purchase Agreement (the "2011 Purchase Agreement"), in substantially the form submitted to the Town Council at this meeting, is hereby approved. The President of the Town Council and the Clerk-Treasurer of the Town are hereby authorized and directed to execute the 2011 Purchase Agreement with such changes and revisions as they deem necessary, desirable or appropriate and to deliver the 2011 Purchase Agreement to the Bond Bank.

Section 6. Bond Bank Official Statement / Continuing Disclosure Agreement. Use of information concerning the Town in any offering materials including a Preliminary Official Statement and distributed in connection with the issuance of the Refunding Bond Bank Bonds is hereby authorized, ratified and approved. If necessary, the President of the Town Council and the Clerk-Treasurer of the Town are hereby authorized and directed to have prepared and delivered to the Bond Bank any information required for such use and further to deem and determine those portions of the Preliminary Official Statement relating to the Town as near final for purposes of Rule 15c2-12 of the United States Securities and Exchange Commission, as amended (the "SEC Rule"). Further, the President of the Town Council and the Clerk-Treasurer of the Town are hereby authorized and directed to execute a continuing disclosure agreement in a form sufficient to allow the underwriters of the Refunding Bond Bank Bonds to comply with the SEC Rule upon being notified by the Bond Bank that the Town is an "obligated person" (as defined in the SEC Rule) with respect to the Refunding Bond Bank Bonds.

Section 7. Further Actions. The President of the Town Council, the Clerk-Treasurer and any other officer of the Town are each hereby authorized and directed, for and on behalf of the Town, to execute, attest and seal all such documents, instruments, certificates, closing papers and other papers and do all such acts and things as may be necessary, desirable or appropriate to effect the 2011 Transaction and to carry out the purposes of this Supplemental Ordinance and the execution and delivery of the Amended 2001 Bonds in accordance with the Ordinance, including, but not limited to, the execution of any certificates, purchase agreements or other

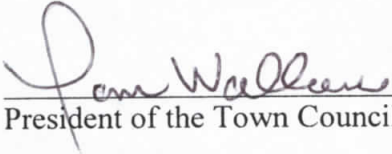
documents necessary to effect the 2011 Transaction, and any and all actions, documents, agreements and certificates heretofore taken or executed in connection with the 2011 Transaction or this Supplemental Ordinance, be, and hereby are, ratified and approved.

Section 8. Construction with Other Ordinances. This Supplemental Ordinance is hereby intended to amend and supplement the Original Bond Ordinance, and to the extent of any inconsistencies or conflicts, if any, between any provision or provisions of this Supplemental Ordinance and the Original Bond Ordinance, the provisions of this Supplemental Ordinance shall be controlling and binding. All ordinances or parts of ordinances, except the Original Bond Ordinance as supplemented and amended by this Supplemental Ordinance, in conflict with the Ordinance are hereby repealed. Unless the context otherwise requires and except as supplemented herein, any references in the Original Bond Ordinance to the 2001 Bonds shall mean the Amended 2001 Bonds and any accounts created and maintained by the Town for the benefit of holders of the 2001 Bonds shall now be maintained, and the funds therein shall now be held, for the benefit of the holders of the Amended 2001 Bonds.

Section 9. Effective Date. This Supplemental Ordinance shall be in full force and effect from and after its passage by the Town Council and upon compliance with the procedures required by law.

\* \* \* \* \*

PASSED AND ADOPTED by the Town Council of the Town of Fort Branch, Indiana, this 9<sup>th</sup> day of February, 2011, by a vote of 3 ayes and 0 nays.

  
\_\_\_\_\_  
President of the Town Council

ATTEST:

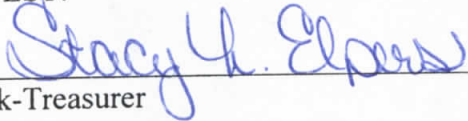
  
\_\_\_\_\_  
Clerk-Treasurer



EXHIBIT A

FORM OF AMENDED 2001 BONDS

NO. 2001AR-1

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF GIBSON

TOWN OF FORT BRANCH, INDIANA  
AMENDED WATERWORKS REFUNDING REVENUE BOND OF 2001

Original Date  
January 1, 2001

Authentication Date  
February 15, 2011

Registered Owner: Indiana Bond Bank

Principal Amount: Nine Hundred Twenty-Five Thousand Dollars (\$925,000)

The Town of Fort Branch (the "Town"), in Gibson County, State of Indiana, for value received, hereby promises to pay to the Registered Owner specified above, or registered assigns, upon surrender hereof, solely out of the special revenue fund hereinafter referred to, the Principal Sums stated below on the Maturity Date specified below,

<u>Maturity Date</u>	<u>Principal Sum</u>	<u>Interest Rate</u>
January 1, 2012	\$135,000	5.932%
January 1, 2013	140,000	5.982
January 1, 2014	150,000	5.982
January 1, 2015	155,000	5.982
January 1, 2016	165,000	5.982
January 1, 2017	180,000	5.982

and to pay interest thereon until the Principal Sum is paid at maturity, at the Interest Rate per annum specified above and from the interest payment date to which interest has been paid or duly provided for next preceding the Authentication Date of this bond as shown above (except if this bond is authenticated after the fifteenth day of the month preceding an interest payment date and on or before the next succeeding interest payment date, it shall bear interest from such interest payment date, and except if this bond is authenticated on or before June 15, 2001, it shall bear interest from the Original Date specified above), with such interest payable semi-annually on January 1 and July 1 of each year, commencing July 1, 2011.

The principal of and interest on this bond is payable at the principal office of the Clerk-Treasurer in the Town of Fort Branch, Indiana, or of any successor registrar and paying agent appointed under the Ordinance hereinafter mentioned (the "Registrar" and the "Paying Agent"). Interest hereon will be paid by cash or draft mailed by the Paying Agent one business day prior

to the payment date to the Registered Owner hereof at the address as it appears on the registration books of the Registrar as of the fifteenth day of the month immediately preceding the applicable interest payment date or at such other address as is furnished to the Paying Agent in writing by such Registered Owner. All payments on this bond shall be made in any coin or currency of the United States of America which, on the dates of such payments, shall be legal tender for the payment of public and private debts.

The Town, the Registrar and the Paying Agent may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and the interest due hereon and for all other purposes, and neither the Town, the Registrar nor the Paying Agent shall be affected by any notice to the contrary.

This bond shall not be valid or become obligatory for any purpose or entitled to any security or benefit under the Ordinance herein described unless and until the certificate of authentication hereon shall have been executed by a duly authorized representative of the Registrar.

This bond is one of an authorized issue of bonds of the Town of Fort Branch, Indiana, designated as "Town of Fort Branch, Indiana, Amended Waterworks Refunding Revenue Bonds of 2001" (the "2001 Bonds"), of like date, tenor and effect, except as to numbering, interest rates and dates of maturity, in the total amount of One Million Fifty Thousand Dollars (\$1,050,000), numbered from R-1 upward, issued for the purpose of providing funds for the refunding of certain bonds previously issued by the Town to finance the acquisition and construction of certain improvements and extensions to the waterworks of the Town, as authorized by Ordinance No. 1992-4 adopted by the Town Council of the Town on the 6<sup>th</sup> day of May, 1992, entitled "An Ordinance of the Town of Fort Branch authorizing the issuance of waterworks revenue bonds for the purpose of providing funds to pay the cost of certain additions, extensions and improvements to the municipal waterworks of said Town, providing for the safeguarding of the interests of the owners of said bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith," by Ordinance No. 2000-15 adopted by the Town Council of the Town on the 18<sup>th</sup> day of December, 2000, entitled, "An Ordinance Supplementing and Amending Ordinance No. 1992-4 and Authorizing the Issuance by the Town of Fort Branch, Indiana, of its Waterworks Refunding Revenue Bonds of 2001 to Provide for the Refunding of its Waterworks Revenue Bonds of 1992, Through the Exchange Therefor, and Other Related Matters," and by an ordinance adopted by the Town Council of the Town on the 9<sup>th</sup> day of February, 2011, entitled "An Ordinance of the Town Council of the Town of Fort Branch, Indiana, Supplementing and Amending Ordinance No. 1992-4 adopted on May 6, 1992, As Previously Amended by Ordinance No. 2000-15 adopted on December 18, 2000, For the Purpose of Authorizing the Execution and Delivery of Amended Revenue Bonds of the Town and Regarding Certain Related Matters" (collectively, the "Ordinance"), and in strict compliance with the provisions of Indiana Code 8-1.5 and Indiana Code 5-1-5, and the laws amendatory thereof and supplemental thereto (collectively, the "Act").

This bond is issuable only in fully registered form in the denomination of \$1,000 or any integral multiple thereof not exceeding the aggregate principal amount of the bonds of this issue maturing in any one year.

Pursuant to the provisions of said Act and said Ordinance, the principal of and interest on this bond and all other bonds of this issue, and any bonds hereafter issued on a parity herewith, are payable solely from the Waterworks Sinking Fund (created by the Ordinance) to be provided from the Net Revenues (herein defined as gross revenues after deduction only for the payment of the reasonable expenses of operation, repair and maintenance) of the waterworks, including all additions and improvements thereto and replacements thereof subsequently acquired or constructed. This bond and the issue of which it is a part constitute a first charge upon said Net Revenues.

This bond does not and shall not constitute an indebtedness of the Town within the meaning of the provisions and limitations of the constitution of the State of Indiana, and the Town is not and shall not be obligated to pay the principal of or interest on this bond except from the special fund provided from such Net Revenues.

The Town of Fort Branch, Indiana, irrevocably pledges the entire Net Revenues of said waterworks to the prompt payment of the principal of and interest on the 2001 Bonds authorized by said Ordinance, of which this is one, and any bonds ranking on a parity therewith, to the extent necessary for that purpose, and covenants that it will cause to be fixed, maintained and collected such rates and charges for services rendered by said works as are sufficient in each year for the payment of the proper and reasonable expenses of operation, repair and maintenance of said works, and for the payment of the sums required to be paid into the Waterworks Sinking Fund under the provisions of the Act and the Ordinance. In the event the Town, or the proper officers thereof, shall fail or refuse to fix, maintain and collect such rates or charges, or if there be a default in the payment of the principal of or interest on this bond, the owner of this bond shall have all of the rights and remedies provided for under Indiana law.

The Town further covenants that it will set aside and pay into its Waterworks Sinking Fund, continued by the Ordinance, a sufficient amount of Net Revenues of such waterworks to meet (a) the interest on all bonds which by their terms are payable from the Net Revenues of the Waterworks, as such interest shall fall due, (b) the necessary fiscal agency charges for paying the principal of and interest on all bonds, (c) the principal of all bonds which by their terms are payable from the Net Revenues of the Waterworks as such principal shall fall due, and (d) an additional amount to create and maintain the reserve required by the Ordinance. Such required payments shall constitute a charge upon all the Net Revenues of said waterworks.

The 2001 Bonds are not subject to optional redemption prior to maturity thereof.

If this bond shall be presented for payment on the date fixed therefor, the Town may deposit in trust with its depository bank, an amount sufficient to pay such bond, and thereafter the registered owner shall look only to the funds so deposited in trust with said bank for payment and the town shall have no further obligation or liability in respect thereto.

Subject to the provisions of the Ordinance regarding the registration of such bonds, this bond and all other bonds of this issue of which this bond is a part are fully negotiable instruments under the laws of the State of Indiana. This bond is transferable or exchangeable only on the books of the Town maintained for such purpose at the principal office of the Registrar, by the Registered Owner hereof in person, or by his attorney duly authorized in writing, upon surrender of this bond together with a written instrument of transfer or exchange satisfactory to the



Registrar duly executed by the registered owner or his attorney duly authorized in writing, and thereupon a new fully registered bond or bonds in the same aggregate principal amount and of the same maturity shall be executed and delivered in the name of the transferee or transferees or the Registered Owner, as the case may be, in exchange therefor. This bond may be transferred or exchanged without cost to the Registered Owner or his attorney duly authorized in writing, except for any tax or other governmental charge which may be required to be paid with respect to such transfer or exchange. The Registrar and Paying Agent shall not be obligated to make any exchange or transfer of this bond (i) during the fifteen (15) days immediately preceding an interest payment date on this bond or (ii) after the mailing of any notice calling this bond for redemption. The Town, the Registrar and the Paying Agent for this bond may treat and consider the person in whose name this bond is registered as the absolute owner hereof for all purposes including for the purpose of receiving payment of, or on account of, the principal hereof and interest due hereon. In the event this bond is mutilated, lost, stolen or destroyed, the Town may cause to be executed and the Registrar may authenticate a new bond of like date, maturity and denomination as this bond, which new bond shall be marked in a manner to distinguish it from this bond; provided, that in the case of this bond being mutilated, this bond shall first be surrendered to the Registrar, and in the case of this bond being lost, stolen or destroyed, there shall first be furnished to the Registrar evidence of such loss, theft or destruction satisfactory to the Town and to the Registrar, together with indemnity satisfactory to them. In the event that this bond, being mutilated, lost, stolen or destroyed, shall have matured or been called for redemption, instead of causing to be issued a duplicate bond the Registrar may pay this bond upon surrender of this mutilated bond or upon satisfactory indemnity and proof of loss, theft or destruction in the event this bond is lost, stolen or destroyed. In such event, the Town and the Registrar may charge the owner of this bond with their reasonable fees and expenses in connection with the above. Every substitute bond issued by reason of this bond being lost, stolen or destroyed shall, with respect to this bond, constitute a substitute contractual obligation of the Town, whether or not this bond, being lost, stolen or destroyed, shall be found at any time, and shall be entitled to all the benefits of the Ordinance, equally and proportionately with any and all other bonds duly issued thereunder.

The bonds authorized and issued pursuant to the Ordinance, including this bond, are subject to defeasance prior to payment as provided in the Ordinance.

The Ordinance contains terms and conditions that affect the rights of any owner of this bond and, by acceptance hereof, each owner of this bond agrees to all such terms and conditions contained in the Ordinance. The Town has the right to amend the Ordinance without the consent of the owners of any bonds issued under the Ordinance so long as the Town determines that such amendment, if enacted, would not materially and adversely affect the owners of such bonds or any other bonds ranking on a parity therewith. The Town may otherwise amend the Ordinance with consent of 66 2/3% of the bondholders of then outstanding 2001 Bonds or bonds issued on a parity therewith.

The Town hereby certifies, recites and declares that all acts, conditions and things required to be done precedent to and in the preparation, execution, issuance and delivery of this bond have been done and performed in regular and due form as required by law.

IN WITNESS WHEREOF, the Town of Fort Branch, Indiana, in Gibson County, State of Indiana, has caused this bond to be executed in its corporate name and on its behalf by the manual or facsimile signature of the President of its Town Council, its corporate seal or a facsimile thereof to be hereunto affixed, and attested by the manual or facsimile signature of its Clerk-Treasurer.

TOWN OF FORT BRANCH, INDIANA

By: \_\_\_\_\_  
President of the Town Council

ATTEST:

\_\_\_\_\_  
Clerk-Treasurer

CERTIFICATE OF AUTHENTICATION

It is hereby certified that this bond is one of the Town of Fort Branch, Indiana, Amended Waterworks Refunding Revenue Bonds of 2001, issued and delivered pursuant to the provisions of the within-mentioned Ordinance.

CLERK-TREASURER OF THE TOWN OF  
FORT BRANCH, INDIANA, as Registrar

By: \_\_\_\_\_  
Authorized Representative

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ (insert name and address) the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within bond on the books kept for the registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guarantee:

NOTICE: Signature(s) must be guaranteed by an eligible guarantor participating in a Securities Transfer Association recognized signatory guaranty program