

ORDINANCE NO. 1992-4

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

WHEREAS, the Town of Fort Branch (the "Town") now owns and operates an unencumbered municipal waterworks in accordance with the provisions of Title 8, Article 1.5 of the Indiana Code, and acts amendatory thereof and supplemental thereto (the "Act"), furnishing the public water supply to said Town and its inhabitants; and

WHEREAS, the Town Council of the Town now finds that certain improvements and extensions to said works are necessary; and that plans, specifications, and estimates have been prepared and filed by the engineers employed by the Town for the construction of said improvements and extensions (the "Project"), which plans and specifications have been or will be approved by said Town Council and by all governmental authorities having jurisdiction; and

WHEREAS, the Town has obtained engineers' estimates of the costs for the construction of said Project and has advertised for and received bids therefor which bids are subject to the Town's obtaining funds to pay for said Project; that on the basis of said estimates and construction bids, the cost of the Project, including incidental expenses, is in the amount of \$2,300,000; and

WHEREAS, the Town Council now finds that it does not have sufficient funds available to pay the cost of said Project and that it will be necessary to obtain such funds from issuance and sale of waterworks revenue bonds in the amount of Two Million Three Hundred Thousand

Dollars (\$2,300,000) payable out of the Net Revenues (as hereinafter defined) of said waterworks and, if necessary, bond anticipation notes (the "BANs"); and

WHEREAS, the Town desires to authorize the issuance of BANs hereunder, if necessary, payable solely from the proceeds of waterworks revenue bonds issued to finance the aforementioned cost of the Project, and to authorize the refunding of said BANs, if issued; and

WHEREAS, all conditions precedent to the adoption of an ordinance authorizing the issuance of said bonds and BANs have been complied with in accordance with the provisions of the Act; now therefore,

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

Sec. 1. Issuance of Bonds and BANs.

(a) The Town, being the owner of and engaged in operating a municipal waterworks furnishing the public water supply to said Town and its inhabitants, now proceed with the Project, the cost of which shall not exceed \$2,300,000, plus investment earnings on the BAN and bond proceeds, without further authorization from the Town Council, and the financing thereof by the issuance of revenue bonds pursuant to and in the manner prescribed by the Act, which revenue bonds shall be payable solely out of the Net Revenues of said waterworks (hereinafter defined as gross revenues of the waterworks after deduction only for the payment of the reasonable expenses of operation, repair and maintenance) of the waterworks, including the works herein acquired and constructed and all additions and improvements thereto and replacements thereof subsequently constructed or acquired.

(b) That the Project shall be constructed and installed in accordance with the plans and specifications heretofore prepared by Commonwealth Engineers, consulting engineers of Indianapolis, Indiana, employed by said Town, which plans and specifications are hereby approved and which plans are by reference made a part of this ordinance as fully as if the same were attached hereto and incorporated herein and two copies of which are now on file in the office of the Clerk-Treasurer and are open for public inspection.

(c) The Town shall issue, if necessary, its BANs for the purpose of procuring interim financing to apply on the cost of said Project. The Town shall issue its BANs in an amount not to exceed Two Million Three Hundred Thousand Dollars (\$2,300,000) to be designated "Waterworks Bond Anticipation Notes." Said BANs shall be numbered consecutively from 1 upward, shall be in multiples of \$1,000, shall be dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed 7.5% per annum (the exact rate or rates to be determined through negotiations) payable upon maturity. The BANs will mature six months from their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed 7.5% per annum (the exact rate or rates to be negotiated). The term of the BANs and all renewal BANs may not exceed five years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof.

The BANs shall be issued pursuant to IC 5-1.5-8-6.1 if sold to the Indiana Bond Bank or pursuant to IC 5-1-14-5 if sold to a financial institution or any other purchaser. The principal of and interest on the BANs shall be payable solely from the issuance of revenue bonds pursuant to and in the manner prescribed by the Act. The revenue bonds will be payable solely out of and constitute a charge against the Net Revenues of the waterworks of the Town, including the

works heretofore constructed and all additions and improvements thereto and replacements thereof presently or subsequently constructed or acquired.

(d) The Town shall issue its bonds, designated "Waterworks Revenue Bonds of 199\_\_\_\_", to be completed with the year in which the bonds are issued, in the principal amount of Two Million Three Hundred Thousand Dollars (\$2,300,000) for the purpose of procuring funds to apply on the costs of said Project, issuance costs and refunding the BANs, if issued.

Said bonds shall be sold at a price not less than 97% of the par value thereof, shall be issued in the denomination of Five Thousand Dollars (\$5,000) each or integral multiples thereof, numbered consecutively from 1 upward, dated as of the first day of the month in which they are sold or the date of delivery if sold to the Indiana Bond Bank and shall bear interest at a rate or rates not to exceed eight and one-half percent (8 1/2%) per annum (the exact rate or rates to be determined by bidding or through negotiation with the Indiana Bond Bank) payable semiannually on January 1 and July 1, beginning on January 1, 1993. The bonds shall mature serially in numerical order on January 1 in the years and amounts as follows:

<u>Year</u>	<u>Amount</u>
1994	\$45,000
1995	45,000
1996	45,000
1997	50,000
1998	50,000
1999	55,000
2000	60,000
2001	65,000
2002	65,000
2003	70,000
2004	75,000
2005	80,000
2006	85,000
2007	95,000
2008	100,000
2009	110,000

2010	115,000
2011	125,000
2012	135,000
2013	145,000
2014	155,000
2015	165,000
2016	175,000
2017	190,000

The BANs are prepayable by the Town, in whole or in part, at any time upon seven days' notice to the owner of the BANs without any premium. The bonds of this issue maturing on or after January 1, 2003 are redeemable at the option of the Town on July 1, 2002, or on any date thereafter, on thirty days' notice, in whole or in part, in inverse order of maturity and by lot within a maturity, at face value, together with the following premiums:

- 3% if redeemed on July 1, 2002,  
or thereafter on or before June 30, 2003;
- 2% if redeemed on July 1, 2003,  
or thereafter on or before June 30, 2004;
- 1% if redeemed on July 1, 2004,  
or thereafter on or before June 30, 2005;
- 0% if redeemed on July 1, 2005,  
or thereafter prior to maturity;

plus in each case accrued interest to the date fixed for redemption.

Notice of such redemption shall be mailed to the address of the registered owner as shown on the registration record of the Town not less than thirty (30) days prior to the date fixed for redemption unless such redemption notice is waived by the owner of the bond or bonds redeemed. The notice shall specify the date and place of redemption and the dates of maturity of the bonds called for redemption. The place of redemption may be determined by the Town. Interest on the bonds so called for redemption shall cease on the redemption date fixed in such

notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

Sec. 2. Registrar and Paying Agent. The Clerk-Treasurer is hereby authorized to contract with a qualified institution to serve as Registrar and Paying Agent for the bonds ("Registrar" or "Paying Agent"). Said Registrar is hereby charged with the responsibility of authenticating the bonds. The Clerk-Treasurer is hereby authorized to enter into such agreements or understandings with the Registrar on the date of issuance of the bonds, or at any later date until all the bonds mature or are redeemed, as will enable the institution to perform the services required of a registrar and paying agent. The Clerk-Treasurer is further authorized to pay such fees as the Registrar may charge for the services it provides as Registrar and Paying Agent and such fees may be paid from the Bond and Interest Account, as hereinafter defined in Section 10, to pay the principal of and interest on the bonds and fiscal agency charges.

As to the BANs and as to the bonds, if sold to the Indiana Bond Bank, the Clerk-Treasurer will be designated the Registrar and Paying Agent and will be charged with the performance of all of the duties and responsibilities of Registrar and Paying Agent.

The principal of the bonds shall be payable at the principal office of the Paying Agent. All payments of interest on the bonds shall be paid by check mailed one business day prior to the interest payment date to the registered owners thereof, as of the fifteenth day of the month preceding such interest payment date, at the addresses as they appear on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by such registered owner. All payments on the bonds shall be made in any lawful money of the

United States of America, which on the date of such payment, shall be legal tender for the payment of public and private debts.

Each bond shall be transferable or exchangeable only upon the books of the Town kept for that purpose at the principal office of the Registrar by the registered owner thereof in person, or by its attorney duly authorized in writing, upon surrender of such bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner, or its attorney duly authorized in writing, and thereupon a new fully registered bond or bonds in an authorized 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. The costs of such transfer or exchange shall be borne by the Town except for any tax or governmental charge required to be paid with respect to the transfer or exchange, which taxes or governmental charges are payable by the person requesting such transfer or exchange. The Town, Registrar and Paying Agent for the bonds may treat and consider the person in whose name such bonds are registered as the absolute owner thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest due thereon.

Interest on such bonds shall be payable from the interest payment date to which interest has been paid next preceding the authentication date of the bonds unless the bonds are authenticated after the fifteenth day of the month preceding an interest payment date and on or before such interest payment date in which case they shall bear interest from such interest payment date, or unless the bonds are authenticated on or before December 15, 1992, in which

case they shall bear interest from the original date of the bonds until the principal shall be fully paid.

Sec. 3. Execution. Each of said bonds and BANs shall be executed in the name of the Town by the manual or facsimile signature of the President, attested by the manual or facsimile signature of its Clerk-Treasurer and the seal of the Town shall be affixed, imprinted or impressed to or on each of said bonds and BANs manually, by facsimile or any other means; and said officials, by the execution of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures the facsimile signatures appearing on said bonds and BANs. In case any officer whose signature or facsimile signature appears on the bonds or BANs shall cease to be such officer before the delivery of the bonds or BANs, the signature of such officer shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery. The bonds shall also be authenticated by the manual signature of an authorized representative of the Registrar and no bond shall be valid or become obligatory for any purpose until the certificate of authentication thereon has been so executed.

Said bonds and BANs shall have all of the qualities and incidents of negotiable instruments under the laws of the State of Indiana, subject to the provisions for registration herein.

Sec. 4. Form of Bonds. The form and tenor of said bonds shall be substantially as follows, all blanks to be filled in properly prior to delivery thereof:

UNITED STATES OF AMERICA

No. \_\_\_\_\_

STATE OF INDIANA

COUNTY OF GIBSON



Original Date

Maturity Date

Authentication Date

Interest Rate

CUSIP

TOWN OF FORT BRANCH  
WATERWORKS REVENUE  
BOND OF 199\_\_\_\_\_

REGISTERED OWNER:

PRINCIPAL SUM:

The Town of Fort Branch ("Town"), in Gibson County, State of Indiana, for value received, hereby promises to pay to the Registered Owner named above ("Registered Owner") or registered assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum set forth above ("Principal Sum") on the Maturity Date set forth above (unless this bond be subject to and be called for redemption prior to maturity as hereinafter provided), and to pay interest hereon until the Principal Sum is paid at the Interest Rate per annum specified above, from the interest payment date to which interest has been paid next preceding the Authentication Date of this bond unless this bond is authenticated after the fifteenth day of the month preceding an interest payment date and on or before such interest payment date in which case it shall bear interest from such interest payment date, or unless this bond is authenticated on or before December 15, 1992, in which case it shall bear interest from the Original Date, which interest is payable semiannually on January 1 and July 1, beginning January 1, 1993.

The principal of this bond is payable at the principal office of \_\_\_\_\_ ("Registrar" or "Paying Agent"), in the \_\_\_\_\_ of \_\_\_\_\_, Indiana. All payments of interest on this bond shall be paid by check mailed one business day prior to the interest payment date to the registered owner hereof, as of the fifteenth day of the month preceding an interest payment date, at the address as it appears on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by the registered owner. All payments on the bond shall be made in any lawful money of the United States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

The Town has designated the bonds as qualified tax-exempt obligations to qualify the bonds for the \$10,000,000 exception from the provisions of Section 265(b)(3) of the Internal Revenue Code of 1986 relating to the disallowance of the deduction for interest expense allocable to tax-exempt obligations.

THE TOWN SHALL NOT BE OBLIGATED TO PAY THIS BOND OR THE INTEREST HEREON EXCEPT FROM THE HEREINAFTER DESCRIBED SPECIAL REVENUE FUND, AND NEITHER THIS BOND NOR THE ISSUE OF WHICH IT IS A PART SHALL IN ANY RESPECT CONSTITUTE A CORPORATE INDEBTEDNESS OF

THE TOWN WITHIN THE PROVISIONS AND LIMITATIONS OF THE CONSTITUTION  
OF THE STATE OF INDIANA.

The terms and provisions of this bond are continued on the reverse side hereof and such terms and provisions shall for all purposes have the same effect as though fully set forth at this place.

It is hereby certified and recited that all acts, conditions and things required to be done precedent to and in the execution, issuance and delivery of this bond have been done and performed in regular and due form as provided by law.

This bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been executed by an authorized representative of the Registrar.

IN WITNESS WHEREOF, the Town of Fort Branch, in Gibson County, Indiana, has caused this bond to be executed in its corporate name by the manual or facsimile signature of the President of its Town Council, its corporate seal to be hereunto affixed, imprinted or impressed by any means and attested manually or by facsimile by its Clerk-Treasurer.

TOWN OF FORT BRANCH, INDIANA

[SEAL]

By \_\_\_\_\_  
President, Town Council

Attest:

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

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the within-mentioned Ordinance.

\_\_\_\_\_, as Registrar

By \_\_\_\_\_

Authorized Representative

(To be printed on Reverse Side)

This bond is one of an authorized issue of bonds of the Town, of like date, tenor and effect, except as to numbering, interest rates and dates of maturity in the total amount of \$2,300,000, numbered consecutively from 1 up; issued for the purpose of providing funds to pay the cost of certain additions, extensions and improvements to the municipally owned waterworks system of the Town[, refunding notes issued in anticipation of bonds] and to pay issuance expenses. This bond is issued pursuant to an ordinance adopted by the Town Council of said Town on the \_\_\_\_ day of \_\_\_\_\_, 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" (the "Ordinance"), and in accordance with the provisions of Indiana law, including without limitation Indiana Code 8-1.5 (the "Act"), the proceeds of which bonds are to be applied solely, together with other funds described in the Ordinance, to the construction of said additions, extensions and improvements[, refunding said interim notes issued in anticipation of bonds] and the incidental expenses incurred in connection therewith.

Pursuant to the provisions of said Act and said Ordinance, the principal of and interest on this bond and all other bonds of said 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 (hereinafter defined as gross revenues of the waterworks after deduction only for the payment of the reasonable expenses of operation, repair and maintenance) of the waterworks, including the works herein acquired and constructed and all additions and improvements thereto and replacements thereof subsequently constructed or acquired. This bond and the issue of which it is a part constitute a first charge upon said Net Revenues.

The Town of Fort Branch irrevocably pledges the entire Net Revenues of said waterworks to the prompt payment of the principal of and interest on the bonds issued on account of the construction of additions, extensions and improvements to said waterworks, 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 service 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 its Waterworks Sinking Fund under the provisions of said Ordinance and said Act. In the event the Town or the proper officers thereof shall fail or refuse to so fix, maintain and collect such rates or charges, or if there be a default in the payment of

the interest on or principal of 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, a sufficient amount of the Net Revenues of said works for payment of (a) the interest on all bonds which by their terms are payable from the revenues of said waterworks, as such interest shall fall due, (b) the necessary fiscal agency charges for paying bonds and interest, (c) the principal of all bonds which by their terms are payable from the revenues of said waterworks, as such principal shall fall due, and (d) an additional amount as a margin of safety to create and maintain the reserve required by the Ordinance. Such required payments shall constitute a first charge upon the Net Revenues of said waterworks.

This bond is transferable or exchangeable only upon the books of the Town kept for that purpose at the office of the Registrar, by the registered owner hereof in person, or by its 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 its attorney duly authorized in writing, and thereupon a new fully registered bond or bonds in an authorized aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or to the registered owner, as the case may be, in exchange therefor. This bond may be transferred or exchanged without cost to the registered owner except for any tax or governmental charge required within respect to the transfer. The Town, the Registrar and any 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.

The bonds of this issue maturing on or after January 1, 2003 are redeemable at the option of the Town on July 1, 2002, or on any date thereafter, on thirty days' notice, in whole or in part, in inverse order of maturity and by lot within a maturity, at face value, together with the following premiums:

- 3% if redeemed on July 1, 2002,  
or thereafter on or before June 30, 2003;
- 2% if redeemed on July 1, 2003,  
or thereafter on or before June 30, 2004;
- 1% if redeemed on July 1, 2004,  
or thereafter on or before June 30, 2005,
- 0% if redeemed on July 1, 2005,  
or thereafter prior to maturity;

plus in each case accrued interest to the date fixed for redemption.

Notice of such redemption shall be mailed to the address of the registered owner as shown on the registration record of the Town not less than thirty (30) days prior to the date

fixed for redemption unless said notice is waived by the registered owner of this bond. The notice shall specify the date and place of redemption and the dates of maturity of the bonds called for redemption. The place of redemption may be determined by the Town. Interest on the bonds so called for redemption shall cease on the redemption date fixed in such notice, if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

If this bond shall not be presented for payment or redemption on the date fixed therefor, the Town may deposit in trust with its depository bank an amount sufficient to pay such bond or the redemption price, as the case may be, 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.

THE OWNER OF THIS BOND, BY THE ACCEPTANCE HEREOF, HEREBY AGREES TO ALL THE TERMS AND PROVISIONS CONTAINED IN THE ORDINANCE. This bond is subject to defeasance prior to redemption or payment as provided in the Ordinance. The Ordinance may be amended without the consent of the owners of the bonds as provided in the Ordinance if the Town Council determines, in its sole discretion, that the amendment shall not adversely affect the rights of any of the owners of the bonds.

The bonds maturing in any one year are issuable only in fully registered form in the denomination of \$5,000 or any integral multiple thereof not exceeding the aggregate principal amount of the bonds maturing in such year.

#### ASSIGNMENT

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

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

NOTICE: Signature(s) must be guaranteed by a broker-dealer or a commercial bank or trust company.

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.

Sec. 5. Authorization for Preparing Bonds and BANs. The Clerk-Treasurer is hereby authorized and directed to have said bonds and BANs prepared, and the President and Clerk-Treasurer are hereby authorized and directed to execute and attest said bonds and BANs in the form and manner herein provided. The Clerk-Treasurer is hereby authorized and directed to deliver said bonds and BANs to the purchasers thereof after sale made in accordance with the provisions of this ordinance, provided that at the time of said delivery the Clerk-Treasurer shall collect the full amount which the purchaser has agreed to pay therefor, which shall not be less than the amount of the BANs set forth in the purchase agreement or 97% of the par value of said bonds, as the case may be, plus accrued interest to the date of delivery. The bonds herein authorized, when fully paid for and delivered to the purchaser, shall be the binding special revenue obligations of the Town, payable out of the Net Revenues of the waterworks to be set aside into the Waterworks Sinking Fund, as herein provided. The proceeds derived from the sale of said bonds shall be and are hereby set aside for application on the cost of the Project, the refunding of the BANs, if issued, and the expenses necessarily incurred in connection with the bonds and BANs. The proper officers of the Town are hereby directed to draw all proper and necessary warrants, and to do whatever acts and things which may be necessary to carry out the provisions of this ordinance.

Sec. 6. Sale of Bonds; Award of Bonds. Prior to the sale of said bonds, the Clerk-Treasurer shall cause to be published a notice of such sale in the Fort Branch Times, the only newspaper published in the Town, two times, at least one week apart, the first publication made at least fifteen (15) days before the date of the sale and the second publication being made at least three (3) days before the date of the sale, all in accordance with IC 5-1-11 and IC 5-3-1.

A notice or summary notice of sale may also be published in The Indianapolis Commercial or in The Bond Buyer in New York, New York. The bond sale notice shall state the time and place of sale, the character and amount of the bonds, the maximum rates of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Clerk-Treasurer and the attorneys employed by the Town shall deem advisable, and any summary notice may contain any information deemed so advisable. Said notice shall provide, among other things, that bidders for said bonds will be required to name the rate or rates of interest which the bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and that such interest rate or rates shall be in multiples of one-eighth ( $1/8$ ) or one-twentieth ( $1/20$ ) of one percent (1%). The rate bid on a maturity shall be equal to or greater than the rate bid on the immediately preceding maturity. No conditional bids or bids for less than 97% of the par value of the bonds will be considered. The opinion of Ice Miller Donadio & Ryan, bond counsel of Indianapolis, Indiana, approving the legality of said bonds will be furnished to the purchaser at the expense of the Town.

The bonds shall be awarded by the Clerk-Treasurer to the best bidder who has submitted its bid in accordance with the terms of this ordinance and the notice of sale. The best bidder will be the one who offers the lowest net interest cost to the Town to be determined by computing the total interest on all of the bonds to their maturities, adding thereto the discount bid, if any and deducting therefrom the premium bid, if any. The right to reject any and all bids is hereby reserved. If an acceptable bid is not received on the date of sale, the sale may be continued from day to day thereafter without further advertisement for a period of thirty (30)

days, during which time no bid which provides a higher net interest cost to the Town than the best bid received at the time of the advertised sale will be considered.

As an alternative to public sale, the Clerk-Treasurer may negotiate the sale of said bonds to the Bond Bank at an interest rate not exceeding eight and one-half percent (8 1/2%) per annum. The President and the Clerk-Treasurer are hereby authorized to (i) submit an application to the Bond Bank, (ii) execute a Bond Purchase Agreement with the Bond Bank with terms conforming to this ordinance and (iii) sell such bonds upon such terms as are acceptable to the President and the Clerk-Treasurer consistent with the terms of this ordinance.

Sec. 7. Financial Records and Accounts. The Town shall keep proper records and books of account, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues received on account of the operation of said waterworks and all disbursements made therefrom and all transactions relating to said waterworks. There shall be prepared and furnished to the original purchaser of the bonds, and upon request to any owner of at least \$25,000 of the bonds, an annual report setting out complete operating, income and financial statements of said waterworks, in reasonable detail, covering the preceding fiscal year. Such report shall be prepared and furnished within ninety (90) days after the close of each fiscal year, and shall be certified by the Clerk-Treasurer, or be prepared by a certified public accountant employed for that purpose. Copies of all such statements and reports shall be kept on file in the office of the Clerk-Treasurer. Any owner of at least \$25,000 of the bonds shall have the right, upon request, at all reasonable times to inspect said waterworks system and the records, accounts and data of the Town relating thereto.



Sec. 8. Construction Account. Any accrued interest and any premium received at the time of the delivery of the bonds shall be deposited in the Waterworks Sinking Fund hereinafter defined. The remaining proceeds from the sale of the bonds, to the extent not used to refund BANs, and BAN proceeds shall upon receipt be deposited in a bank or banks which are legally designated and qualified depositories for the funds of the Town, in a special account or accounts to be designated as "Town of Fort Branch, Waterworks Construction Account." The funds in each of such special accounts shall be deposited, secured, and held, or invested in accordance with the laws of the State of Indiana relating to the depositing, securing and holding, or investing of public funds. The funds in such special account or accounts and any income derived from the investment hereof shall be expended only for the purpose of paying the cost of the Project, refunding the BANs, if issued, and the incidental expenses incurred in connection therewith and with the issuance of bonds and BANs. Any balance or balances remaining unexpended in such special account or accounts after the completion of the Project, which are not required to meet unpaid obligations incurred in connection with the construction of the Project, shall either (1) be deposited in the Waterworks Sinking Fund and used solely for the purposes of said Fund or (2) be used for the same purpose or type of project for which the bonds were issued, all in accordance with IC 5-1-13, as amended.

Sec. 9. Revenue Fund and Operation and Maintenance Fund. All revenues derived from the operation of the waterworks and from the collection of water rates and charges shall be deposited in the Waterworks Revenue Fund ("Revenue Fund") hereby created. Said Revenue Fund shall be segregated and kept separate and apart from all other funds and bank accounts of the Town. Out of said Revenue Fund the proper and reasonable expenses of operation, repair

and maintenance of the works shall be paid, the requirements of the Waterworks Sinking Fund shall be met and the costs of improvements, replacements, additions and extensions to the works shall be paid.

There is hereby created a fund known as the "Operation and Maintenance Fund" ("O & M Fund"). On the last day of each month, a sufficient amount of moneys shall be transferred from the Revenue Fund to the O & M Fund to pay the expenses of operation, repair and maintenance of the works for the next succeeding two (2) calendar months.

The moneys credited to this Fund shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the waterworks on a day-to-day basis, but none of the moneys in said Fund shall be used for depreciation, replacements, improvements, extensions or additions. Any balance in said Fund in excess of the expected expenses of operation, repair and maintenance for the next succeeding month may be transferred to the Waterworks Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds.

Sec. 10. Waterworks Sinking Fund. There is hereby created a special fund designated "Waterworks Sinking Fund," ("Sinking Fund") for the payment of the principal of and interest on all outstanding waterworks revenue bonds, and the payment of any fiscal agency charges in connection with the payment of bonds. There shall be set aside and deposited in said Sinking Fund, as available, and as hereinafter provided, a sufficient amount of the Net Revenues of said waterworks to meet the requirements of the Bond and Interest Account and of the Debt Service Reserve Account hereby continued in said Sinking Fund. Such payments shall continue until the

balance in the Bond and Interest Account, plus the balance in the Debt Service Reserve Account hereinafter described, equals the amount needed to redeem all of the then outstanding bonds.

(a) Bond and Interest Account. There is hereby created, within said Sinking Fund, the Bond and Interest Account. Beginning as of the date of issuance of the Bonds, there shall be credited on the last day of each calendar month from the Revenue Fund to the Bond and Interest Account an amount of the Net Revenues equal to (i) one-sixth ( $1/6$ ) of the interest on all then outstanding bonds payable on the then next succeeding interest payment date and (ii) one-twelfth ( $1/12$ ) of the principal on all outstanding bonds payable on the then next succeeding principal payment date, until the amount of interest and principal payable on the then next succeeding interest and principal payment dates shall have been so credited.

There shall similarly be credited to the account any amount necessary to pay the bank fiscal agency charges for paying principal and interest on the bonds as the same become payable. The Town shall, from the sums deposited in the Sinking Fund and the funds in and credited to the Bond and Interest Account, remit promptly to the registered owner or to the bank fiscal agency sufficient moneys to pay the principal and interest on the due dates thereof together with the amount of bank fiscal agency charges.

(b) Debt Service Reserve Account. There is hereby created, within the Sinking Fund, the Debt Service Reserve Account ("Reserve Account"). The Town shall deposit into the Reserve Account a sum of Net Revenues on the last day of each calendar month until the balance in the Reserve Account is equal to but does not exceed the least of (i) the maximum annual principal and interest requirements of the bonds issued hereunder, (ii) 125% of the average annual debt service on the bonds issued hereunder, or (iii) ten percent (10%) of the proceeds of

the bonds issued hereunder plus a minor portion as defined in the Internal Revenue Code of 1986 (the "Reserve Requirement"). The monthly deposits shall be equal in amount and sufficient so that the balance in the Reserve Account shall equal the Reserve Requirement within five (5) years from the date of delivery of the bonds.

The Reserve Account shall constitute the margin for safety and a protection against default in the payment of principal of and interest on said bonds, and the moneys in the Reserve Account shall be used only to pay current principal and interest on said bonds to the extent that moneys in the Bond and Interest Account are insufficient for that purpose. Any deficiencies in credits to the Reserve Account shall be promptly made up from the next available Net Revenues remaining after credits into the Bond and Interest Account. In the event moneys in the Reserve Account are transferred to the Bond and Interest Account to pay principal and interest on bonds, then such depletion of the balance in the Reserve Account shall be made up from the next available Net Revenues after the credits into the Bond and Interest Account hereinbefore provided for. No moneys shall be held in the Reserve Account in excess of the Reserve Requirement. The Town Council has determined, based upon the advice of its financial advisor, that the Reserve Account is reasonably required and that the Reserve Requirement is no larger than necessary to market the bonds.

Sec. 11. Waterworks Improvement Fund. There is hereby created a special fund designated the Waterworks Improvement Fund ("Improvement Fund"). In the event all required payments into the Operation and Maintenance Fund and the Sinking Fund have been met to date, then any excess Net Revenues may be transferred to the Improvement Fund for improvements, replacements, extensions, and additions to the works. No such transfer to the Improvement

Fund shall be made, however, which will interfere with the requirements of the Sinking Fund or the accumulation of the required reserve therein.

All or any portion of the funds accumulated and reserved in the Improvement Fund shall be transferred to the Sinking Fund, if necessary, to prevent a default in the payment of principal of or interest on the bonds payable from said Sinking Fund or to eliminate any deficiencies in credits to or minimum balance in the Reserve Account for the bonds issued hereunder. Moneys in the Improvement Fund also may be transferred to the O & M Fund to meet unforeseen contingencies in the operation, repair and maintenance of the waterworks.

Sec. 12. Investment of Funds. The Sinking Fund shall consist of at least one separate account of the Town. The O & M Fund and the Improvement Fund may be maintained in one account, or accounts, but such account, or accounts, shall likewise be maintained separate and apart from all other accounts of the Town and apart from the Sinking Fund account or accounts. All moneys deposited in said accounts shall be deposited, held, secured and invested as public funds in accordance with the public depository laws and investment laws of the State of Indiana as now in effect or as hereafter amended.

Sec. 13. Defeasance of the Bonds. If, when the bonds issued hereunder or any portion thereof shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable instructions to call the bonds or any portion thereof for redemption shall have been given, and the whole amount of the principal and the interest and the premium, if any, so due and payable upon all of the bonds or any portion thereof then outstanding shall be paid; or (i) sufficient moneys or (ii) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by the United States of

America, the principal of and the interest on which when due will provide sufficient moneys for such purpose, shall be held in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, then and in that case the bonds issued hereunder or any designated portion thereof shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues of the Town's waterworks.

Sec. 14. Rate Covenant. The Town shall by ordinance establish, maintain and collect just and equitable rates and charges for facilities and services afforded and rendered by said waterworks, which shall, to the extent permitted by law, produce sufficient revenues at all times to pay all the legal and other necessary expenses incident to the operation of such waterworks, to include maintenance costs, operating charges, upkeep, repairs, depreciation, interest charges, to provide for payment of the sums to provide a sinking fund for the liquidation of bonds or other obligations and to provide a debt service reserve for bonds or other obligations, including leases, to provide adequate funds to be used as working capital, as well as funds for making extensions, additions, and replacements, and also, for the payment of any taxes that may be assessed against such waterworks, it being the intent and purpose hereof that such charges shall produce an income sufficient to maintain such waterworks property in a sound physical and financial condition to render adequate and efficient service. So long as any of the bonds herein authorized are outstanding, none of the facilities or services afforded or rendered by said system shall be furnished without a reasonable and just charge being made therefor. The Town shall pay like charges for any and all services rendered by said waterworks to the Town, and all such payments shall be deemed to be revenues of the waterworks. Such rates or charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall

always be sufficient to meet the expenses of operation and maintenance and said requirements of the Sinking Fund.

Sec. 15. Additional Bond Provisions. The Town reserves the right to authorize and issue additional BANs at any time ranking on a parity with the BANs. The Town also reserves the right to authorize and issue additional bonds, payable out of the Net Revenues of its waterworks ranking on a parity with the bonds authorized by this ordinance for the purpose of financing the cost of future additions, extensions, and improvements to the waterworks, or to refund obligations, subject to the following conditions:

(a) The interest on and principal of all bonds or other obligations payable from the Net Revenues of the waterworks shall have been paid to date in accordance with the terms thereof and all credits required to be made to the Sinking Fund and the accounts thereof shall have been made to date.

(b) The amount of Net Revenues of the waterworks in the fiscal year immediately preceding the issuance of any such bonds ranking on a parity with the bonds authorized by this ordinance shall not be less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the proposed additional parity bonds proposed to be issued; or, prior to the issuance of said parity bonds, the water rates and charges shall be increased sufficiently so that said increased rates and charges applied to the previous fiscal year's operations would have produced Net Revenues for said year equal to not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional parity bonds proposed to be issued. For the purposes of this subsection, the records of the waterworks shall be analyzed and

all showings shall be prepared by a certified public accountant retained by the Town for that purpose.

(c) The interest on the additional parity bonds shall be payable semiannually on January 1 and July 1 and the principal shall be payable annually on January 1 in the years in which principal and interest are payable.

Sec. 16. Further Covenants of the Town; Maintenance, Insurance, Pledge Not To Encumber, Subordinate Indebtedness, and Contract with Bondholders. For the purpose of further safeguarding the interests of the owners of the bonds and BANs, it is hereby specifically provided as follows:

(a) All contracts let by the Town in connection with the construction of the Project shall be let after due advertisement as required by the laws of the State of Indiana, and all contractors shall be required to furnish surety bonds in an amount equal to 100% of the amount of such contracts, to insure the completion of said contracts in accordance with their terms, and such contractors shall also be required to carry such employers' liability and public liability insurance as are required under the laws of the State of Indiana in the case of public contracts, and shall be governed in all respects by the laws of the State of Indiana relating to public contracts.

(b) The Project shall be constructed under plans and specifications approved by a competent engineer designated by the Town. All estimates for work done or material furnished shall first be checked by the engineer and approved by the Town.

(c) The Town shall at all times maintain its waterworks in good condition and operate the same in an efficient manner and at a reasonable cost.



(d) So long as any of the bonds and BANs herein authorized are outstanding, the Town shall maintain insurance on the insurable parts of said waterworks of a kind and in an amount such as would normally be carried by private companies engaged in a similar type of business. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the State of Indiana. Insurance proceeds shall be used in replacing the property destroyed or damaged or if not used for that purpose shall be treated and applied as Net Revenues of the works.

(e) So long as any of the bonds and BANs herein authorized are outstanding, the Town shall not mortgage, pledge or otherwise encumber such works or any part thereof, nor shall it sell, lease or otherwise dispose of any portion thereof except equipment or property which may become worn out, obsolete or no longer suitable for use in the waterworks.

(f) Except as hereinbefore provided in Sec. 15, so long as the bonds herein authorized are outstanding, no additional bonds or other obligations pledging any portion of the revenues of said waterworks shall be authorized, executed or issued by the Town except such as shall be made subordinate and junior in all respects to the bonds herein authorized, unless the bonds herein authorized have been duly called for redemption and sufficient funds to effect the redemption and retirement have been deposited at the place of redemption on the date fixed for redemption in accordance with the terms and conditions of said bonds and this ordinance.

(g) The provisions of this ordinance shall constitute a contract by and between the Town and the owners of the bonds and BANs herein authorized, and after the issuance of said bonds and BANs, this ordinance shall not be repealed or amended in any respect which will adversely affect the rights of the owners of said bonds and BANs, nor shall the Town Council adopt any

law, ordinance or resolution which in any way adversely affects the rights of such owners so long as said bonds and BANs or the interest thereon remain unpaid. Excluding the changes set forth in Section 18(a)-(f), the ordinance may be amended, however, without the consent of bondowners, if the Town Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the bonds.

(h) The provisions of this ordinance shall be construed to create a trust in the proceeds of the sale of the bonds and BANs herein authorized for the uses and purposes herein set forth, and the owners of the bonds and BANs shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this ordinance and of said governing Act. The provisions of this ordinance shall also be construed to create a trust in the portion of the Net Revenues herein directed to be set apart and paid into the Sinking Fund for the uses and purposes of said fund as in this ordinance set forth. The owners of said bonds shall have all the rights, remedies and privileges under Indiana law in the event the Town shall fail or refuse to fix and collect sufficient rates and charges for said purposes, or shall fail or refuse to operate and maintain said system and to apply properly the revenues derived from the operation thereof, or if there be a default in the payment of the interest on or principal of the bonds.

Sec. 17. Tax Covenants. In order to preserve the exclusion of interest on the bonds and BANs from gross income, under federal law and as an inducement to the purchasers of the bonds and BANs, the Town represents, covenants and agrees:

(a) No person or entity, other than the Town or another state or local governmental unit, will use proceeds of the bonds or BANs or property financed by said proceeds other than as a member of the general public. No person or entity other than the Town or another state or local

governmental unit will own property financed by bond or BAN proceeds or will have actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, an arrangement such as take-or-pay or other type of output contract or any other type of arrangement that differentiates that person's or entity's use of such property from the use by the public at large of such property.

(b) No portion of the payment of the principal of or interest on the bonds or BANs is, under the terms of the bonds, BANs, this ordinance or any underlying arrangement, directly or indirectly, secured by an interest in property used or to be used for any private use or payments in respect of such property, or to be derived from payments (whether or not to the Town) in respect of property or borrowed money used or to be used for a private business use.

(c) No bond or BAN proceeds will be loaned to any entity or person other than a state or local governmental unit. No bond or BAN proceeds will be transferred directly, or indirectly transferred or deemed transferred to a non-governmental person in a fashion that would in substance constitute a loan of said bond or BAN proceeds.

(d) The Town represents that:

(i) The Town is a governmental unit with general taxing powers;

(ii) The BANs and bonds are not private activity bonds as defined in Section 141 of the Internal Revenue Code of 1986 as in effect on the date of issuance of the bonds or BANs, as the case may be (the "Code");

(iii) At least 95% of the net proceeds of the BANs and bonds will be used for local governmental activities of the Town or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Town; and

(iv) The aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by the Town and all units subordinate to the Town is not reasonably expected to exceed \$5,000,000 in calendar year 1992.

Therefore, the Town meets the requirements of Section 148(f)(4)(D) of the Code and will not have to rebate any arbitrage profits to the United States.

(e) The Town represents that:

(1) The BANs and bonds are not private activity bonds as defined in Section 141 of the Code;

(2) The Town hereby designates the BANs and bonds as qualified tax-exempt obligations for purposes of Section 265(b) of the Code; and

(3) The reasonably anticipated amount of qualified tax-exempt obligations (including 501(c)(3) obligations and tax-exempt leases but excluding other private activity bonds) which will be issued by the Town and all entities subordinate to the Town during 1992 does not exceed \$10,000,000.

(4) The Town has not designated more than \$10,000,000 of qualified tax-exempt obligations during 1992.

Therefore, the BANs and bonds qualify for the exception in the Code from the disallowance of 100% of the deduction by financial institutions of interest expense allocable to tax-exempt obligations.

(f) It will not take any action or fail to take any action with respect to the BANs and bonds that would result in the loss of the exclusion from gross income for federal tax purposes of interest on the BANs and bonds pursuant to Section 103 of the Code, nor will the Town act

in any other manner which would adversely affect such exclusion, and it will not make any investment or do any other act or thing during the period that the BANs and bonds are outstanding which would cause the BANs and bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.

(g) These covenants are based solely on current law in effect and in existence on the date of delivery of such bonds or BANs, as the case may be.

(h) It shall not be an event of default under this ordinance if the interest on the BANs or bonds is not excludable from gross income for federal tax purposes or otherwise pursuant to any provision of the Code which is not currently in effect and in existence on the date of the issuance of the BANs or bonds, as the case may be.

Sec. 18. Amendments with Consent of Bondholders. Subject to the terms and provisions contained in this section, and not otherwise, the owners of not less than sixty-six and two-thirds percent ( $66 \frac{2}{3}\%$ ) in aggregate principal amount of the bonds issued pursuant to this ordinance and then outstanding shall have the right from time to time, anything contained in this ordinance to the contrary notwithstanding, to consent to and approve the adoption by the Town Council of the Town of Fort Branch of such ordinance or ordinances supplemental hereto or amendatory hereof, as shall be deemed necessary or desirable by the Town of Fort Branch for the purpose of modifying, altering, amending, adding to or rescinding in any particular any of the terms or provisions contained in this ordinance, or in any supplemental ordinance; provided, however, that nothing herein contained shall permit or be construed as permitting:

(a) An extension of the maturity of the principal of, mandatory sinking fund redemption date, if any, or interest on any bond issued pursuant to this ordinance; or

(b) A reduction in the principal amount of any bond or the redemption premium or the rate of interest thereon; or

(c) The creation of a lien upon or a pledge of the revenues of the waterworks ranking prior to the pledge thereof created by this ordinance; or

(d) A preference or priority of any bond or bonds issued pursuant to this ordinance over any other bond or bonds issued pursuant to the provisions of this ordinance; or

(e) A reduction in the aggregate principal amount of the bonds required for consent to such supplemental ordinance; or

(f) A reduction of the Reserve Requirement.

In the event that the owners of not less than sixty-six and two-thirds percent (66 2/3 %) in aggregate principal amount of the bonds outstanding at the time of adoption of such supplemental ordinance shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Clerk-Treasurer of the Town, no owner of any bond issued pursuant to this ordinance shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Town Council of the Town from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this ordinance of the Town and all owners of bonds then outstanding, shall thereafter be determined, exercised and enforced in accordance with this ordinance, subject in all respects to such

modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this ordinance, the rights and obligations of the Town and of the owners of the bonds authorized by this ordinance, and the terms and provisions of the bonds and this ordinance, or any supplemental or amendatory ordinance, may be modified or altered in any respect with the consent of the Town and the consent of the owners of all the bonds then outstanding.

Sec. 19. (a) The Town, having satisfied all the statutory requirements for the issuance of its bonds, may elect to issue its BAN or BANs to a financial institution, the Indiana Bond Bank or any other purchaser, pursuant to a Bond Anticipation Note Purchase Agreement (the "Purchase Agreement") to be entered into between the Town and the purchaser. The Town Council hereby authorizes the issuance and execution of the BAN or BANs in lieu of initially issuing bonds to provide interim construction financing for the Project until permanent financing becomes available. It shall not be necessary for the Town to repeat the procedures for the issuance of its bonds, as the procedures followed before the issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance of the bonds and the use of the proceeds to repay the BAN or BANs.

(b) The President and the Clerk-Treasurer are hereby authorized and directed to execute a Purchase Agreement in such form or substance as they shall approve acting upon the advice of counsel. The President and the Clerk-Treasurer may also take such other actions or deliver such other certificates as are necessary or desirable in connection with the issuance of the BANs or the bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith.

Sec. 21. Compliance with Tax Covenants. Notwithstanding any other provisions of this ordinance, the covenants and authorizations contained in this ordinance ("Tax Sections") which are designed to preserve the exclusion of interest on the BANs and bonds from gross income under federal tax law ("Tax Exemption") need not be complied with if the Town receives an opinion of bond counsel that any Tax Section is unnecessary to preserve the Tax Exemption.

Sec. 22. Conflicting Ordinances. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Sec. 23. Headings. The headings or titles of the several sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this ordinance.

Sec. 24. Effective Date. This ordinance shall be in full force and effect from and after its passage.

Adopted this 6th day of May, 1992.

TOWN COUNCIL  
TOWN OF FORT BRANCH

Gerald L. Bledsoe  
Gerald L. Bledsoe, President  
Donald C. Robinson  
Donald C. Robinson, Member

Attest:

Gregory A. Perkins  
Clerk-Treasurer  
Gregory A. Perkins

IDD02FF6/CJF

