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## **CH16 16 .3 - Execution and Delivery of Natural Gas Supply Agreement**

An Ordinance of the Town of Lapel (the "Town") authorizing the execution and delivery of the Natural Gas Supply Agreement and approving matters related thereto and repealing ordinances inconsistent herewith.

### **RECITALS**

WHEREAS, the Town is permitted and has the power pursuant to the provisions of the Indiana Code: (1) to purchase by contract gas or any other service for the purpose of furnishing the gas or service to the patrons of the Town owned utility or to the Town itself; and (2) to enter into contracts; and

WHEREAS, the Town has removed its municipal gas utility from the jurisdiction of the Indiana Utility Regulatory Commission; and

WHEREAS, it has been proposed that certain political subdivisions (the "Indiana Municipal Gas Participants") in the State of Indiana, which own and operate municipal gas utilities, become members of the Indiana Municipal Gas Purchasing Authority, Inc. (the "Authority"); and

WHEREAS, the Authority will be established as a not-for-profit organization pursuant to the Indiana Nonprofit Corporations Act of 1991 (the "Act") for the purpose of acquiring, financing and managing supplies of natural gas for sale to the Indiana Municipal Gas Participants; and

WHEREAS, the Authority will enter into a separate Natural Gas Supply Agreement (each, a "Supply Agreement") and, collectively, the "Supply Agreements") with each of the Indiana Municipal Gas Participants for the purpose of enabling the Authority to sell the natural gas to the Indiana Municipal Gas Participants; and

WHEREAS, the Town recognizes that the Authority will be used for its governmental purposes and functions as described in Article III of the Articles of Incorporation of the Authority (the "Articles"); and

WHEREAS, the Town recognizes that the Authority will perform its functions on behalf of the Indiana Municipal Gas Participants as described in Article III of the Articles; and

WHEREAS, the Town recognizes that the Indiana Municipal Gas Participants have the powers and interests of an owner in the Authority as described in Article IV and Article V of the Articles; and

WHEREAS, the Town recognizes that control and supervision of the organization will be vested in public authorities, as described in Article IV of the Articles; and

WHEREAS, all payments made under the Supply Agreement shall be solely from the revenues of the municipal gas utility;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN AS FOLLOWS:

**Section 1. Approval of Authority.** The establishment of the Authority pursuant to the Act is hereby approved by the Town Council. Further, the Town is authorized to exercise all powers granted to it as a member of the Authority and the Town Council shall have the power to appoint, remove, and reappoint the representative acting on behalf of the Town as a member of the Board of Directors of the Authority.

**Section 2. Execution and Delivery of Supply Agreement.** The substantially final form of the Supply Agreement attached hereto and incorporated herein by reference is hereby approved by the Town Council. The President of the Town Council (the "President") and Clerk-Treasurer of the Town (the "Clerk-Treasurer") are hereby authorized to execute and deliver, on or after the effective date of the incorporation of the Authority and at the appropriate time, the Supply Agreement and to approve any changes in form or substance to the same, and such approval shall be conclusively evidenced by their execution thereof.

**Section 3. Additional Authority of the President and the Clerk-Treasurer.** The President and Clerk-Treasurer are, and each of them, is hereby authorized and directed to do and perform all acts and to execute in the name of the Town and to attest, as appropriate, all such instruments, documents, papers, notices or certificates, including, without limitation, any tax certificate or continuing disclosure undertaking executed in connection with the issuance of the bonds by the Indiana Bond Bank, in such forms the President or Clerk-Treasurer executing or attesting the same shall deem proper, to be evidenced by the execution or attestation thereof which are necessary, desirable or appropriate to carry out the transactions contemplated by this ordinance.

**Section 4. Payments and Rate Covenant.** All payments made under the Supply Agreement shall be solely from the revenues of the municipal gas utility and such payments shall constitute an operating expense of said utility. So long as the Supply Agreement is in effect, the Town Council shall establish, maintain and collect reasonable and just rates and charges for facilities and services afforded and rendered by said municipal gas utility, 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 utility, to include maintenance costs, operating charges, upkeep, repairs, interest charges on bonds or other obligations, to provide a sinking fund and debt service reserve for the liquidation of bonds or other evidences of indebtedness, to provide, adequate funds to be used as working capital, as well as funds for making extensions, additions, and replacements, and all, for the payment

of any taxes that may be assessed against such utility, it being the intent and purpose hereof that such charges shall produce an income sufficient to maintain such utility property in a sound physical and financial condition to render adequate and efficient service.

**Section 5. Compliance with the Supply Agreement.** On and after the execution and delivery of the Supply Agreement, the Town will take all steps necessary to meet its obligation and enforce its right thereunder.

**Section 6. Selection of Counsel.** Ice Miller LLP is hereby selected to serve as counsel to the Town in connection with the execution and delivery of the Supply Agreement by the Town.

**Section 7. Conflicting Ordinances.** All prior ordinances and parts of prior ordinances, insofar as they are in conflict herewith, are hereby repealed.

**Section 8. Effective Date.** This Ordinance shall be in full force and effect from and after its passage by the Town Council.

#### Further Information

3-2007

Date Passed: 4/19/2007