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## CH24 24 .4 - Refund Sewage Works Bond

An Ordinance concerning the current refunding by the Town of Lapel, Indiana of its Sewage Works Revenue Bonds of 2000, Sewage Works Revenue Bonds of 2004 and Sewage Works Revenue Bonds of 2005; authorizing the issuance of sewage works refunding revenue bonds for such purpose; providing for the collection, segregation and distribution of the revenues of the sewage works and the safeguarding of the interests of the owners of said sewage works refunding revenue bonds; other matters connected therewith; and repealing ordinances inconsistent herewith.

WHEREAS, the Town of Lapel, Indiana (the "Town") has heretofore established, constructed and finances its sewage works, and now owns and operates said sewage works pursuant to Indiana Code [36-9-23](#), as in effect on the issue date of the bonds authorized herein, and other applicable laws (the "Act") (all references herein to the Indiana Code are designated hereafter as "IC" followed by the applicable code section or sections); and

WHEREAS, the Town Council of the Town (the "Council") finds that there are outstanding bonds of the sewage works payable out of the Net Revenues (as hereinafter defined) thereof designated as:

- i. the "Sewage Works Revenue Bonds of 2000" (the "2000 Bonds"), now outstanding in the principal amount of \$1,417,000 and maturing annually on January 1 over a period ending January 1, 2040
- ii. the "Sewage Works Revenue Bonds of 2004" (the "2004 Bonds"), now outstanding in the principal amount of \$46,800 and maturing annually on January 1 over a period ending January 1, 2034 and
- iii. the "Sewage Works Revenue Bonds of 2005" (the "2005 Bonds"), now outstanding in the principal amount of \$1,535,000 and maturing annually on January 1 over a period ending January 1, 2035, which 2000 Bonds, 2004 Bonds and 2005 Bonds constitute a first charge on the Net Revenues of the sewage works; and

WHEREAS, the Council finds that the outstanding 2000 Bonds, 2004 Bonds and 2005 Bonds (collectively, the "Refunded Bonds") should be currently refunded pursuant to the provisions of IC [5-1-5](#), as amended, to enable the Town to obtain a reduction in interest payments and effect a savings to the Town; and

WHEREAS, the Council finds that it is necessary to issue its sewage works refunding revenue bonds in an aggregate principal amount not to exceed Three Million Five Hundred Thousand Dollars (\$3,500,000) and to use the proceeds thereof, together with funds on hand, to currently refund the Refunded Bonds and to pay for all costs related to said refunding; and

WHEREAS, the Council has been advised by the Town's financial advisor that it may be economically efficient to acquire a municipal bond insurance policy for the bonds hereby authorized and, if a reserve account is established for the bonds herein authorized, to acquire a debt service reserve surety bond to fund such reserve; and

WHEREAS, in addition to the Refunded Bonds, the Council finds that there are currently outstanding certain sewage works revenue bonds of the Town held by Berkadia Commercial Mortgage, LLC (the "Berkadia Sewer Bonds") which Berkadia Sewer Bonds will be retired in full prior to the issuance of the bonds herein authorized; and

WHEREAS, the bonds to be issued pursuant to this ordinance will constitute a first charge against the Net Revenues of the sewage works and are to be issued subject to the provisions of the laws of the Act, IC [5-1-5](#), as amended, and the terms and restrictions of this ordinance; and

WHEREAS, the Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of said sewage works refunding revenue bonds have been compiled within accordance with the provisions of the Act and IC [5-1-5](#), as amended; now, therefore,

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

Section 1. Authorization of Refunding of Refunded Bonds; Certain Defined Terms.

- a. The Town shall proceed with the current refunding of the Refunded Bonds thereby reducing its interest payments and effecting a savings, as reported by the Town's financial advisor, Patrick Callahan, CPA. The Town shall apply amounts held for the payment of debt service on the Refunded Bonds, if any, to the refunding as provided in Section 12(a).
- b. The terms "sewage works," "sewage works system," "works," "system," and words of like import where used in this ordinance shall be construed to mean and include the existing sewage works system of the Town, including items defined in IC [36-9-1-8](#), and all real estate and equipment used in connection therewith and appurtenances thereto, and all extensions, additions and improvements thereto and replacements thereof now or at any time hereafter constructed or acquired. The bonds herein authorized shall be issued pursuant to and in accordance with the provisions of the Act and IC [5-1-5](#), as amended.

Section 2. Issuance of Bonds.

- a. The Town shall issue its sewage works refunding revenue bonds in the aggregate principal amount not to exceed Three Million Five Hundred Thousand Dollars (\$3,500,000) to be designated "Sewage Works Refunding Revenue Bonds, Series 2015" (the "Bonds"), for the purpose of procuring funds to apply on:

- i. the current refunding of the Refunded Bonds and
  - ii. issuance costs, including, if necessary, costs for insurance and a debt service reserve surety for the Bonds.
- b. The Bonds shall be issued and sold at a price not less than 98.0% of par value thereof. The Bonds shall be issued in fully registered form in denominations of:
  - i. \$5,000 per integral multiples thereof or
  - ii. \$100,000 and any \$5,000 integral multiple in excess thereof, as determined by the Clerk-Treasurer with the advice of the Town's financial advisor, to be set forth in the hereinafter defined Bond Purchase Agreement. The Bonds shall be numbered consecutively from 1 up, originally dated as of the first day of the month in which they are sold or delivered, or the date of delivery, as determined by the Clerk-Treasurer, with the advice of the Town's financial advisor. The Bonds shall bear interest at a rate not exceeding a 4.0% per annum (the exact interest rate or rates to be determined by negotiation). Interest shall be payable semiannually on January 1 and July 1 in each year, commencing on either the first January 1 or the first July 1 following the date of delivery of the Bonds, as determined by the Clerk-Treasurer with the advice of the Town's financial advisor. Principal shall be payable in lawful money of the United States of America at the principal office of the Paying Agent (as hereinafter defined). The Bonds shall mature semiannually on January 1 and July 1 of each year, or be subject to mandatory sinking fund redemption on January 1 and July 1 of each year, over a period ending no later than January 1, 2040. The Bonds shall mature in such amounts as:
    - i. will produce the level annual debt service as practicable taking into account the denomination of the Bonds or
    - ii. otherwise determined by the Clerk-Treasurer with the advice of the Town's financial advisor.
- c. All or a portion of the Bonds may be issued as one or more term bonds, upon election of the purchaser of the Bonds. Such term bonds shall have a stated maturity or maturities consistent with the maturity schedule determined in accordance with the preceding paragraph, on the dates as determined by the purchaser, but in no event later than the last serial maturity date of the Bonds as determined in the preceding paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at 100% of the principal amount thereof, plus accrued interest to the redemption date, on principal payment dates which are hereafter determined in accordance with the preceding paragraph.
- d. The Bonds will be payable solely out of and constitute a first charge against the Net Revenues (herein defined as gross revenues remaining after the payment of the reasonable expenses of operation, repair and maintenance excluding transfers for payment in lieu of property taxes) of the sewage works of the Town. Interest on the Bonds shall be calculated according to a 360-day financial year containing twelve 30-day months or a calendar year basis.

### Section 3. Registrar and Paying Agen.

- a. The Clerk-Treasurer is hereby authorized to serve as, or select and appoint a qualified financial institution to serve as, Registrar and Paying Agent for the Bonds, which Registrar is hereby charged with the responsibility of authenticating the Bonds (the "Registrar" or "Paying Agent"), The Clerk-Treasurer is

hereby authorized to enter into such agreements or understandings with such institution 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 institution may charge for the services it provides as Registrar and Paying Agent, and such fees may be paid from the Sewage Works Sinking Fund established to pay the principal of and interest on the Bonds and fiscal agency charges. If sold to a purchaser that does not object to such designation, the Clerk-Treasurer may serve as Registrar and Paying Agent for the Bonds and, in such case, is hereby charged with the duties of a Registrar and Paying Agent.

- b. 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 each payment (the "Record 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 on or before such Record Date. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time).
- c. All payments on the Bonds shall be made in any coin or currency 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.
- d. 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 but 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 the same aggregate principal amount and of the same maturity shall be executed and delivered in the name of the transferee 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. The Town and the 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.
- e. Interest on Bonds which are authenticated on or before the Record Date which precedes the first interest payment date shall be paid from their original date. Interest on Bonds authenticated subsequent to the Record Date which precedes the first interest payment date thereon shall be paid from the interest payment date to which interest has been paid as of the date on which such Bonds are authenticated, unless a Bond is authenticated between the Record Date and the interest payment date in which case the interest shall be paid from such interest payment.

#### Section 4. Redemption of Bonds

- a. The Bonds may be redeemable at the option of the Town, but no sooner than January 1, 2024, or any date thereafter, on thirty (30) days' notice, in whole or in part, in the order of maturity as determined by the Town, and by lot within a maturity, at face value plus accrued interest to the date fixed for redemption.

- The Clerk-Treasurer shall determine whether the Bonds are redeemable and, in such case, the exact redemption dates, with the advice of the Town's financial advisor, prior to the sale of the Bonds.
- b. If any Bond is issued as a term bond, the Paying Agent shall credit against the mandatory sinking fund requirement for the Bonds maturing as term bonds, and corresponding mandatory redemption obligation, in the order determined by the Town, any Bonds maturing as term bonds which have previously been redeemed (otherwise than as a result of a previous mandatory redemption requirement) or delivered to the Registrar for cancellation or purchased for cancellation by the Paying Agent and not theretofore applied as a credit against any redemption obligation. Each Bond maturing as a term bond so delivered or canceled shall be credited by the Paying Agent at 100% of the principal amount thereof against the mandatory sinking fund obligation on such mandatory sinking fund date, and any excess of such amount shall be credited on future redemption obligations, and the principal amount of the Bonds to be redeemed by operation of the mandatory sinking fund requirement shall be accordingly reduced; provided however, the Paying Agent shall credit only such Bonds maturing as term bonds to the extent received on or before forty-five (45) days preceding the applicable mandatory redemption date.
  - c. Each \$5,000 principal amount of the Bonds shall be considered a separate Bond for purposes of optional and mandatory redemption. If less than an entire maturity is called for redemption, the Bonds to be called for redemption shall be selected by lot by the Registrar. If some Bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the Bonds for optional redemption before selecting the Bonds by lot for the mandatory sinking fund redemption.
  - d. In either case, notice of redemption shall be given not less than thirty (30) days prior to the date fixed for redemption unless such redemption notice is waived by the owner of the Bonds or Bonds redeemed. Such notice shall be mailed to the address of the registered owner as shown on the registration record of the Town as of the date which is forty-five (45) days prior to such redemption date. The notice shall specify the date and place of redemption and sufficient identification 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.

#### Section 5. Book-Entry Provisions.

- a. The Town may, upon the advice of its financial advisor, have the Bonds held by a central depository system pursuant to an agreement between the Town and the Depository Trust Company, New York, New York ("DTC") and have transfers of the Bonds effected by book-entry on the books of the central depository system. In such case, the Bonds shall be issued in the name of Cede & Co., as nominee for DTC, as registered owner of the Bonds, and held in the custody of DTC and the terms and conditions of this provision shall apply.
- b. If the Bonds are held by DTC, a single certificate will be issued and delivered to DTC for each maturity of the Bonds. The actual purchasers of the Bonds (the "Beneficial Owners") will not receive physical delivery of the Bond certificates except as provided herein. Beneficial Owners are expected to receive a written confirmation of their purchase providing details of each Bond acquired. For so long as DTC shall continue to serve as securities depository for the Bonds as provided herein, all transfers of beneficial ownership

- interests will be made by book-entry only, and no investor or other part purchasing, selling or otherwise transferring beneficial ownership of the Bonds is to receive, hold, or deliver any Bond certificate.
- c. For every transfer and exchange of the Bonds, the Beneficial Owner may be charged a sum sufficient to cover such Beneficial Owner's allocable share of any tax, fee, or other governmental charge that may be imposed in relation thereto. Bond certificates are required to be delivered to and registered in the name of the Beneficial Owner, under the following circumstances:
- i. DTC determines to discontinue providing its service with respect to the Bonds (such a determination may be made at any time by giving 30 days' notice to the Town and the Registrar and discharging its responsibilities with respect thereto under applicable law), or
  - ii. the Town determines that continuation of the system of book-entry transfers through DTC (or a successor securities depository) is not in the best interests of the Beneficial Owners.
- d. The Town and the Registrar will recognize DTC or its nominee as the holder of the Bonds for all purposes, including notices and voting, The Town and the Registrar covenant and agree, so long as DTC shall continue to serve as securities depository for the Bonds, to meet the requirements of DTC with respect to required notices and other provisions of a Letter of Representations between the Town and DTC. If necessary to comply with the terms and provisions of the Letter of Representations, a supplemental ordinance shall be adopted to amend this ordinance as necessary.
- e. The Registrar is authorized to rely conclusively upon a certificate furnished by DTC and corresponding certificates from DTC participants and indirect participants as to the identity of, and the respective principal amount of Bonds beneficially owned by, the Beneficial Owner or Beneficial Owners.

#### Section 6. Execution of Bonds; Pledge of Net Revenues to Bonds.

- a. The Bonds shall be signed in the name of the Town by the manual or facsimile signature of the Town Council President and attested by the manual or facsimile signature of the Clerk-Treasurer, who shall affix the seal of said Town to each of said Bonds manually or shall have the seal imprinted or impressed thereon by facsimile. These officials, by the signing of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures their facsimile signatures appearing on said Bonds. In case any officer whose signature or facsimile signature appears on the Bonds shall cease to be such officer between the delivery of the Bonds, 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 Bonds shall be valid or become obligatory for any purpose until the certificate of authentication thereon has been so executed.
- b. The Bonds, and any bonds ranking on a parity therewith, as to both principal and interest, shall be payable from, secured by and shall constitute a first charge upon the Net Revenues of the sewage works of the Town, hereby irrevocably pledged to the payment of the Bonds to the extent necessary for that purpose. The Town shall not be obligated to pay said Bonds or the interest thereon except from the Net Revenues of said works and said Bonds shall not constitute an indebtedness of the Town within the meaning of the provisions and limitations of the constitution of the State of Indiana. The Bonds shall have all of their qualities and incidents of negotiable instruments under the laws of the State of Indiana, subject to the provisions for registration herein.

## Section 7. Form of Bonds.

See hard copy on file at Town Hall.

## Section 8. Preparation and Sale of Bonds; Official Statement; Refunding Escrow.

- a. The Clerk-Treasurer is hereby authorized and directed to have said Bonds prepared, and the Town Council President and Clerk-Treasurer are hereby authorized and directed to execute said Bonds in the form and manner herein provided. The Clerk-Treasurer is hereby authorized and directed to deliver said Bonds to the purchaser of the Bonds as selected by Piper Jaffray & Co., the placement agent (the "Placement Agent"), and approved by the Clerk-Treasurer, in accordance with a bond purchase agreement between the Town and the purchaser of the Bonds (the "Bond Purchase Agreement"). The substantially final form of Bond Purchase Agreement between the Town and the purchaser of the Bonds is attached hereto as Exhibit A and is hereby authorized to execute the Bond Purchase Agreement and deliver the Bonds to the purchaser thereof in accordance with the terms of the Bond Purchase Agreement so long as their terms are consistent with this ordinance. The Bond Purchase Agreement shall establish a final principal amount, purchase price, interest rates, maturity schedule, denominations, optional and mandatory redemption features, if any, and reserve requirement. The Clerk-Treasurer may also deliver the Bonds to the Placement Agent as underwriter if, based upon the advice of the Town's financial advisor, doing so would provide the most financially advantageous terms to the Town.
- b. The Bonds, 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 Town's sewage works, to be set aside into the Sinking Fund as herein provided. The proceeds derived from the sale of the Bonds shall be and are hereby set aside for application on the cost of the current refunding of the Refunded Bonds and the expenses necessarily incurred in connection with the Bonds. 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.
- c. The preparation and distribution of an official statement or private placement memorandum for the Bonds (preliminary and final) prepared by Patrick Callahan, CPA, on behalf of the Town, is hereby authorized. The Town Council President and Clerk-Treasurer are hereby authorized and directed to execute such official statement or private placement memorandum on behalf of the Town in a form consistent with this ordinance and are further authorized to designate the preliminary official statement or private placement memorandum as "nearly final" for purposes of Rule 15c2-12 of the Securities and Exchange Commission (the "SEC Rule"), if applicable.
- d. As an alternate to the preparation and distribution of an official statement or private placement memorandum for the Bonds, the Town may receive from the purchaser of the Bonds a sophisticated investment letter which satisfies applicable state and federal securities laws.
- e. The Clerk-Treasurer is hereby authorized to appoint a financial institution to serve as escrow trustee (the "Escrow Trustee") for the Refunded Bonds in accordance with the terms of the Escrow Agreement between the Town and the Escrow Trustee (the "Escrow Agreement"). The Substantially final form of Escrow Agreement attached hereto as Exhibit B is hereby approved by the Council and the Town Council

President and Clerk-Treasurer are hereby authorized and directed to complete, execute and attest the same on behalf of the Town so long as its provisions are consistent with this ordinance.

- f. The execution by either the Town Council President, the Clerk-Treasurer, the Placement Agent, the Escrow Trustee, the purchaser of the Bonds or the Town's financial advisor, of a subscription for United States Treasurer Obligations - State and Local Government Series for investment of proceeds of the Bonds allocable to the current refunding of the Refunded Bonds to be held under the Escrow Agreement in a manner consistent with this ordinance is hereby approved.
- g. In the event the financial advisor to the Town certifies to the Town that it would be economically advantageous for the Town to obtain bond insurance for the Bonds, the Town hereby authorized the purchase of such bond insurance. In such case, the Town Council President and the Clerk-Treasurer are hereby authorized to execute and deliver all agreements with the provider of the bond insurance to the extent necessary to comply with the terms of such bond insurance and the commitment to issue such bond insurance. The acquisition of bond insurance is hereby deemed economically advantageous if the difference between the present value of
  - i. the total debt service on the Bonds if issued without the bond insurance and
  - ii. the total debt service on the Bonds if issued with the bond insurance, is greater than the cost of the premium for the bond insurance. The cost of obtaining bond insurance shall be considered as a part of the cost of issuance of the Bonds and may be paid out of the proceeds of the Bonds or out of other funds of the waterworks.

#### Section 9. Use of Proceeds.

Proceeds of the Bonds shall be applied as follows and in the following order:

- a. First, any accrued interest and any premium received at the time of the delivery of the Bonds shall be deposited in the Sinking Fund (hereinafter defined) and used to pay interest on the Bonds on the first interest payment date for the Bonds.
- b. Second, concurrently with the delivery of the Bonds, the Clerk-Treasurer shall either:
  - i. acquire, with proceeds of the Bonds and cash on hand, direct obligations of or obligations the principal and interest on which are unconditionally guaranteed by, the United States of America (the "Government Obligations") to be used, together with certain cash from the proceeds of the Bonds and cash on hand as set forth in the Escrow Agreement, to refund and legally defease the Refunded Bonds all as set forth in the Escrow Agreement. In order to refund the Refunded Bonds, the Clerk-Treasurer shall deposit Government Obligations and certain cash with the Escrow Trustee under the Escrow Agreement in an amount sufficient to provide money for payment of the principal of and interest on the Refunded Bonds until the earliest date upon which the Refunded Bonds may be called for redemption. Alternatively, the Clerk-Treasurer may, with the advice of the Town's financial advisor, fully fund the Trust Account under the Escrow Agreement with cash, from the proceeds of the Bonds and funds on hand, to be held uninvested, in an amount sufficient to provide for the refunding of the Refunded Bonds. The Clerk-Treasurer shall obtain a verification of an accountant as to the sufficiency of the funds deposited in the Trust Account under the Escrow Agreement to accomplish said refunding and legal defeasance of the Refunded Bonds; or



- ii. deliver cash to the holder of the Refunded Bonds, from proceeds of the Bonds and cash on hand, in an amount sufficient to provide for the redemption in full of the then outstanding principal of and interest on the Refunded Bonds. The Clerk-Treasurer shall obtain a verification of an accountant as to the required dollar amount necessary to be delivered to the holders of the Refunded Bonds to accomplish said refunding of the Refunded Bonds as of the date of delivery of the Bonds. The Clerk-Treasurer is hereby authorized to contact the holder of the Refunded Bonds, deliver any necessary notices of redemption and take any such further actions as are necessary to permit the redemption of the Refunded Bonds on the date of delivery of the Bonds.
- c. Third, if proceeds of the Bonds will be used to fund all or a portion of the reserve for the Bonds, the Clerk-Treasurer shall transfer such proceeds to the Reserve Account of the Sinking Fund, as hereinafter described.
- d. Fourth, the remaining proceeds from the sale of the Bonds shall be applied by the Clerk-Treasurer to costs of issuance of the Bonds not otherwise paid. Prior to the delivery of the Bonds, the Clerk-Treasurer shall obtain the legal opinion of Bose McKinney & Evans LLP, bond counsel, of Indianapolis, Indiana, and shall furnish such opinion to the Placement Agent and the purchaser of the Bonds. The cost of the opinion shall be considered as part of the costs incidental to the issuance of the Bonds and shall be paid out of the proceeds thereof. When all costs of issuance of the Bonds have been paid, the Clerk-Treasurer shall then transfer any amount then remaining from the proceeds of the Bonds to the hereinafter described Sinking Fund.

#### Section 10. Revenue Fund.

There is hereby created the Revenue Fund (the "Revenue Fund") into which all income and revenues derived from the operation of the sewage works and from the collection of sewage rates and charges shall be deposited. Out of these revenues, the proper and reasonable expenses of operation, repair and maintenance of the works shall be paid, the principal of and interest on all bonds and fiscal agency charges of registrars or paying agents shall be paid, the Reserve Account of the Sinking Fund shall be funded, and the costs of replacements, extensions, additions and improvements shall be paid.

#### Section 11. Operation and Maintenance Fund.

The Operation and Maintenance Fund (the "Operation and Maintenance Fund") is hereby created. Any funds held for operation, repair and maintenance of the sewage works under the ordinances authorizing the Refunded Bonds equal to the amount necessary to pay the expenses of operation, repair and maintenance of the sewage works for a two month period as calculated by the Clerk-Treasurer, with the advice of the Town's financial advisor, shall be transferred to the Operation and Maintenance Fund. On the last day of each calendar month, revenues of the sewage works shall be transferred from the Revenue Fund to the Operation and Maintenance Fund so that the balance maintained in this Fund shall be sufficient to pay the expenses of operation, repair and maintenance of the sewage works for the then 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 sewage works on a day-to-day basis, but none of the moneys in the Operation and Maintenance Fund shall be used for payment in lieu of property taxes, depreciation,

replacements, improvements, extensions or additions. Any moneys in said Fund May be transferred to the Sewage Works Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the sewage works.

## Section 12. Sewage Works Sinking Fund.

There is hereby created a sinking fund for the payment of the principal of and interest on revenue bonds which by their terms are payable from the Net Revenue of the sewage works, and the payment of any fiscal agency charges in connection with the payment of bonds and interest, which fund is hereby designated as the Sewage Works Sinking Fund (the "Sinking Fund"). There shall be set aside and deposited in the Sinking Fund, as available, and as provided below, a sufficient amount of the Net Revenues of the sewage works to meet the requirements of the Bond and Interest Account and the Reserve Account hereby created in the Sinking Fund. Such payments shall continue until the balances in the Bond and Interest Account and the Reserve Account equal the principal of and interest on all of the then outstanding bonds of the sewage works to their final maturity.

- a. Bond and Interest Account. Any moneys heretofore accumulated to pay principal of and interest on the Refunded Bonds shall be credited to and become a part of the Trust Account under the Escrow Agreement and shall be applied on the first payments made from the Trust Account or otherwise be applied to the refunding of the Refunded bonds. There is hereby created, within the Sinking Fund, the Bond and Interest Account. 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. at least one-sixth ( $1/6$ ) of the interest on all then outstanding bonds payable on the then next succeeding interest payment date and
  - ii. at least one sixth ( $1/6$ ) of the principal of all then 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 date 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 of and interest on outstanding bonds as the same become payable. The Town shall from the sums deposited in the Sinking Fund 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 interest and principal on the due dates thereof together with the amount of bank fiscal agency charges.
- b. Reserve Account. There is hereby created, within the Sinking Fund, the Reserve Account (the "Reserve Account"). On the date of delivery of the Bonds, funds on hand of the sewage works, Bond proceeds, or a combination thereof may be deposited in the Reserve Account. The required balance in the Reserve Account shall be determined by the Clerk-Treasurer, with the advice of the Town's financial advisor, upon negotiation with the purchaser of the Bonds, and be set forth in the Bond Purchase Agreement (the "Reserve Requirement"). In any event, the initial deposit or the balance accumulated in the Reserve Account shall not exceed the least of
  - i. the maximum annual debt service on the Bonds and any parity bonds issued in the future by the Town which are payable from the Net Revenues of the sewage works (the "Parity Bonds")
  - ii. 125% of average annual debt service on the Bonds and any Parity Bonds or

iii. 10% of the proceeds of the bonds and any Parity Bonds. On the date of delivery of the Bonds, the Town may deposit the moneys held as a reserve for the Refunded Bonds into the Reserve Account up to an amount equal to but not exceeding the Reserve Requirement. If such deposit into the Reserve Account does not cause the balance therein to equal the Reserve Requirement, an amount of Net Revenues shall be credited to the Reserve Account on the last day of each calendar month until the balance therein equals the Reserve Requirement. The monthly deposits shall be equal in amount and sufficient to accumulate the Reserve Requirements within five years of 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 the Bonds and any Parity bonds, and the moneys in the Reserve Account shall be used to pay current principal and interest on the Bonds and any parity Bonds, to the extent that moneys in the Bonds and Interest Account are insufficient for that purpose. Any deficiency in the balance maintained in the Reserve Account shall be made up from the next available Net Revenues remaining after the credits to the Bond and Interest Account. Any moneys in the Reserve Account in excess of the Reserve Requirement shall be transferred to the Sewage Works Improvement Fund or be used for the purchase of outstanding bonds or installments of principal of fully registered bonds.

A debt service reserve surety bond may be purchased by the Town to satisfy, in whole or in part, the Reserve Requirement. The Town Council President and the Clerk-Treasurer are hereby authorized to execute and deliver the necessary agreements with the provider of the debt service reserve surety bond providing for, among other matters, the reimbursement to such provider of amounts drawn under the debt service reserve surety bond. Each of these officials are hereby authorized and directed to complete, execute and attest any agreement pertaining to such a debt service reserve surety bond on behalf of the Town so long as its provisions are consistent with this ordinance. The provider of the debt service reserve surety bond must be rated, at the time the debt service reserve surety bond is acquired, in one of the three highest rating categories by either Standard & Poor's Rating Services or Moody's Investors Service. The cost of obtaining a debt service reserve surety bond shall be considered as a part of the cost of issuance of the Bonds and may be paid out of the proceeds of the Bonds or out of other funds of the waterworks.

### Section 13. Sewage Works Improvement Fund.

There is hereby created the Sewage Works Improvement Fund (the "Improvement Fund"). As of the date of delivery of the Bonds, any other moneys of the sewage works not otherwise deposited pursuant to the terms of this ordinance shall be transferred to the Improvement Fund and used for sewage works capital improvements or for any other lawful purpose, including payments in lieu of property taxes. After meeting the requirements of the Operation and Maintenance Fund and the Sinking Fund, any excess revenues may be transferred or credited to the Improvement Fund and shall be used for payments in lieu of property taxes, improvements, replacements, additions and extensions of the sewage works. Moneys in the Improvement Fund shall be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal or interest on the then outstanding bonds payable from the Sinking Fund or, if necessary, to eliminate any deficiencies in credits to or minimum balances in the Reserve Account of the Sinking Fund. Moneys in the Improvement Fund may

also be transferred to the Operation and Maintenance Fund to meet unforeseen contingencies in the operation, repair and maintenance of the sewage works.

#### Section 14. Maintenance of Accounts; Investments

The Sinking Fund shall be deposited in and maintained as a separate account or accounts from all other accounts of the Town. The Operation and Maintenance Fund and the Improvement Fund may be maintained in a single 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 the accounts shall be deposited, held and secured as public funds in accordance with the public depository laws of the State of Indiana; provided that moneys therein may be invested in obligations in accordance with the applicable laws, including particularly Indiana Code [5-13](#), as amended or supplemented, and in the event of such investment the income therefrom shall become a part of the funds invested and shall be used only as provided in this ordinance.

#### Section 15. Maintenance of Books and Records.

The Town shall keep proper books of records and accounts, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues collected from said works and all disbursements made on account of the works, also all transactions relating to said works. There shall be furnished, upon written request, to any owner of the Bonds, the most recent audit report of the sewage works prepared by the State Board of Accounts. Copies of all such statements and reports shall be kept on file in the office of the Clerk-Treasurer. Any owner of the Bonds then outstanding shall have the right at all reasonable times to inspect the works and all records, accounts, statements, audits, reports and data of the Town relating to the sewage works. Such inspections may be made by representatives duly authorized by written instrument.

#### Section 16. Rate Covenant.

The Town covenants and agrees that it will establish and maintain just and equitable rates or charges for the use of and the service rendered by the sewage works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses the sewage works by or through any part of the sewage system of the Town, or what in any way uses or is served by the sewage works, at a level adequate to produce and maintain sufficient revenue to provide for the proper operation, repair and maintenance of the sewage works, to comply with and satisfy all covenants contained in this ordinance, and to pay all obligations of the sewage works and of the Town with respect to the sewage works. Such rates and 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, repair and maintenance of the sewage works, and the requirements of the Sinking Fund. The rates and charges so established shall apply to any and all use of such works by and service rendered to the Town, and all departments thereof, and shall be paid by the Town, or the various departments thereof, as the charges accrue.

#### Section 17. Defeasance of Bonds

If, when any of the Bonds issued hereunder 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 and coupons then outstanding shall be paid; or

- i. sufficient moneys, or
- ii. direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, the principal of and the interest on which when due will provide sufficient moneys, 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 sewage works.

#### Section 18. Additional Bond Provisions.

The Town reserves the right to authorize and issue additional Parity Bonds payable out of the Net Revenues of its sewage works ranking on parity with the Bonds for the purpose of financing the cost of future additions, extensions and improvements to the sewage works, or to refund obligations, subject to the following conditions:

- a. All required payments into the Sinking Fund shall have been made in accordance with the provisions of this ordinance, and the interest on and principal of all bonds payable from the Net Revenue of the sewage works shall have been paid to date in accordance with their terms. The Reserve Requirement shall be satisfied for the additional Parity Bonds either at the time of delivery of the additional Parity Bonds or over a five year or shorter period, in a manner which is commensurate with the requirements established in Section 12(b) of this ordinance.
- b. The Net Revenues of the sewage works in the fiscal year immediately preceding the issuance of any such additional Parity Bonds shall be 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; or prior to the issuance of said Parity Bonds, the sewage rates and charges shall be increased sufficiently so that said increased rates and charges applied to the previous year's operations would have produced Net Revenues for said period 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 purposes of this subsection all showings shall be prepared by a certified public accountant employed by the Town for that purpose.
- c. The interest on the additional Parity Bonds shall be payable semiannually on the first days of January and July, and the principal of, or mandatory sinking fund redemption dates for, the additional Parity Bonds shall be payable semiannually on January 1 and July 1.

#### Section 19. Further Covenants.

For the purpose of further safeguarding the interests of the holders of the Bonds, it is specifically provided as follows:

- a. So long as any of the Bonds are outstanding, the Town shall at all times maintain its sewage works in good condition and operate the same in an efficient manner and as a reasonable cost.
- b. So long as any of the Bonds are outstanding, the Town shall acquire and maintain insurance coverage, including fidelity bonds, to protect the sewage works and its operations. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the State of Indiana. Insurance proceeds and condemnation awards shall be used to replace or repair the sewage works.
- c. So long as any of the Bonds 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 machinery, equipment or property which may become worn out, obsolete or no longer suitable for use in the sewage works.
- d. Except as hereinbefore provided in Section 18 hereof, so long as any of the Bonds are outstanding, no additional bonds or other obligations pledging any portion of the revenue of said sewage works shall be authorized, executed, or issued by the Town except such as shall be made subordinate and junior in all respects to the Bonds, unless all of the Bonds are redeemed, retired or defeased pursuant to Section 17 hereof coincidentally with the delivery of such additional bonds or other obligations.
- e. The Town shall take all actions or proceedings necessary and proper, to the extent permitted by law, to require connection of all property where liquid and solid waste, sewage, night soil or industrial waste is produced with available sanitary sewers. The Town shall, insofar as possible, and to the extent permitted by law, cause all such sanitary sewers to be connected with said sewage works.
- f. The provisions of this ordinance shall constitute a contract by and between the Town and the owners of the Bonds, and after the issuance of said Bonds, this ordinance shall not be repealed or amended in any respect which will adversely affect the rights of the owners of said Bonds nor shall the Council adopt any law, ordinance or resolution which in any way adversely affects the rights of such owners so long as any of said Bonds or the interest thereon remain unpaid. Except for the changes set forth in Section 22 (a)-(g), this ordinance may be amended, however, without the consent of Bond owners, if the Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the Bonds.
- g. The provisions of this ordinance shall be construed to create a trust in the proceeds of the sale of the Bonds for the uses and purposes herein set forth, and the owners of the Bonds 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 of the rights, remedies and privileges set forth in the provisions of the governing Act hereinbefore referred to, including the right to have a receiver appointed to administer said sewage works, in the event the Town shall fail or refuse to fix and collect sufficient rates and charges, or shall fail or refuse to operate and maintain said system and to apply the revenues derived from the operation thereof, or if there be a default in the payment of the principal of our interest on any of the Bonds herein authorized or in the event of default in respect to any of the provisions of this ordinance or the governing Act.

## Section 20. Investment of Funds.

The Clerk-Treasurer is hereby authorized to invest moneys pursuant to Indiana Code [5-1-14-3](#) and the provisions of this ordinance (subject to applicable requirements of federal law to insure such yield is the then current market rate) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the Bonds under federal law. The Clerk-Treasurer shall keep full and accurate records of investment earnings and income from moneys held in the funds and accounts created or referenced herein. In order to comply with the provisions of the ordinance, the Clerk-Treasurer is hereby authorized and directed to employ consultants or attorneys from time to time to advise the Town as to requirements of federal law to preserve the tax exclusion. The Clerk-Treasurer may pay any such fees as operating expenses of the sewage works.

## Section 21. Tax Covenants.

In order to preserve the exclusions of interest of the Bonds from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as existing on the date of issuance of the Bonds (the "Code") and as an inducement to purchasers of the Bonds, the Town represents, covenants and agrees that:

- a. The sewage works will be available for use by members of the general public. Use by a member of the general public means use by natural persons not engaged in a trade or business. No person or entity other than the Town or another state or local governmental unit will use more than 10% of the proceeds of the Bonds or property financed by the Bond 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 proceeds or will have any actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, arrangements such as take-or-pay or output contracts or any other type of arrangement that conveys other special legal entitlements and differentiates that person's or entity's use of such property from use by the general public, unless such uses in the aggregate relate to no more than 10% of the proceeds of the Bonds. If the Town enters into a management contract for the sewage works, the terms of the contract will comply with Internal Revenue Service Revenue Procedure 97-13, as it may be amended, supplemented or superseded for time to time, so that the contract will not give rise to private business use under the Code and the Regulations, unless such use in aggregate relates to no more than 10% of the proceeds of the Bonds.
- b. No more than 10% of the principal of or interest on the Bonds is (under the terms of the Bonds, this ordinance or any underlying arrangement), directly or indirectly, secured by an interest in property used or to be used for any private business use or payments in respect of any private business use or payments in respect of such property or to be derived from payments (whether or not to the Town) in respect of such property or borrowed money used or to be used for a private business use.
- c. No more than 5% of the Bonds proceeds will be loaned to any person or entity other than another state or local governmental unit. No more than 5% of the Bond proceeds will be transferred, directly or indirectly, or deemed transferred to a nongovernmental person in any matter that would in substance constitute a loan of the Bond proceeds.
- d. The Town reasonable expects, as of the date hereof, that the Bonds will not meet either the private business use test described in paragraphs (a) and (b) above or the private loan test described in paragraph

- (c) above during the entire term of the Bonds.
- e. No more than 5% of the proceeds of the Bonds will be attributable to private business use as described in (a) and private security or payments described in (b) attributable to unrelated or disproportionate private business use. For this purpose, the private business use test is applied by taking into account only use that is not related to any government use of proceeds of the issue (Unrelated Use) and use that is related but disproportionate to any governmental use of those proceeds (Disproportionate Use).
- f. The Town will not take any action nor fail to take any action with respect to the Bonds that would result in the loss of the exclusion from gross income for federal tax purposes on the Bonds pursuant to Section 103 of the Code, nor will the Town act in any other manner which would adversely affect such exclusion. The Town covenants and agrees not to enter into any contracts or arrangements which would cause the Bonds to be treated as private activity bonds under Section 141 of the Code.
- g. It shall not be an event of default under this ordinance if the interest on any Bond is not excludable from gross income for federal tax purposes or otherwise pursuant to any provisions of the Code which is not currently in effect and in existence on the date of issuance of the Bonds.
- h. These covenants are based solely on current law in effect and in existence on the date of delivery of such Bonds.
- i. The Town represents that it will rebate any arbitrage profits to the United States of America, to the extent required by the Code.
- j. The Town represents that:
1. The Bonds are not private activity bonds as defined in Section 141 of the Code;
  2. The Town hereby designates the Bonds as qualified tax-exempt obligations for purposes of Section 265(b) of the Code;
  3. The reasonably anticipated amount of qualified tax-exempt obligations (including qualified 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 2015, does not exceed \$10,000,000 in such year; and
  4. The Town will not designate more than \$10,000,000 of qualified tax-exempt obligations during 2015.

Therefore, the Bonds qualify for the exceptions in the Code from the disallowance of 100% of the deduction by financial institutions of interest expense allocable to newly acquired tax-exempt obligations.

## Section 22. Amendments with Consent of Bondholders.

Subject to the terms and provisions contained in this Section and Section 19((f), and not otherwise, the owners of not less than sixty-six and two-thirds percent (66 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 of such ordinance or ordinances supplemental hereto as shall be deemed necessary or desirable by the Town 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 or interest on any Bond issued pursuant to this ordinance;  
or
- b. A reduction in the principal amount of any Bond or the rate of interest thereon; or
- c. The creation of a lien upon or a pledge of the revenues of the sewage works 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 in the Reserve Requirement; or
- g. The extension of mandatory sinking fund redemption dates, if any.

If 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 of the adoption thereof by written instrument to be maintained on file in the office of the Clerk-Treasurer, 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 or its officers 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 issued pursuant to the provisions of this ordinance 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 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 issued pursuant to this ordinance then outstanding.

### Section 23. Tax Exemption.

Notwithstanding any other provisions of this ordinance, the covenants and authorizations contained in this ordinance (the "Tax Sections") which are designed to preserve the exclusion of interest on the Bonds from gross income under federal law (the "Tax Exemption") need not be complied with if the Town received an opinion of nationally recognized bond counsel that any Tax Section is unnecessary to preserve the Tax Exemption. At the time of delivery of the Bonds the Town Council President and Clerk-Treasurer will execute post-issuance compliance procedures with respect to the Bonds relating to continued compliance of the Town with respect to the Tax Sections to preserve the Tax Exemption.

### Section 24. Continuing Disclosure.

In order for the Placement Agent of the Bonds to comply with the SEC Rule, if applicable, the Town Council President and the Clerk-Treasurer of the Town are hereby authorized to execute and deliver an agreement by the Town to comply with the requirements of a continuing disclosure undertaking by the Town pursuant to subsection (b)(5) of the SEC Rule, and any amendments thereto from time to time, in substantially the form attached hereto as Exhibit C (the "Continuing Disclosure Agreement"). The Town hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement.

#### Section 25. Conflicting Ordinances.

All ordinances and parts of ordinances in conflict herewith are hereby repealed; provided, however, that this ordinance shall not be construed as adversely affecting the rights of the owners of the Refunded Bonds.

#### Section 26. Sewer Rates.

The estimates of the rates and charges of the sewage works as set forth in the ordinances of the Town are incorporated herein by reference.

#### Section 27. Headings.

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

#### Section 28. Effective Date.

This ordinance shall be in full force and effect from and after its passage.

Passed and adopted by the Town Council of the Town of Lapel, Indiana this 4th Day of June, 2015.

EXHIBIT A-C

Are on file at Town Hall

## Further Information

4-2015

Date Passed: 6/4/2015