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# CH30 30 .16 - Authorizing the Acquisition, Construction of Certain Additions and Improvements to the Waterworks

(SRF BONDS)

**AN ORDINANCE OF THE TOWN OF LAPEL, MADISON COUNTY, INDIANA, AUTHORIZING THE ACQUISITION, CONSTRUCTION OF CERTAIN ADDITIONS AND IMPROVEMENTS TO THE WATERWORKS OF THE TOWN OF LAPEL, MADISON COUNTY, INDIANA; AUTHORIZING THE ISSUANCE OF REVENUE BONDS TO PROVIDE FUNDS FOR THE PAYMENT OF THE COSTS THEREOF; ADDRESSING OTHER MATTERS CONNECTED THEREWITH, INCLUDING THE ISSUANCE OF NOTES IN ANTICIPATION OF BONDS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND ALL MATTERS RELATED HERETO**

**WHEREAS**, the Town has heretofore established, acquired, constructed and finances its municipal waterworks utility system (the "Waterworks" or the "System") for the purpose of furnishing the public water supply to the Town and its inhabitants, and now owns and operates the Waterworks pursuant to provisions of I.C. [8-1.5](#), as in effect on the issue date of the Bond Anticipation Notes or the Bonds, as applicable, which are authorized herein (the "Act"); and

**WHEREAS**, the Town Council of the Town of Lapel, Madison County, Indiana, a Municipal Corporation (hereinafter, the "Town Council"), as its duly elected legislative body, finds that certain additions, improvements and extensions to the System are necessary; and that Commonwealth Engineers, Inc., of Indianapolis, Indiana, the consulting engineers employed by the Town (the "Consulting Engineers"), have prepared and filed plans, specifications, and detailed descriptions and estimates of the costs of the necessary improvements and extensions to the Waterworks, which plans, specifications, descriptions and estimates, to the extent required by applicable law, have been duly submitted to and approved by or will be approved by all governmental authorities having jurisdiction thereover (the improvements and extensions to the Waterworks as described in such engineers' plans and specifications and below as set forth on Exhibit A (and as more fully set forth in the

Financial Assistance Agreement (as hereinafter defined), and any amendment thereto, attached hereto and made a part hereof) are referred to herein as the "Project"); and

**WHEREAS**, the Town Council now further finds that the estimates prepared and delivered by the Consulting Engineers with respect to the costs of acquisition and construction of such improvements and extensions to the Waterworks, and including all authorized expenses relating thereto, including the costs of issuance of bonds on account of the financing of all or a portion thereof, will be in the aggregate amount not to exceed Seven Million Five Hundred Thousand Dollars (\$7,500,000); and

**WHEREAS**, the Town has advertised or will advertise for and receive bids or proposals for the construction of the Project, which bids or proposals will be subject to the Town obtaining funds to pay for the Project; that on the basis of said aforementioned engineering estimates, the maximum estimated cost of the Project, including incidental expenses, in in the amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000); and

**WHEREAS**, the Town Council has determined that to provide funds necessary to pay for the costs of the Project for which other funding is not available, it will be necessary for the Town to issue waterworks revenue bonds, in one (1) or more series, in an amount not to exceed Seven Million Five Hundred Thousand Dollars (\$7,500,000), and, if necessary, bond anticipation notes ("BANs") in an aggregate amount not to exceed Seven Million Five Hundred Thousand Dollars (\$7,500,000); and

**WHEREAS**, the Town Council, after being duly advised, now seeks to authorize the issuance of the Bonds hereunder payable from the Net Revenues (as hereinafter defined) of the Waterworks and the BANs hereunder, if necessary, payable solely from the proceeds of the Waterworks Revenue Bonds issued hereunder; and

**WHEREAS**, the Town expects to refund its outstanding (a) Waterworks Revenue Bonds, Series 2000 and (b) Waterworks Revenue Bonds, Series 2011 prior to the issuance of the Bonds, by issuing its Waterworks Revenue Refunding Bonds, Series 2021A (hereinafter, the "2021A Bonds" ), in the aggregate principal amount of not to exceed Two Million Five Hundred Thousand Dollars (\$2,500,000), and maturing annually on January 1st of each year over a period ending not later than January 1st, 2042, and which 2021A Bonds shall constitute a charge on the Net Revenues (as hereinafter defined) of the System; and

**WHEREAS**, the Town Council has been informed and advised that the Ordinance authorizing the 2021A Bonds (the "2021A Ordinance") allows for the issuance of additional bonds payable from revenues of the System, and ranking on parity with the 2021A Bonds; and

**WHEREAS**, the Town Council now finds, after being duly informed and advised, that all conditions precedent to the issuance of the Bonds on a parity with the 2021A Bonds have been or will be met; and

**WHEREAS**, the Town Council now, based on the foregoing, consequently seeks to authorize the issuance of the Bonds and the BANs to finance the costs of the acquisition and construction of the Project pursuant to the Act and the sale of such revenue bonds at public or private sale, all pursuant to the provisions of IC [5-1-11](#), or to the Authority, as set forth below, pursuant to the provisions of the Act, subject to and dependent upon the terms and conditions hereinafter set forth; and

**WHEREAS**, this Town Council now finds, after being duly informed and advised, that all conditions precedent to the adoption of an Ordinance authorizing the issuance of bond anticipation notes and revenue bonds to provide the necessary funds to be applied to pay all or a portion of the cost of the Project have been compiled with in accordance with the applicable provisions of the Act; and

**WHEREAS**, it is anticipated that the Town may advance all or a portion of the costs of the Project prior to the issuance of the BANs or the Bonds, with such advance to be repaid from proceeds of the BANs or the Bonds upon the issuance thereof; and

**WHEREAS**, the Town Council has been further informed and advised that Section 1.150-2 of the Treasury Regulations on Income Tax (the "Reimbursement Regulations") specifies conditions under which a reimbursement allocation may be treated as an expenditure of bond proceeds, and the Town intends by this Ordinance to qualify amounts advanced by the Town to the Project for reimbursement from proceeds of the BANs or the Bonds in accordance with the applicable requirements of the Reimbursement Regulations; and

**WHEREAS**, the Town may enter into a Financial Assistance Agreement, Funding Agreement and/or Financial Aid Agreement (substantially in the form of Exhibit B attached hereto and made a part hereof) ("Financial Assistance Agreement") with the Indiana Finance Authority (the "Authority") as part of its drinking water loan program, supplemental drinking water and wastewater assistance program, water infrastructure assistance program and/or water infrastructure grant program, established and existing pursuant to IC [5-1.2-1](#) through IC [5-1.2-4](#), IC [5-1.2-10](#), IC [5-1.2-11](#), IC [5-2.2-14](#) and/or IC [5-1.2-14.5](#) (collectively, the "IFA Program"), pertaining to the Project and financing of the Project if any Bonds or BANs are sold to the Authority as part of its IFA Program; and

**WHEREAS**, the Town Council understands that for the Project to be permitted to be financed under the IFA Program, the Town must (a) agree to own, operate and maintain the waterworks and the Project for its useful life and (b) represent and warrant to the Authority that the Town has not intent to sell, transfer or lease the waterworks or the Project for its useful life; and

**WHEREAS**, the Town may accept other forms of financial assistance, as and if available from the IFA Program; and

**WHEREAS**, the Town has removed its waterworks from the jurisdiction of the Indiana Utility Regulatory Commission (the "IURC") with respect to the approval of rates and charges and financings of the waterworks and, accordingly, the Town will not need approval of the IURC prior to the issuance of the Bonds and BANs herein authorized;

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LAPEL, MADISON COUNTY, INDIANA, AS FOLLOWS:**

**SECTION 1. Authorization of Project.** The Town may proceed with the construction of the Project in accordance with the plans and specifications heretofore prepared and filed by the consulting engineers employed by the Town, which plans and specifications are by reference made a part of this Ordinance as fully as if the same were

attached hereto and incorporated herein. Two (2) copies of the plans and specifications are now on file or will be subsequently placed on file in the Office of the Clerk-Treasurer and/or Administrative Offices of the Town and open for public inspection pursuant to the provisions of IC 36-1-5-4. The cost of construction of the Project to be financed shall not exceed the sum of Seven Million Five Hundred Thousand Dollars (\$7,500,000), plus investment earnings on the Bond and BAN proceeds, without further authorization from this Town Council. Where used in this Ordinance, the term "Town" shall be construed also to include any Department, Board, Commission or Officer or Officers of the Town. The terms "Waterworks", "waterworks", "works", "system", and similar terms used in this Ordinance, shall be construed to mean the Town's existing waterworks system together with all the real estate, equipment and appurtenances thereto used in connection therewith, and all improvements, extensions and additions thereto, and replacements thereof, now or subsequently constructed or acquired. If the bonds herein authorized will be sold to the IFA Program, such terms shall also be construed to mean the Drinking Water System, as defined in the Financial Assistance Agreement to be entered into, in such case, between the Town and the Authority through the IFA Program. The Project shall be constructed in accordance with the plans and specifications heretofore mentioned, which plans and specifications are hereby approved. The Project shall be constructed and the Bonds herein authorized shall be issued pursuant to and in accordance with provisions of the Act. The Town reasonably expects to reimburse expenditures incurred by the Town for the Project with proceeds of the Bonds and this constitutes a declaration of Official Intent pursuant to Treasury Regulation 1.150-2(e) and the provisions of IC 5-1-14-6(c).

In the event the bonds herein authorized or the BANs are purchased by the Authority as part of the IFA Program, on behalf of the Town, the Town Council hereby (i) agrees to own, operate and maintain the waterworks and the Project for its useful life and (ii) represents and warrants to the Authority that the Town has no intent to sell, transfer or lease the waterworks or the Project for its useful life.

**SECTION TWO: Description of the Project.** The Project is more particularly described in Exhibit A attached hereto and made a part hereof. The Town shall proceed with the acquisition, construction and installation of the Project and shall enter into all contracts necessary or appropriate for such purpose, in conformity with and subject to the requirements and conditions set forth in this Ordinance and in the Act.

### **SECTION THREE: Issuance of BANS and Bonds.**

(a) The Town shall issue, if necessary, Bond Anticipation Notes (the "BANs") for the purpose of procuring interim financing to pay a portion of the cost of the Project and, if deemed appropriate, the costs of issuance of the BANs. The Town may issue the BANs in one (1) or more series, in an aggregate amount outstanding at any one (1) time not to exceed \$7,500,000 to be designated "Waterworks Bond Anticipation Notes, Series 2021," to be completed with the appropriate year of issuance and an alphabetical designation, if necessary. The BANs shall be lettered and numbers consecutively from R-1 and upward, and shall be in authorized denominations of \$1,000 or more. The BANs shall be dated as of the date of delivery thereof and shall bear interest at a rate not to exceed Three and a Half percent (3.50%) per annum (the exact rate or rates to be determined through negotiations with the purchasers of the BANs) payable either upon maturity or semiannually on January 1st and July 1st, as designated by the Clerk-Treasurer of the Town (the "Clerk-Treasurer"), with the advice of Reedy Financial Group P.C., the Municipal Advisor to the Town (the "Municipal Advisor"). Each series of BANs will

mature no later than five (5) years after their date of delivery, the exact maturity determined by the Clerk-Treasurer, with the advice of the Municipal Advisor and Barnes & Thornburg LLP, Bond Counsel to the Town ("Bond Counsel"). The President of the Town Council (the "President") and the Clerk-Treasurer are hereby authorized and directed to execute a BAN Purchase Agreement in such form or substance as they shall approve acting upon the advice of counsel. The BANs are subject to renewal or extension at an interest rate or rates not to exceed Three and a Half percent (3.50%) per annum (the exact rate or rates to be negotiated with the purchaser of the BANs). The term of any renewal BANs may not exceed five (5) years from the date of delivery of the BANs. The BANs shall be registered in the name of the purchasers thereof. Notwithstanding anything in this Ordinance to the contrary, any series of BANs issued hereunder may bear interest that is taxable and included in the gross income of the owners thereof. If the BANs are issued on a taxable basis, the designated name shall include the term "Taxable" as the first word in the designated name.

(b) The BANs shall be issued pursuant to IC 5-1.2-1 through IC 5-1.2-4, IC 5-1.2-10, IC 5-1.2-14 and/or IC 5-1.2-14.5 if sold to the Authority or pursuant to the provisions of IC 5-1-14-5, as amended, and the Act, if sold to a financial institution or any other purchaser. The BANs shall be sold at a price not less than One Hundred percent (100.00%) of the principal amount thereof. The Town shall pledge to the payment of the principal of and interest on the BANs the proceeds from the issuance of the Bonds pursuant to and in the manner prescribed by the Act. The Town may also use other revenues or funds of the Town legally available therefor, if any, including amounts available to the Town out of federal or state funds available for application to the Project, for payment of the principal of the BANs; provided, however that no funds other than proceeds from the issuance and sale of the Bonds, if and when issued, are pledged to the payment of principal of the BANs. Notwithstanding any other provision of this Ordinance, if the BANs are sold to a purchaser that so agrees, the Town may receive payment for the BANs in installments, and principal shall not be payable and interest shall not accrue on the BANs until such principal amount has been advanced pursuant to requests made by the Town to such purchaser. In the event that the total principal amount of the BANS sold to such purchaser is not advanced to the Town, the principal amount of the BANs shall be reduced accordingly.

(c) The Town shall issue its Waterworks Revenue Bonds (the "Bonds"), in one (1) or more series, in an aggregate principal amount not to exceed \$7,500,000 to be designated "Waterworks Revenue Bonds, Series 202..." to be completed with the year in which the Bonds are issued and separate series designations as appropriate, for the purpose of procuring funds to pay a portion of the cost of the Project, the refunding of the BANs, if issued, and the issuance costs of the Bonds or the BANs, if issued, as determined by the Town, with the advice of the Municipal Advisor. The Bonds shall be issued and sold at a price not less than One Hundred percent (100%) of the principal amount thereof. The Bonds shall be issued in fully registered form in authorized denominations of One Dollar (\$1) each if sold to the Authority as part of the IFA Program and in the denomination of Five Thousand Dollars (\$5,000) each (or such higher minimum denominations as the Clerk\_Treasurer shall determine prior to the sale of the Bonds) if sold to another purchaser, and any integral multiple thereof not exceeding the aggregate principal amount of the Bonds maturing in any one (1) year. The Bonds shall be lettered and numbered consecutively from ....R-1 and upward (with such blank to be filled in based on the year of issuance of the Bonds), originally dated as of the date of delivery, and shall bear interest at a rate not to exceed Three and a Half percent (3.50%) per annum if sold to the Authority as a part of the IFA Program, or shall bear interest at a rate or rates not exceeding Three and a Half percent (3.50%) per annum if sold to any

other purchaser (the exact rate or rates to be determined by negotiation with the IFA Program or another purchaser, or by bidding, as the case may be). Interest on the Bonds shall be calculated on the basis of twelve (12) thirty (30)-day months for a three hundred sixty (360) day year (or on the basis of a three hundred sixty-five (365) day year, if required by the purchaser of the Bonds) and payable semiannually on a January 1st and July 1st in each year (each an "Interest Payment Date"), commencing on the first January 1st or July 1st following the date of delivery of the Bonds, all as determined by the Clerk-Treasurer, with the advice of the Municipal Advisor. The Bonds 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 annually on January 1st of each year, or shall be subject to mandatory sinking fund redemption if term bonds are issued, over a period ending no later than thirty (30) years after the date of issuance of the Bonds in such amounts as is deemed appropriate by the Clerk-Treasurer, with the advice of the Municipal Advisor; provided, however, that any Bonds sold to the Authority as part of its IFA Program shall mature annually on January 1st, or be subject to mandatory sinking fund redemption on January 1st, over a period ending no later than thirty-five (35) years after the date of issuance of the Bonds, and in such amounts as will allow the Town to meet the coverage and/or amortization requirements of the IFA Program, with such debt service schedules to be finalized and set forth in the Financial Assistance Agreement. If the Bonds are sold to a purchaser other than to the Authority as part of its SRF Program, The Town may, upon the advice of the Municipal Advisor, obtain bond insurance for the Bonds.

(d) All or a portion of the Bonds may be issued as one (1) or more term bonds, upon election of the purchaser thereof. Such term bonds shall have a stated maturity or maturities consistent with the maturity schedule determined in accordance with the preceding paragraph, in the years as determined by the purchaser thereof, 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 one hundred percent (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.

(e) If the Bonds authorized hereunder are issued in multiple series, each series of the Bonds shall rank on a parity basis with any other series issued hereunder for all purposes, including the pledge of Net Revenues under this Ordinance.

(f) The Clerk-Treasurer is authorized to serve or select and appoint a qualified financial institution to serve as the Registrar and the Paying Agent for the BANs and the Bonds, which Registrar is hereby charged with the responsibility of authenticating the BANs and the Bonds (the "Registrar" or the "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 the Registrar and the Paying Agent. The Clerk-Treasurer is further authorized to pay such fees as the institution may charge for the services it provides as the Registrar and the Paying Agent, and such fees may be paid from the Sinking Fund. As to the BANs and as to the Bonds, if the purchaser thereof does not object to such designation, the Clerk-Treasurer may serve as Registrar and Paying Agent, and in that case, is hereby charged with the performance of all duties and responsibilities of Registrar and Paying Agent.



(g) If the BANS or Bonds are sold to the Authority as part of its IFA Program, the principal of and interest thereon shall be paid by wire transfer to such financial institution if and as directed by the Authority on the due date of such payment or, if such due date is a day when financial institutions are not open for business, on the business day immediately after such due date. So long as the Authority as part of its IFA Program is the owner of the BANS or the Bonds, such BANS or Bonds shall be presented for payment as directed by the Authority.

(h) If the BANS or Bonds are not sold to the Authority as part of its IFA Program or if the wire transfer payment is not required, the principal of the Bonds and the principal and interest on the BANS shall be payable at the principal (or designated) corporate trust office of the Paying Agent. All payments of interest on the Bonds shall be paid by check mailed to the registered owners thereof, as of the fifteenth (15th) day of the month preceding each Interest Payment Date ("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 1:00pm (New York City time) so such payments are received at the depository by 2:30pm (New York City time). All payments on the BANS and 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.

(i) Each BAN or 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 BAN or 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 BAN or BANS or Bond or Bonds in the same aggregate principal amount and of the same maturity shall be executed and delivered in the name of the transferee or transferees or the registered owner, as the case may be, in exchange thereof. The costs of such transfer or exchange shall be borne by the Town; provided, however that the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. The Town, the Registrar and Paying Agent for the Bonds may treat and consider the person in whose name the BANS or the 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, the premium, if any, and interest due thereon.

(j) The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent upon giving thirty (30) days' notice in writing to the Town and by first class mail to each registered owner of the Bonds then outstanding, and such resignation will take effect at the end of such thirty (30) day period or upon the earlier appointment of a successor registrar and paying agent by the Town. Any such notice to the Town may be served personally or sent by registered mail. The Registrar and Paying Agent may be removed at any time as Registrar and Paying Agent by the Town, in which event the Town may appoint a successor Registrar and Paying Agent. The Town shall notify each registered owner of the Bonds then outstanding by first class mail of the removal of

the Registrar and Paying Agent. Notices to the registered owners of the Bonds shall be deemed to be given when mailed by first class mail to the addresses of such registered owners as they appear on the registration books kept by the Registrar. Upon the appointment of any Successor Registrar and Paying Agent by the Town, the Clerk-Treasurer is authorized and directed to enter into such agreements and understandings with such Successor Registrar and Paying Agent as will enable the institution to perform the services required of a registrar and paying agent for the Bonds. The Clerk-Treasurer is further authorized to pay such fees as the successor Registrar and Paying Agent may charge for the services it provides as registrar and paying agent, and such fees may be paid from the Waterworks Sinking Fund continued in SECTION THIRTEEN hereof. Any predecessor registrar and paying agent shall deliver all of the Bonds and any cash or investments in its possession with respect thereto, together with the registration books, to the successor Registrar and Paying Agent.

(k) The BANs and the Bonds shall bear an original issue date which shall be the date of issuance of the BANs and the Bonds, and each BAN and Bond shall also bear the date of its authentication. Any BAN or Bond authenticated on or before the fifteenth day of the calendar month immediately preceding the first Interest Payment Date shall pay interest from its original issue date; provided, however, that interest on any BANs or Bonds sold to the Authority as part of its IFA Program shall be payable from the date or dates of payment made by the Authority as part of its purchase of the BANs or Bonds pursuant to the Financial Assistance Agreement. Any BAN or Bond authenticated thereafter shall pay interest from the Interest Payment Date next preceding the date of authentication of such BAN or Bond to which interest thereon has been paid or duly provided for, unless such BAN or Bond is authenticated after the day which is the fifteenth day of the calendar month immediately preceding an Interest Payment Date and on or before such Interest Payment Date, in which case interest thereon shall be paid from such Interest Payment Date.

(l) The BANs or the Bonds may be issued in book-entry-only form as one (1) fully registered BAN or Bond per maturity registered in the name of Cede & Co., as nominee for The Depository Trust Company ("DTC"), New York, New York, and DTC may act as securities depository for the BANs or the Bonds and have transfers of the Bonds effected by book-entry on the books of DTC (the "Book Entry System"). The Bonds may be initially issued in the form of a separate single authenticated fully registered Bond for the aggregate principal amount of each separate maturity of the Bonds. Purchasers of beneficial interests will not receive certificates representing their interests in the BANs or the Bonds purchased.

(m) With respect to the Bonds registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, the Town and the Paying Agent shall have no responsibility or obligation to any other holders or owners (including any beneficial owner ("Beneficial Owner")) of the Bonds with respect to (i) the accuracy of the records of the Depository Trust Company, CEDE & CO., or any Beneficial Owner with respect to ownership questions; (ii) the delivery to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any notice with respect to the Bonds including any notice of redemption; or (iii) the payment to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any amount with respect to the principal of, or premium, if any, or interest on the Bonds, except as otherwise provided herein.



(n) With respect to Bonds registered in the name of CEDE & CO., the following provisions shall also apply. No person other than the Depository Trust Company shall receive an authenticated Bond evidencing an obligation of the Town to make payments of the principal of and premium, if any, and interest on the Bonds pursuant to this Ordinance. The Town and the Registrar and Paying Agent may treat as and deem the Depository Trust Company or CEDE & CO. to be the absolute bondholder of each of the Bonds for the purpose of (i) payment of the principal of and premium, if any, and interest on such Bonds; (ii) giving notices of redemption and other notices permitted to be given to bondholders with respect to such Bonds; (iii) registering transfers with respect to such Bonds; (iv) obtaining any consent or other action required or permitted to be taken by or with respect to bondholders; (v) voting; and (vi) for all other purposes whatsoever. The Paying Agent shall pay all principal of and premium, if any, and interest on the Bonds only to or upon the order of the Depository Trust Company, and all such payments shall be valid and effective fully to satisfy and discharge the Town's and the Paying Agent's obligations with respect to principal of and premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. Upon delivery by the Depository Trust Company to the Town of written notice to the effect that the Depository Trust Company has determined to substitute a new nominee in place of CEDE & CO., and subject to the provisions herein with respect to consents, the words "CEDE & CO." in this Ordinance shall refer to such new nominee of the Depository Trust Company. Notwithstanding any other provision hereof to the contrary, so long as any Bond is registered in the name of CEDE & CO., as nominee of the Depository Trust Company, all payments with respect to such Bonds shall be made and given to the Depository Trust Company as provided in a Representation Letter from the Town to the Depository Trust Company.

(o) Upon receipt by the Town of written notice from the Depository Trust company to the effect that the Depository Trust Company is unable or unwilling to discharge its responsibilities and if no substitute depository willing to undertake the functions of the Depository Trust Company hereunder can be found which is willing and able to undertake such functions upon reasonable and customary terms, then the Bonds shall no longer be restricted to being registered in the register of the Town kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, but may be registered in whatever name or names the bondholders transferring or exchanging the bonds shall designate, in accordance with the provisions of this Ordinance.

(p) If the Town determines that it is in the best interests of the bondholders that they be able to obtain certificates for the fully registered Bonds, the Town may notify the Depository Trust Company and the Registrar, whereupon the Depository Trust Company will notify the Beneficial Owners of the availability through the Depository Trust Company of certificates for the Bonds. In such event, the Registrar shall prepare, authenticate, transfer and exchange Certificates for the Bonds as requested by the Depository Trust Company and any Beneficial Owners in appropriate amounts, and whenever the Depository Trust Company requests the Town and the Registrar to do so, the Registrar and the Town will cooperate with the Depository Trust Company by taking appropriate actions after reasonable notice (i) to make available one (1) or more separate Certificates evidencing the fully registered Bonds of any Beneficial Owner's Depository Trust Company account or (ii) to arrange for another securities depository to maintain custody of Certificates and evidencing the Bonds.

(q) In connection with any notice or other communication to be provided to bondholders by the Town or the Registrar with respect to any consent or other action to be taken by bondholders, the Town or the Registrar, as

the case may be, shall establish a record date for such consent or other action and give the Depository Trust Company notice of such record date not less than fifteen (15) calendar days in advance of such record date to the extent possible.

(r) So long as the Bonds are registered in the name of the Depository Trust Company or CEDE & CO. or any substitute nominee, the Town and the Registrar and Paying Agent shall be entitled to request and to rely upon a Certificate or other written representation from the Beneficial Owners of the Bonds or from the Depository Trust Company on behalf of such Beneficial Owners stating the amount of their respective beneficial ownership interests in the Bonds and setting forth the consent, advice, direction, demand or vote of the Beneficial Owners of a record date selected by the Registrar, to the same extent as if such consent, advice, direction, demand or vote were made by the bondholders for purposes of this Ordinance, and the Town and the Registrar and Paying Agent shall for such purposes treat the Beneficial Owners as the bondholders. Along with any such Certificate or representation, the Registrar may request the Depository Trust Company to deliver, or cause to be delivered, to the Registrar a list of all Beneficial Owners of the Bonds, together with the dollar amount of each Beneficial Owner's interest in the Bonds and the current addresses of such Beneficial Owners.

(s) Notwithstanding anything contained herein, the Town may accept any other forms of financial assistance, as and if available, from the IFA Program (including without limitation any forgivable loans, grants or other assistance whether available as an alternative to any BAN or Bond related provision otherwise provided for herein or as a supplement or addition thereto). If required by the IFA Program to be eligible for such financial assistance, one or more of the series of the BANs or Bonds issued hereunder may be issued on a basis such that the payment of the principal of or interest on (or both) such series of BANs or Bonds is junior and subordinate to the payment of the principal of and interest on other series of BANs or Bonds issued hereunder (and/or any other revenue bonds secured by a pledge of Net Revenues, whether now outstanding or hereafter issued), all as provided by the terms of such series of BANs or Bonds as modified pursuant to this authorization. Such financial assistance, if any, shall be as provided in the Financial Assistance Agreement and the BANs or Bonds of each series of BANs or Bonds issued hereunder (including any modification made pursuant to the authorization in this paragraph to the form of Bond otherwise contained herein).

#### **SECTION 4: Redemption of BANs and Bonds.**

(a) If deemed appropriate by the Clerk-Treasurer, with the advice of the Municipal Advisor, the BANs shall be prepayable by the Town, in whole or in part, on or after the date determined to be most appropriate by the Clerk-Treasurer, with the advice of the Municipal Advisor, upon seven (7) days' notice to the owner of the BANs as of the date which is one hundred eighty (180) days prior to such prepayment, without any premium, but with accrued interest to the date of prepayment.

(b) The Bonds may be made redeemable at the option of the Town, in whole or in part, in the order of maturity as determined by the Town, and by lot within a maturity, on thirty (30) days' notice (or sixty (60) days' notice for Bonds sold to the Authority as part of its SRF Program), at face value, with a premium no greater than two-percent (2%), plus accrued interest to the date fixed for redemption. The exact redemption dates and premium, if any, shall be established by the Clerk-Treasurer, with the advice of the Town's municipal advisor, prior to the

sale of the Bonds; provided, that Bonds sold to the Authority as part of its IFA Program shall be redeemable not sooner than ten (10) years after their date of delivery and in inverse order of maturity; provided, further, that if the Bonds are sold to the IFA Program and registered in the name of the Authority, the Bonds shall not be redeemable at the option of the Town unless and until consented to by the Authority.

(c) All or a portion of the Bonds may be aggregated into one (1) or more term bonds payable from mandatory sinking fund redemption payments. If any Bond 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 maturing on the same date 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 one hundred percent (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.

(d) Each authorized denomination amount of 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 the Bonds of mandatory sinking fund redemption before selecting the Bonds by lot for optional redemption.

(e) Notice of redemption shall be given not less than thirty (30) days prior to the date fixed for redemption for Bond's, unless such redemption notice is waived by the owner of the Bonds or Bonds to be 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 for Bonds that are sold to any other purchaser; provided, however that such notice shall be provided at least (60) days in advance if the Bonds are sold to the Authority as part of the IFA Program, to the registered owner as shown on the registration record of the Town as of the date which is sixty-five (65) days prior to the redemption date for us ....