

RESOLUTION NO. 2024-11-6

A RESOLUTION OF THE COUNTY COUNCIL OF MORGAN COUNTY, INDIANA, AUTHORIZING THE PARTICIPATION OF SAID COUNTY IN THE MOTOR FUEL BUDGETING PROGRAM OF THE INDIANA BOND BANK FOR THE 2025 BUDGET YEAR, THE EXECUTION OF THE QUALIFIED ENTITY REIMBURSEMENT AGREEMENT IN CONNECTION THEREWITH AND OTHER RELATED MATTERS

WHEREAS, Morgan County, Indiana (the "County") owns and operates a fleet of motor vehicles which motor vehicles are essential to the ability of the County to serve and provide governmental services to the inhabitants of the County, thereby ensuring the safety and well-being of said inhabitants; and

WHEREAS, the County Council of the County (the "Council"), the fiscal body of the County, finds that the availability of motor vehicle fuel, which includes both gasoline and diesel motor fuel (collectively, "Motor Fuel"), is therefore critical to the County in providing such services; and

WHEREAS, the market-driven volatility of Motor Fuel presents a substantial risk to the Motor Fuel budget of the County, which may require the appropriation of additional funds for the purchase of Motor Fuel should prices increase beyond the amount of funds which have been appropriated for such purpose; and

WHEREAS, current market conditions limit the ability of the County to secure Motor Fuel with qualified suppliers of Motor Fuel in a manner which minimizes the adverse impacts of the volatile Motor Fuel market on the budget for the County; and

WHEREAS, the County has been advised by representatives of the Indiana Bond Bank (the "Bond Bank"), including Crowe LLP, that the Bond Bank has established and continued a motor fuel budgeting program (the "Program") pursuant to which "qualified entities", as defined in Indiana Code 5-1.5-1-8, may participate for the purpose of managing and mitigating the volatility of Motor Fuel prices in order to achieve budget stability; and

WHEREAS, the Council finds that the County is a qualified entity and is eligible to participate in the Program for the 2025 budget year; and

WHEREAS, the Council, having considered the information presented to it, finds that (i) participation in the Program will allow the County to manage and mitigate the volatility of Motor Fuel prices in order to achieve stability in the County's Motor Fuel budget for the 2025 budget year, (ii) participation in the Program will enhance the County's ability to continue to operate its motor vehicle fleet in an economical manner to assure the continued provision of governmental services to the inhabitants of the County, and (iii) the County is authorized to participate in the Program pursuant to Indiana Code 5-1.5, 36-1-4 and 36-2-2; and

Section 4. The obligations of the County under the Agreement shall be payable from and shall not exceed the amount appropriated by the County for Motor Fuel for the 2025 budget year. The Auditor is hereby authorized and directed to make any payments necessary to the Bond Bank pursuant to the terms of the Agreement from funds budgeted by the County for Motor Fuel for the 2025 budget year.

Section 5. All resolutions and parts of resolutions in conflict herewith are hereby repealed.

Section 6. This Resolution shall be in full force and effect upon its passage by the Council.

PASSED AND ADOPTED BY THE COUNTY COUNCIL OF MORGAN COUNTY, INDIANA THIS _____ DAY OF _____, 2024.

COUNTY COUNCIL OF
MORGAN COUNTY, INDIANA

President

Vice President

Council Member

ATTEST:

Linda Pruitt, Auditor
Morgan County, Indiana

QUALIFIED ENTITY REIMBURSEMENT AGREEMENT

This QUALIFIED ENTITY REIMBURSEMENT AGREEMENT, dated as of the 1st day of December, 2024 (this "Agreement"), between the INDIANA BOND BANK, a body corporate and politic ("Bond Bank"), created and existing pursuant to the provisions of Indiana Code 5-1.5, as amended (the "Act"), having its principal place of business in the City of Indianapolis, Indiana, and MORGAN COUNTY, INDIANA, a political subdivision of the State of Indiana ("Qualified Entity");

WITNESSETH:

WHEREAS, pursuant to the Act, the Board of Directors of the Bond Bank has adopted a resolution (the "Bond Bank Resolution") establishing a motor fuel budget program (the "Fuel Budgeting Program, Series 2025") and authorizing the Bond Bank (i) to enter into certain transactions with the Qualified Entity for the purpose of hedging the price associated with the purchase of gasoline and/or diesel motor fuel (such gasoline and diesel motor fuel hereinafter referred to as "Motor Fuel") for use by the Qualified Entity, and (ii) to enter into one or more commodity index swap agreements with one or more commodity index swap dealers that will allow the Qualified Entity to manage and mitigate the volatility of Motor Fuel prices in order to achieve budget stability for such Qualified Entity; and

WHEREAS, pursuant to its Resolutions adopted on _____, 2024 and _____, 2024 (collectively, the "Qualified Entity Resolution") by the County Commissioners and County Council for Morgan County, Indiana, acting as the governing body for the Qualified Entity, the Qualified Entity is authorized to enter into this Agreement for the purpose of allowing the Bond Bank to (i) solicit and select creditworthy swap counterparties, (ii) negotiate and manage one or more commodity index swap agreements, and (iii) to fund all or a portion of the costs and expenses associated with any such swap agreements and the Fuel Budgeting Program, Series 2025, in accordance with this Agreement; and

WHEREAS, pursuant to the Qualified Entity Resolution, the Qualified Entity is authorized to pay to the Bond Bank all or a portion of the funds budgeted for Motor Fuel by the Qualified Entity for the purpose of (i) reimbursing the Bond Bank for amounts advanced by the Bond Bank from the Reserve Account (as defined in the Bond Bank Resolution) necessary to make payments due by the Bond Bank, if any, with respect to a commodity index swap agreement, and (ii) to pay any and all expenses associated with or incurred by the Bond Bank in connection with the Fuel Budgeting Program, Series 2025, allocable to the Qualified Entity; and

WHEREAS, pursuant to the Bond Bank Resolution and in reliance, in part, on the adoption of the Qualified Entity Resolution and the execution and delivery of this Agreement by the Qualified Entity, the Bond Bank has entered into one or more commodity index swap agreements in the form of a Master Agreement, including one or more schedules thereto and/or credit support annexes thereto (collectively, the "ISDA Agreement"), and the confirmation or confirmations entered into thereunder (collectively, the "Confirmation" and, together with the "ISDA Agreement," the "Swap Agreement"), with the commodity index swap dealer or dealers named therein (collectively, the "Swap Dealer");

States, or any applicable judgment or decree of any court, regulatory body or other public body or any loan agreement, indenture, bond, note, resolution, agreement or other instrument (collectively, "Laws and Agreements") to which the Qualified Entity is a party or to which the Qualified Entity or any of its property or assets is otherwise subject, and no event has occurred and is continuing, which, with the passage of time or the giving of notice, or both, would constitute a default or event of default under any such instrument. The execution and delivery of this Agreement and the Qualified Entity's compliance with the provisions hereof will not conflict with or constitute a breach of or default under any Laws and Agreements.

(viii) The Qualified Entity will take such action as may be reasonably requested to facilitate the timely consummation of the transactions contemplated by this Agreement.

(ix) The Qualified Entity hereby covenants that it has taken all proceedings required by law to enable it to appropriate and transfer funds to the Bond Bank as provided in Section 2 hereof.

(x) Except as disclosed in writing to the Bond Bank, there is no action, suit, proceeding, inquiry or investigation of any nature at law or in equity, before or by any court, governmental agency, public board or body pending or, to the knowledge of the Qualified Entity, threatened, seeking to restrain or enjoin the performance of any of the covenants contained in this Agreement or in any way questioning or affecting (A) the transactions contemplated by this Agreement, (B) the right or authority of the Qualified Entity to carry out the terms and provisions of this Agreement, or (C) the power of the Qualified Entity to perform its obligations under this Agreement. Neither the existence of the Qualified Entity nor the right of the officials of the Qualified Entity to their offices nor the titles of the officers of the Qualified Entity to their respective offices are being contested, and no authority or proceeding in connection with or relating to the execution and delivery of this Agreement has been repealed, revoked or rescinded.

(xi) The Qualified Entity hereby covenants that it has duly, regularly and properly adopted or will adopt a budget for 2025 setting forth estimated revenues to be received and estimated expenditures for the fiscal year, including funds appropriated for the purchase of Motor Fuel to be used by the Qualified Entity; has complied with or will comply with all statutory and regulatory requirements with respect to the adoption of such budget; and will levy *ad valorem* property taxes in accordance with all statutory and regulatory requirements.

(xii) The Qualified Entity acknowledges and understands the risks associated with commodity swaps, including the risks attached hereto as Exhibit A.

Fuel Budgeting Program, Series 2025, prior to disbursing such funds to the Qualified Entity as provided herein.

(d) Any payments to be sent to the Qualified Entity shall be wired in immediately available funds to the account of the Qualified Entity identified below:

ABA # _____
Attention: _____
Account # _____ - Morgan County, Indiana

(e) Upon receipt of a bill stating the amounts owed by the Qualified Entity under this Agreement, the Qualified Entity hereby agrees to pay to the Bond Bank or its agent any amounts due as stated in the bill within fifteen (15) business days following the receipt of such bill. In the event the Bond Bank does not receive payment from the Qualified Entity within fifteen (15) business days following the Qualified Entity's receipt of a bill stating the amounts due, the amount due shall accrue interest from the due date at a rate of eight percent (8.00%) per annum until payment is received by the Bond Bank. In the event that payment is received, such payment shall be used in the following order of priority: (i) to pay any accrued interest; and then (ii) to pay the principal of any amounts owed.

(f) The Qualified Entity agrees that the portion of the Swap Agreement allocated to the Qualified Entity, for which the Qualified Entity will be responsible pursuant to this Agreement, is set forth in Exhibit B attached hereto, commencing on the effective date of the Swap Agreement, as set forth in the Confirmation, and ending on December 31, 2025. The Qualified Entity approves the ISDA Agreement, attached as Exhibit C hereto. The Qualified Entity authorizes the Bond Bank to enter into the Confirmation on or after the date of the execution of this Agreement, so long as: (i) the Confirmation includes the purchase of a cap (call) option and (ii) the cap price is no higher than \$ _____, with respect to gasoline and \$ _____, with respect to diesel. Upon the execution and delivery of the Confirmation by the Bond Bank and the Swap Dealer, the Confirmation shall be attached to the ISDA Agreement, as part of the Swap Agreement, which is attached as Exhibit C hereto. The Bond Bank and the Qualified Entity agree that any amounts due by the Qualified Entity under the Swap Agreement pursuant to this Agreement will not exceed the current amount appropriated for Motor Fuel for use by the Qualified Entity.

(g) The terms and conditions for disbursement from the Reserve Account to the Swap Dealer shall be set forth in the Swap Agreement, attached as Exhibit C hereto, and otherwise as may be entered into by the Bond Bank from time to time pursuant hereto.

(h) For the purposes provided in this Section, the Bond Bank's agent shall be Regions Bank, until the Bond Bank provides the Qualified Entity notice otherwise.

shall send the Qualified Entity written notice of the termination payment stating that such termination payment: (A) is due within ten (10) business days following receipt of such notice; (B) shall accrue interest at the rate of eight percent (8.00%) per annum from the date of such termination until repaid; and (C) is in addition to any other amounts owed to the Bond Bank by the Qualified Entity pursuant to this Agreement.

(ii) If any termination payment is received by the Bond Bank from the Swap Dealer in connection with the termination of the Swap Agreement pursuant to this Section, the Bond Bank shall be entitled to retain and apply such amounts against amounts owed by the Qualified Entity. Any amounts retained under this Section shall be used in the following order of priority: (A) to pay any accrued interest on amounts owed; then (B) to pay the principal of any amounts owed. In the event that there are excess moneys after making the payment of interest and principal amounts due, the Bond Bank shall be entitled to retain all such excess moneys.

6. Verification of Qualified Entity Budget. Simultaneously with the execution of this Agreement, the Qualified Entity shall furnish to the Bond Bank any documentation as requested by the Bond Bank, as to, among other things, the funding and maintenance amounts budgeted for the purchase of Motor Fuel to be used by the Qualified Entity.

7. Pledge and Assignment of Payments. The Qualified Entity and the Bond Bank agree that this Agreement and any payments to be made hereunder may be pledged or assigned by the Bond Bank.

8. Annual Financial Information and Reports. The Qualified Entity agrees to furnish to the Bond Bank, so long as this Agreement or the Swap Agreement entered into by the Bond Bank on behalf of the Qualified Entity pursuant to this Agreement remains in effect, annual financial reports, audit reports and such other financial information as is reasonably requested by the Bond Bank.

9. Severability. If any provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement and this Agreement shall be construed and in force as if such invalid or unenforceable provision had not been contained herein.

10. Indemnification. To the extent permitted by law, the Qualified Entity releases the Bond Bank from, agrees that the Bond Bank shall not be liable for, and to the extent permitted by law agrees to indemnify and hold the Bond Bank harmless from, any liability for, or expense resulting from (including, but not limited to, reasonable attorneys' fees and expenses), or any loss or damage that may be occasioned by, any cause whatsoever pertaining to the execution and delivery of the Swap Agreement entered into by the Bond Bank on behalf of the Qualified Entity, or the actions taken or to be taken by the Bond Bank under this Agreement, except for the willful misconduct of the Bond Bank or the Trustee.

11. Counterparts. This Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and

IN WITNESS WHEREOF, the Bond Bank and the Qualified Entity have caused this Agreement to be executed in their respective names, by their duly authorized officers, under the authority of resolutions adopted by each prior to the date hereof, all as of the day and year first above written.

INDIANA BOND BANK

By: _____
Daniel Elliott, Chairperson Ex Officio

Attest:

Jacob Blasdel, Executive Director

MORGAN COUNTY, INDIANA

By: _____
_____, President, Board of Commissioners

Attest:

Linda Pruitt, Auditor

EXHIBIT C

SWAP AGREEMENT

[To be attached following execution of transaction]

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