



Lafayette Common Council Agenda
Lafayette City Hall: Common Council Chambers

Regular Session

Monday, November 4, 2019 @ 6:30 PM

Pledge Of Allegiance

Roll Call

Approval Of Minutes

Regular Meeting October 7, 2019

Special Meeting-Public Hearing October 10, 2019

Special Council Meeting October 23, 2019

Presentation And Disposal Of Claims

Presentation Of Petitions And Communications

Reports Of City Offices On File In The City Clerk's Office

Fleet Maintenance Monthly-September

Police Department Monthly-September

Renew Department Monthly-September

Water Works Department Monthly-September

No Ordinances For Second Reading

No Ordinances For First Reading

Resolutions:

Resolution 2019-19 (A Resolution Setting The 2020 Common Council Calendar Of Meetings)

Documents:

[RESOLUTION 2019-19 DRAFT.PDF](#)

Resolution 2019-20 (A Resolution Of The Common Of The City Of Lafayette, Indiana, Authorizing The Participation Of The Said City In The Motor Fuel Budgeting Program Of The Indiana Bond Bank For The 2020 Budget Year, The Execution Of The Qualified Entity Reimbursement Agreement In Connection Therewith And Other Related Matters)

Documents:

[RESOLUTION 2019-20.PDF](#)

Resolution 2019-21 (Resolution Of The Common Council Of The City Of Lafayette,

Indiana, Approving And Authorizing Certain Actions And Proceedings With Respect To Certain Proposed Economic Development Revenue Bonds And Related Matters)

Documents:

[RESOLUTION 2019-21 DRAFT.PDF](#)

Reports Of Standing Committees

Reports Of Special Committees

Reports By The Mayor

Miscellaneous And New Business

Reports Of Councilmen

Public Comment

Adjournment

December Council Caucus Is Tuesday, November 26th At 6:30 PM

Public Comment: We welcome public comment and encourage active participation at this meeting. However, in order to proceed efficiently, public comment will be limited to two areas of this meeting. First, there will be an opportunity for public comment on ordinances or resolutions currently before the Council. These comments should be limited to three (3) minutes in length and be germane and relevant to the Ordinance or Resolution. All participants will be required to maintain a high level of civility, respect, and courtesy for everyone present. Any participant, who after being advised, persists in a discourteous or hostile manner which may disrupt the meeting will be asked to leave.

At the end of the meeting, time will be reserved for public comment on any issue or concern you may have. Please remember to keep your comments concise and limited to three (3) minutes. Finally, the open comment section is not an opportunity for you to make inappropriate comments about, or personally attack council members or city officials. Again, all participants are required to maintain a high level of civility, respect, and courtesy for everyone present. Any participant, who after being advised, persists in a discourteous or hostile manner which may disrupt the meeting will be asked to leave. This is your opportunity to contribute to the community and assist the council in addressing issues that are important to the City of Lafayette.

2019 OCT 24 A 11: 14

RESOLUTION 2019-19

CINDY MURRAY

2020 Common Council Calendar of Meetings

WHEREAS, the COMMON COUNCIL OF THE CITY OF LAFAYETTE, INDIANA, intends to adopt their calendar for regular meetings and caucus meetings for the calendar year 2019, a copy of which is attached hereto as **EXHIBIT A**, and incorporated by reference and made part of this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF LAFAYETTE, INDIANA THAT:

The times, places, and dates contained in **EXHIBIT A** are hereby adopted for the regular Common Council meeting and Caucus meetings.

PASSED AN ADOPTED BY THE COMMON COUNCIL OF THE CITY OF LAFAYETTE, INDIANA THIS _____ day of November 2019.

COMMON COUNCIL OF THE
CITY OF LAFAYETTE, INDIANA

Ronald Campbell, President

ATTEST:

Cindy Murray, City Clerk

Presented by me to the Mayor of the City of Lafayette, Indiana, this ____ day of November 2019 for his signature and approval.

Cindy Murray, City Clerk

Approved and signed by me as Mayor of the City of Lafayette, Indiana this _____ day of November 2019.

Tony Roswarski, Mayor

ATTEST:

Cindy Murray, City Clerk

Sponsored by Mayor Tony Roswarski

Resolution 2019-19
Exhibit A
LAFAYETTE COMMON COUNCIL
CAUCUS AND REGULAR MEETINGS
2020 CALENDAR

CAUCUS MEETINGS:

Lafayette City Hall, 2nd Floor
 Board of Public Works and Safety Room
 20 North 6th Street
 Lafayette, IN 47901
 Wednesday 6:30 p.m.

COUNCIL MEETINGS:

Lafayette City Hall
 Common Council Chambers
 20 North 6th Street
 Lafayette, IN 47901
 Monday 6:30 p.m.

| <u>MONTH</u> | <u>CAUCUS MEETINGS</u> | <u>COUNCIL MEETINGS</u> |
|-----------------|------------------------|----------------------------|
| January, 2020 | January 8, 2020 | January 13, 2020 |
| February, 2020 | January 29, 2020 | February 3, 2020 |
| March, 2020 | February 26, 2020 | March 2, 2020 |
| April, 2020 | April 1, 2020 | April 6, 2020 |
| May, 2020 | April 29, 2020 | May 4, 2020 |
| June, 2020 | May 27, 2020 | June 1, 2020 |
| July 2020 | July 1, 2020 | July 6, 2020 |
| August, 2020 | July 29, 2020 | August 3, 2020 |
| September, 2020 | September 2, 2020 | *September 8, 2020-Tuesday |
| October, 2020 | September 30, 2020 | October 5, 2020 |
| November 2020 | October 28, 2020 | November 2, 2020 |
| December, 2020 | December 2, 2020 | December 7, 2020 |
| January, 2021 | January 6, 2021 | January 11, 2021 |

**These meetings are changed due to the holiday schedule.*

2019 OCT 24 A 11: 24

RESOLUTION NO. 2019-20

CINDY MURRAY

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF LAFAYETTE, INDIANA, AUTHORIZING THE PARTICIPATION OF SAID CITY IN THE MOTOR FUEL BUDGETING PROGRAM OF THE INDIANA BOND BANK FOR THE 2020 BUDGET YEAR, THE EXECUTION OF THE QUALIFIED ENTITY REIMBURSEMENT AGREEMENT IN CONNECTION THEREWITH AND OTHER RELATED MATTERS

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

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

WHEREAS, the market-driven volatility of Motor Fuel presents a substantial risk to the Motor Fuel budget of the City, 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 City 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 City; and

WHEREAS, the City has been advised by representatives of the Indiana Bond Bank (the "Bond Bank"), including Crowe LLP and Maverick Energy Consulting, 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 City participated in the Program for its budget years 2009 through 2019 and is eligible to participate in the Program for its 2020 budget year; and

WHEREAS, the City's Board of Public Works and Safety (the "Board") has or will consider the matter of the City's participation in the Program for the 2020 budget year and has or will adopt a resolution recommending to the Council that the City participate in the Program for the 2020 budget year; and

WHEREAS, the Council, having considered the information presented to it, including the recommendation of the Board, finds that (i) participation in the Program will allow the City to manage and mitigate the volatility of Motor Fuel prices in order to achieve stability in the City's Motor Fuel budget for the 2020 budget year, (ii) participation in the Program will enhance the City's ability to continue to operate its motor vehicle fleet in an economical manner to assure the continued provision of municipal services to the inhabitants of the City, and (iii) the City is authorized to participate in the Program pursuant to Indiana Code 5-1.5, 36-1-4 and 36-9-6; and

WHEREAS, the Bond Bank has caused to be prepared a Qualified Entity Reimbursement Agreement in connection with the Program, attached hereto as Exhibit A and incorporated herein by reference (the "Agreement"), for execution by and between the City and the Bond Bank; and

WHEREAS, the Bond Bank intends to enter into agreements substantially the same as the Agreement with other qualified entities in connection with the Program; and

WHEREAS, the Agreement has been reviewed by the Council, which has had an opportunity to obtain independent advice and counsel with respect thereto, and has also had the opportunity to review the Agreement with the Bond Bank and seek explanation of the provisions thereof from the Bond Bank; and

WHEREAS, the Agreement sets forth the obligations of the City with respect to its participation in the Program during the term of the Agreement; and

WHEREAS, based upon the foregoing, the Council finds and determines that the City should participate in the Program for the 2020 budget year, that the Agreement should be approved and that any other actions necessary to be taken to assure the City's participation in the Program for the 2020 budget year should be approved;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF LAFAYETTE, INDIANA, AS FOLLOWS:

Section 1. The findings and determinations set forth in the preambles to this Resolution are hereby made findings and determinations of the City.

Section 2. The City is hereby authorized to enter into the Program with the Bond Bank for the purpose of managing and mitigating the volatility of Motor Fuel prices in order to achieve budget stability for the 2020 budget year.

Section 3. The Agreement, in the form attached hereto as Exhibit A, is hereby approved by the Council so that the City may participate in the Program. The Mayor of the City is hereby authorized and directed to execute and deliver, and the Controller of the City is hereby authorized and directed to attest, the Agreement, and to approve any such changes in form or substance thereto which are consistent with the terms of this Resolution, such changes to be conclusively evidenced by its execution. The Mayor, Clerk and Controller of the City, and any officer of the Board, are hereby further authorized and directed to take such other actions or deliver such other certificates as are necessary or desirable in connection with the City's

participation in the Program and the other documents needed for the City's participation in the Program as they deem necessary or desirable in connection therewith.

Section 4. The obligations of the City under the Agreement shall be payable from and shall not exceed the amount appropriated by the City for Motor Fuel for the 2020 budget year. The Controller 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 City for Motor Fuel for the 2020 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 and approval by the Mayor of the City as required by law.

Passed this ____ day of _____, 2019.

COMMON COUNCIL, CITY OF
LAFAYETTE, INDIANA

Ron Campbell, Presiding Officer

Attest:

Cindy Murray, Clerk

Presented by me to the Mayor of the City of Lafayette, Indiana, on the ____ day of _____, 2019.

Cindy Murray, Clerk

This resolution approved and signed by me, the Mayor of the City of Lafayette, Indiana, on the ____ day of _____, 2019.

Tony Roswarski, Mayor

EXHIBIT A

Form of Qualified Entity Reimbursement Agreement

QUALIFIED ENTITY REIMBURSEMENT AGREEMENT

This QUALIFIED ENTITY REIMBURSEMENT AGREEMENT, dated as of the 1st day of December, 2019 (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 CITY OF LAFAYETTE, 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 budgeting program (the “Fuel Budgeting Program, Series 2020 A”) and authorizing the Bond Bank (i) to enter into certain transactions with the Qualified Entity for the purpose of insuring against significant price fluctuations 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 counterparties 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 Resolution No. 2019-___, adopted on _____, 2019 (the “Qualified Entity Resolution”) by the Common Council for the City of Lafayette, Indiana, acting as the fiscal 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 2020 A, in accordance with this Agreement; and

WHEREAS, pursuant to Resolution No. ___-2019, adopted on _____, 2019 by the Board of Public Works and Safety for the City of Lafayette, Indiana, acting pursuant to Indiana Code 36-9-6, as amended, as the purchasing agent for the Qualified Entity with respect to Motor Fuel, 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 2020 A, 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 a commodity index swap agreement in the form of the Master Agreement, including the Schedule thereto and the Credit Support Annex thereto, each dated as of December 19, 2013 (collectively, the “ISDA Agreement”), and the Confirmations entered into thereunder each dated December __, 2019 (the “Confirmations” and, together with the ISDA Agreement, the “Swap Agreement”), with Bank of Montreal (the “Swap Counterparty”);

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein THE BOND BANK AND THE QUALIFIED ENTITY AGREE AS FOLLOWS:

1. Representations and Warranties.

(a) The Qualified Entity makes the following representations and warranties to the Bond Bank:

(i) The Qualified Entity has been duly organized and is validly existing under and pursuant to State law.

(ii) Under State law: (A) the Qualified Entity has full legal right, power and authority (I) to enter into, execute, deliver and perform its obligations under this Agreement, (II) to adopt and perform its obligations under the Qualified Entity Resolution and (III) to carry out and consummate the transactions contemplated by this Agreement and the Qualified Entity Resolution; and (B) the Qualified Entity has complied with and will be in compliance in all respects with the terms of State law in connection with the adoption of the Qualified Entity Resolution and the entering into of this Agreement.

(iii) By all necessary official action, the Qualified Entity has duly approved and adopted the Qualified Entity Resolution, authorized the execution and delivery of this Agreement. This Agreement, when executed and delivered by the parties hereto and the consideration therefor is received by the Qualified Entity, will constitute the legal, valid and binding obligation of the Qualified Entity, enforceable in accordance with its terms, except that its enforceability may be limited by laws relating to bankruptcy, reorganization or other similar laws affecting the rights of creditors, by the exercise of judicial discretion in accordance with general principles of equity and by matters of public policy.

(iv) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not and will not conflict with or result in the creation or imposition of any liens, charges or encumbrances of any nature upon any of the property or assets of the Qualified Entity under: (A) any law, regulation, order or decree to which the Qualified Entity is subject; or (B) any agreement or instrument to which the Qualified Entity is a party or by which the Qualified Entity is bound (other than this).

(v) The Qualified Entity is a “qualified entity,” within the meaning of Indiana Code 5-1.5-1-8, as amended.

(vi) The Qualified Entity is not in breach of or in default under any applicable constitutional provision, law or administrative regulation of the State or the United 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.

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

(viii) 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.

(ix) 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.

(x) The Qualified Entity hereby covenants that it has duly, regularly and properly adopted or will adopt a budget for 2020 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.

(b) The Bond Bank makes the following representations and warranties:

(i) The Bond Bank is a separate body corporate and politic, constituting an instrumentality of the State, and duly organized and validly existing as such under the Act.

(ii) The Bond Bank has all necessary power and authority under the Act to enter into this Agreement and to consummate the transactions contemplated hereby and by proper corporate action has duly authorized the execution and delivery of this Agreement.

(iii) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not and will not conflict with or result in a breach of, and do not and will not constitute a default under, or result in the creation or imposition of any liens, charges or encumbrances of any nature upon any of the property or assets of the Bond Bank under: (A) any law, regulation, order or decree to which the Bond Bank is subject; or (B) any agreement or instrument to which the Bond Bank is a party or by which the Bond Bank is bound.

2. Execution of Swap Agreement; Advancements; Reimbursement by Qualified Entity.

(a) The Bond Bank hereby agrees to enter into the Swap Agreement with the Swap Counterparty for the purpose of hedging the price associated with the purchase of Motor Fuel for use by the Qualified Entity, and to advance payments owed by the Bond Bank to the Swap Counterparty, if any, with respect to the Swap Agreement from the Reserve Account.

(b) Subject to Section 9, the Qualified Entity hereby agrees to appropriate and pay funds to the Bond Bank: (i) to reimburse the Bond Bank for amounts advanced by the Bond Bank from the Reserve Account necessary to make payments due by the Bond Bank to the Swap Counterparty, if any, with respect to the Swap Agreement, which are allocable to the Qualified Entity; (ii) to pay any and all expenses associated with or incurred by Bond Bank in connection with the Fuel Budgeting Program, Series 2020 A, allocable to the Qualified Entity, including, but not limited to, the Swap Agreement, other agreements contemplated under this Agreement, and future agreements, amendments to this Agreement or the agreements contemplated herein, or transactions made pursuant to and consistent with this Agreement; and (iii) paying any other transaction or related costs contemplated hereunder, which are allocable to the Qualified Entity.

(c) Within five (5) business days following a Scheduled Payment Date (as defined in the Swap Agreement), the Bond Bank or its agent shall: (i) confirm and calculate any amounts owed under the Swap Agreement pursuant to this Agreement (A) by the Qualified Entity to the Bond Bank or (B) to the Qualified Entity by the Bond Bank; and (ii) prepare and send any bills or payments to the Qualified Entity for such purpose. In the event the Bond Bank receives payments from the Swap Counterparty on a Scheduled Payment Date, the Bond Bank shall be entitled to retain any interest earned on such payments to cover administrative expenses of the Fuel Budgeting Program, Series 2020 A, 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 City identified below:

Chase Bank
ABA # 074000010
Attention: Peg Richardson
Account # 19971201 – City of Lafayette

(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 A attached hereto, commencing on the effective date of the Swap Agreement, as set forth in the Confirmation, and ending on December 31, 2020. The Qualified Entity approves the ISDA Agreement, attached as Exhibit B 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 both (A) the sale of a floor (put) and (B) the purchase of a cap (call), the combination of which is commonly referred to as a “costless collar”; and (ii) (A) the floor price is no lower than \$____, with respect to gasoline, and \$____, with respect to diesel, and (B) 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 Counterparty, the Confirmation shall be attached to the ISDA Agreement, as part of the Swap Agreement, which is attached as Exhibit B 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 Counterparty shall be set forth in the Swap Agreement, attached as Exhibit B 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 The Bank of New York Mellon Trust Company, N.A., until the Bond Bank provides the Qualified Entity notice otherwise.

3. Withholding of Funds Owed to the Qualified Entity. In the event the Qualified Entity fails to remit payment to the Bond Bank within thirty (30) days after payment is due as provided in Section 2(e) hereof, the Bond Bank shall be entitled to exercise the following rights:

(a) If the Qualified Entity would otherwise be entitled to an allocable portion of amounts owed by the Swap Counterparty under the Swap Agreement pursuant to this Agreement, 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: (i) to pay any accrued interest on amounts owed; then (ii) to pay the principal of any amounts owed.

(b) Pursuant to Indiana Code 5-1.5-8-5, to the extent that any department or agency of the State, including the treasurer of state, is the custodian of money payable to the Qualified Entity (other than for goods or services provided by the Qualified Entity), the Bond Bank may provide written notice to the department or agency head that the Qualified Entity is in default on the payment of any amounts owed arising from this Agreement, and the department or agency shall withhold the payment of that money from that Qualified Entity and pay over the money to the Bond Bank for the purpose of paying any amounts owed to the Swap Counterparty pursuant to the Swap Agreement entered into by the Bond Bank on behalf of the Qualified Entity. Any amounts obtained under this Section shall be used in the following order of priority: (i) to pay any accrued interest on amounts owed; then (ii) to pay the principal of any amounts owed.

4. Term of Agreement; Renewal. The term of this Agreement shall commence on January 1, 2020, and, subject to Section 5 hereof, shall remain in full force and effect up to and including December 31, 2020. This Agreement may be extended beyond December 31, 2020, only if and when duly authorized and approved by the Qualified Entity and the Bond Bank, in writing, with the amended terms set forth therein.

5. Termination.

(a) In the event this Agreement is not extended beyond December 31, 2020, and any amount then remains owed and unpaid by one party to the other under this Agreement, this Agreement shall remain in full force and effect until all such amounts have been paid.

(b) In the event the Qualified Entity fails to remit payment to the Bond Bank within thirty (30) days after payment is due as provided in Section 2(e) hereof, the Bond Bank shall be entitled to terminate this agreement in its sole discretion. If the Bond Bank exercises its right to terminate this Agreement, the Bond Bank shall immediately terminate the notional amount of Motor Fuel allocable to the Qualified Entity in the Swap Agreement.

(i) If any termination payment is owed by the Bond Bank to the Swap Counterparty in connection with the termination of the Swap Agreement pursuant to this Section, such amounts shall be immediately due by the Qualified Entity and shall accrue interest at the rate of eight percent (8.00%) per annum from the date of such termination until paid. The Bond Bank 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 Counterparty 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 the same instrument. The Bond Bank and the Qualified Entity each agree that they will execute any and all documents or other instruments, and take such other actions as may be necessary to give effect to the terms of this Agreement.

12. Waiver. No waiver by either the Bond Bank or the Qualified Entity of any term or condition of this Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Agreement.

13. Entire Agreement. This Agreement, together with the Qualified Entity Resolution, merges and supersedes all prior negotiations, representations and agreements between the Bond Bank and the Qualified Entity relating to the subject matter hereof and constitutes the entire agreement between the Bond Bank and the Qualified Entity in respect hereof and thereof.

14. Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed and enforced in accordance with the laws of the State of Indiana.

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: _____
Kelly M. Mitchell, Chairperson Ex Officio

Attest:

Mark J. Wuellner, Executive Director

CITY OF LAFAYETTE, INDIANA

By: _____
Tony Roswarski, Mayor

Attest:

Tim Clary, Controller

EXHIBIT A

**PORTION OF THE SWAP AGREEMENT ALLOCATED TO
THE QUALIFIED ENTITY**

(City of Lafayette)

| <u>Month</u> | <u>Gasoline (in gallons)</u> | <u>Diesel (in gallons)</u> |
|--------------|------------------------------|----------------------------|
| January | | |
| February | | |
| March | | |
| April | | |
| May | | |
| June | | |
| July | | |
| August | | |
| September | | |
| October | | |
| November | | |
| December | | |
| TOTAL: | | |

EXHIBIT B
SWAP AGREEMENT

RESOLUTION 2019-21

RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF LAFAYETTE, INDIANA, APPROVING AND AUTHORIZING CERTAIN ACTIONS AND PROCEEDINGS WITH RESPECT TO CERTAIN PROPOSED ECONOMIC DEVELOPMENT REVENUE BONDS AND RELATED MATTERS

WHEREAS, the City of Lafayette, Indiana (the "Issuer"), is authorized by IC 36-7-11.9 and 12 (collectively, the "Act") to issue revenue bonds for the financing of economic development facilities, the funds from said financing to be used for the acquisition, construction, renovation, improvement and equipping of said facilities, and said facilities to be either sold or leased to a company or directly owned by a company; and

WHEREAS, Glick Briarwood Lafayette, LP, an Indiana limited partnership (the "Applicant"), has advised the Issuer that it proposes that the Issuer lend proceeds of an economic development financing to the Applicant for the acquisition, construction, renovation, improvement and equipping of a multifamily housing facility consisting of an apartment complex known as Briarwood of Lafayette Apartments, containing approximately 100 apartment units, together with functionally related and subordinate facilities such as parking areas, located at 1750 Windmere Drive, in Lafayette, Indiana (the "Project"); and

WHEREAS, the diversification of industry and increase in or retention of job opportunities (approximately 3 jobs to be retained) to be achieved by the acquisition, construction, renovation, improvement and equipping of the Project will be of public benefit to the health, safety and general welfare of the Issuer and its citizens; and

WHEREAS, the Applicant has agreed after discussions with the Issuer to (a) increase rear lighting at the Project through installation of photocell dawn to dusk lighting on individual unit patios as previously recommended by the Issuer's police department, (b) replace existing parking lot and ornamental pole lighting with LED lighting and (c) add 4 cameras with recording and

cloud storage access capability in locations reasonably acceptable to the Issuer's police department; and

WHEREAS, it would appear that the financing of the Project would be of public benefit to the health, safety and general welfare of the Issuer and its citizens; and

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Lafayette, Indiana, as follows:

SECTION 1. The Common Council of the City of Lafayette, Indiana, finds, determines, ratifies and confirms that the promotion of diversification of economic development and job opportunities in and near the City of Lafayette, Indiana, is desirable to preserve the health, safety and general welfare of the citizens of the Issuer; and that it is in the public interest that the Economic Development Commission of the Issuer (the "Commission") and the Issuer take such action as they lawfully may to encourage economic development, diversification of industry and promotion of job opportunities in and near the Issuer.

The Common Council of the City of Lafayette, Indiana, approves, determines, ratifies and confirms that the issuance and sale of economic development revenue bonds in an amount not to exceed \$8,000,000 of the Issuer under the Act for the lending of the proceeds of the revenue bonds to the Applicant, for the acquisition, construction, renovation, improvement and equipping of the Project will serve the public purposes referred to above, in accordance with the Act.

In order to induce the Applicant to proceed with the acquisition, construction, renovation, improvement and equipping of the Project, and subject to the further final approval of the Common Council of the City of Lafayette, Indiana, the Common Council of the City of Lafayette, Indiana, hereby approves, determines, ratifies and confirms that (i) it will take or cause to be taken such actions pursuant to the Act as may be required to implement the aforesaid financing, or as it may deem appropriate in pursuance thereof; and (ii) it will adopt such ordinances and resolutions and authorize the execution and delivery of such instruments and the taking of such action as may be necessary and advisable for the authorization, issuance and sale of said economic development revenue bonds; and that the aforementioned purposes comply with the provisions of the Act; and (iii) it will use its best efforts at the request of Applicant to authorize the issuance of additional bonds for refunding and refinancing the outstanding principal amount of the bonds, for completion of the Project and for additions to the Project, including the costs of issuance (providing that the financing of such addition or additions to the Project is found to have a public purpose at the time of authorization of such additional bonds), and that the aforementioned purposes comply with the provisions of the Act; provided that all of the foregoing shall be mutually acceptable to the Issuer and the Applicant.

All costs of the Project incurred after the date permitted by applicable federal tax and state laws, including reimbursement or repayment to the Applicant of moneys expended by the Applicant for planning, engineering, a portion of the interest paid during acquisition,

construction, renovation, improvement and equipping, underwriting expenses, attorney and bond counsel fees, acquisition, construction, renovation, improvement and equipping of the Project will be permitted to be included as part of the bond issue to finance the Project, and the Issuer will lend the proceeds from the sale of the bonds to the Applicant for the same purposes. Also, certain indirect expenses, including but not limited to, planning, architectural work and engineering incurred prior to this inducement resolution will be permitted to be included as part of the bond issue to finance the Project.

This resolution shall constitute “official action” for purposes of compliance with federal and state laws requiring governmental action as authorization for future reimbursement from the proceeds of bonds, particularly Treas. Reg. 1.150-2.

The economic development revenue bonds described herein shall be limited, special obligations payable solely from the funds provided therefor as described in the indenture authorizing said bonds and shall not constitute an indebtedness of the City or a loan of the credit thereof within the meaning of any constitutional or statutory provisions. The City is no way responsible for any payment obligation created by said bonds. This resolution does not constitute a binding obligation of the City to issue economic development revenue bonds, but instead, is a commitment by the City to proceed with negotiations for the financing described herein with the Applicant and is subject to the adoption of a bond ordinance by this Common Council in accordance with the provisions of the Act.

This resolution shall be in full force and effect from and after its adoption by the Common Council and approval by the Mayor.

Adopted this 4th day of November, 2019.

COMMON COUNCIL OF THE CITY OF
LAFAYETTE, INDIANA

Ronald Campbell

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