

**RESOLUTION OF THE
NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY**

RESOLUTION NO. 18-01

WHEREAS, IC 5-1.3, IC 6-3.6-11 and IC 36-7.5 authorize the Northwest Indiana Regional Development Authority, the Northern Indiana Commuter Transportation District, and the Indiana Finance Authority to cooperate for the construction, financing, maintenance, operation and ownership of rail projects; and

WHEREAS, the Northwest Indiana Regional Development Authority was established by IC 36-7.5-2-1 for the purpose of, among other things, financing projects and facilities for lease to or for the benefit of eligible political subdivisions under IC 36-7.5-1 *et seq.*; and

WHEREAS, the Northern Indiana Commuter Transportation District was established under IC 8-5-15-2 to aid commuter transportation systems and is an eligible political subdivision as provided in IC 36-7.5-1-12; and

WHEREAS, the Board (as defined below) has received information concerning the Projects (as defined below) at a meeting held on July 12, 2018; and

WHEREAS, the Projects are among the projects and facilities that the RDA is authorized to finance; and

WHEREAS, at this time, the Board has determined to proceed with the approval of actions pertaining only to the West Lake Corridor Project (the "West Lake Corridor Project"); and

WHEREAS, the Board understands that the Indiana Finance Authority intends to finance the West Lake Corridor Project, in part, from the issuance of the IFA Bonds (as defined below); and

WHEREAS, in connection with the IFA Bonds, the Northwest Indiana Regional Development Authority, the Northern Indiana Commuter Transportation District, and the Indiana Finance Authority are required to enter into one or more leases described herein for the purpose of providing for the issuance and repayment of the IFA Bonds; and

WHEREAS, the funding for the payment of lease rentals by the Northwest Indiana Regional Development Authority for payment of the IFA Bonds will be provided from State appropriations, FTA Grant Reimbursements and moneys on deposit in the next generation trust fund established under IC 8-14-15.2, Member Dues and other available RDA revenues, including Participating Unit Revenues (each as defined below); and

WHEREAS, the Board has determined to approve Northwest Indiana Regional Development Authority contributing \$460,000,000 for deposit in the Revenue Trust Fund (as defined below) over the life of the West Lake Corridor Project; and

WHEREAS, the Board has been informed that the Northern Indiana Commuter Transportation District expects that the Capital Improvements Grant (the "CIG") of the Federal Transit Administration ("FTA") will fund approximately 50% of the estimated costs of the West Lake Corridor Project, subject to local funding of the remaining share; and

WHEREAS, the Board has determined that providing the requested financial support to the West Lake Corridor Project is a valid public purpose of the Northwest Indiana Regional Development Authority, will contribute importantly to the economic and community development of northwest Indiana and will benefit the citizens of northwest Indiana; and

WHEREAS, the Board has determined that the Parties should enter into a Revenue Trust Fund Agreement with a corporate trustee acceptable to the Northwest Indiana Regional Development Authority for the purposes of receiving and safeguarding substantially all funds for the West Lake Corridor Project, including all funding sources to be used to pay lease rentals; and

WHEREAS, the Act (as defined below) provides that, subject to IC 5-1.3, the Northwest Indiana Regional Development Authority is the exclusive fiscal officer for the Projects; and

WHEREAS, the Northern Indiana Commuter Transportation District has estimated that the total construction costs of the West Lake Corridor Project will be in an approximate amount of \$765,000,000 with the contingencies required by the FTA; and

WHEREAS, the Northern Indiana Commuter Transportation District has advised the Board that the operation of the West Lake Corridor Project will need financial support from the Northwest Indiana Regional Development Authority from revenues received pursuant to IC 6-3.1-20-7(d) from the Indiana Department of Revenue ("Tax Credit Dollars") until other equivalent funding is provided by the Indiana General Assembly; and

WHEREAS, the Board has determined that using the Tax Credit Dollars for providing financial support for the West Lake Corridor Project is a public purpose and an appropriate use of the Tax Credit Dollars; and

WHEREAS, the Parties (as defined below) have negotiated a Governance Agreement (as defined below) pertaining to the Projects in the form attached hereto as Exhibit A;

WHEREAS, the Board takes the actions under this Resolution in accordance with the Act;

NOW, THEREFORE, BE IT RESOLVED BY THE DEVELOPMENT BOARD OF THE NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY AS FOLLOWS:

Section 1. All terms defined herein and all pronouns used in this Resolution shall be deemed to apply equally to singular and plural and to all genders. All terms defined elsewhere in this Resolution shall have the meaning given in such definition. In this Resolution, unless a different meaning clearly appears from the context:

"Act" means IC 5-1.3, IC 6-3.6-11, and IC 36-7.5 and all related and supplemental acts in effect on the issue date of the IFA Bonds.

"Available Revenues" means any available revenues of the RDA, including the Participating Unit Revenues, which may be dedicated to the payment of specific IFA Bonds.

"Board" means the Development Board of the RDA established under IC 36-7.5-2.

"Bond Trustee" means the corporate trustee serving as trustee with respect to each series of IFA Bonds under the Revenue Trust Fund Agreement (as defined below).

"Deposit Trustee" means the trustee under the Revenue Trust Fund Agreement (as defined below).

"Double Track Project" means the addition of an east/west rail line for a portion of the South Shore Line from Gary to Michigan City and related improvements, all as more fully described in Exhibit 1 of the Governance Agreement, subject to the provisions of the Governance Agreement concerning future approvals with respect thereto.

"FTA Grant Reimbursements" means funds received from the FTA as reimbursement for expenditures by the Parties for moneys spent on one or both Projects pursuant to the FTA grant agreement for such Project.

"Governance Agreement" means the Governance Agreement to be entered into among NICTD, RDA, and IFA, as from time to time amended or supplemented.

"IC" means Indiana Code.

"IFA" means the Indiana Finance Authority organized under IC 5-1.2-3-6.

"IFA Bonds" means one or more series of bonds, notes or other similar obligations issued under IC 5-1.3-1 *et seq.* for the Projects.

"Member Dues" means the revenue that is received from members of the RDA that is allocated each year for economic development purposes under IC 6-3.6-6-9 for making transfers required by IC 36-7.5-4-2 or to provide rail project funding as provided in IC 6-3.6-11-6(b).

"NICTD" means the Northern Indiana Commuter Transportation District established under IC 8-5-15-2.

"Participating Unit Revenues" means payments received by RDA from pledges by or actions taken by local governmental entities within Lake County, Indiana offering to provide revenue to support and finance the West Lake Corridor Project as defined under IC 36-7.5-1-13.5 and pursuant to IC 6-3.6-11-7.

"Parties" means the IFA, the NICTD, and the RDA.

"Projects" means the rail projects as defined in IC 5-1.3-2-14 and IC 36-7.5-1-13.5, including specifically the West Lake Corridor Project and Double Track Project.

"RDA" means the Northwest Indiana Regional Development Authority established under IC 36-7.5-2.

"Revenue Trust Fund" means the development authority revenue fund established under IC 36-7.5-4-1 and held under the Revenue Trust Fund Agreement (as defined below).

"Revenue Trust Fund Agreement" means the Revenue Trust Fund Agreement for the purpose of holding and distributing funds dedicated to the West Lake Corridor Project as appropriate under Exhibit F.

"State" means the State of Indiana.

"West Lake Corridor Project" means an approximately 9-mile new north/south passenger rail line connected to the existing South Shore Line, with four stations, between Hammond (Gateway Station) and Munster/Dyer (Main Street Station, including all property owned or leased by NICTD for the operation of the South Shore Line over the West Lake Corridor Project), all as more fully described in Exhibit 2 of the Governance Agreement.

Section 2. The Board hereby finds and determines:

- a. The West Lake Corridor Project constitutes a Rail Project as defined in IC 36-7.5-1-13.5 and IC 5-1.3-2-14;
- b. The funding for the payment of lease rentals by the RDA for payment of the IFA Bonds with respect to the West Lake Corridor Project will be provided from State appropriations, FTA Grant Reimbursements, moneys on deposit in the next generation trust fund established under IC 8-14-15.2, Member Dues and Available Revenues;
- c. Providing the requested financial support to the West Lake Corridor Project all as more fully described in the agreements described herein is a valid public purpose of the RDA, will contribute to the economic and community development of northwest Indiana and will benefit the residents of northwest Indiana; and
- d. A Revenue Trust Fund Agreement should be entered into by the Parties with a corporate trustee acceptable to the RDA for the purposes of receiving and safeguarding all funds for the Projects, including substantially all funding sources to be used to pay lease rentals.

Section 3.

- a. The Board approves and authorizes the execution of the Governance Agreement, attached hereto in substantially final form as Exhibit A, which outlines the roles and responsibilities among and between the Parties related to the financing,

development, acquisition, construction and operation and maintenance of the Projects, including the Financing Plan in the form of Exhibit 5 of the Governance Agreement, subject to the understanding that certain approvals with respect to the Double Track Project will need to be provided by the Parties in the future before the Double Track Project is approved for funding by the RDA and IFA.

- b. The Chair and/or the Chief Executive Officer are authorized to execute and deliver the Governance Agreement and Financing Agreements (as defined below) in such form, with such changes, additions and deletions to form and substance as they approve, but materially consistent with the intent of the form attached. The Board agrees that the execution of the Governance Agreement and Financing Agreements by the Chair and/or Chief Executive Officer shall constitute evidence of their approval of such changes, additions or deletions. The Chair and/or the Chief Executive Officer are also authorized to take all actions necessary to accomplish the purposes of such Agreements, including approving, executing and delivering any other agreements or contracts necessary or desirable to accomplish the purposes of this resolution.

Section 4. The RDA approves and authorizes the execution of the following agreements set forth below (collectively, the "Financing Agreements"):

- a. The NICTD-RDA lease, the substantially final form of which is attached hereto as Exhibit B for the purpose of making available to RDA those assets of NICTD, whether now owned or held or hereafter acquired or needed for the West Lake Corridor Project pursuant to IC 5-1.3;
- b. The RDA-IFA lease, the substantially final form of which is attached hereto as Exhibit C for the purpose of making available to IFA those assets of NICTD leased to the RDA pursuant to the NICTD-RDA leases, whether now owned or held or hereafter acquired or needed for the West Lake Corridor Project pursuant to IC 5-1.3;
- c. The IFA-RDA master leases, the substantially final form of which is attached hereto as Exhibit D for the purpose of leasing to RDA those assets of NICTD leased to the RDA pursuant to the NICTD-RDA leases, whether now owned or held or hereafter acquired or needed for the Projects, providing for the payment of lease rentals by RDA to IFA for payment of the IFA Bonds and other expenses and directing RDA to cause NICTD to acquire, construct, develop, operate and maintain the West Lake Corridor Project pursuant to IC 5-1.3 and the Governance Agreement;
- d. The RDA-NICTD lease, the substantially final form of which is attached hereto as Exhibit E for the purpose of leasing to NICTD those assets of NICTD leased to the RDA pursuant to the NICTD-RDA leases, whether now owned or held or hereafter acquired or needed for the West Lake Corridor Project, and directing NICTD to acquire, construct, develop, operate and maintain the West Lake Corridor Project pursuant to IC 5-1.3 and the Governance Agreement; and
- e. The Revenue Trust Fund Agreement among the Parties, the Deposit Trustee and the Bond Trustee, the substantially final form of which is attached hereto as

Exhibit F for the purpose of holding and distributing funds dedicated to the West Lake Corridor Project as appropriate.

Section 5. The RDA agrees to:

- (i) Fund the West Lake Corridor Project, from general revenues of the RDA and other specific sources identified in Indiana Code 36-7.5-4-2, and, pursuant to Indiana Code 36-7.5-4-2.5, commit Available Revenues, including Member Dues and Participating Unit Revenues, all in the annual amount of \$14,000,000, beginning in fiscal year 2019, as lease rental payments for a 30-year period, or for the term of the IFA Bonds, whichever is less;
- (ii) Commit the appropriation moneys from the State as authorized by P.L. 213-2015 and P.L. 217-2017 to the RDA to the Westlake Corridor Project (the "State Appropriation") ;
- (iii) Commit the existing moneys of the RDA in the amount of \$40,000,000 to be dedicated to the West Lake Corridor Project;
- (iv) Commit the monies from FTA Grant Reimbursements and the next generation trust fund established under IC 8-14-15.2 to the West Lake Corridor Project; and
- (v) The lease rentals to be paid under the leases described in Section 4 hereof are fair and reasonable for the facilities that are the subject of each such lease.

Section 6. The RDA hereby approves and accepts each of the offers contained in the Participating Unit Revenues pledges and in reliance thereon adopts this Resolution. The Board hereby authorizes the Chair or the Chief Executive Officer of the RDA to notify Lake County and the Treasurer of the State of Indiana of the Participating Unit Revenues and to take such actions as to assure that the Participating Unit Revenues are allocated to RDA and the West Lake Corridor Project pursuant to IC 6-3.6-11-7(b) and IC 36-7.5-4-2.5(c).

Section 7. The RDA hereby approves and authorizes the creation of a Revenue Trust Fund Agreement which will be the central depository for substantially all funds related to the financing and construction of the West Lake Corridor Project (the "Revenue Trust Fund") in furtherance of the RDA being the exclusive fiscal officer of the Projects pursuant to IC 36-7.5-4-18, subject to IC 5-1.3. Within the Revenue Trust Fund, the RDA further creates separate accounts within the Revenue Trust Fund for the West Lake Corridor Project, when appropriate pursuant to Indiana Code 36-7.5-4-1.

Section 8. The RDA further directs all funds and revenue as described in Section 5 (i.e., the Member Dues, the Available Revenues, including Participating Unit Revenues, FTA Grant Reimbursements, moneys on deposit in the next generation trust fund established under IC 8-14-15.2, and the State Appropriation), to be deposited into the Revenue Trust Fund created pursuant to Section 7.

Section 9. All Tax Credit Dollars received and in its possession and to be received pursuant to Indiana Code 6-3.1-20-7(d) shall be deposited into an Escrow Fund as additional financial support to the West Lake Corridor Project created by the Chief Operating Officer of RDA to establish or improve public mass rail transportation systems in Lake County (the "Escrow Fund"), who shall thereafter, to the extent required under the Governance Agreement, upon receipt of an operating deficit cost submission from NICTD, reimburse NICTD for such deficit from Tax Credit Dollars held in the Escrow Fund until an alternative funding source is identified and obtained all as provided in the Governance Agreement.

Section 10. The RDA hereby reaffirms its official intent, in the manner described in the Governance Agreement, to support the Projects in accordance with Section 1 of Resolution No. 17-02 to fund certain costs of completing the Projects with proceeds of the IFA Bonds, if and when issued. Except if specifically referenced, this Resolution shall supersede all previous actions of the RDA related to financing the Projects, and all actions of the RDA in conflict herewith, including RDA Resolution Nos. 08-02, 17-01, and 17-02, are hereby repealed, with regard to financial commitments made therein related to the Projects, and this Resolution shall be effective as of its date of adoption. Notwithstanding the foregoing, any commitments made regarding grant agreements in any prior resolutions shall remain in full force and effect and are not superseded by this Resolution.

Section 11. RDA understands that NICTD will file a grant application with the FTA (the "FTA Grant Application") with respect to the West Lake Corridor Project pursuant to the Governance Agreement provided that the IFA and the RDA shall have the right to review, comment on, and approve any FTA Grant Application materials, including Project sequencing, prior to NICTD's submission to the FTA.

Section 12. If the IFA so requires, for the successful issuance and marketing of the IFA Bonds, the Chief Executive Officer or the Chief Operating Officer of the RDA are authorized to enter into a continuing disclosure agreement (each a "Continuing Disclosure Agreement") in compliance with Rule 15c2-12 of the Securities Exchange Act of 1934 (the "SEC Rule") in connection with the offering of any series of IFA Bonds.

Section 13. The Chief Executive Officer and Chief Operating Officer of the RDA are authorized to approve the form of any Preliminary Official Statement or Final Official Statement with respect to the IFA Bonds, including the authority to deem and determine the "final" official statement of the IFA, subject to completion as permitted by and otherwise pursuant to the provisions of the SEC Rule.

Section 14. The Chief Executive Officer and Chief Operating Officer of the RDA are authorized to continue to engage Ice Miller LLP as counsel to the RDA in connection with the Financing Plan and the development of the Projects.

Section 15. The RDA hereby authorizes the Chair of the Board, the Vice Chair of the Board, the Secretary-Treasurer of the Board, the Chief Executive Officer and the Chief Operating Officer of the RDA (each, an "Authorized Signatory") to execute the Governance Agreement and the Financing Agreements in substantially the forms presented at this meeting,

with such changes in form and substance as such Authorized Signatory shall approve in accordance with the parameters set forth in this Resolution, with such approval to be conclusively evidenced by his or her execution thereof.

Section 16. In addition to the authorization and delegation in Section 3, the RDA hereby authorizes and delegates to the Chief Executive Officer or the Chief Operating Officer of the RDA the power and authority to take any action, require actions, grant approvals, pay invoices, make decisions, enter into agreements, and effectuate any actions or sequencing required for the West Lake Corridor Project or financing authorizations herein, including specifically those required or permitted under the Governance Agreement, any Financing Agreement, any other agreements or any pledge or commitment approved in this Resolution.

Section 17. Any Authorized Signatory is hereby authorized and directed to do and perform all acts and to execute in the name of the RDA and to attest, as appropriate, all such instruments, documents, papers, or certificates in such forms as any Authorized Signatory executing or attesting the same shall deem proper, to be evidenced by the execution or attestation thereof by either manual or facsimile signature, which are appropriate, beneficial, desirable, or necessary to carry out the transactions contemplated by this Resolution.

Section 18. If any section, paragraph, clause, or provision of this Resolution shall be ruled by any court of competent jurisdiction to be invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining sections, paragraphs, clauses, or provisions.

Section 19. All ordinances, resolutions, and orders, or parts thereof, in conflict with the provisions of this Resolution, are, to the extent of such conflict, hereby repealed.

Section 20. This Resolution shall be in full force and effect immediately upon its adoption.

[REMAINDER OF PAGE LEFT BLANK]

ALL OF WHICH HAVING BEEN RESOLVED this 12th day of July 2018 by the Development Board of the Northwest Indiana Regional Development Authority.

BY THE DEVELOPMENT BOARD OF THE
NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY

Chair

Vice Chair

ATTEST:

Secretary-Treasurer

EXHIBIT A

(Governance Agreement)

EXHIBIT B

(NICTD – RDA Lease)

EXHIBIT C

(RDA – IFA Lease)

EXHIBIT D

(IFA – RDA Master Lease)

EXHIBIT E

(RDA – NICTD Lease)

EXHIBIT F

(Revenue Trust Fund Agreement)