

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

**RESOLUTION NO. 2022-\_\_\_**

WHEREAS, IC 5-1.3, IC 6-3.6-11, IC 8-5-15, and IC 36-7.5 authorize the Northwest Indiana Regional Development Authority (“RDA”), the Northern Indiana Commuter Transportation District (“NICTD”) and the Indiana Finance Authority (“IFA”) (collectively referred to herein as the “Parties”) to cooperate in the construction, financing, maintenance, operation and ownership of 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 (individually, as stated; collectively referred to herein as the “Projects”); and

WHEREAS, the Parties previously executed the Third Amended and Restated Governance Agreement Concerning Development of the Rail Projects (the “Third Amended Governance Agreement”), effective as of June 15, 2022 (the “Effective Date of the Third Amended Governance Agreement”) pertaining to development and financing of the Projects, including a schedule, cost budget and financing plan for each Project, which Third Amended Governance Agreement was approved by the Development Board of the RDA (the “Board”); and

WHEREAS, capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Third Amended Governance Agreement and the hereinafter defined Fourth Amended and Restated Governance Agreement; and

WHEREAS, “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; and

WHEREAS, “West Lake Corridor Project” means an approximately 8-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); and

WHEREAS, the Projects are essential for northwest Indiana and vital to the State; and

WHEREAS, the Board has previously approved and committed approximately \$14,100,000 annually to the West Lake Corridor Project under RDA Resolution 19-01 and approximately \$2,200,000 annually to the Double Track Project under RDA Resolution 19-02 for the purposes of debt service, lease rentals and pay-go for the Projects (the “RDA Annual Contributions”); and

WHEREAS, the RDA Annual Contribution to the West Lake Corridor Project, as authorized by RDA Resolution 19-01, was to be funded from “general revenues of the RDA and other sources, including Member Dues and Participating Unit Revenues,” and begin “no earlier than fiscal year 2020,” to be paid during 2021; and

WHEREAS, the IFA entered into a RRIF Loan Agreement with the United States Department of Transportation (“USDOT”) to finance a portion of the costs for the West Lake Corridor Project on or around June 15, 2022; and

WHEREAS, due to the timing of the RRIF Loan Agreement for the West Lake Corridor Project, the Financing Plan as of the Effective Date of the Third Amended Governance Agreement for the West Lake Corridor Project provided for the first installment of the RDA Annual Contribution to the West Lake Corridor Project to be paid in 2022; and

WHEREAS, due in part to the timing of the RRIF Loan Agreement for the West Lake Corridor Project and the related increase in interest rates, the Financing Plans as of the Effective Date of the Third Amended Governance Agreement did not provide enough funding to fully fund the Projects; and

WHEREAS, in furtherance of the Projects, the Board has determined it is necessary and appropriate to amend the Financing Plans and allocate approximately \$4,100,000 of the previously authorized 2021 installment of the RDA Annual Contribution to the West Lake Corridor Project, to be made available, as needed, to fund the Cost Budget as of the Effective Date of the Third Amended Governance Agreement for the West Lake Corridor Project (the “RDA Cost Contribution”); and

WHEREAS, also in furtherance of the Projects, the Board has determined to re-allocate the remaining \$10,000,000 of the previously authorized 2021 installment of the RDA Annual Contribution to the West Lake Corridor Project to fund RDA/IFA Project Costs for both Projects; and

WHEREAS, the RDA additional contribution of \$10,000,000 to fund RDA/IFA Project Costs on both Projects will be paid in accordance with the terms and conditions set forth in a new Trust Fund Agreement to be entered into by and among the IFA, the RDA, and the Bank of New York Mellon Trust Company, N.A., as Deposit Trustee (the “Trust Fund Agreement for RDA/IFA Project Costs”); and

WHEREAS, the RDA Cost Contribution and the RDA additional contribution of \$10,000,000 to fund RDA/IFA Project Costs on both Projects will be funded strictly from Member Dues; and

WHEREAS, IFA and RDA have determined to seek funding from the Build America Bureau of the USDOT to finance a portion of the costs of the Double Track Project; and

WHEREAS, IFA expects to enter into a RRIF Loan Agreement with USDOT to provide favorable funding for the Double Track Project (the “DT Loan Agreement”); and

WHEREAS, as a condition to the DT Loan Agreement, RDA is expected to enter into a Direct Agreement with USDOT in substantially the form presented at this meeting of the Board (the “DT Direct Agreement”); and

WHEREAS, due in part to the anticipated timing of the RRIF Loan Agreement for the Double Track Project and the related increase in interest rates, the Board has determined it is necessary and appropriate to increase the RDA Annual Contribution to the Double Track Project, as authorized by RDA Resolution 19-02, from approximately \$2,200,000 annually to an amount not to exceed \$2,400,000 annually, beginning in 2023; and

WHEREAS, based on the foregoing, the Parties have agreed that modifications to the Third Amended Governance Agreement and certain of its exhibits, including to the Financing Plans (Exhibits 5A and 5B) for the Projects, are necessary and appropriate in order to clarify the timing and amount of the RDA Cost Contribution, to make certain additional revisions to accommodate the anticipated DT Loan Agreement, to incorporate proposed provisions regarding the release of funds upon completion of both Rail Projects, and to provide any other terms reasonably necessary for the successful completion of the Projects; and

WHEREAS, such modifications make it advisable to create a Fourth Amended and Restated Governance Agreement (the "Fourth Amended Governance Agreement"); and

WHEREAS, the Parties have entered into a Revenue Trust Fund Agreement (created under Resolution 18-01) with Bank of New York Mellon Trust Company, N.A., as Deposit Trustee, for the purposes of receiving and safeguarding funds for the Projects; and

WHEREAS, the Parties have entered into various leases, the NICTD-RDA lease, the RDA-IFA lease, the IFA-RDA master leases, and the RDA-NICTD lease for the purposes of the financing of the Projects (the "Leases"); and

WHEREAS, the RDA Board has previously approved and authorized the amendment of the Revenue Trust Fund Agreement and execution of the Leases for the Projects; and

WHEREAS, in connection with the DT Loan Agreement, the Parties propose to adopt a Second Amended and Restated Revenue Trust Fund Agreement, to authorize a Master Lease (the "DT Master Lease") and the DT Direct Agreement for the DT Loan Agreement and to supplement and amend the other related Leases (the Second Amended Revenue Trust Fund Agreement, the DT Master Lease, the Leases and the DT Direct Agreement are collectively referred to as the "Financing Agreements"); and

WHEREAS, the Parties have determined that the Financing Agreements are necessary and appropriate for the purpose of holding and distributing funds dedicated to the Projects, as appropriate, including for supporting IFA's obligations under the Loan Agreement and payment of the RDA Annual Contributions for costs of the Projects prior to completion; and

WHEREAS, the Board takes the actions under this Resolution in accordance with IC 5-1.3 *et seq.*, IC 36-7.5 *et seq.*, and other relevant laws.

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

Section 1.

- a. The Board hereby authorizes and delegates to the Chief Executive Officer, in consultation with the Chairman of the Board, the following:
1. The RDA Board approves the Fourth Amended Governance Agreement (the substantial final form of which is presented at this meeting) and grants authority to negotiate, approve, and enter into a Fourth Amended Governance Agreement, in substantially the form presented at the meeting of this Board, including modifications to the Financing Plans (Exhibits 5A and 5B) for the Projects, in substantially the form attached hereto.
  2. The RDA Board approves the Second Amended and Restated Revenue Trust Fund Agreement, the DT Master Lease and Leases, in substantially the forms presented at this meeting of the Board, and grants authority to execute the Financing Agreements for the purpose of providing for payments owed by IFA under the DT Loan Agreement, holding and distributing funds dedicated to the Projects as appropriate and providing for the payment by RDA for costs of the Projects from the RDA Annual Contributions not available to pay lease rentals.
  3. The RDA Board approves the Trust Fund Agreement for RDA/IFA Project Costs, in substantially the form presented at this meeting of the Board, and grants authority to execute the Trust Fund Agreement for the purpose of receiving, holding and disbursing the RDA additional contribution of \$10,000,000 of Member Dues to fund RDA/IFA Project Costs on both Projects.
  4. The RDA Board approves increasing the RDA Annual Contribution to the Double Track Project from approximately \$2,200,000 annually to an amount not to exceed \$2,400,000 annually, which shall commence in 2023 and terminate in 2048.
- b. The Board hereby finds that the lease rentals to be paid under the DT Master Lease are fair and reasonable for the portion of the Double Track Project.
- c. The Board agrees that the execution of the Fourth Amended Governance Agreement, the Second Amended and Restated Revenue Trust Fund Agreement, the Trust Fund Agreement for RDA/IFA Project Costs, the DT Master Lease, the DT Direct Agreement, and the Leases, by the Chair and/or Chief Executive Officer shall constitute evidence of their approval of any such changes, additions or deletions as the Chair and/or Chief Executive Officer deem proper and approve.
- d. The Chair and/or the Chief Executive Officer acting individually, is each hereby authorized to take all such actions and to execute all such instruments and agreements, or supplements and related documents as are desirable, appropriate,

beneficial or necessary to accomplish the purposes of this Resolution, which shall be conclusively evidenced by his or her execution thereof.

- e. The Board also approves the execution by IFA of the DT Loan Agreement in such form as approved by the Chair and/or the Chief Executive Officer.

Section 2. The authorizations and delegations granted to the Chief Executive Officer and the Chief Operating Officer of the RDA within RDA Resolutions 18-01, 18-02, 19-01, 19-02, 20-01, 21-01, 22-01, 22-02, 22-03, 22-04, 22-05, 22-06, 22-07, and 22-08 remain in effect.

Section 3. 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 4. 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 5. This Resolution shall be in full force and effect immediately upon its adoption.

ALL OF WHICH HAVING BEEN RESOLVED this \_\_\_\_ day of December 2022 by the Development Board of the Northwest Indiana Regional Development Authority.

BY THE DEVELOPMENT BOARD OF THE  
NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY

*Donald P. Feby*

Chair

Vice Chair

*Michelle Reed*

*Gregg Janner*

*[Signature]*

ATTEST:

*Randy Ellwood*

Secretary-Treasurer

Attest