

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

RESOLUTION NO. 20-01

WHEREAS, the Governor of the State of Indiana (the “State”), the Honorable Eric J. Holcomb (the “Governor”) has issued various executive orders declaring a public health emergency (collectively, the “Governor’s Orders”) to help the State confront the Global Pandemic known as COVID-19; and

WHEREAS, as part of these actions, the Governor has suspended various provisions related to the Open Door Law (IC 5-14-1.5 *et seq.*) and the Access to Public Records Act (IC 5-13-3 *et seq.*); and

WHEREAS, Executive Order 20-09, as extended by Executive Order 20-17, suspends the requirement to have any members physically present for a public meeting for the duration of the COVID-19 emergency; and authorizes all governing bodies to hold a public meeting by video or telephone conference, if: (1) a quorum of members participate; and (2) any meeting is made available to members of both the public and media; and

WHEREAS, the Public Access Counselor (the “PAC”) has provided guidance to governmental entities related to compliance with the Governor’s Orders while still balancing the public’s rights and to provide transparency; and

WHEREAS, the PAC’s guidance confirmed that the Governor’s Orders suspend the requirement to have any members of the governing body physically present for a public meeting for the duration of the COVID-19 emergency and authorizes all governing bodies to hold a public meeting by video or telephone conference, if: (1) a quorum of members participate; and (2) any meeting is made available to members of the public and media; and

WHEREAS, the Northwest Indiana Regional Development Authority (“RDA”) wishes to comply with Governor’s Orders to maintain safe social distancing but continue on with essential business; and

WHEREAS, the RDA has posted notice of the meeting on April 6, 2020, and will conduct such meeting in a manner in compliance with the Governor’s Orders and PAC guidance, including public access due to the great and essential economic development interests these Projects (defined below) have for the State and specifically northwest Indiana; and

WHEREAS, the RDA seeks to comport with the Governor's Orders and also follow the guidance of the PAC related to transparency and will provide for virtual public attendance; and

WHEREAS, the RDA was established by IC 36-7.5-2-1 for the purpose of fostering regional development in northwest Indiana through connectivity, including among other things, financing projects and facilities for lease to or for the benefit of eligible political subdivisions under IC 36-7.5 *et seq.*; and

WHEREAS, the Northern Indiana Commuter Transportation District (“NICTD”) 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 Indiana Finance Authority (“IFA”) was established under IC 5-1.2-3-1 as a separate body corporate and politic to oversee State of Indiana debt issuance and provide effective financing solutions; and

WHEREAS, IC 5-1.3 and other provisions within Indiana Code authorize the RDA, NICTD and 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 Projects are essential for northwest Indiana and vital to the State; and

WHEREAS, pursuant to IC 36-7.5-4-18, the RDA is the exclusive fiscal officer for and has final approval for financing the Projects, subject to IC 5-1.3 *et seq.*; and

WHEREAS, pursuant to their respective resolutions, the Parties previously executed a Governance Agreement pertaining to development and financing of the Projects, including a cost budget and financing plan for each Project, which Governance Agreement was approved by the Development Board of the RDA (the “Board”) in 2018 and later was amended in 2019; and

WHEREAS, the RDA adopted Resolution 18-01, Resolution 18-02, RDA Resolution 19-01, and RDA Resolution 19-02 (collectively, the “Rail Project Resolutions”) which approved the original and the amended and restated Governance Agreement (“Governance Agreement”) and the associated Cost Budget, Financing Plan and Schedule to provide the described financial support to the Projects (each as defined in the Governance Agreement); and

WHEREAS, unless specified otherwise, all capitalized terms herein are defined terms and the definitions of those terms are within the Rail Project Resolutions; and

WHEREAS, during the FTA process, the applicants are often required to update plans, specifications and financing strategies; and

WHEREAS, the FTA rated the West Lake Corridor Project medium-high under its metrics and scoring; and

WHEREAS, the Governance Agreement provides that NICTD is responsible for the costs of West Lake Corridor Project in excess of the applicable Cost Budget up to the amount of the Maximum NICTD Excess Cost Contribution (as defined in the Governance Agreement) (the “NICTD Excess Cost Contribution”); and

WHEREAS, the Parties have agreed that the Governance Agreement will be amended as the Projects to continue progress towards the execution of Full Funding Grant Agreements for the Projects; and

WHEREAS, the Projects have been further developed, modifications to the Governance Agreement are necessary and appropriate; and

WHEREAS, it is expected that NICTD will agree that the Governance Agreement should be further amended to provide that NICTD is responsible for certain additional costs related to the construction and procurement of the West Lake Corridor Project; (the “NICTD Additional Contribution”); and

WHEREAS, such additional modifications are advisable to create the Second Amended and Restated Governance Agreement, (the “Second Amended Governance Agreement”) to be responsive to the Projects; and

WHEREAS, in furtherance of the Projects and to strengthen the application to the FTA, the Board now has considered the appropriateness of allocating and committing additional money to be available on an as-needed basis for the West Lake Corridor Project (the “RDA Additional Contribution”); and

WHEREAS, as the governing body of the RDA, the Board elected Board Officers at the March 12, 2020 meeting; and

WHEREAS, the Board recognizes the essential nature of working with the FTA, the State of Indiana, NICTD and IFA and determines that the delegation of certain authorities to the Board Officers of the Development Board is prudent in order to provide for prompt direction to the Chief Executive Officer of the RDA to take any actions needed to make progress on the Projects; 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 to carry on essential business for the RDA.

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

Section 1.

- a. The Development Board hereby delegates to the Board Officers of the Development Board in consultation with the Chief Executive Officer, the following:
 1. The authority to negotiate, approve, and enter into a Second Amended Governance Agreement, which will include various exhibits including the Financing Plans for the Projects, in such form and substance as they approve but materially consistent with the Rail Project Resolutions, as amended by this Resolution. The Board agrees that the execution of the Second Amended Governance Agreement 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 approve. The Board Officers and/or the Chief Executive Officer are also authorized to take all actions necessary to accomplish the purposes of such Second Amended Governance Agreement, including approving, executing and delivering any other agreements or contracts necessary or desirable to accomplish the purposes of this Resolution. Such changes, additions or deletions to the Second Amended

Governance Agreement may include the following, in the discretion of the Board Officers in consultation with the Chief Executive Officer:

- i. allocation of more than the pro rata share of the Maximum NICTD Excess Cost Contribution for either Rail Project shall be subject to RDA and IFA approval;
 - ii. additional oversight of the Projects by the RDA and IFA;
 - iii. the NICTD Additional Contribution;
 - iv. the timing of utilizing the RDA Additional Contribution; and
 - v. coordination of the Parties related to the transit development districts along the West Lake Corridor.
2. As part of a Second Amended Governance Agreement, the authority to commit the RDA Additional Contribution in the amount not to exceed thirty-million dollars (\$30,000,000.00) to be dedicated to the West Lake Corridor Project, subject to the provisions of Section 2 hereof.

Section 2.

- a. The RDA directs that the RDA Additional Contribution be held in a separate escrowed account of the RDA or a separate account under the Revenue Trust Fund Agreement, if required, and utilized to the extent required as determined by the Chair or the Chief Executive Officer in his discretion. The extent, timing, and amount of existing monies committed from the RDA for the RDA Additional Contribution shall be determined by the Chair or the Chief Executive Officer, in his discretion. When the RDA Additional Contribution is utilized for the West Lake Corridor Project from time to time, the Board directs the Chief Executive Officer or the Chief Operating Officer within a reasonable time to update the Board Officers as to status regarding the RDA Additional Contribution.
- b. The Board Officers shall be authorized to commit the RDA Additional Contribution contemporaneously with the direction by the Board Officers to the Chief Executive Officer to execute the Second Amended Governance Agreement after sufficient legal review and upon substantive terms, conditions, and exhibits acceptable to the Chief Executive Officer and the Board Officers, and materially consistent with the purposes of this Resolution.

Section 3. Upon the next regularly scheduled Developmental Board meeting, the Board Officers, with the assistance of the Chief Executive Officer and/or the Chief Operating Officer shall update the Development Board as to status of the Second Amended Governance Agreement and of the RDA Additional Contribution.

Section 4. The authorizations and delegations granted to the Chief Executive Officer and the Chief Operating Officer of the RDA within the Rail Project Resolutions remain in effect.

Section 5. 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 6. This Resolution may be signed in any number of counterparts, each of which is an original and all of which taken together form one single document. Signatures delivered by email in PDF format, facsimile, or other electronic format shall be effective.

Section 7. 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 8. This Resolution shall be in full force and effect immediately upon its adoption.

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ALL OF WHICH HAVING BEEN RESOLVED this 9th day of April 2020 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

_____ *W Anthony Walker* _____

ATTEST:

Secretary-Treasurer

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Donald P. Feeko

Chair

Vice Chair

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Milton Reed

Vice Chair

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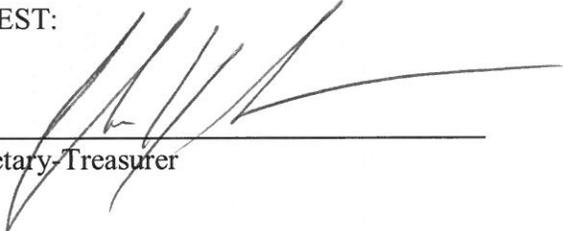
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