

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

**RESOLUTION NO. 2022-01**

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 a Governance Agreement pertaining to development and financing of the Projects, including a schedule, 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 amended in 2019 and 2020, with the Board's approval; 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, 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; 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, due to market conditions, NICTD, in consultation with the IFA, the RDA, the State, and the Federal Transit Administration (the "FTA"), determined to seek bids for the Double Track Project through seven (7) separate procurements, along with separate advance purchases made by NICTD directly, to increase competition, contractor participation, and reduce risk; and

WHEREAS, the contract for Double Track Project #1 was awarded to the Walsh/Herzog Joint Venture by the NICTD Board of Directors on November 22, 2021; and

WHEREAS, the contract for Double Track Project #2 was awarded to Larson-Danielson Construction Company, Inc. by the NICTD Board of Directors on May 4, 2021; and

WHEREAS, the contract for Double Track Project #3 was awarded to Hasse Construction Company, Inc. by the NICTD Board of Directors on May 4, 2021; and

WHEREAS, the contract for Double Track Project #4 was awarded to Larson-Danielson Construction Company, Inc. by the NICTD Board of Directors on November 22, 2021; and

WHEREAS, the contract for Double Track Project #5 was awarded to Rieth-Riley Construction, Co., Inc. by the NICTD Board of Directors on March 29, 2021; and

WHEREAS, the contract for Double Track Project #6 was awarded to Xorail, Inc. by the NICTD Board of Directors on November 22, 2021; and

WHEREAS, the contract for Double Track Project #7 was awarded to Great Lakes Contractor Services, Inc. by the NICTD Board of Directors on August 11, 2021; and

WHEREAS, the awards for the Double Track Project are subject to approval by IFA and RDA per the requirements of the Governance Agreement; and

WHEREAS, NICTD received authorization, per the Governance Agreement, from the IFA and the RDA to execute the contracts for Double Track Project #1, Double Track Project #2, Double Track Project #3, Double Track Project #4, Double Track Project #5, Double Track Project #6, and Double Track Project #7; and

WHEREAS, with the awards for the Double Track Project, along with the actual land acquisition and other costs for the Double Track Project, the updated project costs for the Double Track Project are estimated to be \$652,800,000; and

WHEREAS, the Parties have agreed to amend the Cost Budget for the Double Track Project, to be attached to the amended Governance Agreement referenced below, to reflect the actual cost of the Double Track Project as awarded, with no additional financial contribution from the RDA required beyond that which previously has been approved by this Board; and

WHEREAS, IFA and RDA have determined to seek funding from the Build America Bureau of the United States Department of Transportation ("USDOT"); and

WHEREAS, the State of Indiana (the "State") has determined to provide funding for the Projects through the Next Level Connections Fund (the "NLCF") and from direct appropriations sufficient to obviate the need for IFA bonding with State support for the Projects; and

WHEREAS, IFA expects to enter into a RRIF Loan Agreement (the "Loan Agreement") with USDOT to provide favorable funding for the West Lake Corridor Project; and

WHEREAS, as a condition to the Loan Agreement, RDA is expected to enter into a Direct Agreement with USDOT (the "Direct Agreement"); and

WHEREAS, the Parties also have agreed that modifications to the Governance Agreement and other exhibits, including to the Cost Budget for the Double Track Project and the Schedules and Financing Plans for the Projects, are necessary and appropriate to memorialize the Double Track Project, as awarded, and the Loan Agreement; and

WHEREAS, the Financing Plans will contemplate additional potential contributions from NICTD: (a) to fund approximately \$10 million of the increased costs for the Double Track Project; (b) to fund certain Delay Costs on the Projects in the event the actual Project Costs exceed the Cost Budget; and (c) to fund any additional Project Costs in excess of the Cost Budgets for the Project up to a maximum amount of \$45,000,000 divided between the two Projects; and

WHEREAS, the Financing Plan for the West Lake Corridor Project contemplates an additional potential contribution from the RDA to fund the additional Project Costs in excess of the Cost Budget for the West Lake Corridor Project up to a maximum amount of \$30,000,000, but only after NICTD has paid the above contributions for the West Lake Corridor Project; and

WHEREAS, the RDA Board has previously approved and committed \$14,100,000 annually to the West Lake Corridor Project under RDA Resolution 19-01 and \$2,200,000 annual 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, such modifications make it advisable to create a Third Amended and Restated Governance Agreement (the "Third 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 master leases for the Projects; and

WHEREAS, the Parties propose to adopt an Amended and Restated Revenue Trust Fund Agreement (the "Revenue Trust Fund Agreement," which Revenue Trust Fund Agreement, the master lease for the West Lake Corridor Project and the 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 reimbursing the State from the RDA Annual Contributions not needed for the completion of the Projects within the respective Cost Budget; 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. The Board hereby finds and determines:

- a. The Board hereby ratifies the authorizations given to NICTD by the Chief Executive Officer, on behalf of the RDA, to execute the contracts for Double Track Project #1, Double Track Project #2, Double Track Project #3, Double Track

Project #4, Double Track Project #5, Double Track Project #6, and Double Track Project #7.

b. 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 Third Amended Governance Agreement (the substantial form of which is presented at this meeting) and grants authority to negotiate, approve, and enter into a Third Amended Governance Agreement, in substantially the form presented at the meeting of this Board, including modifications to the Cost Budget (Exhibit 3A) for the Double Track Project, the Project Schedules (Exhibits 4A and 4B) and the Financing Plans (Exhibits 5A and 5B) for the Projects, in such form and substance as they approve and is materially consistent with the following:

i. A Cost Budget for the Double Track Project (Exhibit 3A) that reflects the actual cost of the Double Track Project as awarded, and that is in substantially the form presented at the meeting of this Board.

ii. A Schedule for the Double Track Project (Exhibit 4A) in substantially the form presented at the meeting of this Board.

iii. A Schedule for the West Lake Corridor Project (Exhibit 4B) in substantially the form presented at the meeting of this Board.

iv. A Financing Plan for the Double Track Project (Exhibit 5A) in substantially the form presented at the meeting of this Board.

v. A Financing Plan for the West Lake Corridor Project (Exhibit 5B) in substantially the form presented at the meeting of this Board.

2. The RDA Board approves the Amended and Restated Revenue Trust Fund Agreement and Master Lease for the West Lake Corridor Project, in substantially the forms presented at this meeting of the Board and grants authority to execute the amended Financing Agreements for the purpose of providing for payments owed by IFA under the Loan Agreement, holding and distributing funds dedicated to the Projects as appropriate, providing for the payment by RDA for costs of the Projects of the RDA Annual Contributions not available to pay lease rentals, and the reimbursement to the State of the RDA Annual Contributions not needed for the completion of the Projects within the respective Cost Budget.

c. The Board hereby finds that the lease rentals to be paid under the updated master lease are fair and reasonable for the portion of the West Lake Corridor Project.

- d. The Board agrees that the execution of the Third Amended Governance Agreement, the Amended and Restated Revenue Trust Fund Agreement, the Direct Agreement and the Master Lease for the West Lake Corridor Project, 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.
- e. 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.
- f. The Board also approves the execution by IFA of the Loan Agreement in such form as approved by the Chair and/or the Chief Executive Officer.
- g. The Board approves the execution of the various leases with respect to the Double Track Project since the approval of Resolution 19-02.

Section 2. Upon the next regularly scheduled Board meeting, the Chief Executive Officer and/or Chairman of the Board, shall update the Board as to the status of the Direct Agreement for the West Lake Corridor Project.

Section 3. 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 and 21-01 remain in effect.

Section 4. 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 5. 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 6. This Resolution shall be in full force and effect immediately upon its adoption.

ALL OF WHICH HAVING BEEN RESOLVED this \_\_\_\_ day of February 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. Janko*

Chair

Vice Chair

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary-Treasurer

ALL OF WHICH HAVING BEEN RESOLVED this \_\_\_\_ day of February 2022 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

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

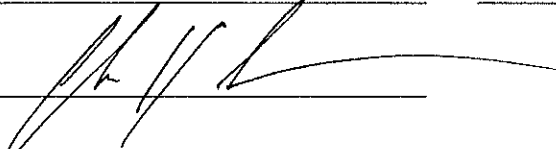
BY THE DEVELOPMENT BOARD OF THE  
NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY

\_\_\_\_\_  
Chair

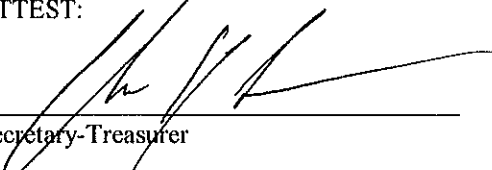
\_\_\_\_\_  
Vice Chair

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  


ATTEST:

\_\_\_\_\_  
  
Secretary-Treasurer

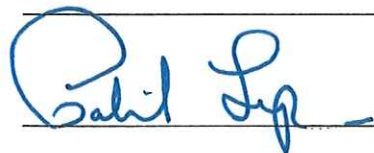


ALL OF WHICH HAVING BEEN RESOLVED this \_\_\_\_\_ day of February 2022 by the Development Board of the Northwest Indiana Regional Development Authority.

BY THE DEVELOPMENT BOARD OF THE  
NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Vice Chair

\_\_\_\_\_  
  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary-Treasurer

ALL OF WHICH HAVING BEEN RESOLVED this 10<sup>th</sup> day of February 2022 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

  
\_\_\_\_\_  
DARNAIL LYLES

\_\_\_\_\_  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary-Treasurer

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

BY THE DEVELOPMENT BOARD OF THE  
NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY

\_\_\_\_\_  
Chair

*Glenn K. Larver*

\_\_\_\_\_  
Vice Chair

\_\_\_\_\_  
\_\_\_\_\_  
ATTEST:

\_\_\_\_\_  
Secretary-Treasurer

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

BY THE DEVELOPMENT BOARD OF THE  
NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY

\_\_\_\_\_  
Chair

*Milton Reed*

\_\_\_\_\_  
Vice Chair

\_\_\_\_\_  
ATTEST:

\_\_\_\_\_  
Secretary-Treasurer