

TRUST FUND AGREEMENT FOR RDA/IFA PROJECT COSTS

AMONG

INDIANA FINANCE AUTHORITY,

NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY

AND

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Deposit Trustee

Dated as of December 1, 2022

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TRUST FUND AGREEMENT

This TRUST FUND AGREEMENT FOR RDA/IFA PROJECT COSTS, dated as of December 1, 2022 (this “Trust Fund Agreement”), is being entered into by and among the INDIANA FINANCE AUTHORITY (the “IFA”), the NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY (the “RDA”), and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as the deposit trustee hereunder (the “Deposit Trustee”).

WITNESSETH

WHEREAS, the RDA, the Northern Indiana Commuter Transportation District (“NICTD”) and the IFA have entered into the Fourth Amended and Restated Governance Agreement Concerning Development of the Rail Project, effective as of December __, 2022 (the “Governance Agreement”), for the purpose, in part, of governing the relationship among those parties in connection with the financing, construction and operations of the Rail Projects (as defined in the Governance Agreement); and

WHEREAS, the IFA, the RDA, NICTD, the Deposit Trustee and The Bank of New York Mellon Trust Company, N.A., as the Bond Trustee, have entered into the Second Amended and Restated Revenue Trust Fund Agreement, dated as of December 1, 2022 (the “Revenue Trust Fund Agreement”), for the purpose, in part, of establishing the funds into and from which deposits and withdrawals shall be made in order to construct the Rail Projects and to collect lease rental payments in order to pay the debt service on the bonds to be issued by the IFA to finance a portion of the costs of the Rail Projects; and

WHEREAS, in order to facilitate the financing and completion of the Rail Projects, the RDA has agreed to make a contribution of \$_____ to pay RDA/IFA Project Costs (as defined in the Governance Agreement and the Revenue Trust Fund Agreement) to the extent such costs are not or cannot be reimbursed from FTA Grant Reimbursements (as defined in the Revenue Trust Fund Agreement); and

WHEREAS, such RDA/IFA Project Costs include engineering and oversight, financial advisory, trustee and legal fees related to the construction and completion of the Rail Projects;

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the Parties and the Deposit Trustee agree as follows:

Section 1. Definitions.

(a) The terms defined in this Section shall for all purposes of this Trust Fund Agreement have the meanings herein specified, unless the context otherwise requires.

“Party” means either of the IFA or the RDA, and “Parties” means both of the IFA and the RDA.

“Rail Projects Fund” means the fund created under Section 2 hereof.

“RDA/IFA Project Costs” has the meaning ascribed to it in the Governance Agreement and the Trust Fund Agreement.

(b) Any term not defined herein which is defined in the Governance Agreement or the Revenue Trust Fund Agreement shall have the meaning as defined in such Agreements.

Section 2. Rail Projects Fund.

(a) The Parties hereby create the Rail Projects Fund. The Deposit Trustee shall deposit into the Rail Projects Fund the amount of \$_____ provided by the RDA, which RDA shall fund from Member Dues (as defined in the Governance Agreement). The Deposit Trustee shall, upon receipt of a disbursement request in the applicable form of Exhibit A, disburse funds in the Rail Projects Fund for RDA/IFA Project Costs requested by the IFA or the RDA to the extent such costs are not or cannot be reimbursed from FTA Grant Reimbursements Costs (as defined in the Revenue Trust Fund Agreement).

(b) The Parties agree that upon the later of the Post-Acceptance Disbursement Date with respect to the West Lake Corridor Project and the Post-Acceptance Disbursement Date with respect to the Double Track Project and the payment of all fees owed to the Deposit Trustee pursuant to this Trust Fund Agreement, the balance remaining in the Rail Projects Fund shall be released to the RDA.

Section 3. Investment of Funds in the Rail Projects Fund.

(a) At the written direction of the IFA, the Deposit Trustee shall invest money in the Rail Projects Fund held by it in Permitted Investments. The Deposit Trustee may conclusively rely upon such instructions as to both the suitability and legality of the directed investments. In the absence of any written directions to the contrary from the IFA to the Deposit Trustee, the Deposit Trustee shall invest cash in the Rail Projects Fund in the BlackRock Federal FD Instl #81. Investments in the Rail Projects Fund shall mature or be redeemable at the option of the IFA prior to the time such amounts will be needed to make payments due hereunder. The Deposit Trustee may make any and all such investments through its own investment department or that of its affiliates or subsidiaries.

(b) Any income from investments of the Rail Projects Fund shall be retained therein.

(c) Although the IFA recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the IFA hereby agrees that confirmations of Permitted Investments are not required to be issued by the Deposit Trustee for each month in which a monthly statement is rendered. No statement need be rendered for the Rail Projects Fund if no activity occurred in such Fund during such month.

Section 4. Deposit Trustee. The Deposit Trustee hereby accepts the trusts imposed upon it by this Trust Fund Agreement and agrees to perform said trusts, upon and subject to the following express terms and conditions:

(a) The Deposit Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Trust Fund Agreement.

(b) The Deposit Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys or agents but shall not be answerable for the misconduct, gross negligence, or negligence of the same if such attorneys or agents have been appointed by the Deposit Trustee with due care, and shall be entitled to act upon the opinion or advice of its counsel concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents and employees as may reasonably be employed in connection with the trust hereof. The Deposit Trustee may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the IFA) and shall not be responsible for any loss or damage resulting from any action or non-action by it taken or omitted to be taken in good faith in reliance upon such opinion or advice.

(c) The Deposit Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the Parties, except as hereinafter set forth. The Deposit Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with this Trust Fund Agreement.

(d) The Deposit Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons.

(e) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceedings, the Deposit Trustee shall be entitled to rely upon a certificate signed on behalf of either Party, or by an officer of either Party or such other person as may be designated for such purpose by resolution of either Party as sufficient evidence of the facts therein contained, and shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Deposit Trustee may accept a certificate of an officer of either Party to the effect that a resolution in the form therein set forth has been adopted by such Party as conclusive evidence that such resolution has been duly adopted, and is in full force and effect.

(f) The permissive right of the Deposit Trustee to do things enumerated in this Trust Fund Agreement shall not be construed as a duty and the Deposit Trustee shall not be answerable for other than its negligence or willful default.

(g) At any and all reasonable times the Deposit Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, but shall not be required, to inspect all books, papers and records of the Parties, and to take such memoranda from and in regard thereto as may be desired.

(h) The Deposit Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(i) Before taking any action hereunder, the Deposit Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from the Deposit Trustee's negligence or willful default, by reason of any action so taken.

(j) All moneys received by the Deposit Trustee shall, until used or applied as herein provided, be held in trust in the manner and for the purposes for which they were received, but need not be segregated from other funds, except to the extent required by this Trust Fund Agreement or law.

(k) None of the provisions of this Trust Fund Agreement shall require the Deposit Trustee to expend or risk its own funds or otherwise incur any liability, financial or otherwise, in the performance of any of its duties hereunder or the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(l) In the absence of gross negligence or bad faith on its part, the Deposit Trustee shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Trust Fund Agreement and delivered using Electronic Means; provided, however, that each of the Parties shall provide to the Deposit Trustee an incumbency certificate listing its officers with the authority to provide such Instructions (the "Authorized Officers") and containing a specimen signature of each such Authorized Officer, each of which incumbency certificates shall be amended by the appropriate Party whenever a person is to be added or deleted from the listing. If either Party elects to give the Deposit Trustee Instructions using Electronic Means and the Deposit Trustee in its discretion elects to act upon such Instructions in good faith, the Deposit Trustee's understanding of such Instructions shall be deemed controlling. Each of the Parties understands and agrees that the Deposit Trustee cannot determine the identity of the actual sender of such Instructions and that the Deposit Trustee shall, in the absence of gross negligence or bad faith on its part, conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Deposit Trustee have been sent by such Authorized Officer. Each Party shall be responsible for ensuring that only its Authorized Officers transmit such Instructions to the Deposit Trustee and that each Party and all its Authorized Officers are solely responsible to safeguard that use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by each such Party. In the absence of gross negligence or bad faith on its part, the Deposit Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Deposit Trustee's reliance upon and compliance with such Instructions notwithstanding that such directions may be in conflict or are inconsistent with subsequent written Instructions. Each Party agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Deposit Trustee, including, without limitation, the risk of the Deposit Trustee acting on unauthorized Instructions and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Deposit Trustee and that there may be more secure methods of transmitting Instructions than any one or more of the methods selected by such Party; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions

provide to each such Party a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Deposit Trustee immediately upon learning of any compromise or unauthorized use of the security procedures provided to it by the Deposit Trustee.

Section 5. Fees, Charges and Expenses of Deposit Trustee. The Deposit Trustee shall be entitled to payment and/or reimbursement out of the funds on deposit in the Rail Projects Fund for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Deposit Trustee in connection with such services. If the Deposit Trustee renders any services hereunder not provided for in this Trust Fund Agreement or the Deposit Trustee is made a party to or intervenes in any litigation pertaining to this Trust Fund Agreement or institutes interpleader proceedings relative hereto, the Deposit Trustee shall be compensated reasonably by the IFA and the RDA for such extraordinary services and reimbursed for any and all claims, liabilities, losses, damages, fines, penalties and expenses, including out-of-pocket expenses and incidental expenses and legal fees occasioned thereby, except any such claim, liability, loss, damage, fine, penalty or expense attributable to the Deposit Trustee's gross negligence, willful misconduct or bad faith.

Section 6. Successor Deposit Trustee. Any corporation or association into which the Deposit Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto, shall be and become successor Deposit Trustee hereunder and vested with all of the title to the whole property or trust estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the Parties, anything herein to the contrary notwithstanding.

Section 7. Resignation by Deposit Trustee. The Deposit Trustee and any successor Deposit Trustee may at any time resign from the trusts hereby created by giving written notice delivered or mailed to the Parties, and such resignation shall take effect at the appointment of a successor Deposit Trustee pursuant to Section 9 hereof and acceptance by the successor Deposit Trustee. Such written notice to the Parties may be served personally or sent by registered or certified mail.

Section 8. Removal of Deposit Trustee. The Deposit Trustee may be removed at any time, by an instrument or concurrent instruments in writing delivered to the Deposit Trustee and to the other Parties, and signed by an Authorized Officer of the IFA, and such removal shall take effect at the appointment of a successor Deposit Trustee pursuant to Section 9 hereof and acceptance by the successor Deposit Trustee.

Section 9. Appointment of Successor Deposit Trustee.

(a) In case the Deposit Trustee hereunder shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the Public Finance Director on

behalf of the Parties. Every such Deposit Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank authorized to act as Deposit Trustee within the State having a reported capital, surplus and undivided profits of not less than Fifty Million Dollars (\$50,000,000) if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms. If no successor Deposit Trustee shall be so appointed and have accepted appointment within sixty (60) days after the giving of written notice by the resigning Deposit Trustee as aforesaid, the resigning Deposit Trustee may petition any court of competent jurisdiction for the appointment of a successor.

(b) Every successor Deposit Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also the Parties an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all of the properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall nevertheless, on the written request of the Parties, or of its successor, execute and deliver an instrument transferring to such successor Deposit Trustee all the properties, rights, powers, and trusts of such predecessor hereunder; and every predecessor Deposit Trustee shall deliver all securities and moneys held by it as Deposit Trustee hereunder to its successor. Should any instrument in writing from either Party be required by any successor Deposit Trustee for more fully and certainly vesting in such successor the properties, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered on behalf of such Party.

Section 10. Amendments or Supplemental Agreements. The Parties and the Deposit Trustee may amend or enter into an agreement or agreements supplemental to this Trust Fund Agreement for any purpose they deem appropriate. Any such agreement shall be in writing and signed by the Parties and the Deposit Trustee.

Section 11. Addresses for Notice and Demands. All notices, demands, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by first class, registered or certified mail, postage prepaid, to the proper address as indicated below, or by Electronic Means, so long as the sender of any such notice, demand, certificate or other communications by Electronic Means, at the time of sending such communications, acts in good faith, reasonably believes that the address or addresses to which such communications is sent is the correct address or addresses and with respect to any intended recipient, receives no subsequent evidence that such communications was not received by such recipient. The Parties and the Deposit Trustee may, by written notice given by each to the others, designate any address or addresses to which notices, demands, certificates or other communications to them shall be sent when required as contemplated by this Trust Fund Agreement. Until otherwise provided by the respective Parties and the Deposit Trustee, all notices, demands, certificates and other communications to each of them, except for such communications that are to be sent by Electronic Means, shall be addressed as follows:

To IFA:

Indiana Finance Authority
One North Capitol, Suite 900

Indianapolis, IN 46204
Attention: Public Finance Director

To RDA:

Northwest Indiana Regional Development
Authority
9800 Connecticut Drive
Crown Point, IN 46307
Attention: Chief Executive Officer

To the Deposit Trustee:

The Bank of New York Mellon Trust Company,
N.A.
300 North Meridian Street, Suite 910
Indianapolis, IN 46204
Attention: Corporate Trust Department

Section 12. Counterparts. This Trust Fund Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have caused this Trust Fund Agreement to be executed for and on their behalf, all as of the date and year first written above.

NORTHWEST INDIANA REGIONAL
DEVELOPMENT AUTHORITY

By: _____
Sherri Ziller,
President and Chief Executive Officer

INDIANA FINANCE AUTHORITY

By: _____
Cristopher R. Johnston, Chair

Attest:

Dan Huge, Public Finance Director
of the State of Indiana

[Signature page to the Trust Fund Agreement for the Rail Projects]

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as Deposit Trustee

By: _____

Name: _____

Title: _____

Attest:

Name: _____

Title: _____

[Signature page to the Trust Fund Agreement for the Rail Projects]

EXHIBIT A

FORM OF DISBURSEMENT REQUEST

DISBURSEMENT REQUEST

STATEMENT NO. _____ REQUESTING DISBURSEMENT OF FUNDS FROM THE RAIL PROJECTS FUND PURSUANT TO SECTION 2 OF THE TRUST FUND AGREEMENT

RDA/IFA Project Costs to be Paid to or for RDA

Pursuant to Section 2 of the Trust Fund Agreement, dated as of _____ 1, 2022 (the “Trust Fund Agreement”), among the Indiana Finance Authority (the “IFA”), the Northwest Indiana Regional Development Authority (the “RDA”) and The Bank of New York Mellon Trust Company, N.A., as the deposit trustee under the Trust Fund Agreement (the “Deposit Trustee”), the undersigned Authorized Officers of the IFA and the RDA, hereby request and authorize the Deposit Trustee, as depository of the Rail Projects Fund, to pay to the RDA or to the persons listed on the Payment Request attached hereto as Exhibit 1 (the “RDA Payment Request”), out of the moneys deposited in the Rail Projects Fund in the amount of \$_____ for the purpose of paying such person(s) or to reimburse the RDA in full, as indicated in the RDA Payment Request, for advances, payments and expenditures made by it for the West Lake Corridor Project or the Double Track Project in connection with the items listed in the RDA Payment Request.

RDA/IFA Project Costs to be Paid to or for IFA

Pursuant to Section 2 of the Trust Fund Agreement, the undersigned Authorized Officers of the IFA and the RDA, hereby request and authorize the Deposit Trustee, as depository of the Rail Projects Fund, to pay to the IFA or to the persons listed on the Payment Request attached hereto as Exhibit 2 (the “IFA Payment Request”), out of the moneys deposited in the Rail Projects Fund in the amount of \$_____ for the purpose of paying such person(s) or to reimburse the IFA in full, as indicated in the IFA Payment Request, for advances, payments and expenditures made by it for the West Lake Corridor Project or the Double Track Project in connection with the items listed in the IFA Payment Request.

Certifications

In connection with the foregoing requests and authorization, each of the undersigned hereby certifies that:

(1) each item for which disbursement is requested hereunder is properly payable out of the Rail Projects Fund in the amount or amounts set forth above in accordance with the terms and conditions of the Trust Fund Agreement, and none of those items has formed the basis for any disbursement heretofore made from the Rail Projects Fund;

(2) each such item is or was necessary in connection with the payment of RDA/IFA Project Costs;

(3) this Disbursement Request shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warrant, protection and authority to the Deposit Trustee for its actions taken pursuant hereto; and

(4) this statement constitutes the approval of the IFA and the RDA of each disbursement hereby requested and authorized.

IN WITNESS WHEREOF, the Authorized Officers of the RDA and the IFA have set their hands as of the ____ day of _____, 20__.

NORTHWEST INDIANA REGIONAL
DEVELOPMENT AUTHORITY

By: _____

Name: _____

Title: _____

INDIANA FINANCE AUTHORITY

By: _____

Name: _____

Title: _____

EXHIBIT 1

RDA PAYMENT REQUEST

Pursuant to Section 2 of the Trust Fund Agreement, dated as of _____ 1, 2022 (the “Trust Fund Agreement”), among the Indiana Finance Authority (the “IFA”), the Northwest Indiana Regional Development Authority (the “RDA”) and The Bank of New York Mellon Trust Company, N.A., as the deposit trustee under the Trust Fund Agreement (the “Deposit Trustee”), the undersigned Authorized Officer of the RDA, hereby submits this RDA Payment Request for RDA/IFA Project Costs to the IFA for its approval and, if so approved by the IFA, for the submission hereof to the Deposit Trustee for payment. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Trust Fund Agreement.

[To be used for payment of RDA/IFA Project Costs directly to a Vendor.]

Payee’s Name and Address	Invoice Number	Dollar Amount	Purpose
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[To be used for reimbursement of RDA/IFA Project Costs paid by the RDA.]

Payee’s Name and Address	Invoice Number	Dollar Amount	Purpose
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RDA

The RDA hereby certifies as follows:

(1) An obligation in the stated dollar amount has been incurred by the RDA, and the same is a proper charge for RDA/IFA Project Costs and has not been paid (or has been paid by the RDA, and the RDA requests reimbursement thereof). Attached hereto is the original invoice with respect to such obligation.

(2) This RDA Payment Request contains no item representing payment on account or any retained percentages, which the RDA is, at the date hereof, entitled to retain (except to the extent such amounts represent a reimbursement to the RDA).

(3) Each such item is or was necessary in connection with the payment of RDA/IFA Project Costs.

(4) This RDA Payment Request shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warrant, protection and authority to the IFA and the Deposit Trustee for its actions taken pursuant hereto.

IN WITNESS WHEREOF, the Authorized Officer of the RDA has set his or her hands as of the ____ day of _____, 20__.

NORTHWEST INDIANA REGIONAL
DEVELOPMENT AUTHORITY

By: _____

Name: _____

Title: _____

EXHIBIT 2

IFA PAYMENT REQUEST

Pursuant to Section 2 of the Trust Fund Agreement, dated as of _____ 1, 2022 (the “Trust Fund Agreement”), among the Indiana Finance Authority (the “IFA”), the Northwest Indiana Regional Development Authority (the “RDA”) and The Bank of New York Mellon Trust Company, N.A., as the deposit trustee under the Trust Fund Agreement (the “Deposit Trustee”), the undersigned Authorized Officer of the IFA, hereby submits this IFA Payment Request for RDA/IFA Project Costs to the RDA for its approval and, if so approved by the RDA, for the submission hereof to the Deposit Trustee for payment. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Trust Fund Agreement.

[To be used for payment of RDA/IFA Project Costs directly to a Vendor.]

Payee’s Name and Address	Invoice Number	Dollar Amount	Purpose
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[To be used for reimbursement of RDA/IFA Project Costs paid by the IFA.]

Payee’s Name and Address	Invoice Number	Dollar Amount	Purpose
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IFA

The IFA hereby certifies as follows:

(1) An obligation in the stated dollar amount has been incurred by the IFA, and the same is a proper charge for RDA/IFA Project Costs and has not been paid (or has been paid by the IFA, and the IFA requests reimbursement thereof). Attached hereto is the original invoice with respect to such obligation.

(2) This IFA Payment Request contains no item representing payment on account or any retained percentages, which the IFA is, at the date hereof, entitled to retain (except to the extent such amounts represent a reimbursement to the IFA).

(3) Each such item is or was necessary in connection with the payment of RDA/IFA Project Costs.

(4) This IFA Payment Request shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warrant, protection and authority to the RDA and the Deposit Trustee for its actions taken pursuant hereto.

IN WITNESS WHEREOF, the Authorized Officer of the IFA has set his or her hands as of the ____ day of _____, 20__.

INDIANA FINANCE AUTHORITY

By: _____

Name: _____

Title: _____