

EXECUTION VERSION

**GOVERNANCE AGREEMENT
CONCERNING
DEVELOPMENT OF THE RAIL PROJECTS**

by and among

NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY,

NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT

and

INDIANA FINANCE AUTHORITY

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**GOVERNANCE AGREEMENT
CONCERNING
DEVELOPMENT OF THE RAIL PROJECTS**

This Governance Agreement (hereinafter “Governance Agreement”) is made by and among the Northwest Indiana Regional Development Authority (“RDA”), the Northern Indiana Commuter Transportation District (“NICTD”) and the Indiana Finance Authority (“IFA”). RDA, NICTD and IFA are sometimes referred to individually herein as a “Party,” or collectively as “the Parties.” This Governance Agreement shall be effective as of August 31, 2018.

Recitals

A. WHEREAS, the South Shore Line is a commuter train service between South Bend, Indiana and Millennium Station in Chicago, Illinois;

B. WHEREAS, NICTD is a commuter transportation district and a municipal corporation formed pursuant to IC 8-5-15;

C. WHEREAS, NICTD has owned and operated the South Shore Line for nearly forty years and has experience in developing capital rail projects for the South Shore Line and in requesting, obtaining and managing federal grant funds through the Federal Transit Administration;

D. WHEREAS, RDA is a separate body corporate and politic formed pursuant to IC 36-7.5 to foster development in northwest Indiana and has since its inception fostered economic development throughout northwest Indiana and has been vested pursuant to IC 36-7.5-4-18 with certain powers and duties with respect to the projects hereinafter described;

E. WHEREAS, IFA is a body politic and corporate formed pursuant to IC 5-1.2-3-1 to oversee State debt issuance and provide effective financing solutions to facilitate State, local and business investment in Indiana and has participated in numerous important economic development activities throughout Indiana;

F. WHEREAS, the RDA and NICTD have developed and advanced plans for improvements to the South Shore Line, specifically the Double Track Project and the West Lake Corridor Project more fully described herein (collectively, the “Rail Projects”), which will improve the South Shore Line and foster economic development throughout northwest and north central Indiana by shortening commute times, providing new rail service to areas not serviced by rail transportation to Chicago, enhancing the economic and community development of the northwest Indiana region, and increasing the convenience to the areas served;

G. WHEREAS, the RDA has determined that the execution and delivery of this Governance Agreement is authorized pursuant to the provisions of IC 5-1.3 and that

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providing assistance to the Rail Projects in the manner herein provided serves a public purpose for which the RDA was created;

H. WHEREAS, it is expected that the Rail Projects will also encourage business investment in and near the station areas, provide faster, less expensive and reliable transportation, will relieve existing and anticipated traffic congestion, reduce vehicular emissions, reduce commuting costs and attract and retain families and younger residents in northwest and north central Indiana;

I. WHEREAS, the Rail Projects will provide faster travel times, will accommodate more trains to improve service during rush hour travel and will be safer to operate;

J. WHEREAS, the RDA, IFA and NICTD have identified and obtained committed local and State funding for the Rail Projects;

K. WHEREAS, NICTD is in the process of applying for necessary federal grant funding from the Federal Transit Administration (“FTA”) on behalf of the RDA and the State, and in its capacity as the CIG grantee, and as the signatory party to the Full Funding Grant Agreement with the FTA, will maintain continuing control of the assets receiving the FTA CIG funding, subject to the terms herein and the Leases;

L. WHEREAS, the Parties desire to jointly complete the FTA grant application processes for the Rail Projects, in order to facilitate the further development, design, construction and financing of the West Lake Corridor Project and the Double Track Project as improvements to the South Shore Line commuter rail system;

M. WHEREAS, any obligations of the RDA or the IFA herein shall not constitute a debt of the State or any municipality, or a pledge of the full faith and credit thereof, under the Constitution of the State; and

N. WHEREAS, a Term Sheet for Development of the Rail Projects was finalized on April 26, 2018, and is superseded in its entirety by this Governance Agreement;

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

Article 1. Definitions of Terms and List of Acronyms Used

1.1 **Annual Report** means the Year End Performance Report prepared by NICTD and provided to IFA and RDA pursuant to Section 8.7.

1.2 **Availability Breach** means a failure to maintain the South Shore Line for use and availability in the manner provided in the Leases, unless such failure is due to a Force Majeure event.

1.3 **Availability Breach Notice** means notice by IFA or RDA of an Availability Breach.

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1.4 **Availability Cure Period** means the 30-day period following an Availability Breach Notice, or such longer period as the Parties may agree in writing.

1.5 **Books and Records** means any and all documents, books, records, papers, or other information relating to the South Shore Line and/or the obligations herein, including (i) all design and construction documents, and operations and maintenance documents, including but not limited to drawings, specifications, submittals, subcontracts, subconsultant agreements, purchase orders, invoices, schedules, meeting minutes, budgets, forecasts, change orders, (ii) income statements, balance sheets, statements of cash flow and changes in financial position, operating income, expenses, capital expenditures and budgeted operating results relating to the Rail Projects, (iii) all budgets, certificates, claims, contract agreements, correspondence, data (including test data), documents, expert analyses, facts, files, information, investigations, materials, notices, plans, projections, proposals, records, reports, requests, samples, schedules, settlements, statements, studies, surveys, tests, test results, and (iv) with respect to all of the above, any information that is stored electronically or on computer-related media, including in any electronic document management system; provided however, that nothing in the Agreement shall require the disclosure by any Party of Books and Records protected by the attorney-client or other legal privilege based upon an opinion of counsel reasonably satisfactory to the other Party, and all disclosures shall be subject to the SSI Policy, if applicable.

1.6 **Bond Resolution** means Resolution No. 15-07 (adopted by NICTD on November 9, 2015), or such other bond resolution substantially similar in form and acceptable to IFA and RDA entered into or otherwise executed or adopted for the purpose of issuing and/or securing bonds or other Permitted NICTD Debt issued by NICTD as provided in Section 6.3 and Section 6.4.

1.7 **Bond Trustee** means the bank serving as the trustee for the IFA Bonds.

1.8 **Business Plan** means the annual report prepared by NICTD detailing the plan for operations and maintenance for the forthcoming year and the five-year capital plan for the South Shore Line as provided in Section 8.8.

1.9 **Capital Expenditures** has the meaning set forth in Section 6.1(e).

1.10 **Construction Adverse Condition** means the occurrence of one or more of the conditions in Sections 11.1.1 – 11.1.8.

1.11 **Construction Adverse Condition Notice** means a notice pursuant to Section 11.2.

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1.12 **Construction Period Step-In Rights** means the rights of IFA and/or RDA to step in and assume design and construction of the Rail Projects pursuant to Section 11.4.

1.13 **Consultation Period** has the meaning set forth in Section 11.6.2.

1.14 **Cost Budget** means the Project Costs and Project Contingency for design, construction, and development for completion of each of the Rail Projects, which are attached as Exhibit 3A (Double Track Project Cost Budget) and Exhibit 3B (West Lake Corridor Project Cost Budget), as applicable, which may be amended by the Parties.

1.15 **CSS** means Chicago South Shore & South Bend Railroad.

1.16 **D/B Substantial Completion** means the the date by when NICTD's design-builder or contractor shall achieve substantial completion of the West Lake Corridor Project or the Double Track Project, as applicable, which date is set forth in the applicable Project Schedule.

1.17 **Debt Coverage** means the calculation of the debt service coverage ratio as provided in Section 6.3 and Exhibit 7 and certified by NICTD in a manner consistent with Exhibit 7, and subject to verification by the IFA and/or RDA in their discretion as provided in Section 6.8.

1.18 **Deposit Trustee** means the bank serving as trustee under the Revenue Trust Fund Agreement.

1.19 **Decision Making Framework Factors** are the factors to be considered during the decision making process set forth in Section 3.1.2.

1.20 **Development Agreement** means an agreement that may be negotiated and executed by the Parties prior to the issuance of any bonds or other financing for the Rail Projects which may set forth additional terms and conditions for the Rail Projects, responsibilities of the Parties, means of addressing changed circumstances and the details of the financing plans.

1.21 **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.

1.22 **Enhanced Oversight** means the activities provided for in Section 11.2.

1.23 **Equivalent Alternative Funding** means funding secured from the General Assembly in the manner provided in Section 8.4.5 in an amount that is equal to or exceeds the immediately prior four quarters of Tax Credit Dollars, whether received by or provided to any Party or any other entity, in each case in any

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manner that is dedicated or made available for use to subsidize the West Lake Operating Deficit.

1.24 **Escrow Fund** means the escrow fund into which RDA is to deposit Tax Credit Dollars as provided in Section 8.4.1.

1.25 **Excess Construction Costs** means Project Costs in excess of the Cost Budget for completion of the applicable Rail Project without regard to whether such excess Project Costs are approved or not.

1.26 **FFGA** means a full funding grant agreement executed with FTA for either Rail Project.

1.27 **FFGA Approval** means execution of an FFGA by FTA.

1.28 **Financing Lease** means the lease agreements from IFA to the RDA for the financing of the Rail Projects through the issuance of the IFA Bonds, which lease agreements shall be payable from lease rentals paid by the RDA in the manner described therein in a manner consistent with IC 5-1.3, IC 36-7.5, IC 6-3.6-11-6, and IC 6-3.6-11-7.

1.29 **Financing Plan** means the plan prepared by RDA and IFA that describes how RDA and IFA intend to finance the State and local share of the capital costs of each of the Rail Projects, and the agreed sources and uses of the monetary contributions, grant funds, and bond proceeds for the Rail Projects, which shall be integrated into the FTA Financial Plan for each Rail Project prepared by NICTD as required by the FTA CIG Program. The respective Financing Plans are attached as Exhibit 5A (Double Track Financing Plan) and Exhibit 5B (West Lake Corridor Financing Plan).

1.30 **FONSI** means a Finding of No Significant Impact signed by the FTA.

1.31 **Force Majeure** means an Act of God, fire, tornado, hurricane, flood, earthquake, explosion, war on American soil, terrorist acts, civil disturbance, labor strikes on a national level or labor strikes that impact the Rail Projects, freight embargoes and similar unavoidable circumstances beyond NICTD's or its agent's control and not caused by any of the following: (i) the negligent or intentional act or omission of NICTD, its agents, contractors or consultants (at whatever tier), or anyone else for whom NICTD is responsible, (ii) breach of this Governance Agreement by NICTD, its agents, contractors or consultants (at whatever tier), or anyone else for whom NICTD is responsible, or (iii) breach of a project labor or "no strike" agreement by NICTD, its agents, contractors or consultants (at whatever tier), or anyone else for whom NICTD is responsible.

1.32 **FTA** means the Federal Transit Administration.

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1.33 **FTA CIG Program** means the Federal Transit Administration Capital Investment Grants Program.

1.34 **FTA Financial Plans** means the financial plans prepared by NICTD as required by the FTA CIG Program and that are approved in writing by IFA and RDA.

1.35 **GANS** means the grant anticipation notes issued by IFA pursuant to IC 5-1.3-6 for the purpose of financing a portion of the Project Costs, which GANS are to be paid from reimbursements received from FTA under the FFGA or as otherwise provided in IC 8-14-15.2.

1.36 **Grants** has the meaning set forth in Section 6.1(b).

1.37 **Gross Revenues** has the meaning set forth in Section 6.1(a).

1.38 **IFA** means the Indiana Finance Authority.

1.39 **IFA Bonds** means the bonds, notes or other obligations, including GANS, issued by IFA for the Rail Projects described in Section 5.2, including bonds, notes or other obligations issued to refund or refinance such bonds, notes or other obligations.

1.40 **IFA Initial Notice** means IFA's notice of a NICTD Operations Adverse Condition pursuant to Section 11.5.

1.41 **Indiana Design Build Statute** means Indiana Code §5-30-1 et seq.

1.42 **Indemnitors** means the following entities who undertake a duty to indemnify a Party hereunder: (i) nonparty consultants, contractors, designers, design-builders, and other professionals involved in the design and/or construction of the Rail Projects, as provided in Section 7.2.6.1; and (ii) NICTD, as provided in Section 15.6.

1.43 **Interlocal Agreement** means the "Interlocal Cooperation Agreement Between and Among Several Lake County Governmental Entities with the Purpose of Providing Resources to Support the Extension and Improvement of Commuter Rail Services Provided by the Northern Indiana Commuter Transit District."

1.44 **Leased Premises** means that portion of the improvements constructed in connection with the Rail Projects and the real property upon which such improvements shall be constructed, together with the existing rail lines and any real and personal property acquired after the execution of Leases, all as more fully described in the Leases, and shall not include any existing stations, existing

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parking facilities, existing buildings, or NICTD rolling stock, except to the extent costs related thereto are included in the applicable Cost Budget.

1.45 **Level of Service** has the meaning set forth in Section 8.7.

1.46 **Leases** means each Lease with respect to the acquisition, construction, development and financing of the Rail Projects, including a lease from NICTD to RDA, a lease from RDA to IFA, the Financing Lease from IFA to RDA and an operating lease from RDA to NICTD all for each Rail Project and as contemplated by IC 5-1.3.

1.47 **Major Contract** means a contract pertaining to the Rail Projects and that is (i) in excess of \$500,000, or (ii) a contract with an entity, when contracts with that entity or any related person or affiliate thereof in aggregate exceed \$500,000, or (iii) any of a series of contracts entered into by NICTD for the purpose of avoiding the determination of whether the contracts would be a Major Contract pursuant to clause (i) or (ii) hereof.

1.48 **Maximum Debt Service** has the meaning set forth in Section 6.3.

1.49 **Maximum NICTD Excess Cost Contribution** means the amount equal to the maximum proceeds of bonds issued, or loan proceeds from a loan, having maximum annual principal and interest payments of \$3 Million per year over a period of up to 30 years.

1.50 **Metra** means the Metropolitan Rail system providing commuter rail service in the Chicago, Illinois area.

1.51 **NEPA** means National Environmental Policy Act, 42 U.S.C. § 4321 et seq.

1.52 **NICTD** means the Northern Indiana Commuter Transportation District.

1.53 **NICTD Excess Cost Contribution** means NICTD's agreed contribution for Excess Construction Costs pursuant to Section 7.8.1.

1.54 **NICTD Financial Operations Report** means the annual report to be prepared by NICTD and provided to IFA and RDA pursuant to Sections 6.1 and 6.3.

1.55 **NICTD Initial Notice** means NICTD's notice of a NICTD Operations Adverse Condition under Section 8.9.

1.56 **NICTD Operations Adverse Condition** means the occurrence of any of the conditions listed in Section 11.5.

1.57 **NIPSCO** means Northern Indiana Public Service Company.

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- 1.58 **O&M** means operation and maintenance.
- 1.59 **Operations Cure Period** means the period provided to NICTD following approval by IFA and RDA of the Recovery Plan in which to cure a NICTD Operations Adverse Condition as provided in Section 11.6.4.
- 1.60 **Operations Expenses** has the meaning set forth in Section 6.1(d).
- 1.61 **Operations Step-In Notice** means the notice by IFA provided for in Section 11.9.
- 1.62 **Operations Step-In Period** means the period from the date of Operations Step-In Notice through Termination.
- 1.63 **Operations Step-In Rights** means the rights of IFA to step in and assume operation and maintenance of the South Shore Line pursuant to Section 11.9.
- 1.64 **Participating Entities** means the governmental entities located in Lake County, Indiana who are parties to the Interlocal Agreement, including any such entities who hereinafter agree to participate therein.
- 1.65 **Payment Request** means a NICTD request for payment or reimbursement of Project Costs incurred for the Rail Projects.
- 1.66 **Permitted NICTD Debt** has the meaning set forth in Section 6.3.
- 1.67 **Project Contingency** means the dollar amount(s) set forth in the applicable Cost Budget, over and above the estimated Project Costs, whether allocated to specific aspects of the Rail Projects or unallocated, which may be used for Project Costs as permitted by this Governance Agreement.
- 1.68 **Project Costs** means all direct and indirect actual costs for completion of design, construction and development of each of the Rail Projects.
- 1.69 **Project Executives** means:
- (a) The CEO of the RDA, or delegate
 - (b) The President and CEO of NICTD, or delegate; and
 - (c) The Public Finance Director of the State of Indiana (in the capacity as the executive director of IFA), or delegate.
- 1.70 **Project Schedule** means the agreed time schedule for completion of development, design and construction of each of the Rail Projects, attached as Exhibit 4A (Double Track Project Schedule) and Exhibit 4B (West Lake Corridor Project Schedule), as applicable, which includes dates for major milestones, including for the start of Revenue Services Operations, and D/B Substantial

Completion, and reasonable float times for unanticipated contingencies. Each Project Schedule may be updated from time to time during construction of the Rail Projects as the Parties may agree in writing.

1.71 **Rail Projects** means

- (a) the Double Track Project and
- (b) the West Lake Corridor Project.

1.72 **Rail Project** means either the Double Track Project or the West Lake Corridor Project.

1.73 **Rail Projects Improvements** means the improvements to be constructed in connection with the Rail Projects.

1.74 **Rail Projects Property** means all real and personal property interests, including but not limited to Leased Premises, Rail Projects Improvements, and such easements, licenses, leases, or property rights, in whatever form reasonably necessary to construct the Rail Projects and operate the South Shore Line, but not including existing stations, existing parking facilities, or existing buildings, or NICTD rolling stock except to the extent any costs for rolling stock are included in the applicable Cost Budget).

1.75 **RDA** means the Northwest Indiana Regional Development Authority.

1.76 **RDA Initial Notice** means RDA's notice of a NICTD Operations Adverse Condition under Section 11.5.

1.77 **RDA/IFA Project Costs** means RDA's and IFA's internal costs, consultant costs and financing costs for the Rail Projects.

1.78 **Recovery Plan** means NICTD's written recovery plan setting forth NICTD's plans and proposed steps to cure NICTD Operations Adverse Condition(s).

1.79 **Restricted Taxes** has the meaning set forth in Section 6.1.

1.80 **Revenue Coverage** means the calculation of the revenue coverage ratio as provided in Section 6.3 and Exhibit 7 and certified by NICTD in a manner consistent with Exhibit 7, and subject to verification by the IFA and/or RDA in their discretion as provided in Section 6.8.

1.81 **Revenue Service Operations Date** means the date by when NICTD shall commence revenue operations for the West Lake Corridor Project or the Double Track Project, as applicable, which date is set forth in the applicable Project Schedule.

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1.82 **Revenue Trust Fund** means the trust fund established and maintained to receive, hold and disburse Rail Projects funds, including FTA grant funds, bond proceeds, member dues, State appropriations and local contributions according to the terms of this Governance Agreement.

1.83 **Revenue Trust Fund Agreement** means the agreement pursuant to which the Revenue Trust Fund is created and governed.

1.84 **ROW** means right of way.

1.85 **SSI Policy** means the terms and conditions of the NICTD Policy and Procedures on Sensitive Security Information as adopted by NICTD on January 26, 2018, a copy of which is attached as Exhibit 10.

1.86 **South Shore Line** means the existing South Shore Line Passenger Railroad, a commuter train service between South Bend, Indiana and Millennium Station in Chicago, Illinois, including those portions of the Double Track Project when complete and those portions of the West Lake Corridor Project when complete, including those assets being funded under the FTA CIG Program and including all other assets, whether now owned or hereafter acquired or leased by NICTD for operation of the South Shore Line.

1.87 **State** means the State of Indiana.

1.88 **State Budget Director** means the SBA Director of the State, or in the absence of this position, the person designated by the Governor to serve in the capacity of the State Budget Director under this Governance Agreement.

1.89 **Subsidy Shortfall** means the amount of any insufficiency of the Escrow Fund to cover any West Lake Corridor Project Deficit in any quarter pursuant to Section 8.4.4.

1.90 **Taxes** has the meaning set forth in Section 6.3.

1.91 **Tax Credit Dollars** means the funds received by RDA pursuant to IC 6-3.1-20-7(d) from the Indiana Department of Revenue as described in Section 8.4.1.

1.92 **TDD** means Transit Development District/s.

1.93 **Termination** means the termination or expiration of this Governance Agreement as provided in Article 13.

1.94 **Unrestricted Taxes** has the meaning set forth in Section 6.1(a).

1.95 **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), all as more fully described in Exhibit 2.

1.96 **West Lake Deficit Cost Submission** means the NICTD request for payment for West Lake Corridor Operating Deficits, if any, as provided in Section 8.4.3 and in compliance with the West Lake Corridor Deficit Cost Submission Form attached hereto as Exhibit 8, accompanied by a completed form of Exhibit 6 that is certified by NICTD and subject to verification by the IFA and/or RDA in their discretion.

1.97 **West Lake Operating Deficit** means the operating cost deficit, if any, related to the West Lake Corridor Project (direct and indirect costs of NICTD, including administrative overhead and costs associated with operating and maintaining the West Lake Corridor Project after completion, minus all revenue associated or derived from the West Lake Corridor Project) as calculated as set forth in Exhibit 6, which shall be subject to verification by IFA and/or RDA in their discretion.

1.98 **WL Deficit Alternative Funding** means funding secured from the General Assembly in an amount that is equal to or exceeds that year's West Lake Operating Deficit, whether received by or provided to any Party or any other entity, in each case in any manner that is dedicated or made available for use to subsidize the West Lake Operating Deficit.

Article 2. Conditions Precedent

2.1 The following are conditions precedent to the Governance Agreement being effective:

2.1.1 Agreement to the Cost Budgets, attached as Exhibit 3A and 3B;

2.1.2 Agreement to the Project Schedules, attached as Exhibit 4A and 4B;

2.1.3 Agreement to the Financing Plans as Exhibit 5A and 5B;

2.1.4 NICTD delivers the information regarding third party agreements as required in Section 14.2, which is approved by RDA and IFA in writing;

2.1.5 Approval of the Governance Agreement, including all exhibits hereto, by the boards of each of the Parties; and

2.1.6 Review of the applicable Financing Plan by the State Budget Committee of the State and approval of the applicable Financing Plan and the Governance Agreement by the State Budget Director.

Article 3. Project Management and Coordination

3.1 The Rail Projects shall be managed by the Project Executives in the manner herein provided, who shall conduct bi-weekly progress meetings to report on the progress of the Parties' respective duties and obligations as set forth in the Governance Agreement and any Development Agreement that may be entered into.

3.1.1 Where and when possible, decisions on the Rail Projects shall be determined by agreement among the Project Executives. Where such agreement is not able to be achieved, the dispute resolution procedures in Article 10 shall apply.

3.1.2 In making decisions regarding the Rail Projects, the Project Executives shall consider factors that include: (1) cost containment; (2) meeting FTA grant criteria and satisfying grant assurances; (3) the applicable Project Schedule, including the timeliness of decision making during the funding, design and construction phases; (4) incremental revenue opportunities; (5) market acceptance; (6) the Parties' contractual obligations and duties to third parties, including their respective contractual risks, duties and liabilities; (7) the impact on current and future FTA grants on NICTD, RDA and IFA projects; (8) impact on future TDD; (9) the State's bond rating; and (10) the availability of funds. These factors are collectively referred to herein as "Decision Making Framework Factors".

3.2 NICTD and RDA shall consult with IFA in advance of taking any action, or making any decision, regarding the Rail Projects that would, in the judgment of IFA, materially impact a bond issuance or the security for a bond issuance, in which IFA acts as the issuer, and such action and/or decision shall be subject to IFA approval.

3.3 NICTD, RDA and IFA shall participate in bi-weekly progress meetings where NICTD shall update RDA and the IFA on the status and progress of the Rail Projects, including prompt updates as to any developments of significance that may impact the applicable Cost Budget or Project Schedule. NICTD, RDA and IFA may request more frequent updates at their individual discretion.

3.4 Prior to the issuance of any bonds or other financing of the Rail Projects, the Parties may enter into a Development Agreement, which, among other things may address details regarding the applicable Financing Plan.

3.5 The Parties intend to submit the West Lake Corridor Project for FFGA Approval prior to submission of the Double Track Project for FFGA Approval.

3.6 Federal Coordination

3.6.1 RDA, IFA and NICTD shall work together to coordinate overall federal strategy, interface, and implementation.

3.6.2 Federal Transit Administration

3.6.2.1 NICTD, with assistance of RDA, shall be the lead agency in the FTA grant application preparation process and interfacing with the FTA, except as otherwise provided herein.

3.6.2.2 NICTD, RDA and IFA representatives involved with or assigned to the Rail Projects shall work together to assure that NICTD, RDA and IFA are timely informed of any regularly scheduled meetings, submittals, or calls with FTA to help secure full involvement, awareness and cooperation regarding interactions with FTA, including but not limited to the FTA grant application process. NICTD, RDA and IFA, and their representatives, shall jointly coordinate and participate on all FTA regularly scheduled meetings, conference calls and submittals. The Parties also shall promptly inform each other as to any potential issues or concerns relating to, or raised by, FTA, and shall inform each other as to all substantive communications with FTA.

3.6.2.3 NICTD, RDA and IFA shall share with each other, and their respective representatives, copies of all draft documents to be provided to FTA, with adequate opportunity (no less than 15 calendar days, unless otherwise agreed in writing) to review in advance of submission to FTA; and also shall promptly provide copies of all documents exchanged with FTA.

3.6.2.4 FTA Grant Application

3.6.2.4.1 Subject to the provisions herein, NICTD shall be the applicant of record on the FTA grant program applications regarding the Rail Projects, and shall lead such grant application process.

3.6.2.4.2 NICTD, RDA and IFA shall work together to identify potential issues related to the FTA grant application process, shall keep each other informed of progress on the FTA grant applications, and shall promptly inform each other of substantive communications with FTA.

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regarding the FTA grant applications. NICTD, RDA and IFA commit to each other to promptly and fully participate in the FTA grant application process.

3.6.2.4.3 RDA and/or IFA may hire technical consultant(s) to conduct independent review(s) of grant application materials and support the grant application process. NICTD shall cooperate with any such technical consultant hired by RDA and/or IFA. IFA and RDA shall have the right to review, comment and approve any grant application materials prior to submission to FTA.

3.6.2.4.4 To the maximum extent possible, all costs incurred by RDA and IFA, including but not limited to financing costs, interest, costs for professional services and legal fees as estimated, identified and included in the applicable Cost Budget or necessarily incurred with respect to the Rail Projects, shall be reimbursable with FTA grant funds, other funds (not including funds from NICTD other than as set forth in this Governance Agreement), or bond proceeds. RDA, IFA and NICTD shall timely exchange information with each other as to the types and amounts of all estimated future Project Costs so that they are sufficiently identified and can be included in the cost estimate submitted to and approved by FTA. In order to help maintain eligibility for cost reimbursement under the FTA grants, all Parties shall report to each other monthly as to the costs that are being incurred and the basis for asserting such costs are eligible for reimbursement with an FTA grant. Without regard to whether any costs incurred by IFA or RDA are reimbursable by FTA grant funds, IFA and RDA may be reimbursed from the proceeds of the IFA Bonds or the rental payments due under the Leases in their sole and absolute discretion.

3.6.2.4.5 The IFA, RDA, and NICTD shall meet to determine the process with respect to transitioning the Double Track Project into the New Starts FTA grant process (or other grant mechanism/process) and the desired timeline for implementation of this transition. Upon conclusion of that process, the recommendation with respect to timing for submission of the Double Track Project or into which FTA grant program the Double Track Project shall be submitted, must be approved in writing by the IFA and RDA. The Parties shall meet to determine the

necessary activities and expenditures, and the timing thereof, in order to successfully progress the Double Track Project through the FTA process.

3.7 State Coordination

3.7.1 RDA and NICTD shall coordinate with the IFA, and the State executive and legislative branches, as necessary to keep them informed of project progress.

3.7.2 NICTD shall interface with Indiana Department of Transportation on technical matters, as necessary, and shall provide RDA updates and opportunity to comment with respect to such matters.

3.8 Local Government Coordination

3.8.1 RDA shall coordinate with local units of government on local funding commitments. NICTD shall provide support.

3.8.2 NICTD is responsible for the NEPA process and, therefore, shall be responsible for coordinating alignment and technical decisions with local units and communities of the Rail Projects. NICTD shall advise RDA in advance, and RDA shall be provided an opportunity to comment in advance, with respect to such plans.

3.9 Community Engagement

3.9.1 NICTD shall conduct local community outreach regarding the technical elements of the Rail Projects (e.g., station location, bike paths, station design, parking, etc.). NICTD's outreach shall be consistent and coordinated with RDA's development plans regarding TDDs.

3.9.2 NICTD shall coordinate with local units of government on ancillary infrastructure improvements to facilitate the Rail Projects.

3.9.3 NICTD shall update RDA and IFA regularly through the bi-weekly progress meetings on local government and community engagement.

Article 4. Property Interests and Activities

4.1 NICTD shall lead ROW acquisition activities for the Rail Projects. NICTD shall timely acquire or shall utilize its powers, once the requisite approvals for all aspects of real estate acquisition by RDA and IFA have been provided, including eminent domain and condemnation powers, to timely acquire the Rail Projects Property and shall timely add any such property to the properties leased to RDA under the applicable Lease.

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4.1.1 If agreed by the Parties, responsibility for ROW acquisition may be performed by a NICTD consultant or transferred to the successful design-builder or prime contractor, depending on final delivery and procurement structure.

4.1.2 NICTD's ROW acquisition plans shall be subject to RDA's right to review and approve, with adequate time for review. RDA's review shall be to insure the Project scope, schedule and budget are met and to ensure consistency with TDD goals. Any RDA ROW modification requests must be timely made and any change requested in the ROW must be within the project scope, schedule and budget of the Rail Projects, otherwise RDA must secure additional funds to potentially cover any increased land acquisition costs and construction delay costs that may occur as a result of this RDA review process.

4.2 NICTD shall own the Rail Projects Property, and shall make such Rail Projects Property available for development, construction, and operation of the Rail Projects through Termination, through inclusion of such Rail Projects Property in the property subject to the Leases.

4.2.1 At such time as agreed to by the Parties, but in no event later than the issuance of any IFA Bonds,

4.2.1.1 (a) the Parties shall enter into the Leases pursuant to which NICTD shall lease the Rail Projects Property to RDA and RDA shall lease the Rail Projects Property to IFA substantially in the form of the Leases attached as Exhibit 9.

4.2.1.2 (b) IFA shall enter into one or more Financing Leases pursuant to which IFA shall lease the Rail Projects Property to RDA, substantially in the form of Lease attached as Exhibit 9.

4.2.1.3 (c) RDA shall enter into one or more leases pursuant to which RDA shall lease the Rail Projects Property to NICTD, substantially in the form of Lease attached as Exhibit 9, thus enabling NICTD to acquire, equip, construct, operate and maintain the Rail Projects.

4.2.2 Notwithstanding the substantially final form of the Leases attached as exhibits to this Governance Agreement, IFA shall be authorized to make such changes in the form of the Leases prior to the issuance of the IFA Bonds as deemed necessary or desirable by IFA for the issuance of the IFA Bonds and the receipt of the most desirable amount of proceeds thereof.

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4.2.3 Upon repayment of all of the IFA Bonds, except in the event that IFA has elected to exercise its Operations Step-In Rights in the manner provided in Section 11.9 (unless and until: (a) IFA agrees to no longer exercise its Operations Step-In Rights; or (b) upon the written request of NICTD to the State Budget Director, the State Budget Director determines, in its sole discretion, that the Leases may terminate or expire by their terms), the Leases shall terminate or expire by their terms.

4.3 NICTD shall obtain all required federal and state permits for the Rail Projects and shall take the lead defending any challenges to such permits. RDA has the right, but not the obligation, to assist NICTD in defending any challenges to the permits and to cooperate with NICTD in that defense.

4.4 NICTD shall be responsible for all utility relocation processes for the Rail Projects. RDA has the right, but not the obligation, to participate in utility relocation.

4.4.1 RDA has approval rights of final utility locations with respect to those utility relocations that impact future TDD opportunities. If RDA requires an alternative utility relocation based on its impact to future TDD opportunities, then any additional costs of such utility relocation are to be funded by RDA so that there are otherwise no cost increases or time delays to the applicable Cost Budget and the Project Schedule.

4.5 NICTD shall be responsible for achieving and maintaining compliance with NEPA, and with any environmental approval processes for the Rail Projects, including but not limited to any applicable Record of Decision, FONSI, or federal, state or local laws. RDA has the right, but not the obligation, to participate in the environmental approval process and compliance therewith.

4.5.1 NICTD shall promptly inform RDA as to the status of all environmental issues and invite RDA to all meetings and conference calls with EPA, IDEM, U.S. Army Corps of Engineers and/or other governmental entities; shall promptly provide RDA with draft copies of all documents to be provided to such entities in advance; and shall promptly provide RDA with copies of all documents exchanged with such entities.

4.6 NICTD shall be responsible for securing all necessary trackage rights for the Rail Projects.

4.7 NICTD shall be responsible for complying with all applicable state and federal requirements, including but not limited to: FTA requirements, FFGA requirements, and FTA grant requirements, which include all FTA requirements as to reporting and/or providing other information.

Article 5. Financing and Funding

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5.1 Subject to Indiana Code 5-1.3, RDA is the exclusive fiscal officer for the Rail Projects. RDA shall coordinate with IFA on funding and financing from State and local jurisdictions.

5.2 IFA shall act as issuer for any bond financing pursuant to IC 5-1.3-6. IFA shall be responsible to determine financings, including determining the timing and manner of issuance of the IFA Bonds, and disbursement of financing proceeds to RDA, NICTD or their assignees, as applicable, subject to market conditions. The IFA Bonds are not expected to be issued to provide financing for a Rail Project until an FFGA has been executed for that Rail Project. In connection with the issuance of the IFA Bonds, the RDA and NICTD shall cooperate in any manner with the issuance of the IFA Bonds, the compliance by the Parties with the provisions of the financing agreements entered into in connection with the IFA Bonds, including the Leases, any continuing disclosure obligations and business interruption insurance required from the Parties in connection with the IFA Bonds. The IFA Bonds shall be payable from lease rentals payable under the Financing Leases entered into by IFA and RDA to the extent that funds have been appropriated to RDA in the manner provided in the Financing Leases.

5.3 RDA and IFA have developed the Financing Plans, attached hereto as Exhibit 5A and 5B. Notwithstanding any other provisions herein, IFA's and RDA's obligations to provide funding and financing for the Rail Projects and for the repayment of IFA Bonds shall be limited to no more than the amounts set forth in the applicable Financing Plan and as set forth in the applicable Cost Budget, which may be amended only by written agreement of the Parties. The amount of proceeds derived from the IFA Bonds from the funding described in the applicable Financing Plan shall be determined at the time of issuance of the IFA Bonds, depending on, among other matters, market conditions. As stated in the applicable Financing Plan, the IFA does not anticipate issuing bonds until receipt of FFGA Approval. All funds provided by RDA and/or IFA to NICTD prior to FFGA Approval shall be limited to payment for Project Costs that are included in the applicable Cost Budget (as amended and updated by written agreement of the Parties), and that also are individually and specifically approved in advance and in writing (both as to the timing and amount of such costs being incurred) by IFA and RDA. For clarity, notwithstanding any other provisions or approvals herein, prior to FFGA Approval, neither IFA nor RDA shall be obligated to provide funding for contracts or other costs that have not been individually and specifically approved in advance by IFA and RDA in writing.

5.4 RDA and/or the IFA shall annually request the \$12 Million State-appropriated funds for the Rail Projects from the State Budget Agency in accordance with the Financing Plans. RDA shall make additional rental payments annually from the funds described in the applicable Financing Plan.

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5.5 The Parties shall establish a Revenue Trust Fund in which the Deposit Trustee shall receive, hold and disburse Rail Project funds, including FTA grant funds, bond proceeds and local contributions. Any and all Rail Projects grant funds received from FTA or any other source shall be transferred to the Deposit Trustee to be held in the Revenue Trust Fund for use in support of the Rail Projects, provided that FTA requirements are maintained for the use and disposition of FTA grant funds. In addition, all State appropriations, RDA member dues and local contributions used as security for any IFA Bonds shall also be deposited into the Revenue Trust Fund and held by the Deposit Trustee.

5.6 Disbursement of Funds

5.6.1 NICTD shall submit Payment Requests for Project Costs incurred in accordance with the applicable Cost Budget, (along with such supporting material as IFA and/or RDA may reasonably require), to RDA and IFA for review and approval, by the tenth (10th) day of each month. Payment Requests shall be made not more frequently than monthly. IFA and RDA shall conduct their review concurrently and approve or reject Payment Requests within 14 days of receipt of a Payment Request. If no objection is made by either IFA or RDA (in writing) within 14 days, then the Payment Request shall be deemed approved after three business days' advance written notice to IFA and RDA by NICTD. Upon IFA and RDA approval, IFA shall submit NICTD's request for payment, along with RDA/IFA Project Costs, to the Deposit Trustee under the Revenue Trust Fund Agreement to issue payment in accordance with the procedures for disbursement of funds as provided in the Revenue Trust Fund Agreement and in accordance with the applicable Financing Plan. In the event that a payment request is deemed approved, NICTD shall retain the right to transmit the payment request to the Deposit Trustee should IFA not do so.

5.6.2 NICTD must adhere to all Federal laws, regulations and procedures related to the administration and reimbursement of Federal funding for the Rail Projects, including but not limited to submitting timely and complete requests for payment to the FTA and following all reporting procedures established by the FTA under the FFGA. If NICTD is required to be the recipient of Federal funding under the FFGA, then NICTD shall deposit all Federal funding received from the FTA for the Rail Projects into the appropriate accounts in accordance with the Revenue Trust Fund Agreement.

5.6.3 Disbursements for approved Payment Requests shall be made by the Deposit Trustee no later than 7 days after approval, unless withheld by the Deposit Trustee in accordance with the Revenue Trust Fund Agreement.

5.6.4 The contractual payment terms in the contracts entered into by NICTD for the Rail Projects shall take into account and not be inconsistent with the procedures and time requirements for RDA, IFA, and the Deposit Trustee to review and approve disbursement of funds for the Payment Requests (e.g., the provisions of this Section allow for a 31-day review, approval, and disbursement process. Contracts entered into by NICTD should take this into account so that penalties for payment delay are not incurred).

5.7 NICTD hereby assigns to RDA all rights, title and interest of NICTD in the instrument entitled Interlocal Cooperation Agreement Between and Among Several Lake County Governmental Entities with the Purpose of Providing Resources to Support the Extension and Improvement of Commuter Rail Services Provided by the Northern Indiana Commuter Transit District, including any revenues paid thereunder from the Participating Entities, and covenants and agrees that all rights, title and interest of NICTD in such Interlocal Cooperation Agreement are hereby vested in RDA. NICTD further agrees to cooperate in any manner requested by RDA with respect to the administration of such Interlocal Cooperation Agreement and the use of such revenues to support the financing contemplated from such revenues in the applicable Financing Plan, including seeking cooperation and support from Lake County, Indiana, with respect thereto.

Article 6. NICTD Operations Covenants

6.1 NICTD agrees to provide to RDA and IFA by April 30th of each year (commencing on April 30, 2019) a copy of NICTD's audited Comprehensive Annual Financial Report for the preceding year, as well as a financial report ("NICTD Financial Operations Report") for such preceding calendar year of NICTD's financial performance for such calendar year, which includes itemization of:

- a. all revenues, those taxes collected pursuant to the provisions of IC 8-3-1.5-20.5 and 20.6, except those defined as Restricted Taxes below ("Unrestricted Taxes"), and any other income received by or on behalf of NICTD, but excluding Restricted Taxes and Grants each as defined below (collectively "Gross Revenues");
- b. federal and State capital grants received by or behalf of NICTD ("Grants");
- c. Indefinite Situs Taxes and any other taxes that may not be used to pay Operations Expenses (defined below) ("Restricted Taxes");
- d. NICTD operating and maintenance expenses, excluding noncash expenses such as depreciation and amortization ("Operations Expenses"); and

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e. capital expenditures incurred by or on behalf of NICTD (“Capital Expenditures”).

6.2 All amounts in Section 6.1(a) through (e) (collectively) above shall be annual amounts based on a calendar year (excluding any prior revenue balances).

6.3 Together with the NICTD Financial Operations Report NICTD shall also provide a debt coverage (“Debt Coverage”) calculation demonstrating the ratio of Restricted Taxes and Unrestricted Taxes (“Taxes”) pledged to the debt service pursuant to the Bond Resolution and reported for such such calendar year divided by the maximum annual debt service on outstanding NICTD debt in the then current or any future year (“Maximum Debt Service”) and a revenue coverage (“Revenue Coverage”) calculation demonstrating the ratio of Gross Revenues for such calendar year together with current unrestricted cash, as of January 1 of such calendar year, to the sum of Operations Expenses for such calendar year all as reported in NICTD's audited financial statements for the previous fiscal year. As used herein “Permitted NICTD Debt” shall mean: (i) existing parity NICTD debt, (ii) contemplated GARVEE bonds for the rail cars in the maximum par amount of not more than \$120 Million, the payment of the principal of and interest on which can be paid by a pledge by NICTD of a maximum amount of \$8 Million per year, 80% of which is payable from Section 5337 State of Good Repair grants and 20% of which may be payable from Taxes over the applicable bond term, (iii) a contemplated \$7.5 Million note for operations expenses maturing no later than December 31, 2018, (iv) parity senior debt permitted by IFA and RDA pursuant to the Bond Resolution, subject to Section 6.4; (v) debt incurred in a manner consistent with the requirements of Section 6.4; and (vi) issuance of debt for cost overruns pursuant to Section 7.8.1.

6.4 NICTD shall incur no additional debt or otherwise pledge any of its Gross Revenues or Taxes for any purpose (other than Permitted NICTD Debt) without the prior written consent of the RDA and IFA (i) during the period until the construction and development of both Rail Projects are completed and are operational; or (ii) thereafter, unless NICTD can demonstrate Debt Coverage of at least 2.0, after taking into account the debt service of such additional debt and all other debt RDA and IFA expect NICTD will need to issue to fund Capital Expenditures contemplated in NICTD's most recent five-year capital plan submitted to FTA.

6.5 NICTD shall manage its operations in each calendar year so that NICTD has a Revenue Coverage in such calendar year of not less than the 1.12 required for the FTA grant application.

6.6 Revenue Coverage and the Debt Coverage shall be calculated according to the form of calculation attached as Exhibit 7.

6.7 Except as otherwise provided in Article 6, NICTD may use its Gross Revenues, Restricted Taxes and Grants in any manner determined by NICTD in its discretion.

6.8 NICTD's Financial Operations Report, Debt Coverage calculation and Revenue Coverage calculation shall be subject to verification by the IFA and/or the RDA in their discretion.

Article 7. Design, Construction and Development of the Rail Projects

7.1 NICTD shall complete and deliver the Rail Projects in accordance with the applicable Cost Budget (as amended by written agreement of the Parties) and applicable Project Schedule (as amended by written agreement of the Parties), and in compliance with the limitations in this Governance Agreement concerning the use of Project Contingency.

7.2 NICTD, with the assistance of RDA, shall be the procuring entity for the design, acquisition, construction, construction management/owner's representative, and/or program management of the Rail Projects.

7.2.1 NICTD shall make a recommendation to RDA and IFA regarding procurement and delivery structure/s for each Rail Project. Such recommendation shall be subject to RDA and IFA review and approval. IFA shall provide support to RDA on financing and commercial elements, as necessary, subject to the applicable Financing Plan.

7.2.2 NICTD shall lead the review of design plans, technical proposals, reports, and related technical documents as necessary or helpful to facilitate the procurements. Subject to the SSI Policy, RDA shall have the right, but not the obligation, to participate.

7.2.3 The Parties acknowledge and agree that representatives of RDA and IFA, and their respective designees, who are exercising rights and functions described or contemplated in this Governance Agreement are persons with a "need to know" under the SSI Policy and are entitled to receive and review sensitive security information, provided they comply with the requirements of the SSI Policy. RDA and IFA will provide to NICTD (updated as necessary) a list of representatives and designees that they identify as "need to know".

7.2.4 All procurement proposal or bid evaluations related to the design, construction, construction management/owner's representative, and/or program management on the Rail Projects that are being procured through the design-build project delivery process shall involve a coordinated team of evaluators selected by NICTD that shall constitute the Technical Review Committee in conformance with the Indiana Design-Build Statute.

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RDA and IFA each shall be entitled to representation on the Technical Review Committee (a majority of the membership of which will be appointed by NICTD) and/or any other committee or body formed for purposes of evaluating the proposals or bids at any stage of the procurement process.

7.2.4.1 NICTD shall lead the technical proposal evaluations and conduct the selection process through solicitation of statements of qualifications and qualitative and price proposals in accordance with the Indiana Design-Build Statute and the SSI Policy. RDA and IFA shall have the right, but not the obligation, to attend evaluation sessions and interviews, subject to the provisions in the SSI Policy.

7.2.4.2 For procurements utilizing the design-bid-build competitive bidding project delivery system, bids and proposals shall be evaluated by NICTD in accordance with the statutory requirements. RDA and IFA shall have the right, but not the obligation, to attend bid and proposal evaluation sessions, subject to the provisions in the SSI Policy.

7.2.4.3 If any other delivery method for procurement is selected, the Parties shall agree on the procedures for evaluation and selection.

7.2.5 NICTD shall lead the preparation of all procurement documents (including technical specifications) and of all contracts pertaining to the Rail Projects. Copies of all executed contracts shall be provided to IFA and RDA upon execution, but in all events, no later than submission of any related Payment Request.

7.2.6 Unless RDA and IFA consent otherwise, NICTD shall include in all contracts pertaining to the Rail Projects (and shall require that all lower-tier subcontracts or subconsultant agreements thereto also include) the following provisions:

7.2.6.1 to the fullest extent permitted by law, the contracting party shall defend, indemnify and hold harmless, NICTD, IFA, RDA, and the State, (and each of their respective agents and employees), from and against third-party claims arising out of or resulting from the services provided under the contract;

7.2.6.2 all of the insurance policies (excepting workers compensation and professional liability) provided by the contracting party shall provide that NICTD, IFA, RDA and the State are named as additional insureds;

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7.2.6.3 the contracting party shall provide IFA and/or RDA access to all Books and Records, and shall provide IFA and/or RDA copies of all Books and Records upon request, at the contracting party's cost and expense;

7.2.6.4 that without RDA or IFA assuming any liability or obligation thereunder, RDA and the IFA are intended third party beneficiaries of the contract and are entitled to enforce its terms, consistent with third party beneficiary rights and on the same terms and conditions as NICTD;

7.2.6.5 that such contracts may be assigned to IFA and/or RDA or their respective designees in the event of Step-In pursuant to Section 11.4 herein;

7.2.6.6 that payments thereunder shall be subject to State appropriation and availability, and that to the extent a determination is made by RDA or IFA that funds are not appropriated or otherwise available to support continuation of performance, such contract shall be subject to being terminated for convenience by NICTD at no cost to NICTD, RDA and/or IFA;

7.2.6.7 that NICTD, RDA and/or IFA shall have the right to monitor construction through independent technical representative(s), who also shall have access to the Rail Projects and all of the Books and Records (any such representative shall be subject to any contractual confidentiality terms and the SSI Policy).

7.2.7 The Parties shall confer and coordinate regularly regarding and during the development of the procurement documents. RDA and IFA shall have an opportunity to review and comment on all NICTD proposed final drafts of procurement documents for Major Contracts and NICTD proposed final drafts of all other Major Contracts and shall have not less than 30 days (excepting in case of emergency or as otherwise agreed by the Parties) to review and approve such NICTD proposed final draft procurement documents and such NICTD proposed final draft contracts prior to issuance and/or distribution to third parties. NICTD shall advise RDA and IFA of its final recommendation of the preferred proposer or bidder prior to award, and such preferred proposer or bidder shall be subject to RDA and IFA written consent and approval. RDA and IFA's consent and approval decision as to the preferred proposer or bidder and as to the form of final contract to be entered therewith shall be conveyed to NICTD within 10 business days of NICTD's recommendation. NICTD shall not enter any proposed Major Contract until RDA and IFA consent

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and approve in writing. Once RDA and IFA approve such contract in writing, and provided the amount and timing of the cost of such contract is as stated in the applicable Cost Budget and the applicable Financing Plan, NICTD shall be able to rely upon that commitment as binding in entering into its contractual obligations, subject to other terms herein.

7.3 Attached as Exhibits 3A, Exhibit 3B, Exhibit 4A and Exhibit 4B are the agreed Cost Budgets and the Project Schedules for the Rail Projects, each of which may be amended or modified only by written agreement of the Parties. NICTD shall be responsible to ensure that project development, design and construction shall be performed to meet the applicable Cost Budget and Project Schedule, as amended by written agreement of the Parties. The Parties agree that the Cost Budgets include the Project Contingency required as part of the FTA requirement for the FTA CIG Program and the Financing Plans are designed to provide funding for the Cost Budgets. Notwithstanding the Financing Plans designed to fund the Cost Budgets, NICTD agrees to work closely with IFA and RDA to complete the Rail Projects using only the Project Contingency provided in Section 7.3.2, including the Project Contingency approved by IFA and RDA, so as to minimize the amount of funding required to fund actual Project Costs.

7.3.1 The Cost Budgets, Project Schedules and written job cost reports prepared by NICTD per Section 7.4.1 shall be reviewed by NICTD, RDA and IFA on a monthly basis.

7.3.2 The following proposed changes are subject to the review and written approval of RDA and IFA:

7.3.2.1 changes to the applicable Cost Budget for either Rail Project,

7.3.2.2 any use of Project Contingency set forth in the applicable Cost Budget, whether allocated or unallocated, in excess of \$250,000 (per month in the aggregate, per Rail Project); and/or

7.3.2.3 any adjustment to the applicable Project Schedule that will extend either the Revenue Service Operations Date or the D/B Substantial Completion Date, or extends any other major milestone date established in the Project Schedule, for, in each case, either Rail Project.

7.4 Monthly Reporting.

7.4.1 NICTD shall report to RDA and IFA on a monthly basis in a written job cost report in a form to be agreed upon by the Parties, that reconciles the historic expenditures and realistic projections for the costs

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of and schedule for the Rail Projects against the applicable Cost Budget and Project Schedule.

7.4.2 The monthly report shall include, but not be limited to: (i) a report on all proposed, rejected and approved change orders, (ii) a projected Project Contingency drawdown curve, actual use of Project Contingency, and the amount of remaining Project Contingency, (iii) a list of deviations between costs included in and underlying the applicable Cost Budget and the current projected actual cost of the Rail Projects (including without limitation all actual, incurred and estimated Project Costs), (iv) a list of deviations between the applicable Project Schedule and the actual projected schedule for the work, including any failure to achieve milestones and the effect, if any, on the cost forecast.

7.4.3 NICTD must adhere to the reporting process in order to receive funding for approved Project Costs. NICTD will also inform RDA and IFA promptly in writing of any additional material deviations in the projected actual Project Costs versus the applicable Cost Budget, and any additional material deviations in the projected schedule versus the applicable Project Schedule. In the event of actual or projected Project Cost overruns or schedule delay, NICTD shall, as part of its monthly report to RDA and IFA, report what actions NICTD is taking or will take to bring the actual projected Project Costs within the applicable Cost Budget and/or the actual projected schedule within the applicable Project Schedule, as applicable.

7.5 RDA and IFA have established an agreed-upon budget for RDA/IFA Project Costs which are included in the applicable Cost Budget. RDA/IFA Project Costs shall be reported and shared with NICTD on an ongoing basis in the same manner and time as NICTD costs are shared with RDA and IFA.

7.5.1 To the extent permitted by FTA, up to \$1 Million of the Project Contingency in the applicable Cost Budget may be used to fund any overrun in the RDA/IFA Project Costs (\$500,000 allocated to each of RDA and IFA).

7.5.2 Any overrun of costs incurred by RDA and/or IFA above such allocated Project Contingency shall be paid for by RDA or IFA, as applicable, with funds other than FFGA funds or bond proceeds, except as provided in Section 3.6.2.4.4 (*i.e.*, the costs are necessarily incurred with respect to the Rail Projects) and/or except to the extent such overruns relate to Enhanced Oversight, Construction Period Step-In Rights and/or Operations Step-In Rights. In the event of either such exception, FFGA funds (to the extent permitted by FTA), bond proceeds and/or any other Project funding may be used to cover such RDA/IFA Project Costs.

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Notwithstanding the foregoing, NICTD shall not be responsible for paying any RDA/IFA Project Costs including any overrun of costs incurred by RDA and/or IFA, except to the extent such RDA/IFA Project Costs are paid from the NICTD Excess Cost Contribution in accordance with Section 7.8, provided however that NICTD shall be liable for any such RDA/IFA Project Cost overruns that are caused by NICTD's failure to adhere to the Governance Agreement or its willful misconduct or gross negligence.

7.6 NICTD shall review, approve or reject, as appropriate, individual invoices submitted in accordance with the respective contract terms and NICTD's contractual payment obligations.

7.7 NICTD or NICTD's retained construction manager/technical representative/owners representative shall perform construction observation/inspection of the Rail Projects, verify contractor invoices, and provide such reports as reasonably requested by RDA or the IFA on thirty (30) days' advance notice.

7.8 Except as provided in Section 7.5 with respect to RDA/IFA Project Costs, or otherwise approved by IFA and RDA in writing, NICTD shall be responsible for the costs of the Rail Projects in excess of the applicable Cost Budget, incurred while NICTD is in charge of the Rail Projects, up to the amount of the Maximum NICTD Excess Cost Contribution. All costs, to the extent permitted by law, shall be submitted as a part of the overall Project Costs for potential federal grant reimbursement.

7.8.1 In the event Excess Construction Costs are incurred, upon direction from IFA and RDA from time to time, NICTD agrees to make the NICTD Excess Cost Contribution by providing financing for such Excess Construction Costs, except as provided below, up to the Maximum NICTD Excess Cost Contribution. NICTD may choose to fund Excess Construction Costs from the payment of cash in lieu of funding the NICTD Excess Cost Contribution with the proceeds of bonds or a loan at the time of such direction.

7.8.2 If NICTD elects to issue bonds or other debt to fund the NICTD Excess Cost Contribution, NICTD shall also be obligated to provide such debt service coverage, in addition to the \$3 Million annually, needed to adequately secure such bonds or other debt. NICTD agrees that the form and structure of such bonds or other debt shall be reasonably acceptable to IFA and RDA.

7.8.3 Subject to the Maximum NICTD Excess Cost Contribution, IFA and RDA may request that additional Excess Construction Costs be funded at any time and from time to time until the Rail Projects are

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constructed and operational. Notwithstanding the foregoing, NICTD's obligation to fund Excess Construction Costs is limited to the Excess Construction Costs and shall be no more than the Maximum NICTD Excess Cost Contribution.

7.8.4 The proceeds of the NICTD Excess Cost Contribution or any cash paid in lieu thereof shall be deposited in the Revenue Trust Fund in the same manner as IFA bond proceeds, local contributions and FTA grant funds are deposited. The NICTD Excess Cost Contribution shall be used toward Excess Construction Costs prior to any action by RDA or IFA to cooperate with NICTD to seek additional funding or additional revenues.

7.8.5 If additional funds are required to finance any Excess Construction Costs after the Maximum NICTD Excess Cost Contribution has been funded, IFA and RDA, with the cooperation of NICTD, shall seek additional funding or additional revenues through the Indiana General Assembly or from other sources.

7.8.6 Following completion of the Rail Projects, if the NICTD Excess Costs Contribution is in excess of the actual cost overrun, such excess amount shall be returned to NICTD.

7.9 Any contribution NICTD has agreed to provide in the applicable Financing Plan shall be provided on or before FFGA Approval. Such contribution shall be in addition to the Maximum NICTD Excess Cost Contribution.

7.10 If the actual costs for completing the Double Track Project exceed the Cost Budget allocable to that project, NICTD and RDA shall certify such deficit to, and seek to enforce the contributions required from, the entities described in IC 36-7.5-4.5-16(d)(5).

7.11 NICTD shall provide all documents and reasonable requests for information requested by RDA and IFA, including obtaining or requesting such documents or information from its contractors and consultants. RDA and IFA shall make such document and information requests to NICTD in writing and NICTD shall be provided a reasonable period of time in which to furnish or respond to such requests.

7.12 NICTD shall provide RDA and IFA unfettered access to all Books and Records and shall provide copies of all Books and Records requested by RDA and the IFA, subject to the SSI Policy.

7.13 RDA and IFA each retain the right to perform observation of construction by their respective independent technical representative for IFA's and RDA's respective benefit only.

7.14 By no later than December 31 2018 (unless otherwise extended by mutual agreement of the parties), NICTD shall deliver a fully executed agreement with Metra concerning trackage rights that has been approved in writing in advance by both IFA and RDA.

7.15 By no later than December 31, 2018 (unless otherwise extended by mutual agreement of the parties), NICTD shall deliver a fully executed agreement or agreements with NIPSCO or others, (including CSS) concerning solutions for the Bailey station issues impacting the Rail Projects that has/have been approved in writing in advance by both IFA and RDA.

Article 8. Operations and Maintenance

8.1 NICTD shall operate and maintain the South Shore Line during construction and after completion of the Rail Projects.

8.2 Except as provided herein, NICTD shall be responsible for payment of all O&M costs of the South Shore Line, including during construction of the Rail Projects and after each of the Rail Projects are completed. Except as provided in Section 8.4, RDA shall have no responsibility for the costs of O&M of the Rail Projects.

8.3 NICTD shall pay O&M costs and rolling stock acquisition costs on the Double Track Project.

8.3.1 NICTD shall have the ability to seek reimbursement for a portion of O&M and rolling stock acquisition costs on the Double Track Project, from the FTA through federal formula funds, provided that any such request or reimbursement has no impact on the grant monies being pursued for reimbursement from FTA for capital costs for the Rail Projects.

8.3.2 RDA and IFA shall have no responsibility to pay O&M or rolling stock acquisition costs for the Double Track Project except the Parties shall work cooperatively to seek funding for O&M costs that NICTD is unable to fund or finance as provided in Article 6, and such costs shall not be treated as a cost of the Rail Projects under the Cost Budget.

8.4 NICTD shall pay O&M costs on the West Lake Corridor Project, subject to the further provisions in this Section 8.4, which shall govern in the event of a West Lake Operating Deficit.

8.4.1 Indiana Code 6-3.1-20-7(d) provides that the RDA will receive certain Tax Credit Dollars, in an amount as determined by the Indiana Department of Revenue, to establish or improve public mass rail transportation systems in Lake County. Upon the execution of the

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Governance Agreement the RDA shall deposit all Tax Credit Dollars in its possession into the Escrow Fund and shall thereafter upon receipt, deposit all Tax Credit Dollars into the Escrow Fund until Equivalent Alternative Funding is secured pursuant to Section 8.4.5 or WL Deficit Alternative Funding is secured pursuant to Section 8.4.6.

8.4.2 All Tax Credit Dollars received by the RDA shall be maintained in the Escrow Fund and not utilized by RDA for any purpose other than toward a West Lake Operating Deficit, except as provided in Section 8.4.6.

8.4.3 Beginning with the second calendar quarter after completion of the West Lake Corridor Project, RDA shall provide to NICTD, on a quarterly basis upon submission by NICTD to RDA of a West Lake Deficit Cost Submission, from the moneys held at that time in the Escrow Fund (if available) a sum equal to the amount of West Lake Operating Deficit for the preceding calendar quarter. The Parties agree that each West Lake Deficit Cost Submission shall include a completed West Lake Deficit Cost Submission Form attached as Exhibit 8, accompanied by a completed form of Exhibit 6 certified by NICTD. NICTD also shall provide RDA a copy of any West Lake Corridor deficit information NICTD provides to the FTA. The West Lake Operating Deficit shall be subject to verification by RDA and/or IFA in their discretion.

8.4.4 To the extent there exists a Subsidy Shortfall, NICTD will retain the right to collect such Subsidy Shortfall from the Tax Credit Dollars remaining in the Escrow Fund, except to the extent funds in the Escrow Fund are unavailable as a result of the operation of Section 8.4.6, and to collect such Subsidy Shortfall from future Tax Credit Dollars deposited into the Escrow Funds, except as otherwise provided in Section 8.4.5.

8.4.5 Upon the request of RDA, the Parties agree to cooperate in seeking funding to subsidize the West Lake Operating Deficit from the General Assembly. If at any time Equivalent Alternative Funding from the General Assembly to address the West Lake Operating Deficit is secured in an amount for the next year that equals or exceeds the immediately prior four quarters of Tax Credit Dollars, whether received by or provided to any Party or any other entity, in each case in any manner that is dedicated to subsidize the West Lake Operating Deficit the RDA shall have no further or continuing obligation, whether under Section 8.4 or otherwise, to deposit Tax Credit Dollars in the Escrow Fund or to otherwise provide Tax Credit Dollars for the West Lake Operating Deficit (other than funds on deposit in the Escrow Fund when such Equivalent Alternative Funding is secured, which shall continue to be held, except as provided in Section 8.4.6, in the Escrow Fund and disbursed to NICTD to cover any portion of

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the West Lake Operating Deficit not covered by the Equivalent Alternative Funding).

8.4.6 As of the last day of the first year in which either (i) WL Deficit Alternative Funding is secured, or (ii) the Tax Credit Dollars collected for that year pursuant to Section 8.4.1, is equal to or greater than that year's West Lake Operating Deficit, any moneys that remain in the Escrow Fund (after disbursement to NICTD for such year's West Lake Operating Deficit), from whatever source, shall be released to RDA upon direction of the RDA.

8.4.6.1 In the event WL Deficit Alternative Funding has been secured per Section 8.4.6(i), RDA shall have no further or continuing obligation, whether under this Section 8.4 or otherwise, to provide Tax Credit Dollars for the West Lake Operating Deficit or to deposit such Tax Credit Dollars into the Escrow Fund.

8.4.6.2 In the event Tax Credit Dollars collected for that year pursuant to Section 8.4.1, are equal to or greater than that year's West Lake Operating Deficit per Section 8.4.6(ii), Tax Credit Dollars as received shall continue thereafter to be deposited into the Escrow Fund and made available to NICTD to cover any West Lake Operating Deficit in accordance with the terms of this Section 8.4, until either Equivalent Alternative Funding or WL Deficit Alternative Funding is secured, in either event of which RDA shall have no further or continuing obligation, whether under this Section 8.4 or otherwise, to provide Tax Credit Dollars for the West Lake Operating Deficit or to deposit such Tax Credit Dollars into the Escrow Fund.

8.4.6.3 In no event shall RDA be responsible for West Lake Operating Deficits beyond (i) the Tax Credit Dollars collected under this Section 8.4, and (ii) cooperating with NICTD and IFA to seek the Equivalent Alternative Funding as provided in Section 8.4.5.

8.4.7 For avoidance of doubt, RDA shall have no responsibility for the costs of operations and maintenance of the Rail Projects beyond Tax Credit Dollars, and only to the extent provided in this Section 8.4.

8.4.8 The Escrow Fund Agreement shall provide that RDA and NICTD shall receive monthly account statements. Until such time as WL Deficit Alternative Funding has been secured, by August 15 of each year, RDA shall provide NICTD a statement specifying the Tax Credit Dollars received and deposited into the Escrow Fund and disbursed from the Escrow Fund that are attributable to the preceding State fiscal year.

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8.5 IFA and RDA shall not be responsible for the cost of rehabilitating or acquiring railway cars for use as rolling stock on the West Lake Corridor Project except to the extent such costs are included in the Cost Budget.

8.6 Neither IFA nor RDA shall be responsible for any lifecycle costs of the South Shore Line or the Rail Projects.

8.7 In addition to the NICTD Operations Financial Report required pursuant to Sections 6.1 and 6.3, at the end of each calendar year, NICTD shall prepare and furnish to IFA, RDA and others to whom it is statutorily or contractually required, an Annual Report that includes a certification as to whether or not its completed annual commuter rail services have been in substantial conformance with its published services schedule ("Level of Service"), and also provides NICTD's current financial position and plans with respect to the following.

8.7.1 The custody, safeguarding, investment and application of all moneys received or to be received by NICTD;

8.7.2 The establishment of funds, reserves and accounts, including those required or held under the Bond Resolution;

8.7.3 The construction, improvement, maintenance, repair, operation and insurance of the South Shore Line, including the anticipated Level of Service;

8.7.4 The rates of fees, tolls, rentals, or other charges to be collected for the use of the South Shore Line; and

8.7.5 Debt Coverage and Revenue Coverage for such year.

8.8 Additionally, by the end of January of each calendar year, NICTD shall prepare and furnish to IFA and RDA a certified report for the operation and maintenance of the South Shore Line that includes (i) the information set forth in Section 8.7 for the next succeeding calendar year, and (ii) a copy of NICTD's five-year capital plan (collectively "Business Plan"). A copy of the proposed Business Plan shall be provided to IFA and RDA for their review and comment at least 30 days before approval by the NICTD Board of Trustees. The Business Plan shall be approved by the NICTD Board of Trustees annually before it is implemented. Upon approval by the NICTD Board of Trustees, NICTD shall furnish a copy of the final approved Business Plan to IFA, RDA and others to whom it is statutorily and contractually required. Failure of NICTD to provide the Business Plan as required herein, the Annual Report as required by Section 8.7, or the NICTD Financial Operations Report required by Sections 6.1 and 6.3 shall be a material breach of this Governance Agreement and constitutes an NICTD Operations Adverse Condition under Section 11.5. The Annual Report,

and/or any parts thereof, shall be subject to verification by IFA and/or RDA in their discretion.

8.9 During the term of the Governance Agreement, if at any point in time during the calendar year or as part of its annual year-end review and reporting, NICTD determines (1) that NICTD is not operating the South Shore Line in substantial compliance with the Business Plan then in effect, (2) that NICTD is not maintaining Revenue Coverage of 1.12 as set out in Section 6.5, or (3) that NICTD is otherwise in breach of any material provision in the Governance Agreement or the Development Agreement (if entered), with respect to the operations and maintenance of the South Shore Line, and/or Leases, including that NICTD is otherwise unable to maintain the South Shore Line for use and occupancy in the manner provided in the Leases, NICTD shall so advise IFA and RDA, in writing, within 30 days of NICTD's determination with a NICTD Initial Notice.

Article 9. Insurance and Bonding

9.1 NICTD shall develop, or shall engage an insurance consultant to develop, for the review and approval of IFA and RDA, an insurance program for the Rail Projects and for the South Shore Line after completion of each Rail Project.

9.1.1 The insurance program for each Rail Project prior to its completion shall provide insurance protection for the benefit of IFA, RDA, NICTD, contractors, subcontractors and other Rail Project participants. The program may be an owner controlled program (OCIP), a contractor controlled program (CCIP), or a comprehensive program of insurance requirements for the insurance to be provided by the contractors, subcontractors or other consultants working on or providing services with respect to the Rail Project to be complied with by each participant on the Rail Project and shall include insurance and coverage amount requirements for:

9.1.1.1 Workers Compensation

9.1.1.2 General Liability, including completed operations and contractual liability coverage

9.1.1.3 Employer's Liability

9.1.1.4 Automobile Liability

9.1.1.5 Contractor's Pollution

9.1.1.6 Pollution Legal Liability

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9.1.1.7 Builder's Risk

9.1.1.8 Professional Errors and Omissions

9.1.1.9 Delayed opening coverage, for protection regarding payments on the IFA Bonds

9.1.2 The insurance program for the South Shore Line after completion of a Rail Project and continuing for the term of this Governance Agreement shall provide insurance protection for the benefit of IFA, RDA and NICTD and shall include insurance coverage amount requirements for:

9.1.2.1 Workers Compensation

9.1.2.2 General Liability

9.1.2.3 Employers Liability

9.1.2.4 Automobile Liability

9.1.2.5 Property Insurance

9.1.2.6 Business Interruption Insurance

9.1.3 NICTD, IFA, RDA, the State, the Bond Trustee, and the Deposit Trustee shall be named as additional insureds on such policies (except Workers Compensation and Professional Errors and Omissions insurance policies.)

9.1.4 IFA, RDA and the State shall have no liability for deductibles or self-insured retentions.

9.1.5 Each insurance policy shall provide that the coverage is primary and non-contributory with respect to the named and additional insureds.

9.1.6 Coverages for Builder's Risk, Delayed Opening, Business Interruption, and Property Insurance shall provide coverage for all Force Majeure events as may be commercially reasonable and available.

9.1.7 Each insurance policy shall provide a waiver of subrogation in favor of all additional insureds.

9.2 NICTD shall require a 100% performance and payment bond from its design-builder or construction contractor.

9.3 Costs of insurance and bonding shall be included in the Cost Budget.

Article 10. Dispute Resolution

10.1 For disputes between and among the Parties regarding the Rail Projects, RDA shall coordinate with NICTD and IFA to compile objective data to consider and analyze, along with the potential outcomes and impacts of a given decision or dispute. The Parties hereto, together with their consultants, shall support this process, as necessary.

10.2 The Project Executives shall confer in good faith in an attempt to reach a consensus on disputes after considering the compiled data and other appropriate factors, including the Decision Making Framework Factors. To the extent permitted by law, the Parties agree to maintain as confidential the deliberations (which include written communications and other documents) contemplated herein.

10.3 If consensus cannot be reached by the Project Executives on disputes between and among the Parties regarding the Rail Projects or proposed changes to the Governance Agreement or Development Agreement (if entered), then the dispute, issue, or proposed change shall be decided by a majority vote among the Project Executives, taking into consideration the Decision Making Framework Factors.

10.4 Any such majority decision by the Project Executives may be appealed to the State Budget Director within 10 business days of the decision.

10.5 Additionally, the State Budget Director (or his or her delegate) has the power to veto or override even a majority decision by the Project Executives for issues that, in the State Budget Director's sole discretion, materially and negatively impacts the State.

10.6 Except as provided in Sections 15.6, 15.7 and 15.8, nothing herein is intended to operate as a waiver of any Party's rights under the Governance Agreement, the Development Agreement (if entered into) or such contractual, statutory, common law, and/or equitable rights and remedies as may otherwise exist by law.

Article 11. Adverse Conditions / Enhanced Oversight / Step-In Rights

11.1 In addition to the remedy set forth in Section 15.7, IFA and/or RDA, shall be entitled to Enhanced Oversight on the Rail Projects in such manner and to such level as they deem appropriate in the event one or more of the following Construction Adverse Conditions occurs:

11.1.1 The Revenue Service Operations Date or the date of D/B Substantial Completion for either Rail Project is projected to be later than the date set forth in the applicable Project Schedule (as amended by

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written agreement of the Parties) or any major milestone date established in the applicable Project Schedule is not achieved by the date set forth in the applicable Project Schedule;

11.1.2 The costs for either Rail Project is projected to be more than the amounts set forth in the applicable Cost Budget (not including any amounts added by written amendment agreed by the Parties), unless such increase is due to a change in scope requested by RDA;

11.1.3 NICTD breaches any material provision in this Governance Agreement, the Development Agreement (if entered), and/or a Lease, including, but not limited to: (i) failure of NICTD to fund the NICTD Excess Cost Contribution as required by Section 7.8.1; (ii) failure to maintain Revenue Coverage of 1.12 as required by Section 6.5; or (iii) incurrence of debt contrary to the provisions of Section 6.4;

11.1.4 The occurrence of any circumstance that has a material adverse effect on the applicable Financing Plan;

11.1.5 NICTD fails to comply with a decision rendered or direction given by the State Budget Director;

11.1.6 NICTD, or an entity under the control of NICTD, takes action that deviates from the originally planned scope of work that has a materially negative impact on one or more TDDs or the development thereof;

11.1.7 NICTD, or an entity under the control of NICTD, fails to effectively prepare any FTA grant application;

11.1.8 The occurrence of any circumstance(s) that subject IFA or RDA to material liabilities not contemplated in the applicable Financing Plan; or

11.1.9 NICTD, or any entity under the control of NICTD, fails to materially comply with FTA grant requirements and/or FFGA requirements.

11.2 In the event of the occurrence of one or more of the above Construction Adverse Conditions, IFA and/or RDA may send a notice to NICTD of intent to exercise Enhanced Oversight with respect to one or more Construction Adverse Conditions (each, a "Construction Adverse Condition Notice"). If the Construction Adverse Condition is not cured within 30 calendar days of NICTD's receipt of such Construction Adverse Condition Notice, in addition to all of their other rights hereunder, RDA and/or IFA shall have the right (but not the obligation) to exercise Enhanced Oversight on the Rail Projects, which shall include the right of RDA, IFA, and/or its designee(s), to engage in one or more of

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the following Enhanced Oversight activities at RDA or IFA's discretion (provided FTA has no objection after consultation):

11.2.1 review and approve all change orders, contracts (and amendments thereto), and third party agreements (and amendments thereto) prior to execution;

11.2.2 review and approve any allocations of remaining Project Contingency;

11.2.3 require NICTD to prepare additional cost containment measures, including investigation of value engineering options or project scope changes;

11.2.4 review and make recommendations regarding staffing and/or sequencing of Work;

11.2.5 require NICTD to prepare and provide additional reports, including: job cost reports, scheduling reports, and/or additional value engineering / scope reduction alternatives;

11.2.6 participate in all Project progress meetings; and

11.2.7 require NICTD to assist IFA and RDA, in their discretion, in seeking additional funding for the Rail Projects, including, but not limited to, from the General Assembly.

11.3 The inclusion of items in Sections 11.2.1 – 11.2.7 or Sections 11.8.1 – 11.8.8 shall be cumulative of any rights provided to NICTD, IFA or RDA under this Governance Agreement, the Development Agreement (if entered into), or the Leases.

11.4 In the event a Construction Adverse Condition noted in Section 11.1 above, occurring prior to completion of construction of either or both Rail Project/s, is not curable or is not cured within 90 calendar days after the Construction Adverse Condition Notice, in its discretion, the IFA, RDA or one of their respective designees has the right, but not the obligation (provided FTA has no objection after consultation), to exercise Construction Period Step-In Rights and assume all facets of the design and construction of the Rail Projects, including but not limited to all of the following: design, construction, FTA grant application, land acquisition, utility relocation, and environmental approvals, until completion of the construction of the Rail Project(s).

11.4.1 To the extent the IFA and/or RDA (or one of their respective designees) exercises its Construction Period Step-In Rights under this Section 11.4, the IFA and/or RDA (as applicable) shall assume all

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responsibility for the design and construction of the Rail Projects and all further design and construction responsibilities of NICTD shall be terminated.

11.4.2 In the event IFA or RDA exercises Construction Period Step-in Rights and NICTD is no longer in charge of the Rail Projects for the duration of the construction thereof, NICTD shall not be responsible for any costs in excess of the applicable Cost Budget that are incurred by RDA or IFA, except for the Maximum NICTD Excess Cost Contribution. Notwithstanding the foregoing, NICTD shall be liable for any such excess costs that are caused by NICTD's failure to adhere to the Governance Agreement or its willful misconduct or gross negligence occurring either before or after NICTD is no longer in charge of the Rail Projects, to the same extent as if RDA and/or IFA had not exercised Construction Period Step-In Rights. For the duration of such exercise of the Construction Period Step-In Rights, NICTD, RDA and IFA shall coordinate the construction and railroad operations so as to minimize interference with the construction of the Rail Projects or the operation of the South Shore Line, including by developing a reasonable operations plan, and shall cooperate to effectuate assignment or enforcement of rights under contracts with respect to the Rail Projects.

11.5 If at any point in time during the calendar year, or as part of the annual year-end review and reporting, until Termination of this Governance Agreement, IFA and/or RDA determine that any of the following conditions exist, which are NICTD Operations Adverse Conditions, IFA and/or RDA may so advise NICTD in writing with an IFA Initial Notice or RDA Initial Notice, as applicable:

11.5.1 that NICTD is not operating the South Shore Line in substantial compliance with the Business Plan then in effect,

11.5.2 that NICTD is not maintaining Revenue Coverage of 1.12 as set out in Section 6.5, or

11.5.3 that NICTD is otherwise in breach of any material provision in the Governance Agreement or the Development Agreement (if entered) with respect to the operations and maintenance of the South Shore Line, and/or the Leases, including that NICTD is otherwise unable to maintain the South Shore Line for use and occupancy in the manner provided in the Leases. Such a determination must be based upon documented financial statements or other evidence which demonstrate NICTD's alleged failure to meet and maintain the items set forth in this Section 11.5.

11.6 Within 60 days of the date of the NICTD Initial Notice under Section 8.9, or within 60 days of the date of receipt by NICTD of an IFA Initial Notice or RDA Initial Notice, NICTD shall submit a written Recovery Plan to IFA, RDA

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and FTA setting forth NICTD's plans and proposed steps to cure the NICTD Operations Adverse Condition(s).

11.6.1 Any distribution of the Recovery Plan by IFA, RDA or other parties shall remain subject to the NICTD SSI Policy.

11.6.2 The Recovery Plan is subject to the review and approval of IFA and RDA. Assuming no objections by FTA after IFA and RDA consultation with FTA, and within 30 days after receiving the Recovery Plan, the IFA, RDA and FTA may consult with NICTD and propose changes or additions to the Recovery Plan which, in their best judgment, may enhance the Recovery Plan and improve it ("Consultation Period").

11.6.3 Barring written directive not to do so from IFA, RDA or FTA during the Consultation Period, NICTD shall commence the preliminary steps to implement the Recovery Plan upon its being tendered to the IFA, RDA and FTA and while waiting for formal approval thereof by IFA and RDA, provided there are no objections to the Recovery Plan by FTA.

11.6.4 NICTD shall commence and diligently prosecute such Recovery Plan to completion for a period not to exceed 120 days following receipt of the written approval of the Recovery Plan by IFA and RDA, as may be amended, or if such Recovery Plan requires work to be done, actions to be taken, or conditions to be remedied, which by their nature cannot reasonably be done, taken or remedied within such 120-day period, such 120-day period shall be extended for so long as NICTD shall commence such remedy within such 120-day period and shall diligently and continuously prosecute the same to completion, for a period not to exceed an additional 30 days (for a maximum of 150 days), or such longer period as agreed to in writing by the IFA and RDA ("Operations Cure Period"). NICTD regularly (and no less than monthly) shall keep IFA, RDA and FTA informed of the cure efforts NICTD is undertaking during the Operations Cure Period.

11.7 A failure by NICTD to maintain the South Shore Line for use and availability in the manner provided in the Leases, unless such failure is due to a Force Majeure Event, shall be an Availability Breach.

11.7.1 In the event of an Availability Breach, notice thereof may be provided by IFA and/or RDA.

11.7.2 In the event of an Availability Breach Notice from either IFA or RDA, NICTD shall have the Availability Cure Period in which to cure the Availability Breach.

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11.8 Beginning with the date of a NICTD Initial Notice, an IFA Initial Notice, an RDA Initial Notice, and/or an Availability Breach Notice, the IFA, RDA and FTA, and its or their designees or consultants, subject to continued compliance with the NICTD SSI Policy, may monitor and observe the actions of NICTD in implementing the Recovery Plan or other efforts to cure (to the extent applicable), and to engage in one or more of the following activities:

11.8.1 Review all NICTD contracts and proposed amendments to contracts prior to execution;

11.8.2 Review and make recommendations to undertake cost containment measures;

11.8.3 Review and make recommendations regarding staffing, sequencing and/or performance of operations and maintenance;

11.8.4 Require NICTD to prepare and provide additional periodic reports, including, but not limited to, cost reports, scheduling reports, and/or status and progress reports on current or future operations and maintenance plans;

11.8.5 Require NICTD, consistent with applicable law, to pursue steps to increase revenues and/or cut expenses to the extent needed to cure a failure to achieve the Revenue Coverage of 1.12;

11.8.6 Prohibit NICTD from incurring any debt unless such debt is part of the Recovery Plan;

11.8.7 Review and approve any capital projects, other than those required by FTA;

11.8.8 Participate in regular Recovery Plan scheduled meetings.

11.9 IFA may provide an Operations Step-In Notice in the event of any of the following: (i) at the conclusion of the Availability Cure Period, if NICTD has failed to cure the Availability Breach; or (ii) at the conclusion of the Operations Cure Period if NICTD has failed to cure the NICTD Operations Adverse Condition(s) described in the NICTD Initial Notice, RDA Initial Notice and/or IFA Initial Notice, has failed to substantially complete and implement the Recovery Plan, or has failed to demonstrate its continued ability to maintain and operate the South Shore Line as statutorily required for its essential purpose as a commuter transportation rail line.

11.9.1 After consultation with RDA and FTA, in addition to other remedies available under the Governance Agreement, IFA shall have the right to exercise the following Operations Step-In Rights effective

immediately after sending to NICTD an Operations Step-In Notice: to assume or engage an operator acceptable to FTA of IFA's choosing or to take over all facets of the operation and maintenance of the South Shore Line for the Operations Step-In Period by assignment or other means.

11.9.2 In the event IFA exercises its Operations Step-in Rights for operation and maintenance of the South Shore Line as provided herein, NICTD shall cooperate in all respects therewith, including but not limited to the NICTD Board of Trustees transferring or making available to the IFA, or any operator designated by IFA, all NICTD assets of the South Shore Line during the Operations Step-In Period.

11.9.3 If prior to the expiration of the Operations Cure Period or the Availability Cure Period, as applicable, NICTD has cured all of the NICTD Operations Adverse Conditions set forth in Section 11.5 above, or as applicable, has cured the Availability Breach, IFA shall not be entitled to exercise any Operations Step-In Rights.

Article 12. Restoration

12.1 If at any point during the term of the Governance Agreement, any part of the Rail Projects or the South Shore Line are destroyed or damaged by casualty or other cause of any kind or nature, to the extent that there is insurance coverage available, NICTD shall undertake the repair or restoration using available insurance proceeds and other sources of funds available to NICTD.

Article 13. Termination

13.1 Once the IFA Bonds or any other similar financing by IFA or RDA are issued with respect to the Rail Projects, or either Rail Project, pursuant to this Governance Agreement, this Governance Agreement shall remain in full force and effect for so long as any such IFA Bonds, similar financings or any refunding bonds remain outstanding. When all such IFA Bonds, similar financings, and any refunding bonds with respect to the Rail Projects are retired, this Governance Agreement shall terminate, except in the event IFA has exercised Operational Step-In Rights, unless in such event: (a) the IFA agrees to terminate this Governance Agreement; or (b) upon the written request of NICTD to the State Budget Director, the State Budget Director determines, in its sole discretion, that this Governance Agreement may terminate.

13.2 Prior to the issuance of any IFA Bonds or other similar financing for either Rail Project, this Governance Agreement may be terminated by IFA and/or RDA in the event of any of the following: (i) NICTD has failed to deliver the agreement as required in Section 7.14; (ii) NICTD has failed to deliver the agreement(s) as required in Section 7.15; (iii) NICTD fails to receive the approval of IFA and RDA on the insurance programs required in Section 9.1; or (iv) or neither of the

Rail Projects progresses through the FTA CIG Program such that as of June 30, 2020, neither of the Rail Projects has received FFGA Approval. In the event of any of the foregoing, IFA and/or RDA may send notice to the other Parties of the intent to terminate, which termination shall be effective thirty (30) days following such notice.

13.3 In the event the FTA declares that either the Double Track Project or the West Lake Corridor Project is not eligible for FFGA Approval, the provisions of this Governance Agreement shall no longer apply with respect to ongoing or future obligations with respect to that ineligible Rail Project.

Article 14. Third Party Agreements

14.1 NICTD shall be responsible for securing all necessary third party agreements for the Rail Projects.

14.2 By no later than September 1, 2018, NICTD shall provide RDA and IFA with a comprehensive list of all necessary third party agreements and a plan for securing the agreements, including the projected costs thereof, which list shall be subject to the review and approval of the RDA and IFA. Such consent decisions shall take into consideration, without limitation, the Decision Making Framework Factors and whether FTA consent or approval is needed. Once RDA and IFA approve such contract in writing, and provided the amount and timing of the cost of such contract is consistent with agreed upon projections that underlie the applicable Cost Budget and the applicable Financing Plan, NICTD shall be able to rely upon that commitment as binding in entering into its contractual obligations, subject to other terms herein. This RDA and IFA approval is separate and distinct from the Major Contracts review and approval process set out in Section 7.2.7.

14.3 All prospective agreements with third parties shall provide that:

14.3.1 without RDA or IFA assuming any liability or obligation thereunder, RDA and the IFA are intended third party beneficiaries thereof and are entitled to enforce their terms, consistent with third party beneficiary rights and on the same terms and conditions as NICTD.

14.3.2 the contract may be assigned to IFA and/or RDA or their respective designees in the event of the exercise of Construction Period Step-In Rights and/or Operations Step-In Rights per Article 11;

14.3.3 (for all contracts that are to be funded or financed by RDA or IFA) payments thereunder shall be subject to State appropriation and availability, and that to the extent a determination is made by RDA or IFA that funds are not appropriated or otherwise available to support continuation of performance, such contract shall be subject to being terminated for convenience by NICTD at no cost to NICTD, RDA and/or

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IFA except for costs of work performed or services provided prior to termination.

14.3.4 the third party is required to provide RDA and IFA with access to all documents related to the Rail Projects, and such third party shall provide copies of all documents to RDA at RDA's request, or the IFA, at the IFA's request, at the third party's cost and expense.

14.4 For all prospective agreements with utilities, municipalities and governmental agencies, NICTD shall seek agreement that any rights of NICTD shall extend to NICTD's assignees or successors in interest.

14.5 In the event that IFA and/or RDA exercise any of its Construction Period Step-In Rights or IFA exercises any of its Operations Step-In Rights under Article 11, NICTD shall enforce its rights in all third party agreements as requested by RDA and/or IFA, as applicable.

Article 15. General Matters

15.1 Governing Law and Venue. This Governance Agreement shall be governed by and construed in accordance with the laws of the State. Any suit must be brought in the State Court in Marion County, Indiana.

15.2 Confidentiality. The Parties and their respective consultants and contractors shall maintain the confidentiality of confidential data or information provided by the Parties and shall not disclose such information to third parties not similarly bound to a non-disclosure agreement, except as may be required by statute, ordinance, or order of court, or as authorized by the Party which provided the data or information. The Parties and their respective consultants and contractors shall provide notice to the other Parties of any request for such information.

15.3 Press Releases and Public Records Requests.

15.3.1 Neither NICTD nor RDA shall make press releases or written statements regarding the Rail Projects without the prior consent of the IFA, NICTD and RDA.

15.3.2 The Parties shall provide to each other copies of all public records requests received as to the Rail Projects promptly after receipt and shall develop a process for a coordinated and mutually agreed response.

15.4 Taxes. NICTD shall perform its obligations hereunder such that purchases and contracts are exempt from sales and use taxes to the maximum extent permitted by law.

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15.5 Third Party Claims. NICTD shall bear the costs of all losses or liabilities arising from tort claims for personal injury or property damage asserted by third parties with respect to the Rail Projects that are not covered by insurance, the Indemnitors as provided in Section 7.2.6.1, or another third party, except in the event that IFA and/or RDA exercises Construction Period Step-In Rights and/or IFA exercises Operations Step-In Rights, under Article 11. In the event of such exercise, NICTD shall bear the costs of such claims that arise prior to the effective date of the step-in, and those that arise after the Rail Projects are transferred back to NICTD, if applicable. The party (IFA or RDA, as applicable) that exercises such step-in rights shall bear the costs of claims that arise during any such period while step-in rights are being exercised.

15.6 Indemnity. Except as provided in this Section 15.6, NICTD shall release, protect, defend, indemnify and hold harmless the RDA, IFA, the Bond Trustee, and the Deposit Trustee from and against any and all claims, causes of action, suits, judgments, demands, and/or losses, in each case if asserted or incurred by or awarded to any third party, arising out of or relating to or resulting from NICTD's design, construction or operation of the Rail Projects or the South Shore Line. NICTD's indemnity obligation shall not extend to: (i) any third party claim to the extent directly caused by the negligence, recklessness, willful misconduct, or breach of any material obligation under the Governance Agreement by IFA or RDA, or (ii) any claims, causes of action, suits, judgments, demands, and/or losses resulting from any action of the RDA or IFA during an Operations Step-In Period or resulting from any actions taken by the RDA or IFA after the exercise of any Construction Period Step-In Rights, provided however that nothing herein shall relieve NICTD of responsibility to pay up to the Maximum NICTD Excess Cost Contribution for Excess Construction Costs irrespective of the exercise of Construction Period Step-In Rights. The RDA and IFA shall have no obligation to indemnify NICTD.

15.7 Liability Among the Parties. Notwithstanding Section 10.6, none of the Parties shall be liable to any of the other Parties for claims and/or actions (whether alleging negligence, breach of contract, strict liability, warranty, breach of professional services, detrimental reliance, or otherwise) relating to: (i) design, construction, operation or maintenance of any portion of the Rail Projects; (ii) financing or funding of any portion of the Rail Projects; and/or (iii) any other obligations hereunder, and each Party expressly disclaims any and all express or implied representations or warranties with respect thereof, including any warranties of suitability or fitness for use. The limitation of liability provided herein shall not apply to the following:

15.7.1 damages to the extent covered and paid for by insurance;

15.7.2 NICTD's indemnity obligation under Section 15.6;

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15.7.3 damages to the extent covered and paid for by an Indemnitor pursuant to an indemnity obligation described in Section 7.2.6.1; and

15.7.4 damages to the extent paid for by a responsible party (other than a Party to this Governance Agreement) pursuant to applicable federal and state environmental laws.

15.8 Injunctive Relief. Notwithstanding Section 10.6, the Parties are entitled to seek injunctive relief for specific performance of any obligation set forth in this Governance Agreement, provided: such injunctive relief or specific performance relief is timely sought so as to not result in prejudice to the other Parties; and the IFA and RDA are entitled to pursue any remedies needed to protect the payment of the IFA Bonds.

15.9 Fare Policy. NICTD is authorized to set fare policy. NICTD as operator will collect and deposit farebox and any other revenues, including taxes, into the system revenue account (or similar account), except in the event IFA exercises Operations Step-In Rights under Section 11.9.1, in which case IFA shall have the authority to set fare policy and right to collect farebox and any other revenues during such Operations Step-In Period.

15.10 Amendment and Assignment. This Governance Agreement may be amended, supplemented, or modified only by a written document executed by the Parties. Except as otherwise provided herein, neither this Governance Agreement nor any of the rights, duties, or obligations described herein may be assigned by any Party hereto without the prior express written consent of the other Parties, and such consent shall not be unreasonably withheld so long as such assignment is consistent with the purposes of this Governance Agreement.

15.11 Notice to Parties. Notices under the Governance Agreement shall be in writing and (a) delivered personally; (b) sent by certified mail, return receipt requested; or (c) sent by recognized overnight mail or courier services, with delivery receipt requested, to the following addresses:

As to RDA: President and/or Chief Executive Officer
Northwest Indiana Regional Development Authority
9800 Connecticut Drive
Crown Point, IN 46307

With a copy to: Office of the Indiana Attorney General
302 W. Washington Street, 5th Floor
Indianapolis, IN 46204

As to NICTD: President and/or Chief Executive Officer
Northern Indiana Commuter Transportation District

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33 E. US Highway 12
Chesterton, IN 46304

With a copy to: Office of General Counsel
Northern Indiana Commuter Transportation District
33 E. US Highway 12
Chesterton, IN 46304

As to IFA: Public Finance Director of the State of Indiana
Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, IN 46204

With a copy to: General Counsel
Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, IN 46204

15.12 Authority. Each of the undersigned attests that he/she is the properly authorized representative, agent, member or officer of the Party indicated.

15.13 Severability. If any provision of this Governance Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions hereof shall not be affected thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue. This provision shall not be interpreted to materially alter the relationships of the Parties as set forth in this Governance Agreement or materially affect the ability of the Parties to achieve the purpose of this Agreement.

15.14 No Third Party Beneficiaries. This Governance Agreement is solely for the benefit of the Parties hereto, and to the extent provided herein, their respective directors, officers, employees, agents and representatives; and no provision in this Governance Agreement shall be deemed to confer upon other persons any remedy, claim, reimbursement, cause of action or other right.

15.15 Limitation on Recourse. No recourse shall be had for the payment or performance of any obligation or covenant in this Governance Agreement, or for any claim against a Party to this Governance Agreement, personally against any past, present or future director, member, officer, employee, agent or official of any of the Parties under any rule of law or equity, statute, or constitution or by the enforcement of any assessment or penalty or otherwise, and all such personal liability is hereby expressly waived.

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15.16 Entire Understanding. This Governance Agreement sets forth the entire fully integrated understanding and agreement of the Parties hereto as of the effective date hereof with respect to the transactions contemplated hereby and supersedes any and all prior agreements, arrangements, and understandings among the Parties relating to the subject matter hereof.

15.17 Counterparts. This Governance Agreement 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 or facsimile shall be effective.

15.18 Non-Waiver of Rights. Except as provided in Section 15.7, the failure of a Party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a Party of any condition or any breach of any term, covenant, representation or warranty contained in this Governance Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in other instances.

15.19 Successors and Assigns. This Governance Agreement shall be binding upon and inure to the benefit of the Parties and each of their permitted successors, assigns and legal representatives.

15.20 Survival. The dispute resolution provisions in Article 10 and the provisions contained in this Governance Agreement, which by their inherent character should survive Termination, shall survive Termination.

15.21 Further Assurances. In connection with the structure contemplated by this Governance Agreement, each Party shall execute and deliver such additional documents and instruments and perform such additional acts that may be necessary or appropriate to deliver the Rail Projects in the manner described herein and/or to further the intent of this Governance Agreement.

15.22 Subject to Appropriation. Except with respect to those funds that as a matter of law are not subject to appropriation by the General Assembly, the Parties acknowledge that the funds for the Financing Plans under this Governance Agreement are subject to biennial appropriation by the General Assembly and the availability of the amounts necessary to fund such appropriations. The obligation of IFA and RDA to fund does not constitute an indebtedness of the State or any political subdivision thereof within the meaning or application of any constitutional provision or limitation, nor does it constitute a pledge of the faith, credit or taxing power of the State or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. IFA and RDA have no taxing power. No Party has the right to have taxes levied or compel appropriations by the General Assembly for any payment contemplated hereunder.

EXECUTION VERSION

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Governance Agreement as of the date first written above.

Northwest Indiana Regional Development Authority

By: 

Name: Bill Hanna

Title: President and Chief Executive Officer

Northern Indiana Commuter Transportation District

By: _____

Name: Michael Noland

Title: President

Indiana Finance Authority

By: _____

Name: Micah G. Vincent

Title: Chair

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Governance Agreement as of the date first written above.

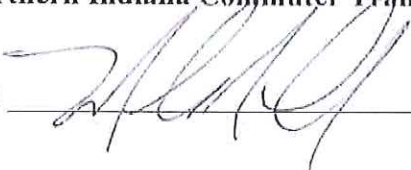
Northwest Indiana Regional Development Authority

By: _____

Name: Bill Hanna

Title: President and Chief Executive Officer

Northern Indiana Commuter Transportation District

By:  _____

Name: Michael Noland

Title: President

Indiana Finance Authority

By: _____

Name: Micah G. Vincent

Title: Chair

EXECUTION VERSION

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Northwest Indiana Regional Development Authority

By: _____

Name: Bill Hanna

Title: President and Chief Executive Officer

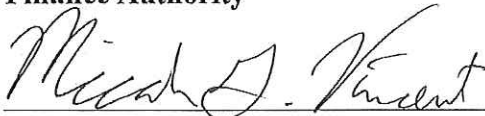
Northern Indiana Commuter Transportation District

By: _____

Name: Michael Noland

Title: President

Indiana Finance Authority

By: 

Name: Micah G. Vincent

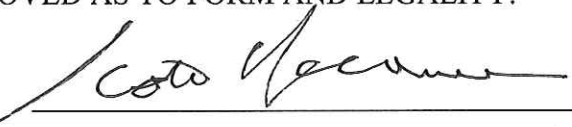
Title: Chair

EXECUTION VERSION

APPROVED AS TO FORM AND SUBSTANCE:

By: 
Jason D. Hudich, State Budget Director

APPROVED AS TO FORM AND LEGALITY:

By:  10.2.2018
(for) Indiana Attorney General Scott C. Newman
Chief Counsel, Advisory Division