

**MEMORANDUM OF UNDERSTANDING BETWEEN THE ST. JOSEPH COUNTY
BOARD OF COMMISSIONERS, THE CITY OF SOUTH BEND, INDIANA, AND THE
SOUTH BEND REDEVELOPMENT COMMISSION REGARDING THE SOUTH
SHORE LINE**

This Memorandum of Understanding (“MOU”) is entered into this ___ day of _____, 2019, by and between the St. Joseph County Board of Commissioners (the “County”), the City of South Bend, Indiana (the “City”), and the South Bend Redevelopment Commission (the “Commission”).

WHEREAS, the South Shore Line, which carries commuters between South Bend and Chicago, has been approved for significant funding for major improvements over the next several years; and

WHEREAS, various improvements are planned for the South Shore Line, including extension of the railroad by nine miles from Hammond to Dyer, adding a second track between Gary and Michigan City as well as moving the street-running tracks in Michigan City, constructing a new station location within the corporate boundaries of the City of South Bend (the “Station”), the purchase of new rail cars, and the completion of a federally-mandated safety project named Positive Train Control; and

WHEREAS, the Common Council of the City of South Bend, Indiana issued Resolution No. 4609-16 in support of the proposed project believing it to be in the “best interests of the City of South Bend, Indiana to positively move the transportation advancements forward”; and

WHEREAS, the State of Indiana has mandated that St. Joseph County, Indiana provide \$18.25 million in matching funds (the “Matching Fund Amount”) before the State will provide significant funds to proceed with any of the proposed improvements to the South Shore Line; and

WHEREAS, as the City of South Bend will derive economic benefit from an improved South Shore Line, the City has agreed to assist the County by raising fifty percent (50%) of the Matching Fund Amount, not to exceed \$9.125 million (the "City's Contribution Amount").

NOW, THEREFORE, the parties hereby agree as follows:

1. Objectives. The County and the City shall cooperate in good faith with the purpose of making improvements that would shorten the South Shore Line travel time from South Bend to Chicago and toward determining a mutually agreeable site for the Station.
2. Responsibilities. The County agrees to utilize bonds, the type of which shall be determined by the County in its sole discretion, to provide financing of fifty percent (50%) of the Matching Fund Amount (the "County's Contribution Amount"). The County shall be solely responsible for all costs and expenses, including but not limited to interest and fees, related to the funding of the County's Contribution Amount. The City agrees to pursue bonds, the type of which shall be determined by the City and the Commission in their sole discretion, to fund the City's Contribution Amount. The City and the Commission shall be solely responsible for all costs and expenses, including but not limited to interest and fees, related to the City's Contribution Amount. In exchange for the City's agreement to provide the City's Contribution Amount, the County shall provide funding for the Station in an amount at least equal to \$9.125 million.

The County agrees that the County's Contribution Amount shall be expended in its entirety before the City's Contribution Amount will be spent, regardless of the terms of any third-party agreements made or the requirements of any understandings between the County and any other entity, including but not limited to the State of Indiana, the Indiana Finance Authority, or the Northern Indiana Commuter Transportation District. Further, in the event that the double

tracking project contemplated herein does not move forward with federal funding and the County receives a refund of amounts paid toward the Matching Fund Amount, the County shall repay to the City an amount equal to the refund amount up to City's Contribution Amount.

At such time as the selection of a site for the Station is contemplated to occur, the City and the County shall determine a mutually agreeable site for the Station. Notwithstanding the foregoing, or anything herein to the contrary, the City shall not be obligated to provide the City's Contribution Amount or any amounts toward the Station unless a separate agreement is executed with the Northern Indiana Commuter Transportation District for the maintenance of a full-service station stop for the South Shore Line within the corporate boundaries of the City or the west side of the South Bend International Airport for a time period of no less than twenty (20) years. Further, the City shall not be obligated to fund any amount toward the Station if it is not located at a site to which the City agrees.

3. Term. This MOU is valid for six (6) years starting on the date that it is executed last by the County, City, or Commission; however, the parties agree that the County's funding obligation set forth above for the Station shall survive the termination of this MOU. It may also be extended by mutual written agreement of the parties involved.

4. Records. The parties shall retain all of their records relating to this MOU for a period of three (3) years following expiration or termination of the MOU, or following resolution of a dispute under this MOU, whichever occurs later.

5. Notices. Any notice required or permitted to be given by either the County or the City pursuant to the terms of this MOU shall be in writing and shall be deemed given when delivered personally or deposited in the U.S. mail, first class with postage prepaid, and addressed to the parties as follows:

If to the County: Andrew Kostielney, President
St. Joseph County Board of Commissioners
7th Floor
227 W. Jefferson Blvd.
South Bend, IN 46601

With copy to: Jamie C. Woods, Esq.
County Attorney
Thorne • Grodnik, LLP
P.O. Box 1210
Mishawaka, IN 46546-1210

If to the City: Mayor of South Bend, Indiana
227 W Jefferson Blvd. Ste. 1400 N
South Bend, IN 46601

and

City of South Bend
Department of Community Investment
227 W. Jefferson Blvd., Ste. 1400 S
South Bend, IN 46601
Attn: Executive Director

With a copy to:

South Bend Legal Department
227 W. Jefferson Blvd., Ste. 1200 S
South Bend, IN 46601
Attn: Corporation Counsel

6. Miscellaneous.

(a) All parties agree by signing this MOU that they have the necessary authority to enter into this MOU.

(b) This MOU is solely for the benefit of the parties hereto and gives no right to any other party.

(c) Nothing in this MOU is intended or will be deemed to create a partnership or joint venture between the parties.

(d) Neither party may assign, transfer, pledge or make other disposition of this MOU.

(e) Any waiver by a party of a breach of a provision of this MOU will not operate or be construed to be a waiver of any other breach of that provision or of any breach of any other provision of this MOU. A failure by a party to insist upon strict adherence to any term of this MOU on one or more occasions will not be considered a waiver or deprive that part of the right thereafter to insist upon strict adherence to that term or any other term of this MOU. Any waiver must be in writing and signed by the party against whom enforcement is sought.

(f) This MOU shall be construed in accordance with the laws of the State of Indiana. In the event of a dispute, controversy or claim arising out of or relating to this MOU or to any agreement(s) concluded pursuant to this MOU, the parties will use reasonable efforts to promptly settle such dispute through direct negotiation. Any dispute that is not settled within sixty (60) days from the date a party has notified the other of the nature of the dispute and of the measures that should be taken to rectify it shall be resolved by litigation in the Circuit or Superior Courts of St. Joseph County, Indiana.

(g) If any one or more of the provisions of this MOU shall be held invalid, illegal, or unenforceable, the validity and enforceability of all other provisions of this MOU shall not be affected.

(h) This MOU is the complete agreement between the St. Joseph County Board of Commissioners, the City of South Bend, Indiana, and the South Bend Redevelopment Commission, and supersedes all prior agreements, arrangements and understandings with respect

to the transactions provided for herein, including, but not limited to, the Memorandum of Understanding Between the St. Joseph County Board of Commissioners and the South Bend Redevelopment Commission dated June 20, 2017, which shall be deemed terminated as of the date set forth above. No representation, promise, inducement, or statement of intention has been made by or on behalf of any party hereto that is not set forth in this MOU. This MOU may be amended only by written agreement signed by each of the parties involved.

(i) This MOU may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

Signature Page Follows

IN WITNESS WHEREOF, the County, the City, and the Commission through their duly authorized representatives enter into this MOU.

ST. JOSEPH COUNTY BOARD OF COMMISSIONERS

Andrew Kostielney
Andrew Kostielney, President

Deborah Fleming
Deborah Fleming, D.M.D., Vice-President

Dave Thomas
Dave Thomas, Member

Date: _____

CITY OF SOUTH BEND, INDIANA

Daniel Parker
Daniel Parker, Controller

Date: _____

SOUTH BEND REDEVELOPMENT COMMISSION

By: Marcia I. Jones
Marcia I. Jones, President

Attest: Quentin Phillips
Quentin Phillips, Secretary

Date: _____