

**MEMORANDUM OF UNDERSTANDING AMONG THE ST. JOSEPH COUNTY
BOARD OF COMMISSIONERS, THE SOUTH BEND REDEVELOPMENT
COMMISSION, AND THE NORTHERN INDIANA COMMUTER TRANSPORTATION
DISTRICT REGARDING THE SOUTH SHORE LINE**

This Memorandum of Understanding (“MOU”) is entered into this ___ day of _____, 2019 (“Effective Date”), by and among the St. Joseph County Board of Commissioners (the “County”), the South Bend Redevelopment Commission (the “City”), and the Northern Indiana Commuter Transportation District (“NICTD”).

WHEREAS, NICTD operates the South Shore Line, which carries commuters between South Bend and Chicago, and is seeking approval 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, a new station location within the corporate limits of the City of South Bend, the purchase of new rail cars, and the completion of a federally-mandated safety project named Positive Train Control; and

WHEREAS, all of these proposed improvements should result in better and faster service for commuters going between South Bend and Chicago; and

WHEREAS, the State of Indiana has mandated that the County 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, the County and the City have agreed pursuant to a Memorandum of Understanding executed between them dated September 17, 2019 (the “County-City MOU”), that the City will assist the County with raising fifty percent of the Matching Fund Amount, not to exceed \$9.125 million (the “City’s Contribution Amount”), to assist in making improvements to the South Shore Line; and

WHEREAS, in return for the City’s Contribution Amount, the County and the City wish to ensure that their citizens will derive material benefit from the proposed improvements to the South Shore Line.

NOW, THEREFORE, the parties hereby agree as follows:

1. **Objectives.** The County, the City, and NICTD shall cooperate with the purpose of making improvements that would shorten the South Shore Line travel time from South Bend to Chicago.

2. **Responsibilities.** The County agrees to provide the County’s Contribution Amount of fifty percent (50%) of the Matching Fund Amount. The City agrees to provide the City’s Contribution Amount. The County and the City shall be solely responsible for the costs and expenses of their respective Contribution Amount. The County agrees to provide funding

for the station in an amount at least equal to \$9.125 million. All of this is in accordance with the terms and conditions of the County-City MOU.

In exchange for receiving the County's Contribution Amount, the City's Contribution Amount, and the County's and the City's joint agreement to participate in the funding of a new station location within the corporate limits of the City, NICTD agrees as follows:

(a) NICTD shall maintain a full-service station stop for the South Shore Line within the corporate boundaries of the City or the west side of and immediately adjacent to the South Bend International Airport for a period of not less than twenty (20) years from the Effective Date of the County-City MOU. The parties agree that the City and the County shall determine a mutually agreeable location for a new station, with input from NICTD. The new station location shall have capacity substantially similar to the current station's capacity or greater, provided that such capacity reflects the demands for passenger rail operations. This section of the MOU shall survive termination or expiration of the MOU.

(b) In the event that a location for a new station within the boundaries of the City or the west side of and immediately adjacent to the South Bend International Airport cannot be determined, NICTD agrees to maintain the current station stop on the east side of the South Bend International Airport.

(c) The Matching Fund Amount, and any other funding contributions from the counties located in the South Shore Line corridor (LaPorte, Porter, and Lake) will be spent pro rata by NICTD, and any surplus funds remaining from the Contribution and other funding contributions from the counties located in the South Shore Line corridor shall be refunded to the contributing entities pro rata (i.e., any surplus contributions should be returned to each entity according to the percentage of funds contributed).

3. Term and Termination. This MOU is valid for a term of twenty (20) years from the Effective Date. The Parties may by written mutual agreement terminate this MOU for convenience.

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 the parties 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: 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

If to NICTD: Northern Indiana Commuter Transportation District
33 E. U.S. Highway 12
Chesterton, IN 46304
Attn: President

With a copy to: Harris Welsh & Lukmann
107 Broadway
Chesterton, IN 46304
Attn: L. Charles Lukmann, III

6. Miscellaneous.

(a) All parties agree by signing this MOU that they have the necessary authority to enter into this MOU, and have each taken all necessary actions to bind itself to the terms, conditions, and obligations of 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) The County and the City may assign this MOU to another Indiana political subdivision located within the corporate boundaries of the City of South Bend. NICTD may assign this MOU to the Indiana Finance Authority (“IFA”) or the Northwest Indiana Regional Development Authority (“RDA”), if the IFA and/or RDA exercise their Construction Period Step-In Rights and/or Operations Step-In Rights per Article 11 of the Amended and Restated Governance Agreement Concerning Development of the Rail Projects, effective June 24, 2019 (the “Governance Agreement”).

(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 party 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 of the waiver 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 their best 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 among the St. Joseph County Board of Commissioners, the South Bend Redevelopment Commission , and the Northern Indiana Commuter Transportation District, and supersedes all prior agreements, arrangements and understandings with respect to the transactions provided for herein, including, but no limited to, the Memorandum of Understanding Between the St. Joseph County Board of Commissioners and the South Bend Redevelopment Commission dated June 20, 2017; provided, however, this MOU does not supersede the County-City MOU entered into on September 17, 2019. 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) The language used in this Agreement is language developed and chosen by all parties to express their mutual intent and no rule of strict construction shall be applied against any party.

(j) 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 NICTD, through their duly authorized representatives, enter into this MOU.

ST. JOSEPH COUNTY BOARD OF COMMISSIONERS

SOUTH BEND REDEVELOPMENT COMMISSION

Andrew Kostielney, President


By: _____
Marcia I. Jones, President

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

Attest: _____
Quentin Phillips, Secretary

Dave Thomas, Member

NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT

By: 
Michael Noland, President