

Town of Munster
Resolution 1991

**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**

Whereas, Indiana Code 36-1-7-1, et seq., allows governmental entities to make the most efficient use of their powers by enabling them to mutually purchase and utilize equipment, supplies, services, and resources for their mutual benefit;

Whereas, The participating governmental entities located in Lake County, Indiana are empowered by the aforesaid Interlocal Cooperation act, as amended to contract on behalf of each other on a basis of mutual advantage so as to better provide public services and facilities at a lesser cost; and

Whereas, The participating governmental entities located in Lake County, Indiana who are signatories to this agreement, now desire to enter into an agreement constructed pursuant to IC. 36-1-7-1, et seq., with The Northern Indiana Commuter Transportation District, by and through its Board of Trustees, to provide for the ability to provide capital financing for the mutual benefit of the participating entities, and at a shared cost, to support the extension and improvement of commuter rail segments associated with a "*West Lake Commuter Rail Transportation Corridor*";

Now Therefore, In consideration of the mutual terms, covenants, and conditions set forth herein, the participating governmental entities located in Lake County, Indiana, by and through their proper boards of authority, hereby agree as follows:

Section 1. Duration of Agreement; Amendments.

(A) The duration of this agreement shall be from its adoption by the Government of Lake County, and the other municipal governments, provided this agreement is adopted by either ordinance or resolution by each of the proper boards of authority of the relevant aforesaid governmental entities as participating entities, then continuing for thirty (30) years from ***February 1, 2015***, extending to and concluding on June 30, 2044, renewable thereafter by agreement of the parties, evidenced by passage of similar resolutions or ordinances, should the purposes of this agreement require it.

(B) Notwithstanding the provisions of this Section, the pledged revenues contributed by the participating governmental entities may be discontinued by participating entities earlier than the herein named concluding date, provided that funds on deposit to the credit of the fund described in Section 5 of this agreement are sufficient to meet all obligations of the fund toward the non-federal share, including any debt service or capital lease rentals.

(C) Before payments may be discontinued, the Enhanced Entity must certify that the resources of the fund described in Section 5 of this agreement are sufficient to meet all obligations of the fund toward the non-federal share, including any debt service or capital lease rentals.

(D) This agreement may be amended by unanimous consent of the participating entities, evidenced by passage and adoption by the same body and officers that are empowered to initially adopt this agreement; provided, that no amendment may be made to the provisions of Section 8, and that no amendment shall be authorized that would impair the ability of the Enhanced Entity to satisfy any debts, liabilities, or obligations for which county economic development income taxes are pledged or otherwise encumbered, or that would adversely affect the owners of any outstanding bonds or any lease rentals due, all pursuant to IC 6-3.5-7-12.7 and IC 6-3.5-7-13.1(d).

Section 2. Purposes and Objectives.

The purpose of this agreement is to authorize and allow the *Enhanced Entity* to employ the resources on deposit to the credit of the fund described in Section 5 of this agreement to support and finance the extension and improvement of **commuter rail transportation services and connecting them across communities** on behalf of the several participating entities for the mutual benefit of the participating entities generating an economy of scale for the achievement of the objectives herein described. Actions to carry out the purposes and objects of this agreement may include but are not limited to the following:

- (1) Provide resources to support the Northern Indiana Commuter Transportation District (NICTD), by and through its Board of Trustees to engage professional services in support of preliminary environmental and engineering activities;
- (2) Provide resources to support the construction, improvement and related activities to affect the extension of commuter rail associated

with the segments, which are part of a "West Lake Commuter Rail Transportation Corridor."

- (3) "West Lake Commuter Rail Transportation Corridor" shall be defined as the planned course and location described in the relevant Environmental Impact Statement's (EIS) scope, which includes an area from Chicago, Illinois to approximately Saint John, Indiana;

Section 3. Administration and Authority Delegation.

(A) This agreement shall be administered through an Indiana Political Subdivision styled as Lake County, Indiana, acting on behalf of all the participating governmental entities and in cooperation with the Northern Indiana Commuter Transportation District. The separate entity shall be known as the *Enhanced Entity*. When acting under this agreement, Lake County shall be an *Enhanced entity*, implementing the provisions of this agreement. The legislative and fiscal powers of the *Enhanced Entity* shall be exercised by the Lake County Council. The executive powers of the *Enhanced Entity* shall be exercised by the Board of Lake County Commissioners. These powers shall be construed to include all powers directly granted it under the relevant laws of Indiana, those powers permitted under I.C. 36-1-7-2 and those powers exercisable by the participating entities individually and outlined in relevant Indiana law, deemed necessary to carryout the project and purposes described in Section 2 of this agreement.

(B) The Auditor of Lake County shall perform all usual duties associated with Auditor's office as clerk of the *Enhanced Entity*, as required by law as generally set forth in IC 36-2-9, sections 7 and 8.

Section 4. Fiscal Administration.

(A) This agreement hereby delegates to the duly elected Auditor of Lake County, the duty to disburse and account for all moneys of this undertaking pursuant to the terms of this agreement. including performing these duties for the fund described in Section 5. This agreement further delegates to the duly elected Treasurer of Lake County the duty to receive, invest and account for all moneys of this undertaking pursuant to the terms of the this agreement, including performing these duties for the fund described in Section 5. This includes the authority to receive the pledged contributions from the participating governmental entities, made under the provisions of this agreement, any donations from non-participating entities, and including contributions from the participating governmental entities that may come in the form of transfers made pursuant to **IC 6-3.5-7-12.7**, or designations made under I.C. 6-3.5-7-15(a)(2).

(B) In all cases, The Treasurer and the Auditor of Lake County shall perform all usual duties associated with their offices and as required by law in regards to the money and resources described in this interlocal agreement generally and in particular to the resources associated with the fund described in Section 5 of this agreement.

Section 5. Commuter Rail Extension & Improvement Fund.

(A) There is hereby created and established the ***Commuter Rail Extension and Improvement Fund***, which shall be a distinct and separate special purpose fund, to be under the fiscal administration of the Lake County Treasurer and Lake County Auditor, as a special non-reverting fund established for the purposes of supporting the activities and services including engineering obtained or construction conducted in consequence of this agreement, including debt or capital lease financing, pursuant to the laws of the State of Indiana governing public entities.

(B) Expenditures from this fund may only be for the purposes for which this fund was established as set forth in this Interlocal Cooperative Agreement:

- (1) Expenditures from this fund may be made only upon appropriation by the **Lake County Council** as the appropriating body for the *Enhanced Entity*;
- (2) Expenditures from this fund may only be for the purposes of set forth in this agreement and according to its terms.

(C) The sources of money for the fund may be as follows:

- (1) The pledged *contributions or designations* from the participating governmental entities of their certified distributions of County Economic Development Income Tax, described and authorized in this Interlocal Cooperative Agreement and in IC 6-3.5-7 et seq.
- (2) Interest earned from the investment of moneys on deposit to the credit of the fund created by this agreement, provided such investments are conducted pursuant to IC 5-13-9 et seq.;
- (3) Gifts, donations, bequests and other voluntary contributions from any person or entity to the fund consistent with the lawful purposes and objectives of the fund;

- (4) Money derived from state or Federal grants, matching funds, contributions from any other governmental entity not already described in this agreement; and
- (5) Contributions for such projects as may be consistent with the objects of I.C. 8-5-1, I.C. 8-5-15, I.C. 8-24 et seq., I.C. 36-9-1, **and subject to Section 9 (F) of this agreement**, including but not limited to multi-party or intergovernmental undertakings.

(D) Expenditures from the Fund shall be made from the proper category of expense and for the purposes of the fund, only after an appropriation has been made in the manner provided by statute for making other appropriations and shall be disbursed only on approved accounts payable vouchers allowed by the proper body of the *Enhanced Entity*. Further, expenditures shall only be made at a regular or special meeting of the proper body of the *Enhanced Entity*, pursuant to IC 5-11-10, I.C. 36-4-8, IC 36-5-4 and I.C. 36-2-6;

(E) The fund appropriations shall be further governed as follows:

- (1) All unused and unencumbered monies do not revert to any corporation or county general fund or to any fund but the fund created by this agreement;
- (2) The unused and unencumbered balance of an appropriation shall not lapse at the end of the year in which the appropriation was made nor does it revert, but remains in full force and effect to the credit of the fund created by this agreement without re-appropriation until the purpose for which the appropriation was made has been accomplished or abandoned;

(F) The Enhanced Entity shall cause a report on the condition of the Fund to be made to the participating governmental entities at least annually, with the annual report to be made by March 1 of the year first following the close of the fiscal year. The report shall be a public record subject to the provisions of IC 5-14-3 et seq.

Section 6. Benchmarks and Resource Returns.

(A) If the proper applications for the Federal Funds necessary and desirable to achieve the commuter rail extension and improvements described

in this agreement have not been filed by **December 31, 2020**, all resources on deposit to the credit of the fund described in Section 5, shall be identified and distributed to the several participating entities and to any non entity donors **based upon the ratio of the actual contributions made by each to the total on deposit to the credit of the fund** upon satisfaction of all obligations and liabilities, which may have been incurred to date.

(B) Further, in the event that the purposes of this agreement are achieved or abandoned, after allowance for any encumbrances and all other lawful payables, the unobligated, unassigned, unreserved fund balance shall be identified and distributed to the several participating entities and to any non entity donors **based upon the ratio of the actual contributions made by each to the total on deposit to the credit of the fund** and the fund defeased upon satisfaction of all obligations and liabilities.

Section 7. Findings and Determinations Regarding Uses of CEDIT.

(A) The participating governmental entities hereby find and determine that the use of economic development income tax as may be contributed, transferred, allocated, or designated in support of the purposes of this interlocal cooperation agreement are fully consistent with the allowable purposes and uses of the economic development income tax as set forth and permitted in IC 6-3.5-7-13.1.

(B) That the participating governmental entities hereby further find and determine that the project, activities and purposes contemplated under this interlocal cooperation agreement, particularly assembling the combined CEDIT resources of Lake County, and the several cities and towns therein, working cooperatively with the Northern Indiana Commuter Transit District to extend and improve commuter rail service is an allowable *economic development project* and capital project for which bonds or capital lease financing are permitted under the terms of IC 6-3.5-7-13.1 and further contemplated under IC 36-1-7-11.5.

Section 8. Pledges Irrevocable and Irreducible.

(A) The *Enhanced Entity* may commit resources from the fund described in Section 5 of this agreement to pay the principal and interest on bonds issued to support the extension and improvement of commuter rail service in the West Lake Transportation Corridor or to support capital lease financing to support the extension and improvement of commuter rail service in the West Lake Transportation Corridor.

(B) For the duration of the agreement, no participating governmental entity may take any step that would impair the ability of the *Enhanced Entity* to satisfy any debts, liabilities, or obligations for which county economic development income taxes are pledged or otherwise encumbered, nor shall they expend the county economic development income taxes in a manner that would adversely affect the owners of any outstanding bonds or any lease rentals due, all pursuant to IC 6-3.5-7-12.7 and IC 6-3.5-7-13.1(d).

(C) For the duration of the agreement, no participating governmental entity may reduce the percentage of county economic development income taxes pledged by it at the time of the adoption of this agreement; however, this does not prohibit a participating governmental entity from increasing its percentage as long as at no time it does not fall below the percentage first pledged at the time of this agreement's adoption.

Section 9. Participating Governmental Entities, Pledged Percentages and Additional Provisions.

(A) In consideration of the mutual promises contained herein, the provisions, terms and pledges to which the participating governmental entities have consented, contained and listed in the attached exhibit styled as *Pledged Revenues and Participating Entities*, is hereby adopted, approved, and incorporated by reference and the exhibit is made of essence to this agreement.

(B) Participating Entities may increase their pledges by action of their fiscal body, as defined in IC 36-1-2-6, with the approval of their executive, as defined in I.C. 36-1-2-5, and then communicating this change to the Auditor of Lake County as Clerk of the *Enhanced Entity*. Upon notification of the change, the proper officer will cause the exhibit described in Section 9 (A) of this agreement to be modified, to reflect that change without effect upon those pledges then in place. Once modified, the successor exhibit becomes a part of this Interlocal Cooperative Agreement subject to its terms and conditions.

(C) Governmental entities may become participating entities at any time during the life of this agreement. Such entities desiring to become participating entities may do so by performing the following:

- (1) Adopting an ordinance or resolution, agreeing to the terms of this interlocal cooperation agreement;
- (2) Fixing a percentage pledge of county economic development income tax or any regular recurrent revenue lawful for the purposes

of this agreement as a pledged contribution under the agreement by action of their fiscal body;

- (3) Communicate this action to the Auditor of Lake County as Clerk of the Enhanced Entity;
- (4) Further evidence this action and approval by execution and transmission of the proper participant counterpart, which shall be made a part of this interlocal cooperation agreement. Upon notification of the new participating entity, the proper officer will cause the exhibit described in Section 9 (A) to be modified, to reflect this addition without effect upon those pledges then in place. Once modified, the new or successor exhibit becomes a part of this Interlocal Cooperative Agreement subject to its terms and conditions.

(D) That the Executive as defined in I.C. 36-1-2-5, of all participating entities shall prepare and faithfully file the *Capital Improvement Plan* that includes the necessary provisions so as to be consistent with the terms of this interlocal cooperative agreement and in accord with I.C. 6-3.5-7-15.

(E) That the legislative or fiscal bodies of all the participating entities **shall** approve and pass the appropriations necessary to the extent that it supports and fulfills those provisions of the Capital Improvement Plan adopted by the municipal executive according to the duty outlined in Section 9 (D) of this agreement and consistent with the terms of this interlocal cooperation agreement.

(F) That the contributed funds or pledged revenues from participating governmental entities as described in this Section, shall be utilized to satisfy project requirements creditable to the non-Federal cost-share.

Section 10. Title.

The extensions and improvements financed or constructed in consequence of and according to the purposes of this agreement, become property of the Northern Indiana Commuter Transit District (NICTD), to the extent those improvements are within its particular lawful boundaries or jurisdiction, all according to law.

Section 11. Counterparts.

This Interlocal Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and such

counterparts, together, shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

Section 12. Recording.

Before this agreement takes effect, it must be recorded with the Office of the Lake County Recorder. No later than sixty (60) days after it takes effect and is recorded, the agreement must be filed with the Office of the State Board of Accounts for audit purposes, all pursuant to I.C. 36-1-7-6.

EXHIBIT: Pledged Revenues and Participating Entities

- (1) The **County of Lake**, by and through its County Commission and Council, agrees to and shall contribute no less than **twenty-five percent (25%)** of its annual certified distribution of county economic development income tax as set forth in I.C. 6-3.5-7-12, according to the terms of this interlocal cooperation agreement to be deposited with the fund described in Section 5 of this agreement, to be used by the Lake County Board of Commissioners acting as an enhanced entity, to be payable according to terms and frequencies that the Enhanced Entity may direct;
- (2) The **City of Crown Point**, by and through its fiscal body with the approval of the executive, agrees to and shall contribute no less than **ten percent (10%)** of its annual certified distribution of county economic development income tax as set forth in I.C. 6-3.5-7-12, according to the terms of this interlocal cooperation agreement to be deposited with the fund described in Section 5 of this agreement, to be used by the Lake County Board of Commissioners acting as an enhanced entity, to be payable according to terms and frequencies that the Enhanced Entity may direct;
- (3) The **Town of Dyer**, by and through its fiscal body with the approval of the executive, agrees to and shall contribute no less than **fifteen percent (15%)** of its annual certified distribution of county economic development income tax as set forth in I.C. 6-3.5-7-12, according to the terms of this interlocal cooperation agreement to be deposited with the fund described in Section 5 of this agreement, to be used by the Lake County Board of Commissioners acting as an enhanced entity, to be payable according to terms and frequencies that the Enhanced Entity may direct;
- (4) The **City of Gary** by and through its fiscal body with the approval of the executive, agrees to and shall contribute one hundred thousand dollars (\$100,000) in 2015 and each year thereafter, no less than **twenty percent (20%)** of its annual certified distribution of county economic development income tax as set forth in I.C. 6-3.5-7-12, according to the terms of this interlocal cooperation agreement to be deposited with the fund described in Section 5 of this agreement, to be used by the Lake County Board of Commissioners acting as an enhanced entity, to be payable according to terms and frequencies that the Enhanced Entity may direct;
- (5) The **Town of Griffith**, by and through its fiscal body with the approval of the executive, agrees to and shall contribute no less than **five percent (5%)** of its annual certified distribution of county economic

development income tax as set forth in I.C. 6-3.5-7-12, according to the terms of this interlocal cooperation agreement to be deposited with the fund described in Section 5 of this agreement, to be used by the Lake County Board of Commissioners acting as an enhanced entity, to be payable according to terms and frequencies that the Enhanced Entity may direct;

(6) The **Town of Highland**, by and through its fiscal body with the approval of the executive, agrees to and shall contribute no less than **twenty percent (20%)** of its annual certified distribution of county economic development income tax as set forth in I.C. 6-3.5-7-12, *beginning with the certified amount in FY 2014*, according to the terms of this interlocal cooperation agreement to be deposited with the fund described in Section 5 of this agreement, to be used by the Lake County Board of Commissioners acting as an enhanced entity, to be payable according to terms and frequencies that the Enhanced Entity may direct;

(7) The **City of Hobart**, by and through its fiscal body with the approval of the executive, agrees to and shall contribute no less than **eighteen percent (18%)** of its annual certified distribution of county economic development income tax as set forth in I.C. 6-3.5-7-12, according to the terms of this interlocal cooperation agreement to be deposited with the fund described in Section 5 of this agreement, to be used by the Lake County Board of Commissioners acting as an enhanced entity, to be payable according to terms and frequencies that the Enhanced Entity may direct;

(8) The **City of Lake Station**, by and through its fiscal body with the approval of the executive, agrees to and shall contribute no less than **twenty percent (20%)** of its annual certified distribution of county economic development income tax as set forth in I.C. 6-3.5-7-12, according to the terms of this interlocal cooperation agreement to be deposited with the fund described in Section 5 of this agreement, to be used by the Lake County Board of Commissioners acting as an enhanced entity, to be payable according to terms and frequencies that the Enhanced Entity may direct;

(9) The **Town of Lowell**, by and through its fiscal body with the approval of the executive, agrees to and shall contribute no less than **fifteen percent (15%)** of its annual certified distribution of county economic development income tax as set forth in I.C. 6-3.5-7-12, according to the terms of this interlocal cooperation agreement to be deposited with the fund described in Section 5 of this agreement, to be used by the Lake County Board of Commissioners acting as an enhanced entity, to be payable according to terms and frequencies that the Enhanced Entity may direct;

(10) The **Town of Merrillville**, by and through its fiscal body with the approval of the executive, agrees to and shall contribute no less than **twenty-two percent (22%)** of its annual certified distribution of county economic development income tax as set forth in I.C. 6-3.5-7-12, according to the terms of this interlocal cooperation agreement to be deposited with the fund described in Section 5 of this agreement, to be used by the Lake County Board of Commissioners acting as an enhanced entity, to be payable according to terms and frequencies that the Enhanced Entity may direct;

(11) The **Town of Munster**, by and through its fiscal body with the approval of the executive, agrees to and shall contribute no less than **thirty-four percent (34%)** of its annual certified distribution of county economic development income tax as set forth in I.C. 6-3.5-7-12, *beginning with the certified amount in FY 2014*, according to the terms of this interlocal cooperation agreement to be deposited with the fund described in Section 5 of this agreement, to be used by the Lake County Board of Commissioners acting as an enhanced entity, to be payable according to terms and frequencies that the Enhanced Entity may direct;

(12) The **Town of New Chicago**, by and through its fiscal body with the approval of the executive, agrees to and shall contribute no less than **one percent (1%)** of its annual certified distribution of county economic development income tax as set forth in I.C. 6-3.5-7-12, according to the terms of this interlocal cooperation agreement to be deposited with the fund described in Section 5 of this agreement, to be used by the Lake County Board of Commissioners acting as an enhanced entity, to be payable according to terms and frequencies that the Enhanced Entity may direct;

(13) The **Town of Schererville**, by and through its fiscal body with the approval of the executive, agrees to and shall contribute no less than **thirty-four percent (34%)** of its annual certified distribution of county economic development income tax as set forth in I.C. 6-3.5-7-12, according to the terms of this interlocal cooperation agreement to be deposited with the fund described in Section 5 of this agreement, to be used by the Lake County Board of Commissioners acting as an enhanced entity, to be payable according to terms and frequencies that the Enhanced Entity may direct;

(14) The **Town of St. John**, by and through its fiscal body with the approval of the executive, agrees to and shall contribute no less than **fifteen percent (15%)** from its annual certified distribution of county economic development income tax as set forth in I.C. 6-3.5-7-12, according to the terms

of this interlocal cooperation agreement to be deposited with the fund described in Section 5 of this agreement, to be used by the Lake County Board of Commissioners acting as an enhanced entity, to be payable according to terms and frequencies that the Enhanced Entity may direct;

(15) The **Town of Schneider**, by and through its fiscal body with the approval of the executive, agrees to and shall contribute no less than **twenty percent (20%)** of its annual certified distribution of county economic development income tax as set forth in I.C. 6-3.5-7-12, according to the terms of this interlocal cooperation agreement to be deposited with the fund described in Section 5 of this agreement, to be used by the Lake County Board of Commissioners acting as an enhanced entity, to be payable according to terms and frequencies that the Enhanced Entity may direct;

(16) The **City of Whiting**, by and through its fiscal body with the approval of the executive, agrees to and shall contribute no less than **twenty-five percent (25%)** of its annual certified distribution of county economic development income tax as set forth in I.C. 6-3.5-7-12, according to the terms of this interlocal cooperation agreement to be deposited with the fund described in Section 5 of this agreement, to be used by the Lake County Board of Commissioners acting as an enhanced entity, to be payable according to terms and frequencies that the Enhanced Entity may direct;

(17) The **Town of Winfield**, by and through its fiscal body with the approval of the executive, agrees to and shall contribute no less than **twenty-five percent (25%)** of its annual certified distribution of county economic development income tax as set forth in I.C. 6-3.5-7-12, according to the terms of this interlocal cooperation agreement to be deposited with the fund described in Section 5 of this agreement, to be used by the Lake County Board of Commissioners acting as an enhanced entity, to be payable according to terms and frequencies that the Enhanced Entity may direct;

Participant Counterpart

EFFECTIVE DATE. This agreement shall be effective under Section 1 of this agreement after the same has been ratified by each of the participating entities by Ordinance or Resolution all pursuant to I.C. 36-1-7-2.

IN WITNESS WHEREOF, the parties have caused this Interlocal Agreement to be executed in their names and on their behalf as of the date first written above.

TOWN of MUNSTER, INDIANA
1005 Ridge Road, Munster, Indiana 46321

By and Through its Town Council

By: _____


John Reed, President

Attest:



David F. Shafer, Clerk-Treasurer
Town of Munster

Participant Execution Date: August 11, 2014