

AGREEMENT
By and between
FEDERAL HIGHWAY ADMINISTRATION
UNITED STATES DEPARTMENT OF TRANSPORTATION

AND

KENTUCKY TRANSPORTATION CABINET

AND

KENTUCKY PUBLIC TRANSPORTATION INFRASTRUCTURE AUTHORITY

AND

INDIANA DEPARTMENT OF TRANSPORTATION

AND

AND INDIANA FINANCE AUTHORITY

THIS AGREEMENT, made and entered into by and between the KENTUCKY TRANSPORTATION CABINET, an agency of the Commonwealth of Kentucky (hereinafter referred to as "KYTC"), the KENTUCKY PUBLIC TRANSPORTATION INFRASTRUCTURE AUTHORITY, an agency of the Commonwealth Kentucky created to facilitate the construction, financing, operation, and oversight of transportation projects of the Commonwealth of Kentucky (hereinafter referred to as "KPTIA"), the INDIANA DEPARTMENT OF TRANSPORTATION, an agency of the State of Indiana (hereinafter referred to as "INDOT"), the INDIANA FINANCE AUTHORITY, an independent instrumentality of the State of Indiana (hereinafter referred to as "IFA"), and the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION (hereinafter referred to as "FHWA" and, collectively with KYTC, KPTIA, INDOT and IFA, as the "Parties"):

WITNESSETH:

WHEREAS, the Louisville-Southern Indiana Ohio River Bridges Project (hereinafter referred to as the "Toll Facility") is a construction, modernization and rehabilitation project that addresses cross-river transportation needs in the greater Louisville-Southern Indiana region by providing two new bridges across the Ohio River and reconstructing

the existing John F. Kennedy Memorial Bridge (I-65) over the Ohio River, thereby creating additional capacity, improving transportation efficiency and reliability, and making needed performance and safety enhancements to existing infrastructure; and

WHEREAS, the Commonwealth of Kentucky and the State of Indiana, through their respective transportation agencies, KYTC and INDOT, as well as through KPTIA, IFA, and the Louisville and Southern Indiana Bridges Authority, have collaborated in partnership with each other and with FHWA to plan for and advance this development as a single project comprising an integrated cross-river transportation system; and

WHEREAS, the Governors of Kentucky and Indiana signed a Memorandum of Understanding (“MOU”) on March 5, 2012, which outlines the terms and conditions for a comprehensive development agreement (“Development Agreement”) that will define the “roles and responsibilities for procurement, revenue sharing, financing, construction, tolling, operation, and maintenance” of the Toll Facility under a single financial plan and project management plan, and that will specifically assign the Commonwealth of Kentucky responsibility for leading the delivery of the Downtown Crossing portion of the Toll Facility (as defined below) and assign the State of Indiana responsibility for leading the delivery of the East End Crossing portion of the Toll Facility (as defined below); and

WHEREAS, as part of the Toll Facility, and in furtherance of their undertakings under the single comprehensive development plan memorialized in the MOU (and to be confirmed in the Development Agreement), KYTC, KPTIA, INDOT, and IFA desire to reconstruct a highway, currently designated as “the John F. Kennedy Memorial Bridge,” which carries I-65 over the Ohio River between Louisville, Kentucky and Jeffersonville, Indiana, and which currently operates as a toll free facility, and to convert it into a toll facility (the “Downtown Crossing”); and

WHEREAS, the Downtown Crossing reconstruction efforts will include reconstruction of the deck on the John F. Kennedy Memorial Bridge to carry I-65 southbound traffic, reconstruction and modernization of the approach interchange where I-64, I-65, and I-71 converge on the south side of the John F. Kennedy Memorial Bridge, reconstruction of the I-65 approach on the north side of the John F. Kennedy Memorial Bridge, and construction of a new bridge adjacent to the John F. Kennedy Memorial Bridge to carry I-65 northbound traffic, as well as all related design, construction, financing, operation, and maintenance; and

WHEREAS, KYTC and KPTIA plan to procure the Downtown Crossing portion of the Toll Facility utilizing a design-build contract, whereby a single contractor will be retained to design and construct the Downtown Crossing, and then KYTC and/or KPTIA will be responsible for operation and maintenance of the John F. Kennedy Memorial Bridge and the new bridge to carry I-65 northbound traffic, as well as those portions of the Toll Facility located in Kentucky (with the exception of the new bridge across the Ohio River connecting the Gene Snyder Freeway (KY 841) to the Lee Hamilton Highway (S.R. 265), hereinafter referred to as the “East End Bridge”) after construction is complete; and

WHEREAS, as part of the Toll Facility, and in furtherance of their undertakings under the single comprehensive development plan memorialized in the MOU (and to be confirmed in the Development Agreement), KYTC, KPTIA, INDOT and IFA desire to construct a highway, including the new East End Bridge and approach roadways in Kentucky and Indiana that will connect the Gene Snyder Freeway (KY 841) to the Lee Hamilton Highway (S.R. 265), and to provide for all related design, construction, financing, operation, and maintenance work related thereto (the "East End Crossing"); and

WHEREAS, IFA plans to procure the services of a private developer to design, finance, and construct the East End Crossing portion of the Toll Facility and to operate and maintain portions of the East End Crossing, including those portions of the Toll Facility located in Indiana (with the exception of the John F. Kennedy Memorial Bridge and the new bridge to carry I-65 northbound traffic) after construction is complete pursuant to a public-private agreement, and IFA will compensate the developer for its services with milestone payments during the construction period and with availability payments during the long-term operations period, subject to adjustments based on the developer's performance of its operation and maintenance obligations in accordance with agreed upon standards; and

WHEREAS, the availability payments to be made by IFA are unitary payments that the developer will use to pay debt service, operation and maintenance costs (including those related to reconstruction, resurfacing, restoration, and rehabilitation of the East End Crossing portion of the Toll Facility), and a reasonable return on investment; and

WHEREAS, the toll revenues derived from the Toll Facility will be collected by a single toll collection system operator and will then be allocated between the Commonwealth of Kentucky and the State of Indiana in accordance with the Development Agreement; and

WHEREAS, Section 129(a)(1)(A) of Title 23, United States Code, as amended, permits Federal participation in the initial construction of a toll highway, bridge, or tunnel (other than a highway, bridge, or tunnel on the Interstate System) or approach thereto; and

WHEREAS, Section 129(a)(1)(C) of Title 23, United States Code, as amended, permits Federal participation in the reconstruction or replacement of a toll free bridge or tunnel and conversion of that bridge or tunnel into a toll facility; and

WHEREAS, the Parties have agreed to be bound by and to comply with provisions of Section 129(a) of Title 23, United States Code, as amended, for the Toll Facility; and

WHEREAS, Paragraph 3 of Section 129(a) of Title 23, United States Code, as amended, requires that before FHWA may allow federal participation under Section 129 in the construction of a highway, bridge or tunnel, the state authority(ies) having jurisdiction over the highway, bridge or tunnel must enter into an agreement with FHWA that restricts the use of toll revenues from the toll facility as follows:

“(3) Limitation on Use of Revenues ... all toll revenues received from operation of the toll facility will be used first for debt service, for reasonable return on investment of any private person financing the project, and for the costs necessary for the proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation. If the State certifies annually that the tolled facility is being adequately maintained, the State may use any toll revenues in excess of amounts required under the preceding sentence for any purpose for which Federal funds may be obligated by a State under this title.”

NOW THEREFORE, the Parties hereby agree as follows:

1. KYTC, KPTIA, INDOT, and IFA agree that the toll revenues from the operation of the Toll Facility will be used first for debt service (including financing payments and the funding of reasonable reserves), for reasonable return on investment of any private person financing the Toll Facility or any portion thereof, and for the costs necessary for the proper operation and maintenance of the Toll Facility, including reconstruction, resurfacing, restoration, and rehabilitation, as provided in paragraph 3 of Section 129(a) of Title 23, United States Code, as amended. It is understood that KPTIA or KYTC, and IFA or INDOT, as the case may be, may be reimbursed, out of its State's share of the toll revenues related to the Toll Facility, for any payments made from highway transportation appropriations (whether transferred to it or received directly by it) to satisfy any of the permissible uses of toll revenues set forth in the first sentence of this paragraph, including, in the case of IFA, any payments made by IFA to the developer under the public-private partnership agreement relating to the East End Crossing that satisfy any such permissible uses of toll revenues.

2. In accordance with Section 129(a) of Title 23, United States Code, as amended, KYTC, KPTIA, INDOT, and IFA hereby certify that they can and will comply with the following requirements provided in paragraph 3 of Section 129(a), Title 23, United States Code, as amended:

KYTC, KPTIA, INDOT, and IFA agree to certify annually that the Toll Facility is being adequately maintained. Upon such certification, KYTC, KPTIA, INDOT, and IFA are entitled to use any toll revenues in excess of amounts required under paragraph 3 of Section 129(a), as amended, for any purpose for which Federal funds may be obligated by a State under Title 23, United States Code. One certification submitted by KYTC, KPTIA, INDOT, or IFA to the FHWA shall be sufficient to satisfy the requirements of this paragraph so long as each of KYTC, KPTIA, INDOT and IFA is bound by such certification.

Both the Downtown Crossing and the East End Crossing must be certified as being adequately maintained before any toll revenue from the Toll Facility may be deemed to be “excess” (for purposes of paragraph 3 of Section 129(a), as amended) and be used for any other purpose for which Federal funds may be obligated by a State under Title 23, United States Code.

3. KYTC, KPTIA, INDOT, and IFA agree, upon reasonable notice, to make all records pertaining to the Toll Facility subject to audit by the FHWA. The KYTC, KPTIA, INDOT, and IFA agree to annually audit the records of the Toll Facility for compliance with the provisions of this agreement and report the results thereof to the FHWA. One audit completed by KYTC, KPTIA, INDOT, or IFA shall be sufficient to satisfy the requirements of this section. In lieu of KYTC, KPTIA, INDOT, or IFA performing said audit, a report of an independent auditor furnished to the Parties may satisfy the requirements of this section.

4. That this Agreement (a) shall bind and benefit the Parties' successors and assigns, including any person that succeeds to the interests or obligations of a Party hereto; (b) shall be prepared as five separate originals so that each signatory will have an original Agreement; and (c) become effective upon the date of the last signatory to this Agreement.

IN WITNESS THEREOF, the parties hereto have caused this instrument to be duly executed, the day and year first written above.

COMMONWEALTH OF KENTUCKY
KENTUCKY TRANSPORTATION
CABINET

DATE: 7/20/2012

BY: 

Michael W. Hancock
Secretary

Approved as to form and legality

BY: 

Rebecca Goodman, Esq.

KENTUCKY PUBLIC
TRANSPORTATION
INFRASTRUCTURE AUTHORITY

DATE: 7/20/2012

BY: 

Michael W. Hancock
Chairperson.

Approved as to form and legality

BY: 

Rebecca Goodman, Esq.


STATE OF INDIANA
INDIANA DEPARTMENT OF
TRANSPORTATION

DATE: 7/25/2012

BY: 
Michael B. Cline
Commissioner

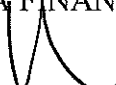
Approved as to form and legality:

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF INDIANA

BY: 
Title: Chief Counsel, Advisory Division


INDIANA FINANCE AUTHORITY

DATE: 7/25/2012

BY: 
Kendra W. York
Public Finance Director

FEDERAL HIGHWAY
ADMINISTRATION
UNITED STATES DEPARTMENT OF
TRANSPORTATION

DATE: 7/30/2012

BY: 
John R. Baxter
Associate Administrator for
Infrastructure