

**Interlocal Cooperation Agreement for the Design,
Procurement, Construction, Financing, Tolling, Operation and
Maintenance for the Louisville-Southern Indiana Ohio River Bridges Project**

This Interlocal Cooperation Agreement for the Design, Procurement, Construction, Financing, Tolling, Operation and Maintenance for the Louisville-Southern Indiana Ohio River Bridges Project ("Agreement") is made by and among the Indiana Finance Authority ("IFA"), the Kentucky Public Transportation Infrastructure Authority ("KPTIA"), the Indiana Department of Transportation ("INDOT"), and the Kentucky Transportation Cabinet ("KYTC"). IFA, INDOT, KYTC, and KPTIA are sometimes referred to individually herein as a "Party" or collectively as "the Parties". This Agreement shall, for purposes of Indiana law, constitute two separate interlocal agreements as described below and shall be effective as of _____, 2012.

Recitals

A. WHEREAS, the Louisville-Southern Indiana Ohio River Bridges Project ("Project") is a construction and reconstruction project that is located within the Louisville metropolitan planning area, which includes portions of the Commonwealth of Kentucky ("Kentucky") and the State of Indiana ("Indiana") and is composed primarily of two elements: the Downtown Crossing (as defined herein) and the East End Crossing (as defined herein);

B. WHEREAS, the Project will provide additional capacity, improve transportation efficiency and reliability, expand travel choices, and deliver urgently needed performance and enhancements to existing infrastructure in the Louisville-Southern Indiana region;

C. WHEREAS, pursuant to Kentucky Revised Statutes ("KRS") 175B.030 and Senate Joint Resolution 169 (2010), the Louisville and Southern Indiana Bridges Authority (the "Bridges Authority") was created and ratified by the Kentucky General Assembly and given the primary task of developing a financial plan for the Project, which was to be submitted to KPTIA for approval;

D. WHEREAS, the State of Indiana's participation in the Bridges Authority was authorized by the Governor of Indiana pursuant to Executive Order 09-11 dated December 3, 2009 (the "Executive Order");

E. WHEREAS, the Bridges Authority has developed and approved a financial plan for the Project in accordance with KRS 175B.030(6), and such financial plan has also been approved by KPTIA as required by KRS 175B.030(6);

F. WHEREAS, in Part I. A., 4 (16) of Kentucky House Bill 2, 2012 Extraordinary Session, signed by the Governor of Kentucky on May 2, 2012 ("Kentucky H.B. 2"), the Kentucky General Assembly stipulated that the Bridges Authority has completed the tasks and duties assigned to it by KRS 175B.030 by adopting the aforementioned financial plan and submitting that plan to KPTIA and the Kentucky General Assembly;

G. WHEREAS, in late 2011, Kentucky and Indiana, in consultation with the Bridges Authority, determined that the preferred approach for delivery of the Project was for each state to

take the lead in overseeing and financing construction of approximately one-half of the Project, with Kentucky being responsible for financing and constructing the Downtown Crossing and Indiana being responsible for financing and constructing the East End Crossing;

H. WHEREAS, this preferred approach has been memorialized in a term sheet adopted by the states pursuant to a Memorandum of Understanding signed by their respective Governors on March 5, 2012;

I. WHEREAS, the Federal Highway Administration (“FHWA”) has issued an Amended Record of Decision (“ROD”) for the Project, and FHWA has approved an Initial Financial Plan pursuant to its Financial Plans Guidance under Title 23, Section 106(h) of the United States Code;

J. WHEREAS, KPTIA is an independent de jure municipal corporation and political subdivision of Kentucky constituting a governmental agency and instrumentality of Kentucky;

K. WHEREAS, in Part I, A., 4., (16) of Kentucky H.B. 2, the Kentucky General Assembly has authorized KPTIA to participate as the developing and issuing authority for purposes of KRS Chapter 175B in the development, construction, financing, tolling, operations and maintenance of the Project, and has determined that, in carrying out its functions, powers and duties, KPTIA will be performing essential public and government functions that improve the public welfare and prosperity of the people of Kentucky;

L. WHEREAS, as the developing and issuing authority, KPTIA has the powers and authorities set forth in KRS175B.020 and KRS175B.025, including but not limited to the power to fix, revise, charge and collect tolls; to enforce rules and regulations for the use of a project; to directly or indirectly construct, reconstruct, maintain, repair, operate and regulate projects within Kentucky, or contract with another entity for these services; to acquire and hold real and personal property and rights-of-way; and to dispose of such property as KPTIA deems necessary;

M. WHEREAS, KYTC is a cabinet and public agency of Kentucky and is responsible for and has authority to direct and control the establishment, construction and maintenance of Kentucky's primary road system;

N. WHEREAS, the IFA is a body politic and corporate with authority to assist Indiana with, among other things, the financing, acquisition, building and equipping of structures for state use, including highways, toll roads and bridges;

O. WHEREAS, the Indiana General Assembly created the IFA for public purposes, and declared that the exercise by the IFA of its powers constitutes an essential governmental, public and corporate function;

P. WHEREAS, INDOT is an Indiana state agency responsible for planning, building and operating Indiana's transportation system, including the development and implementation of a strategic plan to meet the needs of Indiana and its stakeholders, and to enhance economic development;

Q. WHEREAS, IFA, KPTIA, INDOT and KYTC are each a state agency, political subdivision, public instrumentality and/or public corporate body within the meaning and usage of IC 36-1-7-1, as well as a public agency within the meaning and usage of KRS 65.230 and 65.240, and thus they possess the power and are authorized to enter into one or more interlocal agreements under their states' respective Interlocal Cooperation Acts (IC 36-1-7 et. seq. and KRS 65.210 to 65.300);

R. WHEREAS, IC 36-1-7-8 provides that, if any entities of other jurisdictions are parties to an interlocal agreement, the agreement constitutes an interstate compact;

S. WHEREAS, KYTC and KPTIA are entities of a jurisdiction other than Indiana, rendering this interlocal agreement an interstate compact pursuant to IC 36-1-7-8;

T. WHEREAS, KRS 65.290 provides that an agreement entered pursuant to Kentucky's Interlocal Cooperation Act that is between one or more public agencies of Kentucky and one or more public agencies of another state, shall have the status of an interstate compact;

U. WHEREAS, IFA and INDOT are public agencies of a state other than Kentucky, rendering this interlocal agreement an interstate compact pursuant to KRS 65.290;

V. WHEREAS, IFA, INDOT, KYTC and KPTIA are each authorized to participate in the design, procurement, construction, financing, tolling, operation and maintenance of the Project;

W. WHEREAS, KYTC has the power to utilize design-build procurement methods for the Project (Part I., A., 4., (12) of Kentucky H.B. 2);

X. WHEREAS, IFA has such powers and authorities set forth in IC 8-15.5, including the power to enter into one or more public-private agreements pursuant to which a private entity or entities will design, construct, finance, operate and maintain the East End Crossing portion of the Project, including the tolling development, tolling integration, and tolling operation functions;

Y. WHEREAS, pursuant to IC 8-15.5-1-2, IFA also has the power to authorize an operator to impose tolls for the operation of motor vehicles on all or part of the Project;

Z. WHEREAS, pursuant to IC 8-15.5-7-1, IFA may fix and revise the amounts of the tolls an operator may charge and collect for the use of any part of the Project, and pursuant to IC 9-21-3.5-10, IC 4-4-11-15, IC 4-22-2-37.1, and IC 8-15-2-17 and 17.2, *inter alia*, IFA may adopt rules and regulations regarding tolling of the Project, including toll collection and enforcement;

AA. WHEREAS, pursuant to IC 8-15.5-10-5, IFA also has the power to acquire such public or private lands as it may deem necessary for accomplishing the Project, and may sell, transfer and convey any such lands or interest therein as may be necessary or convenient for the construction and operation of any toll road project;

BB. WHEREAS, pursuant to IC 8-15.5-10-1, IFA may exercise any powers in participation or cooperation with INDOT or any other governmental entity and enter any contracts to facilitate that participation or cooperation;

CC. WHEREAS, pursuant to IC 8-15.5-5-6, INDOT has been authorized to and may perform duties and exercise powers delegated to it by the IFA with respect to the Project;

DD. WHEREAS, INDOT and IFA are entitled to tort claims protection under IC 34-13-3 et. seq. and as otherwise provided by law, and intend to share and retain such protection when acting in cooperation with the Kentucky Parties as provided herein and in the Bi-State Development Agreement;

EE. WHEREAS, KYTC and KPTIA are entitled to tort claims protection under Section 231 of the Kentucky Constitution, KRS 44.072 and as otherwise provided by law, and intend to share and retain such protection when acting in cooperation with the Indiana Parties as provided herein and in the Bi-State Development Agreement;

FF. WHEREAS, the States' Parties have exemptions from payment of state and local taxes, including but not limited to income and ad valorem property taxes, and intend to share and retain such exemptions when acting in cooperation with each other as provided herein and in the Bi-State Development Agreement;

GG. WHEREAS, the purposes of this Agreement are: (a) to establish joint boards composed of representatives of the Parties to this Agreement for each of the separate agreements contained herein under Indiana law, and on which all Parties hereto are represented; and (b) to facilitate and assist in the accomplishment of the Project through the delegation and sharing among the Parties all of their respective rights, powers, functions, duties, and privileges as necessary, useful or appropriate to develop, procure, design, construct, finance, toll, operate and maintain the Project;

HH. WHEREAS, KRS 175B.030(7)(a) contemplates that, upon the approval of the financial plan required by KRS 175B.030(6), a development agreement may be entered into establishing the duties, responsibilities, powers and authorities of the parties involved in delivering the Project;

II. WHEREAS, KRS 175B.030(7)(c) provides that, in addition to such development agreement, additional agreements may be executed, as necessary, to complete the Project;

JJ. WHEREAS, KRS 175B.025 provides that KPTIA, as the developing and issuing authority, has the power to enter into agreements as necessary to facilitate the development, construction, maintenance, operation, repair, tolling, or financing of the Project;

KK. WHEREAS, the Parties are entering the Bi-State Development Agreement, which defines their respective roles and responsibilities for the procurement, revenue-sharing, financing, constructing, tolling, operation and maintenance of the Project;

LL. WHEREAS, in connection with execution of the Bi-State Development Agreement, the performance of the Parties' obligations thereunder and the accomplishment of the Project as contemplated by the Bi-State Development Agreement, the Parties having determined it is in the best interests of the Parties, the citizens of Indiana and the citizens of Kentucky (including but not limited to those residing in the Louisville-Southern Indiana area) to enter into this Agreement to set forth the terms of such joint agreement as required by the Interlocal Cooperation Acts;

MM. WHEREAS, the Parties (as applicable) have conducted the appropriate meetings or hearings as required by law and have otherwise met all conditions precedent to entering this Agreement;

NN. WHEREAS, KYTC, KPTIA, IFA and INDOT have adopted resolutions authorizing the execution, delivery and performance of this Agreement;

OO. WHEREAS, the Secretary of KYTC has approved this Agreement;

PP. WHEREAS, this Agreement shall be submitted for approval to the Attorney General of Indiana, and the Attorney General of Kentucky;

QQ. WHEREAS, this Agreement will be filed with the County Recorder of Clark County, Indiana and with the Indiana State Board of Accounts; and

RR. WHEREAS, this Agreement will be filed with the County Clerk of Franklin County, Kentucky, and with the Secretary of State of Kentucky;

SS. WHEREAS, for purposes of Indiana law, this Agreement shall consist of two separate interlocal agreements within one document with certain common provisions---one interlocal agreement pertaining to the Joint Board and the responsibilities specified in Sections 3.01 and 3.03 hereof, and the other pertaining to the Tolling Body and the responsibilities specified in Sections 3.02 and 3.03 hereof, each of which agreements shall constitute and be considered an 'interlocal agreement' within the meaning of this Agreement and I.C. 36-1-7.

TT. Each of the Joint Board and the Tolling Body shall be considered "joint boards" under I.C. 36-1-7.

NOW, THEREFORE, in consideration of the premises and the representations, warranties, covenants and agreements contained herein, IFA, INDOT, KYTC and KPTIA agree as follows:

1.0 Purpose

In addition to the purposes set forth above in the Recitals, this Agreement provides for (a) the delegation, combination and/or sharing with the Joint Board, Tolling Body, and each of the Parties, to the extent such other Party is acting pursuant to an authorization set forth herein (or any supplement hereto) or in the Bi-State Development Agreement as applicable, of all powers that are useful, necessary, or appropriate, for the development, procurement, design, construction, financing, tolling, operation and maintenance of the Project as set forth in the Bi-

State Development Agreement (while also retaining such powers for themselves); and (b) the exercise by the Joint Board, the Tolling Body, and the Parties of the powers delegated, combined and/or shared with them herein for the benefit of the citizens of Indiana and the citizens of Kentucky (including but not limited to those residing in the Louisville-Southern Indiana area).

2.0 Definitions and Acronyms

As used in this Agreement, the following terms shall have the meanings specified below:

- 2.01 **Agreement** means this Interlocal Cooperation Agreement for the Design, Procurement, Construction, Financing, Tolling, Operation and Maintenance for the Louisville-Southern Indiana Ohio River Bridges Project.
- 2.02 **Bi-State Development Agreement** means the agreement to which IFA, INDOT, KYTC, KPTIA and the Bridges Authority are parties which defines their respective roles and responsibilities for the procurement, revenue-sharing, financing, constructing, tolling, operation and maintenance of the Project.
- 2.03 **Custody Agreement** means the agreement entered among IFA, KPTIA, or the Joint Board (on behalf of such parties), the Toll Operator, and a bank or trust company as custodian which shall provide procedures for the deposit, division and transfer of toll revenues for the benefit of IFA and KPTIA.
- 2.04 **Downtown Crossing** means the portion of the Project that involves reconstruction and operational improvements to the Kennedy Interchange where I-64, I-65 and I-71 converge on the south side of the Kennedy Bridge in downtown Louisville (Section 1), reconstruction of the Kennedy Bridge along with construction of a New Downtown Bridge just east of the Kennedy Bridge (I-65) (Section 2), and reconstruction of the I-65 approach in Indiana, including modernization to improve ingress and egress and realignment and widening of the approaches (Section 3)
- 2.05 **East End Crossing** means the portion of the Project that involves construction of a new East End Bridge (Section 5) located about eight miles from downtown Louisville connecting the Gene Snyder Freeway (KY 841) to the Lee Hamilton Highway (S.R. 265) along with the approaches in Kentucky (Section 4) and Indiana (Section 6).
- 2.06 **IFA** means Indiana Finance Authority; a body politic and corporate created by Indiana pursuant to IC 4-4-11-4, which provides that the exercise of its powers constitutes an essential, governmental, public, and corporate function; the procuring entity for East End Crossing.
- 2.07 **Indiana Parties** means IFA and INDOT.
- 2.08 **Interlocal Cooperation Acts** means KRS 65.210 et.seq. and IC 36-1-7, respectively.

- 2.09 **INDOT** means Indiana Department of Transportation, an agency of Indiana.
- 2.10 **Joint Board** means a board created by this Agreement in Section 3.01.
- 2.11 **Kentucky H.B. 2** means Kentucky House Bill 2, 2012 Extraordinary Session, signed by the Governor of Kentucky on May 2, 2012.
- 2.12 **Kentucky Parties** means KYTC and KPTIA.
- 2.13 **KPTIA** means Kentucky Public Transportation Infrastructure Authority; the developing authority and issuing authority for the Downtown Crossing.
- 2.14 **KYTC** means Kentucky Transportation Cabinet, the procuring agency for the Downtown Crossing.
- 2.15 **Project** means the Louisville-Southern Indiana Ohio River Bridges Project
- 2.16 **Project Termination** means the later of the following dates: (i) the date when the Public-Private Agreement has concluded and been satisfied on the East End Crossing; and (ii) the date when bonds issued by KPTIA or any other entity to finance or refinance the Downtown Crossing have been satisfied.
- 2.17 **Project-Wide Costs** means costs that are necessary for and that benefit the Project as a whole and that are not specifically attributable to East End Crossing or Downtown Crossing.
- 2.18 **Toll Operations Agreement** means any agreement implementing this Agreement, in part, to be entered into among a toll operator and either (i) the Parties (or certain of them representing each State) and/or (ii) the Joint Board acting on behalf of such Parties, which will identify the duties and responsibilities of the toll operator with respect to the comprehensive electronic tolling system and, the collection and deposit of toll revenues and enforcement functions. The initial Toll Operations Agreement may be contained within the Toll System Integrator Agreement.
- 2.19 **Toll Policy Agreement** means an agreement implementing this Agreement, in part, to be entered among (i) the Parties (or certain of them representing each State) and/or (ii) the Tolling Body acting on behalf of such Parties establishing a comprehensive toll policy for the Project.
- 2.20 **Toll System Integrator Agreement** means an agreement implementing this Agreement, in part, to be entered between the Parties (or certain of them representing each State and/or (ii) the Joint Board acting on behalf of such Parties) and a toll system integrator pursuant to which the toll system integrator will provide a comprehensive, electronic toll system for the Project and perform the role of the toll operator during a minimum initial period of one year.
- 2.21 **Tolling Body** means the board by that name established herein in Section 3.02.

3.0 Administration

3.01 Establishment of Joint Board

Pursuant to the Interlocal Cooperation Acts, the parties hereby establish the Joint Board composed of the following representatives of the Parties to this Agreement (or their respective designees who may serve in their stead from time to time):

Chairman of KPTIA

Public Finance Director of the State of Indiana, representative of the IFA

Secretary of KYTC

Commissioner of INDOT

The Joint Board shall administer this Agreement, and shall exercise such other powers and authorities for the purposes set forth herein and/or in the Bi-State Development Agreement (except for those responsibilities set forth in Section 3.02 and 3.03 to be carried out by the Tolling Body).

3.02 Establishment of Tolling Body

Pursuant to the Interlocal Cooperation Acts, the parties hereto establish the Tolling Body, composed of the members of the Joint Board, plus an additional representative each from the IFA and KPTIA. The Tolling Body shall be assigned responsibilities hereunder relating solely to toll policy development and the Toll Policy Agreement, as more fully described in Sections 11.4.2 and 11.5 of the Bi-State Development Agreement and in Sections 3.02 and 3.03 hereof.

3.03 Rules of Governance

The Joint Board and the Tolling Body each shall be governed by its own By-laws that it will adopt and which may be amended from time to time. The Joint Board and the Tolling Body each shall have the authority to amend its By-Laws in a manner that is not inconsistent with this Agreement or with the Bi-State Development Agreement as it may determine to be in the best interest of the Joint Board or the Tolling Body, as the case may be, and its members. The Joint Board and the Tolling Body each may choose in its respective By-laws to operate under the applicable laws of Indiana or Kentucky or both states.

4.0 Financing, Staffing, Supplying and Budget

Pursuant to the Bylaws, the Joint Board and the Tolling Body shall each have the authority and responsibility for establishing and maintaining their respective budgets for Project-Wide Costs, which, unless otherwise agreed, shall be shared equally by the Indiana Parties and the Kentucky Parties. The Joint Board and the Tolling Body each

shall have the authority to appoint or hire such consultants, agents or other persons, and to procure such supplies, as it may determine to be useful, appropriate or necessary to organize the respective operations and to implement the respective functions of the Joint Board and the Tolling Body.

5.0 Duration/Termination, Disposal of Property

5.01 The duration of this Agreement will be through and until termination of the Bi-State Development Agreement.

5.02 In the event this Agreement is terminated, the property shall be disposed of as provided in Article 5 of the Bi-State Development Agreement.

6.0 Real and Personal Property

The real and personal property shall be acquired, held and disposed of in the manner set forth in Article 5 of the Bi-State Development Agreement.

7.0 Powers, Privileges and Immunities

7.01 For the duration of this Agreement and without divesting itself of such powers, privileges and immunities, IFA delegates, combines and shares with, (i) the Joint Board, (ii) the Tolling Body and (iii) each other Party to the extent such other Party is acting pursuant to an authorization set forth herein (or any supplement hereto), in an implementing agreement described in Subsection 10.12 hereof, or in the Bi-State Development Agreement as applicable, the following powers, privileges and immunities, but only to the extent necessary, useful or appropriate for the respective duties of each for developing, procuring, designing, constructing, financing, tolling, operating and maintaining the Project in accordance with the purposes and terms set forth herein and the Bi-State Development Agreement:

7.01.01 to assist with the financing, acquisition, building and equipping of structures for state use, including highways, toll roads and bridges;

7.01.02 to enter contracts for the design, construction, financing, operation and maintenance of public works in Indiana;

7.01.03 to impose, fix and revise amounts, and collect user fees for use of any part of a toll road;

7.01.04 to acquire, sell, transfer and/or convey such public or private lands in Indiana, or any interest therein, as it deems necessary or convenient for accomplishing a toll road project;

7.01.05 to enter into one or more interlocal agreements under Indiana's Interlocal Cooperation Act (IC 36-1-7 et. seq.);

- 7.01.06 to participate in the design, procurement, construction, financing, tolling, operation and maintenance of the Project;
 - 7.01.07 to exercise powers and authorities set forth in IC 8-15.5, including the power to enter into one or more public-private agreements pursuant to which a private entity or entities will design, construct, finance, operate and maintain the Project;
 - 7.01.08 pursuant to IC 8-15.5-1-2, to authorize an operator to impose tolls for the operation of motor vehicles on all or part of the Project;
 - 7.01.09 pursuant to IC 8-15.5-7-1, to fix and revise the amounts of the tolls an operator may charge and collect for the use of any part of the Project;
 - 7.01.10 to acquire such public or private lands as IFA may deem necessary for accomplishing the Project, and sell, transfer and convey any such lands or interest therein as may be necessary or convenient for the construction and operation of a toll road project;
 - 7.01.11 pursuant to IC 8-15-2-17.2(a)(10), to establish enforcement procedures and make assessment for the failure to pay required tolls;
 - 7.01.12 tort claims protection under IC 34-13-3 et. seq. and as otherwise provided by law;
 - 7.01.13 pursuant to IC 8-15.5-10-1, to exercise any powers in participation or cooperation with INDOT or any other governmental entity and enter any contracts to facilitate that participation or cooperation;
 - 7.01.14 to be exempt from certain state and local taxes, including income and ad valorem property taxes; and
 - 7.01.15 to exercise any other of its powers, rights, privileges and immunities consistent with the purposes set forth herein, including those identified in the Recitals.
- 7.02 For the duration of this Agreement and without divesting itself of such powers, privileges and immunities, INDOT delegates, combines and shares with, (i) the Joint Board, (ii) the Tolling Body and (iii) each other Party to the extent such other Party is acting pursuant to an authorization set forth herein (or any supplement hereto), in an implementing agreement described in Subsection 10.12 hereof, or in the Bi-State Development Agreement as applicable, the following powers, privileges and immunities, but only to the extent necessary, useful or appropriate for their respective responsibilities for developing, procuring, designing, constructing, financing, tolling, operating and maintaining the Project

in accordance with the purposes and terms set forth herein and the Bi-State Development Agreement:

- 7.02.01 To direct and control the establishment, construction and maintenance of that portion of Indiana's primary road system which is within the Project;
 - 7.02.02 to enter contracts for the design, construction, financing, operation and maintenance of public works in Indiana;
 - 7.02.03 to enter into one or more interlocal agreements under Indiana's Interlocal Cooperation Act (IC 36-1-7 et. seq.);
 - 7.02.04 pursuant to IC 8-15.5-5-6, to perform duties and exercise powers delegated to it by the IFA with respect to the Project;
 - 7.02.05 to participate in the design, procurement, construction, financing, tolling, operation and maintenance of the Project;
 - 7.02.06 tort claims protection under IC 34-13-3 et. seq. and as otherwise provided by law; and
 - 7.02.07 to be exempt from certain state and local taxes, including income and ad valorem property taxes; and
 - 7.02.08 to exercise any other of its powers, rights, privileges and immunities consistent with the purposes set forth herein, including those identified in the Recitals.
- 7.03 For the duration of this Agreement and without divesting itself of such powers, privileges and immunities, KYTC delegates, combines and shares with, (i) the Joint Board, (ii) the Tolling Body and (iii) each other Party to the extent such other Party is acting pursuant to an authorization set forth herein (or in any supplement hereto), in an implementing agreement described in Subsection 10.12 hereof, or in the Bi-State Development Agreement as applicable, the following powers, privileges and immunities, but only to the extent necessary, useful or appropriate for their respective responsibilities for developing, procuring, designing, constructing, financing, tolling, operating and maintaining the Project in accordance with the purposes and terms set forth herein and the Bi-State Development Agreement:
- 7.03.01 to enter contracts for the design, construction, financing, operation and maintenance of public works in Kentucky;
 - 7.03.02 to utilize design-build procurement methods for the Project pursuant to Part I, A., 4., (12) of Kentucky H.B. 2, notwithstanding any conflicting provisions of KRS Chapters 45A, 176 and 177;

- 7.03.03 to direct and control the establishment, construction and maintenance of that portion of Kentucky's primary road system which is within the Project;
 - 7.03.04 to enter into one or more interlocal agreements under Kentucky's Interlocal Cooperation Act (KRS 65.210 to 65.300.);
 - 7.03.05 to participate in the design, procurement, construction, financing, tolling, operation and maintenance of the Project,
 - 7.03.06 tort claims protection under Section 231 of the Kentucky Constitution, KRS 44.072 and as otherwise provided by law;
 - 7.03.07 pursuant to KRS 175B.030, to enter into a development agreement establishing the duties, responsibilities, powers and authorities of the parties involved in the delivery of the Project; and
 - 7.03.08 to be exempt from certain state and local taxes, including income and ad valorem property taxes; and
 - 7.03.09 to exercise any other of its powers, rights, privileges and immunities consistent with the purposes set forth herein, including those identified in the Recitals.
- 7.04 For the duration of this Agreement and without divesting itself of such powers, privileges and immunities, KPTIA delegates, combines and shares with, (i) the Joint Board, (ii) the Tolling Body and (iii) each other Party to the extent such other Party is acting pursuant to an authorization set forth herein (or any supplement hereto), in an implementing agreement described in Subsection 10.12 hereof, or in the Bi-State Development Agreement as applicable, the following powers, privileges and immunities, but only to the extent necessary, useful or appropriate for their respective responsibilities for developing, procuring, designing, constructing, financing, tolling, operating and maintaining the Project in accordance with the purposes and terms set forth herein and the Bi-State Development Agreement:
- 7.04.01 to enter contracts for the design, construction, financing, operation and maintenance of public works in Kentucky;
 - 7.04.02 to fix, revise, charge and collect tolls;
 - 7.04.03 to enforce rules and regulations for the use of the Project;
 - 7.04.04 to acquire, hold and dispose of real and personal property and rights-of-way in Kentucky;

- 7.04.05 to directly or indirectly construct, reconstruct, maintain, repair, operate and regulate projects within Kentucky, or contract with another entity for these services;
 - 7.04.06 such other powers it has as the developing and issuing authority under KRS 175B.020, KRS 175.025 or otherwise, consistent with the purposes set forth herein;
 - 7.04.07 to enter into one or more interlocal agreements under Kentucky's Interlocal Cooperation Act (KRS 65.210 to 65.300);
 - 7.04.08 to participate in the design, procurement, construction, financing, tolling, operation and maintenance of the Project;
 - 7.04.09 tort claims protection under Section 231 of the Kentucky Constitution, KRS 44.072 and as otherwise provided by law,
 - 7.04.10 pursuant to KRS 175B.025 and 175B.030, to enter into such additional agreements necessary to facilitate the development, construction, maintenance, operation, repair, tolling, or financing of the Project; and
 - 7.04.11 to be exempt from certain state and local taxes, including income and ad valorem property taxes; and
 - 7.04.12 to exercise any other of its powers, rights, privileges and immunities consistent with the purposes set forth herein, including those identified in the Recitals.
- 7.05 The Parties shall each contribute and share the interlocal powers described herein, as well as such powers incidental thereto and necessarily implied therefrom in order to accomplish the Project and the purposes of the Agreement, an implementing agreement described in Subsection 10.12 hereof, and the Bi-State Development Agreement. Notwithstanding the foregoing delegations of powers, the Parties agree that the Bi-State Development Agreement assigns and allocates specific duties and responsibilities among the Parties and to the Joint Board and the Tolling Body for the development, construction, maintenance, operation, repair, tolling, or financing of the Project. To the extent that the Bi-State Development Agreement contains provisions assigning or allocating such duties and responsibilities to particular Parties, the provisions of the Bi-State Development Agreement shall control over the more general delegations of powers set forth herein.
- 7.06 The States' Parties have exemptions from the payment of state and taxes, including but not limited to income and ad valorem property taxes.

- 7.07 To the fullest extent permitted by law, the States' Parties have entered into this Agreement as representatives of their respective sovereign states. The Indiana Parties shall be entitled to assert sovereign immunity and/or all other applicable protections against liability in Kentucky courts to the same extent Kentucky is able to assert sovereign immunity and all other such applicable protections against liability in Kentucky courts, and the Kentucky Parties shall be entitled to assert sovereign immunity and all other applicable protections against liability in Indiana courts to the same extent Indiana is able to assert sovereign immunity and/or all other such applicable protections against liability in Indiana courts.
- 7.08 Each Party has taken all necessary actions and received necessary approvals and consents to perform its obligations hereunder to delegate all powers as described herein.
- 7.09 Each Party confirms it has taken no action, nor has it entered any agreement, that would conflict with the rights delegated to any other Party hereunder.

8.0 Amendment and Termination

8.01 Amendment

This Agreement may only be changed, amended, modified, appended to or supplemented by a writing consented to as a change, amendment, modification, appendix or supplement to this Agreement by all of the Parties hereto.

8.02 Termination

8.02.01 This Agreement will terminate only upon termination of the Bi-State Development Agreement.

8.02.02 The following provisions shall survive termination of this Agreement: Subsection 5.02; Articles 9.0 and 10.0.

9.0 Dispute Resolution

Any dispute or claim arising out of or relating to this Agreement shall be governed by the dispute resolution procedures in the Bi-State Development Agreement.

10.0 General Matters

10.01 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. An electronically transmitted duplicate signature of any Party shall be considered to have the same binding effect as an original signature.

10.02 Severability

If any provision of this 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 Agreement or materially affect the ability of the Parties to achieve the purpose of this Agreement.

10.03 No Third Party Beneficiaries

This 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 Agreement shall be deemed to confer upon other persons any remedy, claim, reimbursement, cause of action or other right.

10.04 Agreement and Sharing of Power

This Agreement is intended to be an interlocal agreement or contract pursuant to the Interlocal Cooperation Acts, in which the Parties have undertaken to provide that which is required by the Interlocal Cooperation Acts and it is intended that thereby the Parties shall share those powers as set forth herein. If and to the extent this Agreement is not such an interlocal agreement or contract or does not effectively delegate and share such powers, this Agreement shall be deemed to include such terms not otherwise included herein and to exclude such terms not otherwise excluded herefrom, as are necessary to cause this Agreement to be deemed a valid interlocal agreement or contract under Indiana and Kentucky law and to delegate, combine and share such powers pursuant to the laws of those states.

10.05 Reasonable Efforts; Cooperation

Subject to the terms and conditions of this Agreement, each Party will use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under the applicable laws and regulations to consummate the transactions contemplated by this Agreement. In addition, the Parties each agree to cooperate and take such actions, including any necessary amendments hereto, as may be required in the judgment of the Joint Board, or the Tolling Body as circumstances require for the Joint Board, the Tolling Body or any of the Parties hereto to obtain all necessary qualifications and approvals, including any that may be required by any state or federal agencies, and to execute and deliver such other documents, certificates, agreements and/or other writings and to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously the transactions contemplated by this Agreement, and from time to time, upon the request of another Party to

this Agreement and without further consideration, to execute, acknowledge and deliver in proper form any further instruments, and take such other action as the other Parties may reasonably require, in order to effectively carry out the intent of this Agreement, including without limitation, the delegation of any further powers that may be necessary, useful or appropriate to permit the Joint Board, the Tolling Body or the Parties to carry out their purposes.

10.06 Relationship of the Parties

The Parties are independent parties and nothing contained herein shall be deemed to create a partnership, joint venture, or employer employee relationship for purposes of federal or state tax law, or otherwise. Notwithstanding the above, the Parties, the Tolling Body and the Joint Board, when exercising any powers delegated herein or in the Bi-State Development Agreement shall be exercising the sovereign powers of each State in the fulfillment of the Project, this Agreement and the Bi-State Development Agreement within the meaning of paragraphs AA and BB of the Recitals.

10.07 Immunity of Officers, Directors, Members, Employees and Agents

No recourse shall be had for any claim based upon any obligation in this Agreement against any past, present or future official, officer, director, member, employee or agent of the Parties, as such, under any rule of law or equity, statute or constitution.

10.08 No Assignment

Except as set forth herein, no party may sell, assign, pledge or otherwise transfer any of its rights or benefits under this Agreement to any other person, without the written consent of all other Parties, and any purported sale, assignment, pledge or other transfer without such consent shall be null and void.

10.09 Notice

10.09.01 Any notice required by this Agreement shall be made to the other Parties at the following addresses:

As to KPTIA: Michael W. Hancock
Chairman, KPTIA
Kentucky Transportation Cabinet
200 Mero Street
Frankfort, KY 40622

With a copy to: Todd Shipp
Office of Legal Services
Kentucky Transportation Cabinet

200 Mero Street
Frankfort, KY 40622
Todd.shipp@ky.gov

As to KYTC:

Michael W. Hancock
Secretary
Kentucky Transportation Cabinet
200 Mero Street
Frankfort, KY 40622

With a copy to:

Rebecca Goodman
Executive Director
Office of Legal Services
Kentucky Transportation Cabinet
200 Mero Street
Frankfort, KY 40622
rebecca.goodman@ky.gov

and

Timothy J. Hagerty
Frost Brown Todd LLC
400 West Market St., Suite 3200
Louisville, KY 40202
thagerty@fbtlaw.com

As to IFA:

Kendra W. York
Public Finance Director of the State of Indiana
Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, Indiana 46204
kyork@ifa.in.gov

With a copy to:

James McGoff
General Counsel
Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, Indiana 46204
jmcgoff@ifa.in.gov

and

Brenda Horn
ICE MILLER LLP
One American Square, Suite 2900
Indianapolis, IN 46282-0200
Brenda.Horn@icemiller.com

and

Scott Brinkman
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202-2828
scott.brinkman@skofirm.com

As to INDOT:

Michael B. Cline
Commissioner
Indiana Department of Transportation
100 North Senate Avenue, IGCN 731
Indianapolis IN 46204-2216

With a copy to:

Mark Ahearn
Chief Legal Counsel and Deputy Commissioner
Indiana Department of Transportation
100 North Senate Avenue, IGCN 755
Indianapolis IN 46204
mahearn@indot.in.gov

and

William Malley
Perkins Coie, LLP
700 13th Street, NW, Suite 600
Washington, D.C. 20005-3960
WMalley@perkinscoie.com

10.09.02 Notice shall be by hand delivery, overnight delivery or electronic mail. If notice is sent by electronic mail, a copy shall be sent by overnight delivery or First Class U.S. Mail the same day.

10.10 Entire Agreement

Except as otherwise provided herein or in the Bi-State Development Agreement, this Agreement sets forth the entire understanding and agreement of the Parties hereto 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.

10.11 Relation to Bi-State Development Agreement

This Agreement shall be deemed to be an exhibit to the Bi-State Development Agreement.

10.12 Future Implementing Agreements

Pursuant to and in furtherance of the powers delegated herein, the Parties anticipate entering future agreements, as necessary, to implement the purposes of this Agreement and the Bi-State Development Agreement, including Toll System Integrator Agreement, Toll Operations Agreements, and Ground Lease Agreements, all with respect to the agreements herein related to the Joint Board, and the Toll Policy Agreement with respect to the Tolling Body.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the respective dates set forth below.

INDIANA FINANCE AUTHORITY

BY: _____

Adam M. Horst, Chairman

Date _____

BY: _____

Kendra W. York
Public Finance Director of the State of Indiana

Date _____

INDIANA DEPARTMENT OF TRANSPORTATION

BY: _____

Michael B. Cline, Commissioner

Date _____

APPROVED AS TO FORM AND SUBSTANCE

STATE BUDGET AGENCY

By: _____

Adams M. Horst, State Budget Director

Date _____

APPROVED

ATTORNEY GENERAL OF THE STATE
OF INDIANA

By: _____

Gregory F. Zoeller, Attorney General

Date _____

APPROVED

GOVERNOR OF THE STATE OF INDIANA

By: _____

For Mitchell E. Daniels, Jr., Governor

Date _____

KENTUCKY TRANSPORTATION CABINET

BY: _____

Michael W. Hancock, P.E.
Secretary of the Transportation Cabinet

Date _____

APPROVED AS TO FORM AND LEGALITY

BY: _____

Rebecca Goodman
Executive Director of the Office of Legal Services
Transportation Cabinet

Date _____

KENTUCKY PUBLIC TRANSPORTATION INFRASTRUCTURE AUTHORITY

BY: _____

Lori Flanery
Vice Chair of KPTIA

Date _____

APPROVED AS TO FORM AND LEGALITY

BY: _____

J. Todd Shipp
Special Assistant of the Office of Legal Services
Transportation Cabinet

Date _____

APPROVED

ATTORNEY GENERAL OF THE COMMONWEALTH OF
KENTUCKY

By: _____

Jack Conway, Attorney General

Date _____