

BI-STATE DEVELOPMENT AGREEMENT
CONCERNING
THE LOUISVILLE SOUTHERN INDIANA OHIO RIVER BRIDGES PROJECT

TABLE OF CONTENTS

	<u>Page</u>
Article 1.	Definitions of Terms and List of Acronyms Used.....4
Article 2.	Joint Board; Tolling Body; Interlocal Agreement13
2.1.	Creation of Joint Board and Tolling Body.....13
2.2.	Powers and Authorities13
2.3.	Duties and Responsibilities.....13
2.4.	Rules of Governance.....13
2.5.	Duration13
2.6.	Purpose.....14
2.7.	Financing/Staffing/Supplying and Budget.....14
2.8.	Termination.....14
2.9.	Administration14
2.10.	Real and Personal Property.....14
2.11.	Approvals.....15
2.12.	Relationship of the Parties15
2.13.	Sovereign Immunity and Statutory Limitations on Tort Damages.....15
Article 3.	Bridges Authority.....16
Article 4.	Bi-State Management Team and Project Management Plan16
Article 5.	Acquisition of Property, Utility Relocation and Project Termination Property Transfers.....16
5.1.	Property Interests - East End Crossing16
5.2.	Property Interests - Downtown Crossing.....18
5.3.	Utility Relocation.....20
5.4.	Termination of Ground Leases21
5.5.	Taxes21
Article 6.	Schedule22
Article 7.	Budget.....22
Article 8.	Financing.....23
8.1.	Overview of Project Financing23
8.2.	Financing of East End Crossing.....25
8.3.	Financing of Downtown Crossing26
8.4.	Path to Implementation28
Article 9.	Environmental/Other Federal Requirements29
Article 10.	Project Scope, Procurement, Design Standards and Construction30
10.1.	Description of Project30
10.2.	Coordination of Activities.....30
10.3.	Procurement of Project Construction.....31
10.4.	Design Standards and Construction Specifications32
10.5.	Design/Change Order Review – Sections 3 and 4.....33

10.6.	Changes in Scope of Work and Change Orders.....	34
10.7.	Unforeseen Conditions.....	34
10.8.	Construction Observation	34
10.9.	Inspections and Inspection Reports	35
10.10.	Substantial Completion.....	35
10.11.	Final Acceptance.....	35
10.12.	DBE Goals	36
10.13.	Federal Highway Administration Requirements	36
10.14.	Permitting.....	36
10.15.	Insurance	36
10.16.	As-Built Drawings	37
10.17.	Ownership/License of Design and Construction Documents	37
10.18.	Prevailing Wage Law	37
Article 11.	Tolling of the Project	37
11.1.	Agreement to Toll; Federal Toll Agreements.....	37
11.2.	Commencement of Tolling Operations.....	38
11.3.	Revenue Share; Toll Covenants; Disposition of Toll Revenues.....	38
11.4.	Tolling Framework and Parameters; Further Agreements.....	39
11.5.	Toll Policy Agreement; Terms.....	43
11.6.	Toll System Integrator Agreement; Terms	44
11.7.	Toll Operations Agreement; Terms	45
11.8.	Custody Agreement and Application of Toll Revenues; Toll System Collection Expenses.....	46
11.9.	Rulemaking.....	47
11.10.	Interpretive Principles.....	47
11.11.	Duration of Tolling	47
Article 12.	Operations and Maintenance.....	48
12.1.	Traffic Plan During Construction	48
12.2.	Operations and Maintenance Prior to Project Termination	48
12.3.	Operations and Maintenance After Project Termination	49
Article 13.	Representations and Warranties.....	49
Article 14.	Termination/Alternative Procurements.....	51
Article 15.	Restoration and Force Majeure	52
Article 16.	General Matters.....	53
16.1.	Mutual Consents	53
16.2.	Access to Records	53
16.3.	Federal Project Number	53
16.4.	Approval of Public Statements or Press Releases.....	53
16.5.	Confidentiality	53
16.6.	Dispute Resolution.....	54
16.7.	Third Party Claims	54
16.8.	Indemnification/ Third Party Beneficiary Rights	54
16.9.	Liability Between the Parties	55

16.10.	Amendment and Assignment.....	56
16.11.	Notice to Parties.....	56
16.12.	Reporting Requirements	57
16.13.	State Sovereignty	57
16.14.	Organizational Conflicts of Interest.....	58
16.15.	Noncollusion.....	58
16.16.	Severability	58
16.17.	No Third Party Beneficiaries	59
16.18.	Limitation on Recourse.....	59
16.19.	Entire Understanding	59
16.20.	Counterparts.....	59
16.21.	Non-waiver of Rights.....	59
16.22.	Cooperation amongst the Parties	59
16.23.	Time is of the Essence	60
16.24.	Continued Access to Consultants and Advisors	60
16.25.	Term.....	60
APPENDIX A	The Downtown Crossing (Sections 1, 2 and 3).....	1
APPENDIX B	Downtown Crossing Final Acceptance	3
APPENDIX C	Downtown Crossing Substantial Completion	5
APPENDIX D	The East End Crossing (Sections 4, 5 And 6).....	6
APPENDIX E	East End Crossing Final Acceptance.....	7
APPENDIX F	East End Crossing Substantial Completion	9
APPENDIX G	Insurance Requirements	11
APPENDIX H	Form of Interlocal Agreement.....	12
APPENDIX I	Existing Litigation and Sharing of Fees	13

BI-STATE DEVELOPMENT AGREEMENT

CONCERNING

THE LOUISVILLE SOUTHERN INDIANA OHIO RIVER BRIDGES PROJECT

This Bi-State Development Agreement (hereinafter “Agreement”) is made by and among the State of Indiana (hereinafter “Indiana”), by and through the Indiana Department of Transportation (hereinafter “INDOT”), the Commonwealth of Kentucky (hereinafter “Kentucky”), by and through the Kentucky Transportation Cabinet (hereinafter “KYTC”), the Indiana Finance Authority (hereinafter “IFA”), the Kentucky Public Transportation Infrastructure Authority (hereinafter “KPTIA”), and the Louisville and Southern Indiana Bridges Authority (hereinafter “Bridges Authority”). IFA, INDOT, KYTC, KPTIA and the Bridges Authority are sometimes referred to individually herein as a “Party,” or collectively as “the Parties.” IFA, INDOT, KYTC, and KPTIA are sometimes referred to individually herein as a “State’s Party,” or collectively as the “States’ Parties.” This Agreement shall be effective as of _____, 2012.

WHEREAS, Kentucky and Indiana have agreed to pursue jointly certain needed improvements to better connect Louisville, Kentucky with Southern Indiana via Ohio River crossings;

WHEREAS, this joint pursuit resulted in the Federal Highway Administration (“FHWA”) issuing a Record of Decision in September of 2003, officially approving the Louisville-Southern Indiana Ohio River Bridges Project (“Project”);

WHEREAS, the Project is a construction and reconstruction project that is located within a metropolitan planning area that connects Kentucky and Indiana and is composed primarily of two elements: the Downtown Crossing (hereinafter defined), and the East End Crossing (hereinafter defined);

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

WHEREAS, in 2008, the FHWA approved an Initial Financial Plan and a Project Management Plan (“PMP”, hereinafter defined) for the Project;

WHEREAS, in 2011, at the direction of the Governor of Kentucky and the Governor of Indiana, the Parties identified certain design adjustments to reduce the cost while still meeting the purpose and needs of the Project;

WHEREAS, on November 10, 2011 and on April 20, 2012, the FHWA approved a Supplemental Draft Environmental Impact Statement and a Supplemental Final Environmental Impact Statement, respectively, which in each case evaluated, among other alternatives, certain cost-saving design adjustments and electronic tolling of the Project’s bridge facilities;

WHEREAS, a revised Record of Decision (“ROD”) for the Project was issued by FHWA on June 20, 2012;

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

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”);

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);

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;

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

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 roughly 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;

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 and dated March 5, 2012 (the “MOU”);

WHEREAS, KPTIA, KYTC, IFA, and INDOT are authorized to participate in the Project;

WHEREAS, KPTIA is an independent de jure municipal corporation and political subdivision of Kentucky and has authority to participate in the construction, operation, financing and oversight of significant transportation projects connecting Kentucky and Indiana, and to review, approve and monitor all such projects, and to assist with the operation, financing and management thereof;

WHEREAS, KPTIA is authorized pursuant to Part I, A., 4., (16) of Kentucky H.B. 2 to participate as the developing and issuing authority as described in KRS 175B.025 in the development, construction, financing and operation and maintenance of the Downtown Crossing;

WHEREAS, KYTC is a department and 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;

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

WHEREAS, KYTC has proposed it will select and enter a design-build agreement with a design-build team that will design and build the Downtown Crossing as generally described in the term sheet attached to the MOU;

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

WHEREAS, IFA has been authorized by statute to solicit, evaluate, negotiate, enter into, and administer agreements for the Project;

WHEREAS, IFA has proposed it will select and enter into an agreement or agreements with one or more private sector entities that will develop, design, build, finance, and, for certain components, operate and maintain the East End Crossing through an availability payment concession, as generally described in the term sheet attached to the MOU;

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;

WHEREAS, INDOT is authorized to and may perform duties and exercise powers delegated to it by IFA with respect to the Project, and may otherwise participate in the Project;

WHEREAS, IFA, KPTIA, INDOT and KYTC are entities described in IC 36-1-7-1, as well as public agencies within the meaning and usage of KRS 65.230 and 65.240, and thus possess the power and are authorized to enter into one or more interlocal agreements;

WHEREAS, the Ohio River bridge structures will ultimately be owned 50% by Indiana and 50% by Kentucky), consistent with the historic ownership of bridge structures between the two States, and ground leases of real property owned by Indiana and Kentucky will be entered into as appropriate and necessary in order to accomplish the purposes of the Project, in accordance with the terms set forth in this Agreement;

WHEREAS, a Bi-State Management Team ("BSMT"), composed of members from KYTC and INDOT, with representatives of the Federal Highway Administration ("FHWA") as

non-voting, ex-officio members, has participated in the coordination of project wide activities to date, and has created and continues to update the PMP;

WHEREAS the BSMT is to provide oversight by monitoring and reporting as to the progress of the Project;

WHEREAS, the Transportation Policy Committee of the Louisville (KY-IN) Metropolitan Planning Organization, which carries out key policy functions and directs the transportation planning process for the greater Louisville (KY-IN) Metropolitan Planning Area, has approved the Project for inclusion in its long-range metropolitan transportation plan (*Horizon 2030*) based on a financial demonstration for the Project adopted in 2010 and updated in 2011;

WHEREAS, this Agreement, as well as the obligations created hereunder or described herein, do not constitute a debt, liability or obligation of Indiana or Kentucky, or a pledge or lending of the faith and credit of either state;

WHEREAS, this Project is a public improvement, and this Agreement relates to the location, construction, and financing of this public improvement within the meaning of IC 34-6-2-124 and IC 34-13-5, "Public Lawsuits for Testing Public Improvements of Municipal Corporations";

WHEREAS, the Parties desire to document and define the respective roles and responsibilities for the procurement, revenue-sharing, financing, designing, constructing, tolling, operation and maintenance of the Project; and

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;

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the Parties agree as follow:

Article 1. Definitions of Terms and List of Acronyms Used

- 1.1. Addendum means an addendum to this Agreement entered by the States' Parties.
- 1.2. Availability Payment Structure means the procurement provided for in Subsection 8.2.
- 1.3. Bridges Authority means the Louisville and Southern Indiana Bridges Authority and/or any successor entity.
- 1.4. BSMT means Bi-State Management Team, a team composed of representatives from KYTC and INDOT, as well as FHWA as a non-voting, ex-officio member.
- 1.5. Current Version of the Design-Build Agreement means the version of the Design-Build Agreement posted on the website of the Kentucky Transportation Cabinet as of the date hereof under the heading Design-Build Agreement.

- 1.6. Current Version of the Public-Private Agreement means the version of the Public-Private Agreement posted on the website of the Indiana Finance Authority on October 5, 2012 under the heading “Requests for Proposals Ohio River Bridges RFP Addenda – RFP Addendum No. 5.
- 1.7. Custody Agreement means the agreement entered by and among the Toll Operator and the States’ Parties (or certain of them representing each state) and/or the Joint Board on behalf of the States’ Parties, as described in Subsection 11.8.1 herein.
- 1.8. DBE means the Disadvantaged Business Enterprises program of the U.S. Department of Transportation.
- 1.9. Design-Build Agreement means the agreement or agreements entered between KYTC and the Design-Build Team for development of the Downtown Crossing. The term also includes design-bid-build agreements.
- 1.10. Design-Build Team means the design-builder(s) for development of the Downtown Crossing selected by KYTC as described in Subsection 10.3.1 herein.
- 1.11. Developer means the private entity or entities selected by IFA to develop the East End Crossing as described in Subsection 10.3.2 herein.
- 1.12. 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), all as more fully described in Appendix A.
- 1.13. Downtown Crossing Bridges means, collectively, (i) the Kennedy Bridge structure and (ii) the New Downtown Bridge, each located in Section 2.
- 1.14. Downtown Crossing Final Acceptance means that all of the conditions to Formal Acceptance have been met as defined and described in Sections 7.6 and 8.6 of the Current Version of the Design-Build Agreement (a copy of which Sections are attached as **Appendix B**). No revision to Sections 7.6 and 8.6, as reflected in **Appendix B**, that affects Section 3 of the Downtown Crossing shall be made unless agreed to by the States’ Parties.
- 1.15. Downtown Crossing Substantial Completion means that all of the conditions to Substantial Completion have been met as defined and described in Section 8.1 of the Current Version of the Design-Build Agreement (a copy of which Section is attached as **Appendix C**). No revision to Section 8.1, as reflected in **Appendix C**, that affects Section 3 of the Downtown Crossing shall be made unless agreed to by the States’ Parties.

- 1.16. Downtown Crossing TIFIA Loan means any TIFIA loan to Kentucky Parties used to fund a portion of the costs of the Downtown Crossing.
- 1.17. Downtown Property means collectively the Kentucky Downtown Property and the Indiana Downtown Property.
- 1.18. DSRF means the debt service reserve fund to be established in the Kentucky Revenue Bond Indenture as described more fully in Subsection 8.3.5.1.
- 1.19. DSRF Replenishment Guarantee means the agreement of KYTC to replenish and restore the DSRF as provided in Subsection 8.3.5.1.
- 1.20. 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), all as more fully described in **Appendix D**.
- 1.21. East End Crossing Bridge means the new bridge structure to be constructed in Section 5.
- 1.22. East End Crossing Final Acceptance means that all of the conditions to Final Acceptance have been met as defined and described in Section 5.8.5.2 of the Current Version of the Public-Private Agreement (a copy of which is attached as **Appendix E**). No revision Section 5.8.5.2, as reflected in **Appendix E**, that affects Section 4 of the East End Crossing shall be made unless agreed to by the States' Parties.
- 1.23. East End Crossing Substantial Completion means that all of the conditions to DB Substantial Completion have been met as defined and described in Sections 5.8.2.1 and 5.8.2.2 of the Current Version of the Public-Private Agreement (a copy of which Sections are attached as **Appendix F**). No revision to Sections 5.8.2.1 and 5.8.2.2, as reflected in **Appendix F**, that affects Section 4 of the East End Crossing shall be made unless agreed to by the States' Parties.
- 1.24. East End Crossing TIFIA Loan means any TIFIA loan to the Indiana Parties or the Developer of the East End Crossing used to fund a portion of the costs of the East End Crossing.
- 1.25. East End Property means collectively the Kentucky East End Property and the Indiana East End Property.
- 1.26. Environmental Litigation means any lawsuit that is filed in a court of competent jurisdiction and seeks to overturn, set aside, enjoin, or otherwise inhibit the implementation of a federal, state, or local agency's approval of the Project based on the agency's alleged non-compliance with applicable laws, including but not limited to: the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*; Section 4(f) of the Department of Transportation Act, 23 U.S.C. § 138; and 49

U.S.C. § 303; the National Historic Preservation Act, 16 U.S.C. § 470 *et seq.*; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*; and other federal, state, or local laws.

- 1.27. FHWA means the Federal Highway Administration.
- 1.28. Force Majeure Event means the occurrence of any of the following events that materially and adversely affects performance of a State's Party's obligations, provided that such events (or the effects of such events) are not caused, and could not have been avoided by the exercise of caution, due diligence, or reasonable efforts, by such State's Party or its representatives: (a) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover; (b) any act of terrorism, riot, insurrection, civil commotion or sabotage that causes direct physical damage to the East End Crossing or the Downtown Crossing; (c) nuclear explosion that causes direct physical damage to the East End Crossing or Downtown Crossing, or radioactive contamination of the East End Crossing or Downtown Crossing, (d) flood, fire, explosion, gradual inundation caused by natural events, a tornado with an enhanced Fujita Score Rating of EF2, sinkhole caused by natural events, or landslide caused by natural events, in each case directly impacting the physical improvements of, or the performance of work at, the East End Crossing or the Downtown Crossing, and (e) a seismic event causing trembling or shaking movement of the earth's surface that produces ground motions exceeding the design requirements and which directly impacts or causes damage to the physical improvements of the East End Crossing or the Downtown Crossing.
- 1.29. General O&M Expenses means expenses for the Kentucky O&M Portion (other than Toll System Collection Expenses).
- 1.30. General O&M Reserve Fund means the fund by that name to be established under the Kentucky Revenue Bond Indenture and described in Subsection 8.3.5.2.
- 1.31. 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.
- 1.32. Indemnitors means the States' Parties' respective nonparty consultants, designers, developers, contractors, and other professionals (including the Developer and the Design-Build Team) involved in the design, construction, and O&M on the Project.
- 1.33. Indiana Access Rights shall have the meaning as described in Subsection 5.2.3.
- 1.34. Indiana Downtown Property means all real and personal property interests, including but not limited to such easements, licenses, leases or property rights, in

whatever form reasonably necessary to construct Section 3 of the Downtown Crossing.

- 1.35. Indiana Downtown Property Ground Lease means the ground lease described in Subsection 5.2.2.2.
- 1.36. Indiana East End Property means all real and personal property interests, including but not limited to such easements, licenses, leases or property rights, in whatever form reasonably necessary to construct Section 6 of the East End Crossing.
- 1.37. Indiana O&M Portion means Sections 3, 4B, 5, and 6.
- 1.38. Indiana Parties means IFA and INDOT.
- 1.39. Indiana Revenue Share means 50% of all Toll Revenues, subject to the adjustment described in Subsection 8.1.9.
- 1.40. INDOT means Indiana Department of Transportation, an agency of Indiana.
- 1.41. Interlocal Agreement means an agreement or agreements entered among IFA, INDOT, KPTIA and KYTC for the joint undertaking of facilitating the accomplishment of the Project.
- 1.42. Interstate Standards means standards required by FHWA for interstate construction.
- 1.43. Interlocal Statutes means IC 36-1-7 *et seq.* and KRS 65.210 to 65.300.
- 1.44. Joint Board means a board that will be created by the Interlocal Agreement that is composed of one representative of each of the States' Parties (or their successor entities) for the joint undertaking of facilitating the accomplishment of the Project.
- 1.45. Kennedy Bridge means the Kennedy Memorial Bridge, the existing I-65 bridge over the Ohio River connecting Louisville, Kentucky and Jeffersonville, Indiana which does not include the new I-65 bridge that will be constructed as part of the Downtown Crossing.
- 1.46. Kennedy Tolling Deadline shall have the meaning as described in Subsection 11.2.2.
- 1.47. Kentucky Access Rights shall have the meaning as described in Subsection 5.1.3.
- 1.48. Kentucky Downtown Property means all real and personal property interests, including but not limited to such easements, licenses, leases or property rights, in whatever form reasonably necessary to construct and operate Sections 1 and 2 of the Downtown Crossing.

- 1.49. Kentucky East End Property means all real and personal property interests, including but not limited to such easements, licenses, leases or property rights, in whatever form reasonably necessary to construct Sections 4 and 5 of the East End Crossing.
- 1.50. Kentucky East End Property Ground Lease means the ground lease described in Subsection 5.1.2.2.
- 1.51. Kentucky H.B. 2 means Kentucky House Bill 2, 2012 Extraordinary Session, signed by the Governor of Kentucky on May 2, 2012.
- 1.52. Kentucky O&M Portion means Sections 1, 2 and 4A.
- 1.53. Kentucky Parties means KYTC and KPTIA.
- 1.54. Kentucky Revenue Bonds means toll revenue bonds to be issued by KPTIA to fund a portion of the costs of the Downtown Crossing as described in Subsections 8.3.4. and 8.3.5.
- 1.55. Kentucky Revenue Bond Indenture means the indenture or similar instrument pursuant to which KPTIA will issue the Kentucky Revenue Bonds as described in Subsection 8.3.5.
- 1.56. Kentucky Revenue Share means 50% of all Toll Revenues, subject to the adjustment described in Subsection 8.1.9.
- 1.57. KPTIA means Kentucky Public Transportation Infrastructure Authority; the developing authority and issuing authority for the Downtown Crossing.
- 1.58. KYTC means Kentucky Transportation Cabinet, the procuring agency on the Downtown Crossing.
- 1.59. Louisville-Southern Indiana Ohio River Bridges Project means the Downtown Crossing, the East End Crossing and any related commitments contained in the ROD.
- 1.60. Major Projects Financial Plan means the financial plan required under 23 USC 106(h) developed by the Indiana Parties and the Kentucky Parties and approved by FHWA in 2012.
- 1.61. M&R Expenses means lifecycle costs and/or capital costs necessary to continue to maintain the Kentucky O&M Portion in good operating order and that are not normally recurring costs.
- 1.62. M&R Reserve Fund means the fund by that name to be created under the Kentucky Revenue Bond Indenture, and described in Subsection 8.3.5.2., pursuant to which lifecycle and capital costs will be funded for the Downtown Crossing.

- 1.63. MOU means the Memorandum of Understanding signed by the Governors of Indiana and Kentucky dated March 5, 2012.
- 1.64. NEPA means National Environmental Policy Act, 42 U.S.C. § 4321 et seq.
- 1.65. NEPA Documents means the Final Environmental Impact Statement dated April 8, 2003, the Record of Decision dated September 6, 2003, the Supplemental Final Environmental Impact Statement dated April 20, 2012, and the Revised Record of Decision dated June 19, 2012.
- 1.66. New Downtown Crossing Bridge means the new bridge structure being constructed as part of the Downtown Crossing just east of the Kennedy Bridge (I-65) and located in Section 2.
- 1.67. O&M means Operations and Maintenance, which are any and all recurring and nonrecurring costs, including M&R Expenses, necessary to maintain the Project (not including the Toll System Collection Expenses) in good operating order, including both regular and routine maintenance, lifecycle maintenance, and capital costs. O&M shall include, but not be limited to, compliance with applicable operations and maintenance standards.
- 1.68. Private Activity Bonds means private activity bonds issued under the Internal Revenue Code Sections 142(a)(15) and (m).
- 1.69. Project means the Louisville-Southern Indiana Ohio River Bridges Project.
- 1.70. PMP means the Major Projects Project Management Plan required under 23 U.S.C. 106(h) that has been developed by the States' Parties and submitted to FHWA.
- 1.71. 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.
- 1.72. Project Wide Costs means costs that are necessary for and that benefit the Project as a whole and that are not specifically attributable to the East End Crossing or the Downtown Crossing.
- 1.73. Proposer(s) means any person or entity who submits a response to the request for proposals for the Downtown Crossing or the East End Crossing.
- 1.74. Public-Private Agreement means the agreement or agreements entered between IFA and the Developer for development of the East End Crossing.
- 1.75. Reserve Replenishment Guarantees means the guarantees by that name defined in Subsection 8.3.5.2.

- 1.76. ROD means the revised Record of Decision issued by FHWA for the Project on June 20, 2012.
- 1.77. ROD Requirements means the requirements as described in Subsection 9.1.
- 1.78. Section 1 means the Kennedy Interchange and the Kentucky approaches to the Downtown Crossing Bridges.
- 1.79. Section 2 means the Downtown Crossing Bridges.
- 1.80. Section 3 means the Indiana approaches to the Downtown Crossing Bridges.
- 1.81. Section 4 means the Kentucky approach to the East End Crossing Bridge.
- 1.82. Section 4A means that southern portion of Section 4 that is not part of Section 4B.
- 1.83. Section 4B means the portion of Section 4 beginning at a point on Proposed KY 841 north of the northerly abutment of the proposed Harrods Creek/River Road Bridge near Station 149+08 northbound and continuing north to the northerly limits of Section 4.
- 1.84. Section 5 means the East End Crossing Bridge.
- 1.85. Section 6 means the Indiana approach to the East End Crossing Bridge.
- 1.86. Section 129 Toll Agreement means the agreement with FHWA entered into pursuant to 23 U.S.C. § 129 regarding the treatment of the Project as a toll facility.
- 1.87. State Fiscal Year means the fiscal year of Indiana or Kentucky, or both as the context may require.
- 1.88. States' Parties means IFA, INDOT, KPTIA and KYTC.
- 1.89. States' Party means any one of IFA, INDOT, KPTIA or KYTC.
- 1.90. TIFIA means the federal program providing credit assistance for qualified transportation infrastructure projects of regional and national significance under the Transportation Infrastructure Finance and Innovation Act, codified at 23 U.S.C. §601 et. seq.
- 1.91. TIGER Discretionary Grants means certain Supplementary Discretionary Grants from the U.S. Department of Transportation known as Transportation Investment Generating Economic Recovery Grants.
- 1.92. Toll Revenues means the gross amount of all tolls, administrative fees, violation charges, incidental charges, prepaid fees, penalties and other charges collected through a collection process with respect to the Project.

- 1.93. Tolling Body means the body established in the Interlocal Agreement as described in Subsection 11.5.2, being comprised of the members of the Joint Board plus one additional representative of IFA and one additional representative of KPTIA.
- 1.94. Tolling O&M Reserve Fund means the fund by that name established under the Kentucky Revenue Bond Indenture to provide for KPTIA's Toll System Collection Expenses, as described in the Kentucky Revenue Bond Indenture.
- 1.95. Toll Operations Agreement means an agreement entered into among a Toll Operator and/or either (i) the States' Parties (or certain of them representing each State) or (ii) the Joint Board on behalf of the States' Parties, which will identify the duties and responsibilities of the Toll Operator with respect to the comprehensive electronic tolling system and the deposit of Toll Revenues pursuant to the Custody Agreement. The initial Toll Operations Agreement may be contained within the Toll System Integrator Agreement.
- 1.96. Toll Operator means a qualified toll system operator engaged by the Joint Board on behalf of the States' Parties and/or the States' Parties (or certain of them representing each State) pursuant to the Toll Operations Agreement. The Toll Operator may be the Toll System Integrator from time to time.
- 1.97. Toll Policy Agreement means an agreement entered among the States' Parties (or certain of them representing each State) and/or the Tolling Body establishing a comprehensive toll policy for the Project.
- 1.98. Toll System Collection Expenses means operation and maintenance expenses incurred by the Toll Operator and paid from toll revenues and other sources available to IFA and KPTIA.
- 1.99. Toll System Integrator means a qualified toll system integrator who will be engaged to provide a comprehensive, electronic toll system for the Project pursuant to the Toll System Integrator Agreement. The Toll System Integrator will perform the role of the Toll Operator during a minimum initial period of one year.
- 1.100. Toll System Integrator Agreement means an agreement entered between the States' Parties (or certain of them representing each State), and/or the Joint Board on behalf of the States' 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.

Article 2. Joint Board; Tolling Body; Interlocal Agreement

2.1. Creation of Joint Board and Tolling Body

KPTIA, IFA, INDOT and KYTC agree they will use their best efforts to enter into an Interlocal Agreement pursuant to the Interlocal Statutes by November 1, 2012, which Interlocal Agreement will be in substantially the form set forth in **Appendix H**. The Joint Board and the Tolling Body shall be created for the joint undertaking of facilitating and assisting in the accomplishment of the Project and each shall be established with and for the purpose of exercising all of the respective rights, powers, functions and duties of each of the respective Parties that are necessary, useful, or appropriate for the Project, all as shall be more fully described in the Interlocal Agreement or as more fully described herein.

2.2. Powers and Authorities

The Joint Board and the Tolling Body shall each be authorized to use any and all of the respective powers and authorities granted to them by the Interlocal Agreement or as granted to them herein. Each of these powers is hereby shared or delegated as may be necessary and appropriate to and for the use by its individual members to accomplish each of their respective obligations and responsibilities as set forth in this Agreement. Neither the Joint Board nor the Tolling Body shall exercise any of its respective powers in a manner inconsistent with the express terms of this Agreement.

2.3. Duties and Responsibilities

The Joint Board and the Tolling Body shall each, to the extent of its respective authority and in the exercise of its respective discretion, exist solely to assist and facilitate the performance by the Parties of their responsibilities under this Agreement with respect to the Project.

2.4. Rules of Governance

The Joint Board and the Tolling Body shall each, in the exercise of its respective discretion, establish such rules of governance as it may deem necessary and proper for the accomplishment of its respective purposes, consistent with the provisions of this Agreement.

2.5. Duration

The Interlocal Agreement shall provide that its duration will be through and until Project Termination or until termination of this Agreement, whichever occurs first. The duration of the Interlocal Agreement may be extended by agreement of the States' Parties, within the limitations of the Interlocal Statutes.

2.6. Purpose

The Interlocal Agreement shall provide that the purpose thereof is to assist the Parties in the accomplishment of the Project as described herein.

2.7. Financing/Staffing/Supplying and Budget

The Interlocal Agreement shall provide for the manner of financing (including addressing the payment, if any, of the employer's share of any pertinent pension plans that might be involved), staffing, and supplying the joint undertaking, and of establishing and maintaining a budget therefor, all of which shall be consistent with this Agreement.

2.8. Termination

The Interlocal Agreement shall provide for termination only upon termination of this Agreement.

2.9. Administration

2.9.1. The Joint Board shall be composed of representatives of the States' Parties, and each State's Party shall be represented. Each of the following (by virtue of their offices) shall serve on the Joint Board, or shall designate a representative (or representatives) who may serve in their stead from time to time:

2.9.1.1 Chairman of KPTIA

2.9.1.2 The Public Finance Director of the State of Indiana on behalf of IFA

2.9.1.3 Secretary of KYTC

2.9.1.4 Commissioner of INDOT

2.9.2. The Tolling Body shall be comprised of representatives of the States' Parties and each States' Party shall be represented. The members of the Tolling Body shall consist of the members of the Joint Board, as set forth in 2.9.1 above, plus one additional representative from IFA and one additional representative of KPTIA.

2.10. Real and Personal Property

The Interlocal Agreement shall provide that real and personal property shall be acquired, held and disposed of in the manner set forth herein.

2.11. Approvals

- 2.11.1. IFA, KPTIA, INDOT and KYTC agree that each will obtain a resolution or other appropriate authorization of their respective organization approving and authorizing execution of the Interlocal Agreement.
- 2.11.2. IFA shall be responsible for submitting the Interlocal Agreement to the Attorney General of Indiana, and for obtaining his approval thereof; and KPTIA shall be responsible for submitting the Interlocal Agreement to the Attorney General of Kentucky and to the Secretary of KYTC, and for obtaining their approval thereof, in compliance with the Interlocal Statutes.
- 2.11.3. The Indiana Parties shall file the Interlocal Agreement with the County Recorder of Clark County, Indiana, and with the Indiana State Board of Accounts.
- 2.11.4. The Kentucky Parties shall file the Interlocal Agreement with the County Clerks of Jefferson County, Kentucky and Franklin County, Kentucky, and with the Kentucky Secretary of State.

2.12. Relationship of the Parties

The Interlocal Agreement shall provide that the States' Parties hereto 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.

2.13. Sovereign Immunity and Statutory Limitations on Tort Damages

Notwithstanding any provision to the contrary herein, the Indiana Parties shall be considered agents of the Kentucky Parties in carrying out the development and operation of that portion of the East End Crossing which is to be constructed within the Commonwealth of Kentucky and shall be entitled to protection from claims and suits by third parties in connection with such activities to the maximum extent provided by principles of sovereign immunity or other statutory limitations on tort damages applicable to the Commonwealth of Kentucky or the State of Indiana. Notwithstanding any provision to the contrary herein, the Kentucky Parties shall be considered agents of the Indiana Parties in carrying out the development and operation of that portion of the Downtown Crossing which is to be constructed within the State of Indiana and shall be entitled to protection from claims and suits by third parties in connection with such activities to the maximum extent provided by principles of sovereign immunity or other statutory limitations on tort damages applicable to Commonwealth of Kentucky or the State of Indiana. This provision shall survive Project Termination or other termination of this Agreement.

Article 3. Bridges Authority

- 3.1. The Bridges Authority hereby delegates any and all of its powers to the States' Parties as necessary for purposes of accomplishing the Project as set forth herein.
- 3.2. The Bridges Authority shall provide an annual report of its activities, prepared as described in Subsection 4.1, to (i) the Joint Board, (ii) the Indiana Parties and (iii) the Kentucky Parties. The submission of such report to the Joint Board shall satisfy the requirements of (ii) and (iii).
- 3.3. The Bridges Authority shall cause a certified public accountant to perform an annual audit of the Bridges Authority and shall submit such audit to the Joint Board.
- 3.4. The States' Parties shall provide staff and support to the Bridges Authority through the BSMT together with such other assistance as is reasonably necessary to enable the Bridges Authority to fulfill its reporting and audit responsibilities under this Agreement, the costs of which will be shared equally by the States' Parties.

Article 4. Bi-State Management Team and Project Management Plan

- 4.1. The BSMT shall provide oversight of the Project by monitoring the status and progress of the Project, and reporting to and coordinating with FHWA as necessary and/or as requested by FHWA. Without limiting the foregoing, the BSMT shall prepare the annual report regarding the activities of the Bridges Authority and submit it to the Bridges Authority for review and comment, before the Bridges Authority submits the report as required by Subsection 3.2 hereof.
- 4.2. The BSMT will update the PMP and the Major Projects Financial Plan, which shall be subject to the prior approval of IFA and KPTIA. The PMP and Major Projects Financial Plan shall be consistent with this Agreement and shall be submitted to FHWA as required.

Article 5. Acquisition of Property, Utility Relocation and Project Termination Property Transfers

- 5.1. Property Interests - East End Crossing
 - 5.1.1. Property Acquisition - East End Crossing. The Indiana Parties shall timely acquire or shall utilize their powers, including eminent domain and condemnation powers, to timely acquire the Indiana East End Property. The Kentucky Parties shall timely acquire or shall utilize their powers, including eminent domain and condemnation powers, to timely acquire the Kentucky East End Property. The Indiana Parties shall be responsible for all costs of acquiring the Indiana East End Property. The Kentucky Parties shall be responsible for all costs of acquiring the Kentucky East End Property. Any costs incurred by the

Indiana Parties as a result of the inability of the Kentucky Parties to acquire such real and personal property interests with respect to the Kentucky East End property pursuant to the schedule for property acquisition attached to the Technical Provisions for the Indiana East End Crossing procurement as Attachment 21-1, as such schedule shall be amended from time to time, shall be the responsibility and obligation of the Kentucky Parties.

5.1.2. Property Ownership - East End Crossing.

5.1.2.1 *Indiana East End Property.* Indiana (whether directly, or through INDOT or through IFA) shall own the Indiana East End Property and make such Indiana East End Property available for the development, construction, and operation of the East End Crossing at least through the Project Termination.

5.1.2.2 *Kentucky East End Property.* At such time as agreed to by the States' Parties, but in no event later than the commencement of construction of Sections 4 and 5 of the East End Crossing, the Kentucky Parties shall enter into a ground lease with the Indiana Parties (or another entity designated by the Indiana Parties), providing for the lease of all Kentucky East End Property located in Sections 4 and 5 to IFA, on behalf of Indiana, for a term of years ending on the date of Project Termination, and providing, among other things, that (i) the Developer and other persons and entities under the direction of the Indiana Parties shall be allowed to enter the Kentucky East End Property subject to the ground lease for the purpose of developing and constructing and, if so elected by the Indiana Parties, operating the portion of the Project constructed under the terms of the ground lease, (ii) the ground lease shall terminate at Project Termination, (iii) the East End Crossing Bridge structure to be constructed on Section 5 shall be owned by Indiana through and until the Project Termination and, on Project Termination, Indiana shall transfer a 50% ownership in the East End Crossing Bridge structure to Kentucky, and thereafter the East End Crossing Bridge structure shall be owned by Indiana and Kentucky as joint tenants on a 50%/50% basis, and (iv) following Project Termination, any improvements located on Section 4 shall be owned solely by Kentucky (such ground lease, the "Kentucky East End Property Ground Lease"). If additional Kentucky East End Property is acquired pursuant to Subsection 5.1.1 above after commencement of construction of Sections 4 and 5 of the East End Crossing, the Kentucky Parties and the Indiana Parties shall amend the Kentucky East End Property Ground Lease to include such additional property within the Kentucky East End Property Ground Lease. The Kentucky East End Property Ground Lease shall be recorded in the applicable real property records in the county where such real property is located, and every such recorded instrument shall contain a covenant

prohibiting the tenant(s) from filing a complaint or instituting any procedure at law or in equity to have the real or personal property interest arising under the Kentucky East End Property Ground Lease partitioned in accordance with any other law.

- 5.1.3. Kentucky East End Property Access Rights. Until the execution and delivery of the Kentucky East End Property Ground Lease, the Kentucky Parties grant the Indiana Parties, the Developer and their respective authorized contractors, sub-contractors, agents, and employees, upon reasonable advance notice, the right to enter the Kentucky East End Property for the purpose of (i) conducting any investigation or inspection of the Kentucky East End Property to the extent desired and deemed consistent with good commercial practice and necessary to evaluate the use of the Kentucky East End Property for the East End Crossing including, without limitation, such soils, engineering and environmental studies as may be necessary to assess the condition and suitability of the Kentucky East End Property for its intended uses in the East End Crossing; and (ii) engaging in any and all activities intended to facilitate the completion of the East End Crossing (collectively, the “Kentucky Access Rights”). The Kentucky Access Rights shall include (y) the right of ingress, egress, transportation and use of vehicles, equipment, material, and personnel over, across, and under the Kentucky East End Property; and (z) the right to remove, restore, rebuild or construct any improvements necessary to complete the East End Crossing. The Indiana Parties and the Developer shall take all reasonable precautions to minimize damage to the Kentucky East End Property or the property of third parties while utilizing the Kentucky Access Rights. In the event that the Indiana Parties, the Developer, their respective authorized contractors, sub-contractors, employees, or agents shall cause any damage to the Kentucky East End Property or the property of third parties, then the Indiana Parties shall at their own cost and expense (which may be passed on to the Developer), restore the Kentucky East End Property or the property of third parties as reasonably practical to the same condition the Kentucky East End Property or the property of third parties was in immediately prior to such damage.

5.2. Property Interests - Downtown Crossing

- 5.2.1. Property Acquisition - Downtown Crossing. The Kentucky Parties shall timely acquire or shall utilize their powers, including eminent domain and condemnation powers, to timely acquire the Kentucky Downtown Property. The Indiana Parties shall timely acquire or shall utilize their powers, including eminent domain and condemnation powers, to timely acquire the Indiana Downtown Property. The Kentucky Parties shall be responsible for all costs of acquiring the Kentucky Downtown Property. The Indiana Parties shall be

responsible for all costs of acquiring the Indiana Downtown Property. Any costs incurred by the Kentucky Parties as a result of the inability of the Indiana Parties' to acquire such real and personal property interests with respect to the Indiana Downtown Property pursuant to the schedule for property acquisition attached to the RFP for the Kentucky Design/Build procurement as Appendix RW-04, as such schedule shall be amended from time to time, shall be the responsibility and obligation of the Indiana Parties.

5.2.2. Property Ownership - Downtown Crossing.

5.2.2.1 *Kentucky Downtown Property.* Kentucky (whether directly, or through KYTC or KPTIA) shall own the Kentucky Downtown Property and make such Kentucky Downtown Property available for the development, construction and operation of the Downtown Crossing at least through the Project Termination.

5.2.2.2 *Indiana Downtown Property.* At such time as agreed to by the States' Parties, but in no event later than the commencement of construction of Sections 2 and 3 of the Downtown Crossing, the Indiana Parties shall enter into a ground lease with the Kentucky Parties, providing for the lease of all Indiana Downtown Property located in Section 2 and Section 3 to Kentucky (or a KYTC designated entity), for a term of years ending on the date of Project Termination, and providing, among other things, that (i) the Design-Build Team and other persons and entities under the direction of the Kentucky Parties shall be allowed to enter the Indiana Downtown Property for the purpose of constructing and maintaining and, if so elected by the Kentucky Parties, operating the portion of the Project constructed under the terms of the ground lease, (ii) such ground lease shall terminate at Project Termination, (iii) the Kennedy Bridge shall continue to be owned by Indiana and Kentucky as joint tenants on a 50%/50% basis at all times (even after Project Termination), (iv) the New Downtown Crossing Bridge to be constructed on Section 2 shall be owned by Kentucky through and until the Project Termination and, on Project Termination, Kentucky shall transfer a 50% ownership in the Downtown Crossing Bridge structure to Indiana, and thereafter the Downtown Crossing Bridge structure shall be owned by Indiana and Kentucky as joint tenants on a 50%/50% basis, and (v) any improvements located on Section 3 shall be owned solely by Indiana at and after Project Termination (such ground lease, the "Indiana Downtown Property Ground Lease"). If additional Indiana Downtown Property is acquired pursuant to Subsection 5.2.1 above after commencement of construction of Sections 2 and 3 of the Downtown Crossing, the Indiana Parties and the Kentucky Parties shall amend the Indiana Downtown Property Ground Lease to include such additional property within the Indiana Downtown Property Ground Lease. The

Indiana Downtown Property Ground Lease shall be recorded in the applicable real property records in the county where such real property is located, and every such recorded instrument shall contain a covenant prohibiting the tenants from filing a complaint or instituting any procedure at law or in equity to have the real or personal property interest arising under the Indiana Downtown Property Ground Lease partitioned in accordance with any other law.

- 5.2.3. Access to the Indiana Downtown Property. Until the execution and delivery of the Indiana Downtown Property Ground Lease, the Indiana Parties grant the Kentucky Parties, the Design-Build Team and their respective authorized contractors, sub-contractors, agents, or employees, upon reasonable advance notice, the right to enter the Indiana Downtown Property for the purpose of (i) conducting any investigation or inspection of the Indiana Downtown Property to the extent desired and deemed consistent with good commercial practice and necessary to evaluate the use of the Indiana Downtown Property for the Downtown Crossing including, without limitation, such soils, engineering and environmental studies as may be necessary to assess the condition and suitability of the Indiana Downtown Property for its intended uses in the Downtown Crossing; and (ii) engaging in activities intended to facilitate the completion of the Downtown Crossing (collectively, the “Indiana Access Rights”). The Indiana Access Rights shall include (y) the right of ingress, egress, transportation and use of vehicles, equipment, material, and personnel over, across, and under the Indiana Downtown Property; and (z) the right to remove, restore, rebuild or construct any improvements necessary to complete the Downtown Crossing. The Kentucky Parties and Design-Build Team shall take all reasonable precautions to minimize damage to the Indiana Downtown Property or the property of third parties while utilizing the Indiana Access Rights. In the event that the Kentucky Parties, the Design-Build Team, their respective authorized contractors, sub-contractors, employees, or agents shall cause any damage to the Indiana Downtown Property or the property of third parties, then the Kentucky Parties shall at their own cost and expense (which may be passed on to the Design-Build Team), restore the Indiana Downtown Property or the property of third parties as reasonably practicable to the same condition the Indiana Downtown Property or the property of third parties was in immediately prior to such damage.

5.3. Utility Relocation

- 5.3.1. Utility Relocation - East End Crossing. The Indiana Parties shall use best efforts and where applicable, their full authority, including but not limited to any rights of condemnation and/or eminent domain, to obtain an agreement to relocate any public utilities or any other

occupancies located within the East End Property (whether Indiana East End Property or Kentucky East End Property) that are necessary to complete the East End Crossing, including those that may be subject to the prior public use doctrine or similar law or statute that prevents the States' Parties from exercising condemnation powers to obtain the property interest at issue. To the extent that it is necessary to exercise rights of condemnation and/or eminent domain within the Kentucky East End Property, the Kentucky Parties shall make all reasonable efforts to assist the Indiana Parties in this process. All costs of such public utility and other occupancy relocation within the East End Property shall be borne by the Indiana Parties.

- 5.3.2. Utility Relocation - Downtown Crossing. The Kentucky Parties shall use best efforts and where applicable, their full authority, including but not limited to rights of condemnation and/or eminent domain, to obtain an agreement to relocate any public utilities or any other occupancies located within the Downtown Property (whether Kentucky Downtown Property or Indiana Downtown Property) that are necessary to complete the Downtown Crossing, including those that may be subject to the prior public use doctrine or similar law or statute that prevents the States' Parties from exercising condemnation powers to obtain the property interest at issue. To the extent that it is necessary to exercise rights of condemnation and/or eminent domain within the Indiana Downtown Property, the Indiana Parties shall make all reasonable efforts to assist the Kentucky Parties in this process. All costs of such public utility and other occupancy relocation within the Downtown Property shall be borne by the Kentucky Parties.

5.4. Termination of Ground Leases

- 5.4.1. East End Crossing. At Project Termination, the Kentucky East End Property Ground Lease will terminate by its terms. The East End Crossing Bridge shall be owned 50% by the Indiana Parties and 50% by the Kentucky Parties following Project Termination.
- 5.4.2. Downtown Crossing. At Project Termination, the Indiana Downtown Property Ground Lease will terminate by its terms. The Kennedy Bridge and the New Downtown Crossing Bridge shall be owned 50% by the Indiana Parties and 50% by the Kentucky Parties following Project Termination.

5.5. Taxes

INDOT and IFA are exempt from payment of any and all Kentucky state and local taxes in connection with any portion of the Project which is located in Kentucky, including without limitation ad valorem property taxes and income taxes; provided, however, that INDOT and IFA are not exempt from payment of

Kentucky sales or use tax arising from direct purchases (if any) by INDOT or IFA of personal property that is of a type subject to Kentucky sales or use tax. KYTC and KPTIA are exempt from payment of any and all Indiana state and local taxes in connection with any portion of the Project which is located in Indiana, including without limitation ad valorem property taxes and income taxes; provided, however, that KYTC and KPTIA are not exempt from payment of Indiana sales or use tax arising from direct purchases (if any) by KYTC or KPTIA of personal property that is of a type subject to Indiana sales or use tax. However, if for some reason in the future Kentucky and/or any of its agencies, instrumentalities, political subdivisions, or any local unit of government in Kentucky (a "Kentucky Taxing Entity") levies a tax against one or more of the States' Parties or their property in connection with the Project, the Kentucky Parties shall use all reasonable efforts to cause the Kentucky Taxing Entity to rescind such levy and/or shall contest such levy in a court of competent jurisdiction, but if such efforts are unsuccessful, the Kentucky Parties shall pay such taxes, assessments, fees or other charges, including any interest and penalties, collection costs and other charges and fees; provided however that Kentucky will not be obligated to pay any sales or any other tax of Developer or the Design-Build Team or any of their contractors or subcontractors. If for some reason in the future Indiana and/or any of its agencies, instrumentalities, political subdivisions, or any local unit of government in Indiana (an "Indiana Taxing Entity") levies a tax against one or more of the States' Parties or their property in connection with the Project, the Indiana Parties shall use all reasonable efforts to cause the Indiana Taxing Entity to rescind such levy and/or shall contest such levy in a court of competent jurisdiction, but if such efforts are unsuccessful, the Indiana Parties shall pay such taxes, assessments, fees or other charges, including any interest and penalties, collection costs and other charges and fees; provided, however, that Indiana will not be obligated to pay any sales or any other tax of the Developer or the Design-Build Team or any of their contractors or subcontractors.

Article 6. Schedule

The Indiana Parties and the Kentucky Parties shall use their best efforts to accomplish East End Crossing Substantial Completion and Downtown Crossing Substantial Completion of the Project by July 1, 2018.

Article 7. Budget

The Parties have participated in the development of a Major Projects Financial Plan, which include the estimated costs for completion of the Project. The Parties acknowledge and agree that the estimated costs set forth in the Major Projects Financial Plan are reasonable and adequate for the Project. Per the terms of this Agreement, the Indiana Parties and Kentucky Parties shall be responsible to perform the duties and obligations set forth herein within the parameters identified in the Major Projects Financial Plan. The Major Projects Financial Plan may not be amended without the prior approval of the States' Parties. Changes in scope shall be governed by Subsection 10.6.

Article 8. Financing

8.1. Overview of Project Financing

- 8.1.1. This Article 8 deals primarily with the various sources and uses of funds for construction of the Project. In addition, certain Subsections also address the sources to be used by the relevant States' Parties for the payment of obligations related to the procurements.
- 8.1.2. As of June 30, 2012, the States have expended \$293.5 million (\$220.2 million by Kentucky and \$73.3 million by Indiana) for the Project.
- 8.1.3. In January 2012, FHWA, in consultation with KYTC and INDOT, performed a cost estimate review of the Project. The following cost estimate information was derived from that process, and reflects the estimate of costs in the Major Projects Financial Plan.

Project Segment	Total Cost (in millions)
Section 1 - Kennedy Interchange(KY)	\$659.8
Section 2 - Downtown Crossing Bridges	\$357.8
Section 3 – Downtown Approach(IN)	\$197.7
Section 4 - East End Approach(KY)	\$737.6
Section 5 - East End Bridge	\$284.4
Section 6 - East End Approach(IN)	\$196.1
Project Wide Costs	\$150.5
TOTAL	\$2,583.9

As set forth in the Major Projects Financial Plan, Indiana's portion of the total cost (in millions) is \$1,276.30, and Kentucky's portion of the total cost (in millions) is \$1,307.60. These amounts take into account costs that already have been advanced by Indiana and by Kentucky on all Sections.

- 8.1.4. The Indiana Parties agree to take responsibility for the procurement, financing and construction of the East End Crossing, composed of Sections 4, 5 and 6. The Kentucky Parties agree to take responsibility for the procurement, financing, and construction of the Downtown Crossing, composed of Sections 1, 2 and 3. In addition to funding the costs of such portions of the Project, the Kentucky Parties and the Indiana Parties have agreed to fund the anticipated Project Wide Costs

in the estimated amounts of \$92.3 million and \$58.2 million, respectively.

- 8.1.5. The States' Parties expect to fund their respective portions of the Project from (i) contributions by the applicable State from conventional State and federal transportation program funds, (ii) proceeds of bonds or other evidences of indebtedness of a Kentucky Party, an Indiana Party, and the Developer, including proceeds of TIFIA loans and (iii) equity funding from the Developer. In addition, federal discretionary program funds may also be utilized for the Project to the extent additional discretionary funds become available to the States.
- 8.1.6. Kentucky and Indiana have historically used federal-aid resources for the Project and have committed specific funding for the Project from their respective near-term federal-aid highway funding programs.
- 8.1.7. Federal-aid formula funds used to fund the Project have been and will continue to be matched by a combination of State highway funds and toll credits (credits unrelated to the Project) in Kentucky and by State funds in Indiana. Both States have demonstrated track records of meeting their State match obligations with a variety of State funding sources, including State imposed fuel taxes and a variety of transportation-related fees.
- 8.1.8. Based on expectations regarding the availability of federal funding, as well as expectations regarding the availability of corresponding State transportation funds, an estimated \$1.3 billion of federal-aid highway formula and State transportation funds is reasonably expected to be available to the Project. This amount includes \$293.4 million estimated to be expended through State fiscal year 2012.
- 8.1.9. Based on the importance of the Project to national freight movements and the national economy, the States' Parties agree to continue to identify and, as appropriate, pursue discretionary federal funding, including the TIGER Discretionary Grants program. The States' Parties agree to seek opportunities for federal TIFIA funding, acknowledging the expected limited availability of TIFIA funding for the Project. The States' Parties agree that the percentages agreed to for the Indiana and Kentucky Revenue Shares may be adjusted by agreement of the States' Parties to take into account any final allocation of TIFIA funding to the Project. The States' Parties also agree to coordinate submission of applications for TIFIA if invited to do so by the U.S. Department of Transportation.
- 8.1.10. To support the financing and construction of the Downtown Crossing, Kentucky will provide funds as described in Section 8.3.

8.1.11. To support the financing and construction of the East End Crossing, Indiana will provide funds as described in Section 8.2.

8.2. Financing of East End Crossing

8.2.1. The Indiana Parties shall take sole responsibility for the procurement, financing and construction of the East End Crossing, composed of Sections 4, 5 and 6. The costs of this portion of the Project, together with the Indiana share of Project Wide Costs, as reflected in the Major Projects Financial Plan, is set forth in Subsection 8.1.3. above.

8.2.2. IFA shall conduct a procurement process and undertake to execute a Public-Private Agreement with a Developer to finance a portion of the costs of constructing the East End Crossing utilizing an availability payment structure. The Developer will be obligated to design and construct the East End Crossing and operate and maintain a portion of the East End Crossing. (See Article 10).

8.2.3. INDOT has committed \$570 million in federal and conventional State funds through 2018 to fund its obligations for the East End Crossing. This includes six payments of \$54 million per State Fiscal Year to make milestone payments (or other payments) to IFA, \$172.7 million in additional Project costs during the construction period, and \$73.3 million previously expended for Project costs. In addition, INDOT has committed an additional \$108 million (\$54 million for each State Fiscal Year 2019 and 2020), expected to be used to make milestone payments (or other payments) to IFA. The foregoing contributions are subject to appropriation by the Indiana General Assembly of such amounts. IFA will be committed under the Public-Private Agreement to make certain milestone payments (or other payments) to the Developer and will enter into an agreement with INDOT pursuant to which INDOT will agree to pay certain of the funds described above to IFA to fund such payment obligations to the Developer.

8.2.4. In addition to the funds provided by the Indiana Parties as described in Subsection 8.2.3, the balance of the amount required to fund the design and construction of the East End Crossing is expected to be provided by the Developer, which may include proceeds of indebtedness of the Developer and a Developer equity contribution. If the Developer elects to use Private Activity Bonds to satisfy a portion of its funding obligations, IFA may serve as the conduit issuer for the purpose of lending proceeds thereof to the Developer.

8.2.5. In connection with the Public-Private Agreement, IFA shall make availability payments to the Developer from amounts to be paid to IFA

by INDOT under the use agreement described in Subsection 8.2.6 and the Indiana Revenue Share.

- 8.2.6. In connection with the Public-Private Agreement, IFA will enter into a use agreement with INDOT with respect to the East End Crossing, which agreement shall provide that INDOT will make use payments (subject to Indiana General Assembly appropriations) to IFA which will be used together with the Indiana Revenue Share to fund the availability payments owed by IFA to the Developer.
- 8.2.7. The Indiana Parties reserve the right to utilize toll revenue bonds to fund all or part of the East End Crossing, in which event this Subsection 8.2 and any related Subsections of this Agreement shall be revised by an amendment which is not to the detriment of the Kentucky Parties and which has been executed by the States' Parties.
- 8.2.8. Nothing set forth herein shall be construed as constituting a debt, liability or obligation of Indiana or Kentucky, or a pledge or lending of the full faith and credit of either State within the meaning of any constitutional provision or limitation.

8.3. Financing of Downtown Crossing

- 8.3.1. The Kentucky Parties shall take sole responsibility for the procurement, financing and construction of the Downtown Crossing, composed of Sections 1, 2 and 3. The costs of this portion of the Project, together with the Kentucky share of Project Wide Costs, as reflected in the Major Projects Financial Plan, is set forth in Subsection 8.1.3. above.
- 8.3.2. Under the structure that Kentucky plans to use, the Downtown Crossing will be financed with a combination of funding commitments from Kentucky, governmental purpose tax-exempt debt in the form of GARVEE bonds backed by future federal funds, and governmental purpose tax-exempt debt in the form of toll revenue bonds secured by the Kentucky Revenue Share ("Kentucky Revenue Bonds").
- 8.3.3. Under the six year highway plan adopted by Kentucky, the Kentucky Parties will provide \$536 million in future federal funds to be used for the Downtown Crossing. This includes \$300 million in traditional federal funds (\$50 million per State Fiscal Year for six years beginning with State Fiscal Year 2013) and the proceeds of an estimated \$236 million of previously authorized GARVEE bonds, for a total of \$536 million. This funding is in addition to already expended funds of \$220.2 million of \$279.4 million authorized for the period ending with State Fiscal Year 2012. The foregoing

contributions are subject to appropriation by the Kentucky General Assembly of such amounts.

8.3.4. The Kentucky Parties additionally will issue one or more series of Kentucky Revenue Bonds in an amount estimated to exceed \$350.0 million, as an additional source of funding for the costs of the Downtown Crossing. KPTIA will issue the Kentucky Revenue Bonds, as the “issuing authority” under KRS 175B.025. The Kentucky Revenue Bonds will be governmental purpose tax-exempt bonds secured by the Kentucky Revenue Share. The Kentucky Revenue Share will be used to make payments of principal and interest on the Kentucky Revenue Bonds.

8.3.5. The Kentucky Revenue Bonds will be issued by KPTIA pursuant to a Kentucky Revenue Bond Indenture.

8.3.5.1 The Kentucky Revenue Bond Indenture shall include a debt service reserve fund (“DSRF”) into which shall be deposited and maintained an amount equal at least to the next State Fiscal Year’s principal and interest requirements for all outstanding senior lien bonds. In the event that the Kentucky Revenue Share is insufficient to fully fund senior lien bond principal and interest payments, the DSRF shall be used to make timely payments to bondholders. In order to support the Kentucky Revenue Bonds, KYTC agrees to budget and seek to have appropriated, at the next available opportunity, from legally available highway funds, an amount that will replenish and restore the DSRF to its required amount, which constitutes the DSRF Replenishment Guarantee. Any such amounts budgeted and appropriated will be considered a loan to the Kentucky Parties for the Downtown Crossing and repaid with interest at 5% per annum from the Kentucky Revenue Share, as described in the Kentucky Revenue Bond Indenture.

8.3.5.2 The Kentucky Revenue Bond Indenture shall include (a) a Tolling O&M Reserve Fund into which shall be deposited an amount equal to one half of the estimated total Toll System Collection Expenses due in the following State Fiscal Year (which is KPTIA’s share of such expenses) or such lesser amount agreed to by IFA and KYTC, (b) a General O&M Reserve Fund into which shall be deposited amounts deemed reasonable by a mutually agreeable independent engineer to fund the O&M Expenses for the Kentucky O&M Portion, and (c) an M&R Reserve Fund into which shall be deposited over time amounts deemed reasonable by a mutually agreeable independent engineer to fund lifecycle costs for the Kentucky O&M Portion. In the event that the Kentucky Revenue Share is insufficient to fully fund required Tolling O&M Reserve Fund deposits, required General O&M Reserve Fund deposits and required

M&R Reserve Fund deposits, and in order to support the creditworthiness of the Kentucky Revenue Bonds, KYTC agrees to budget and seek to have appropriated, at the next available opportunity, from legally available highway funds, an amount that will restore the Tolling O&M Reserve Fund, General O&M Reserve Fund and M&R Reserve Fund to the respective required amounts which constitute the Reserve Replenishment Guarantees. Any such amounts budgeted and appropriated will be considered a loan to the Kentucky Parties for the Downtown Crossing and repaid with interest at 5% per annum from the Kentucky Revenue Share fund balances which are on deposit from time to time in the General Reserve Fund, as described in the Kentucky Revenue Bond Indenture, subject to priority of payments from such fund as described in the Kentucky Revenue Bond Indenture.

8.3.5.3 The Kentucky Revenue Bond Indenture or the official authorization of the issuance of Kentucky Revenue Bonds thereunder shall contain an acknowledgement that no amounts of principal and interest on such bonds are payable from the Indiana Revenue Share and that, in addition to the DSRF, a portion of the Kentucky Revenue Share is required to be separately set aside as reserves as set forth above in this Subsection 8.3.5.

8.3.5.4 In addition to the provisions described in this Subsection 8.3.5, the Kentucky Revenue Bond Indenture will contain other provisions providing for priority of payment from various sources, fund and reserves, determined and established as necessary in order to market the Kentucky Revenue Bonds at the lowest possible interest rates then prevailing at the time such Kentucky Revenue Bonds are issued.

8.3.5.5 The States' Parties acknowledge that modifications to the requirements of Subsection 8.3.5 may be desirable, based upon then current market conditions at the time of execution of the Kentucky Revenue Bond Indenture, rating agency requirements or similar factors, and that such modifications may be made through an amendment to this Agreement executed by such Parties.

8.3.6. Nothing set forth herein or in the Kentucky Revenue Bond Indenture shall be construed as constituting a debt, liability or obligation of Kentucky or Indiana, or a pledge of the faith and credit of either State within the meaning of any constitutional provision or limitation.

8.4. Path to Implementation

8.4.1. KYTC will continue to advance the procurement process for the Downtown Crossing, which commenced with the issuance of a draft Request for Qualifications on February 23, 2012 and is expected to

achieve award by no later than December 31, 2012 and contracting by no later than March 31, 2013. Toward this end, KYTC has issued a request for qualifications, has announced a “short list” of qualified design-build teams and has issued a request for proposals.

- 8.4.2. IFA, in conjunction with INDOT, will continue to advance the procurement process for the East End Crossing, which commenced with the issuance of a Request for Qualifications on March 9, 2012 and is expected to reach commercial close with the Developer by December 31, 2012 and reach financial close by March 31, 2013. Toward this end, IFA has issued a request for qualifications, has announced a “short list” of qualified developer teams, and has issued a request for proposals.

Article 9. Environmental/Other Federal Requirements

- 9.1. The States’ Parties shall be collectively responsible for achieving and maintaining compliance with the requirements of the ROD in the development, design, financing, construction, operation and maintenance of the Project, including any revisions, modifications, or amendments made to the ROD in accordance with the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*; Section 4(f) of the Department of Transportation Act, 49 U.S.C. § 303 and 23 U.S.C. § 138; the National Historic Preservation Act, 16 U.S.C. § 470 *et seq.*; the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*; and any other applicable federal, state, and local laws (hereinafter “ROD Requirements”).
- 9.2. Before seeking FHWA approval to modify a ROD Requirement, a Party must notify each of the other States' Parties in writing and, if requested, consult with the other States' Parties regarding (1) the decision about whether to seek approval for the modification, and (2) the process for obtaining approval of the modification and the role of each State in that process. No Party shall seek FHWA approval to modify, amend, or revise the ROD or any ROD Requirement without the prior written consent of both INDOT and KYTC.
- 9.3. The Indiana Parties shall be responsible for achieving and maintaining compliance with the ROD Requirements specifically applicable to the East End Crossing, and may delegate the responsibility for complying with any portion of those requirements to the Developer. The Kentucky Parties shall be responsible for achieving and maintaining compliance with the ROD Requirements specifically applicable to the Downtown Crossing, and may delegate the responsibility for complying with any portion of those requirements to the Design-Build Team.
- 9.4. The Indiana Parties and Kentucky Parties shall be equally responsible, and shall share the costs equally, for achieving and maintaining compliance with any Project-wide ROD Requirements and may agree in writing among themselves to delegate responsibility for complying with any portion of those requirements to

one of the States' Parties, the Developer, or the Design-Build Team, as appropriate.

- 9.5. The States' Parties agree to cooperate in the defense of any Environmental Litigation, but each States' Party shall bear its own costs in such litigation.

Article 10. Project Scope, Procurement, Design Standards and Construction

10.1. Description of Project

10.1.1. The Project consists of the Downtown Crossing (Sections 1, 2, and 3), the East End Crossing (Sections 4, 5, and 6) and any other commitments contained in the ROD.

10.1.2. KYTC will be responsible for all work, improvements, services, labor and materials necessary to design and construct the Downtown Crossing. Procurement of the Downtown Crossing will be composed of Sections 1, 2 and 3 of the Project, including the New Downtown Crossing Bridge, the reconfiguration of the Kennedy Interchange, reconstruction of the Kennedy Bridge, and the Indiana approach in Jeffersonville. The procurement will be carried out through one or more Design-Build Agreements, for which KYTC will be the contracting agency and will be responsible for design approval and construction acceptance. INDOT will serve in a supporting and consulting capacity to assist with the review of plans, proposals, reports and related documents as necessary or helpful to facilitate the procurement.

10.1.3. IFA will be responsible for all work, improvements, services, labor and materials necessary to design and construct the East End Crossing. Procurement of the East End Crossing will be composed of Sections 4, 5 and 6 of the Project, including the East End Crossing Bridge, and the related approaches in Indiana and Kentucky. The procurement will proceed, at IFA's discretion, using either a Public-Private Agreement with an availability payment concession structure for design-build-finance-operate-maintenance services, or a design-build contract for the construction period only. IFA will serve as the contracting agency for procurement of the East End Crossing, with INDOT, on IFA's behalf, being responsible for design approval and construction acceptance. KYTC will serve in a supporting and consulting capacity to assist with the review of plans, proposals, reports and related documents as necessary or helpful to facilitate the procurement.

10.2. Coordination of Activities

10.2.1. The Parties agree to work cooperatively together and to coordinate planning, design, financing, construction, and operation and

maintenance of their respective portions of the Project. To that end, the States' Parties shall at their own cost and expense provide qualified staff and consultants to carry out their responsibilities with respect to the design, construction, scheduling and coordination of Project activities, including attendance at working group meetings.

- 10.2.2. With respect to the Downtown Crossing: (i) the Indiana Parties shall communicate their comments regarding the Downtown Crossing only through the Kentucky Parties and not directly to the Design-Build Team; (ii) the Indiana Parties shall have no right to direct the work of the Design-Build Team; (iii) subject to the dispute resolution provisions in Subsection 16.6 herein, the Kentucky Parties shall retain sole discretion on whether to adopt the comments of the Indiana Parties and may reject the same; and (iv) the Indiana Parties shall provide any input and comments on a timely basis within such times as permitted by KYTC, which shall consider all of the relevant circumstances when establishing the allowable time periods.
- 10.2.3. With respect to the East End Crossing: (i) the Kentucky Parties shall communicate their comments regarding the East End Crossing only through the Indiana Parties and not directly to the Developer; (ii) the Kentucky Parties shall have no right to direct the work of the Developer; (iii) subject to the dispute resolution provisions in Subsection 16.6 herein, the Indiana Parties shall retain sole discretion on whether to adopt the comments of the Kentucky Parties and may reject the same; and (iv) the Kentucky Parties shall provide any input and comments on a timely basis within such times as permitted by IFA, which shall consider all of the relevant circumstances when establishing the allowable time periods.
- 10.2.4. The Kentucky Parties shall perform their obligations under this Agreement in a manner that does not adversely impact or interfere with the Indiana Parties and/or the Developer. The Indiana Parties shall perform their obligations under this Agreement in a manner that does not adversely impact or interfere with the Kentucky Parties and/or the Design-Build Team.

10.3. Procurement of Project Construction

- 10.3.1. Following receipt and evaluation of proposals and the selection of a preferred proposer using the design-build powers authorized by Kentucky, KYTC anticipates entering into a Design-Build Agreement with a qualified development team that would obligate the Design-Build Team to design and build the Downtown Crossing.
- 10.3.2. IFA anticipates entering into a Public-Private Agreement with a qualified development team (the "Developer") that would obligate the

Developer to design, build and finance the East End Crossing and operate and maintain a portion of the East End Crossing.

10.3.3. The Kentucky Parties and the Indiana Parties each shall have the right to request the assistance of the other States' Parties in the review of plans, proposals, reports and related documents as necessary or helpful to facilitate the procurement; provided that such participation shall not include involvement in the recommendation of a preferred Proposer or the final decision to select a Developer and/or Design-Build Team, as applicable. The Parties agree to maintain the confidentiality of all proposal information.

10.3.4. The Kentucky Parties and Indiana Parties will use their best efforts to execute the Design-Build Agreement, or the Public-Private Agreement, as applicable, as soon as practicable in 2012.

10.4. Design Standards and Construction Specifications

10.4.1. All design services to be provided by KYTC or on KYTC's behalf, including the preparation of plans, specifications and environmental compliance documentation, shall be performed in accordance with the applicable professional standard of care, as well as all applicable codes and regulations, at KYTC's sole cost and expense. Such design standards and construction specifications as INDOT shall agree to will be used for Section 3 (Indiana approach).

10.4.2. All design services to be provided by IFA/INDOT or on IFA/INDOT's behalf, including preparation of plans, specifications and environmental compliance documentation, shall be performed in accordance with the applicable professional standard of care, as well as all applicable laws, codes and regulations, at IFA/INDOT's sole cost and expense. Such design standards and construction specifications as KYTC shall agree to will be used for Section 4 (Kentucky approach).

10.4.3. The Downtown Crossing shall be designed and constructed to meet current Interstate Standards. In the process of structuring and executing the procurement, KYTC shall have the discretion to implement design changes to the extent consistent within the previous FHWA approvals for the Project. Design changes that require an additional FHWA approval will be permitted only with the concurrence of IFA and INDOT. Such concurrence shall be obtained before formally requesting the FHWA approval.

10.4.4. The East End Crossing shall be designed and constructed to meet current Interstate Standards and the width of the major structures shall be constructed with four lanes initially but shall be wide enough to

accommodate six lanes. In the process of structuring and executing the procurement, IFA and INDOT shall have the discretion to implement design changes to the extent consistent within the previous FHWA approvals for the Project. Design changes that require additional FHWA approval will be permitted only with the concurrence of KYTC. Such concurrence shall be obtained before formally requesting the FHWA approval.

10.4.5. For purposes of Subsections 10.4.3 and 10.4.4, the following definitions shall apply:

10.4.5.1 “Design change” includes any changes to the design of the project that result from value engineering, from proposals submitted by a contractor (e.g., innovative technical concepts or alternative technical concepts), or from other analyses performed by KYTC or INDOT, respectively, for the Downtown Crossing or the East End Crossing.

10.4.5.2 “FHWA approval” means any FHWA approval of a Reevaluation, an Environmental Assessment, or a Supplemental Environmental Impact Statement, pursuant to NEPA.

10.5. Design/Change Order Review – Sections 3 and 4

Each State shall allow the non-procuring State to designate a liaison to the design team of Sections 3 and 4, respectively, which liaison shall have observer status during design meetings involving the Developer or the Design-Build Team.

All communication of the liaison with respect to the design of Section 3 or 4, respectively, shall be made only to the representatives of the procuring State. No communication with respect to the design shall occur between the liaison and the Developer or the Design-Builder.

Design plans and change orders relating to Sections 3 and 4 shall be submitted to the non-procuring State prior to the work described therein being commenced. The non-procuring State shall review design plans and change orders and provide comments to the procuring State within a timeframe that will not delay work under the procuring State’s contract and that will provide reasonable time for resolving comments without a dispute. The States will establish a specific time frame for response when design submittals and change orders are presented to the other State for review and comment in order to meet the procuring State’s schedule. Disputes regarding the comments or the procuring State’s response to the comments shall be resolved pursuant to the dispute resolution provisions in Subsection 16.6.

10.6. Changes in Scope of Work and Change Orders

- 10.6.1. The Indiana Parties or Kentucky Parties may within their sole discretion make owner-directed changes in the scope of the work for that portion of the Project that they are responsible for developing and financing so long as such changes are consistent with the applicable design standards and ROD Requirements; provided however that any owner-directed change proposed by one of the States' Parties that increases the estimated cost or time for completion of the Downtown Crossing or the East End Crossing, respectively, beyond that set forth in the Major Projects Financial Plan, or that would result in a decrease in the estimated toll revenues to be derived from the operation of the toll facility comprised of the Downtown Crossing and the East End Crossing, shall be subject to the review and approval of the other States' Parties. The States' Parties shall provide the other States' Parties with copies of all proposed changes in the scope of work a minimum of twenty-eight (28) days prior to proposed initiation of the change.
- 10.6.2. The States' Parties shall provide the other States' Parties with notice of all pending change orders due to changed conditions, including those due to hazardous materials, within fourteen (14) days of receipt of a notice of changed condition. The receiving Parties shall have fourteen (14) days to review such change order and provide comments.
- 10.6.3. Disputes regarding the comments or the procuring State's response to the comments shall be resolved pursuant to the dispute resolution provision in Subsection 16.6.

10.7. Unforeseen Conditions

In the event of unforeseen conditions resulting in additional costs for the East End Crossing, including but not limited to environmental conditions, hazardous materials, differing site conditions, labor/material shortages, and other unforeseen conditions, the Indiana Parties shall bear such additional costs, except as otherwise provided by Subsection 16.9. In the event of unforeseen conditions resulting in additional costs for the Downtown Crossing, including but not limited to environmental conditions, hazardous materials, differing site conditions, labor/material shortages, and other unforeseen conditions, the Kentucky Parties shall bear such additional costs, except as otherwise provided by Subsection 16.9. Disputes regarding unforeseen conditions shall be resolved pursuant to the dispute resolution provisions in Subsection 16.6.

10.8. Construction Observation

Upon reasonable advance notice, the Kentucky Parties shall provide the Indiana Parties an opportunity to observe construction being performed on Section 3; and

the Indiana Parties shall provide the Kentucky Parties an opportunity to observe construction being performed on Section 4. Disputes regarding observation of construction shall be resolved pursuant to the dispute resolution provisions of Subsection 16.6.

10.9. Inspections and Inspection Reports

Each of the States' Parties shall provide the other States' Parties an opportunity to observe and review inspections and to review inspection reports relating to the design, construction and/or O&M, for Section 3 (Indiana Parties have right to observe and review), and Section 4 (Kentucky Parties have right to observe and review). The States' Parties shall meet and confer to develop a mutually acceptable procedure for attendance at inspections and sharing of inspection reports. The provision of such reports shall be subject to the limitations of Subsection 16.5. Disputes regarding inspections and inspection reports shall be resolved pursuant to the dispute resolution provisions in Subsection 16.6.

10.10. Substantial Completion

Whenever the Kentucky Parties believe that some or all of Section 3 has reached Downtown Crossing Substantial Completion, and/or the Indiana Parties believe that some or all of Section 4 has reached East End Crossing Substantial Completion, such States' Parties shall provide the other States' Parties advance notice of, and an opportunity to attend, the inspection of Downtown Crossing Substantial Completion or East End Crossing Substantial Completion, and shall provide a written notice of Downtown Crossing Substantial Completion or East End Crossing Substantial Completion, as applicable, as well as any punch-list items from the inspection, to the other States' Parties. The receiving States' Parties shall have 14 days following such inspection to provide comments. It shall be within the Kentucky Parties' reasonable discretion to determine whether Downtown Crossing Substantial Completion as to the Downtown Crossing (including Section 3) has been achieved. It shall be within the Indiana Parties' reasonable discretion to determine whether East End Crossing Substantial Completion as to East End Crossing (including Section 4) has been achieved. Disputes regarding whether Downtown Crossing Substantial Completion of Section 3 or East End Crossing Substantial Completion of Section 4 has been achieved shall be resolved pursuant to the dispute resolution provisions in Subsection 16.6.

10.11. Final Acceptance

Whenever the Kentucky Parties believe that some or all of Section 3 has reached Downtown Crossing Final Acceptance, and/or the Indiana Parties believe that some or all of Section 4 has reached East End Crossing Final Acceptance, such States' Parties shall provide the other States' Parties advance notice of, and an opportunity to attend, the final inspection and shall provide a copy of any punch-list items from the inspection to the other States' Parties. The receiving States'

Parties shall have 14 days following such inspection to provide comments. It shall be within the Kentucky Parties' reasonable discretion to determine whether Downtown Crossing Final Acceptance as to the Downtown Crossing (including Section 3) has been achieved. It shall be within the Indiana Parties' reasonable discretion to determine whether East End Crossing Final Acceptance as to East End Crossing (including Section 4) has been achieved. Disputes regarding such final acceptance of Sections 3 and 4 shall be resolved pursuant to the dispute resolution provisions in Subsection 16.6.

10.12. DBE Goals

Because the Project is a single project with two crossings, to be built with federal as well as state funds, and as such, is subject to federal law, it is anticipated that each of the States' Parties shall independently agree with FHWA on DBE goals appropriate for their respective procurements and elements of the Project as applicable. IFA and KYTC will include language in their procurement advertisements and contract documents and/or Public-Private Agreement or Design-Build Agreement, as applicable, requiring the Developer and the Design-Build Team to meet the DBE/good faith effort goals applicable to their respective procurements and agreements as well as aggressively create and monitor opportunities for "race neutral" and other broader community participation.

10.13. Federal Highway Administration Requirements

The States' Parties shall comply and/or conform with all applicable rules, regulations, and any other requirements of whatever kind of FHWA, and any other governmental agency having jurisdiction relating to the design, construction, operation and maintenance of the Project.

10.14. Permitting

Each States' Party shall provide all reasonable assistance to the other States' Parties in obtaining the necessary permits required to perform construction work in the jurisdiction of the other States' Parties.

10.15. Insurance

Except as provided herein, each Party shall require its Developer or Design-Build Team, as applicable, to procure and maintain, or cause to be procured and maintained, the insurance policies and coverages identified in **Appendix G**. Such insurance policies shall cover the described exposures for work performed during the design and construction phase of each Project segment. KYTC, KPTIA, IFA, INDOT, Bridges Authority, and the Joint Board each shall be named as additional insureds on such policies (excepting Workers Compensation and Professional Errors and Omissions).

10.16. As-Built Drawings

Upon Downtown Crossing Substantial Completion or East End Crossing Substantial Completion, as applicable, as-built drawings shall be provided to the other State's Party having O&M responsibility for that part of the Project under Article 12, as and when received from the Developer or Design-Build Team, respectively, including all approved submittals and shop drawings.

10.17. Ownership/License of Design and Construction Documents

As part of their respective procurements, the Indiana Parties and Kentucky Parties each shall obtain full ownership rights in the design and construction documents for their respective portions of the Project. Each also shall grant to the other States' Parties a license to use such design and construction documents.

10.18. Prevailing Wage Law

Notwithstanding anything contained herein to the contrary, each State shall comply and shall require its Design-Build Team and/or Developer, respectively, to comply with the state and/or federal prevailing and/or statutory common wage law(s) applicable to its portion of the Project, when performing or when contracting for the performance of its obligations on the Project. Without limiting the foregoing, to the extent that FHWA and the U.S. Department of Labor approve project-specific wage rates for the Project based upon the higher rate for each labor classification of the two geographic areas (the "Project-Specific Wage Rates"), each State shall comply and shall require its Design-Build Team and/or Developer, respectively, to comply with such Project-Specific Wage Rates when performing or when contracting for the performance of obligations on the Project.

Article 11. Tolling of the Project

11.1. Agreement to Toll; Federal Toll Agreements

11.1.1. Tolling. The States' Parties agree to implement tolling on all cross-river bridge spans included in the Project. The States' Parties acknowledge that the Downtown Crossing and the East End Crossing have been planned and are being delivered as a single Project, comprising an integrated cross-river transportation system that requires close coordination to ensure unified and viable tolling operations. The States' Parties further acknowledge that establishing the framework for such coordination is essential to the Project and is a fundamental purpose of this Agreement.

11.1.2. 129 Agreement. Prior to the date hereof, the States' Parties and FHWA have entered into a Section 129 Toll Agreement authorizing the treatment of the Project as a toll facility under 23 U.S.C. § 129.

11.1.3. Contract Awards. The Kentucky Parties shall use their best efforts to award a contract for the design and construction of the Downtown Crossing, and the Indiana Parties shall use their best efforts to award a contract for the design and construction of the East End Crossing, in each case by December 31, 2012.

11.2. Commencement of Tolling Operations

11.2.1. Commencement. The States' Parties agree that tolling operations for the East End Crossing Bridge and the New Downtown Crossing Bridge shall commence, in each case, as soon as each is open to traffic.

11.2.2. Kennedy Tolling. The States' Parties agree that the tolling operations for the Kennedy Bridge shall commence upon the earliest of (i) the date when the New Downtown Crossing Bridge is sufficiently complete to be open to traffic, (ii) the date of East End Crossing Substantial Completion, or (iii) June 30, 2018. Such date is referred to herein as the "Kennedy Tolling Deadline." Notwithstanding the foregoing, the States' Parties agree that the execution and delivery of the Toll Policy Agreement described in Subsection 11.5 is a condition precedent to the commencement of tolling operations for the Kennedy Bridge.

11.3. Revenue Share; Toll Covenants; Disposition of Toll Revenues

11.3.1. Toll Revenue Disposition. In order to facilitate the financing of the Project, the States' Parties agree that all Toll Revenues received shall be allocated equally between IFA and KPTIA (or another Kentucky entity identified by KPTIA). That is, fifty percent of all Toll Revenues shall be allocated to IFA and fifty percent of all Toll Revenues shall be allocated to KPTIA (or another Kentucky entity identified by KPTIA), such amounts being referred to respectively as the Indiana Revenue Share and the Kentucky Revenue Share. Notwithstanding the foregoing, the applicable percentages may be adjusted by agreement of the States' Parties as described in Subsection 8.1.9. Further, the States' Parties represent and agree that they will enter into further agreements, which may be addenda hereto, described in Subsections 11.4 and 11.5 below, in order to implement the tolling of the Project.

11.3.2. Toll Covenant. Subject to review by credit rating agencies, U.S. Department of Transportation (in connection with any TIFIA loans) and any provider of credit enhancement, KPTIA and IFA agree, so long as any Party shall have outstanding financial obligations related to the construction or financing of the Project (including any toll revenue bonds, TIFIA loans, availability payment obligations, or

other financial obligations under a Public-Private Agreement) to set and maintain toll rates and charges in each State fiscal year such that:

11.3.2.1 The Kentucky Revenue Share shall be not less than the greater of the following (i) 1.50 times the debt service requirements for senior lien Kentucky Revenue Bonds, (ii) 1.25 times the aggregate debt service requirements for the senior lien Kentucky Revenue Bonds and the Downtown Crossing TIFIA Loans and (iii) all debt service and other funding obligations of KPTIA under the Kentucky Revenue Bond Indenture; and

11.3.2.2 The Indiana Revenue Share (i) shall be not less than 100% of the aggregate amount of availability payments and other financial obligations due and payable during the following year under the Public-Private Agreement, during any period that availability payments and other financial obligations under the Public-Private Agreement, if any, remain outstanding, or (ii) in the event that IFA does not enter into a Public-Private Agreement and issues toll revenue bonds to finance the Project, shall be the greater of (a) 1.50 times the debt service requirements for senior lien IFA toll revenue bonds, (b) 1.25 times the aggregate debt service requirements for any senior lien IFA toll revenue bonds and East End Crossing TIFIA Loans and (iii) all debt service and other funding obligations of IFA under any IFA toll revenue bond indenture, during any period that toll revenue bonds of IFA if any, remain outstanding.

11.3.3. Use and Disposition of Toll Revenues. The States' Parties acknowledge and agree that the rate covenant provisions set forth in Subsection 11.3.2 above comply with KRS 175B.040 inasmuch as the tolls generated at the rates established in accordance with such provisions will be sufficient to pay Project costs (in combination with other committed sources of funding), meet debt service obligations, and create reserves, it being understood that "reserves" for this purpose shall include, but not exceed, amounts necessary to ensure that the Kentucky Revenue Share and the Indiana Revenue Share are funded at levels consistent with the aforementioned rate covenant. The States' Parties agree that all Toll Revenues, and the uses thereof, are subject to the requirements of 23 U.S.C. § 129.

11.4. Tolling Framework and Parameters; Further Agreements

11.4.1. Framework. The States' Parties agree that this Agreement shall constitute an agreement regarding tolling framework, parameters and procedures for further implementation of tolling planning, which shall be further implemented by the various agreements or Addendum hereto set forth below and in Subsection 11.5.

11.4.1.1 The States' Parties agree that the tolling shall be uniform and comprehensive for all bridge components of the Project, through a unified approach with a common systems developer and integrator, common operator, common systems and common enforcement policies, with only such differences, if any, as may be dictated by the inherent design differences between the East End Crossing and Downtown Crossing.

11.4.1.2 Detailed tolling policies shall be established under the Toll Policy Agreement described in Subsection 11.5 below, after fulfillment of the tolling policy development process described in Subsection 11.4.2 below.

11.4.1.3 Detailed tolling policies set forth in the Toll Policy Agreement shall be based on one or more traffic and revenue studies made by qualified consultants at the expense of the States' Parties or any of them.

11.4.1.4 Tolling may be conducted on the basis of "all electronic tolling" and "electronic toll collections" through automated systems with an open architecture accommodating systems such as E-Z Pass, I-Pass, I-Zoom, etc.

11.4.2. Tolling Policy Development. Pursuant to the ROD, the States' Parties are required, and the States' Parties have agreed, to develop a tolling policy that is sensitive and responsive to low-income and minority populations (hereinafter, "environmental justice populations"), to develop such policy through additional outreach and public involvement with environmental justice populations and to express such policy in the Toll Policy Agreement.

11.4.2.1 The States' Parties, acting with and through the Tolling Body, agree to:

- Conduct a detailed assessment of the potential economic effects of tolls on environmental justice populations, using the latest publicly available population data, traffic forecasts, and community input.
- Make the results of that study publicly available.
- Identify and evaluate a range of measures for mitigating the effects of tolling on low-income and minority populations.
- Provide an opportunity for additional public input on those potential measures.

11.4.2.2 In developing the tolling policy, the States' Parties, acting with and through the Tolling Body, will adopt a plan for mitigating the effects of tolling on environmental justice populations which will

- Include practicable measures for minimizing impacts of tolling on environmental justice communities.
- Comply with FHWA policy, including FHWA "Guidance on Environmental Justice and NEPA" dated December 16, 2011; FHWA Order 6640.23A "FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (June 14, 2012); and any update or other current FHWA policy available at the time of the assessment.

11.4.2.3 The ROD requires that the tolling policy will be completed before tolling is allowed to be initiated on the Project.

11.4.2.4 In determining the practicability of measures to mitigate effects on environmental justice populations, the States' Parties may take into account the financial requirements of the Project, the technical and logistical issues associated with toll collection methods, and other needs.

11.4.2.5 In developing the tolling policy, consideration shall be given to the information contained in the FHWA report, "Environmental Justice Emerging Trends and Best Practices Guidebook" (November 2011), the "Department of Transportation Environmental Justice Strategy" (March 2, 2012), and other applicable publications available at the time the toll policy is developed.

11.4.2.6 Tolling policy development may also consider other factors, including but not limited to:

- Vehicle classes
- Time of day
- Congestion based pricing
- Schedule for rate adjustments
- Discounts, differentials
- Violations and enforcement
- Transponder distribution arrangements
- Billing and user account policies
- Video collection systems
- Regional interoperability and reciprocity.

11.4.2.7 The States' Parties expect that the development of the tolling policy shall be completed and a Toll Policy Agreement (as

described in Subsection 11.5 below) shall be executed by June 30, 2013.

- 11.4.3. Toll System Integrator. The States' Parties (or certain of them representing each state), and/or the Joint Board acting on behalf of the States' Parties, shall engage a Toll System Integrator to design, procure, and install a comprehensive toll system for the Project pursuant to the Toll System Integrator Agreement. In addition, the Toll System Integrator Agreement shall obligate the Toll System Integrator to operate, maintain and manage the comprehensive toll system for the Project (performing the role of the Toll Operator) for a minimum initial period of at least one year following installation of the toll system. The States' Parties shall use their best efforts to enter the Toll System Integrator Agreement by March 31, 2013, but in any event shall enter into the Toll System Integrator Agreement no later than June 30, 2013.
- 11.4.4. Toll Operator. The States' Parties (or certain of them representing each state), and/or the Joint Board acting on behalf of the States' Parties, agree to undertake a procurement for a Toll Operator (the initial selection and procurement of which shall be as provided in Subsection 11.4.3); and, following the expiration of the initial period during which the Toll System Integrator will operate and manage the system, to enter into a Toll Operations Agreement with a Toll Operator to operate, maintain and manage a comprehensive toll system for the Project.
- 11.4.5. Custody Agreement. The Toll Operator and the States' Parties (or certain of them representing each state) and/or the Joint Board acting on behalf of the States' Parties, shall enter into a Custody Agreement, which satisfies the requirements of Subsection 11.8, with a bank or trust company as custodian no later than six (6) months prior to the Kennedy Tolling Deadline.
- 11.4.6. Addendum. The States' Parties agree that, concurrently with commercial close on the East End Crossing procurement, they will execute and deliver an addendum to this Agreement, reciting (i) actions which have been undertaken, (ii) actions which have been completed, and (iii) actions remaining to be done for the development of the tolling policy, all as set forth herein, and setting forth the further agreements described in this Subsection 11.4 (the "Addendum"). The Addendum shall further memorialize such additional understandings and agreements on which such States' Parties are then in accord.

11.5. Toll Policy Agreement; Terms

11.5.1. Toll Policy Agreement. Upon completion of the tolling policies, the States' Parties, and/or the Tolling Body, acting on behalf of the States' Parties, shall enter into a Toll Policy Agreement, which shall incorporate and be the expression of the tolling policy developed pursuant to Subsection 11.4. The Toll Policy Agreement shall be considered an implementing agreement and Exhibit to this Agreement. The Toll Policy Agreement shall require the consent of the parties thereto for certain changes in the tolling policy or changes in maximum rates or fees which may be charged pursuant to the Toll Policy Agreement and the Toll Operations Agreement.

11.5.2. Tolling Body. The Interlocal Agreement shall establish a Tolling Body, shall delegate and assign rights, powers and responsibilities to the Tolling Body, and shall prescribe who may exercise the various designated powers of each of the parties thereto, subject to such limitations as may be contained therein.

11.5.3. Terms. The terms of the Toll Policy Agreement shall include, among other appropriate terms:

11.5.3.1 Expected initial toll rates, including, but not limited to, identification of vehicle classes, unit toll rates by vehicle class, allowable toll variations by time of day or day of week, and toll variations tied to levels of traffic congestion,

11.5.3.2 Toll rate adjustments and adjustment mechanisms, including, but not limited to, allowable frequency of toll rate adjustments, market or other external indices underlying adjustment mechanisms, and any forced triggers for rate adjustments, and

11.5.3.3 Such terms as are necessary to comply with the ROD as described in 11.4.2 above.

11.5.4. Initial Rates. Initial toll rates and related factors established in the Toll Policy Agreement shall be mutually agreeable to the States' Parties to support at appropriate levels the financial obligations of the respective States' Parties with respect to the East End Crossing and Downtown Crossing. Such initial toll rates shall be sufficient to provide Toll Revenues which satisfy the rate covenant in Subsection 11.3.2 and shall:

11.5.4.1 give assurance to holders of bonds or other evidence of indebtedness with respect to the amount of the Kentucky Revenue Share expected to be available to fund obligations (whether senior or subordinate) to be incurred by KPTIA to finance the Downtown Crossing, and

11.5.4.2 give assurance to IFA with respect to the amount of the Indiana Revenue Share expected to be available to fund obligations to be incurred by the IFA to finance the East End Crossing and make either availability payments or revenue bond payments.

11.6. Toll System Integrator Agreement; Terms

The States' Parties (or certain of them representing each state), and/or the Joint Board, acting on behalf of the States' Parties, shall conduct a procurement of the Toll System Integrator. Said procurement shall include the initial toll operation procurement described in Subsection 11.7. below.

11.6.1. Toll System Integrator. The States' Parties (or certain of them representing each state), and/or the Joint Board, acting on behalf of the States' Parties, shall enter into a Toll System Integrator Agreement with a Toll System Integrator. The Indiana Parties shall require the Developer to coordinate with the Toll System Integrator with respect to the work under the Toll System Integrator Agreement. The Kentucky Parties shall require the Design-Build Team to coordinate with the Toll System Integrator with respect to the work under the Toll System Integrator Agreement. The terms of the Toll System Integrator Agreement shall include the following:

11.6.1.1 The Toll System Integrator shall design, develop, procure, equip, integrate, deliver, install, commission, test and warrant the entire tolling and violation enforcement system, which shall include all equipment installed at the roadside, software, the toll data center servers and the entire back office which would be composed of the electronic toll collection system, account management, customer service center functions and the violation processing system.

11.6.1.2 The Toll System Integrator shall provide the toll system so that it shall (i) accommodate the tolling of all cross-river traffic on the Project through all stages of traffic control and travel lane configurations and (ii) be initially installed to fully function without relocation of the tolling facilities.

11.6.1.3 The Toll System Integrator shall agree to perform the role of the Toll Operator above for a minimum initial period of at least a year.

11.6.1.4 The Toll System Integrator Agreement shall be executed in the second quarter of 2013.

11.6.1.5 Costs of, and payment to, the Toll System Integrator shall be borne equally by the appropriate Kentucky Parties and appropriate Indiana Parties and shall be paid as provided in the Toll System Integrator Agreement.

11.7. Toll Operations Agreement; Terms

The States' Parties (or certain of them representing each State), and/or the Joint Board, acting on behalf of the States' Parties, shall conduct procurements of the Toll Operators. The initial procurement for a Toll Operator may be accomplished together with the Toll System Integrator procurement described in Subsection 11.6 above.

11.7.1. Delegation. Under the Toll Operations Agreement, the Joint Board and the States' Parties shall delegate certain powers, rights and responsibilities to the Toll Operator (consistent with the Toll Policy Agreement). The Toll Operations Agreement shall further provide that the Joint Board or the States' Parties shall have consent rights over key operational considerations, as specified therein (including changes to business rules, collection and enforcement policies, toll system technology and upgrades and replacements, toll rates, maximum tolls, and rate adjustment mechanisms), as well as audit rights related to the Project.

11.7.2. Forecasts. The States' Parties agree that the initial toll rate schedule established in the Toll Operations Agreement may be based on one or more "investment grade" traffic and revenue forecasts, prepared by qualified traffic and revenue forecasting firms.

11.7.3. Periodic Review. So long as either the Indiana Parties or the Kentucky Parties shall have outstanding financial obligations related to the Project, the Toll Operations Agreement shall provide for a mechanism for annual or more frequent periodic review of the adequacy of existing toll schedules and adjustment mechanisms to produce Toll Revenues to support the respective payment and covenant obligations of IFA and KPTIA related to financing the East End Crossing and the Downtown Crossing, respectively. The Toll Operations Agreement shall provide that, if (a) the actual or projected Indiana Revenue Share or Kentucky Revenue Share for the then current State fiscal year is less than the amount required to pay the respective payment obligations or to satisfy the respective financial covenants (including but not limited to rate covenants and additional indebtedness tests) related to financing the East End Crossing and the Downtown Crossing, respectively, or (b) the Indiana Revenue Share or the Kentucky Revenue Share for the next State Fiscal Year is forecasted to be less than required to satisfy the same, then IFA or KPTIA shall engage a qualified traffic and revenue consultant, acceptable to both parties, to provide a report recommending the adjustments to the toll rates and charges necessary to increase the forecasted Indiana Revenue Share and Kentucky Revenue Share to an amount forecasted to be sufficient to satisfy all applicable payment and covenant requirements for the next State Fiscal Year and each of the four (4) succeeding State Fiscal

Years. In the selection of such consultant, the party whose share of Toll Revenues was insufficient to enable it to meet its payment and covenant requirements with respect to the Downtown Crossing or the East End Crossing, as the case may be, shall have the final decision, and the consent of the other party to the selection of such consultant shall not be unreasonably withheld. The appropriate States' Parties shall immediately implement the recommended toll adjustments and engage the qualified traffic and revenue consultant to monitor actual cash flow and to submit reports comparing to the forecasted Indiana Revenue Share and Kentucky Revenue Share not less than quarterly for a minimum period of one year after delivery of such report.

11.7.4. Procedures. The States' Parties (or certain of them representing each State), and/or the Joint Board, acting on behalf of the States' Parties, as applicable, shall establish procedures within the Toll Operations Agreement for operations, insurance, management, repair, and replacement of tolling equipment and other tolling activities of the Toll Operator on the affected portions of the Project, as well as appropriate provisions for oversight, removal, termination or replacement of the Toll Operator.

11.7.5. Law Enforcement: Toll Enforcement. The States' Parties shall provide for law enforcement and tolling violation enforcement in the Toll Policy Agreement and in the Interlocal Agreement. The States' Parties agree to take all reasonable actions to charge and enforce the tolls and other charges established pursuant to the Toll Policy Agreement and to take all reasonable efforts appropriate for collection and enforcement of those tolls and other charges.

11.7.6. Rev. Proc. 97-13. The States' Parties agree that, if necessary to provide financing for any procurement on favorable terms, the Tolling Operations Agreement shall be compliant with IRS Revenue Procedure 97-13, or any successor provision.

11.8. Custody Agreement and Application of Toll Revenues; Toll System Collection Expenses

11.8.1. Toll Revenues. The Custody Agreement shall include provisions requiring:

11.8.1.1 the daily deposit of all Toll Revenues into an account or accounts for the benefit of IFA and KPTIA,

11.8.1.2 the daily division of such Toll Revenues on a 50/50 basis (i.e., the Kentucky Revenue Share and the Indiana Revenue Share) for the benefit of IFA and KPTIA,

11.8.1.3 procedures for the periodic transfer of the Indiana Revenue Share and the Kentucky Revenue Share by the custodian to the trustee for the obligations of IFA under the Public-Private Agreement or any Indiana toll revenue bond indenture, and to the trustee for the obligations of KPTIA under the Kentucky Revenue Bond Indenture, respectively.

11.8.2. No Discretion. No party to the Custody Agreement or the Toll Operations Agreement shall have discretionary authority over any element of cash collections, account deposits or distributions, and all such cash flows shall occur strictly in accordance with the terms of the Custody Agreement.

11.8.3. Expenses. Toll System Collection Expenses shall be divided on an equal (50/50) basis between IFA and KPTIA and the respective share of Toll System Collection Expenses shall be payable by IFA and KPTIA from the Indiana Revenue Share and the Kentucky Revenue Share, respectively, and amounts held under the respective trust indentures or agreements described in Subsection 11.8.1.3 above.

11.9. Rulemaking

The States Parties agree, upon recommendations to be made by the Tolling Body, to undertake administrative rulemaking procedures as promptly as practicable as may be necessary to establish the framework for electronic tolling, tolling procedures, tolling enforcement and any other rules or regulations necessary or appropriate to effectuate the provisions of this Article 11 and operation of a comprehensive tolling system for the Project. Notwithstanding the foregoing, the States' Parties acknowledge that amendment of the Kentucky statutes and/or enactment of new statutes may be required in order to implement certain enforcement mechanisms with respect to violations of any electronic tolling system. The Kentucky Parties will make reasonable efforts to enact legislation in 2013 providing for such amendment and/or new statutes.

11.10. Interpretive Principles

References herein to the "States' Parties" may include a subset of such Parties including at least one entity from each State. References to an Interlocal Agreement may be to a separate agreement, components of the same agreement or supplements or addenda to an Interlocal Agreement.

11.11. Duration of Tolling

The tolling framework, parameters and procedures provided for herein shall continue for the duration of this Agreement, and may be extended thereafter by agreement of the States' Parties.

Article 12. Operations and Maintenance

12.1. Traffic Plan During Construction

- 12.1.1. Downtown Crossing – During the period beginning when construction commences on the Project until Downtown Crossing Substantial Completion, the Kentucky Parties shall be responsible for developing a traffic plan to safely and efficiently handle, direct and/or divert through-traffic affected by construction of the Downtown Crossing. Such traffic plan as to Section 3 will be developed with the advice and consent of the Indiana Parties. Such traffic plan will be submitted reasonably in advance of its implementation; and consent of the Indiana Parties shall not be unreasonably withheld.
- 12.1.2. East End Crossing – During the period beginning when construction commences on the Project until East End Crossing Substantial Completion, the Indiana Parties shall be responsible for developing or causing to be developed a traffic plan to safely and efficiently handle, direct and/or divert through-traffic affected by construction of the East End Crossing. Such traffic plan as to Section 4 will be developed with the advice and consent of the Kentucky Parties. Such traffic plan will be submitted reasonably in advance of its implementation; and consent of the Kentucky Parties shall not be unreasonably withheld.

12.2. Operations and Maintenance Prior to Project Termination

- 12.2.1. East End Crossing – At such time as the Indiana Parties have certified to the Kentucky Parties that East End Crossing Substantial Completion has occurred pursuant to the provisions hereof (including, but not limited to, the definition of such term and Subsection 10.10 hereof), the responsibility for O&M for the completed Section(s) of the East End Crossing shall be as follows: Section 4A shall be the responsibility of the Kentucky Parties (and Kentucky’s O&M standards shall apply), and Sections 4B, 5 and 6 shall be the responsibility of the Indiana Parties (and Indiana’s O&M standards shall apply). These O&M responsibilities may be delegated to a private vendor. The East End Crossing shall be considered part of the state highway system designated under IC 8-23-4-2 for purposes of identification, maintenance standards, and enforcement of traffic laws. Section 4 shall be classified as also part of Kentucky’s state highway system. Management, establishment of standards, and traffic enforcement for Section 4A shall be delegated to KYTC.
- 12.2.2. Downtown Crossing – At such time as the Kentucky Parties have certified to the Indiana Parties that Downtown Crossing Final Acceptance has occurred pursuant to the provisions hereof (including, but not limited to, the definition of such term and Subsection 10.10

hereof), the responsibility for O&M for the completed Section(s) of the Downtown Crossing shall be as follows: Section 1 and 2 shall be the responsibility of the Kentucky Parties (and Kentucky's O&M standards shall apply), and Section 3 shall be the responsibility of the Indiana Parties (and Indiana's O&M standards shall apply). These O&M responsibilities may be delegated to a private vendor.

12.3. Operations and Maintenance After Project Termination

12.3.1. After Project Termination, the Kentucky Parties shall be responsible for the Kentucky O&M Portion. The Kentucky Parties shall keep a correct and accurate record of the maintenance, repairs, construction or reconstruction of the Downtown Crossing Bridges or parts thereof and shall annually bill the Indiana Parties for one-half of the cost thereof as of June 30th of any calendar year, and the Indiana Parties shall, within a reasonable time, reimburse the Kentucky Parties for such billed amounts.

12.3.2. After Project Termination the Indiana Parties shall be responsible for the Indiana O&M Portion. The Indiana Parties shall keep a correct and accurate record of the maintenance, repairs, construction or reconstruction of the East End Crossing Bridge and Section 4B, or parts thereof and shall annually bill the Kentucky Parties for one-half of the cost thereof as of June 30th of any calendar year, and the Kentucky Parties shall, within a reasonable time, reimburse the Indiana Parties for such billed amounts.

12.4. Beginning upon Downtown Crossing Substantial Completion, and upon East End Crossing Substantial Completion, respectively, and for the duration of this Agreement, the Downtown Crossing and the East End Crossing each shall remain open to all vehicular traffic including but not limited to semi-truck traffic. During this period, no Party shall close either the East End Crossing or the Downtown Crossing to any kind of vehicular traffic without the consent of the other States' Parties, except in response to an emergency or planned maintenance.

Article 13. Representations and Warranties

13.1. IFA makes the following representations and warranties to the other States' Parties:

13.1.1. The IFA is an independent public instrumentality of Indiana exercising essential public functions and is duly organized and existing under Indiana Code 4-4-10.9 and 4-4-11 et seq.

13.1.2. The IFA Board has approved the execution and delivery of this Agreement by the IFA and authorized its performance of its obligations hereunder.

- 13.1.3. As of the date of this Agreement, the IFA is not aware of any environmental, archeological, or hazardous materials on or near the Project that require remediation other than those that are identified in the NEPA Documents.
- 13.1.4. The IFA is not aware of any pending litigation relating to the Project other than the matter(s) identified on **Appendix I**.
- 13.2. KYTC makes the following representations and warranties to the other States' Parties:
 - 13.2.1. KYTC is a cabinet of Kentucky exercising essential public functions and is duly organized and existing under KRS 12.250 and KRS Chapter 174.
 - 13.2.2. The Secretary of KYTC has approved the execution and delivery of this Agreement by KYTC and authorized its performance of its obligations hereunder.
 - 13.2.3. As of the date of this Agreement, KYTC is not aware of any environmental, archeological, or hazardous materials on or near the Project that require remediation other than those that are identified in the NEPA Documents.
 - 13.2.4. KYTC is not aware of any pending litigation relating to the Project other than the matter(s) identified on **Appendix I**.
- 13.3. INDOT makes the following representations and warranties to the other States' Parties:
 - 13.3.1. INDOT is a department and agency of Indiana exercising essential public functions and is duly organized and existing under Indiana Code 8-23-2 et seq.
 - 13.3.2. The Commissioner of INDOT has approved the execution and delivery of this Agreement by INDOT and authorized its performance of its obligations hereunder.
 - 13.3.3. As of the date of this Agreement, INDOT is not aware of any environmental, archeological, or hazardous materials on or near the Project that require remediation other than those that are identified in the NEPA Documents.
 - 13.3.4. INDOT is not aware of any pending litigation relating to the Project other than the matter(s) identified on **Appendix I**.
- 13.4. KPTIA makes the following representations and warranties to the other States' Parties:

- 13.4.1. KPTIA is an instrumentality of Kentucky exercising essential public functions and is duly organized and existing under KRS 175B.015.
- 13.4.2. KPTIA's Chairman has approved the execution and delivery of this Agreement by KPTIA and authorized its performance of its obligations hereunder.
- 13.4.3. As of the date of this Agreement, KPTIA is not aware of any environmental, archeological, or hazardous materials on or near the Project that require remediation other than those that are identified in the NEPA Documents.
- 13.4.4. KPTIA is not aware of any pending litigation relating to the Project other than the matter(s) identified on **Appendix I**.

Article 14. Termination/Alternative Procurements

- 14.1. In the event that, as of June 30, 2014 or thereafter, a contract has not been awarded, or the planned work has been cancelled or materially delayed, for either the Downtown Crossing or the East End Crossing, or both, the States' Parties shall use their best efforts and work together in good faith to identify and implement appropriate measures to ensure that construction of the entire Project will be completed as contemplated in the ROD and that the States' Parties will be able to meet their obligations under Subsection 11.2.2.
- 14.2. In the event that unexpected state, federal, local or other conditions of extraordinary significance occur that are beyond the control of one or more of the States' Parties, causing the States' Parties or any of them to believe that (a) the Downtown Crossing, the East End Crossing and/or the Project in general cannot or will not proceed to completion as contemplated herein and that (b) termination, modification, suspension, interruption or amendment of this Agreement, the Design-Build Agreement and/or the Public-Private Agreement is necessary, then the States' Parties shall proceed as follows:
 - 14.2.1. The State's Party seeking to invoke the provisions of this Article shall provide written notice to the other States' Parties of the condition requiring action by the Parties.
 - 14.2.2. Within thirty (30) days after receipt of such written notice, the States' Parties shall meet in person, and shall use their best efforts and work together in good faith to address fairly and equitably, for all States' Parties, the changed conditions and to the extent reasonably practicable, to identify the measures by which construction of the entire Project may be completed as contemplated in the ROD, and that the requirements of Subsection 11.2.2 may be satisfied, including consideration of any adjustment to the Toll Revenue share allocation that may be equitably required under the changed circumstances.

Article 15. Restoration and Force Majeure

- 15.1. If all or any part of the Downtown Crossing or East End Crossing shall be destroyed or damaged prior to its respective substantial completion (as defined by “Downtown Crossing Substantial Completion” and “East End Crossing Substantial Completion,” respectively) by casualty or other cause of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or extraordinary, foreseen or unforeseen, the respective procuring State’s Party shall, at its sole cost and expense, whether or not insurance proceeds, if any, shall be equal to the estimated cost of repairs, alterations, restoration, replacement and rebuilding, proceed diligently to repair, restore, or rebuild the same to the project requirements. The State’s Party with the rebuilding responsibility shall be entitled to pursue cost recovery against applicable insurance or third parties having responsibility for such damages; and the other States’ Parties shall reasonably assist with such cost recovery efforts.
- 15.2. If all or any part of the Downtown Crossing or East End Crossing shall be destroyed or damaged subsequent to its respective substantial completion (as defined by “Downtown Crossing Substantial Completion” and “East End Crossing Substantial Completion,” respectively) by casualty or other cause of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary, or extraordinary, foreseen or unforeseen, the respective State’s Party or State’s Parties having the obligation for the expense of O&M pursuant to Sections 12.2 and 12.3 shall, at its or their sole cost and expense, whether or not insurance proceeds, if any, shall be equal to the estimated cost of repairs, alterations, restoration, replacement and rebuilding, proceed diligently to repair, restore, or rebuild the same to the original project requirements. The State’s Party or State’s Parties with the rebuilding responsibility shall be entitled to pursue cost recovery against applicable insurance or third parties having responsibility for such damages; and the other States’ Parties shall reasonably assist with such cost recovery efforts.
- 15.3. None of the States’ Parties shall be excused from any obligation under this Agreement as a result of events such as those referenced in Subsection 15.1, 15.2, or as a result of a Force Majeure Event, nor shall such casualty or Force Majeure Event be considered grounds for terminating this Agreement. Notwithstanding the foregoing, the Party suffering the casualty and/or Force Majeure Event shall nonetheless have its obligations to deliver a completed crossing or fulfill its obligation to maintain an open, usable crossing, equitably suspended, but only for the period of time reasonably commercially necessary to undertake and complete the repairs or restoration.

Article 16. General Matters

16.1. Mutual Consents

16.1.1. IFA, INDOT and the Bridges Authority acknowledge and consent to KYTC and KPTIA's roles, powers and authorities with respect to the real estate acquisition, joint tenancy, procurement, financing, project delivery and operation and maintenance activities as described herein.

16.1.2. KYTC, KPTIA and the Bridges Authority acknowledge and consent to IFA and INDOT's roles, powers and authorities with respect to the real estate acquisition, joint tenancy, procurement, financing, project delivery and operation and maintenance activities as described herein.

16.2. Access to Records

Each State's Party shall require its contractors or consultants (including the Developer and the Design-Build Team) to: (a) maintain until at least three years after Project Termination, all documents relating to the Project, including but not limited to design and construction documents, operations and maintenance documents, investigations, expert analyses, notices, claims, settlements, and correspondence, (including all such documents that are in electronic media), and (b) permit access thereto at such contractors'/consultants' facilities as requested by the applicable contracting State's Party. Each State's Party shall cooperate with the other States' Parties' reasonable requests for copies of, or inspection of such documents or material.

16.3. Federal Project Number

INDOT and KYTC agree that each shall provide to the other the federal project number under which the Party's federal funds for the Project have been obligated.

16.4. Approval of Public Statements or Press Releases

Prior to any press release regarding the Project or the making or releasing of any other major announcements concerning the Project, the States' Parties shall consult with one another to ensure that such statements are timely, accurate and do not breach agreed upon confidentiality commitments.

16.5. Confidentiality

The Parties, and their respective Project consultants and Project contractors (including the Developer and the Design-Build Team) shall not disclose to third parties confidential factual data or information provided by the Parties except as may be required by statute, ordinance, or order of the court, or as authorized by the Party who provided the data or information. The Parties and their respective Project consultants and Project contractors shall provide notice to the other Parties of any request for such information as provided in this Agreement.

16.6. Dispute Resolution

To the extent permitted by law, the States' Parties shall use best efforts to resolve any disputes between and among them. To this end, the States' Parties shall consult and negotiate with each other in good faith, recognizing their mutual interest in achieving a just and equitable solution satisfactory to all States' Parties. It is expressly acknowledged and agreed by and among the States' Parties that the overriding consideration is that the Project be accomplished on time and on budget. In the event there is a dispute between the States' Parties, the work may continue pending resolution of the dispute, provided that the State's Party or State's Parties responsible for such work shall continue the disputed work at their sole risk and expense and shall solely bear any additional cost, including any cost of correction or delay, that results from the ultimate resolution of such dispute. The complaining Party shall immediately call a dispute resolution meeting between the States' respective project managers. For disputes involving the proper application or interpretation of the ROD or federal issues, FHWA shall be consulted as part of the resolution. If the dispute remains unresolved after the project managers agree, or one of them notifies the other, that further meetings will not be helpful, the complaining party shall, within 30 calendar days of the most recent dispute resolution meeting, submit a written request for review to the Joint Board. The Parties acknowledge the risks to the construction schedule inherent in the dispute resolution process. The Parties commit to being mindful of these risks in their decisions to escalate disputes. The Parties will use their best efforts to resolve any disputes among them. The Parties shall consult and negotiate in good faith recognizing their mutual interest in achieving a just and equitable solution. In the event there is a dispute between the States Parties as to the delegation of powers, duties, obligations, or responsibilities between the Joint Board and the Tolling Body, such dispute shall be resolved between the states' governors.

16.7. Third Party Claims

The States' Parties shall share equally, on a 50/50 basis, all losses or liabilities arising from tort claims for personal injury or property damage asserted by third parties with respect to the Project not covered by insurance, the Indemnitors or any other third party.

Each of the States' Parties shall bear responsibility for its own attorneys' fees and costs incurred as a result of any third party claims arising out of or relating to the Project, unless otherwise agreed by the States' Parties in writing.

16.8. Indemnification/ Third Party Beneficiary Rights

The States' Parties shall cause the Indemnitors with whom they have a contract to name KYTC, KPTIA, INDOT, IFA, Joint Board, and Bridges Authority as express beneficiaries under an indemnity clause to be included in each such contract which protects the Parties against any and all third-party claims, losses,

expenses and/or damages arising from the Indemnitors' performance on the Project.

To the extent permitted by the laws of Kentucky and Indiana, the States' Parties shall defend the Bridges Authority and its individual members against any and all third party claims, losses, expenses and/or damages arising from or related to the performance or non-performance by the States' Parties of their obligations under this Agreement. The States' Parties shall share the costs of such defense equally, on a 50/50 basis.

The Indiana Parties shall provide in the Public-Private Agreement for the East End Crossing that KYTC shall be a third party beneficiary of the Public-Private Agreement as to any direct damages resulting from design or construction defects in Section 4A. The Kentucky Parties shall provide in the Design-Build Agreement for the Downtown Crossing that IFA and INDOT shall be third party beneficiaries of the Design-Build Agreement as to any direct damages resulting from design or construction defects in Section 3.

16.9. Liability Between the Parties

16.9.1. Except to the extent set forth in this Agreement, none of the Parties shall be liable to any of the other Parties for claims and/or actions (whether alleging negligence, breach of contract, strict liability, warranty, breach of professional services or otherwise) relating to the quality, suitability, operability or condition of any design, construction, operation or maintenance of any portion of the Project, and each Party expressly disclaims any and all express or implied representations or warranties with respect thereof, including any warranties of suitability or fitness for use. The limitation of liability provided herein shall not apply to the following:

a) damages to the extent covered and paid for by insurance;

b) damages to the extent covered and paid for by an Indemnitor pursuant to an indemnity obligation described in Subsection 16.8, and

c) damages to the extent paid for by a responsible party (other than a Party to this Agreement) pursuant to applicable federal and state environmental laws.

16.9.2. Notwithstanding Subsection 16.9.1, the Parties are entitled to seek injunctive relief for specific performance of any obligation set forth in this Agreement, provided such relief is timely sought so as to not result in prejudice to the other State's Parties.

16.9.3. In the event the East End Crossing is not completed or is significantly delayed other than as a result of action or inaction on the part of the Kentucky Parties, the Indiana Parties shall be solely responsible for

any claims or costs that may be asserted by FHWA or the United States Department of Transportation for reimbursement under 23 CFR 630.112 or otherwise.

16.9.4. In the event the Downtown Crossing is not completed or is significantly delayed other than as a result of action or inaction on the part of the Indiana Parties, the Kentucky Parties shall be solely responsible for any claims or costs that may be asserted by FHWA or the United States Department of Transportation for reimbursement under 23 CFR 630.112 or otherwise.

16.10. Amendment and Assignment

This Agreement may be further amended, supplemented, or modified only by a written document executed by the States' Parties. Except as otherwise provided herein, neither this Agreement nor any of the rights, duties, or obligations described herein shall be assigned by any State's Party hereto without the prior express written consent of the other States' Parties, and such consent shall not be unreasonably withheld so long such assignment is consistent with the purposes of this Agreement.

16.11. Notice to Parties

As to KPTIA: Chairman
Kentucky Public Transportation Infrastructure
Authority
200 Mero Street, 6th Floor
Frankfort, KY 40622

With a copy to: General Counsel
Kentucky Transportation Cabinet
200 Mero Street, 6th Floor
Frankfort, KY 40622

As to KYTC: Secretary
Kentucky Transportation Cabinet
200 Mero Street, 6th Floor
Frankfort, KY 40622

With a copy to: General Counsel
Kentucky Transportation Cabinet
200 Mero Street, 6th Floor
Frankfort, KY 40622

As to IFA: Public Finance Director of the State of Indiana
Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, IN 46204

With a copy to:	General Counsel Indiana Finance Authority One North Capitol Avenue, Suite 900 Indianapolis, IN 46204
As to INDOT:	Commissioner Indiana Department of Transportation 100 North Senate Avenue, IGCN 731 Indianapolis, IN 46204-2216
With a copy to:	Chief Legal Counsel and Deputy Commissioner Indiana Department of Transportation 100 North Senate Avenue, IGCN 755 Indianapolis IN 46204
As to Bridges Authority:	Chair (Kentucky), Louisville and Southern Indiana Bridges Authority c/o Kentucky Transportation Cabinet 200 Metro Street, 6 th Floor Frankfort, KY 40622 Co-Chair (Indiana), Louisville and Southern Indiana Bridges Authority c/o Indiana Department of Transportation 100 North Senate Avenue, IGCN 755 Indianapolis, IN 46204

16.12. Reporting Requirements

The Public Private Agreement and Design-Build Agreement shall require Project contractors and consultants to comply with applicable reporting requirements of FHWA, the Office of Management and Budget, and any other federal agency with oversight authority over this Project or its financing.

16.13. State Sovereignty

To the fullest extent permitted by law, the Indiana Parties, the Kentucky Parties and the Bridges Authority have entered into this Agreement as representatives of their respective sovereign states. Nothing herein shall be construed as consent by any Party to suit in the courts of the other state, or waiver of tort claim protections, or waiver of sovereign immunity or rights under the Eleventh Article of Amendment to the Constitution of the United States. This Agreement does not grant any rights to any party except the Parties herein. Nothing in this Agreement shall be deemed to create or give rise to any right of action in, or any liability to, any third party claiming to have suffered a loss, damage or injury by virtue of any alleged failure by any Party hereto to comply with the terms of this Agreement. The Indiana Parties and the Bridges Authority shall be entitled to assert sovereign immunity and/or all other applicable protections in Kentucky courts to the same

extent Kentucky is able to assert sovereign immunity and all other such applicable protections in Kentucky courts, and the Kentucky Parties and the Bridges Authority shall be entitled to assert sovereign immunity and all other applicable protections in Indiana courts to the same extent Indiana is able to assert sovereign immunity and/or all other such applicable protections in Indiana courts. This provision shall survive Project Termination or other termination of this Agreement.

16.14. Organizational Conflicts of Interest

16.14.1. The States' Parties agree to establish a policy applicable to both procurements to avoid organizational conflicts of interest. Such policies shall require application of the standards of 23 CFR §§ 636.103 and 636.116. The States' Parties shall independently have the discretion to waive nonmaterial conflicts of any person or entity previously under contract with IFA, INDOT or KYTC to prepare preliminary plans, planning reports or other project development products with respect to their respective procurements to allow such person or entity to participate on a Proposer team.

16.14.2. Upon approval of the other States' Parties, additional exceptions to this policy may be granted by either of the States' Parties upon written request from such person or entity, if it is determined that the involvement of such person or entity is in the best interest of the public and does not constitute an unfair advantage to such person or entity.

16.15. Noncollusion

Each of the undersigned attests, subject to the penalties for perjury, that he/she is the properly authorized representative, agent, member or officer of the Party indicated, that he/she has not, nor has any other member, employee, representative, agent or officer of that Party directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

16.16. 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 States' Parties as set forth in this Agreement or materially affect the ability of the States' Parties to achieve the purpose of this Agreement.

16.17. 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.

16.18. Limitation on Recourse

No recourse shall be had for the payment or performance of any obligation or covenant in this Agreement, or for any claim against a Party to this Agreement, personally against any past, present or future director, member, officer, employee, agent or official of any of the Parties under any rule of law or equity, statute, or constitution or by the enforcement of any assessment or penalty or otherwise, and all such personal liability is hereby expressly waived.

16.19. Entire Understanding

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, including without limitation the 2004 Memorandum of Agreement for Design and Construction of the Two Bridges and Approaches (Bi-State Management Agreement) as amended or supplemented through the date hereof.

16.20. 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.

16.21. Non-waiver of Rights

The failure of a Party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a Party of any condition or any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in other instances.

16.22. Cooperation amongst the Parties

Approvals and consents required by any Party shall not be unreasonably withheld, conditioned or delayed.

16.23. Time is of the Essence

The times for performance provided for in this Agreement are essential due to the obligations and expenditures of the Parties. If a time is not specified, performance shall be required promptly and with due regard to the conditions of performance of other Parties in reliance thereon.

16.24. Continued Access to Consultants and Advisors

The States' Parties will cooperate and put such arrangements or contracts in place to ensure their continued mutual access to consultants that are deemed to be shared resources of the Project. The costs of any such consultation shall be borne by the Party requesting the particular access. Nothing herein shall be construed to require a Party to provide access to its own consultants and advisors.

16.25. Term

This Agreement shall remain in full force and effect until terminated per the terms of this Agreement, or by written agreement of the Parties.

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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

Adam M. Horst, Chairman

Date 10-16-12

BY: Kendra W. York

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

Date 10-16-12

INDIANA DEPARTMENT OF TRANSPORTATION

BY: Michael B. Cline

Michael B. Cline, Commissioner

Date 10-16-12

APPROVED AS TO FORM AND LEGALITY

ATTORNEY GENERAL OF THE STATE
OF INDIANA

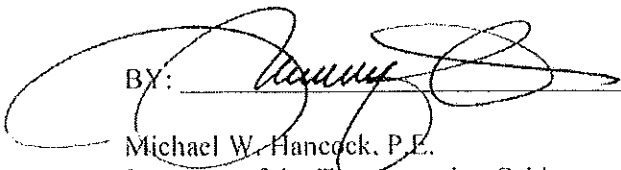
By: Matt Rupp Sr.

Gregory F. Zoeller, Attorney General

Date 12/17/12

KENTUCKY TRANSPORTATION CABINET

BY: _____

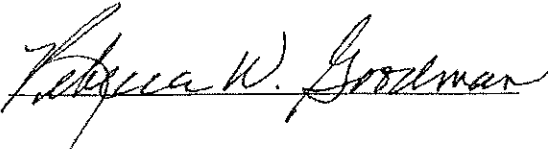

Michael W. Hancock, P.E.
Secretary of the Transportation Cabinet

Date

10/16/12

APPROVED AS TO FORM AND LEGALITY

BY: _____


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

Date

10/16/12

KENTUCKY PUBLIC TRANSPORTATION INFRASTRUCTURE AUTHORITY

BY: Lori H. Flanery

Lori Flanery
Vice Chair of KPTIA

Date 10/16/2012

APPROVED AS TO FORM AND LEGALITY

BY: J. Todd Shipp

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

Date 10/16/12

LOUISVILLE AND SOUTHERN INDIANA BRIDGES AUTHORITY

BY: Charles Buddeke

Charles Buddeke, Chair

Date 10-29-12

APPENDIX A

THE DOWNTOWN CROSSING (SECTIONS 1, 2 AND 3)

The Downtown Crossing includes the reconstruction and operational improvements to the interchange junctures of I-65, I-64, and I-71; the southern approaches to a new I-65 Ohio River Bridge; the construction of a new I-65 Ohio River Bridge; the reconfiguration and reconstruction of the existing I-65 Kennedy Bridge; and the Indiana northern approaches to the I-65 bridges with the various local egresses and ingresses to I-65. The juncture of Interstates 64, 65 and 71 in downtown Louisville is locally known as the “Kennedy Interchange.” It includes the southern approaches to the New Downtown Bridge and the adjacent existing Kennedy Bridge. Limits of work on the affected interstates are: I-64 from near the Preston Street overpass eastward to near the Story Avenue Interchange, I-65 from the Liberty Street interchange northward to the south end of the Ohio River Bridges approach spans, and I-71 from the junction with I-64 northward to the former railroad bridge between Beargrass Creek and Edith Avenue. The Downtown Crossing calls for a reconfiguration and rebuilding of the Kennedy Interchange in-place, which will include several improvements both in and approaching the interchange. These improvements include:

- Reconfiguration of I-64, I-65, and I-71 movements to the additional lanes provided by the new northbound I-65 Downtown Bridge and the rehabilitated (for southbound I-65) existing Kennedy Bridge;
- The elimination of the current traffic weaving movements from I-64 westbound and I-71 southbound to I-65;
- The elimination of the current traffic weaving movements from I-65 to I-64 eastbound and I-71 northbound;
- Introduction of “Collector-Distributor (CD) Road” systems on I-65 between I-64 and the Liberty Street interchange;
- Reconstruction of all bridges in the interchange; and
- Introduction of a “Flyover Ramp” for the Story Avenue entrance ramp movement to I-65.

The New Downtown Bridge crossing of I-65 between downtown Louisville, Kentucky and Jeffersonville, Indiana will be configured to carry northbound I-65 traffic across the Ohio River. The newly constructed bridge will extend from the northern end of the Kennedy Interchange on the south in Kentucky to the newly constructed approach spans in Indiana. The new main structure will be a three tower cable-stayed bridge. The new bridge and approach structures will cross both Waterfront Park in Kentucky and Riverfront Park in Indiana and, on the latter side, will be adjacent to the Old Jeffersonville Historic District. This new northbound structure will be located just upstream and nearly parallel to the existing Kennedy Bridge and will carry six 12-foot lanes and two 12-foot shoulders. Northbound approach spans will flank both sides of the main cable-stayed bridge. To the south, the cable-stayed bridge connects with new approach spans that are a part of the new Kennedy Interchange, To the north, approach spans will be constructed over the river flood wall and local streets in Jeffersonville. The existing I-65 Kennedy Bridge will be re-decked and will have structural improvements made to it. The existing Indiana bridge approaches to the Kennedy Bridge will be replaced. The Kennedy

Bridge will be reconfigured to serve southbound traffic and carry six 12-foot travel lanes and two 9.5-foot shoulders. The reconfigured deck of the Kennedy Bridge will tie into the newly-constructed Kennedy Interchange to the south. Changes to I-65 in southern Indiana will include widening of the facility to accept the additional capacity provided by the New Downtown Bridge, modernizing a collector-distribution road system to improve ingress and egress from Clarksville and Jeffersonville, Indiana, and improving connections between these two communities that have been separated since the Interstate was originally built through this area. Thus, the Indiana approaches to the Downtown Bridge include the realignment and widening of southbound I-65 to the current Kennedy Bridge and the construction of a new segment of northbound I-65 from the New Downtown Bridge. The Indiana approach improvements extend from West Market Street northward to approximately 1,250 feet north of Stansifer Avenue / West 14th Street. In addition to the improvements for I-65, improved local access is provided to the City of Jeffersonville and the Town of Clarksville.

In addition, I-65 will be expanded in the Indiana portion of the project area from the existing three lane configuration to four lanes in both the northbound and southbound directions. A new elevated ramp system will connect US 31 at the Clark Memorial (2nd Street) Bridge with I-65, eliminating the at-grade crossing at Court Avenue. Additional access for Clarksville and Jeffersonville will be provided with the opening of 6th Street / South Clark Boulevard under I-65 and added ramps. The collector-distributor ramp system and interchanges with I-65 at Court Avenue, 10th Street and Stansifer Avenue / West 14th Street will also be reconstructed.

APPENDIX B

DOWNTOWN CROSSING FINAL ACCEPTANCE

§7.6 FINAL INSPECTION AND FORMAL ACCEPTANCE OF WORK

KYTC will not consider the work complete and will not make final payment until DBT clears the right-of-way, borrow pits, and all ground DBT occupies in connection with the work of all rubbish, equipment, excess materials, temporary structures, and weeds. DBT shall place rubbish and all waste materials of whatever nature, other than hazardous materials, on either public or private property in a location out of view from the roadway and in a manner acceptable to KYTC that does not present an unsightly appearance. DBT shall restore in an acceptable manner all property, both public and private, that was damaged in the prosecution of the work. DBT shall drain all ditches and all borrow pits where practical, and leave all space under structures unobstructed and in such condition that drift shall not collect and induce scouring.

DBT shall notify the Engineer when the Project is near completion. The Engineer will then advise in writing all work items that are unsatisfactory. When these work items are complete to the Engineer's satisfaction, the Engineer will call the Project complete and issue a Project Completion Notice. When there are seasonal limitations or other compelling situations, the Engineer may call the Project complete without requiring correction of the unsatisfactory work items until weather permits or the situation is remedied. When the Project is called complete and a Project Completion Notice has been issued, it is ready for KYTC's final inspection.

KYTC and other appropriate agencies, such as FHWA, will complete final inspections on all items of work for Formal Acceptance within 90 Calendar Days of the date of issuance of the Project Completion Notice with the exception of striping, seeding, other erosion control items, tree planting, and landscaping. KYTC will make final inspections on seeding and other erosion control items according to the applicable section of the Standard Specifications for Road and Bridge Construction. KYTC will make final inspections on tree planting and landscaping as the Contract specifies. The Department will make individual final inspections on particular groups of work items such as structures, electrical, grade and drain, and surface. KYTC may make final inspections before the Project is called complete on items of work that have been completed. The Engineer will issue written final inspection reports for items of work upon completion of each final inspection. The reports will include a list of all uncompleted work and required corrective work. The Engineer will issue a Comprehensive Final Inspection Report that will include all inspection reports with the exception of striping, seeding, tree planting and landscaping.

Complete all items of uncompleted work and all required corrective work listed in the final inspection reports within 90 Calendar Days of receiving the Engineer's Comprehensive Final Inspection Report. When the specified seasonal or temperature limitations or other compelling situations prohibit DBT from performing the work, and the Engineer chooses to call the Project complete and issue a Project Completion Notice without requiring correction of the unsatisfactory work items until weather permits or the situation is remedied, DBT shall complete the work within 90 Calendar Days after the date the Engineer directs. When the final inspection report is received apart from the Comprehensive Final Inspection Report, corrective work for striping, seeding and other erosion control items, tree planting, and landscaping shall be completed within 90 Calendar Days of receiving the Engineer's inspection report.

When the following occur, DBT shall substitute the deferral date for the date of the Engineer's Comprehensive Final Inspection Report when determining the above time limits for completion of uncompleted work and corrective work:

- A. The Contract specifies deferral of payment,
- B. The Project is complete before the date the Department can make payment (deferral date), and
- C. The deferral date is later than the date of the Engineer's Comprehensive Final Inspection Report.

DBT shall submit required as-built drawings, project documentation, and required information on materials incorporated into the Project, considering them as uncompleted work or required corrective work.

If there is a dispute regarding any of the items listed as uncompleted work or required corrective work on any of the final inspection reports, submit in writing a letter of dispute to the Engineer within 30 days of receipt of the report. The Department will respond back in writing to the letter of dispute within 21 days of receiving the letter. If there is still a dispute, proceed according to Article 12. When the dispute does not apply to all items of work in the report, complete the items not in dispute as specified herein.

Subject to Article 15.8, KYTC will make Formal Acceptance of the Project when KYTC has determined that DBT has completed all Work, including required corrective work, has complied with all obligations of the Contract and the bonds, and the Commissioner has accepted the Project.

§ 8.6 FINAL COMPLETION AND FINAL PAYMENT

The Project shall be considered Finally Complete when Formal Acceptance of the entirety of the Project has been made in accordance with Article 7.6. Upon Formal Acceptance, KYTC shall certify Final Completion and process DBT's Final Payment Application in accordance with Article 5.

APPENDIX C

DOWNTOWN CROSSING SUBSTANTIAL COMPLETION

§ 8.1 SUBSTANTIAL COMPLETION

§ 8.1.1 Substantial Completion is the stage in the progress of the Work when the Project is sufficiently complete in accordance with the Contract Documents so that KYTC can occupy or use all elements of the Project for its intended use. For this Project, Substantial Completion shall be deemed to occur, and such use possible when:

- 1) All three Sections of the Downtown Crossing, identified in the Project Scope as Sections 1, 2 and 3, are sufficiently complete to become permanently open to traffic for all lanes, and
- 2) Tolls may begin to be collected.

The only elements of the Work whose full completion may not be required in order for the Project to be open to traffic permanently and Substantially Complete will be:

- 1) seeding
- 2) tree planting
- 3) landscaping that is not essential for permanent lane opening

If seasonal considerations make permanent striping impossible when all other elements of Substantial Completion have been obtained by DBT, then KYTC will allow for Substantial Completion to be acknowledged with temporary striping, provided that DBT has submitted a plan for completion of permanent striping at the first available opportunity.

APPENDIX D

THE EAST END CROSSING (SECTIONS 4, 5 AND 6)

The proposed new East End Bridge will cross the Ohio River just north of Harrods Creek on the Kentucky side, connecting to just north of Utica on the Indiana side. The new bridge will link the Gene Snyder Freeway in Kentucky to the Lee Hamilton Highway in Indiana, completing the eastern portion of the I-265/KY841/SR265 loop around the Louisville-Southern Indiana metropolitan area. It includes:

- Two 12-foot travel lanes in each direction, with 12-foot wide outside shoulders, and 8-foot to 12-foot wide inside shoulders that narrow at the towers; and
- A 13-foot pedestrian/bicycle path along the downstream (west) side of the bridge.
- The 3.4 mile long approach to the new East End Bridge on the Kentucky side will reconstruct and widen 1.9 miles of existing KY 841 (Gene Snyder Freeway) to four lanes from I-71 to U.S. 42, where it currently ends, and extend 1.4 miles to the new East End Bridge. This Section has several distinctive features, including:
 - A tunnel under U.S. 42 and the Drumanard Estate, which, along with the other major structures of the East End Crossing, will be designed for and constructed to a width sufficient to allow the roadway to be restriped to six lanes (three lanes in each direction) when the future traffic need dictates; and
 - A multi-use pathway near the Ohio River Terrace Character Area between River Road and the new East End Bridge.
- The 4.1 mile long Indiana approach to the new East End Bridge will carry four lanes (two northbound and two southbound) and will extend S.R. 265 (Lee Hamilton Highway) from its current terminus at S.R. 62 to the Ohio River and the new East End Bridge.

APPENDIX E

EAST END CROSSING FINAL ACCEPTANCE

5.8.5.2 IFA will issue a written certificate of Final Acceptance for all Project Sections at such time as all of the following have occurred for all Project Section(s):

- a. The Substantial Completion Date has occurred, all requirements for Substantial Completion remain satisfied, and IFA has issued a certificate of Substantial Completion encompassing all Project Sections;
- b. All Punch List items have been completed and delivered to the reasonable satisfaction of IFA;
- c. All Landscaping Work and non-structural aesthetic features have been completed in accordance with Section 5 of the Technical Provisions and the plans and designs prepared in accordance therewith;
- d. Developer demonstrates to IFA's reasonable satisfaction that Developer has acquired and properly stored, or arranged for immediate availability, a reasonable inventory of all spare parts, spare components, spare equipment, special tools, materials, expendables and consumables necessary for operation and maintenance of the East End Crossing during the Operating Period as identified in the Operations and Maintenance Plan and Maintenance Plan;
- e. IFA has received a complete set of the Record Drawings in form and content required by Section 3.12.2.2 of the Technical Provisions;
- f. IFA has received as-built survey sheets for the East End Crossing;
- g. If any Governmental Entity with jurisdiction requires any form of certification of design, engineering or construction with respect to the East End Crossing or any portion thereof, including any certifications from the engineer of record and architect of record for the East End Crossing, Developer has caused such certificates to be executed and delivered and has concurrently issued identical certificates to IFA;
- h. All Utility Adjustment Work and other work that Developer is obligated to perform for or on behalf of third parties has been accepted by such third parties, and Developer has paid for all work by third parties that Developer is obligated to pay for, other than disputed amounts;
- i. Developer has made all deposits to the Intellectual Property Escrow(s) and Financial Escrow required at or prior to Final Acceptance pursuant to Sections 23.5 and 23.6;
- j. IFA has received the final certifications regarding suspension or debarment as set forth in Section 7.16

k. There exist no uncured Developer Defaults that are the subject of a Notice, or with the giving of Notice or passage of time, or both, could become the subject of a Warning Notice (except any Developer Default for which Final Acceptance will affect its full and complete cure); and Developer has submitted to IFA (i) documentation of DBE utilization and (ii) if the DBE Goal is not met, documentation supporting good faith efforts, as required under Exhibit 7 (DBE Special Provisions).

APPENDIX F

EAST END CROSSING SUBSTANTIAL COMPLETION

5.8.2.1 IFA will issue a written certificate of DB Substantial Completion upon satisfaction of all the following conditions for all Project Sections:

a. Developer has completed the design and construction of all Project Sections in accordance with the PPA Documents, including all traffic ramps, entry and exit points, noise/sound walls (if any), lanes, shoulders, guard rails, striping and delineations, concrete traffic barriers, bridge railings, fire safety systems, cable safety systems, metal beam guard fences, safety end treatments, terminal anchor sections, crash attenuators, illumination, signals and other major safety features, and including all East End Crossing equipment (including the electronic vehicle detection required under Section 19 of the Technical Provisions), such that all of the Project Sections are in a condition that can be opened for normal and safe vehicular travel in all lanes and at all points of entry and exit, as determined in IFA's reasonable discretion, subject only to Punch List items;

b. The need for temporary traffic controls or for Closures at any time, including due to the existence of or need to complete Punch List items, has ceased (except for any then required for Planned Maintenance), and otherwise set forth in Section 5.8.2.2;

c. The systems and equipment installed by Developer comply, in all respects, with applicable Laws, are operational and functional, and have passed the fire marshal and any other inspections and tests required under the PPA Documents, and Developer has delivered to IFA all reports, data and documentation relating to such tests;

d. The Parties have completed preparation of the Punch Lists for the entire East End Crossing (other than resolution of items included under protest);

e. The ITS (i) is completed, (ii) complies with applicable Laws, (iii) has passed the fire marshal inspections and tests required under the PPA Documents and Law, (iv) has passed all demonstration, performance and acceptance testing in accordance with the Technical Provisions and Project Management Plan, including interconnection with the regional Traffic Management Center (TMC), TRIMARC, and the Traffic Operations Center (TOC) as provided in the Technical Provisions, and (v) is ready for normal operation;

f. All Submittals required by the Project Management Plan or PPA Documents to be submitted to IFA prior to Substantial Completion have been submitted to and approved by IFA, in the form and content required by the Project Management Plan or PPA Documents;

g. Developer has satisfied any other requirements or conditions for Substantial Completion set forth in the Technical Provisions, including Sections 17.5 and 19 (completion, testing and commissioning of IFA work stations);

h. Developer has made all deposits to the Intellectual Property Escrow(s) and the Financial Escrow required at or prior to Substantial Completion pursuant to Sections 23.5 and 23.6;

i. There exists no uncured Developer Default that is the subject of a Notice, unless (i) Substantial Completion will effect its full and complete cure, (ii) with respect to a monetary default that Developer has disputed in writing, Developer is current in its deposit of funds into the MP Disputed Amounts Fund in accordance with the Project Trust Agreement regarding the amount in dispute, or (iii) with respect to a non-monetary default, Developer has a right to cure and is diligently pursuing cure within the applicable cure period;

j. Developer has delivered to IFA all manufacturer warranties required under, and in the form and content specified by the Technical Provisions; and

k. The date specified under Section 5.8.2.4 has passed.

5.8.2.2 In determining whether DB Substantial Completion has occurred, the Parties shall disregard (i) the status of Landscaping Work and non-structural aesthetic features included in the Final Design Documents in determining whether DB Substantial Completion has occurred, except to the extent that its later completion will affect public safety or satisfaction of the criterion in Section 5.8.2.1(b), which determination shall be made by IFA in its reasonable discretion, and (ii) except to the extent provided in Section 5.8.2.4, disregard whether the Tolling Systems Integrator's work has been completed and accepted by IFA.

APPENDIX G

INSURANCE REQUIREMENTS

Coverage	Limit
Worker's Compensation	Statutory
General Liability	\$100,000,000
Employer's Liability	\$100,000,000
Auto	\$25,000,000
Builder's Risk	Full Replacement Cost
Professional Errors & Omissions	\$20,000,000
Contractors' Pollution	\$50,000,000
Vessel Hull / Machinery (Watercraft)	Hull: Actual Cash Value Liability: \$25,000,000 plus \$75,000,000 excess
Aviation	\$25,000,000

APPENDIX H
FORM OF INTERLOCAL AGREEMENT

APPENDIX I

EXISTING LITIGATION AND SHARING OF FEES

Existing Litigation Matter

**Arrangement for Payment of Attorneys'
Fees and Other Defense Costs**

National Trust for Historic Preservation v. Federal Highway Administration, pending in the U.S. District Court in Louisville, Kentucky, Case 3:10-cv00007-JGH

Kentucky Parties and Indiana Parties each shall retain and pay for their own counsel