

RESOLUTION JB-2013-6

**RESOLUTION OF JOINT BOARD
APPROVING ADDENDUM #2
TO BI-STATE DEVELOPMENT AGREEMENT**

WHEREAS, the State of Indiana and the Commonwealth of Kentucky have jointly undertaken a project to improve cross river mobility over the Ohio River between Louisville and Southern Indiana, authorized by the Federal Highway Administration in its revised Record of Decision dated June 20, 2012 (the "Project"); and

WHEREAS, the Indiana Finance Authority ("IFA") and the Indiana Department of Transportation ("INDOT") have been authorized to participate in the Project on behalf the State of Indiana, and the Kentucky Public Transportation Infrastructure Authority ("KPTIA") and the Kentucky Transportation Cabinet ("KYTC") have been authorized to participate in the Project on behalf of the Commonwealth of Kentucky; and

WHEREAS, IFA, INDOT, KPTIA and KYTC (collectively the "States' Parties" and each individually a "State's Party") have (together with the Louisville and Southern Indiana Bridges Authority) entered into a Bi-State Development Agreement effective December 17, 2012 (the "Development Agreement"); and

WHEREAS, the Development contemplates that it may be amended from time to time with the consent of the States' Parties; and

WHEREAS, the States' Parties have prepared an amendment to the Development Agreement in the form of Addendum #2 thereto, dated September 11, 2013 (attached as Exhibit A to this Resolution) and presented it to this Joint Board for approval; and


WHEREAS, the States' Parties agree that such Addendum #2 will subsequently be approved, as needed, executed and delivered by each State's Party.

NOW, THEREFORE, THE JOINT BOARD HEREBY RESOLVES AS FOLLOWS:

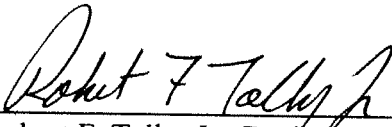
1. Addendum #2, as set forth in Exhibit A hereto, with such changes as may be approved by all of the States' Parties is hereby accepted and approved.
2. The Joint Board hereby requests that said Addendum #2 be approved, as needed, executed and delivered by each of the States' Parties as an amendment to the Development Agreement.

Dated this 11th day of September, 2013.

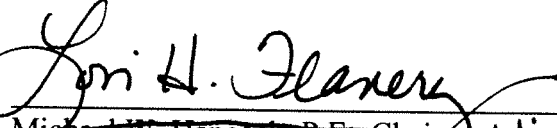
INDIANA FINANCE AUTHORITY

By: 
Kendra W. York, Public Finance Director
of the State of Indiana

INDIANA DEPARTMENT OF
TRANSPORTATION

By: 
Robert F. Tally, Jr., Designee of
Commissioner

KENTUCKY PUBLIC TRANSPORTATION
INFRASTRUCTURE AUTHORITY

By: 
~~Michael W. Hancock, P.E., Chair~~ Vice-Chair
Lori Flanery, Member

KENTUCKY TRANSPORTATION CABINET

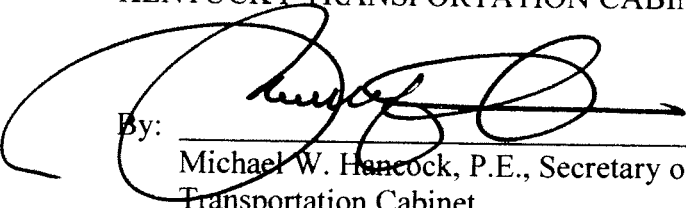
By: 
Michael W. Hancock, P.E., Secretary of the
Transportation Cabinet

EXHIBIT A

(See Addendum #2 Attached)

ADDENDUM #2
dated as of September 11, 2013
to Bi-State Development Agreement (the "Original Development Agreement")
among Indiana Finance Authority (IFA),
Indiana Department of Transportation (INDOT),
Kentucky Public Transportation Infrastructure Authority (KPTIA), and
Kentucky Transportation Cabinet (KYTC) (collectively, the "States' Parties")

WHEREAS, the States' Parties, together with the Louisville-Southern Indiana Ohio River Bridges Authority, have previously entered into the Original Development Agreement pursuant to which the State of Indiana and the Commonwealth of Kentucky are jointly engaged in the development of the Louisville-Southern Indiana Ohio River Bridges Project (the "Project"); and

WHEREAS, the States' Parties have previously entered into Addendum #1 dated as of December 27, 2012 pursuant to Subsection 11.4.6 of the Original Development Agreement.

WHEREAS, the Original Development Agreement as supplemented by the aforementioned Addendum #1 and as supplemented and amended by this Addendum #2 is hereinafter referred to collectively as the "Development Agreement"; and

WHEREAS, all terms not otherwise defined herein shall have the meanings specified in the Development Agreement; and

WHEREAS, Subsection 11.4.1 of the Development Agreement provides that such 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", all as further described in Article 11; and

WHEREAS, the Development Agreement (in Subsections 16.10 and in Subsection 8.3.5.5 and Subsection 8.2.7) contemplates the need for additional amendments and addenda from time to time; and

WHEREAS, in order to help facilitate the financing by the Kentucky Parties of the Downtown Crossing and to reflect changes and updated information since the execution and delivery of the Development Agreement, the States' Parties now wish to update, supplement and amend the Development Agreement as set forth in this Addendum #2.

NOW, THEREFORE, THE STATES' PARTIES WITNESSETH AS FOLLOWS:

Section 1. Section 1.19 of the Development Agreement is deleted and subsequent sections are correspondingly renumbered through former Section 1.91 (now 1.90).

Section 2. New Section 1.66 of the Development Agreement is revised as follows:

1.66 O&M means Operations and Maintenance, which are any and all recurring costs, necessary to maintain the Project (not including the Toll System Collection Expenses or M&R 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.

Section 3. New Section 1.70 of the Development Agreement is amended to read as follows:

- 1.70 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; (ii) the date when all TIFIA loan obtained by any State's Party has been paid in full, and (iii) the date when all bonds issued by KPTIA or any other entity to finance or refinance the Downtown Crossing have been satisfied.

Section 4. A new Section 1.91 is added to the Development Agreement as follows:

- 1.91 Toll Rate Resolution means the resolution to be passed by the Tolling Body setting the initial toll rates and adopting a schedule for toll rate adjustments.

Section 5. Section 1.92 of the Development Agreement is amended to read as follows:

- 1.92 Toll Revenues means the gross amount of all tolls, administrative fees, violation charges, incidental charges, penalties and other charges collected through a collection process with respect to the Project.

Section 6. Section 8.2.3 of the Development Agreement is amended to read as follows:

- 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. Further, INDOT has agreed to make payments in an amount of \$9 million per State Fiscal Year for 5 years to fund a Relief Events Allowance Account (as defined in the Public-Private Agreement) to be used as provided for in the Public-Private Agreement for the East End Crossing. 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 has entered into an agreement with INDOT pursuant to which INDOT has agreed to pay certain of the funds described above to IFA to fund such payment obligations to the Developer. IFA is applying for an East End Crossing TIFIA loan in an

amount not to exceed \$392 million to fund all or a portion of the milestone payments described above. If the request for such loan is granted and IFA borrows such proceeds, IFA expects to repay the East End Crossing TIFIA loan from the Indiana Revenue Share.

Section 7. Section 8.2.4 of the Development Agreement is amended to read as follows:

- 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 includes proceeds of indebtedness of the Developer and a Developer equity contribution. On March 28, 2013 IFA issued Private Activity Bonds in the amount of \$676,805,000 for the benefit of the Developer.

Section 8. Section 8.3.3 of the Development Agreement is amended to read as follows:

- 8.3.3 Under the six year highway plan adopted by Kentucky, the Kentucky Parties will provide up to \$536 million in future federal funds to be used for the Downtown Crossing. This includes up to \$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 approximately \$236 million of GARVEE bonds issued August 8, 2013, 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.

Section 9. Section 8.3.4 of the Development Agreement is amended to read as follows:

- 8.3.4. The Kentucky Parties additionally will issue one or more series of Kentucky Revenue Bonds including a TIFIA Loan in an amount estimated to exceed \$750.0 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.

Section 10. Section 8.3.5 of the Development Agreement is amended to read as follows:

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 required to obtain an investment grade rating on the Kentucky Revenue Bonds, when issued. 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.

8.3.5.2 The Kentucky Revenue Bond Indenture shall include (a) a Tolling O&M Reserve Fund (which shall be fully funded upon delivery of the Kentucky Revenue Bonds) in which shall be maintained (from Toll Revenues and otherwise as provided below) an amount that is no less than the budgeted Tolling O&M Expenses, as reflected in the KPTIA budget, for the current fiscal year, or such lesser amount agreed to by IFA and KYTC, (b) a General O&M Reserve Fund (which shall be fully funded over five (5) years by deposits from Toll Revenues) in which shall be maintained from Toll Revenues (and otherwise as provided below) an amount that is no less than the highest consecutive four months of the budgeted General O&M Expenses, as reflected in the KPTIA budget, for the current fiscal year, and (c) an M&R Reserve Fund in which shall be maintained in amounts deemed reasonable by a qualified independent engineer to fund lifecycle costs for the Kentucky O&M Portion. In the event that the Kentucky Revenue Share is insufficient to fully replenish any subsequent deficits in the Tolling O&M Reserve Fund, General O&M Reserve Fund and M&R Reserve Fund requirements, 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. The requirement of this section shall be deemed satisfied so long as the corresponding reserve requirements of the Kentucky Revenue Bond Indenture are satisfied.

- 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.

Section 11. Section 11.3.2 of the Development Agreement is amended to read as follows:

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 amount required each year to pay all debt service and other funding obligations of KPTIA under the Kentucky Revenue Bond Indenture and to meet the Rate Covenant in the form of Section 708 of the Kentucky Revenue Bond Indenture attached hereto

as Exhibit A; provided that KPTIA agrees not to modify said Section 708 without the prior written consent of the Indiana Parties; 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 or (ii) in the event that IFA also borrows funds pursuant to an East End Crossing TIFIA Loan, shall be no less than the greater of (a) the sum of 100% of the aggregate amount of availability payments and other financial obligations due and payable during the following year under the Public Private Agreement and 1.25 times the aggregate debt service requirements for any East End Crossing TIFIA Loans for such period, and (b) the sum of the aggregate amount of availability payments and other financial obligations due and payable during the following year under the Public Private Agreement and all debt service and other funding obligations of IFA under any East End Crossing TIFIA Loan for such period.

Section 12. Section 11.4.2.7 of the Development Agreement is deleted.

Section 13. Section 11.4.3 of the Development Agreement is amended to read as follows:

- 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.

Section 14. A new Section 11.4.7 of the Development Agreement is added as follows:

- 11.4.7 Toll Rate Resolution. States' Parties, acting with and through the Tolling Body, shall adopt a Toll Rate Resolution setting the initial toll rates and adopting a schedule for toll rate adjustments on or before September 11, 2013. Such Toll Rate Resolution shall comply with the toll rate covenant in Subsection 11.3.2 and the provisions of Subsection 11.4.2. Nothing in this Subsection shall be interpreted to limit the commitments contained in Subsection 11.4.2.

Section 15. Section 11.6.1.4 of the Development Agreement is amended to read as follows:

11.6.1.4 [Reserved]

Section 16. Section 11.7.3 of the Development Agreement is amended to read as follows:

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.

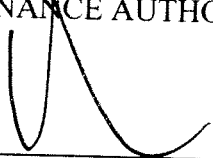
11.7.3.1 The Toll Operations Agreement shall provide that, if (a) the actual or projected Indiana Revenue Share or Kentucky Revenue Share for the then current State fiscal year is less than the amount required to pay the respective payment obligations or to satisfy the respective financial covenants (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 or other changes 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.

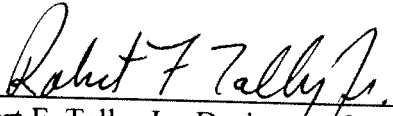
- 11.7.3.2 Notwithstanding the foregoing, the Indiana Parties agree that, unless actual Toll Revenues are materially less than projected Toll Revenues as described in the traffic and revenue forecast prepared for KPTIA and dated August 30, 2013 (“T&R Study”), the T&R Study shall be sufficient to satisfy the requirements of 11.7.3.1 above as to the Indiana Revenue Share through an initial period of two (2) full fiscal years following tolling commencement, and no further actions as described in 11.7.3.1 above shall be required as to the Indiana Revenue Share or Indiana Rate Covenant.
- 11.7.3.3 The IFA acknowledges that IFA has committed under the Public Private Agreement to seek, or cause the INDOT to seek, appropriations for each year sufficient to meet the IFA’s obligation to make Availability Payments to the Developer. The obligations of the IFA to pay Availability Payments to the Developer (i) do not constitute an indebtedness of the State of Indiana or any political subdivision thereof within the meaning or application of any constitutional provision or limitation and (ii) do not constitute a pledge of the faith, credit or taxing power of the State or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. Subject to the conditions described in 11.7.3.2 above, the Indiana Parties do not anticipate that they will require the implementation of the provisions described in 11.7.3.1 above through the initial period of two (2) full fiscal years immediately following tolling commencement.

Dated this 11th day of September, 2013.

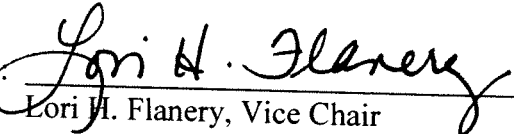
INDIANA FINANCE AUTHORITY

By: 
Kendra W. York, Public Finance Director
of the State of Indiana

INDIANA DEPARTMENT OF
TRANSPORTATION

By: 
Robert F. Tally, Jr., Designee of
Commissioner

KENTUCKY PUBLIC TRANSPORTATION
INFRASTRUCTURE AUTHORITY

By: 
Lori H. Flanery, Vice Chair

KENTUCKY TRANSPORTATION CABINET

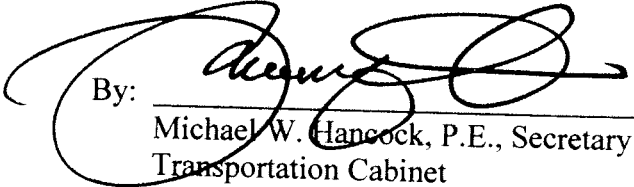
By: 
Michael W. Hancock, P.E., Secretary of the
Transportation Cabinet

EXHIBIT A

Section 708. Rate Covenant.

(a) The Authority, in accordance with the Development Agreement and the Toll Policy Agreement, shall use its best efforts to provide for the establishment, and shall charge and collect, Tolls for the privilege of traveling on the System, at rates sufficient so that Total System Revenue are in an amount at least equal to (i), (ii), (iii), (iv) and (v):

(i) 150% of the Annual Debt Service with respect to all Outstanding First Tier Bonds;

(ii) 135% of the Annual Debt Service with respect to all Outstanding First Tier Bonds and Second Tier Bonds;

(iii) 125% of the Annual Debt Service with respect to all Outstanding First Tier Bonds, Second Tier Bonds and Third Tier Bonds;

(iv) 110% of the Annual Debt Service with respect to all Outstanding Bonds; and

(v) 100% of the aggregate amount of the required payments described in subsections (a) through (i) of Section 504 to the extent such payments have not been otherwise paid or provided for from Bond proceeds.

(b) The Authority will at least annually, prior to June 30 of each Fiscal Year, review the financial condition of the System, the anticipated Total System Expenses, Debt Service Requirements, various reserves and other costs of the Authority System, and proceed in a timely fashion to recommend to the Tolling Body any required adjustment to the Toll Rate Schedule it determines is necessary to comply with subsection (a) above to provide sufficient Total System Revenue to fund amounts required to be deposited and maintained in the Funds and Accounts and to comply with other relevant covenants in this General Trust Indenture.

(c) Prior to recommending any revision in the Toll Rate Schedule, the Authority, shall obtain: (i) a certificate of the Traffic Consultant stating, based upon reasonable assumptions and applying the revised Toll Rate Schedule, the projected Total System Revenue for the then-current Fiscal Year and each subsequent Fiscal Year through the last scheduled maturity of all then-Outstanding Bonds, (ii) a certificate of the Consulting Engineer stating, based upon reasonable assumptions, the projected Total System Expenses for the then-current Fiscal Year and each subsequent Fiscal Year through the last scheduled maturity of all Outstanding Bonds, and (iii) a certificate of an Authorized Representative stating that, based upon the information contained in the certificates described in (i) and (ii) above, the adoption of the revised Toll Rate Schedule will not cause Toll Revenue to decrease to an amount that will cause the Authority to fail to comply with the requirements of (a) above. Any certificate delivered by the Traffic Consultant pursuant to this subsection shall be based on the opinion of the Traffic

Consultant as to Total System Revenue to be derived by the Authority from the System under the terms of the Development Agreement and the Toll Policy Agreement (provided that investment and other income not related to Tolls shall be estimated by an Authorized Representative), and a certificate of an Authorized Representative stating the opinion of the Authority as to the amount of Total System Expenses paid or accrued during any pertinent Fiscal Year, assuming that the proposed Toll Rate Schedule had been in effect during the pertinent Fiscal Year.

(d) The failure in any Fiscal Year to obtain Total System Revenue in the amounts sufficient to enable the Authority to comply with subsection (a) above, which failure may continue during the succeeding Fiscal Year, shall not, in and of itself, constitute an Event of Default under this General Trust Indenture if (i) the Authority within 60 days after the end of the Fiscal Year requests the written recommendations of the Traffic Consultant as to how to increase Toll Revenue and/or the written recommendations of a Consulting Engineer as to how to reduce Total System Expenses in the following Fiscal Year to the level required to comply with subsection (a) above, (ii) within 60 days of the date of the request from the Authority, the Traffic Consultant and/or the Consulting Engineer provide to the Authority the written recommendations described in clause (i), and (iii) the Authority takes steps to implement those recommendations within 60 days after receipt thereof and diligently proceeds to substantially comply with the recommendations of the Traffic Consultant and/or the Consulting Engineer.