

**Toll Policy Agreement
Concerning
The Louisville-Southern Indiana Ohio River Bridges Project**

Contents

1. Definitions of Terms.....	6
2. Toll Policy	9
3. Toll Start and Toll Duration	10
3.1 Tolling Commencement	10
3.2 Tolling Termination	11
4. EJ Mitigation Plan.....	11
5. Toll Rate Resolution	11
6. Business Rules.....	11
6.1 Approve Business Rules	11
6.2 Changes to the Business Rules.....	12
7. Toll Enforcement.....	12
7.1 Exchange of Ownership Information	12
7.2 Reciprocal Toll Enforcement.....	13
7.3 Enhanced Enforcement.....	13
8. Transponder Interoperability.....	13
8.1 E-ZPass Membership.....	14
8.2 Other Interagency Transponder Networks.....	14
9. Administrative Rules and Regulations	14
10. Custody Agreement.....	15
11. General Matters.....	15
11.1 Access to Records	15
11.2 Dispute Resolution.....	15
11.3 Amendment	15
11.4 Notice to Parties	16
11.5 State Sovereignty	18
11.6 Non-collusion	18
11.7 Severability.....	18
11.8 No Third Party Beneficiaries	19
11.9 Limitation on Recourse	19
11.10 Non –waiver of Rights.....	19

11.11	Cooperation amongst the Parties	19
11.12	Time is of the Essence	19
11.13	Term	20
11.14	Future Implementing Agreement	20
11.15	Tolling Body.....	20

Attachment A – EJ Mitigation Plan

Attachment B – Toll Rate Resolution

Attachment C – Business Rules

Attachment D – Draft Administrative Rules and Regulations

**Toll Policy Agreement
Concerning
The Louisville-Southern Indiana Ohio River Bridges Project**

This Toll Policy Agreement (hereinafter “Agreement”) is made by and among the State of Indiana (“Indiana”), by and through the Indiana Department of Transportation (“INDOT”), the Commonwealth of Kentucky (“Kentucky”), by and through the Kentucky Transportation Cabinet (“KYTC”), the Indiana Finance Authority (“IFA”), and the Kentucky Public Transportation Infrastructure Authority (“KPTIA”). IFA, INDOT, KYTC, and KPTIA are sometimes referred to individually as a “Party,” or collectively as “the Parties.” Agreement of the Parties is evidenced through the passage of the Tolling Body’s Resolution TB-2015-3 This Agreement shall be effective as of _____, 2015.

WHEREAS, Kentucky and Indiana agreed to jointly pursue needed improvements to better connect Louisville, Kentucky with Southern Indiana by undertaking the Louisville-Southern Indiana Ohio River Bridges (“LSIORB”) Project (“Project”) to provide additional capacity, improve transportation efficiency and reliability, expand travel choices, and deliver urgently needed performance and safety enhancements to existing infrastructure in the region;

WHEREAS, KPTIA, KYTC, IFA, and INDOT are authorized to participate in the Project and to enter into this Agreement;

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, 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, IFA is an Indiana body politic and corporate and instrumentality exercising essential public functions with authority to assist Indiana in the financing, acquisition, building, equipping, operations, and maintenance of structures for state use, including highways, toll roads, and bridges;

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, the Federal Highway Administration ("FHWA") approved the Project at several stages: the Record of Decision in September of 2003, the Initial Financial Plan and Project Management Plan in 2008, the Supplemental Draft Environmental Impact Statement on November 10, 2011, the Supplemental Final Environmental Impact Statement on April 20, 2012, and the Revised Record of Decision ("RROD") on June 20, 2012;

WHEREAS, the Parties have entered into a Section 129 Toll Agreement authorizing the treatment of the Project as a toll facility under 23 U.S.C. § 129;

WHEREAS, the RROD contained a commitment for Indiana and Kentucky to adopt a tolling policy that is sensitive and responsive to low-income and minority populations ("Environmental Justice Populations" or "EJ Populations") and to adopt the tolling policy prior to commencement of tolling on the Project;

WHEREAS, the Parties and the Louisville Southern Indiana Bridges Authority entered into a Bi-State Development Agreement Concerning the Louisville Southern Indiana Ohio River Bridges Project ("BSDA") which provides a framework for the bi-state construction and continued operations of the Project as well as the Interlocal Cooperation Agreement for the Design, Procurement, Construction, Financing, Tolling, Operations, and Maintenance for the Louisville Southern Indiana Ohio River Bridges Project ("Interlocal"), by which the Parties share their statutory powers for the purposes of the Project pursuant to Kentucky Revised Statutes ("KRS") 65.230 and 65.240 and Indiana Code ("IC") 36-1-7-1, including the powers necessary to implement toll operations;

WHEREAS, the BSDA and the Interlocal created a joint board to facilitate the Project (“Joint Board”) and a the tolling body to develop toll policy and the EJ Mitigation Plan (as hereinafter defiend) and to approve this Agreement (“Tolling Body”);

WHEREAS, KYTC and INDOT, in compliance with the RROD, have conducted a detailed assessment of the potential economic effects of tolls on low-income and minority populations using the latest publicly available data, traffic forecasts, and community input and made that study publicly available;

WHEREAS, KYTC and INDOT, in compliance with the RROD, have identified and evaluated a range of measures for mitigating the effects of tolling on low-income and minority populations and provided an opportunity for additional public input on those potential measures;

WHEREAS, the Tolling Body has adopted a plan for mitigating the effects of tolling on low-income and minority populations (“EJ Mitigation Plan”), attached hereto as Attachment A, which includes practicable measures for minimizing adverse impacts of tolling on impacted EJ Populations and with which FHWA has concurred;

WHEREAS, the Tolling Body adopted Resolution TB 2013-2 on September 11, 2013, preliminarily setting initial toll rates in accordance with toll rate covenants established in the BSDA and toll rate adjustment mechanisms and today adopted TB 2016-1 (“Toll Rate Resolution”) attached hereto as Attachment B, which clarifies that earlier resolution;

WHEREAS, pursuant to the authority granted to the IFA in Joint Board Resolutions JB 2013-7 and JB 2014-6, the IFA, in cooperation with the other Parties, has procured a toll system provider (“TSP”) to design, implement, and operate the toll system for the Project;

WHEREAS, the TSP is considered the Toll Operator and the Toll Integrator, and the Toll Services Agreement with the TSP is considered the Toll Operations Agreement and the Toll Integrator Agreement as those terms are used in the BSDA.

WHEREAS, the Parties have agreed to designate and have designated representatives, one from INDOT and KYTC, to administer the contracts and manage the efforts of the jointly procured toll consultants, including the TSP, as outlined in the applicable Joint Board resolutions (“Toll Representatives”);

WHEREAS, the Parties, along with the TSP and toll advisors, have developed business rules to govern the operation of the toll system (“Business Rules”), attached hereto as Attachment C;

WHEREAS, the Parties acknowledge the need to provide the toll enforcement process with the force of law and have agreed to the Draft Rules and Regulations, attached hereto as Attachment D which outline those principles that should be contained in the administrative rules and regulations which will subsequently be promulgated by IFA and KPTIA on behalf of each state in the form required by such state;

WHEREAS, continued cooperation and collaboration between the Parties on important tolling issues are vital to the success of the Project and the ability of IFA and KPTIA to meet their financial obligations and the Parties desire to document and define their agreements as to these issues;

WHEREAS, the Parties intend to cause this Agreement to be further implemented through (i) administrative rules and regulations promulgated by the IFA and KPTIA, (ii) through reciprocal agreements with other states related to vehicle owner information and toll enforcement, (iii) membership in the E-ZPass Group to facilitate regional interoperability of toll collection systems, and (iv) through the implementation of the Business Rules into the operations of the Project.

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

1. Definitions of Terms

- 1.01 Agreement means this Toll Policy Agreement.
- 1.02 Bi-State Development Agreement ("BSDA") means the agreement to which IFA, INDOT, KYTC, KPTIA, and the Louisville Southern Indiana Bridges Authority are parties which defines their respective roles and responsibilities of the procurement, revenue-sharing, financing, constructing, tolling, operation and maintenance of the Project and all addendum thereto.
- 1.03 Business Rules means those rules and procedures drafted by the Joint Board and the TSP which are attached hereto as Attachment C and which may be amended from time to time pursuant to the terms of the Agreement.
- 1.04 DMV means the Department of Motor Vehicle Licensing in Kentucky and the Bureau of Motor Vehicles in Indiana.

- 1.05 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, reconstruction of the Kennedy Bridge along with construction of a New Downtown Bridge just east of the Kennedy Bridge (I-65), and reconstruction of the I-65 approach in Indiana, including modernization to improve ingress and egress and realignment and widening of the approaches.
- 1.06 Draft Administrative Rules and Regulations means those mutually agreed upon principles contained in the administrative rules and regulations to be enacted by KPTIA and IFA.
- 1.07 East End Bridge means the new bridge structure to be constructed as part of the East End Crossing.
- 1.08 East End Crossing means the portion of the Project that involves construction of a new East End Bridge located approximately eight miles upriver of downtown Louisville connecting the Gene Snyder Freeway (KY 841) to the Lee Hamilton Highway (S.R. 265) along with the approaches in Kentucky and Indiana.
- 1.09 EJ Mitigation Plan means the plan adopted by the Tolling Body on May 7, 2015, attached hereto as Attachment A.
- 1.10 Environmental Justice Populations (“EJ Populations”) means low income and minority communities as more specifically defined in the RROD.
- 1.11 E-Z Pass means the E-ZPass Group which provides interoperability options to those with E-ZPass transponder accounts.
- 1.12 FHWA means the Federal Highway Administration.
- 1.13 Indiana means the State of Indiana.
- 1.14 INDOT means the Indiana Department of Transportation, an agency of Indiana.
- 1.15 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.
- 1.16 Interlocal Agreement (“Interlocal”) means an agreement entered among IFA, INDOT,

KPTIA, and KYTC for the joint undertaking of facilitating the accomplishment of the Project.

- 1.17 Joint Board means the board created by the Interlocal that is composed of one representative of each of the Parties (or their successor entities) for the joint undertaking of facilitating the accomplishment of the Project.
- 1.18 Kennedy Bridge means the John F. 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 is being constructed as part of the Downtown Crossing.
- 1.19 Kentucky means the Commonwealth of Kentucky.
- 1.20 Kentucky Public Transportation Infrastructure Authority ("KPTIA") means the independent de jure municipal corporation and political subdivision of Kentucky created by KRS Chapter 175B which is the developing and issuing authority for the Downtown Crossing.
- 1.21 KYTC means the Kentucky Transportation Cabinet, an agency of Kentucky.
- 1.22 Louisville Southern Indiana Ohio River Bridges Project ("LSIORB Project" or "Project") means the Downtown Crossing, the East End Crossing and any related commitments contained in the RROD.
- 1.23 Map 21 means the funding and authorization bill to govern United States surface transportation and spending, passed by Congress on June 29, 2012, and signed into law on July 6, 2012, which is referred to as The Moving Ahead for Progress in the 21st Century Act
- 1.24 National Law Enforcement Telecommunications System ("NLETS") means the information sharing network which acts as an interface to search each state's criminal, driver, and license plate records.
- 1.25 New Downtown Bridge means the new bridge structure being constructed as part of the Downtown Crossing just east of the Kennedy Bridge (I-65).
- 1.26 Revised Record of Decision ("RROD") means the revised Record of Decision issued by FHWA for the Project on June 20, 2012.

- 1.27 States' Parties and Parties means IFA, INDOT, KPTIA, and KYTC.
- 1.28 Toll Rate Resolution means the resolution passed by the Tolling Body TB 2016-1 which clarified the initial toll rates for the Project as well as the procedures for increasing tolls and the toll covenants and is attached as Attachment B.
- 1.29 Toll Representatives means those persons as identified in Section 11.4, designated by INDOT and KYTC to make certain toll related decisions.
- 1.30 Toll System Provider ("TSP") means that entity selected by the Joint Board to be the toll operator and integrator for the Project.
- 1.31 Tolling Body means the body established in the Interlocal being comprised of the members of the Joint Board plus one additional representative of IFA and one additional representative of KPTIA, charged with making toll policy decisions for the Project.

2. Toll Policy

The guiding principles of this Toll Policy are as follows:

- 2.1 That a single comprehensive toll system be established for the Project as a whole on all three border bridges included in the Project.
- 2.2 That all-electronic tolling be used to maximize cross-border mobility and ease of travel.
- 2.3 The cost of the Project be fairly and equitably borne by all users of the Project.
- 2.4 The citizens of the region, including EJ Populations, dependent on cross-border travel for employment, have access to more affordable tolling options.
- 2.5 That EJ Populations have multiple readily available alternatives for low cost cross-border travel.
- 2.6 That revenue generated by the toll system be adequate to support the obligations incurred by the Parties for financing and maintenance of the Project.

2.7 That the Parties have access to adequate means of toll collection and enforcement to assure high levels of overall compliance.

2.8 That the Project maximize interoperability and compliance with the goals of MAP
21

2.9 That flexibility be retained in the establishment of toll account types, vehicle categories, and user options as necessary to meet customer needs, comply with the EJ Mitigation Plan, enforce tolls, encourage timely toll payment, and meet the financial requirements of the Project.

2.10 That appropriate processes be implemented, including processes for waiving tolls, to assure cross boarder public safety in times of emergency.

2.11 That the toll system and toll collections efforts taken by the TSP be designed to treat users of the Project as customers and to function in an efficient, seamless, and transparent way.

2.12 That motorists from other states are encouraged both to use the Project and to comply promptly with their toll payment obligations through interoperable electronic systems, and through reciprocal agreements with other states to provide for efficient toll collection and enforcement.

2.13 That motorists from all states, to the extent possible, are treated uniformly by the toll collection process and by toll enforcement activities.

3. Toll Start and Toll Duration

3.1 Tolling Commencement

3.1.1 The Parties agree that tolling on the LSIORB Project shall commence at the earlier of the time that the Project adds new cross-river capacity to the transportation system in the Project area or January 1, 2017.

3.1.2 Tolling on the East End Bridge shall commence at the time that it is open to traffic.

3.1.3 Tolling on the Kennedy Bridge shall commence when the earlier of the following has occurred: (1) the East End Bridge is open to traffic, (2) the New Downtown Bridge is open to

traffic, the Kennedy Bridge rehabilitation is complete, and the Downtown Crossing is open to traffic in its final traffic configuration, or (3) January 1, 2017.

3.1.4 Tolling on the New Downtown Bridge shall commence when the earlier of the following has occurred: (1) the East End Bridge is open to traffic, (2) the New Downtown Bridge is open to traffic, the Kennedy Bridge rehabilitation is complete, and the Downtown Crossing is open to traffic in its final traffic configuration or (3) January 1, 2017.

3.1.5 The Tolling Body may subsequently determine whether tolling commencement may be delayed beyond the times for toll commencement described above, in order to increase the Project's customer base or to provide live testing of the toll system prior to beginning to charge customers. The decision to delay tolling must be evidenced by a resolution of the Tolling Body.

3.2 Tolling Termination

Tolling shall continue for the duration of the BSDA and may be extended thereafter by agreement of the Parties.

4. EJ Mitigation Plan

The Tolling Body has adopted the EJ Mitigation Plan, which is attached hereto as Attachment A and is incorporated herein by reference. The Parties shall take any action necessary to implement the measures described in the EJ Mitigation Plan.

The Tolling Body shall be responsible for coordinating the monitoring of the impact of EJ Populations as required in the EJ Mitigation Plan and the RROD. To that end, the Tolling Body shall periodically review the effects to these populations no less frequently than biennially.

5. Toll Rate Resolution

The Tolling Body has adopted the Toll Rate Resolution, which is attached hereto as Attachment B and incorporated herein by reference. The Parties shall take any action necessary to implement the toll schedule and toll escalation rate described in the Toll Rate Resolution.

6. Business Rules

6.1 Approve Business Rules

The Parties approve and support the Business Rules drafted by the TSP in collaboration with the Toll Representatives of INDOT and KYTC, attached hereto as Attachment C and incorporated herein by this reference.

6.2 Changes to the Business Rules

The Business Rules may be changed from time to time for a variety of reasons, including to improve customer service or to improve efficiency of the toll system. As such, the Business Rules must be a flexible document. To provide this needed flexibility, the Parties agree the Toll Representatives of INDOT and KYTC may, by mutual consent, propose changes to the Business Rules to the Tolling Body, provided those Business Rules are consistent with both states' laws, specifically the administrative rules and regulations related to tolling.

The Toll Representatives of INDOT and KYTC shall provide notice and an electronic copy of any changes they propose to the Business Rules to the Tolling Body members or member designees, all those listed in Section 11.4, and to any additional persons as directed by any Party, along with a summary of those changes. Any Tolling Body member may, within 30 days of receipt of the proposed change, notify the Toll Representatives of INDOT and KYTC and the other Members of the Tolling Body that they take an exception to such a change to the Business Rules. If an exception is taken, the change shall not take effect until such time as the Tolling Body passes a resolution approving the change. The Tolling Body shall meet as soon as is reasonably possible following an exception being taken to a proposed change to the Business Rules. If no exception is taken, the proposed change to the Business Rules shall be deemed approved and shall take effect at the expiration of the 30 day notice period. In no event shall changes related to toll rates, toll rate escalation, vehicle classification, the EJ Mitigation Plan, or vehicles allowed exempt crossing, take effect unless ratified by a resolution passed by the Tolling Body.

7. Toll Enforcement

7.1 Exchange of Ownership Information

The Parties agree to make license plate and vehicle ownership information available to one another, the TSP, and any third party vendors, free of charge, as necessary for the sole purpose of pursuing those drivers using the Project, failing to pay a toll on a facility located in either state, or otherwise violating laws, rules, or regulations related to a tolled bridge or roadway located in either state.

INDOT agrees to make available to the TSP, its authority to use the National Law Enforcement Telecommunications System (“NLETS”) to search for the ownership information for vehicles using the Project.

The Parties agree to pursue agreements to share license plate and vehicle ownership information reciprocally with other states.

7.2 Reciprocal Toll Enforcement

The Parties agree to use their powers shared pursuant to the Interlocal to enforce tolls charged on the LSIORB Project and to assist the TSP and other third party vendors in enforcing tolls charged on the LSIORB Project, as more fully described in the Business Rules.

The Parties agree to cause the agency or agencies in their state responsible for vehicle registration (“DMV”) to accept notification from the TSP of motorists with vehicles registered in their state with outstanding tolls and fees. The Parties further agree to cause their respective DMVs, upon receipt of such notice, to withhold vehicle registration renewal until payment in full of all outstanding tolls and fees is received by the TSP.

To contribute to the successful collection of tolls on the LSIORB Project, the Parties agree to enforce tolls charged on any other facilities in either state in the same manner each Party would enforce a toll violation on its own toll facility.

The Parties agree to pursue similar reciprocal toll enforcement agreements with other states to further contribute to the successful collection of tolls on the LSIORB Project.

7.3 Enhanced Enforcement

The Parties agree to periodically accept from the TSP a list of persistent or chronic violators residing in their respective state, as indicated in the Business Rules, and to cooperatively pursue revenue from those individuals to the fullest extent permitted under their respective state’s laws, including civil suits for debt collection, prosecutions in state courts, instructions or requests to state police departments to stop and detain these individuals, and other available collection remedies and enforcement actions.

8. Transponder Interoperability

8.1 E-ZPass Membership

The most efficient method of toll collection is by using a transponder tied to a prepaid account, through which a toll is deducted from a customer's account balance when the toll system recognizes a transponder registered to a customer. It is important for successful toll collection on the LSIORB Project that tolls be collected using this method from customers with accounts based in other states. The E-ZPass Group ("E-ZPass") is currently made up of 26 toll agencies in 15 states. Member agencies are able to access prepaid accounts based at another facility when a transponder from that facility uses a member agency's facility. The Parties agree that it is desirable for the LSIORB Project to be part of the E-ZPass network.

KPTIA as a full member of E-ZPass has been directed by the Joint Board to use its membership to include the LSIORB Project in the E-ZPass network.

The Indiana Parties agree to pay one half of KPTIA's costs associated with its E-ZPass membership, excluding application fees, but including any costs charged per-transaction and the cost of any testing required to certify the LSIORB Project's equipment for use within the E-ZPass. At such time as the Indiana Parties obtain its own E-ZPass membership, the Indiana Parties shall only continue to pay to KPTIA half of those per transaction costs resulting from the LSIORB Project.

8.2 Other Interagency Transponder Networks

The Parties agree to evaluate and pursue, where mutually acceptable, similar interagency transponder network memberships with other interagency transponder networks, as appropriate. Through these measures and their E-ZPass membership, the Parties agree that they will have met the goals of the Map 21 toll interoperability requirements.

9. Administrative Rules and Regulations

KPTIA and IFA shall cause to be adopted administrative rules and regulations to implement this Agreement and its attachments and to provide the toll collection and enforcement process with the force of law.

The IFA shall adopt administrative rules applicable to Indiana pursuant to its emergency rulemaking powers under IC 9-21-3.5, 8-15.5, and 8-15-2.

KPTIA shall adopt administrative regulations applicable to Kentucky pursuant to KRS Chapter 175B and 13A.

IFA and KPTIA agree to coordinate the drafting and promulgation of their respective rules and regulations to ensure that the toll collection process is uniform and consistent without regard to the residence of the customer or violator. Such administrative rules and regulations shall be as uniform and consistent as possible, taking into account any differences in the states' laws, where applicable. To accomplish these goals the administrative rules and regulations promulgated by IFA and KPITA shall include those principles contained in the Draft Administrative Rules and Regulations, as attached hereto as Attachment D.

IFA and KPTIA agree to provide final copies of administrative rules and regulations to the Parties upon final adoption and effectiveness.

10. Custody Agreement

IFA and KPTIA agree to enter into a custody agreement with the TSP, the revenue control manager, and each states' trustee for the Project which shall govern the transfer of toll revenues to the Parties respective Trustees. Toll revenues shall be divided equally between the states' respective trustees periodically, no less frequently than monthly.

11. General Matters

11.1 Access to Records

Each Party shall cooperate with the other Parties' reasonable requests for copies of, or inspections of such documents or materials as may be required for the requesting Party to complete an audit of the toll system.

11.2 Dispute Resolution

All disputes related to the toll system or other tolling matters concerning this agreement or the LSIORB Project shall be resolved pursuant to the process described in paragraph 16.6 of the BSDA, except that for purposes of these disputes, the project managers shall be deemed to be the Toll Representatives of INDOT and KYTC.

11.3 Amendment

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

11.4 Notice to Parties

As to the Toll Representatives: Director of Tolling Oversight
Indiana Department of Transportation
1030 Spring Street
Jeffersonville, IN 47130

Employee assigned to the LSIORB tolling project
Kentucky Transportation Cabinet
200 Mero Street
Frankfort, KY 40622

As to Members of the Tolling Body: Secretary
Kentucky Transportation Cabinet
200 Mero Street
Frankfort, KY 40622

Chairperson
Kentucky Public Transportation Infrastructure
Authority
200 Mero Street
Frankfort, KY 40622

KPTIA Member
c/o Secretary
Kentucky Transportation Cabinet
200 Mero Street
Frankfort, KY 40622

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

Public Finance Director of the State of Indiana
Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, IN 43204

IFA Member
c/o Public Finance Director of the State of Indiana
Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, IN 43204

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

With a copy to: General Counsel
Kentucky Public Transportation Infrastructure
Authority
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
KYTC
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 43204

With a copy to: General Counsel
Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, IN 43204

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

11.5 State Sovereignty

To the fullest extent permitted by law, the Parties 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 foreign courts, 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 to comply with the terms of this Agreement. The Parties shall be entitled to assert sovereign immunity and/or all other applicable protections in foreign courts to the same extent they are able to assert sovereign immunity and all other such applicable protections in their own courts. This provision shall survive termination of this Agreement.

11.6 Non-collusion

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.

11.7 Severability

If any provision of this Agreement shall be held invalid, illegal, or unenforceable, the validity, legality, or enforceability of the other provisions hereof shall not be affected thereby, and there shall be deemed substituted for the provision at issue a valid, legal, and enforceable provision as similar as possible to the provision at issue. This provision shall not be interpreted

to materially alter the relationships of the Parties as set forth in this Agreement or materially affect the ability of the Parties to achieve the purpose of this Agreement.

11.8 No Third Party Beneficiaries

This Agreement is solely for the benefit of the Parties hereto, and to the extent provided, their respective directors, officers, employees, agents, and representatives; and no provision in this Agreement shall be deemed to confer on other person any remedy, claim, reimbursement, cause of action, or other right.

11.9 Limitation on Recourse

No recourse shall be had for the payment or performance of any obligations 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.

11.10 Non -waiver of Rights

The failure of a Party at any time or times to require performance of any provision of this Agreement 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.

11.11 Cooperation amongst the Parties

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

11.12 Time is of the Essence

The times for performance provided or 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.

11.13 Term

The term of this Agreement shall be equal to the term of the Interlocal.

11.14 Future Implementing Agreement

Through this Agreement and the Interlocal, the Parties have shared and contributed the powers specified in Section 7.0 of the Interlocal, including the powers to set, charge, collect and enforce tolls and fees; to retain a TSP; and to promulgate and enforce administrative rules and regulations, among other powers. This Agreement shall be considered an implementing agreement and exhibit to the BSDA, pursuant to Section 11.5.1 of the BSDA and an implementing document of the Interlocal, pursuant to Section 10.12 of the Interlocal.

11.15 Tolling Body

The Tolling Body shall survive the execution and delivery of this Toll Policy Agreement and shall continue to serve as a joint board under the Interlocal and the statutes referenced therein and herein, responsible for amendments or addenda to this Agreement.