

**BI-STATE DEVELOPMENT AGREEMENT  
CONCERNING  
THE ILLIANA CORRIDOR PROJECT**

## TABLE OF CONTENTS

		<u>Page</u>
Article 1.	Definitions.....	3
Article 2.	Executive Committee.....	8
2.1.	Creation of Executive Committee.....	8
2.2.	Duties and Responsibilities.....	8
2.3.	Membership .....	9
2.4.	Relationship of the Parties .....	9
2.5.	Sovereign Immunity.....	9
Article 3.	Bi-State Management Team and Project Management Plan .....	9
3.1.	Oversight.....	9
3.2.	PMP Update.....	9
Article 4.	Project Delivery .....	10
4.1.	Illinois Portion of the Project.....	10
4.2.	Indiana Portion of the Project .....	10
4.3.	Path to Implementation.....	11
4.4.	Contract Awards .....	11
4.5.	Access Rights.....	12
Article 5.	Schedule.....	12
5.1.	Traffic Ready Completion .....	12
5.2.	Review and Comment on Schedule Provisions in Public Private Agreement.....	13
Article 6.	Budget.....	13
Article 7.	Financing.....	13
7.1.	Overview of Project Financing .....	13
7.2.	Financing of the Indiana Portion of the Project .....	14
7.3.	Financing of Illinois Portion of the Project.....	15
Article 8.	Environmental/Other Federal Requirements .....	17
8.1.	The Record of Decision .....	17
8.2.	Tier Two NEPA Process.....	17
8.3.	Modifications of the ROD .....	17
8.4.	Indiana Portion of the Project - ROD .....	17
8.5.	Illinois Portion of the Project - ROD .....	17
8.6.	Environmental Litigation.....	17
8.7.	Mitigation.....	17
Article 9.	Project Coordination, Design Standards and Construction.....	17
9.1.	Coordination of Activities.....	18
9.2.	Design Standards .....	18
9.3.	Change Orders .....	19

9.4.	Construction Observation .....	20
9.5.	Inspections and Inspection Reports .....	20
9.6.	Traffic Ready Completion .....	20
9.7.	Final Completion .....	21
9.8.	DBE Goals .....	21
9.9.	Federal Highway Administration Requirements .....	21
9.10.	Insurance .....	21
9.11.	Prevailing Wage Law.....	21
Article 10.	Tolling of the Project .....	22
10.1.	Agreement to Toll .....	22
10.2.	Tolling Framework and Parameters.....	22
10.3.	Toll Policy Agreement.....	23
10.4.	Commencement of Tolling Operations.....	24
10.5.	Toll System Integrator/Operator .....	24
10.6.	Rulemaking .....	24
10.7.	Duration of Tolling .....	24
Article 11.	Operations and Maintenance.....	25
11.1.	Coordination Plan .....	25
11.2.	Duration .....	25
11.3.	State Line Road Bridge until Project Termination .....	25
11.4.	State Line Road Bridge after Project Termination .....	25
11.5.	Commitment to Maintain Project Open to Traffic.....	25
Article 12.	Representations and Warranties.....	25
12.1.	IFA.....	25
12.2.	INDOT .....	26
12.3.	IDOT .....	26
Article 13.	Unexpected Conditions.....	26
Article 14.	Restoration and Force Majeure.....	27
14.1.	Casualty Rebuilding.....	27
14.2.	Casualty Delays .....	27
Article 15.	General Matters.....	27
15.1.	Single Project.....	27
15.2.	Access to Records.....	28
15.3.	Federal Project Number .....	28
15.4.	Approval of Public Statements or Press Releases.....	28
15.5.	Confidentiality .....	28
15.6.	Dispute Resolution.....	28
15.7.	Liability Between the Parties.....	29
15.8.	Amendment and Assignment.....	30
15.9.	Notice to Parties .....	30
15.10.	Reporting Requirements .....	30

15.11.	State Sovereignty .....	30
15.12.	Organizational Conflicts of Interest.....	31
15.13.	Noncollusion.....	31
15.14.	Severability .....	31
15.15.	No Third Party Beneficiaries .....	32
15.16.	Limitation on Recourse.....	32
15.17.	Entire Understanding/Limited Survival.....	32
15.18.	Counterparts.....	32
15.19.	Non-waiver of Rights.....	32
15.20.	Cooperation amongst the Parties .....	32
15.21.	Time is of the Essence .....	32
15.22.	Continued Access to Consultants and Advisors .....	33
15.23.	Term.....	33
APPENDIX A	Insurance Requirements .....	1
APPENDIX B	Existing Litigation and Sharing of Fees .....	3

## **BI-STATE DEVELOPMENT AGREEMENT**

### **CONCERNING**

### **THE ILLIANA CORRIDOR PROJECT**

This Bi-State Development Agreement (the "Agreement") is made by and among the State of Indiana ("Indiana"), by and through the Indiana Department of Transportation ("INDOT"), the State of Illinois ("Illinois"), by and through the Illinois Department of Transportation ("IDOT"), and the Indiana Finance Authority ("IFA"). IFA, INDOT, and IDOT are sometimes referred to individually herein as a "Party," or collectively as "the Parties." This Agreement shall be effective as of \_\_\_\_\_, 2014.

WHEREAS, Illinois and Indiana have agreed to pursue certain needed improvements in northeast Illinois and northwest Indiana, to improve regional mobility, alleviate local system congestion, and provide for efficient movement of freight;

WHEREAS, the proposed improvements, located in an area generally bounded by Interstate 55 to the west, Interstate 65 to the east, US 30 to the north, and the southernmost tip of Will County to the south, have been identified as the Illiana Corridor Project (the "Project");

WHEREAS, in light of the proposed participation of the Federal Highway Administration ("FHWA") in the financing and approval of the Project, FHWA, in cooperation with INDOT and IDOT, determined that the preparation of an Environmental Impact Statement ("EIS"), pursuant to the National Environmental Policy Act ("NEPA"), was appropriate, and that a "tiered" EIS should be prepared, with the Tier One EIS intended to resolve issues regarding transportation mode, facility type, and general location;

WHEREAS, to that end, FHWA issued a Notice of Intent in the Federal Register on June 8, 2011, indicating FHWA's intent, in cooperation with INDOT and IDOT, to prepare a Tier One EIS for the Project;

WHEREAS, on January 17, 2013, FHWA issued a combined Tier One Final EIS and Record of Decision ("ROD") identifying "Corridor B3" as the preferred corridor for the Project and approving it for further consideration in a Tier Two EIS, subject to conditions set forth in the ROD;

WHEREAS, Corridor B3 is an approximately 2,000 feet wide, 47-mile long east-west oriented corridor with a western terminus at Interstate 55 just north of the City of Wilmington in Illinois and an eastern terminus at Interstate 65 approximately three miles north of State Road 2 in Indiana;

WHEREAS, FHWA, in cooperation with IDOT and INDOT, is in the process of preparing a Tier Two EIS to evaluate roadway alignments within the preferred corridor and to evaluate detailed design elements, including interchanges, structures and drainage requirements, and published a Tier Two Draft EIS for public review and comment on January 24, 2014;

WHEREAS, FHWA anticipates issuing a Tier Two Final EIS and ROD later in 2014, which will confirm and approve the selection of a specific alignment within the approved corridor and other design elements, including interchange locations, and any Project mitigation requirements;

WHEREAS, the Project is proposed to be a tolled facility, configured for all-electronic, open road tolling, with no option for cash payment;

WHEREAS, the Parties have submitted to FHWA a Major Projects Project Management Plan ("PMP", as hereinafter defined) for the Project, and are in the process of preparing a Major Projects Financial Plan;

WHEREAS, the Parties have determined that the preferred approach for delivery of the Project (as provided in the Tier Two Draft Final EIS) is for each State to design, finance, construct, operate and maintain the portions of the Project located in their respective States, and pursuant to the applicable multi-state protocol, Illinois shall be responsible for the State Line Road Bridge, it being located on the eastern border of Illinois;

WHEREAS, the Parties previously memorialized their intentions regarding their respective rights and obligations concerning the Project in a term sheet dated November 5, 2013 (the "Term Sheet");

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

WHEREAS, IDOT is a department and of the State of Illinois and is responsible for and has authority to direct and control the establishment, construction and maintenance of Illinois' primary road system;

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

WHEREAS, IDOT 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, operate and maintain the Illinois Portion of the Project (defined hereafter) through an availability payment concession;

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, operate and maintain the Indiana Portion of the Project (defined hereafter) through an availability payment concession;

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, a Bi-State Management Team ("BSMT"), composed of members from IDOT and INDOT, has participated in the coordination of Project-wide activities to date, and will continue to work in cooperation with FHWA to complete the Tier Two EIS process, and to prepare and update the Major Projects Financial Plan and PMP, as needed;

WHEREAS, pursuant to the Amended and Restated Memorandum of Agreement dated July 23, 2013, an Executive Committee comprised of six members was established to provide oversight, monitoring and communications regarding the Project;

WHEREAS, this Agreement, as well as the obligations created hereunder or described herein, does not constitute a debt, liability or obligation of Indiana or Illinois, 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 their respective roles and responsibilities for the procurement, financing, design, construction, tolling, operation and maintenance of the Project; and

WHEREAS the Parties have met all conditions precedent to entering into this Agreement;

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

**Article 1. Definitions.**

The terms defined in this Article 1 and elsewhere in this Agreement for all purposes of this Agreement have the meanings herein specified, unless the context clearly otherwise requires. The words "herein", "hereof", and "hereunder" and other words of similar import without reference to any particular Article, Section or Subsection refer to this Agreement as a whole and not to any particular Article, Section or other Subsection unless the context clearly indicates otherwise. The terms defined herein shall include the plural as well as the singular. Words of the neutral gender shall be deemed and construed to include correlative words of the feminine and masculine genders. Headings of Articles, Sections and Subsections herein and the table of contents hereof are solely for the convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

"Agreement" means this Bi-State Development Agreement concerning the Illiana Corridor Project among INDOT, IDOT and IFA.

"Addendum" means an addendum to this Agreement entered into by the Parties.

"Bridge Transition Segment" means the section of the Illinois Portion of the Project that begins at a point on the Project above the centerline of State Line Road and proceeds 100 feet east, to the connection point of the Indiana Portion of the Project.

"BSMT" means Bi-State Management Team, as provided in the PMP.

"DBE" means the Disadvantaged Business Enterprises program of the U.S. Department of Transportation.

"Developer" means either the Indiana Developer or the Illinois Developer, or both as the context requires.

"Environmental Litigation" means any lawsuit (including complaint, petition, or similar legal action) that is filed in a court of competent jurisdiction (including any administrative forum) and seeks to overturn, set aside, alter, enjoin, or otherwise inhibit the implementation of a federal, state, or local agency's approval of the Project, or any part thereof, based on the agency's alleged non-compliance with any 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, and local laws.

"Expressway Standards" means the standards contained in the Indiana Design Manual 2013 and the Illinois Bureau of Design and Environment Manual.

"FHWA" means the Federal Highway Administration.

"Final Completion" means that all of the work to construct the Project has been completed.

"Force Majeure Event" means the occurrence of any of the following events that materially and adversely affect performance of a 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 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 a Portion of the Project; (c) strikes, embargoes, acts or omissions of a port or transportation authority, unavailability or shortages of materials or other events causing interruption to or damage to construction or operation of the Project; (d) nuclear explosion that causes direct physical damage to a Portion of the Project, or radioactive contamination of a Portion of the Project, (e) 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, a Portion of the Project, (f) 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 a Portion of the Project, and (g) any Governor-declared emergency related to the Project.

"IDOT" means the Illinois Department of Transportation, a department of the State of Illinois with responsibility for planning, construction and maintenance of Illinois' transportation network.

"IFA" means Indiana Finance Authority, a body politic and corporate not a state agency but an independent instrumentality exercising essential public functions created pursuant to IC 4-4-11-4, the procuring entity for Indiana Portion of the Project.

"Illiana Corridor Project" means the design, construction, operation and maintenance, as applicable, of the east-west transportation corridor extending from Interstate 55 in Illinois to Interstate 65 in Indiana, as identified and approved in the ROD, and any related commitments contained in the ROD.

"Illinois Developer" means the private entity or entities selected by IDOT to develop the Illinois Portion of the Project.

"Illinois Portion of the Project" means the portion of the Project extending from Interstate 55 in Illinois to the Illinois-Indiana state line, which shall include construction of interchanges at Interstate 55, IL-53/Riley Road, Cedar/Wilton Center Road, U.S. 45/52, Interstate 57, IL-50 and IL-1 Interchange, as well as the State Line Road Bridge, and the approach work defined herein as the Bridge Transition Segment, all as more fully described in the PMP.

"Illinois Public-Private Agreement" means the agreement or agreements entered between IDOT and the Illinois Developer for development of the Illinois Portion of the Project.

"Illinois Toll Operator" means a qualified toll system operator engaged by IDOT for the Illinois Portion of the Project.

"Illinois Toll Revenues" means Toll Revenues on the Illinois portion of the Project.

"Indemnitors" means the Parties' respective nonparty consultants, designers, developers, contractors, and other professionals involved in the design, construction, and O&M on the Project.

"Indiana Developer" means the private entity or entities selected by IFA to develop the Indiana Portion of the Project.

"Indiana Parties" means IFA and INDOT.

"Indiana Portion of the Project" means the portion of the Project extending from Interstate 65 in Indiana, west to a point that is at the eastern boundary of the Bridge Transition Segment all as more fully described in the PMP.

"Indiana Public-Private Agreement" means the agreement or agreements entered between IFA and the Indiana Developer for development of the Indiana portion of the Project.

"Indiana Toll Operator" means a qualified toll system operator engaged by IFA or INDOT for the Indiana Portion of the Project.

"Indiana Toll Revenues" means Toll Revenues on the Indiana Portion of the Project.

"INDOT" means Indiana Department of Transportation, an agency of Indiana.

"Interstate 55 to Interstate 57 Segment" means the part of the Illinois Portion of the Project beginning at, and including the interchanges at, Interstate 55 and extending east to and including the connection point at Interstate 57.

"Interstate 57 to State Line Road Segment" means the part of the Illinois Portion of the Project beginning at, and including, the interchange at Interstate 57, and extending east to and including the State Line Road Bridge.

"Interstate Standards" means standards required by FHWA for interstate construction.

"Major Projects Financial Plan" means the financial plan for the Project required under 23 USC 106(h), to be developed by the Parties and approved by FHWA.

"Major Projects Project Management Plan" means that plan which is required under 23 U.S.C. 106(h) to be developed for the Project by the Parties and submitted to FHWA.

"MOU" means the Amended and Restated Memorandum of Understanding entered by the State of Indiana (through INDOT) and the State of Illinois (through IDOT) dated on or about July 23, 2013, concerning the Illiana Corridor Project.

"NEPA" means the National Environmental Policy Act, 42 U.S.C. § 4321 et seq.

"NEPA Documents" means the Tier One Final EIS and ROD, approved by FHWA on January 17, 2013, as amended, modified, or superseded by the Tier Two Final EIS and ROD, at such time as those documents are approved by FHWA, or as later amended or modified.

"O&M" and/or "Operations and Maintenance" mean any and all activities and improvements together with any and all recurring and nonrecurring costs necessary to operate and maintain the Project in good operating order, including both regular and routine maintenance, lifecycle maintenance, and capital costs, and shall include, but not be limited to, compliance with applicable operations and maintenance standards.

"Parties" means IFA, INDOT, and IDOT.

"PMP" means the "Major Projects Project Management Plan" for the Project, as amended or updated by INDOIT and IDOT.

"Portion of the Project" means either the Illinois Portion of the Project or the Indiana Portion of the Project, or both, as the context may require.

"Private Activity Bonds" means private activity bonds issued under the Internal Revenue Code Sections 142(a)(15)(m).

"Project" means the Illiana Corridor Project.

"Project Termination" means the later of the following dates: (i) the date when the Illinois Public-Private Agreement has concluded and been satisfied on the Illinois Portion of the Project; or (ii) the date when the Indiana Public-Private Agreement has concluded and been satisfied on the Indiana Portion of the Project.

"Project-Wide Costs" means costs that are incurred by agreement of the Parties for the benefit of the Project as a whole and which are not specifically applicable to either the Illinois Portion of the Project or the Indiana Portion of the Project, and for which costs IDOT will be responsible for paying 75%, and IFA/INDOT will be responsible for paying 25%.

"ROD" means the Tier One Record of Decision issued by FHWA for the Project on January 17, 2013, as amended, superseded or modified by any Tier Two Record of Decision issued by FHWA.

"ROD Requirements" means the requirements as described in **Subsection 8.1**.

"State" means either the State of Illinois or the State of Indiana or both, as the context may require.

"State Fiscal Year" means the fiscal year of Indiana or Illinois, or both as the context may require.

"State Line Bridge" means the new bridge structure to be constructed by IDOT over State Line Road, and shall include the Bridge Transition Segment.

"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.

"Toll Policy" means the agreed terms and conditions for tolling operations for the Project, including agreed toll rates, toll schedules and business rules.

"Toll Policy Agreement" means an agreement entered among the Parties (or certain of them representing each State) establishing a comprehensive toll policy for the Project.

"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.

"Traffic Ready Completion" means the stage in the progress of the work when the Project (or portion thereof) is sufficiently complete in accordance with the requirements of this Agreement so that it can be occupied and permanently open to traffic for all lanes.

## **Article 2. Executive Committee**

2.1. Creation of Executive Committee. An Executive Committee, comprised of three members from each State, shall be created to facilitate and assist in the accomplishment of the Project by providing a bi-state forum for oversight, monitoring, and communications regarding the Project.

### 2.2. Duties and Responsibilities

2.2.1. The Executive Committee shall, to the extent of their members' respective authority and in the exercise of their respective discretion, exist solely to assist and facilitate the performance by the Parties of their responsibilities under this Agreement with respect to the Project.

2.2.2. The Executive Committee shall establish a regular schedule of conference calls and in-person meetings.

2.2.3. The Executive Committee shall provide oversight for the Project and shall have responsibility for:

- (a) establishment of external communications protocol;
- (b) establishment of the Project management;
- (c) dispute resolution between the Project managers;
- (d) coordination of construction, operations and maintenance consistent with this Agreement;
- (e) coordination of tolling policy;
- (f) retention of any shared consultants and advisors, including putting any arrangements in place to ensure mutual access to such joint consultants and/or advisors to the extent any are intended to be shared resources for the Project.

- (g) Decisions of the Executive Committee shall be made by achieving consensus on issues.

### 2.3. Membership

2.3.1. The Executive Committee shall be comprised of the six members described below. Each of the following (by virtue of their offices) shall serve on the Executive Committee, or shall designate a representative (or representatives) who may serve in their stead from time to time:

- (a) the Secretary of IDOT;
- (b) the Director of Finance and Administration of IDOT;
- (c) the Director of Highways of IDOT;
- (d) the Public Finance Director of the State of Indiana on behalf of IFA;
- (e) the Commissioner of INDOT; and
- (f) the Deputy Commissioner of Innovative Project Delivery of INDOT.

2.4. Relationship of the Parties. The 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.

2.5. Sovereign Immunity. Nothing herein shall be construed as consent by the State of Indiana to suit in the Courts of the State of Illinois, or as consent by the State of Illinois to suit in the Courts of the State of Indiana, or a waiver of either states' sovereign immunity or rights under the Eleventh Amendment to the Constitution of the United States. IDOT, IFA and INDOT shall each be entitled to protection from claims and suits by third parties in connection with such activities to the maximum extent provided by the principles of sovereign immunity or other statutory limitations on tort damages applicable to the State of Illinois or Indiana.

### **Article 3. Bi-State Management Team and Project Management Plan**

3.1. Oversight. 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.

3.2. PMP Update. The BSMT will update the PMP and the Major Projects Financial Plan, which shall be subject to the prior approval of IFA and IDOT. The PMP and Major

Projects Financial Plan shall be consistent with this Agreement and shall be submitted to FHWA as required.

**Article 4. Project Delivery**

4.1. Illinois Portion of the Project.

- 4.1.1. IDOT shall be responsible for the timely delivery of the Illinois Portion of the Project, which shall include, at IDOT's sole cost and expense, the following:
- (a) To utilize its powers, including eminent domain and condemnation powers, to acquire the property necessary to construct the Illinois Portion of the Project;
  - (b) To utilize its powers, including eminent domain and condemnation powers, to relocate any public utilities or any other occupancies located in Illinois that are necessary to complete the Illinois Portion of the Project;
  - (c) To provide funding for the Illinois Portion of the Project;
  - (d) To provide all work, improvements, services, labor, and materials necessary to design and construct the Illinois Portion of the Project;
  - (e) To pay its portion of the Project Wide Costs; and
  - (e) To provide all Operations and Maintenance of the Illinois Portion of the Project.

4.2. Indiana Portion of the Project.

- 4.2.1. Indiana Parties shall be responsible for the timely delivery of the Indiana Portion of the Project, which shall include, at the Indiana Parties' sole cost and expense, the following:
- (a) To utilize its powers, including eminent domain and condemnation powers, to acquire the property located in the State of Indiana necessary to construct the Project;
  - (b) To utilize its powers, including eminent domain and condemnation powers, to relocate any public utilities or any other occupancies located in Indiana that are necessary to complete the Indiana Portion of the Project;
  - (c) To provide funding for the Indiana Portion of the Project;

- (d) To provide all work, improvements, services, labor, and materials necessary to design and construct the Indiana Portion of the Project;
- (e) To pay its portion of the Project Wide Costs; and
- (f) To provide all Operations and Maintenance of the Indiana Portion of the Project.

4.3. Path to Implementation.

- 4.3.1. IDOT will continue to advance the procurement process for the Illinois Portion of the Project, which commenced with the issuance of a draft Request for Qualifications on November 8, 2013.
- 4.3.2. IFA, in conjunction with INDOT, will continue to advance the procurement process for the Indiana Portion of the Project, which commenced with the issuance of a Request for Qualifications on November 12, 2013.

4.4. Contract Awards.

- 4.4.1. The Parties agree to provide one another, prior to the release of any final Request for Proposal to potential Developers, an opportunity to review and comment on provisions in each State's Public-Private Agreement that the other State believes is reasonably necessary to coordinate each State's Portion of the Project. The Parties agree not to disclose the contents of the other State's draft Public-Private Agreement, other than to their employees, attorneys and consultants.
- 4.4.2. The Parties agree that neither State shall make any public announcement with respect to the results of its evaluation process for the procurement of its Portion of the Project prior to the final proposal due date with respect to the other State's Portion of the Project.
- 4.4.3. IDOT shall use its best efforts to achieve financial close for a contract for the design, construction, and operation and maintenance of the Illinois Portion of the Project by the first quarter 2015, and the Indiana Parties shall use their best efforts to achieve financial close for a contract for the design, construction, and operation and maintenance of the Indiana Portion of the Project, in each case by approximately one month later.

4.5. Access Rights.

- 4.5.1. Upon the Indiana Parties obtaining rights to such property located in Indiana needed for the Illinois Portion of the Project, which shall be no later than July 1, 2015, and upon receipt of reasonable advance notice from IDOT, the Indiana Parties will grant to IDOT, the Illinois Developer and their respective authorized contractors, sub-contractors, agents, and employees, such access rights reasonably necessary to construct, operate and maintain the Illinois Portion of the Project. Such access rights shall include (i) the right of ingress, egress, transportation and use of vehicles, equipment, material, and personnel over, across, and under the property; and (ii) the right to remove, restore, rebuild or construct any improvements necessary to complete the Illinois Portion of the Project, but only to the extent consistent with this Agreement and INDOT approvals or conditions. IDOT, the Illinois Developer, and their respective authorized contractors, sub-contractors, agents, and employees shall take all reasonable precautions to minimize damage to the property located in Indiana and/or the property of third parties while utilizing the access rights.
- 4.5.2. In the event that IDOT, the Illinois Developer, and/or their respective authorized contractors, sub-contractors, employees, or agents cause any damage to the property in Indiana or the property of third parties, then IDOT shall at its own cost and expense (which may be passed on to the Illinois Developer), restore the property as reasonably practical to the same condition immediately prior to such damage.

**Article 5. Schedule**

- 5.1. Traffic Ready Completion. The Parties agree to use best efforts to achieve Traffic Ready Completion of the Project on or before December 31, 2018, and also agree to use best efforts to achieve the following interim Traffic Ready Completion dates, respectively:
- 5.1.1. IDOT shall use best efforts to achieve Traffic Ready Completion of the Interstate 57 to State Line Road Segment by June 30, 2018. The Bridge Transition Segment will be completed by May 1, 2017, with the exception of punch list items. All work to be performed by IDOT and the Illinois Developer on the Bridge Transition Segment will be complete as of May 1, 2017, to the extent as to ensure that the Indiana Developer can



proceed unimpeded with the work required under the Indiana contract.

- 5.1.2. The Indiana Parties shall use best efforts to achieve Traffic Ready Completion of the Indiana Portion of the Project by June 30, 2018.
- 5.1.3. IDOT shall use best efforts to achieve Traffic Ready Completion of the Interstate 55 to Interstate 57 Segment by December 31, 2018.

5.2. Review and Comment on Schedule Provisions in Public Private Agreement. The Parties agree to provide one another with an opportunity to review and comment on provisions related to the Project schedule, including without limitation provisions related to substantial completion of each State's Portion of the Project and incentives and consequences for failure to meet substantial completion of each State's Portion of the Project, provided in the respective Public-Private Agreement prior to the release of the any final Request for Proposal to potential Developers.

5.3. The Parties agree that the current schedule is dependent upon a number of prerequisite requirements that are not within their control. The Parties commit to work cooperatively together toward meeting the current scheduled dates; but in the event that circumstances beyond their control make such schedule not reasonably achievable, to communicate this change of circumstances and to then work together to develop a new schedule acceptable to Parties.

## **Article 6. Budget**

The Parties are participating in the development of a Major Projects Financial Plan, which will 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, 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 Parties.

## **Article 7. Financing**

### **7.1. Overview of Project Financing.**

- 7.1.1. In connection with development of the Tier One EIS, the States developed a conceptual cost estimate of \$1.509 billion for the Project. It is anticipated that the Tier Two EIS will identify, refine and detail additional cost factors that will modify the projected conceptual costs.

- 7.1.2. The 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 IDOT, IFA, the Indiana Developer or Illinois Developer, including proceeds of TIFIA loans and Private Activity Bonds, (iii) equity funding from the Illinois Developer and/or Indiana Developer.
  - 7.1.3. Illinois 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.
  - 7.1.4. 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 other State funds. 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.
- 7.2. Financing of the Indiana Portion of the Project. The Indiana Parties shall take sole responsibility for the procurement, financing, design, construction, and operations and maintenance of the Indiana Portion of the Project.
- 7.2.1. IFA shall conduct a procurement process and may undertake to execute a public-private agreement with a developer to finance a portion of the costs of constructing the Indiana Portion of the Project utilizing an availability payment structure. IFA will commit in the Indiana Public Private Agreement to pay availability payments over the course of a 35-year operations period. The Indiana Developer will be obligated to design, construct, finance, operate, and maintain the Indiana Portion of the Project.
  - 7.2.2. INDOT has committed \$80 - \$110 million in federal and conventional State funds to fund the Indiana Portion of the Project. The balance of the amount required to fund the design, construction, Operations and Maintenance of the Indiana Portion of the Project is expected to be provided by the Indiana Developer, which may include proceeds of indebtedness of the Indiana Developer, including a TIFIA loan, the use of the Private Activity Bonds and equity contributions from the Indiana Developer.

- 7.2.3. In connection with the Indiana Public-Private Agreement, IFA will enter into a use agreement with INDOT with respect to the Indiana Portion of the Project, 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 Toll Revenues to fund the availability payments owed by IFA to the Indiana Developer.
- 7.2.4. IDOT and the Indiana Parties shall assist in and coordinate their efforts in support of TIFIA financing for each portion of the Project.
- 7.2.5. Nothing set forth herein shall be construed as constituting a debt, liability or obligation of Indiana or Illinois, or a pledge or lending of the full faith and credit of either State within the meaning of any constitutional provision or limitation.

7.3. Financing of Illinois Portion of the Project. IDOT shall take sole responsibility for the procurement, financing, construction and Operations and Maintenance of the Illinois Portion of the Project.

- 7.3.1. IDOT shall conduct a procurement process and may undertake to execute a public-private agreement with a developer, and such developer will be responsible for financing a portion of the costs of constructing the Illinois Portion of the Project. IDOT will commit in the Illinois Public Private Agreement to pay availability payments over the course of the operating period portion of a 39-year term. The Illinois Developer will be obligated to design, construct, finance, operate and maintain the Illinois Portion of the Project.
- 7.3.2. IDOT has committed a minimum of \$250 million in State funds to fund its obligations for the Illinois Portion of the Project. In accordance with the Illinois Public Private Agreement, the Illinois Developer will be required to finance all design, construction and Operations and Maintenance responsibilities thereunder for the Illinois Portion of the Project. Such financing may include proceeds of indebtedness of the Illinois Developer, including TIFIA loan, and an Illinois Developer equity contribution.

- 7.3.3. The Indiana Parties and IDOT shall assist in and coordinate their efforts in support of TIFIA financing for each portion of the Project.
- 7.3.4. Nothing set forth herein shall be construed as constituting a debt, liability or obligation of Indiana or Illinois, or a pledge or lending of the full faith and credit of either State within the meaning of any constitutional provision or limitation.

## Article 8. Environmental/Other Federal Requirements

- 8.1. The Record of Decision. The Parties acknowledge the Project is subject to the requirements of the ROD, 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").
- 8.2. Tier Two NEPA Process. The parties agree to continue to work together pursuant to the terms of the MOU, and to continue to coordinate with FHWA, to complete the Tier Two NEPA process. The Parties expressly acknowledge that construction of the Project shall not commence prior to FHWA approval of a Tier Two Final EIS and ROD.
- 8.3. Modifications of the ROD. Before seeking FHWA approval to modify a ROD Requirement, a Party must notify each of the other Parties in writing and, if requested, consult with the other 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 the Parties.
- 8.4. Indiana Portion of the Project - ROD. The Indiana Parties shall be responsible for achieving and maintaining compliance with the ROD Requirements in the development, design, financing, construction, operation and maintenance of the Indiana Portion of the Project, and may delegate the responsibility for complying with any portion of those requirements to the Indiana Developer.
- 8.5. Illinois Portion of the Project - ROD. IDOT shall be responsible for achieving and maintaining compliance with the ROD Requirements in the development, design, financing, construction, operation and maintenance of the Illinois Portion of the Project, and may delegate the responsibility for complying with any portion of those requirements to the Illinois Developer.
- 8.6. Environmental Litigation. The Parties agree to cooperate in the defense of any Environmental Litigation, and each Party shall bear its own costs in such litigation.
- 8.7. Mitigation. The Parties agree to cooperate and assist each other in implementing any environmental mitigation activities or commitments contained in the ROD Requirements or otherwise required for compliance with any applicable federal, state, or local environmental law, regulation, permit, or approval required for construction of the Project, including assistance with the location of mitigation properties in the other State, if necessary; provided that each State will be responsible for the cost of any mitigation required to construct and operate its respective Portion of the Project.

## Article 9. Project Coordination, Design Standards and Construction

9.1. Coordination of Activities.

- 9.1.1. The Parties agree to work cooperatively together and to coordinate planning, design, financing, construction, and Operations and Maintenance of their respective portions of the Project so that the Project is complete, cost-effective and consistent with the ROD. To that end, the 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.
- 9.1.2. With respect to the Illinois Portion of the Project: (i) the Indiana Parties shall communicate their comments regarding the Illinois Portion of the Project only through IDOT and not directly to the Illinois Developer; (ii) the Indiana Parties shall have no right to direct the work of the Illinois Developer; and (iii) except as otherwise provided herein with respect to the State Line Road Bridge, IDOT shall retain sole discretion on whether to adopt the comments of the Indiana Parties and may reject the same.
- 9.1.3. With respect to the Indiana Portion of the Project: (i) IDOT shall communicate their comments regarding the Indiana Portion of the Project only through the Indiana Parties and not directly to the Indiana Developer; (ii) IDOT shall have no right to direct the work of the Indiana Developer; and (iii) the Indiana Parties shall retain sole discretion on whether to adopt the comments of IDOT and may reject the same.
- 9.1.4. IDOT shall perform their obligations under this Agreement in a manner that does not adversely impact or interfere with the Indiana Parties and/or the Indiana Developer. The Indiana Parties shall perform their obligations under this Agreement in a manner that does not adversely impact or interfere with IDOT and/or the Illinois Developer.

9.2. Design Standards.

- 9.2.1. The Illinois Portion of the Project shall be constructed to meet current Expressway Standards including such requirements as may be necessary to permit designation of the Illiana Expressway as an interstate highway. Except as otherwise provided in this Subsection 9.2.1, IDOT shall

have the ability to explore, utilize and implement, value engineering and alternative technical concepts. Any value engineering and alternative technical concepts that require a Supplemental EIS as defined by federal law will not be permitted. Alterations as facilitated by a consultation process with FHWA, including re-evaluations, may be permitted if in the best interest of the Project, and shall only be permitted upon written concurrence of IFA and INDOT where the alteration or re-evaluation involves the State Line Road Bridge or the ROD.

- 9.2.2. The Indiana Portion of the Project shall be constructed to meet current Expressway Standards including such requirements as may be necessary to permit designation of the Illiana Expressway as an interstate highway. Except as otherwise provided in this Subsection 9.2.2, IFA and INDOT shall have the ability to explore, utilize and implement, value engineering and alternative technical concepts. Any value engineering and alternative technical concepts that require a Supplemental EIS as defined by federal law will not be permitted. Alterations as facilitated by a consultation process with FHWA, including re-evaluations, may be permitted if in the best interest of the Project.
- 9.2.3. The Indiana Portion of the Project and Illinois Portion of the Project each shall be designed and constructed so that the width of the major structures and the travel way shall be four lanes initially but shall be expandable to six lanes.
- 9.2.4. INDOT shall have the right to review, comment on, and approve the design and the technical provisions, including any relevant O and M and handback requirements, regarding the State Line Road Bridge. INDOT shall conduct such review within a timeframe that will not delay work on the Illinois Portion of the Project.
- 9.2.5. IDOT shall have the right to review, comment on, and approve the design and technical provisions, including any relevant O and M and handback requirements, regarding the Indiana Portion's connection to the State Line Road Bridge. IDOT shall conduct such review within a timeframe that will not delay work on the Indiana Portion of the Project.

9.3. Change Orders. INDOT shall have the right to review and comment on any change orders relating to the design, construction, Operation and Maintenance, or handback

requirements of the State Line Road Bridge. The Parties shall meet and confer to develop a mutually acceptable process for INDOT's review of such change orders. INDOT's participation in such change order process shall be conducted so as to not delay work on the Illinois Portion of the Project.

9.4. Construction Observation. Upon reasonable advance notice, IDOT shall provide the Indiana Parties an opportunity to observe construction being performed on the Illinois Portion of the Project; and the Indiana Parties shall provide IDOT an opportunity to observe construction being performed on the Indiana Portion of the Project.

9.5. Inspections and Inspection Reports. INDOT shall have the right to observe inspections, and review inspection reports, relating to the construction of the State Line Road Bridge. The Parties shall meet and confer to develop a mutually acceptable process for INDOT's attendance at inspections and the sharing of inspection reports. INDOT's participation in inspections shall be conducted so as to not delay work on the Illinois Portion of the Project.

9.6. Traffic Ready Completion.

9.6.1. Except as otherwise provided herein, each State shall have sole discretion to determine the Traffic Ready Completion and Final Completion of its respective Portion of the Project, provided however, the Parties agree to provide reasonable advance written notice to the other Parties of determination of Traffic Ready Completion on any part of their respective Portions of the Project.

9.6.2. IDOT shall provide INDOT advance notice of, and an opportunity to attend, the inspection of the State Line Road Bridge to determine if it is traffic ready. INDOT shall have fourteen (14) days following such inspection to provide comments to IDOT, and Traffic Ready Completion shall not be declared on the State Line Road Bridge without INDOT's written consent.

9.6.3. INDOT shall provide IDOT advance notice of and an opportunity to attend, the inspection of the Indiana Portions' connection to the State Line Road Bridge to determine if it is traffic ready. IDOT shall have fourteen (14) days following such inspection to provide comments to INDOT, and Traffic Ready Completion shall not be declared on the Indiana Portion's connection to the State Line Road Bridge without IDOT's written consent.



9.7. Final Completion.

9.7.1. IDOT shall provide INDOT reasonable advance written notice of, and an opportunity to attend, the inspection of the State Line Road Bridge, to determine Final Completion. INDOT shall have fourteen (14) days following such inspection to provide comments to IDOT, and Final Completion shall not be declared on the State Line Road Bridge without INDOT's written consent.

9.7.2. The Parties agree to provide reasonable advance written notice to the other Parties of determination of Final Completion on any part of their respective portions of the Project.

9.8. DBE Goals. Because the Project is a single project with two procurements, 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 shall establish DBE goals appropriate for their respective procurements and portions of the Project in accordance with applicable federal requirements. IFA and IDOT will include language in the Indiana Public-Private Agreement and the Illinois Public-Private Agreement, respectively, requiring the Indiana Developer and the Illinois Developer respectively, 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.

9.9. Federal Highway Administration Requirements. The 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.

9.10. Insurance. Each Party shall require its respective Developer, to procure and maintain, or cause to be procured and maintained, the insurance policies and coverages identified in Appendix A. Such insurance policies shall cover the described exposures for work performed during the design, construction and Operations and Maintenance phases of each portion of the Project. IDOT, INDOT and IFA each shall be named as additional insureds on General Liability policies (including excess or umbrella policies, either by endorsement or by "follow form" provisions.).

9.11. Prevailing Wage Law. Notwithstanding anything contained herein to the contrary, each State shall comply with and shall require its 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 (including Indiana Code 5-16-7 et seq. and 820 ILCS 130/1 et seq.) 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 (the "Project-Specific Wage Rates"), each State shall comply and shall require its Developer, to

comply with such Project-Specific Wage Rates when performing or when contracting for the performance of obligations on the Project.

## **Article 10. Tolling of the Project**

### **10.1. Agreement to Toll.**

- 10.1.1. The Parties agree to implement tolling on the Project. The Parties acknowledge that the Illinois Portion of the Project and the Indiana Portion of the Project have been planned and coordinated to comprise an integrated transportation corridor that requires close coordination to ensure unified and viable tolling operations. The Parties further acknowledge that establishing the framework for such coordination is essential to the Project and is a fundamental purpose of this Agreement.
- 10.1.2. Parties agree to assist and cooperate in meeting any FHWA requirements with respect to approving the Project for tolling, including any ROD Requirements applicable to tolling.

### **10.2. Tolling Framework and Parameters.**

- 10.2.1. The Parties agree that this Agreement shall constitute an agreement regarding tolling framework, which shall be further defined and implemented by a Toll Policy Agreement between the Parties.
- 10.2.2. The Parties agree that the maximum tolling rates shall be uniform for all Portions of the Project by vehicle class.
- 10.2.3. IDOT shall collect and retain the Illinois Toll Revenues. The Indiana Parties shall collect and retain the Indiana Toll Revenues.
- 10.2.4. Tolling for the Project shall be designed and configured for all electronic, open-road tolling, with no option for cash payment. The electronic toll collections through these automated systems shall be coordinated, interoperable and use an open architecture accommodating systems such as E Z Pass, I Pass, I Zoom, and the Ohio River Bridges Pass.
- 10.2.5. The Parties agree, to the extent permitted by each State's governing laws, to assist and cooperate in establishing requirements for appropriate entities in each State to (i)

share registration information in its possession sufficient to identify and locate persons and/or entities utilizing the Project and incurring toll charges, and (ii) assist in the collection of unpaid tolls or other charges assessed against a resident of its respective State. These requirements shall provide for maintenance of confidentiality of customer account information. The Parties agree to establish these requirements by the third quarter of 2014.

10.3. Toll Policy Agreement.

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

- (a) Administrative method for the joint establishment of tolls, which shall be accomplished on a bi-state basis with a common and consistent policy for the entire Project.
- (b) Expected initial toll rates, including, but not limited to, identification of vehicle classes, unit toll rates by vehicle class, allowable toll variations, if any, by time of day or day of week, and toll variations, if any, tied to levels of traffic congestion,
- (c) 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
- (d) Such terms as are necessary to comply with the ROD.
- (e) Business rules for customer service including transponders and account maintenance.

10.3.2. The 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.

10.3.3. The Parties expect that the development of the tolling policy shall be completed and a Toll Policy Agreement shall be executed by third quarter 2014.

- 10.4. Commencement of Tolling Operations. The Parties agree that tolling operations for the Project will commence at such time as any portion of the Project is open and traffic-ready and such tolling shall be based on the provisions of the Toll Policy Agreement and the agreed toll rates.
- 10.5. Toll System Integrator/Operator. Toll integration, toll collections, and tolling operation and maintenance shall be undertaken separately for the Indiana Portion of the Project and the Illinois Portion of the Project by each State's selected provider, selected either as part of its respective procurement, by a separate procurement or by other means. The tolling systems shall be designed and constructed to provide coordination and interoperability between the States' respective tolling systems.
- 10.6. Rulemaking. The Parties agree, upon recommendations to be made by the Tolling Body, to undertake or cause the appropriate entities to undertake, administrative rulemaking procedures as promptly as practicable as may be necessary to establish the framework for setting rates, electronic tolling, tolling procedures, tolling enforcement and any other rules or regulations necessary or appropriate to effectuate the provisions of this Agreement and operation of tolling systems for the Project.
- 10.7. 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 Parties.

## Article 11. Operations and Maintenance

- 11.1. Coordination Plan. The Parties shall jointly develop a traffic, operations and maintenance coordination plan in order to provide effective and efficient coordinated operation of the Project.
- 11.2. Duration. The Parties shall continue to be responsible for performing all O&M within their respective States until Project Termination, except as otherwise set forth herein.
- 11.3. State Line Road Bridge until Project Termination. During the period of time beginning when construction commences on the State Line Road Bridge and continuing until Project Termination, IDOT shall be responsible for O&M for the State Line Road Bridge, including all costs and expenses associated therewith. These responsibilities may be delegated to a private entity.
- 11.4. State Line Road Bridge after Project Termination. After Project Termination, IDOT shall be responsible for performing the O&M on the State Line Road Bridge, with the costs and expenses thereof to be shared with the Indiana Parties. IDOT shall keep a correct and accurate record of the maintenance, repairs, construction or reconstruction of the State Line Road Bridge and shall annually invoice the Indiana Parties for one-half of such cost by June 30 of any calendar year, and the Indiana Parties shall, within a reasonable time, reimburse IDOT for the amount of such invoice.
- 11.5. Commitment to Maintain Project Open to Traffic. Beginning upon Traffic Ready Completion of any Portion of the Project, and for the duration of this Agreement, the Illinois Portion of the Project and the Indiana Portion of the Project 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 Indiana Portion of the Project or the Illinois Portion of the Project to any kind of vehicular traffic without the consent of the other Parties, except in response to an emergency, planned maintenance or permitted closure pursuant to the respective public-private agreements. The Parties agree to coordinate their rules for permitted closures for their respective portions of the Project so as to mitigate to the extent possible, any effect on toll revenues.

## Article 12. Representations and Warranties

- 12.1. IFA. IFA makes the following representations and warranties to the other Parties:
  - 12.1.1. 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.
  - 12.1.2. The IFA Board has approved the execution and delivery of this Agreement by the IFA and authorized its performance of its obligations hereunder.

12.1.3. 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.

12.1.4. The IFA is not aware of any pending litigation relating to the Project other than the matter(s) identified on **Appendix B.**

12.2. **INDOT.** INDOT makes the following representations and warranties to the other Parties:

12.2.1. 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.

12.2.2. The Commissioner of INDOT has approved the execution and delivery of this Agreement by INDOT and authorized its performance of its obligations hereunder.

12.2.3. 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.

12.2.4. INDOT is not aware of any pending litigation relating to the Project other than the matter(s) identified on **Appendix B.**

12.3. **IDOT.** IDOT makes the following representations and warranties to the other Parties:

12.3.1. IDOT is a department of the State of Illinois exercising essential public functions and is duly organized and existing under 20 ILCS 2705/2705-1 et seq.

12.3.2. The Secretary of IDOT has approved the execution and delivery of this Agreement by IDOT and authorized its performance of its obligations hereunder.

12.3.3. As of the date of this Agreement, IDOT 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.

12.3.4. IDOT is not aware of any pending litigation relating to the Project other than the matter(s) identified on **Appendix B.**

### **Article 13. Unexpected Conditions**

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 Parties, causing the Parties or any of them to believe that (a) the Illinois Portion of the Project, the Indiana Portion of the Project and/or the Project in general cannot or will not proceed to completion as contemplated herein and that (b) termination, or material modification, suspension, interruption or amendment of this Agreement, the Illinois Public-Private Agreement and/or the Indiana Public-Private Agreement is necessary, then the Parties shall provide written notice to the other Parties of the condition requiring action by the Parties. Within thirty (30) days after receipt of such written notice, the Parties shall meet in person, and shall use their best efforts and work together in good faith to address fairly and equitably, for all 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. Disputes arising out of this article are subject Section 15.6.

#### **Article 14. Restoration and Force Majeure**

- 14.1. Casualty Rebuilding. If all or any part of the Illinois Portion of the Project or Indiana Portion of the Project shall be destroyed or damaged prior to Project Termination 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 Party responsible for constructing and performing O&M on such part of the Project 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 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 Parties shall reasonably assist with such cost recovery efforts.
- 14.2. Casualty Delays. None of the Parties shall be excused from any obligation under this Agreement as a result of events such as those referenced in **Subsection 14.1**, 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 portion of the Project or fulfill its obligation to maintain an open, usable portion of the Project equitably suspended, but only for the period of time reasonably commercially necessary to undertake and complete the repairs or restoration. The Party suffering the casualty shall make commercially reasonable efforts to mitigate the damages from, and the effects of, the casualty event, and shall maintain open to traffic all portions of the Project unaffected by the casualty event.

#### **Article 15. General Matters**

- 15.1. Single Project. The Project is and will continue to be reflected as a single project with a single financial demonstration for fiscal constraint purposes, including but not limited to in the context of Chicago Metropolitan Agency Planning and the Northwestern Indiana Regional Planning Commission.

- 15.2. Access to Records. Each Party shall require its contractors or consultants (including the respective developers) 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 Party. Each Party shall cooperate with the other Parties' reasonable requests for copies of, or inspection of such documents or material.
- 15.3. Federal Project Number. INDOT and IDOT 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.
- 15.4. 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 Parties shall consult with one another to ensure that such statements are timely, accurate and do not breach agreed upon confidentiality commitments.
- 15.5. Confidentiality. The Parties, and their respective Project consultants and Project contractors (including the respective Developers) 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.
- 15.6. Dispute Resolution. To the extent permitted by law, the Parties shall use best efforts to resolve any disputes between and among them. To this end, the 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 Parties. It is expressly acknowledged and agreed by and among the 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 Parties, the work may continue pending resolution of the dispute, provided that the Party or 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 Executive Committee. 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 Parties that is not able to resolved by the Exccutive Committee, such dispute shall be resolved between the States' governors.

15.7. Liability Between the Parties.

15.7.1. 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; and
- (b) 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.

15.7.2. Notwithstanding **Subsection 15.7.1**, 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 Parties.

15.7.3. In the event the Indiana Portion of the Project is not completed or is significantly delayed other than as a result of action or inaction on the part of IDOT or its agents, 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.

15.7.4. In the event the Illinois Portion of the Project is not completed or is significantly delayed other than as a result of action or inaction on the part of the Indiana Parties, IDOT 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.

15.8. Amendment and Assignment. This Agreement may be further amended, supplemented, or modified only by a written document executed by the Parties. 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 such assignment is consistent with the purposes of this Agreement.

15.9. Notice to Parties.

As to IDOT: Secretary  
Illinois Department of Transportation  
2300 South Dirksen Parkway  
Springfield, IL 62764-0001

With a copy to: General Counsel  
Illinois Department of Transportation  
2300 South Dirksen Parkway  
Springfield, IL 62764-0001

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

15.10. Reporting Requirements. The Illinois Public Private Agreement and the Indiana Public Private Agreement each shall require the respective Developers, 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.

15.11. State Sovereignty. To the fullest extent permitted by law, IDOT, INDOT and IFA 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. To the fullest extent permitted by law, the Indiana Parties shall be entitled to assert sovereign immunity and/or all other applicable protections in Illinois courts to the same extent Illinois is able to assert sovereign immunity and all other such applicable protections in Illinois courts, and IDOT 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.

15.12. Organizational Conflicts of Interest.

15.12.1. The 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 Parties shall independently have the discretion to waive nonmaterial conflicts of any person or entity previously under contract with IFA, INDOT or IDOT 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.

15.12.2. Upon approval of the other Parties, additional exceptions to this policy may be granted by either of the 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.

15.13. 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.

15.14. 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

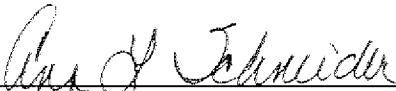
valid, legal and enforceable provision as similar as possible to the provision at issue. This provision shall not be interpreted to materially alter the relationships of the Parties as set forth in this Agreement or materially affect the ability of the Parties to achieve the purpose of this Agreement.

- 15.15. 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.
- 15.16. 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.
- 15.17. Entire Understanding/Limited Survival. 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, excepting however that the July 23, 2013 Amended and Restated Memorandum of Agreement between Illinois Department of Transportation and Indiana Department of Transportation, the terms and conditions of which shall survive to the extent not inconsistent with the terms herein.
- 15.18. 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.
- 15.19. 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.
- 15.20. Cooperation amongst the Parties. Approvals and consents required by any Party shall not be unreasonably withheld, conditioned or delayed.
- 15.21. 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.

- 15.22. Continued Access to Consultants and Advisors. The 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.
- 15.23. 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.

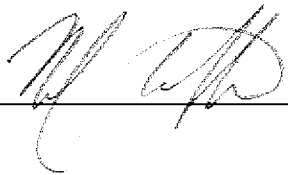
[Remainder of page intentionally blank]

ILLINOIS DEPARTMENT OF TRANSPORTATION

BY:   
Ann L. Schneider, Secretary

Date 4/26/14

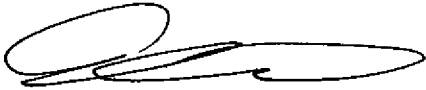
APPROVED AS TO FORM AND LEGALITY

BY: 

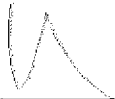
Date April 17, 2014

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

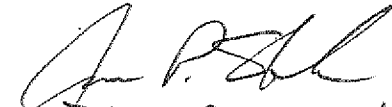
BY:   
\_\_\_\_\_  
Christopher D. Atkins, Chairman

Date 4/24/14

BY:   
\_\_\_\_\_  
Kendra W. York  
Public Finance Director of the State of Indiana

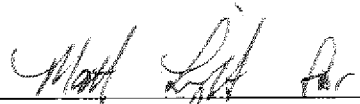
Date 4/24/14

INDIANA DEPARTMENT OF TRANSPORTATION

BY:  DEPUTY COMMISSIONER INNOVATIVE PROJECT DELIVERY  
~~for~~ Karl B. Browning, Commissioner Date 4/24/14

APPROVED AS TO FORM AND LEGALITY

ATTORNEY GENERAL OF THE STATE  
OF INDIANA

By:  Gregory F. Zoeller, Attorney General Date 4/25/14



APPENDIX A

INSURANCE REQUIREMENTS

<b>COVERAGE</b>	<b>LIMIT</b>
<b>Worker's Compensation</b>	Statutory
<b>General Liability</b>  Coverage should be substantially similar to, or at least as broad as, that contained in Insurance Services Office Commercial General Liability Insurance Policy CG 00 01 10 01 with no modifications reducing coverage unless approved by the State.	No less than \$100,000,000  The requisite insurance coverage limit may be satisfied through a combination of primary policies and umbrella or excess policies and may be provided under a Controlled Insurance Program (CIP). Umbrella and excess policies shall comply with all insurance requirements, terms and provisions set forth in the respective PPAs for the applicable type of coverage and shall be no less broad than follow form to primary policies.
<b>Employer's Liability</b>	No less than \$100,000,000  The requisite insurance coverage limit may be satisfied through a combination of primary policies and umbrella or excess policies. Umbrella and excess policies shall comply with all insurance requirements, terms and provisions set forth in the respective PPAs for the applicable type of coverage and shall be no less broad than follow form to primary policies.
<b>Auto</b>	No less than \$25,000,000  The requisite insurance coverage limit may be satisfied through a combination of primary policies and umbrella or excess policies. Umbrella and excess policies shall comply with all insurance requirements, terms and provisions set forth in the respective PPAs for the applicable type of coverage and shall be no less broad than follow form to primary policies.

<b>COVERAGE</b>	<b>LIMIT</b>
<p><b>Builder's Risk</b> (on the broadest "all risk" form available including delayed opening coverage)</p>	<p>The policy shall provide coverage per occurrence up to a loss limit approved as follows: each State shall establish a loss limit for its policy, which limit shall be subject to review and reasonable approval by the other State.</p> <p>The policy shall provide business income coverage for no less than 12 months of delay in completing and opening the toll way and shall have a maximum waiting period of no more than 90 days.</p>
<p><b>Professional Errors &amp; Omissions</b></p>	<p>No less than \$10,000,000</p>
<p><b>Contractors' Pollution Liability</b></p>	<p>No less than \$25,000,000</p>
<p><b>Aircraft Liability</b> <b>Watercraft (26 Feet or longer) Liability</b></p>	<p>If aircraft or watercraft will be used for any construction or O&amp;M activity, subject to State approval, the policy shall provide coverage per occurrence at a loss limit approved by the State.</p>
<p><b>Property Insurance</b> (during O&amp;M period) – including business income coverage</p>	<p>The policy shall provide coverage per occurrence up to a loss limit approved as follows: each State shall establish a loss limit for its policy, which limit shall be subject to review and reasonable approval by the other State.</p> <p>The policy shall provide business income coverage for no less than 12 months of interruption of operations.</p>
<p><b>Railroad Protective Liability</b> - if required by railroads</p>	<p>As specified by the railroad.</p>

**APPENDIX B**

**EXISTING LITIGATION AND SHARING OF FEES**

**Existing Litigation Matter**

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

1. *Openlands, Midewin Heritage Association and Sierra Club v. United States Department of Transportation, et al.*, Case No. 13C490, U.S.D.C. for Northern District of Illinois.

IDOT and Indiana Parties each shall retain and pay for their own counsel.

2. *Dye et al., v. State of Indiana*, Cause No. 45C01-1305-PL-00044, Lake County, Indiana, Circuit/Superior Court.

Indiana Parties shall retain and pay for their own counsel.