

KYTC: _____
INDOT: _____

**AGREEMENT
BETWEEN THE STATE OF INDIANA AND THE COMMONWEALTH OF KENTUCKY
FOR THE I-69 CROSSING OVER THE OHIO RIVER BETWEEN EVANSVILLE,
INDIANA AND HENDERSON, KENTUCKY
(Environmental and Preliminary Development Phase)**

This Memorandum of Agreement (hereinafter referred to as "Agreement") is made and entered into, by and between the State of Indiana (hereinafter referred to as "Indiana"), acting by and through the Indiana Department of Transportation (hereinafter referred to as "INDOT") and the Commonwealth of Kentucky (hereinafter referred to as "Kentucky"), acting by and through the Kentucky Transportation Cabinet (hereinafter referred to as "KYTC"), and jointly referred to as the "States".

WITNESSETH:

WHEREAS, Title 23 U.S.C. authorizes the expenditure of federal funds for river crossing projects; and

WHEREAS, INDOT and KYTC propose to cooperate in the National Environmental Policy Act ("NEPA") environmental studies and preliminary development of the I-69 crossing over the Ohio River between Evansville (Indiana) and Henderson (Kentucky) and its approaches (hereinafter referred to as the "Project") and have agreed to enter into this Agreement to establish the duties and responsibilities of each; and

WHEREAS, I-69 Evansville to Henderson, as a major infrastructure project jointly undertaken by the States, establishes the need for shared capacity to review, approve, finance and monitor the Project; and

WHEREAS, the States wish to establish a bi-state project management team to discharge the obligations of this Agreement with respect to the NEPA and preliminary development of the Project; and

NOW, THEREFORE in consideration of the mutual covenants and agreements herein contained, the parties contractually agree as follows:

(1) **RECITALS INCORPORATED:** The foregoing recitals are hereby incorporated into this Agreement, and serve as a material part of this Agreement.

(2) **SCOPE OF THE PROJECT:** The States agree to jointly evaluate the feasibility and examine the environmental impacts of the I-69 Evansville to Henderson proposal and a reasonable range of alternatives to that proposal, pursuant to the requirements of NEPA and related statutes and regulations. The Project will include an evaluation of the approaches associated with each alternative, any interchanges, connections to existing roadway systems and necessary appurtenant structures in both Indiana and Kentucky.

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(3) **FUNDING COMMITMENTS:** The estimated cost of the Project is \$17,000,000. INDOT agrees to pay one-half (50%) of the costs of the Project, not to exceed \$8,500,000. KYTC agrees to pay one-half (50%) of the costs of the Project, not to exceed \$8,500,000. Work by either Indiana or Kentucky staff and any other items provided by either Indiana or Kentucky toward completion of this project, shall not be chargeable toward either state's \$8,500,000 contribution. Each state's \$8,500,000 shall be used strictly for payment of consultant's invoices and the aerial surveys and mapping needed for the project. Additional phases of work, and both the costs and cost-sharing provisions thereof, required during or after the NEPA and preliminary development phase, including but not limited to additional environmental and preliminary design, detailed/final/phase II design, waterway permit applications and mitigation, Section 106 mitigation, right-of-way acquisition, utility relocation, and/or construction, shall be covered under future supplements to this agreement executed by all parties. INDOT agrees to set up a Federal Highway Administration (FHWA) project to provide funds for this Project, including obtaining project authorization and executing the FHWA-required project agreement. |

(4) **PROJECT CONTRACT AWARD:** INDOT agrees to advertise, award and administer a contract for the Project in an amount not to exceed \$17,000,000.

(5) **PROJECT ADMINISTRATION:** The parties agree that INDOT shall be the lead agency for the Project, which scope is defined in paragraph 2 of this Agreement, and shall use the INDOT's consultant selection process to engage a pre-qualified professional consultant firm to provide those NEPA and preliminary development services to meet the scope outlined in this Agreement ("Project Consultant"). The selection of the Project Consultant to perform the work shall be the joint decision of the consultant selection team. INDOT shall appoint three (3) members and KYTC shall appoint three (3) to serve on the selection team.

As lead agency, INDOT shall enter into a contract with the selected consultant to complete the Project (the "Project Agreement"). The Bi-State Management Team will include an equal number of representatives from KYTC and INDOT, and, if appropriate, Federal Highway representatives. The make-up of the Bi-State Management Team shall be determined by the joint agreement of the State's Representatives as defined in paragraph 6 of this Agreement. The Bi-State Management team shall direct the work of the Project Consultant and make all decisions related to the Project.

The Bi-State Management Team will coordinate with all appropriate state and local officials, and with the general public, as required by federal law.

The consultant shall invoice each state for the Project costs and neither state is responsible for more than the 50% of the costs of the approved invoice. The procurement document for the Project Consultant shall provide each state no less than 45 days to pay their invoices.

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(6) **STATE'S REPRESENTATIVE:** KYTC's Deputy State Highway Engineer for Project Development or his designee shall be KYTC's representative and project manager for the purpose of administering the provisions of this Agreement. KYTC's representative may designate by written notice other persons having the authority to act on behalf of KYTC in furtherance of the performance of this Agreement.

INDOT's Senior Project Manager of Innovative Project Delivery or his designee shall be INDOT's representative and project manager for the purpose of administering the provisions of this Agreement. INDOT'S representative may designate by written notice other persons having the authority to act on behalf of INDOT in furtherance of the performance of this Agreement.

(7) **NOTICES:** Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after delivery by United States mail, regular mail postage prepaid, or upon receipt by email delivery, addressed to:

The Kentucky Transportation Cabinet (KYTC) as follows:

**Deputy State Highway Engineer, Office of Project Development
Attn: Paul Looney
Kentucky Transportation Cabinet
200 Mero Street, 6th Floor
Frankfort, KY 40622
Email: paul.looney@ky.gov**

The Indiana Department of Transportation (INDOT)

**Senior Project Manager of Innovative Project Delivery
Attn: Sam Sarvis
Indiana Department of Transportation
3650 South U.S. Highway 41
Vincennes, IN 47591
Email: ssarvis@indot.in.gov**

or to such other place as the parties may designate in accordance with this Agreement. Notices by e-mail are acceptable between, by, and from, the respective state project managers and shall be deemed given upon receipt if during the normal work week or upon the first workday, excluding holidays.

(8) **DISPUTE RESOLUTION**

In the event a dispute arises regarding any portion of the Project, notification of such dispute shall be submitted in writing to each respective project manager for resolution within ninety (90) days of discovery of such dispute. In such notification, the disputing party shall present such evidence as may support its position. Within a reasonable time, but not longer than thirty (30) days from the date of receipt, project managers shall review

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the facts and circumstances surrounding the dispute for the purpose of determination and attempt to resolve the dispute within a reasonable period of time. If the dispute can not be resolved at the project team level, such dispute shall be submitted to the Secretary for KYTC and Commissioner of Indiana Department of Transportation. Their resolution shall be final.

(9) NONDISCRIMINATION ASSURANCE: With regard to work performed by the Project Consultant on the Project, INDOT agrees to cause the following language to be included in the Project Agreement for the Project:

Consultant Nondiscrimination

A. This Contract is enacted pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of this Contract, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the CONSULTANT or any subcontractor.

Under IC 22-9-1-10 CONSULTANT covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, or status as a veteran.

B. The CONSULTANT understands that INDOT is a recipient of federal funds. Pursuant to that understanding, the CONSULTANT agrees that if the CONSULTANT employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the CONSULTANT will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The CONSULTANT shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Contract.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and

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related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (INDOT's nondiscrimination enforcement is broader than the language of Title VI and encompasses other State and Federal protections. INDOT's nondiscrimination enforcement shall include the following additional grounds: sex, sexual orientation, gender identity, ancestry, age, income status, religion, disability, income status, limited English proficiency, or status as a veteran.)

C. During the performance of this Contract, the CONSULTANT, for itself, its assignees and successors in interest (hereinafter referred to as the "CONSULTANT") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:

1. Compliance with Regulations: The CONSULTANT shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
2. Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this Contract, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity,

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national origin, religion, disability, ancestry, income status, limited English proficiency, or status as a veteran.

4. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Indiana Department of Transportation and Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses furnish this information, the CONSULTANT shall so certify to the Indiana Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this Contract, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding payments to the CONSULTANT under the Contract until the CONSULTANT complies, and/or (b) cancellation, termination or suspension of the Contract, in whole or in part.
6. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs a through f in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The CONSULTANT shall take such action with respect to any subcontract or procurement as the Indiana Department of Transportation, the Federal Highway Administration, or the Office of Federal Contract Compliance Programs may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the Indiana Department of

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Transportation to enter into such litigation to protect the interests of the Indiana Department of Transportation, and, in addition, the CONSULTANT may request the United States of America to enter into such litigation to protect the interests of the United States of America.

(10) **Consultant Indemnification:** The Project Consultant shall provide indemnification for INDOT and KYTC and any insurance policies shall include KYTC as an additional insured.

(11) **LAW OF INDIANA TO GOVERN:** Any Agreement executed by INDIANA with a consultant pursuant to this Agreement shall be construed in accordance with and governed by the laws of the State of Indiana. It is agreed that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, in which INDOT or any of their agents, representatives or employees is a named party, shall be instituted only in the appropriate jurisdiction of Indiana.

(12) **State Sovereignty:** The States have entered into this present Agreement as sovereign states and not as principal and agent or as a joint venture. Nothing herein shall be construed as consent by either state to suit in the courts of the other state, or waiver of that state's 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 INDOT and KYTC. 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 either party hereto to comply with the terms of this Agreement.

(13) **Kentucky Affidavit for Bidders Offerors and Contractors:** The procurement document for the Project Consultant shall provide that the Project Consultant complete and provide to KYTC the Kentucky Affidavit for Bidders Offerors and Contractors.

(14) **NONSOLICITATION:** The States agree that as a part of this Agreement, the Project Consultant shall be required to warrant in a signed writing that it has not employed or retained any company or person, other than a bona fide employee working for the Project Consultant, to solicit or secure the Project Agreement with INDOT, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of that Project Agreement with INDOT. For breach or violation of this warranty, both parties shall have the right to annul this Agreement without liability, or at its discretion, to deduct from the fee or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

(15) **FHWA APPROVAL:** Both parties understand that this Agreement and the Project Agreement is contingent upon Federal Highway Administration (FHWA) approval of funding and administration of the Project.

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(16) **AUDIT OF RECORDS**: INDOT and the Project Consultant must maintain all records relating to this Agreement and the Project Agreement, including but not limited to invoices, payrolls, etc. These records must be available at all reasonable times at no charge to the States, FHWA, and/or either of their designees or representatives during the period of this Agreement and any extension thereof, and for three (3) years from the date of final payment made under the Project Agreement.

(17) **DBE REQUIREMENTS**: The States have mutually agreed that there will be no required goal for participation by "disadvantaged business enterprise" (DBE) firms, as that term is defined and used in Title 49 CFR Part 26, included in INDOT's proposal for the Project work to be performed. However, nothing in this section shall preclude either State from establishing goals for work to be executed in that particular State.

(18) **WORK PRODUCT**: Copies of all documents, reports, exhibits, etc. produced by the Project Consultant at the direction of the States shall be provided to the States at no charge.

(19) **CONFIDENTIALITY**: The States and the Project Consultant shall not disclose to third parties confidential factual data or information except as may be required by statute, ordinance, or order of court, or as authorized by the States. Each of the States, and the Project Consultant, shall notify the other State's representatives immediately of any request for such information.

(20) **PERFORMANCE OF AGREEMENT**:

(A) This Agreement constitutes the entire agreement between the parties with respect to the subject of this Agreement. All prior discussions and understanding between the parties are superseded by this Agreement.

(B) Neither this Agreement nor any rights, duties, or obligation described herein shall be assigned by either party hereto without the prior express written consent of the other party.

(C) This Agreement constitutes the entire agreement between the parties. It may only be amended, supplemented, or modified by a written document executed in the same manner as this Agreement was approved.

(D) It is understood by all parties that this Agreement is contingent upon FHWA approval of funding and administration of the Project.

(E) This Agreement shall be deemed substantially performed only when fully performed according to its terms and conditions and any modification thereof.

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(F) All provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective successors of the parties hereto.

(21) **AUTHORITY TO EXECUTE**: Any person executing this Agreement in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

(22) **SECTION HEADINGS**: All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

(23) **FORCE MAJEURE, SUSPENSION AND TERMININATION**:
In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster, actions or decrees of governmental bodies or communication line failure not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may be given written notice to terminate this Agreement.

(24) **SEVERABILITY**
Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

(25) **Multiple Originals**
This Agreement shall be executed in duplicated counterparts, initialed by the parties on each page. Each of the duplicated counterparts so executed shall be deemed to be an original.

(26) **Term**
This Agreement terminates on the earlier of completion of the Project or on December 31, 2019. However, this Agreement shall automatically renew under the same terms and conditions for three years and shall remain in full force and effect between the parties until the Project has been completed.

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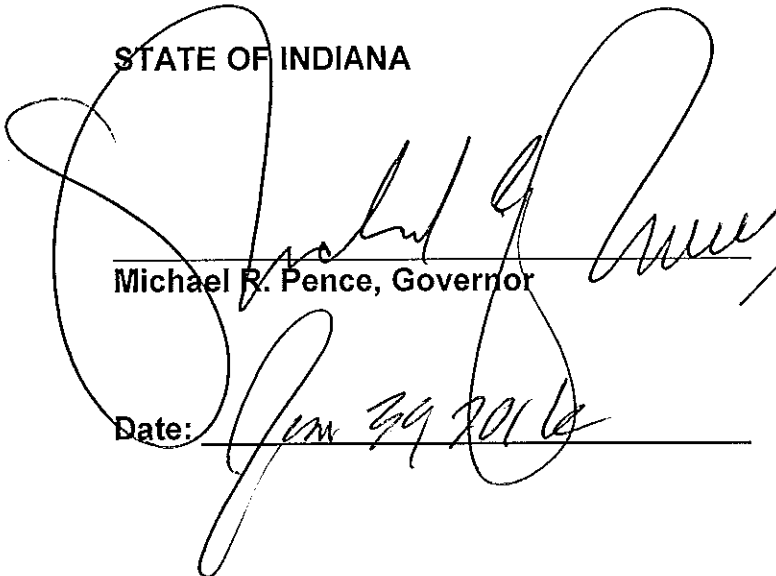
IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by KYTC this 30th day of June, 2016

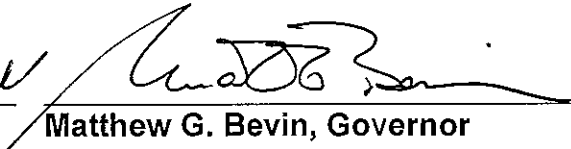
Executed by INDOT this _____ day of _____, 2016

STATE OF INDIANA

COMMONWEALTH OF KENTUCKY



Michael R. Pence, Governor



Matthew G. Bevin, Governor

Date: Jun 29 2016

Date: 30 JUNE 2016

KYTC: _____

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APPROVALS

**STATE OF INDIANA
State Budget Agency**



Brian E. Bailey, Director

Date: 8-1-16

**STATE OF INDIANA
Department of Administration**

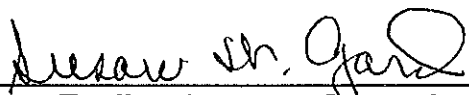


Jessica Robertson, Commissioner

Date: 7/19/16

Approved as to Form and Legality:

Approved as to Form and Legality:



Greg Zoeller, Attorney General of Indiana

Date: 8/2/16