

**AGREEMENT BETWEEN THE STATE OF OHIO
AND THE COMMONWEALTH OF KENTUCKY FOR THE REPLACEMENT
OF THE BRENT SPENCE BRIDGE
CARRYING IR 71/75 OVER THE OHIO RIVER
BETWEEN COVINGTON, KENTUCKY AND CINCINNATI, OHIO**

This Agreement is made and entered into this 14th day of October, 2004, by and between the Commonwealth of Kentucky (hereinafter referred to as "CWK"), acting by and through the Kentucky Transportation Cabinet (hereinafter referred to as "KYTC") and the State of Ohio (hereinafter referred to as "OHIO"), acting by and through the Director of the Department of Transportation (hereinafter referred to as "ODOT").

RECITALS:

WHEREAS, Pursuant to Ohio Agreement No. 1380, the existing Brent Spence Bridge and its southern approach, which carries IR 71/75 over the Ohio River, is owned and maintained by KYTC; and

WHEREAS, the northern approach to the Brent Spence Bridge beginning at, but not including, Pier 1 [Survey Station 602+10.5], is owned and maintained by ODOT; and

WHEREAS, the Federal Government has committed One Million Nine Hundred Forty Three Thousand Two Hundred Fourteen Dollars (\$1,943,214) for preliminary engineering and environmental studies to evaluate the replacement of the existing Brent Spence Bridge over the Ohio River, hereinafter collectively referred to as the "Project"; and

WHEREAS, Section 5501.44 of the Ohio Revised Code authorizes the Director of the Ohio Department of Transportation to enter into agreements with other states relative to the cooperation in the repair, maintenance, and construction of toll-free bridges crossing the Ohio River; and

WHEREAS, ODOT and KYTC propose to cooperate in the replacement of the Brent Spence Bridge and its approaches and enter into this agreement to establish the duties and responsibilities of each therefore; and

NOW, THEREFORE, for and in consideration of the mutual covenants herein set forth to be kept and performed, it is agreed by the parties hereto as follows:

I. GENERAL PURPOSE

This agreement is entered into by the parties to establish their respective responsibilities with regard to the Project. The foregoing recitals are hereby incorporated as a material part of this Agreement.

II. ENGINEERING AND FEASIBILITY STUDIES

A. CWK shall be the lead state agency for conducting the Project and shall enter into a contract with a qualified consultant to conduct an Engineering Feasibility Study as the first part of the preliminary engineering for the Project.

B. CWK Division of the Federal Highway Administration shall administer the Project.

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

- C. KYTC agrees to set up a Federal Highway Administration Project to provide funds for said project.
- D. ODOT agrees to pay \$242,901.75 towards the completion of the Engineering Feasibility Study.
- E. Financing
 - 1. On receipt of Consultant's Billings for work performed on the feasibility study, KYTC shall submit invoices to ODOT for the amount of ODOT's share on the Billing. Invoices will be submitted to the District Structure Planning Engineer, Ohio Department of Transportation, District 8, 505 S. St. Rt. 741, Lebanon, OH 45036.
 - 2. ODOT agrees to promptly review the invoices and the District 8 Office shall provide to KYTC its written acceptance of the invoice. If ODOT encounters any problems with an invoice submitted to KYTC for payment, ODOT shall immediately notify KYTC, District 6 Offices to resolve any issues. KYTC will not process payment of the disputed invoice until notified in writing by ODOT that all issues are resolved.
 - 3. Except in cases where KYTC has received notice of a problem with an invoice, invoices will be deemed approved by ODOT if no written approval is received by KYTC within thirty (30) days from the date of receipt of the invoice by ODOT. KYTC will not pay Consultant's invoice until it has received ODOT's written approval or until thirty (30) days has elapsed, whichever is sooner.
 - 4. All invoices submitted to ODOT by KYTC shall be paid within thirty (30) days of approval by ODOT. All payments shall be payable to: Kentucky State Treasurer. Payments shall be mailed to Mike Yeager, KYTC P.O. Box 17130, Covington, KY 41017

III. FUTURE PHASES OF WORK

Additional phases of work required after or during the engineering feasibility study including but not limited to Preliminary Engineering, Environmental Clearance, Detailed Design, Right-of-Way Acquisition, Utility Relocation, and Construction, shall be covered under supplements to this agreement.

IV. GENERAL PROVISIONS

- A. This agreement constitutes the entire Agreement between the parties. 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. Any change to the provision of this agreement must be made in a written amendment executed by both parties.

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

- D. This agreement may be terminated by unilateral action by either party upon thirty (30) days written notice to the other party. Upon notice of the receipt thereof, KYTC shall immediately cease all billing functions and shall invoice ODOT for all outstanding amounts already approved. This termination invoice shall be due and payable thirty (30) days after receipt thereof.
- E. Where work is performed in Ohio pursuant to the terms of this Agreement, the Agreement shall be construed in accordance with and governed by the laws of the State of Ohio and suit, if any shall be brought in Franklin County of the State of Ohio.
- F. 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.
- G. It is understood by all parties that this Agreement is contingent upon Federal Highway Administration approval of funding and administration of the Project.
- H. This Agreement shall be deemed to have been substantially performed only when fully performed according to its terms and conditions and any modification thereof.
- I. All provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective successors or parties hereto.
- J. This Agreement and any renewal thereof, are subject to the determination by Ohio that sufficient funds have been appropriated by the Ohio General Assembly to ODOT for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by Ohio Revised Code Section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires. Ohio's current General Assembly cannot commit a future General Assembly to an expenditure; therefore, the term of this agreement cannot extend beyond the biennial budget year.
- K. Similarly, pursuant to the Commonwealth of Kentucky Constitution, the Commonwealth cannot enter into any contract or agreement, which would obligate the Commonwealth beyond the current fiscal biennium. Therefore, work to be performed under this contract or agreement is to be continued in succeeding fiscal years for the term of the contract or agreement and any subsequent renewal, contingent upon funds being appropriated by the legislature for this work. In the event of non-appropriation of funds by either ODOT or KYTC, the contract shall be canceled in whole without penalty to either State at the end of the then current fiscal year for such state, with this contract or agreement becoming null and void at the end of said fiscal year. Both ODOT and KYTC will make efforts to obtain the necessary funds to avoid cancellation of the contract or agreement, and both parties agree to provide written notice to the other party in the event of non-appropriation 30 days prior to the end of the fiscal year in which such non-appropriation for the next fiscal year occurs.
- L. Because the bienniums of the State of Ohio and the Commonwealth of Kentucky end on opposite fiscal years, the terms and conditions of this Agreement shall be reviewed at a meeting to be held by the parties every year on or about June 30. At the time of review, the parties shall determine whether the terms and conditions of this Agreement are still satisfactory to each party or whether modifications are required. If no modifications are required, the Agreement may be affirmatively

Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge

renewed by ODOT and KYTC for the next year. Such renewal shall be acknowledged in respective letters from the Director of Transportation for the State of Ohio and the Secretary of Transportation for KYTC, or their designated representatives, affirming their renewal of the agreement. If modifications are required, such changes shall be made by written amendment executed by both parties. Each party is free to request modifications to the terms and conditions of this Agreement at any time while this Agreement is in effect and such modifications may be made by written amendment upon the mutual agreement of both parties. In the event that the parties hereto do not agree to renew this agreement, neither party to the Agreement shall have any further obligations hereunder.

IN WITNESS WHEREOF, the State of Ohio and the Commonwealth of Kentucky have caused their names to be signed and their seals to be hereunto affixed by their respective Governors, the Ohio Department of Transportation has caused its name to be signed by its Director of Transportation, and the Kentucky Transportation Cabinet has caused its name to be signed by its Secretary of Transportation and all thereunto duly authorized.



STATE OF OHIO

Bob Taft
Governor

OHIO DEPARTMENT OF TRANSPORTATION

By: Gordon Proctor
Director

ATTEST Catherine Perkins

COMMONWEALTH OF KENTUCKY

Ernie Fletcher
Governor

KENTUCKY TRANSPORTATION CABINET

By: Manuel Bailey
Secretary

ATTEST Cheryl Caldwell

Approved:

Michael Saensh
Attorney General (Ohio)

Jack Stapp
Office of General Counsel (Kentucky)

**FIRST SUPPLEMENT TO AGREEMENT BETWEEN THE STATE OF OHIO
AND THE COMMONWEALTH OF KENTUCKY FOR THE REPLACEMENT
OF THE BRENT SPENCE BRIDGE
CARRYING IR 71/75 OVER THE OHIO RIVER
BETWEEN COVINGTON, KENTUCKY AND CINCINNATI, OHIO
(Environmental and Preliminary Design Phase)**

This Agreement is made and entered into this 23rd day of November, 2004, by and between the Commonwealth of Kentucky (hereinafter referred to as "CWK"), acting by and through the Kentucky Transportation Cabinet (hereinafter referred to as "KYTC") and the State of Ohio (hereinafter referred to as "OHIO"), acting by and through the Director of the Department of Transportation (hereinafter referred to as "ODOT").

RECITALS:

WHEREAS, Pursuant to Ohio Agreement No. 1380, the existing Brent Spence Bridge and its southern approach, which carries IR 71/75 over the Ohio River, is owned and maintained by KYTC; and

WHEREAS, the northern approach to the Brent Spence Bridge beginning at, but not including, Pier 1 [Survey Station 602+10.5], is owned and maintained by ODOT; and

WHEREAS, the Federal Government has committed funding through two separate earmarks for preliminary engineering and environmental studies to evaluate the replacement of the existing Brent Spence Bridge over the Ohio River, hereinafter collectively referred to as the "Project"; and

WHEREAS, Section 5501.44 of the Ohio Revised Code authorizes the Director of the Ohio Department of Transportation to enter into agreements with other states relative to the cooperation in the repair, maintenance, and construction of toll-free bridges crossing the Ohio River; and

WHEREAS, ODOT and KYTC propose to cooperate in the replacement of the Brent Spence Bridge and its approaches and have agreed to enter into this supplemental agreement to establish the duties and responsibilities of each for the environmental and preliminary design phases of the project.

NOW, THEREFORE, for and in consideration of the mutual covenants herein set forth to be kept and performed, it is agreed by the parties hereto as follows:

I. GENERAL PURPOSE

This agreement is entered into by the parties to establish their respective responsibilities with regard to the Project. The foregoing recitals are hereby incorporated as a material part of this Agreement.

II. SCOPE OF WORK

A. The parties agree that ODOT shall be the lead agency for the Environmental and Preliminary Design Phase of the Project, utilizing Steps 1 through 8 of ODOT's Major Project Development Process. However, the selection of a consultant to conduct the environmental and preliminary design work shall be the joint decision of a consultant

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

selection team consisting of three representatives each from ODOT and KYTC. Each party shall identify their respective members within fifteen (15) calendar days from the execution of this agreement.

B. The parties shall also create a consultant advisory committee to assist in the selection of a qualified consultant. The members of this committee may include interested parties from the surrounding community in both states. The exact composition of the committee shall be by invitation and shall be at the sole discretion of ODOT and KYTC. The final selection of the consultant, however, shall be made jointly by the Secretary of KYTC and the director of ODOT and their decision shall be final.

C. As lead agency, ODOT shall enter into a contract with the selected consultant to conduct all necessary environmental studies, research, and design required to complete any necessary environmental documents as directed by ODOT and KYTC. The selected consultant, its sub consultants and subcontractors, shall collectively or individually hold all necessary pre-qualifications in Ohio and Kentucky.

D. KYTC and ODOT shall jointly manage the environmental and preliminary design phase of the Project. For ODOT, the project manager and point of contact shall be Stefan Spinosa, ODOT District 8 Office. For KYTC, the project manager and point of contact shall be Kevin Rust, KYTC District 6. For Ohio FHWA, the point of contact shall be Mark VonderEmbse. For Kentucky FHWA, the point of contact shall be Evan Wisnieski.

III. FINANCING

- A. ODOT will be responsible for the cost of the environmental and preliminary design phase of the Project under its ownership, and KYTC shall be responsible for the cost of environmental phase of the Project under its ownership. Ownership for this phase of the Project shall be determined by the number of interstate lane miles in the study area that will be affected by the Project. The parties agree that KYTC is responsible for 28.15 lane miles or 45.5% of the study area and ODOT is responsible for 33.69 lane miles or 54.5% of the study area.
- B. The estimated cost of the environmental and preliminary design phase of the Project is Eighteen Million Dollars (\$18,000,000). ODOT agrees to pay 54.5% of the estimated cost of the environmental phase, not to exceed Nine Million Eight Hundred and Ten Thousand Dollars (\$9,810,00) and KYTC pay 45.5% of the estimated cost of the environmental phase, not to exceed Eight Million One Hundred and Ninety Thousand (\$8,190,000).
- C. Additional phases of work, and the costs thereof, required during or after the environmental and preliminary design phase, including but not limited to, additional Preliminary Design, Detailed Design, Right-of-Way Acquisition, Utility Relocation, and Construction, shall be covered under future supplements to this agreement, executed by all parties.
- D. Any right, claim, interest, and/or right of action, whether contingent or vested, of ODOT, arising out of or related to any contract entered into by ODOT for the work to be performed hereunder for the portion of the study area located in Kentucky (the "Claim"), shall be subrogated to Kentucky, and Kentucky shall have all of Ohio's rights in and to the Claim and against any other person(s) or entity(ies) against which such subrogation rights may be enforced. Ohio shall immediately notify Kentucky in writing of any Claim. Ohio further authorizes Kentucky to sue, compromise, or settle

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

any such Claim. It is the intent of the parties that Kentucky be fully substituted for Ohio and subrogated to all Ohio's rights to recover under such Claim(s). Ohio agrees to cooperate with reasonable requests from Kentucky for assistance in pursuing any action on the subrogated Claim including requests for information and/or documents and/or to testify.

- E. Upon receipt of consultant's invoices for work performed on the environmental and preliminary design phase, ODOT shall pay such invoices in accordance with the requirements of Section 126.30 of the Ohio Revised Code.
- F. ODOT shall then submit copies of the paid invoices to KYTC for the amount of KYTC's share of the invoice. Copies of invoices will be submitted, by certified mail to KYTC project manager Kevin Rust, at P.O. Box 17130, Covington, KY 41017.
- G. KYTC agrees to promptly review the paid invoice. If KYTC finds the amount of Kentucky's share to be unacceptable or has an issue with the consultant's invoice, KYTC shall immediately contact ODOT's point of contact to initiate a resolution of either issue.
- H. Except in cases where ODOT has received notice of a problem with either Kentucky's share of the consultant's invoice or the invoice itself, KYTC shall pay to ODOT its share within forty-five (45) days of the date of receipt. All payments shall be payable to: Treasurer, State of Ohio, c/o ODOT, District 8, 505 South S.R. 741, Lebanon, OH 45036.

IV. DISPUTE RESOLUTION

In the event a dispute arises regarding any portion of the environmental phase of the Project, notification of such dispute shall first 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 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 manager's level, the managers shall jointly submit the dispute to their respective district's director or chief district engineer. If the dispute can not be resolved at the district level, such dispute shall be submitted to ODOT's Assistant Director for Planning and Production and KYTC's State Highway Engineer. The resolution of the Assistant Director and the State Highway Engineer shall be final.

V. GENERAL PROVISIONS

- A. This agreement constitutes the entire Agreement between the parties. 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. Any change to the provision of this agreement must be made in a written amendment executed by both parties.

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

- D. Where work is performed in Ohio pursuant to the terms of this Agreement, the Agreement shall be construed in accordance with and governed by the laws of the State of Ohio and suit, if any shall be brought in Franklin County of the State of Ohio.
- E. It is understood by all parties that this Agreement is contingent upon Federal Highway Administration approval of funding and administration of the Project.
- F. This Agreement shall be deemed to have been substantially performed only when fully performed according to its terms and conditions and any modification thereof.
- G. All provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective successors or parties hereto.
- H. This Agreement and any renewal thereof are subject to the determination by Ohio that sufficient funds have been appropriated by the Ohio General Assembly to ODOT for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by Ohio Revised Code Section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires. Ohio's current General Assembly cannot commit a future General Assembly to any expenditure; therefore, the term of this agreement cannot extend beyond the biennial budget year.
- I. Similarly, pursuant to the Commonwealth of Kentucky Constitution, the Commonwealth cannot enter into any contract or agreement, which would obligate the Commonwealth beyond the current fiscal biennium. Therefore, work to be performed under this contract or agreement is to be continued in succeeding fiscal years for the term of the contract or agreement and any subsequent renewal, contingent upon funds being appropriated by the legislature for this work. In the event of non-appropriation of funds by either ODOT or KYTC, the contract shall be canceled in whole without penalty to either State at the end of the then current fiscal year for such state, with this contract or agreement becoming null and void at the end of said fiscal year. Both ODOT and KYTC will make efforts to obtain the necessary funds to avoid cancellation of the contract or agreement, and both parties agree to provide written notice to the other party in the event of non-appropriation 30 days prior to the end of the fiscal year in which such non-appropriation for the next fiscal year occurs.
- J. The terms of this Agreement shall expire on June 30 of each year. This Agreement may be affirmatively renewed by ODOT and KYTC in the next year. Such renewal shall be by letter from the Director of Transportation for the State of Ohio and the Secretary of Transportation for KYTC, or their representatives, affirming their willingness to renew the agreement. The letters shall be received by each party by July 31 of each year. In the event that the parties hereto do agree to renew this agreement, neither party to the Agreement shall have any further obligations hereunder.
- K. 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.

IN WITNESS WHEREOF, the State of Ohio and the Commonwealth of Kentucky have caused their names to be signed and their seals to be hereunto affixed by their respective Governors, the

Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge

Ohio Department of Transportation has caused its name to be signed by its Director of Transportation, and the Kentucky Transportation Cabinet has caused its name to be signed by its Secretary of Transportation and all thereunto duly authorized.

STATE OF OHIO

Bob Taft
Governor

OHIO DEPARTMENT OF TRANSPORTATION

By: Gordon Orter
Director

COMMONWEALTH OF KENTUCKY

Eric Fletcher
Governor

KENTUCKY TRANSPORTATION CABINET

By: Mansfield Banley
Secretary

Approved:

Michael A. ...
Attorney General (Ohio)

Arund Williams
Office of Legal Services (Kentucky)

Second Supplement to
Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge

Ohio Agreement No. 20541-B
PID 75119

**SECOND SUPPLEMENT TO AGREEMENT BETWEEN THE STATE OF OHIO
AND THE COMMONWEALTH OF KENTUCKY FOR THE REPLACEMENT
OF THE BRENT SPENCE BRIDGE
CARRYING IR 71/75 OVER THE OHIO RIVER
BETWEEN COVINGTON, KENTUCKY AND CINCINNATI, OHIO
(Environmental and Preliminary Design Phase)**

This **Second Supplement to Agreement No. 20451** is made and entered into this 11th day of December, 2008, by and between the Commonwealth of Kentucky (hereinafter referred to as "CWK"), acting by and through the Kentucky Transportation Cabinet (hereinafter referred to as "KYTC") and the State of Ohio (hereinafter referred to as "OHIO"), acting by and through the Director of the Department of Transportation (hereinafter referred to as "ODOT").

RECITALS:

WHEREAS, Pursuant to Ohio Agreement No. 1380, the existing Brent Spence Bridge and its southern approach, which carries IR 71/75 over the Ohio River, is owned and maintained by KYTC; and

WHEREAS, the northern approach to the Brent Spence Bridge beginning at, but not including, Pier 1 [Survey Station 602+10.5], is owned and maintained by ODOT; and

WHEREAS, the Federal Government has committed funding through two separate earmarks for preliminary engineering and environmental studies to evaluate the replacement of the existing Brent Spence Bridge over the Ohio River, hereinafter collectively referred to as the "Project"; and

WHEREAS, Section 5501.44 of the Ohio Revised Code authorizes the Director of the Ohio Department of Transportation to enter into agreements with other states relative to the cooperation in the repair, maintenance, and construction of toll-free bridges crossing the Ohio River; and

WHEREAS, ODOT and KYTC propose to cooperate in the replacement of the Brent Spence Bridge and its approaches and have agreed to enter into this supplemental agreement to establish the duties and responsibilities of each for the environmental and preliminary design phases of the project.

WHEREAS, the Project Study Area has extended further to the south increasing the amount of Kentucky owned lane miles in the Project.

NOW, THEREFORE, for and in consideration of the mutual covenants herein set forth to be kept and performed, it is agreed by the parties hereto that the Agreement between the State of Ohio and the Commonwealth of Kentucky be **amended** as follows:

I. GENERAL PURPOSE

This Second Supplement to Agreement No. 20451 is entered into by the parties to establish their respective responsibilities with regard to the financing of the Project.

The foregoing recitals are hereby incorporated as a material part of this Agreement.

**Second Supplement to
Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

II. SCOPE OF WORK

The parties agree that there are no changes to Section II - Scope of Work as previously amended in the First Supplement to this Agreement (Agreement No. 20451-A).

III. FINANCING

The parties agree that Section III – Financing, Paragraphs A and B shall be amended as follows:

- A. ODOT will be responsible for the cost of the environmental and preliminary design phase of the Project under its ownership, and KYTC shall be responsible for the cost of environmental phase of the Project under its ownership. Ownership for this phase of the Project shall be determined by the number of interstate lane miles in the study area that will be affected by the Project. The parties agree that KYTC is responsible for 38.24 lane miles or 53.2% of the study area and ODOT is responsible for 33.69 lane miles or 46.8% of the study area.
- B. The estimated cost of the remaining steps, to be negotiated with the consultant, of the environmental and preliminary design phase of the Project is Ten Million Eight Thousand One Hundred Sixteen Dollars (\$10,008,116). ODOT agrees to pay 46.8% of the remaining estimated cost of the environmental and preliminary design phase, not to exceed Four Million Six Hundred Eighty-three Thousand Seven Hundred Ninety-eight Dollars (\$4,683,798) and KYTC pay 53.2% of the estimated cost of the environmental phase, not to exceed Five Million Three Hundred Twenty-four Thousand Three Hundred Eighteen Dollars (\$5,324,318).
- C. Additional phases of work, and the costs thereof, required during or after the environmental and preliminary design phase, including but not limited to, additional Preliminary Design, Detailed Design, Right-of-Way Acquisition, Utility Relocation, and Construction, shall be covered under future supplements to this agreement, executed by all parties.

The remaining paragraphs of this Section shall remain the same for the duration of this Agreement.

IV. DISPUTE RESOLUTION

The parties agree that there are no changes to Section IV - Scope of Work as previously amended in the First Supplement to this Agreement (Agreement No. 20451-A).

V. GENERAL PROVISIONS

The parties agree that there are no changes to Section V - Scope of Work as previously amended in the First Supplement to this Agreement (Agreement No. 20451-A).

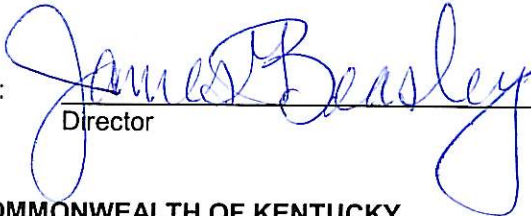
IN WITNESS WHEREOF, the State of Ohio and the Commonwealth of Kentucky have caused their names to be signed and their seals to be hereunto affixed by their respective Governors, the Ohio Department of Transportation has caused its name to be signed by its Director of Transportation, and the Kentucky Transportation Cabinet has caused its name to be signed by its Secretary of Transportation and all thereunto duly authorized.

Second Supplement to
Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge

STATE OF OHIO


Governor


OHIO DEPARTMENT OF TRANSPORTATION

By: 
Director

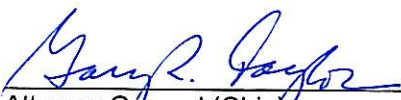
COMMONWEALTH OF KENTUCKY


Governor

KENTUCKY TRANSPORTATION CABINET

By: 
Secretary

Approved:


Attorney General (Ohio)
Acting Section Chief
Bus. Counsel Section


Office of Legal Services (Kentucky)

**THIRD SUPPLEMENTAL TO AGREEMENT BETWEEN THE STATE OF OHIO
AND THE COMMONWEALTH OF KENTUCKY FOR THE REPLACEMENT
OF THE BRENT SPENCE BRIDGE
CARRYING IR 71/75 OVER THE OHIO RIVER
BETWEEN COVINGTON, KENTUCKY AND CINCINNATI, OHIO**

This Third Supplemental Agreement is made and entered into this 12th day of December 2012, by and between the Commonwealth of Kentucky (hereinafter referred to as "Kentucky"), acting by and through the Kentucky Transportation Cabinet (hereinafter referred to as "KYTC") and the State of Ohio (hereinafter referred to as "OHIO"), acting by and through the Department of Transportation (hereinafter referred to as "ODOT"). Previous agreements executed prior to the Third Supplemental Agreement include the original Agreement executed October 4, 2004, the First Supplement executed November 23, 2004 and the Second Supplement executed December 11, 2008.

RECITALS:

WHEREAS, pursuant to Ohio Agreement No. 1380, the existing Brent Spence Bridge and its southern approach, which carries IR 71/75 over the Ohio River, is owned and maintained by KYTC; and

WHEREAS, the northern approach to the Brent Spence Bridge beginning at, but not including, Pier 1 [Survey Station 602+10.5], is owned and maintained by ODOT; and

WHEREAS, the Federal Government has committed funding through two separate earmarks to evaluate the replacement of the existing Brent Spence Bridge over the Ohio River, hereinafter collectively referred to as the "Project;" and

WHEREAS, Section 5501.44 of the Ohio Revised Code authorizes the Director of the Ohio Department of Transportation to enter into agreements with other states relative to the cooperation in the repair, maintenance, or construction of a bridge crossing a stream that forms a boundary line of the state of Ohio; and

WHEREAS, ODOT and KYTC are now finished with the Environmental and Preliminary Design Phase covered under agreements 20541-A and 20541-B by signature of FONSI dated August 9, 2012; and

WHEREAS, ODOT and KYTC in cooperation with the Federal Highway Administration (hereinafter referred to as "FHWA") have identified a recommended Preferred Alternative (Alternative I) for the Project; and

WHEREAS, ODOT and KYTC will need to submit a Major Project Initial Financial Plan to the FHWA; and

WHEREAS, ODOT and KYTC propose to cooperate in the replacement of the Brent Spence Bridge and its approaches and have agreed to enter into this Third Supplemental Agreement to establish the duties and responsibilities of each for the Project Procurement Identification and Initial Financial Plan Preparation; and

WHEREAS, ODOT and KYTC are in agreement to formally establish a Bi-State Management Team with the authority to oversee the Project, to evaluate Project procurement options, and to

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

prepare an Initial Financial Plan as well as assess the need for procuring additional professional services, maintain a Project website, and manage public relations;

NOW, THEREFORE, for and in consideration of the mutual covenants herein set forth to be kept and performed, it is agreed by the parties hereto as follows:

I. GENERAL PURPOSE

This Third Supplemental Agreement is entered into by the parties to establish their respective responsibilities with regard to the Project. The foregoing recitals are hereby incorporated as a material part of this Agreement.

II. BI-STATE MANAGEMENT TEAM

ODOT and KYTC shall formally establish a Bi-State Management Team (BSMT) that shall jointly oversee the Project. The BSMT shall be comprised of representatives from ODOT and KYTC and shall consider current state policies and processes when rendering decisions. The BSMT shall be responsible for participating in the evaluation of procurement options as detailed in Section III, B. of this Agreement and in the preparation of an Initial Financial Plan as well as the need for procuring additional professional services. In addition, the BSMT shall maintain a Project website and manage routine public relations connected with the Project.

III. SCOPE OF WORK

A. The parties shall cooperate with and assist each other by sharing necessary information, by providing input as to each party's progress during further development of the project, and by equally participating in the BSMT.

B. Project procurement options considered by the BSMT may consist of the following items:

1. Assessment of traditional procurement options (Design-Bid-Build and Design-Build) and public-private partnerships (Including, but not limited to, Design-Build Finance Maintain and Design-Build Finance Operate and Maintain).
2. Evaluation of all potential revenue sources to fund the Project construction.
3. Development of comprehensive Value for Money (VFM) financial models that allow comparison of a Public Sector Comparator with Public-Private Partnership options.
4. Identification of risks and development of risk strategies and risk allocations based on the procurement methods.
5. Development of a report detailing the assessment of procurement options described above.

C. The BSMT shall prepare an Initial Financial Plan for the Project.

D. The BSMT shall maintain a Project website.

E. The BSMT shall manage routine public relations connected with the Project. ODOT and KYTC shall work together on non-routine public relations.

F. The BSMT shall evaluate the need for procuring additional professional services for the Project.

IV. FINANCING

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

- A. KYTC and ODOT agree to be jointly responsible for all costs associated with the joint investigation of project procurement options and the joint preparation of the Initial Financial Plan. The total cost of the joint investigation and the Initial Financial Plan shall not exceed Four Million dollars (\$4,000,000.00), with ODOT and KYTC each responsible for 50 % of these costs.
- B. Additional phases of work, and the costs thereof, required during or after the Project Procurement Identification and the Initial Financial Plan Preparation, including but not limited to, additional Preliminary Design, Detailed Design, Right-of-Way Acquisition, Utility Relocation, and Construction, shall be covered under future supplements to this agreement, executed by all parties.
- C. Upon receipt of consultant's invoices for work performed regarding evaluation of procurement options, ODOT shall pay such invoices in accordance with the requirements of Section 126.30 of the Ohio Revised Code.
- D. ODOT shall then submit copies of the paid invoices to KYTC for the amount of KYTC's share of the invoice. Copies of invoices will be submitted, by certified mail to KYTC Chief District 6 Engineer, at 421 Buttermilk Pike, Covington, KY 41017.
- E. KYTC agrees to promptly review the paid invoice and remit its share of the cost to ODOT within 45 days of its receipt of the paid invoice. All payments shall be payable to: Treasurer, State of Ohio, c/o ODOT, District 8, 505 South S.R. 741, Lebanon, OH 45036. If KYTC has an issue with the consultant's invoice, KYTC shall contact ODOT's point of contact within 5 days of receiving the invoice to initiate a resolution.

V. DISPUTE RESOLUTION

If a dispute cannot be resolved by the BSMT, the dispute shall be elevated to the Director of ODOT and the Secretary of KYTC. Their decision shall be final.

VI. GENERAL PROVISIONS

- A. This Third Supplemental Agreement constitutes the entire agreement between the parties. All prior discussions and understanding between the parties are superseded by this Agreement.
- B. Neither this Third Supplemental 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. Any change to the provision of this Third Supplemental Agreement must be made in a written amendment executed by both parties.
- D. Where work is performed in Ohio pursuant to the terms of this Third Supplemental Agreement, it shall be construed in accordance with and governed by the laws of the State of Ohio and suit, if any, shall be brought in Franklin County of the State of Ohio.
- E. Where work is performed in Kentucky pursuant to the terms of this Third Supplemental Agreement, it shall be construed in accordance with and governed by the laws of the State of Kentucky and suit, if any, shall be brought in Franklin County of the State of Kentucky.

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

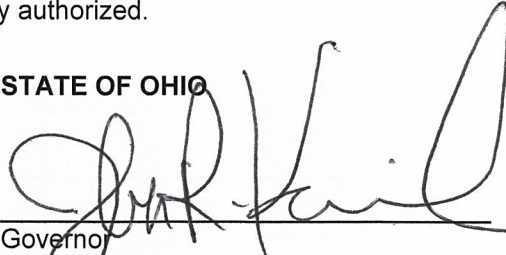
- F. This Third Supplemental Agreement shall be deemed to have been substantially performed only when fully performed according to its terms and conditions and any modification thereof.
- G. All provisions of this Third Supplemental Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective successors or parties hereto.
- H. If any provision of this Third Supplemental 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 Third Supplemental Agreement or materially affect the ability of the parties to achieve the purpose of this Third Supplemental Agreement.
- I. This Third Supplemental Agreement and any renewal thereof are subject to the determination by Ohio that sufficient funds have been appropriated by the Ohio General Assembly to ODOT for the purpose of this Third Supplemental Agreement and to the certification of funds by the Office of Budget and Management, as required by Ohio Revised Code Section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Third Supplemental Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Third Supplemental Agreement or any renewal thereof will terminate on the date funding expires. Ohio's current General Assembly cannot commit a future General Assembly to any expenditure; therefore, the term of this agreement cannot extend beyond the biennial budget year.
- J. Similarly, pursuant to the Commonwealth of Kentucky Constitution, the Commonwealth cannot enter into any contract or agreement, which would obligate the Commonwealth beyond the current fiscal biennium. Therefore, work to be performed under this contract or this Third Supplemental Agreement is to be continued in succeeding fiscal years for the term of the contract or agreement and any subsequent renewal, contingent upon funds being appropriated by the legislature for this work. In the event of non-appropriation of funds by either ODOT or KYTC, the contract shall be canceled in whole without penalty to either State at the end of the then current fiscal year for such state, with this contract or this Third Supplemental Agreement becoming null and void at the end of said fiscal year. Both ODOT and KYTC will make efforts to obtain the necessary funds to avoid cancellation of the contract or the Third Supplemental agreement, and both parties agree to provide written notice to the other party in the event of non-appropriation 30 days prior to the end of the fiscal year in which such non-appropriation for the next fiscal year occurs.
- K. The terms of this Third Supplemental Agreement shall expire on June 30 of each year. This Third Supplemental Agreement may be affirmatively renewed by ODOT and KYTC in the next year. Such renewal shall be by letter from the Director of Transportation for the State of Ohio and the Secretary of Transportation for KYTC, or their representatives, affirming their willingness to renew the agreement. The letters shall be received by each party by July 31 of each year. In the event that the parties hereto do not agree to renew this Third Supplemental Agreement, neither party to this agreement shall have any further obligations hereunder.

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

- L. Any person executing this Third Supplemental 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.

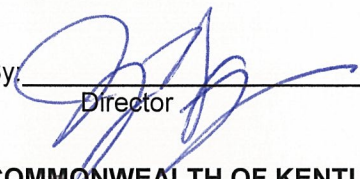
IN WITNESS WHEREOF, the State of Ohio and the Commonwealth of Kentucky have caused their names to be signed and their seals to be hereunto affixed by their respective Governors, the Ohio Department of Transportation has caused its name to be signed by its Director of Transportation, and the Kentucky Transportation Cabinet has caused its name to be signed by its Secretary of Transportation and all thereunto duly authorized.

STATE OF OHIO



Governor

OHIO DEPARTMENT OF TRANSPORTATION

By: 

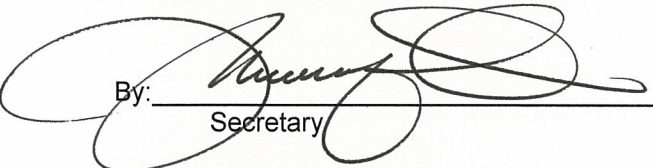
Director

COMMONWEALTH OF KENTUCKY



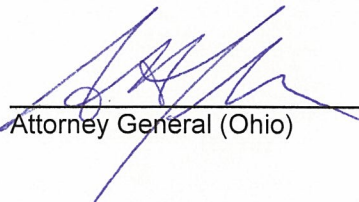
Governor

KENTUCKY TRANSPORTATION CABINET

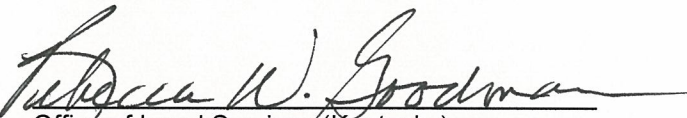
By: 

Secretary

Approved:



Attorney General (Ohio)



Office of Legal Services (Kentucky)

Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge

Ohio Agreement No. 20541-D
PID 75119 and 89068

**FOURTH SUPPLEMENT TO AGREEMENT BETWEEN THE STATE OF OHIO
AND THE COMMONWEALTH OF KENTUCKY FOR THE REPLACEMENT
OF THE BRENT SPENCE BRIDGE
CARRYING IR 71/75 OVER THE OHIO RIVER
BETWEEN COVINGTON, KENTUCKY AND CINCINNATI, OHIO**

This Fourth Supplemental Agreement is made and entered into this _____ day of _____, 2014, by and between the Commonwealth of Kentucky (hereinafter referred to as "Kentucky"), acting by and through the Kentucky Transportation Cabinet (hereinafter referred to as "KYTC") and the State of Ohio (hereinafter referred to as "Ohio"), acting by and through the Department of Transportation (hereinafter referred to as "ODOT"). Previous agreements executed prior to the Fourth Supplemental Agreement include the original Agreement executed October 4, 2004, the First Supplement executed November 23, 2004, the Second Supplement executed December 11, 2008, and the Third Supplement executed December 12, 2012.

RECITALS:

WHEREAS, Pursuant to Ohio Agreement No. 1380, the existing Brent Spence Bridge and its southern approach, which carries IR 71/75 over the Ohio River, is owned and maintained by KYTC; and

WHEREAS, the northern approach to the Brent Spence Bridge beginning at, but not including, Pier 1 [Survey Station 602+10.5], is owned and maintained by ODOT; and

WHEREAS, the Federal Government has committed funding through two separate earmarks to evaluate the replacement of the existing Brent Spence Bridge over the Ohio River, hereinafter collectively referred to as the "Project"; and

WHEREAS, Section 5501.44 of the Ohio Revised Code authorizes the Director of the Ohio Department of Transportation to enter into agreements with other states relative to the cooperation in the repair, maintenance, or construction of a bridge crossing a stream that forms a boundary line of the state of Ohio; and

WHEREAS, ODOT and KYTC are now finished with the Environmental and Preliminary Design Phase covered under First Supplement to this Agreement (Agreement No. 20541-A) and the Second Supplement to this Agreement (Agreement No. 20541-B) by signature of FONSI dated August 9, 2012; and

WHEREAS, ODOT and KYTC in cooperation with the Federal Highway Administration (hereinafter referred to as "FHWA") have identified a recommended Preferred Alternative (Alternative I) for the Project; and

WHEREAS, ODOT and KYTC will need to submit a Major Project Initial Financial Plan to the FHWA; and

WHEREAS, ODOT and KYTC propose to cooperate in the replacement of the Brent Spence Bridge and its approaches and have agreed to enter into this Fourth Supplemental Agreement to evaluate procurement options and to prepare the Initial Financial Plan; and

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

WHEREAS, ODOT and KYTC previously established a Bi-State Management Team (hereinafter referred to as “BSMT”) with the authority to oversee the Project, to evaluate Project procurement options, and to prepare an Initial Financial Plan as well as assess the need for procuring additional professional services, maintain a Project website, and manage public relations;

NOW, THEREFORE, for and in consideration of the mutual covenants herein set forth to be kept and performed, it is agreed by the parties hereto as follows:

I. GENERAL PURPOSE

This Fourth Supplemental agreement is entered into by the parties to establish their respective responsibilities with regard to the Project. The foregoing recitals are hereby incorporated as a material part of this Agreement.

II. BI-STATE MANAGEMENT TEAM

A. The parties agree that Section II – Bi-State Management Team as previously documented in the Third Supplement to this Agreement (Agreement No. 20451-C) remains intact with the following amendment:

1. The BSMT shall be comprised of representatives from KYTC and ODOT and shall consider the current policies of their respective states when making recommendations and taking actions to advance the expeditious and cost effective development and delivery of the Project.
2. The parties agree that ODOT shall be the lead contracting agency with respect to the Project.

III. SCOPE OF WORK

A. The parties agree that Section III – Scope of Work as previously documented in the Third Supplement to this Agreement (Agreement No. 20451-C) remains intact with the following amendments:

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

1. The BSMT shall procure additional professional services necessary to update or amend the project environmental document.
2. The BSMT shall procure additional professional services to assist in the preparation and processing of applications through the FHWA with respect to funding (TIFIA, PNRs, etc.) and tolling authority, including but not limited to the Major Projects Project Management Plan.
3. The BSMT shall procure additional professional services to assist in the preparation of a Bi-State Development Agreement.
4. The BSMT shall develop an Initial Financial Plan and procurement methodology for the Project
5. Effective date for this agreement is August 30, 2014. The parties acknowledge that work described in this Fourth Supplemental Agreement has begun prior to the effective date and do hereby accept that work.

IV. FINANCING

- A. The parties agree that Section IV – Financing as previously documented in the Third Supplement to this Agreement (Agreement No. 20451-C) remains intact with the following amendment:
 1. KYTC and ODOT agree to be jointly responsible for all costs associated with the environmental re-evaluation or completion of an amended environmental document; the preparation and processing of funding applications through the FHWA with respects to tolling authority; and the preparation of a Bi-State Development Agreement.
 2. The total cost of the items described in the above paragraph one shall not exceed Eight Million dollars (\$8,000,000.00) with ODOT and KYTC each responsible for 50% of these costs. KYTC and ODOT agree that this cost sharing provision shall apply to both work done after the effective date and to work described herein, done prior to the effective date.
 3. KYTC and ODOT agree to be responsible for the portion of the Subsurface Utility Exploration ("SUE") work that lies within their respective states. The cost of the SUE work done in the area for which KYTC is responsible shall not exceed \$55,000 unless spending in excess of this amount is expressly authorized by the Secretary of KYTC.

V. DISPUTE RESOLUTION

The parties agree that there are no changes to Section V – Dispute Resolution as previously established in the Third Supplement to this Agreement (Agreement No. 20451-C).

VI. GENERAL PROVISIONS

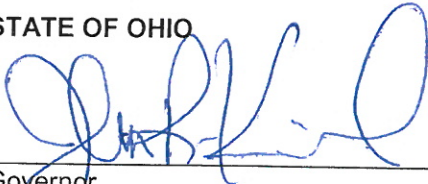
The parties agree that there are no changes to Section VI – General Provisions as previously established in the Third Supplement to this Agreement (Agreement No. 20451-C).

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge

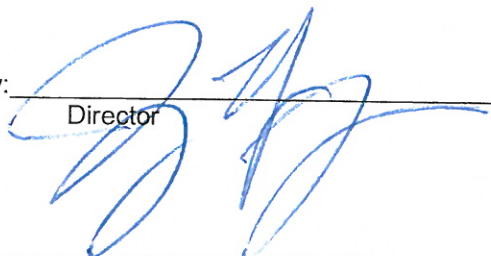
IN WITNESS WHEREOF, the State of Ohio and the Commonwealth of Kentucky have caused their names to be signed and their seals to be hereunto affixed by their respective Governors, the Ohio Department of Transportation has caused its name to be signed by its Director of Transportation, and the Kentucky Transportation Cabinet has caused its name to be signed by its Secretary of Transportation and all thereunto duly authorized.

STATE OF OHIO



Governor

OHIO DEPARTMENT OF TRANSPORTATION

By: 

Director

COMMONWEALTH OF KENTUCKY



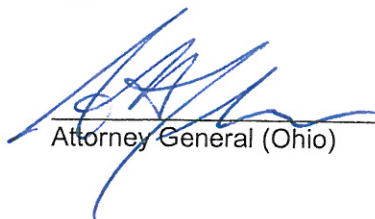
Governor

KENTUCKY TRANSPORTATION CABINET

By: 

Secretary

Approved:



Attorney General (Ohio)



Office of Legal Services (Kentucky)

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

Ohio Agreement No. 20541-E
PID 75119 and 89068

**FIFTH SUPPLEMENT TO THE AGREEMENT BETWEEN THE STATE OF OHIO AND
THE COMMONWEALTH OF KENTUCKY FOR THE REPLACEMENT
OF THE BRENT SPENCE BRIDGE
CARRYING IR 71/75 OVER THE OHIO RIVER
BETWEEN COVINGTON, KENTUCKY AND CINCINNATI, OHIO**

This Fifth Supplemental Agreement is made and entered into this 29 day of April, 2021, by and between the Commonwealth of Kentucky (hereinafter referred to as "Kentucky"), acting by and through the Kentucky Transportation Cabinet (hereinafter referred to as "KYTC") and the State of Ohio (hereinafter referred to as "Ohio"), acting by and through the Department of Transportation (hereinafter referred to as "ODOT"). Previous agreements executed prior to the Fifth Supplemental Agreement include the original Agreement executed October 4, 2004, the First Supplemental Agreement executed November 23, 2004, the Second Supplemental Agreement executed December 11, 2008, the Third Supplemental Agreement executed December 12, 2012, and the Fourth Supplemental Agreement executed August 30, 2014.

I. RECITALS:

WHEREAS, Pursuant to Ohio Agreement No. 1380, the existing Brent Spence Bridge and its southern approach, which carries IR 71/75 over the Ohio River, is owned and maintained by KYTC; and

WHEREAS, the northern approach to the Brent Spence Bridge beginning at, but not including, Pier 1 [Survey Station 602+10.5], is owned and maintained by ODOT; and

WHEREAS, the Federal Government has committed funding through two separate earmarks to evaluate the replacement of the existing Brent Spence Bridge over the Ohio River, hereinafter collectively referred to as the "Project"; and

WHEREAS, Section 5501.44 of the Ohio Revised Code authorizes the Director of the Ohio Department of Transportation to enter into agreements with other states relative to the cooperation in the repair, maintenance, or construction of a bridge crossing a stream that forms a boundary line of the state of Ohio; and

WHEREAS, ODOT and KYTC entered into an agreement on October 14, 2004 (Agreement No. 20541), hereinafter referred to as the "2004 Agreement", to begin study of the replacement of the Brent Spence Bridge; and

WHEREAS, Pursuant to the 2004 Agreement, KYTC was established as the lead state agency for conducting the Project and was required to contract with a qualified consultant to conduct an Engineering Feasibility Study as the first part of the preliminary Engineering for the Project; and

WHEREAS, ODOT and KYTC's obligations under the 2004 Agreement have been completed; and

WHEREAS, ODOT and KYTC entered into the First Supplemental Agreement to the 2004 Agreement on November 23, 2004 (Agreement No. 20541-A) which established ODOT as the lead state agency for the environmental and preliminary design phases of the Project and required ODOT and KYTC to jointly manage consultant selection; and

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

WHEREAS, ODOT and KYTC's obligations under the First Supplemental Agreement to the 2004 Agreement have been completed; and

WHEREAS, ODOT and KYTC entered into the Second Supplemental Agreement to the 2004 Agreement (Agreement No. 20541-B) on December 11, 2008 which restructured the financial participation by each state on the Project development; and

WHEREAS, ODOT and KYTC's obligations pursuant to the Second Supplemental Agreement to the 2004 Agreement have been completed; and

WHEREAS, ODOT and KYTC entered into the Third Supplemental Agreement to the 2004 Agreement (Agreement No. 20541-C) on December 12, 2012 which ended the Environmental and Preliminary Design phases described in the First and Second Supplemental Agreements by the Signature of the FONSI dated August 9, 2012; and

WHEREAS, ODOT and KYTC in cooperation with the Federal Highway Administration (hereinafter referred to as "FHWA") identified a recommended Preferred Alternative (Alternative I) for the Project; and

WHEREAS, ODOT and KYTC established a Bi-State Management Team (hereinafter referred to as "BSMT") with the authority to oversee the Project, to evaluate Project procurement options, and to prepare an Initial Financial Plan as well as assess the need for procuring additional professional services, maintain a Project website, and manage public relations; and

WHEREAS, the BSMT evaluated Procurement options in October 2013 with the release of the Brent Spence Bridge Project Options Analysis; and

WHEREAS, the BSMT proposed an Initial Financial Plan in December 2013 with the release of the Brent Spence Bridge Project Initial Financial Plan; and

WHEREAS, the BSMT's obligation to assess the need for procuring additional professional services is ongoing with HNTB being selected and under contract with ODOT; and

WHEREAS, the BSMT's obligation to maintain a Project website and manage public relations has been complete and ongoing; and

WHEREAS, ODOT and KYTC entered into the Fourth Supplemental Agreement to the 2004 Agreement (Agreement No. 20541-D) on August 30, 2014 which obligated the BSMT to procure additional professional services (1) necessary to update or amend the Project environmental document (2) to assist in the preparation and processing of applications through FHWA with respect to funding, (3) to assist in the development of the Bi-State Development Agreement, and (4) to develop an Initial Financial Plan and procurement methodology; and

WHEREAS, the BSMT has modified the HNTB contract authorized in the Third Supplemental Agreement to the 2004 Agreement and will continue reviewing and updating that contract to meet the obligation of updating and/or amending the Project Environmental Document; and

WHEREAS, the BSMT has begun work on the procurement of professional services to assist in the preparation and processing of applications through FHWA with respect to funding, but the work is not complete; and

WHEREAS, the BSMT has begun work on the procurement of professional services to assist in the development of the Bi-State Development Agreement, but work is not complete; and

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

WHEREAS, the BSMT has begun work on developing an updated Initial Financial Plan, but work is not complete; and

WHEREAS, the Initial Financial Plan identified traffic diversion when toll financing of the project is considered, but final analysis of community impacts is not complete; and

WHEREAS, ODOT and KYTC propose to cooperate in the development of a companion bridge to the Brent Spence Bridge and modifications to the bridge approaches, and have agreed to enter into this Fifth Supplemental Agreement to identify the procurement strategy and update the traffic analyses and refine design concepts to support a revised Initial Financial Plan;

NOW, THEREFORE, for and in consideration of the mutual covenants herein set forth to be kept and performed, it is agreed by the parties hereto as follows:

II. GENERAL PURPOSE

This Fifth Supplemental agreement is entered into by the parties to establish their respective responsibilities with regard to the Project. The foregoing recitals are hereby incorporated as a material part of this Agreement.

III. BI-STATE MANAGEMENT TEAM

- A. ODOT and KYTC will continue utilizing a Bi-State Management Team comprised of representatives from ODOT and KYTC.
- B. The BSMT shall consider the current policies of their respective states when making non-binding recommendations and taking actions to advance the expeditious and cost-effective development and delivery of the Project.
- C. The parties agree that ODOT will continue to be the lead contracting agency with respects to the BSMT's efforts on the Project.
- D. The BSMT will incorporate Performance Based Project Development concepts in to the Project.

IV. SCOPE OF WORK

- A. To prepare the Brent Spence Bridge companion bridge project for future funding opportunities, the BSMT shall generate the following information:
 - 1. A summary of the status of the Project, including design, environmental, financial, and procurement actions taken.
 - 2. A non-binding recommendation to each State regarding the following issues:
 - a. Whether a Bi-State Memorandum of Understanding, a Bi-State Compact Not Approved by Congress (CNAC), or a Bi-State Compact Approved by Congress, or some other governing structure will allow the most efficient, timely delivery of the Project;
 - b. Identification and an in-depth discussion of each of the following:

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

- i. Project steps and schedule from execution of the Fifth Supplemental agreement to Project construction;
 - ii. Capacity and potential for use of Ohio state funding, Kentucky state funding, federal funding (State distribution, TIFIA, INFRA Grant, etc.), and other funding for construction.
 - iii. Which Ohio state funded, Kentucky state funded, federal funded, and/or another funded delivery structure will allow for the expeditious delivery of the Project.
- B. The BSMT will continue to perform the following obligations and duties from previous Supplement Agreements to the 2004 Agreement:
 1. From the Third Supplemental Agreement to the 2004 Agreement:
 - a. The BSMT will maintain a Project website;
 - b. The BSMT will manage routine public-relations connected with the Project.
 2. From the Fourth Supplemental Agreement to the 2004 Agreement:
 - a. The BSMT will continue to procure additional services to update or amend the Project Environmental document, as necessary due to refinement of design concepts and traffic analysis associated with this Supplemental Agreement;
 - b. The BSMT will procure additional professional services to assist in the preparation and processing of applications through the FHWA with respect to funding (TIFIA, PNRS, BUILD, INFRA, etc.), including but not limited to the Major Projects Project Management Plan;
 - c. The BSMT will procure additional professional services to assist in the preparation of a Bi-State Development Agreement;
 - d. The BSMT will continue to develop an Initial Financial Plan and procurement methodology for the Project.

V. FINANCING

- A. KYTC and ODOT agree to be jointly responsible for all costs associated with efforts required of the BSMT in development of the Project.
- B. The total cost of the items described in the above paragraph shall not exceed Four Million dollars (\$4,000,000.00) with ODOT and KYTC each responsible for 50% of these costs. KYTC and ODOT agree that this cost sharing provision shall apply to both work done after the effective date described herein, and work done prior to the effective date.
- C. Additional phases of work required after the completion of the above referenced tasks shall be covered under future supplements to the 2004 Agreement.

D. Contact information for invoices shall be as follows:

1. For ODOT: Ohio Department of Transportation, District 8, 505 South S.R. 741, Lebanon, OH 45036.
2. For KYTC: Kentucky Transportation Cabinet, 421 Buttermilk Pike, Covington, KY, 41017.

VI. DISPUTE RESOLUTION

If a dispute cannot be resolved by the BSMT, the dispute shall be elevated to the Director of ODOT and the Secretary of KYTC. Their decision shall be final.

VII. GENERAL PROVISIONS

- A. This Fifth Supplemental Agreement constitutes the entire agreement between the parties. All prior discussions and understanding between the parties are superseded by this Agreement.
- B. Neither this Fifth Supplemental Agreement nor any rights, duties, or obligations described herein shall be assigned by either party without the prior written consent of the other party.
- C. Any change to this Fifth Supplemental Agreement must be made in a written amendment executed by both parties.
- D. Where work is performed in Ohio pursuant to the terms of the Fifth Supplemental Agreement, it shall be construed in accordance with and governed by the laws of the State of Ohio and suit, if any, shall be brought in Franklin County of the State of Ohio.
- E. Where work is performed in Kentucky pursuant to the terms of this Fifth Supplemental Agreement, it shall be construed in accordance with and governed by the laws of the State of Kentucky and suit, if any, shall be brought in Franklin County of the State of Kentucky.
- F. This Fifth Supplemental Agreement shall be deemed to have been substantially performed only when fully performed according to its terms and conditions and any modification thereof.
- G. All provisions of this Fifth Supplemental Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective successors or parties hereto.
- H. If any provision of this Fifth Supplemental 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 Fifth Supplemental Agreement or materially affect the ability of the parties to achieve the purpose of this Fifth Supplemental Agreement.

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

- I. This Fifth Supplemental Agreement and any renewal thereof are subject to the determination by Ohio that sufficient funds have been appropriated by the Ohio General Assembly to ODOT for the purpose of this Fifth Supplemental Agreement and to the certification of funds by the Office of Budget and Management, as required by Ohio Revised Code Section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Fifth Supplemental Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Fifth Supplemental Agreement or any renewal thereof will terminate on the date funding expires. Ohio's current General Assembly cannot commit a future General Assembly to any expenditure; therefore, the term of this agreement cannot extend beyond the biennial budget year.
- J. Similarly, pursuant to the Commonwealth of Kentucky Constitution, the Commonwealth cannot enter into any contract or agreement, which would obligate the Commonwealth beyond the current fiscal biennium. Therefore, work to be performed under this Fifth Supplemental Agreement is to be continued in succeeding fiscal years for the term of the contract or agreement and any subsequent renewal, contingent upon funds being appropriated by the legislature for this work.
- K. In the event of non-appropriation of funds by either ODOT or KYTC, the agreement shall be canceled in whole without penalty to either State at the end of the then current fiscal year for such state, with this Fifth Supplemental Agreement becoming null and void at the end of said fiscal year. Both ODOT and KYTC will make efforts to obtain the necessary funds to avoid cancellation of the agreement or the Fifth Supplemental agreement, and both parties agree to provide written notice to the other party in the event of non-appropriation 30 days prior to the end of the fiscal year in which such non-appropriation for the next fiscal year occurs.

VIII. SUMMARY OF COMPLETED WORK

- A. The parties have spent \$18.2M during the preliminary engineering and environmental engineering phases to determine the Preferred Alternative.
- B. During the planning phase in 2006, 25 conceptual alternatives were studied.
- C. During the Assessment of Alternatives in 2009, 8 conceptual alternatives were studied.
- D. During the Environmental Engineering Phase in 2011, 2 alternatives were recommended for further study.
- E. The Environmental Assessment and FONSI for the Project was approved on August 9, 2012. This document assumed the use of traditional funding mechanisms. However, when ODOT and KYTC agreed to revisit the project and study non-traditional funding and Project Delivery methods in the Third Supplemental Agreement to the 2004 Agreement, reopening the Environmental Document was necessary to assess the potential impacts due to tolling.
- F. In addition to assessing the above potential impacts, additional bridge types could be considered for cost-savings purposes.
- G. In January 2015, the Kentucky and Ohio Governors met and announced a plan to explore cost-savings options for the Project. A consultant began a study to identify

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

those cost-savings measures. The options explored included (1) due to the diversion from tolling, a reduction in the number of lanes over the river to 12, (2) to shorten the Kentucky approach by 1.5 miles, and (3) Develop costs for one bridge and two bridge Ohio River Crossings.

- H. As a result of these efforts, four additional concepts were generated by ODOT and KYTC that maintained the 16-lane crossing. Of those four concepts, two concepts remain, Concept 2 and Concept 4.
- I. As to ODOT's acquisition of property in anticipation of the Project, ODOT has identified 79 parcels to acquire for right of way. Acquisition is complete for 60 parcels. ODOT is in negotiation or appraisal for 4 parcels. There are 5 railroad parcels that will be acquired via agreement at time of construction. ODOT is purchasing 10 parcels from the City of Cincinnati. As to KYTC's acquisition of property in anticipation of the Project, no activity has been undertaken.
- J. As to Governance structures, three options have been considered. The options include (1) a Bi-State Memorandum of Understanding (Currently, the two states are cooperating under this governance structure), (2) a Bi-State Compact Not Approved by Congress (CNAC), and (3) a Bi-State Compact Approved by Congress.
- K. As to procurement options, three options have been considered. These options include (1) a bundle with a Public-Private Partnership (P3) Contract as a Design, Build, Finance, Operate, and Maintain (DBFOM), (2) a bundle with a Public-Private Partnership Contract as a design-build with Kentucky retaining operation, maintenance, and life cycle responsibility, and (3) a bundle with a Public-Private Partnership Contract as a design-build with Kentucky retaining the detailed design, operations, maintenance, and life cycle responsibility.
- L. The following is a list of expenditures authorized by the 2004 Agreement and subsequent Supplemental Agreements:

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**


	ODOT	KYTC
2004 Agreement	\$292,901.75	\$292,901.75
First Supplemental	\$9,810,000.00	\$8,190,000.00
Second Supplemental	\$4,683,798.00	\$5,324,318.00
Third Supplemental	\$2,000,000.00	\$2,000,000.00
Fourth Supplemental	\$4,000,000.00	\$4,000,000.00
TOTAL	\$20,786,699.75	\$19,807,219.75

Note: Amounts are not to exceed.

Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge

IN WITNESS WHEREOF, the State of Ohio and the Commonwealth of Kentucky have caused their names to be signed and their seals to be hereunto affixed by their respective Governors, the Ohio Department of Transportation has caused its name to be signed by its Director of Transportation, and the Kentucky Transportation Cabinet has caused its name to be signed by its Secretary of Transportation and all thereunto duly authorized.

STATE OF OHIO


Governor


OHIO DEPARTMENT OF TRANSPORTATION

By: 
Director


COMMONWEALTH OF KENTUCKY


Governor

KENTUCKY TRANSPORTATION CABINET

By: 
Secretary

Approved:


Attorney General (Ohio)


Office of Legal Services (Kentucky)

**SIXTH SUPPLEMENT TO THE AGREEMENT BETWEEN THE STATE OF OHIO AND
THE COMMONWEALTH OF KENTUCKY FOR THE REPLACEMENT
OF THE BRENT SPENCE BRIDGE
CARRYING IR 71/75 OVER THE OHIO RIVER
BETWEEN COVINGTON, KENTUCKY AND CINCINNATI, OHIO**

This Sixth Supplemental Agreement is made and entered into this 28 day of February, 2022, by and between the Commonwealth of Kentucky (hereinafter referred to as "Kentucky"), acting by and through the Kentucky Transportation Cabinet (hereinafter referred to as "KYTC") and the State of Ohio (hereinafter referred to as "Ohio"), acting by and through the Department of Transportation (hereinafter referred to as "ODOT"). Previous agreements executed prior to the Sixth Supplemental Agreement include the original Agreement executed October 4, 2004, the First Supplemental Agreement executed November 23, 2004, the Second Supplemental Agreement executed December 11, 2008, the Third Supplemental Agreement executed December 12, 2012, the Fourth Supplemental Agreement executed August 30, 2014, and the Fifth Supplemental Agreement executed April 29, 2021.

I. RECITALS:

WHEREAS, Pursuant to Ohio Agreement No. 1380, the existing Brent Spence Bridge and its southern approach, which carries IR 71/75 over the Ohio River, is owned and maintained by KYTC; and

WHEREAS, the northern approach to the Brent Spence Bridge beginning at, but not including, Pier 1 [Survey Station 602+10.5], is owned and maintained by ODOT; and

WHEREAS, the Federal Government has committed funding through two separate earmarks to evaluate the replacement of the existing Brent Spence Bridge over the Ohio River, hereinafter collectively referred to as the "Project"; and

WHEREAS, Section 5501.44 of the Ohio Revised Code authorizes the Director of the Ohio Department of Transportation to enter into agreements with other states relative to the cooperation in the repair, maintenance, or construction of a bridge crossing a stream that forms a boundary line of the state of Ohio; and

WHEREAS, ODOT and KYTC entered into an agreement on October 14, 2004 (Agreement No. 20541), hereinafter referred to as the "2004 Agreement", to begin study of the replacement of the Brent Spence Bridge; and

WHEREAS, Pursuant to the 2004 Agreement, KYTC was established as the lead state agency for conducting the Project and was required to contract with a qualified consultant to conduct an Engineering Feasibility Study as the first part of the preliminary Engineering for the Project; and

WHEREAS, ODOT and KYTC's obligations under the 2004 Agreement have been completed; and

WHEREAS, ODOT and KYTC entered into the First Supplemental Agreement to the 2004 Agreement on November 23, 2004 (Agreement No. 20541-A) which established ODOT as the lead state agency for the environmental and preliminary design phases of the Project and required ODOT and KYTC to jointly manage consultant selection; and

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

WHEREAS, ODOT and KYTC's obligations under the First Supplemental Agreement to the 2004 Agreement have been completed; and

WHEREAS, ODOT and KYTC entered into the Second Supplemental Agreement to the 2004 Agreement (Agreement No. 20541-B) on December 11, 2008 which restructured the financial participation by each state on the Project development; and

WHEREAS, ODOT and KYTC's obligations pursuant to the Second Supplemental Agreement to the 2004 Agreement have been completed; and

WHEREAS, ODOT and KYTC entered into the Third Supplemental Agreement to the 2004 Agreement (Agreement No. 20541-C) on December 12, 2012 which ended the Environmental and Preliminary Design phases described in the First and Second Supplemental Agreements by the Signature of the FONSI dated August 9, 2012; and

WHEREAS, ODOT and KYTC in cooperation with the Federal Highway Administration (hereinafter referred to as "FHWA") identified a recommended Preferred Alternative (Alternative I) for the Project; and

WHEREAS, ODOT and KYTC established a Bi-State Management Team (hereinafter referred to as "BSMT") with the authority to oversee the Project, to evaluate Project procurement options, and to prepare an Initial Financial Plan as well as assess the need for procuring additional professional services, maintain a Project website, and manage public relations; and

WHEREAS, the BSMT evaluated Procurement options in October 2013 with the release of the Brent Spence Bridge Project Options Analysis; and

WHEREAS, the BSMT proposed an Initial Financial Plan in December 2013 with the release of the Brent Spence Bridge Project Initial Financial Plan; and

WHEREAS, the BSMT's obligation to assess the need for procuring additional professional services is ongoing with HNTB being selected and under contract with ODOT; and

WHEREAS, the BSMT's obligation to maintain a Project website and manage public relations has been complete and on-going; and

WHEREAS, ODOT and KYTC entered into the Fourth Supplemental Agreement to the 2004 Agreement (Agreement No. 20541-D) on August 30, 2014 which obligated the BSMT to procure additional professional services (1) necessary to update or amend the Project environmental document (2) to assist in the preparation and processing of applications through FHWA with respect to funding, (3) to assist in the development of the Bi-State Development Agreement, and (4) to develop an Initial Financial Plan and procurement methodology; and

WHEREAS, the BSMT has modified the HNTB contract authorized in the Third Supplemental Agreement to the 2004 Agreement and will continue reviewing and updating that contract to meet the obligation of updating and/or amending the Project Environmental Document; and

WHEREAS, the BSMT has procured professional services to assist in the preparation and processing of applications through FHWA with respect to funding; and

WHEREAS, the BSMT had begun work on the procurement of professional services to assist in the development of the Bi-State Development Agreement, but work was terminated because of subsequent Supplemental Agreements and scope of work changes; and

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

WHEREAS, the BSMT has begun work on developing an updated Initial Financial Plan, but work is not complete; and

WHEREAS, the Initial Financial Plan identified traffic diversion when toll financing of the project is considered, but final analysis of community impacts is not complete; and

WHEREAS, ODOT and KYTC entered into the Fifth Supplemental Agreement to the 2004 Agreement (Agreement No. 20541-E) on April 29, 2021 which obligated the BSMT to procure additional professional services (1) to develop a Project Summary Report (2) to develop a non-binding recommendation on a Project governance structure, (3) to develop project steps and schedule to bring the Project to construction, (4) to identify capacity and potential for use of Ohio, Kentucky, and Federal funding to construct the project; (5) to develop a non-binding recommendation on which Ohio, Kentucky, and Federal funded delivery structure will allow for the expeditious delivery of the project; and

WHEREAS, the BSMT has developed the Project Summary report; and

WHEREAS, the BSMT has developed a non-binding recommendation on the Project governance structure and Ohio and Kentucky have agreed to complete the project under the auspices of an Interstate Cooperative Agreement with Ohio acting as the lead agency; and

WHEREAS, the BSMT has developed an initial Project Schedule to bring the Project to construction; and

WHEREAS, the BSMT has agreed to a general funding plan, including provisions that all preliminary engineering, environmental re-evaluation, financial analysis, procurement support, and other tasks prior to construction will be equally shared between Ohio and Kentucky, that each state will be responsible for property acquisition and costs in their respective states, that each state will be responsible for utility relocation costs in their respective states, that each State will be responsible for all design, construction, construction engineering, construction inspection, and program management costs within their state except for the new companion main river crossing bridge which will be equally shared; and

WHEREAS, the BSMT has agreed that the Project shall be constructed without the use of private financing and without the use of toll revenue; and

WHEREAS, ODOT and KYTC propose to cooperate in the development of a companion bridge to the Brent Spence Bridge and modifications to the bridge approaches, and have agreed to enter into this Sixth Supplemental Agreement to develop and execute an Interstate Cooperative Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants herein set forth to be kept and performed, it is agreed by the parties hereto as follows:

II. GENERAL PURPOSE

This Sixth Supplemental Agreement is entered into by the parties to establish their respective responsibilities with regard to the Project. The foregoing recitals are hereby incorporated as a material part of this Agreement.

III. BI-STATE MANAGEMENT TEAM

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

- A. ODOT and KYTC will continue utilizing a Bi-State Management Team comprised of representatives from ODOT and KYTC.
- B. The BSMT shall consider the current policies of their respective states when making non-binding recommendations and taking actions to advance the expeditious and cost-effective development and delivery of the Project.
- C. The parties agree that ODOT will continue to be the lead contracting agency with respects to the BSMT's efforts on the Project.

IV. SCOPE OF WORK

- A. The BSMT will develop a binding Interstate Cooperative Agreement to be executed by the Governor of each State per the term sheet that is hereby attached to this Sixth Supplemental Agreement as Attachment A.
- B. The BSMT will procure services to support the awarding of a design-build construction contract for the construction of the Brent Spence companion bridge project.
- C. The BSMT will continue to perform the following obligations and duties from previous Supplement Agreements to the 2004 Agreement:
 - 1. From the Third Supplemental Agreement to the 2004 Agreement:
 - a. The BSMT will maintain a Project website;
 - b. The BSMT will manage routine public-relations connected with the Project.
 - 2. From the Fourth Supplemental Agreement to the 2004 Agreement:
 - a. The BSMT will continue to procure additional services necessary to update or amend the Project Environmental document;
 - b. The BSMT will procure additional professional services to assist in the preparation and processing of applications through the FHWA with respect to funding (TIFIA, PNRS, BUILD, INFRA, etc.), including but not limited to the Major Projects Project Management Plan;
 - c. The BSMT will continue to develop an Initial Financial Plan for the Project.
 - 3. From the Fifth Supplemental Agreement to the 2004 Agreement:
 - a. The BSMT will continue to develop project steps and schedule to bring the Project to construction;
 - b. The BSMT will continue to identify capacity and potential for use of Ohio, Kentucky, and Federal funding to construct the project;
 - c. The BSMT will develop a non-binding recommendation on which Ohio, Kentucky, and Federal funded delivery structure will allow for the expeditious delivery of the project.

V. FINANCING

- A. KYTC and ODOT agree to be jointly responsible for all costs associated with efforts required of the BSMT in development of the Project.
- B. The total cost of the items described in the above paragraph shall not exceed Twenty Million dollars (\$20,000,000.00) with ODOT and KYTC each responsible for 50% of these costs. KYTC and ODOT agree that this cost sharing provision shall apply to both work done after the effective date described herein, and work done prior to the effective date.
- C. Additional phases of work required after the completion of the above referenced tasks shall be directed pursuant to the Interstate Cooperative Agreement.
- D. Contact information for invoices shall be as follows:
 - 1. For ODOT: Ohio Department of Transportation, District 8, 505 South S.R. 741, Lebanon, OH 45036.
 - 2. For KYTC: Kentucky Transportation Cabinet, 421 Buttermilk Pike, Covington, KY, 41017.

VI. DISPUTE RESOLUTION

If a dispute cannot be resolved by the BSMT, the dispute shall be elevated to the Director of ODOT and the Secretary of KYTC. Their decision shall be final.

VII. GENERAL PROVISIONS

- A. This Sixth Supplemental Agreement constitutes the entire agreement between the parties. All prior discussions and understanding between the parties are superseded by this Agreement.
- B. Neither this Sixth Supplemental Agreement nor any rights, duties, or obligations described herein shall be assigned by either party without the prior written consent of the other party.
- C. Any change to this Sixth Supplemental Agreement must be made in a written amendment executed by both parties.
- D. Where work is performed in Ohio pursuant to the terms of the Sixth Supplemental Agreement, it shall be construed in accordance with and governed by the laws of the State of Ohio and suit, if any, shall be brought in Franklin County of the State of Ohio.
- E. Where work is performed in Kentucky pursuant to the terms of this Sixth Supplemental Agreement, it shall be construed in accordance with and governed by the laws of the State of Kentucky and suit, if any, shall be brought in Franklin County of the State of Kentucky.
- F. This Sixth Supplemental Agreement shall be deemed to have been substantially performed only when fully performed according to its terms and conditions and any modification thereof.

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

- G. All provisions of this Sixth Supplemental Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective successors or parties hereto.
- H. If any provision of this Sixth Supplemental 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 Sixth Supplemental Agreement or materially affect the ability of the parties to achieve the purpose of this Sixth Supplemental Agreement.
- I. This Sixth Supplemental Agreement and any renewal thereof are subject to the determination by Ohio that sufficient funds have been appropriated by the Ohio General Assembly to ODOT for the purpose of this Sixth Supplemental Agreement and to the certification of funds by the Office of Budget and Management, as required by Ohio Revised Code Section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Sixth Supplemental Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Sixth Supplemental Agreement or any renewal thereof will terminate on the date funding expires. Ohio's current General Assembly cannot commit a future General Assembly to any expenditure; therefore, the term of this agreement cannot extend beyond the biennial budget year.
- J. Similarly, pursuant to the Commonwealth of Kentucky Constitution, the Commonwealth cannot enter into any contract or agreement, which would obligate the Commonwealth beyond the current fiscal biennium. Therefore, work to be performed under this Sixth Supplemental Agreement is to be continued in succeeding fiscal years for the term of the contract or agreement and any subsequent renewal, contingent upon funds being appropriated by the legislature for this work.
- K. In the event of non-appropriation of funds by either ODOT or KYTC, the agreement shall be canceled in whole without penalty to either State at the end of the then current fiscal year for such state, with this Sixth Supplemental Agreement becoming null and void at the end of said fiscal year. Both ODOT and KYTC will make efforts to obtain the necessary funds to avoid cancellation of the agreement or the Sixth Supplemental agreement, and both parties agree to provide written notice to the other party in the event of non-appropriation 30 days prior to the end of the fiscal year in which such non-appropriation for the next fiscal year occurs.

VIII. SUMMARY OF COMPLETED WORK

- A. The parties have spent \$18.2M during the preliminary engineering and environmental engineering phases to determine the Preferred Alternative.
- B. During the planning phase in 2006, 25 conceptual alternatives were studied.
- C. During the Assessment of Alternatives in 2009, 8 conceptual alternatives were studied.

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

- D. During the Environmental Engineering Phase in 2011, 2 alternatives were recommended for further study.
- E. The Environmental Assessment and FONSI for the Project was approved on August 9, 2012. This document assumed the use of traditional funding mechanisms. However, when ODOT and KYTC agreed to revisit the project and study non-traditional funding and Project Delivery methods in the Third Supplemental Agreement to the 2004 Agreement, reopening the Environmental Document was necessary to assess the potential impacts due to tolling.
- F. In addition to assessing the above potential impacts, additional bridge types could be considered for cost-savings purposes.
- G. In January 2015, the Kentucky and Ohio Governors met and announced a plan to explore cost-savings options for the Project. A consultant began a study to identify those cost-savings measures. The options explored included (1) due to the diversion from tolling, a reduction in the number of lanes over the river to 12, (2) to shorten the Kentucky approach by 1.5 miles, and (3) Develop costs for one bridge and two bridge Ohio River Crossings.
- H. As a result of these efforts, four additional concepts were generated by ODOT and KYTC that maintained the 16-lane crossing. Of those four concepts, two concepts remain, Concept 2 and Concept 4.
- I. As to ODOT's acquisition of property in anticipation of the Project, ODOT has identified 79 parcels to acquire for right of way. Acquisition is complete for 70 parcels. ODOT is in negotiation or appraisal for 4 parcels. There are 5 railroad parcels that will be acquired via agreement at time of construction. KYTC intends to begin RW acquisition in 2022 on an estimated 120 parcels.
- J. As to Governance structures, three options have been considered. The options include (1) a Bi-State Memorandum of Understanding (Currently, the two states are cooperating under this governance structure), (2) a Bi-State Compact Not Approved by Congress (CNAC), and (3) a Bi-State Compact Approved by Congress. In 2022, the states agreed to move forward under the auspices of an Interstate Cooperative Agreement.
- K. As to procurement options, four options have been considered. These options include (1) a bundle with a Public-Private Partnership (P3) Contract as a Design, Build, Finance, Operate, and Maintain (DBFOM), (2) a bundle with a Public-Private Partnership Contract as a design-build with Kentucky retaining operation, maintenance, and life cycle responsibility, (3) a bundle with a Public-Private Partnership Contract as a design-build with Kentucky retaining the detailed design, operations, maintenance, and life cycle responsibility and (4) Contract as a state and federally financed package of design-bid-build and design-build contracts. Still under consideration are design-bid-build and design-build contracts.
- L. The following is a list of expenditures authorized by the 2004 Agreement and subsequent Supplemental Agreements:

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

	ODOT	KYTC
2004 Agreement	\$292,901.75	\$292,901.75
First Supplemental	\$9,810,000.00	\$8,190,000.00
Second Supplemental	\$4,683,798.00	\$5,324,318.00
Third Supplemental	\$2,000,000.00	\$2,000,000.00
Fourth Supplemental	\$4,000,000.00	\$4,000,000.00
Fifth Supplemental	\$2,000,000.00	\$2,000,000.00
TOTAL	\$22,786,699.75	\$21,807,219.75

Note: Amounts are not to exceed.

**Agreement between State of Ohio
And Commonwealth of Kentucky
Brent Spence Bridge**

IN WITNESS WHEREOF, the State of Ohio and the Commonwealth of Kentucky have caused their names to be signed and their seals to be hereunto affixed by their respective Governors, the Ohio Department of Transportation has caused its name to be signed by its Director of Transportation, and the Kentucky Transportation Cabinet has caused its name to be signed by its Secretary of Transportation and all thereunto duly authorized.

STATE OF OHIO

Mike DeWine
Governor

OHIO DEPARTMENT OF TRANSPORTATION

By: *Jack Marchbanks*
Director

COMMONWEALTH OF KENTUCKY

Andy Beshear
Governor

KENTUCKY TRANSPORTATION CABINET

By: *[Signature]*
Secretary

Approved:

[Signature]
Attorney General (Ohio)

DocuSigned by:

William Fogle

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Office of Legal Services (Kentucky)

OH Agreement 20541-F Attachment A
Term Sheet For Interstate Cooperative Agreement
Brent Spence Bridge Corridor Project

<i>This term sheet summarizes the concepts and key potential terms of the proposed Interstate Cooperative Agreement. There is no legal obligation on the part of any party until a definitive agreement is duly executed and delivered by the parties.</i>	
Purpose:	To define the roles and responsibilities for procurement, funding, construction, and maintenance of the Brent Spence Bridge Corridor Project (the “Project”) under a single comprehensive development plan.
Project Description:	The project will encompass its NEPA-defined scope.
Parties:	<ul style="list-style-type: none"> • Ohio Department of Transportation (“ODOT”) • Kentucky Transportation Cabinet (“KYTC”)
Party Financial Responsibilities:	<ul style="list-style-type: none"> • All preliminary engineering, environmental re-evaluation, financial analysis, procurement support, etc. to get through project procurement shall be equally shared between Ohio and Kentucky. • Each state will be responsible for property acquisition and costs in their respective states. • Each state will be responsible for utility relocation costs in their respective states. • Each State will be responsible for all design, construction, construction engineering, construction inspection, and program management costs within their state except for the new companion main river crossing bridge which will be equally shared.
Current Cost Share:	<p>The total Project cost estimate was updated in November 2021, and reflects the following based on the proposed Party financial responsibilities:</p> <ul style="list-style-type: none"> • Ohio Share: \$1.48 Billion • Kentucky Share: \$1.31 Billion
Environmental Re-evaluation:	ODOT and KYTC are committed to working with stakeholders to address concerns deemed pertinent to the project. If FHWA determines project changes are significant to warrant a re-evaluation of the environmental document, the States will work with FHWA to complete that process.
Federal Highway Administration Major Project Requirements:	<p>A Major Project’s Initial Financial Plan will be submitted jointly by ODOT and KYTC to the Federal Highway Administration as promptly as practicable.</p> <p>A Major Project Management Plan consistent with final Interstate Cooperative Agreement will be submitted jointly by ODOT and KYTC to the Federal Highway Administration no later than 12 months after execution of the Interstate Cooperative Agreement.</p>
Right of Way Responsibilities:	Each state will be responsible for all right-of-way actions and costs within their respective state including but not limited to acquisition services, acquisition costs, relocation expenses, and utility relocation expenses.
Procurement Structure:	The project will be delivered via a combination of Design-Bid-Build and Design-Build procurements.
Procurement Lead:	ODOT will remain as the lead agency in delivering the project.
Construction Oversight Responsibilities:	ODOT will lead the construction oversight responsibilities of the project with support from KYTC.
Operation and Maintenance Responsibilities	Upon completion of the project, and final acceptance by ODOT and KYTC of the work product, each state will have responsibility for the ongoing maintenance, repair, and reconstruction of the infrastructure as determined by the Interstate Cooperative Agreement.