

PROPOSED EXECUTION VERSION 1/18/2023

INTERSTATE COOPERATIVE AGREEMENT
REGARDING THE
BRENT SPENCE BRIDGE CORRIDOR PROJECT
BY AND BETWEEN
THE STATE OF OHIO
AND
THE COMMONWEALTH OF KENTUCKY

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. DEFINITIONS OF TERMS AND LIST OF ACRONYMS USED.....	4
ARTICLE 2. PURPOSE.....	11
ARTICLE 3. GOVERNANCE STRUCTURE; PROJECT MANAGEMENT PLAN; PRELIMINARY EVALUATION.....	11
3.1 Designation of Lead Agency	11
3.2 Lead Agency Duties and Responsibilities	11
3.3 Cooperating Agency Duties and Responsibilities	13
3.4 Executive Oversight Committee.....	14
3.5 Design Build Project Administration Committee.....	14
3.6 Procurement Administration Committee.....	14
3.7 Bi-State Management Team	14
ARTICLE 4. ACQUISITION OF PROPERTY, UTILITY RELOCATION AND PROJECT TERMINATION; PROPERTY TRANSFERS.....	16
4.1 Property Interests Acquisition.	16
4.2 Property Ownership.....	16
4.3 Utility Relocation	17
4.4 Taxes and Permit Fees	18
ARTICLE 5. PROJECT DEVELOPMENT SCHEDULE.....	18
5.1 Project Development Schedule.....	18
ARTICLE 6. PROJECT BUDGET.....	18
6.1 Preliminary Cost Estimate.....	18
6.2 Initial Financial Plan	18
6.3 Duties and Obligations.....	18
ARTICLE 7. OVERVIEW OF PROJECT FUNDING.....	19
7.1 Project Funding, Generally.	19
7.2 Funding of Project.....	20
7.3 Path to Implementation.....	22
ARTICLE 8. ENVIRONMENTAL/OTHER FEDERAL REQUIREMENTS.....	23
8.1 NEPA Documents	23
8.2 NEPA Process	23
8.3 Modification of the NEPA Documents.....	23
8.4 Project – Environmental Compliance.....	23
8.5 Mitigation	24
8.6 Environmental Litigation	24
ARTICLE 9. PROJECT COORDINATION, PROCUREMENT, DESIGN STANDARDS AND CONSTRUCTION.....	24
9.1 Lead Agency Roles and Responsibilities	24
9.2 Coordination of Activities.....	24
9.3 Procurement of Project Development and Construction	25
9.4 Design Standards and Construction Specifications.....	26
9.5 Design/Change Order Review.	27
9.6 Changes in Scope of Work and Change Orders.	27
9.7 Construction Observation.....	28

9.8	Inspections and Inspection Reports	28
9.9	Substantial Completion	28
9.10	Final Completion	28
9.11	Workforce Goals.....	29
9.12	Federal Highway Administration Requirements.....	29
9.13	Permitting.....	29
9.14	Insurance.....	29
9.15	As-Built Drawings	29
9.16	Ownership/License of Design and Construction Documents.....	29
9.17	Prevailing Wage Law	29
ARTICLE 10.	OPERATIONS AND MAINTENANCE.	30
10.1	Traffic Plan During Construction	30
10.2	Brent Spence Bridge Corridor Phases O&M.....	30
10.3	Companion Bridge Phase O&M	30
10.4	Existing Brent Spence Bridge O&M.....	30
10.5	Companion Bridge and Existing Brent Spence Bridge Replacement.....	31
10.6	Annual Reconciliation of Interest Due on Delayed Payments	31
ARTICLE 11.	REPRESENTATIONS AND WARRANTIES.....	31
11.1	KYTC Representations and Warranties	31
11.2	ODOT Representations and Warranties	31
ARTICLE 12.	TERMINATION/ALTERNATIVE PROCUREMENTS.	32
12.1	Material Delay	32
12.2	Extraordinary Conditions.....	32
ARTICLE 13.	RESTORATION AND FORCE MAJEURE.	33
13.1	Destruction Prior to Substantial Completion	33
13.2	Destruction Subsequent to Substantial Completion	33
13.3	Force Majeure.....	34
ARTICLE 14.	GENERAL MATTERS.....	34
14.1	Access to Records.....	34
14.2	Federal Project Number	34
14.3	Approval of Public Statements or Press Releases.....	34
14.4	Confidentiality	34
14.5	Dispute Resolution.....	34
14.6	Resolution of Claims and Disputes.....	35
14.7	Jurisdiction and Venue	36
14.8	Third Party Claims.....	37
14.9	Indemnification/Third Party Beneficiary Rights.....	37
14.10	Liability Between the Parties.....	37
14.11	Appropriation.	38
14.12	Amendment and Assignment.....	39
14.13	Notice to Parties.	39
14.14	Reporting Requirements.....	40
14.15	State Sovereignty	40
14.16	Organizational Conflicts of Interest.....	41
14.17	Noncollusion	41
14.18	Severability.....	41
14.19	No Third-Party Beneficiaries	41
14.20	Limitation on Recourse	41

14.21	Entire Understanding	42
14.22	Counterparts	42
14.23	Non-Waiver of Rights	42
14.24	Cooperation between the Parties	42
14.25	Time is of the Essence	42
14.26	Continued Access to Consultants and Advisors	42
14.27	Term	42

INTERSTATE COOPERATIVE AGREEMENT REGARDING

BRENT SPENCE BRIDGE CORRIDOR PROJECT

BY AND BETWEEN

THE STATE OF OHIO AND THE COMMONWEALTH OF KENTUCKY

This Interstate Cooperative Agreement Regarding Brent Spence Bridge Corridor Project (hereinafter “**Agreement**”) is made by and between the State of Ohio (hereinafter “**Ohio**”), by and through the Ohio Department of Transportation (hereinafter “**ODOT**”) and the Commonwealth of Kentucky (hereinafter “**Kentucky**”), by and through the Kentucky Transportation Cabinet (hereinafter “**KYTC**”). ODOT and KYTC are sometimes referred to individually herein as a “**Party**,” or collectively as the “**Parties**.” This Agreement shall be effective as of February 17, 2023 (the “**Effective Date**”).

WHEREAS, The I-71/I-75 corridor is a major north-south transportation corridor and is one of the busiest national freight movement routes, and as such is an important link for the local, regional and national economies; and

WHEREAS, the improvements comprising the existing Brent Spence Bridge (the “**Existing Brent Spence Bridge**”) together with its approaches provide an interstate connection over the Ohio River and carry both I-71 and I-75 traffic and facilitate local travel by providing access to downtown Cincinnati, Hamilton County, Ohio and Covington, Kenton County, Kentucky; and

WHEREAS, safety, congestion and geometric issues currently exist on the Existing Brent Spence Bridge and its approaches, which threaten the overall efficiency and flexibility of a vital national and regional mobility, trade and national defense corridor; and

WHEREAS, Kentucky and Ohio, by and through KYTC and ODOT, have agreed to jointly improve the operational characteristics of an approximately 7.8-mile segment of the I-71/I-75 corridor in Kentucky and Ohio for the purposes of improving traffic flow, level of service, and safety; correcting geometric deficiencies; and maintaining connectivity to key regional and national transportation corridors (collectively, the “**Project Purposes**”); and

WHEREAS, Kentucky and Ohio have determined to achieve the Project Purposes through the funding, design, and construction of improvements to and complementary to the Existing Brent Spence Bridge and its approaches, which improvements are anticipated to be comprised of: (i) the construction of a new interchange on I-75 in Ohio between Findlay Street and Marshall Avenue to connect I-75 to the new Western Hills Viaduct (Ohio PID 114161) (“**Brent Spence Bridge Corridor Phase I**”); (ii) the reconstruction and widening of I-75 in Ohio from Linn Street to Findlay Street and the reconstruction of Gest Street from Freeman Avenue to U.S. 50 (Ohio PID 113361) (“**Brent Spence Bridge Corridor Phase II**”); (iii) the improvement of the Existing Brent Spence Bridge and the approaches to the Existing Brent Spence Bridge from approximately state line mile 186.7 in Kentucky, including I-71/I-75, to approximately state line mile 2.7 in Ohio

(exclusive of those areas addressed under the scope for the Brent Spence Bridge Corridor Phase I and Brent Spence Bridge Corridor Phase II) (“**Brent Spence Bridge Corridor Phase III**” and, together with Brent Spence Bridge Corridor Phase I and Brent Spence Bridge Corridor Phase II, the “**Brent Spence Bridge Corridor Phases**”); and (iv) the development and construction of a companion bridge to the Existing Brent Spence Bridge (the “**Companion Bridge**”) to serve the I-71/I-75 corridor (the “**Companion Bridge Phase**,” any of the Brent Spence Bridge Phases or the Companion Bridge Phase may be referred to individually as a “**Phase**” or collectively as, the “**Brent Spence Bridge Corridor Phases**” or the “**Project**”), all as depicted in **Appendix A**; and

WHEREAS, from time to time the federal government has committed funding to the Project, including through multiple earmarks to evaluate the Project, and in 2021, made funding opportunities available to the Parties for the Project under the Infrastructure Investment and Jobs Act (the “**IJA**”); and

WHEREAS, Section 5501.44(A)(3) of the Ohio Revised Code authorizes the Director of the Ohio Department of Transportation to enter into agreements with “another state for the replacement, improvement, rehabilitation, operation, and maintenance of a bridge or system of bridges at one location that carries two interstate highways over the Ohio river to another state and the replacement, improvement, rehabilitation, operation, and maintenance of roadways providing for ingress to and egress from that bridge or system of bridges”; and

WHEREAS, to memorialize their cooperation with respect to evaluating and assessing the feasibility of the Project, the Parties entered into an Agreement dated October 14, 2004 (the “**2004 Agreement**”), as amended by the First Supplemental Agreement to 2004 Agreement dated November 23, 2004 (the “**First Supplement**”), as further amended by the Second Supplemental Agreement dated December 11, 2008 (the “**Second Supplement**”), the Third Supplemental Agreement dated December 12, 2012 (the “**Third Supplement**”), the Fourth Supplemental Agreement dated August 30, 2014 (the “**Fourth Supplement**”), the Fifth Supplemental Agreement dated April 29, 2014 (the “**Fifth Supplement**”), and the Sixth Supplemental Agreement dated February 28, 2022 (the “**Sixth Supplement**” and the 2004 Agreement as so amended, the “**Prior Agreement**”); and

WHEREAS, to evaluate, implement, administer and monitor the Project, the Parties established a Bi-State Management Team comprised of representatives from ODOT and KYTC (the “**BSMT**”); and

WHEREAS, pursuant to the Prior Agreement, the Parties, between themselves and by and through the BSMT, have undertaken and completed various obligations and duties, including the completion of the Environmental and Preliminary Design phases described under the First and Second Supplements as evidenced by the approval of the Environmental Assessment and the issuance of a Finding of No Significant Impact (the “**FONSI**”) for the Project on August 9, 2012; and

WHEREAS, pursuant to the Fifth Supplement, the BSMT prepared (1) a Brent Spence Bridge Project Summary Report dated November 4, 2021 (the “**Project Summary Report**”), (2) a Brent Spence Bridge Project Governance Structural Evaluation and Recommendation Report

dated November 24, 2021 (the “**Governance Report**”), and (3) a draft project schedule to bring the Project to procurement and construction; and

WHEREAS, in furtherance of its duties and obligations with respect to evaluating procurement options for the Project, the BSMT released the Brent Spence Bridge Project Options Analysis dated October 2013; and

WHEREAS, the BSMT has evaluated financing options for the Project and issued the Brent Spence Bridge Project Initial Financial Plan dated December 2013 (the “**Initial Financial Plan**”); and

WHEREAS, the BSMT has commenced work on updating the Initial Financial Plan and the Parties anticipate that the updated Initial Financial Plan will be completed within twelve (12) months of the Effective Date; and

WHEREAS, since the development of the Initial Financial Plan and the passage of the IJJA, the Parties have agreed that a fundamental characteristic of the Project is that it shall be funded without the use of private financing and without toll revenue generation; and

WHEREAS, in anticipation of undertaking the Project and in accordance with the Sixth Supplement, the Parties have agreed to an interim funding plan, which provides that all preliminary engineering, environmental re-evaluation, financial analysis, procurement support, and other tasks prior to, and in furtherance of, construction of the Project will be shared equally between the Parties in an aggregate amount not to exceed Twenty Million dollars (\$20,000,000); and

WHEREAS, the interim funding plan provides that each Party will be responsible for property acquisition and related property acquisition costs incurred in connection with the portion of the Project to be located within their respective States, that, in accordance with applicable State and federal law, each State will be responsible for the relocation of utilities within their respective States at no cost to the other Party, that each State will be responsible for all design, construction, construction engineering, construction inspection, and program management costs for the costs of the portion of the Project to be located within their respective States except for any of the foregoing costs that are attributable to the Existing Brent Spence Bridge Rehabilitation and Companion Bridge Phase, which costs shall be shared equally between the States; and

WHEREAS, the Parties have further agreed that upon Final Completion of the Project, Kentucky will be responsible for performing the Bridge Operations and Maintenance of the Companion Bridge and the Existing Brent Spence Bridge, with the Bridge Operations and Maintenance costs attributable to the Companion Bridge and the Existing Brent Spence Bridge being allocated between the Parties in accordance with Sections 10.3 and 10.4 hereof; and

WHEREAS, this Agreement, as well as the obligations created hereunder or described herein, shall not constitute a debt, liability or obligation of Ohio or Kentucky, or a pledge or lending of the faith and credit of either State; and

WHEREAS, in furtherance of the recommendations set forth in the Governance Report, the Parties have agreed to enter into this Agreement to provide for jointly undertaking the Project with ODOT serving as the Lead Agency (defined herein) and KYTC serving as the Cooperating Agency (defined herein); and

WHEREAS, to advance the construction of the Project as described in this Agreement, the BSMT will produce a Major Project Management Plan (the “PMP”), which, after approval as provided herein, shall be submitted to the FHWA by no later than twelve (12) months from the Effective Date; and

WHEREAS, the Parties desire to further document and define their respective roles and responsibilities with respect to the procurement, funding, design, construction, operations and maintenance of the Project; and

WHEREAS, the Parties have conducted the appropriate meetings as required by law and have otherwise met all conditions precedent to entering into this Agreement.

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

ARTICLE 1. DEFINITIONS OF TERMS AND LIST OF ACRONYMS USED.

“**Addendum**” means an addendum to this Agreement entered into by the Parties.

“**ADR Procedures**” shall have the meaning as described in Section 14.6.

“**Brent Spence Bridge Corridor Phase I**” shall have the meaning given to such term in the recitals hereto.

“**Brent Spence Bridge Corridor Phase II**” shall have the meaning given to such term in the recitals hereto.

“**Brent Spence Bridge Corridor Phase III**” shall have the meaning given to such term in the recitals hereto.

“**Brent Spence Bridge Corridor Phases**” shall have the meaning given to such term in the recitals hereto.

“**Brent Spence Bridge System**” means, together, the Existing Brent Spence Bridge and its approaches, in each case, as improved by the Brent Spence Bridge Corridor Phases constructed in accordance with this Agreement, and the Companion Bridge.

“**Bridge Inspection**” means all in-service and safety inspections of the Existing Brent Spence Bridge and/or the Companion Bridge, as applicable, required under applicable state or federal statutes, laws, rules, or regulations.

“Bridge Operations and Maintenance (Bridge O&M)” means the ongoing obligations of KYTC to maintain the Existing Brent Spence Bridge and the Companion Bridge, which include Bridge Inspection, Routine Maintenance, and Major Maintenance and Rehabilitation with respect to the Existing Brent Spence Bridge and the Companion Bridge.

“BSMT” shall have the meaning given to such term in the recitals hereto.

“Companion Bridge Phase” shall have the meaning given to such term in the recitals hereto.

“Construction Agreements” means, collectively, the Design-Bid-Build Agreement(s) and the Design-Build Agreement(s).

“Construction Engineering and Inspection Consultant” means the consultant selected by ODOT, in consultation with KYTC, pursuant to Section 9.3.8 hereof to perform the professional services contemplated under the Construction Engineering and Inspection Consultant Agreement.

“Construction Engineering and Inspection Consultant Agreement” means the professional services agreement entered into by and among ODOT, KYTC, and the Construction Engineering and Inspection Consultant providing for inspection services.

“Construction Teams” means, collectively, the Design-Build Team(s) and the designers and construction contractor(s) contracted under the Design-Bid-Build Agreement(s).

“Cooperating Agency” shall have the meaning as described in Section 3.1.

“Cost of Funds Rate” means the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under Section 1274 of the “Internal Revenue Code of 1986,” 100 Stat. 2085, 26 U.S.C.A. 1274, for July of the then-current calendar year.

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

“Delay Claim” means any claim filed by the applicable Construction Team under the applicable Construction Agreement that pertains to a delay or acceleration in the performance of the work under the applicable Construction Agreement due to an act or failure to act by ODOT in its capacity as “owner” under the applicable Construction Agreement, including but not limited to, any act or failure to act by ODOT that is attributable to KYTC or ODOT and their respective obligations hereunder.

“Delayed Payments” shall have the meaning as described in Section 10.3.

“Design-Bid-Build Agreement” means the agreement or agreements pertaining to the Brent Spence Bridge Corridor Phase I and Brent Spence Bridge Corridor Phase II, or the applicable portion thereof, to be entered into between ODOT and the designers and the construction

contractor(s) for development and construction of the Brent Spence Bridge Corridor Phase I or the Brent Spence Bridge Corridor Phase II, applicable.

“Design-Build Agreement” means the agreement or agreements pertaining to the Project, or the applicable portion thereof, to be entered into between ODOT and the Design-Build Team for development and construction of the Project.

“Design-Build Team” means the applicable design-builder(s) for development and construction of the Project, or the applicable portion thereof, selected by ODOT as described in Subsection 9.3.2 herein.

“Effective Date” shall have the meaning given to such term in the recitals hereto.

“Environmental Litigation” means any lawsuit that is filed in a court of competent jurisdiction and seeks to overturn, set aside, enjoin, or otherwise inhibit the implementation of a federal, state, or local agency’s approval of the Project based on the agency’s alleged non-compliance with applicable laws, including but not limited to: the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*; Section 4(f) of the Department of Transportation Act, 23 U.S.C. § 138; and 49 U.S.C. § 303; the National Historic Preservation Act, 16 U.S.C. § 470 *et seq.*; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*; and other federal, state, or local laws.

“Environmental Requirements” means the requirements to be memorialized in the NEPA Documents and incorporated by reference in Section 8.1.

“Existing Brent Spence Bridge” means the bridge improvements (OH SFN: 3107787; KY SFN: 059B00046N) that presently carry the I-71/I-75 corridor traffic.

“Existing Brent Spence Bridge Rehabilitation” means that portion of the Brent Spence Bridge Corridor Phase III consisting of the improvement and rehabilitation of the Existing Brent Spence Bridge.

“Federal Aid Funding” shall have the meaning as described in Subsection 7.1.5.

“Federal Funds” shall have the meaning as described in Subsection 7.1.5.

“Federal Grant Funding” shall have the meaning as described in Subsection 3.7.3.

“Federal Loan Programs” shall have the meaning as described in Subsection 3.7.4.

“Final Completion” means, generally, with respect to any Phase that all work to construct the applicable Phase has been completed in accordance with Article 9 herein and has been determined in accordance with the procedures set forth under the applicable Construction Agreement.

“FONSI” shall have the meaning given to such term in the recitals hereto.

“Force Majeure Event” means the occurrence of any of the following events that materially and adversely affects performance of a Party’s obligations, provided that such events (or the effects of such events) are not caused, and could not have been avoided by the exercise of reasonable caution, due diligence, or reasonable efforts, by such Party or its representatives: (a) war (including civil war and revolution), invasion, armed conflict, violent act(s) of enemy(ies), military or armed blockade, or military or armed takeover; (b) plague, epidemic, pandemic (including material worsening of the COVID-19 global health pandemic), outbreaks of infectious disease and any corresponding governmental health orders or mandates affecting the Project, including mandatory shutdowns, isolations or quarantine; (c) any act of terrorism, riot, insurrection, civil commotion including but not limited to acts of civil disobedience, criminal activity, or sabotage that causes direct physical damage to the Project or which cause the Project to be substantially impaired; (d) nuclear explosion or radiation weapon that causes direct physical damage to the Project or radioactive contamination of the Project; (e) flood, fire, explosion, gradual inundation caused by natural events, a tornado with an enhanced Fujita Score Rating of EF2, sinkhole caused by natural events, or landslide caused by natural events, in each case directly impacting the physical improvements of, or the performance of work at, the Project; (f) a seismic event causing trembling or shaking movement of the earth’s surface that produces ground motions exceeding the design requirements and which directly impacts or causes damage to the physical improvements of the Project; (g) kinetic cyber-attack that causes direct physical damage to the Project, or which cause the project to be substantially impaired; and (h) use of chemical or/and biological weapon(s) that causes direct physical damage to the Project, or which cause the project to be substantially impaired.

“Governance Report” shall have the meaning given to such term in the recitals hereto.

“HNTB” means HNTB Ohio, Inc., an Ohio corporation.

“ICE Agreements” means the two Independent Cost Estimate Agreements each to be entered into by and among ODOT, KYTC and the applicable Independent Construction Cost Estimator providing for the delivery of the construction estimation services and related services.

“IIJA” means the Infrastructure Investment and Jobs Act signed into law by President Joseph R. Biden on November 15, 2021; Public Law 117-58.

“Indemnitors” means the Parties’ respective consultants, designers, contractors, and other professionals (including the Design-Build Team and the designer(s) and construction contractor(s) under the Design-Bid-Build Agreement(s)) involved in the design, and construction on the Project.

“Independent Construction Cost Estimators” means the two professional service firms selected to perform the construction estimation services under the corresponding ICE Agreement.

“Initial Financial Plan” has the meaning as set forth in Subsection 3.7.5 and as further described in Article 6.

“Initiating Party” shall have the meaning as described in Section 14.6.

“Kentucky Brent Spence Bridge Corridor” means the approaches to the Existing Brent Spence Bridge and the Companion Bridge that are located in Kentucky.

“Kentucky Pre-Development Project Costs” means the preliminary costs of undertaking the Project that are attributable to Kentucky, including all acquisition costs attributable to the Kentucky Property, all utility costs attributable to the Kentucky Property, 50% of the pre-engineering and design costs of the Project, 50% of the financial analysis costs of the Project, 50% of the procurement support costs of the Project, and 50% of the environmental re-evaluation costs of the Project.

“Kentucky Project Costs” means (i) 50% of the costs of the Companion Bridge Phase, (ii) 50% of the costs of the Existing Brent Spence Bridge Rehabilitation, (iii) 100% of the costs of the Kentucky Brent Spence Bridge Corridor, and (iv) 50% of the Project Wide Costs.

“Kentucky Property” means all real property and personal property interests, if any, including but not limited to such easements, licenses, leases or property rights, in whatever form reasonably necessary to construct and operate the portions of the Project located in Kentucky.

“Kentucky Property Acquisition Scope” shall have the meaning as described in Subsection 4.1.2.

“Kentucky Right of Entry” means those certain rights of entry to the Kentucky Property to be granted by KYTC in favor of ODOT for the purposes of undertaking and completing the Project, as further described in Subsection 4.2.3.

“Kentucky Standards” means the construction and engineering standards applicable to those portions of the Project located in Kentucky.

“KYTC Delayed Payment” shall have the meaning as described in Subsection 7.2.3.

“KYTC Utility Relocation Scope” shall have the meaning as described in Subsection 4.3.1.

“Lead Agency” shall have the meaning as described in Section 3.1.

“Major Maintenance and Rehabilitation” means, with respect to the Brent Spence Bridge System, the painting of the Existing Brent Spence Bridge or the Companion Bridge, and the repair of deteriorated or damaged elements of the Existing Brent Spence Bridge or the Companion Bridge, including the repair of pile, foundations, substructures, abutments, piers, superstructures, and/or approach slabs, in each case, to restore the structural integrity of the applicable bridge.

“Major Projects Financial Plan” means the financial plan required under 23 U.S.C. §106(h) to be developed by the BSMT and approved by FHWA.

“Major Revision” means any revision to any or all of (i) the Project Schedule, (ii) Project Budget, or (iii) the Environmental Requirements that meets or exceeds the corresponding threshold to be established under the Project Management Plans.

“**Mediation**” shall have the meaning as described in Section 14.6.1.

“**NEPA**” means National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*

“**NEPA Documents**” means the FONSI or, if required at a later date, any Environmental Impact Statement or Supplemental Environmental Impact Statement, and any revisions to the foregoing.

“**Non-Appropriation Event**” shall have the meaning as described in Subsection 14.11.3.

“**ODOT Delayed Payment**” shall have the meaning as described in Subsection 10.3.

“**ODOT Utility Relocation Scope**” shall have the meaning as described in Subsection 4.3.2.

“**Ohio Brent Spence Bridge Corridor**” means the approaches to the Existing Brent Spence Bridge and the Companion Bridge that are located in Ohio.

“**Ohio Pre-Development Project Costs**” means the preliminary costs of undertaking the Project that are attributable to Ohio, including all acquisition costs attributable to the Ohio Property, all utility costs attributable to the Ohio Property, 50% of the pre-engineering and design costs, 50% of the financial analysis costs, 50% of the procurement support costs and 50% of the environmental re-evaluation costs.

“**Ohio Project Costs**” means (i) 50% of the costs of the Companion Bridge Phase, (ii) 50% of the costs of the Existing Brent Spence Bridge Rehabilitation, (iii) 100% of the costs of the Ohio Brent Spence Bridge Corridor, and (iv) 50% of the Project Wide Costs.

“**Ohio Property**” means all real property interests, including but not limited to such easements, licenses, leases or property rights, in whatever form, necessary to construct the portions of the Project located in Ohio.

“**Ohio Property Acquisition Scope**” shall have the meaning as described in Subsection 4.1.1.

“**Ohio Standards**” means the construction and engineering standards applicable to those portions of the Project located in Ohio.

“**Period Costs**” shall have the meaning as described in Subsection 7.2.3.

“**PMP**” or “**Project Management Plan**” means the Major Project Management Plan required under 23 U.S.C. 106(h) to be developed by the BSMT as provided herein and adopted by the Parties and submitted to FHWA.

“**Prior Agreement**” shall have the meaning given to such term in the recitals hereto.

“**Processing Date**” shall have the meaning as described in Subsection 7.2.3.

“Project” shall mean collectively, Brent Spence Bridge Corridor Phases, and the Companion Bridge Phase.

“Project Budget” shall mean the budget for the Project as initially set forth in the Initial Financial Plan and then updated in the Major Projects Financial Plan.

“Project Committees” means the Procurement Administration Committee, the Executive Oversight Committee, and the Design Build Project Administration Committee.

“Project Costs” means the aggregate amount of actual costs attributable to the Project, which amount as of November 2021 is estimated to be \$2,793,000,000.00 as the same shall be revised and updated in the Initial Financial Plan and again in the Major Projects Financial Plan and thereafter adjusted from time to time through Final Completion in accordance with Section 9.10 hereof.

“Project Development Schedule” shall have the meaning set forth in Article 5 and is attached hereto as **Appendix B**.

“Project Evaluation Period” shall have the meaning as described in Subsection 14.11.3.

“Project Management Services Agreement” means the professional services agreement authorized under the Sixth Supplement made by and among ODOT, KYTC and HNTB and providing for the delivery of certain project management and administrative services by HNTB in furtherance of the Project.

“Project Purposes” shall have the meaning given to such term in the recitals hereto.

“Project-Specific Wage Rates” shall have the meaning as described in Section 9.17.

“Project Summary Report” shall have the meaning given to such term in the recitals hereto.

“Project Wide Costs” means actual costs that are necessary for and that benefit the Project as a whole and that are not specifically attributable to either Party.

“Project Year” means each twelve (12) month period commencing with the Effective Date through the date that is three hundred and sixty-five (365) days thereafter and then each anniversary of the Effective Date.

“Quality Assurance Manager/Owner’s Representative” means the professional service firm selected to assist ODOT and KYTC pursuant to the Quality Assurance Manager/Owner’s Representative Agreement.

“Quality Assurance Manager/Owner’s Representative Agreement” means the Agreement to be entered into by and among ODOT, KYTC, and the Quality Assurance Manager/Owner’s Representative providing for review of the Design-Build Team’s design submissions, review of

buildable units, review of value engineering proposals, quality assurance management for design components of the Design-Build Agreement, and other related services.

“**Responding Party**” shall have the meaning as described in Section 14.6.

“**Routine Maintenance**” means, with respect to the Brent Spence Bridge System, clearing debris, sweeping, snow and ice removal, minor wearing surface patching, cleaning bridge drainage systems, marking for traffic control, guardrail repair, maintenance of lighting systems, and minor and emergency repairs to deck, railing and appurtenances.

“**State Funds**” shall have the meaning as described in Subsection 7.1.5.

“**State Standards**” shall mean, together, the Kentucky Standards and the Ohio Standards.

“**Substantial Completion**” of the Project generally means the stage in the progress of the Project or a designated Phase, portion or element thereof is sufficiently complete in accordance with the applicable provisions under the Construction Agreements so the Parties can utilize the Project or designated Phase, portion or element thereof for its intended use; provided, however, that as a condition precedent to Substantial Completion, the Parties have received all certificates of occupancy and other permits, approvals, licenses and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project, as further detailed in the Construction Agreements with respect to the applicable portion of the Project.

ARTICLE 2. PURPOSE.

The purpose of this Agreement is to cooperatively undertake the Project to improve the operational characteristics within the I-71/I-75 corridor for interstate, local, and through traffic. The objectives of the Project include (i) improving traffic flow and level of service; (ii) improving safety; (iii) correcting geometric deficiencies; and (iv) maintaining connections to key regional and national transportation corridors.

ARTICLE 3. GOVERNANCE STRUCTURE; PROJECT MANAGEMENT PLAN; PRELIMINARY EVALUATION.

3.1 Designation of Lead Agency. In accordance with the recommendations of the Governance Report, the Parties hereby designate ODOT as the lead agency (the “**Lead Agency**”) for purposes of undertaking the Project as contemplated herein. The Parties further designate KYTC as the cooperating agency (the “**Cooperating Agency**”) for purposes of undertaking the Project as contemplated herein. The Parties agree that the Lead Agency and the Cooperating Agency shall hold such duties, responsibilities and obligations as are set forth under Sections 3.2 and 3.3 below together with such additional duties, responsibilities and obligations as may be identified from time to time by the Parties.

3.2 Lead Agency Duties and Responsibilities. In its capacity as Lead Agency, ODOT shall hold the following duties and responsibilities:

- 3.2.1 To utilize its powers, including eminent domain and condemnation powers, to acquire, at its sole cost and expense, the Ohio Property;
- 3.2.2 To utilize its powers, including eminent domain and condemnation powers, to relocate, at no cost to Kentucky, any public utilities or any other occupancies located in Ohio that are necessary to complete those portions of the Project located in Ohio;
- 3.2.3 To make sufficient State Funds and Federal Funds available to pay the Ohio Project Costs;
- 3.2.4 To make sufficient funds available to pay the Ohio Pre-Development Project Costs, including Ohio's commitment of 50% of the up to Twenty Million Dollar (\$20,000,000) contribution under the Sixth Supplement;
- 3.2.5 To pay 50% of the Project Wide Costs;
- 3.2.6 Upon Substantial Completion of the Ohio Brent Spence Bridge Corridor, to pay 100% of the costs of maintaining the Ohio Brent Spence Bridge Corridor;
- 3.2.7 Upon Substantial Completion of the Companion Bridge to pay the portion of the costs of the Bridge O&M allocated to Ohio under Section 10.3 below;
- 3.2.8 Upon Substantial Completion of the Existing Brent Spence Bridge Rehabilitation, to pay the portion of the costs of the Bridge O&M allocated to Ohio under Section 10.4 below;
- 3.2.9 To procure and provide all work, improvements, services, labor and materials necessary to develop, design, construct and complete the Project;
- 3.2.10 As Lead Agency, to apply for and procure the funding for the Project through Federal and State sources and to receive or direct all State Funds and Federal Funds made available to the Parties in furtherance of the funding for the Project, as set forth in Article 7 herein, except as otherwise set forth in Sections 3.2.11 and 3.3.5;
- 3.2.11 As Lead Agency, to join Kentucky as a co-sponsor in applying for Federal Funds for the Project as set forth in Article 7 herein;
- 3.2.12 Finalize and submit the updated Initial Financial Plan to FHWA and annual updates thereafter; and
- 3.2.13 Finalize and submit the updated PMP to FHWA and annual updates thereafter.

3.3 Cooperating Agency Duties and Responsibilities. In its capacity as Cooperating Agency, KYTC shall be responsible for the following duties and responsibilities:

- 3.3.1 To utilize its power, including eminent domain and condemnation powers, to acquire, at its sole cost and expense, the Kentucky Property;
- 3.3.2 To utilize its powers, including eminent domain and condemnation powers, at its sole cost and expense, to relocate any public utilities or any other occupancies located in Kentucky that are necessary to complete those portions of the Project located in Kentucky;
- 3.3.3 To grant the Kentucky Right of Entry to ODOT and its contractors, subcontractors and authorized agents;
- 3.3.4 To make sufficient funds available to pay the Kentucky Pre-Development Project Costs, including Kentucky's commitment of 50% of the up to Twenty Million Dollar (\$20,000,000) contribution under the Sixth Supplement;
- 3.3.5 To join Ohio as a co-sponsor and supporting agency in jointly applying for Federal Grant Funding as set forth in Article 7 herein;
- 3.3.6 To make sufficient State Funds and Federal Funds available to pay or reimburse the Kentucky Project Costs as set forth in Article 7 herein;
- 3.3.7 To pay 50% of the Project Wide Costs;
- 3.3.8 Assist in the development of the updated Major Projects Financial Plan, the PMP and the Project Development Schedule;
- 3.3.9 Upon Substantial Completion of the Kentucky Brent Spence Bridge Corridor, to pay 100% of the costs of maintaining the Kentucky Brent Spence Bridge Corridor;
- 3.3.10 Upon Substantial Completion of the Companion Bridge to perform the Bridge O&M with respect to the Companion Bridge and to pay the costs of the Bridge O&M allocated to Kentucky under Section 10.3 below;
- 3.3.11 Upon Substantial Completion of the Existing Brent Spence Bridge Rehabilitation to perform the Bridge O&M with respect to the Existing Brent Spence Bridge and to pay the costs of the Bridge O&M allocated to Kentucky under Section 10.4 below; and
- 3.3.12 Upon Substantial Completion of Brent Spence Bridge Corridor Phase I, to maintain the applicable portions of the Project in accordance with this Agreement.

- 3.4 **Executive Oversight Committee.** An Executive Oversight Committee comprised of two (2) members from each of ODOT, KYTC and the FHWA, shall be created to facilitate and assist the Lead Agency in the development and delivery of the Project by providing a bi-state forum for oversight, monitoring and communications regarding the Project. Membership composition and specific duties and responsibilities of the Executive Oversight Committee will be set forth in the Project Management Plan.
- 3.5 **Design Build Project Administration Committee.** A Design Build Project Administration Committee comprised of two (2) members from each of ODOT, KYTC and the FHWA, shall be created to perform construction management duties and responsibilities. Membership composition and specific duties and responsibilities will be set forth in the Project Management Plan.
- 3.6 **Procurement Administration Committee.** A Procurement Administration Committee comprised of two (2) members—one (1) member from ODOT and one (1) member from KYTC—shall be created to perform duties and responsibilities related to procurement performed in conjunction with preliminary Project activities being undertaken by the BSMT.
- 3.7 **Bi-State Management Team.** In furtherance of the development of the Project, the BSMT will perform the below-described duties and responsibilities as previously delegated to the BSMT in under the Prior Agreement.
- 3.7.1 **Traffic Analysis and Modeling.** The BSMT shall update existing traffic analysis and modeling with respect to the Project.
- 3.7.2 **Design Concept Development and Refinement.** The BSMT will refine and finalize the Project concept design options for review and approval by the Executive Oversight Committee.
- 3.7.3 **Federal Grant Funding.** The BSMT will assist KYTC’s and ODOT’s development of joint applications for federal funding of the Project, including but not limited, to the *Bridge Replacement, Rehabilitation, Preservation, Protection, and Construction Program (Bridge Formula Program)*; the *Federal Highway Administration Competitive Grants for Nationally Significant Bridges (Bridge Investment Program)*; the *National Infrastructure Project Assistance (NIPA) Grant (Mega Projects Grant)*; the *Infrastructure for Rebuilding America (INFRA) (Nationally Significant Multimodal Freight and Highway Projects Program)*; the *Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT) Grant*, and any other federal grant funding for which the Project is or becomes eligible; (collectively, the “**Federal Grant Funding**”), such funding and grant applications to be submitted by ODOT and KYTC, jointly.
- 3.7.4 **Federal Loan Programs.** The BSMT will assist in ODOT’s and KYTC’s development of joint applications for financing through The

Transportation Infrastructure Finance and Innovation Act (TIFIA) financing program and similar federal loan programs (“**Federal Loan Programs**”) to finance a portion of the Project Costs, such financing applications to be submitted by ODOT and KYTC, jointly.

- 3.7.5 **Initial Financial Plan**. The BSMT shall assist in the development of the Initial Financial Plan (“**Initial Financial Plan**”), to be submitted to FHWA by ODOT, which will include the following elements: 1) project description, 2) Project Development Schedule, 3) project cost, 4) project funds, 5) project financing issues, 6) project cash flow projections, 7) risk and response strategies, and 8) annual update cycle, with annual updates pursuant to 23 U.S.C. §106 (h)(1) and (3) that will include: 1) summary of cost changes since last submitted financial plan; 2) cost and funding trends since initial financial plan; 3) summary of schedule changes since last financial plan; and schedule trends since initial financial plan.
- 3.7.6 **Major Project Management Plan (PMP)**. The BSMT shall assist in the development of the PMP to be submitted by ODOT to FHWA, which plan will include the following elements: 1) Project Purposes, goals, objectives and metrics; 2) Project description; 3) Project procurement; 4) Project organizational management; 5) Project management controls regarding contract administration, scope, cost, schedule, risk and quality; 6) Project communications management; 7) Project documentation and reporting; 8) project closeout; 9) Project oversight; and 10) other pertinent information as deemed appropriate that will enhance the project management and ensure that goals and objectives are met.
- 3.7.7 **Project Development Schedule**. Assist in the development of the Project Development Schedule as set forth in Article 5 herein.
- 3.7.8 **Project Procurement and Delivery Structure**. The BSMT will assist in the development of a Project procurement and delivery structure to ensure the cost effective and efficient delivery of the Project.
- 3.7.9 **NEPA Reevaluation and Update**. In anticipation of the implementation and undertaking of the Project, BSMT will complete a NEPA reevaluation commencing in 2022 and ending in 2023. If it is determined that any significant changes to the project impacts are identified that were not previously evaluated in the NEPA Documents, then the BSMT will complete a Supplemental Environmental Impact Statement. BSMT will fulfill any additional requirements relating to the NEPA Reevaluation, in accordance with applicable federal law.
- 3.7.10 **Communications**. The BSMT will manage routine public relations connected with the Project and shall maintain the Project website.

ARTICLE 4. ACQUISITION OF PROPERTY, UTILITY RELOCATION AND PROJECT TERMINATION; PROPERTY TRANSFERS.

4.1 Property Interests Acquisition.

4.1.1 **Ohio Property Acquisition.** ODOT has undertaken the acquisition of the Ohio Property pursuant to the Prior Agreement (the “**Ohio Property Acquisition Scope**”). In cooperation with the applicable Project Committees and, after adoption, the Project Management Plan, ODOT shall utilize its powers, including eminent domain and condemnation powers, to timely complete the Ohio Property Acquisition Scope in accordance with the dates set forth in the Project Development Schedule. ODOT shall be responsible for all costs to complete the Ohio Property Acquisition Scope, and in the event such property acquisition scope is not completed in accordance with the Project Development Schedule and results in Delay Claims filed by the Construction Teams, ODOT shall be solely responsible for paying 100% of the cost of such Delay Claims and any expenses related thereto as Ohio Project Costs from Ohio State Funds and/or Federal Funds allocated to Ohio, irrespective of the location of the Project or portion thereof to which the Delay Claims pertain.

4.1.2 **Kentucky Property Acquisition.** In cooperation with the applicable Project Committees and, after adoption, the Project Management Plan, KYTC shall timely acquire or shall utilize its powers, including eminent domain and condemnation powers, to timely acquire the Kentucky Property in accordance with the dates set forth in the Project Development Schedule (“**Kentucky Property Acquisition Scope**”). KYTC shall be responsible for all costs to complete the Kentucky Property Acquisition Scope, and in the event such property acquisition scope is not completed in accordance with the Project Development Schedule and results in Delay Claims filed by the Construction Teams, KYTC shall be solely responsible for paying 100% of the cost of such Delay Claims and any expenses related thereto as Kentucky Project Costs from Kentucky State Funds and/or Federal Funds allocated to Kentucky, irrespective of the location of the Project or portion thereof to which the Delay Claims pertain.

4.2 Property Ownership.

4.2.1 **Ohio Property.** ODOT shall own the Ohio Property and make such Ohio Property available for the development, construction, and operation of the Project.

4.2.2 **Kentucky Property.** KYTC shall own the Kentucky Property and, pursuant to the Kentucky Right of Entry, make such Kentucky Property available to ODOT, the applicable Construction Team, and their

respective contractors, subcontractors, consultants and agents for the development, construction, and operation of the Project.

- 4.2.3 **Kentucky Property Right of Entry**. KYTC grants the Kentucky Right of Entry to ODOT, and its authorized contractors, sub-contractors, agents, and employees the right to use the Kentucky Property for the purpose of (i) conducting any investigation or inspection of the Kentucky Property to the extent desired and deemed consistent with prudent commercial practice and necessary to evaluate the use of the Kentucky Property for the Project including, without limitation, such soils, engineering and environmental studies as may be necessary to assess the condition and suitability of the Kentucky Property for its intended uses in connection with the Project; and (ii) engaging in any and all activities intended to facilitate the completion of the Project (collectively, the “**Kentucky Right of Entry**”). The Kentucky Right of Entry shall include (y) the right of ingress, egress, transportation and use of vehicles, equipment, material, and personnel over, across, and under the Kentucky Property; and (z) the right to remove, restore, rebuild or construct any improvements necessary to complete the Project. ODOT shall take all reasonable precautions to minimize damage to the Kentucky Property while exercising the Kentucky Right of Entry. The instrument governing the Kentucky Right of Entry shall provide that in the event that ODOT or its authorized contractors, sub-contractors, employees, or agents shall cause material damage to the Kentucky Property, then ODOT shall at its own cost and expense (which may be passed on to any contractor or subcontractor), restore the Kentucky Property as reasonably practical to the condition of the Kentucky Property immediately prior to such damage.

4.3 **Utility Relocation**.

- 4.3.1 **Utility Relocation – Kentucky Property**. KYTC shall use best efforts and where applicable, its full authority, including, but not limited to, any rights of condemnation and/or eminent domain, to obtain an agreement to relocate any public utilities or any other occupancies located within the Kentucky Property that are necessary to complete the Project (the “**KYTC Utility Relocation Scope**”). The KYTC Utility Relocation Scope shall be conducted at no cost or expense to ODOT.
- 4.3.2 **Utility Relocation – Ohio Property**. ODOT shall use best efforts and where applicable, its full authority, including but not limited to any rights of condemnation and/or eminent domain, to obtain an agreement to relocate any public utilities or any other occupancies located within the Ohio Property that are necessary to complete the Project (the “**ODOT Utility Relocation Scope**”). The ODOT Utility Relocation Scope shall be conducted at no cost or expense to KYTC.

- 4.4 **Taxes and Permit Fees.** KYTC shall retain title to the Kentucky Property, subject to the Kentucky Right of Entry, and, pursuant to Section 170 of the Kentucky Constitution and related statutory provisions, the Kentucky Property shall be exempt from any and all Kentucky state and local *ad valorem* real property taxes and personal property taxes on tangible and intangible goods; provided however, to the extent the Kentucky Property or any portion thereof is determined not to be exempt from such taxes, then KYTC shall be solely responsible for any and all costs and expenses attributable to such taxes, including but not limited to interest, penalties and collection costs. In the event ODOT, its contractors, sub-contractors, agents and consultants are not exempt from the payment of Kentucky sales tax or use tax attributable to direct purchases of personal property (including construction materials to be incorporated into the Project), then 100% of the cost of such sales or use taxes shall be included as Kentucky Project Costs. Any state or local permit fees and related expenses shall be borne as Project Costs attributable to the Party whose jurisdiction imposes such permit fees and related expenses. It is anticipated that ODOT shall be exempt from all state or local income taxes levied by Kentucky or any local jurisdiction, provided that to the extent that any such income tax is levied against ODOT, then the cost of such income tax, including but not limited to interest, penalties and collection costs, shall be borne by KYTC as a Kentucky Project Cost.

ARTICLE 5. PROJECT DEVELOPMENT SCHEDULE.

- 5.1 **Project Development Schedule.** ODOT has prepared a Project Development Schedule, which is attached hereto as **Appendix B** (the “**Project Development Schedule**”). The Parties shall work in good faith and cooperatively with each other to achieve the timely completion of each element of the Project as set forth in the Project Development Schedule. Subject to the Major Revision provisions set forth under Section 9.6.2 hereof, with prior notice to KYTC, ODOT may elect to update the Project Development Schedule from time to time.

ARTICLE 6. PROJECT BUDGET.

- 6.1 **Preliminary Cost Estimate.** Upon completion of the traffic analysis and modeling and final design summary report, the BSMT shall prepare a preliminary cost estimate for the Project. The preliminary cost estimate will be used to complete the “cost estimate review workshop” required in accordance with the FHWA Major Project Cost Estimate Guidance dated January 2007 and last modified on March 22, 2007.
- 6.2 **Initial Financial Plan.** The BSMT shall prepare an Initial Financial Plan for review and analysis by ODOT and KYTC. Upon completion of the Initial Financial Plan review and analysis, ODOT shall submit the final Initial Financial Plan to FHWA for review and approval.
- 6.3 **Duties and Obligations.** Upon review and approval of the Initial Financial Plan, ODOT and KYTC shall be responsible to perform the duties and obligations set forth herein within the parameters identified in the Initial Financial Plan.

ARTICLE 7. OVERVIEW OF PROJECT FUNDING.

7.1 Project Funding, Generally.

- 7.1.1 In conjunction with the October 2022 Cost, Schedule and Risk Assessment, the Parties developed a conceptual cost estimate of \$3.537 billion for the Project.
- 7.1.2 As of the execution of the Sixth Supplement, the Parties have authorized expenditures of \$41,807,219.75 by KYTC and \$42,786,699.75 by ODOT for the evaluation and development of the Project.
- 7.1.3 Pursuant to the Sixth Supplement, BSMT is proceeding to develop an updated Initial Financial Plan for submission to the FHWA after approval by the BSMT.
- 7.1.4 The updated Initial Financial Plan and a subsequent Major Projects Financial Plan will allocate the Project Costs between the Parties with the understanding that (i) the Project Costs attributable to the Companion Bridge Phase will be shared equally between the Parties, (ii) the Project Costs attributable to the Existing Brent Spence Bridge Rehabilitation will be shared equally between the Parties, and (iii) each Party being responsible for 100% of the costs of the approaches to the Companion Bridge and the Existing Brent Spence Bridge that are located within their respective state. These amounts take into account Project Costs that already have been contributed by Ohio and by Kentucky for the evaluation and development of the Project.
- 7.1.5 In addition to funding their respective Project Costs, the Parties will be responsible for 50% of the Project Wide Costs. The Parties will fund their respective portions of the Project Costs and Project Wide Costs by making funds available to the Lead Agency from (i) contributions from conventional State transportation program funds and all other non-federal sources available to either Party (“**State Funds**”) and (ii) contributions from federal transportation program funds apportioned pursuant to the federal funding formula (“**Federal Aid Funding**”) and funds available under Federal Loan Programs (collectively “**Federal Funds**”), and discretionary program funds available through Federal Grant Funding.
- 7.1.6 Federal Grant Funding allocated to Kentucky and Ohio used to fund the Project has been and will continue to be matched by a combination of State Funds and Federal Aid Funding.
- 7.1.7 Based upon the significance of the Project to national freight movements and the national economy, the Parties agree to continue to identify and, as appropriate, pursue Federal Funds and the Federal Grant Funding set forth in Subsection 3.7.3 herein, and any other federal funding program

available to fund a portion of the Project with Federal Funds and Federal Grant Funding. In the event ODOT and KYTC are successful in obtaining Federal Grant Funding, KYTC shall file a transfer request or similar request with the U.S. Department of Transportation, FHWA and/or other applicable federal department or agency, as applicable, to undertake all actions necessary to directly transfer and disburse to ODOT, as the Lead Agency, all such Federal Grant Funding allocated and/or awarded to Kentucky and, further with respect to any transfer request made in conjunction with the Federal Grant Funding made available under Title 23, as “receiving agency” pursuant to and in accordance with 23 U.S.C. §104 (f)(3) and FHWA Order 4551.1, made available pursuant to 49 U.S.C. §6701. All such Federal Grant Funding allocated and/or awarded to Ohio and/or Kentucky for the Project shall be directly transferred and disbursed by U.S. DOT, FHWA and any federal department or agency in furtherance of the funding, development, procurement, and delivery of the Project.

7.2 Funding of Project.

- 7.2.1 In cooperation with the applicable Project Committees, the Parties shall be responsible for procuring their respective portion of the Project Costs as set forth under the updated Initial Financial Plan and finalized under the Major Projects Financial Plan.
- 7.2.2 Except for the Federal Grant Funding transferred pursuant to Section 7.1.7, ODOT will advance funds for the total Project Costs. KYTC shall promptly reimburse ODOT pursuant to Section 7.2.3.
- 7.2.3 On the first (1st) day and the fifteenth (15th) day of each month (each a “**Processing Date**”), KYTC and ODOT will approve payments to the Design-Build Team for their respective portions of the Project Costs (the “**Period Costs**”). In the event the Period Costs are not approved on the corresponding Processing Date, then the Period Costs shall be approved as soon as practicable after all discrepancies are resolved. Any delays in approving Period Costs shall be governed by Section 14.6 hereof. After approval of the Period Costs on the corresponding Processing Date, ODOT will allocate (i) Federal Grant Funding, (ii) Federal Funds, (iii) Ohio State Funds, and (iv) Kentucky State Funds to pay for the applicable portions of the Period Costs; thereafter, after the Processing Date on the first (1st) of each month, ODOT will remit the approved Period Costs to the Design-Build Team. By no later than the fifteenth (15th) of each month, KYTC will reimburse ODOT for KYTC’s remaining portions of the Period Costs with its Federal Funds and the Kentucky State Funds attributable to the Processing Date occurring on the first (1st) of each month. In the event the actual portion of the Project Costs payable from KYTC’s Federal Funds and Kentucky State Funds exceeds the Period Costs payable from KYTC’s Federal Funds and Kentucky State Funds with respect to any Processing Date, then ODOT shall (i) provide KYTC notice of the same and (ii) advance the unpaid

balance of such actual Project Costs; thereafter, KYTC shall reimburse ODOT within fifteen (15) days of the date on which such payment is made. Further provided that in the event the actual Project Costs payable from KYTC's Federal Funds and Kentucky State Funds are less than Period Costs payable from KYTC's Federal Funds and Kentucky State Funds, then such excess payment shall offset KYTC's Federal Funds and Kentucky State Funds contribution on the next Processing Date (or, if ODOT is due any reimbursement, then such excess payment shall reimburse ODOT for any prior advance of KYTC's Federal Funds and Kentucky State Funds). In the event ODOT advances Ohio State Funds to pay Kentucky Project Costs attributable to the corresponding Processing Date, and thereafter KYTC fails to reimburse ODOT for such payment within thirty (30) days of the date on which such reimbursement payment is due to ODOT (a "KYTC Delayed Payment"), then interest shall accrue on the amount of such KYTC Delayed Payment at a per annum rate of interest equal to the Cost of Funds Rate (computed by applying the ratio of the Cost of Funds Rate over a year of 360 days, multiplied by the amount of the KYTC Delayed Payment, multiplied by the actual number of days the KYTC Delayed Payment is unpaid) until such time that KYTC makes the reimbursement payment to ODOT. Each year, ODOT and KYTC will reconcile the interest due on all KYTC Delayed Payments with the interest due on all ODOT Delayed Payments (defined herein) in accordance with Section 10.6 hereof.

- 7.2.4 To ensure that funds made available through Federal Grant Funding are administered in accordance with the applicable federal laws and regulations, including applicable requirements pertaining to the matching of State Funds, the Parties will cooperate to reconcile on an annual basis during each Project Year the allocation of State Funds and Federal Grant Funding and make corresponding adjustments based upon actual expenditures.
- 7.2.5 Prior to the award of any Construction Agreement, KYTC will irrevocably commit Federal Funds and State Funds available to it to fund the Kentucky Project Costs. With respect to its contribution of State Funds, KYTC will cause 100% of the amounts appropriated and made available to KYTC by the Kentucky General Assembly for fiscal years 2022-2024 to be available for prompt disbursement pursuant to Section 7.2.3; provided however, to the extent that the foregoing amounts appropriated and made available by the Kentucky General Assembly to KYTC are insufficient to fund the full Kentucky Project Costs, then KYTC covenants and agrees to make additional State Funds available to pay the Kentucky Project Costs from time to time during the Project.
- 7.2.6 Prior to the commencement of any work on the Project, ODOT will commit Federal Funds and State Funds available to it from the federal government and the Ohio General Assembly to fund the Ohio Project Costs as contemplated under the Major Projects Financial Plan.

- 7.2.7 Nothing set forth herein shall be construed as constituting a debt, liability or obligation of Ohio or Kentucky, or a pledge or lending of the full faith and credit of either State within the meaning of any constitutional provision or limitation.
- 7.2.8 Either or both of the Parties may elect to finance a portion of their respective Project Costs through one or more of the following funding sources (i) borrowing funds through Federal Loan Programs, (ii) issuing and selling governmental purpose tax-exempt or taxable bonds in the form of GARVEE bonds secured by the future receipt of Federal Grant Funding, or (iii) issuing and selling governmental tax-exempt or taxable revenue bonds, secured by State Funds or Federal Funds available to either Party. For avoidance of doubt, neither Party shall have any obligation to repay any portion of the debt service attributable to any obligation issued or borrowed by the other Party to finance such other Party's Project Costs.
- 7.2.9 To the extent that change orders or other cost overruns require the Parties to increase the amount of their respective Project Costs, the Parties hereby covenant and agree to undertake such actions as may be required to make additional State Funds and Federal Funds available to the Project with such action including but not being limited to issuing additional indebtedness, securing additional appropriations from the respective legislatures and/or applying for additional Federal Funds (as contemplated under Section 7.3.1 below). The Parties further covenant and agree that to the extent any previously awarded Federal Funds subsequently become unavailable to either Party to pay Project Costs, that the applicable Party will make available its proportionate share of such unavailable Federal Funds from whatever sources may be available to such Party, including but not limited to State Funds.
- 7.2.10 The Parties shall be responsible for procuring their respective portion of the Project Costs as set forth under the updated Initial Financial Plan and finalized under the Major Projects Financial Plan. The Parties acknowledge and agree that the terms and conditions contained in this Section 7.2 are intended to set forth certain parameters with respect to the funding of the Project and the payment of Project Costs and that certain supplemental procedures may be provided for in the PMP to address the specific terms and conditions relating to the expenditure of the various sources of Federal Funds and Federal Grant Funding.

7.3 Path to Implementation.

- 7.3.1 **Funding Applications.** ODOT and KYTC, in conjunction with the BSMT, will jointly prepare funding applications for available Federal Grant Funding as set forth in Subsection 3.7.3 and under the Federal Loan Programs as set forth in Subsection 3.7.4 as soon as practicable after the execution and delivery of this Agreement.

- 7.3.2 **Contract Procurement.** ODOT will advance the procurement process for the Construction Agreements pertaining to the Project through the development and issuance of one or more request(s) for qualifications and/or one or more request(s) for proposals in cooperation with KYTC and the applicable Project Committees. Notwithstanding anything to the contrary contained herein, ODOT shall not be obligated to award any Design-Build Agreement for the Project until such time that 100% of the State Funds and Federal Funds required to pay the Project Costs attributable to the Project are (i) in the case of Ohio’s Federal Funds and State Funds, held by ODOT or irrevocably committed to be held by ODOT, (ii) in the case of Kentucky’s Federal Grant Funding, transferred to ODOT as the Lead Agency or irrevocably committed to be transferred to ODOT as the Lead Agency “receiving agency,” and (iii) in the case of the Kentucky State Funds and Federal Funds, made available to fund the Kentucky Project Costs pursuant to this Agreement.

ARTICLE 8. ENVIRONMENTAL/OTHER FEDERAL REQUIREMENTS.

- 8.1 **NEPA Documents.** Upon approval, the Parties shall be collectively responsible for achieving and maintaining compliance with the requirements of the NEPA Documents in the development, design, funding, construction, operation and maintenance of the Project, including any revisions, modifications, or amendments made to the NEPA Documents in accordance with the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*; Section 4(f) of the Department of Transportation Act, 49 U.S.C. § 303 and 23 U.S.C. § 138; the National Historic Preservation Act, 16 U.S.C. § 470 *et seq.*; the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*; and any other applicable federal, state, and local laws (hereinafter “Environmental Requirements”).
- 8.2 **NEPA Process.** The Parties agree to continue to cooperate with the BSMT to complete a NEPA reevaluation in 2023. If it is determined that there are new and significant environmental impacts not previously evaluated in the NEPA Documents, or if FHWA directs the Parties, the BSMT will prepare the necessary NEPA Documents.
- 8.3 **Modification of the NEPA Documents.** Before seeking FHWA approval to modify an Environmental Requirement that pertains to the any portion of the Project located in Kentucky, ODOT must notify KYTC in writing and, if requested in writing, consult with KYTC regarding (1) the decision to seek approval for the modification, and (2) the process for obtaining approval of the modification. In the event KYTC does not make a written request for consultation, then ODOT shall proceed with seeking FWHA approval to modify the applicable Environmental Requirements. For avoidance of doubt, ODOT shall have no duty to notify KYTC or otherwise seek the input of KYTC with respect to the modification of any Environmental Requirement that pertains to the Ohio Property.
- 8.4 **Project – Environmental Compliance.** ODOT, KYTC and the applicable Project Committees shall be responsible for achieving and maintaining compliance with those Environmental Requirements that apply to their respective portions of the Project, and may

delegate the responsibility for complying with any portion of those requirements to the applicable Construction Team.

- 8.5 Mitigation.** ODOT shall be responsible for environmental mitigation costs attributable to the Ohio Property together with the costs for achieving and maintaining compliance with any Project-wide Environmental Requirements that are attributable to the Ohio Property. KYTC shall be responsible for environmental mitigation costs attributable to the Kentucky Property together with the costs for achieving and maintaining compliance with any Project-wide Environmental Requirements that are attributable to the Kentucky Property. Notwithstanding anything to the contrary contained herein, the Parties may agree to delegate responsibility for complying with any portion of the Environmental Requirements to the applicable Construction Team under the terms of the applicable Construction Agreement.
- 8.6 Environmental Litigation.** The Parties agree to cooperate in the defense of any Environmental Litigation, but each Party shall bear its own costs in such litigation.

ARTICLE 9. PROJECT COORDINATION, PROCUREMENT, DESIGN STANDARDS AND CONSTRUCTION.

- 9.1 Lead Agency Roles and Responsibilities.** ODOT, as the Lead Agency, will be responsible for all work, improvements, services, labor and materials necessary to design and construct the Project. The procurement will be carried out through the Construction Agreements, including a Design-Build Agreement for Brent Spence Bridge Corridor Phase III and the Companion Bridge Phase, and one or more Design-Bid-Build Agreements for Brent Spence Bridge Corridor Phase I and Brent Spence Bridge Corridor Phase II, under which ODOT will be the contracting agency and will be responsible for design approval and construction acceptance. KYTC will serve in a cooperating and consulting capacity to assist with the review of plans, proposals, reports, and related documents as necessary or helpful to facilitate the procurement.
- 9.2 Coordination of Activities.**
- 9.2.1 KYTC will work cooperatively with ODOT as the Lead Agency to coordinate planning, design, funding, construction, and operation and maintenance of their respective portions of the Project. To that end, the Parties shall at their own cost and expense provide qualified staff and consultants to carry out their responsibilities with respect to the design, construction, scheduling, and coordination of Project activities, including attendance at working group meetings.
- 9.2.2 In furtherance of their respective responsibilities hereunder, ODOT and KYTC will coordinate with HNTB in accordance with the Project Management Services Agreement. The costs attributable to the Project Management Services Agreement will be paid by the Parties as Project Wide Costs.

9.2.3 KYTC shall communicate its comments and recommendations regarding the Project through ODOT and not directly to the applicable Design-Build Team. KYTC shall have no right to direct the work of any Design-Build Team. Subject to the dispute resolution provisions in Section 14.6 herein, ODOT shall exercise reasonable discretion over whether to adopt the comments and recommendations of KYTC and, with good cause established in writing in advance, may reject the same. For purposes of the foregoing sentence, “good cause” shall mean for purposes necessary to advance the Project and comply with the Construction Agreements and the PMP. KYTC shall provide any input and comments on a timely basis within such times as reasonably set forth by ODOT in order to continue with the Project on schedule, which shall consider all of the relevant circumstances when establishing the allowable time periods.

9.3 Procurement of Project Development and Construction.

9.3.1 Following receipt of bids, using the powers and rights authorized by Ohio and this Agreement, ODOT anticipates entering into Construction Agreement(s) for Brent Spence Bridge Corridor Phase I and Brent Spence Bridge Corridor Phase II.

9.3.2 Following receipt and evaluation of proposals and the selection of one or more preferred proposers using the design-build powers authorized pursuant to the Ohio Revised Code by Ohio, ODOT anticipates entering into a single Design-Build Agreement for the Companion Bridge Phase and Brent Spence Bridge Corridor Phase III.

9.3.3 ODOT, in consultation with KYTC, will select two Independent Construction Cost Estimators pursuant to applicable provisions of the Ohio Revised Code pertaining to the procurement of professional service providers. Upon the selection of the Independent Construction Cost Estimators, ODOT and KYTC will enter into the ICE Agreements, which will require each Independent Construction Cost Estimator to (i) conduct an independent cost review of the plans and documents prepared by the Design-Build Project Administration Committee, (ii) determine the estimated costs of constructing the Project, and (iii) review all cost estimates prepared by the Design-Build Team, provided that one of the ICE Agreements shall be entered into to satisfy applicable requirements of the Ohio Revised Code as determined by ODOT. The costs of the Independent Construction Cost Estimators under the ICE Agreements will be shared by the Parties as Project Wide Costs.

9.3.4 ODOT, in consultation with KYTC, will select a Quality Assurance Manager/Owner’s Representative pursuant to applicable provisions of the Ohio Revised Code pertaining to the procurement of professional service providers. Upon the selection of the Quality Assurance Manager/Owner’s Representative, ODOT, KYTC and the Quality

Assurance Manager/Owner's Representative will enter into a Quality Assurance Manager/Owner's Representative Agreement pursuant to which the Quality Assurance Manager/Owner's Representative will assist ODOT and KYTC with review of the Design-Build Team's design submissions, review of buildable units, review of value engineering proposals, and provide quality assurance management for design components of the Design-Build Agreement. The costs of the Quality Assurance Manager/Owner's Representative under the Quality Assurance Manager/Owner's Representative Agreement will be shared by the Parties as Project Wide Costs.

- 9.3.5 ODOT shall consult with KYTC, and the Design-Build Project Administration Committee in the review of plans, proposals, reports and related documents to facilitate the procurement of the Design-Build Agreement.
- 9.3.6 ODOT shall be solely responsible for the procurement for Brent Spence Bridge Corridor Phase I and Brent Spence Bridge Corridor Phase II.
- 9.3.7 ODOT will use its best efforts to execute the Construction Agreements, as soon as practicable and generally in accordance with the Project Development Schedule.
- 9.3.8 ODOT, in consultation with KYTC, will select a Construction Engineering and Inspection Consultant pursuant to applicable provisions of the Ohio Revised Code pertaining to the procurement of professional service providers. The Construction Engineering and Inspection Consultant will perform such inspections as are determined to be necessary by ODOT from time to time during construction of the Project. The costs attributable to the Construction Engineering and Inspection Consultant Agreement will be allocated between the Parties based upon the State in which the underlying services are performed with the costs of any inspection services pertaining to the Companion Bridge structure or the Existing Brent Spence Bridge structure being shared equally between the Parties.

9.4 Design Standards and Construction Specifications.

- 9.4.1 The Project shall be designed and constructed to meet current applicable State Standards. In the process of structuring and executing the procurement, ODOT, with KYTC's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, shall have the discretion to implement design changes to the extent consistent within the previous FHWA approvals for the Project and the Project Management Plan. ODOT, in consultation with KYTC and in accordance with applicable standards developed under the Project Management Plan, shall be responsible for developing any construction

or engineering standards which are applicable to any portion of the Project but not otherwise addressed under the applicable State Standards.

9.5 Design/Change Order Review.

- 9.5.1 KYTC shall appoint two liaisons to the Design-Build Project Administration Committee, which liaisons shall participate in design and construction meetings involving the applicable Construction Team. All communication of the liaisons with respect to the design and/or construction of the Project shall be made in coordination with representatives of ODOT.
- 9.5.2 Prior to the commencement of work on the applicable portion of the Project (except for Brent Spence Bridge Corridor Phase I and Brent Spence Bridge Corridor Phase II to which this subsection shall not apply), design documents shall be promptly submitted to KYTC. KYTC shall review such design documents and provide comments to ODOT within a reasonable timeframe that will not adversely impact or cause delay work under the Design-Build Agreement. The Parties will establish a specific time frame for each response when design submittals are presented to KYTC for review and comment in order to meet the Project Development Schedule. Disputes regarding KYTC's comments to the design documents or ODOT's response to KYTC's comments shall be resolved pursuant to the dispute resolution process set forth in Section 14.6.
- 9.5.3 After KYTC approval of the design documents and commencement of work on the applicable portion of the Project, design changes shall be governed by the review processes set forth in the Project Management Plan and generally described under Section 9.4 above.

9.6 Changes in Scope of Work and Change Orders.

- 9.6.1 ODOT, subject to the review and approval of KYTC, which approval shall not be unreasonably withheld, conditioned, or delayed, may make changes in the scope of the work for the Project as detailed in the Project Management Plan.
- 9.6.2 ODOT, subject to the review and approval of KYTC, which approval shall not be unreasonably withheld, conditioned, or delayed, may make owner-directed changes in the scope of the work for the Project provided that such changes do not constitute a "Major Revision." Any owner-directed change proposed by ODOT that constitutes a "Major Revision" shall be subject to the review and recommendation procedures established under the PMP and approval by the applicable Project

Committee, if any, and KYTC, with such approval to be provided within the timelines established under the PMP.

9.6.3 Disputes regarding the comments or ODOT's response to the comments shall be resolved pursuant to the dispute resolution provision in Section 14.6.

9.6.4 The term "**Major Revision**" shall have the meanings assigned to it under the Project Management Plan.

9.7 **Construction Observation.** KYTC shall have continuous and unlimited access to observe construction being performed on the Project; provided however, Kentucky shall be responsible for its proportionate share of the costs of observation.

9.8 **Inspections and Inspection Reports.** Each Party shall provide the other Party an opportunity to observe and review inspections and to review inspection reports relating to the design and construction for the Project. The Parties shall meet and confer to develop a mutually acceptable procedure for attendance at inspections and sharing of inspection reports. Disputes regarding inspections and inspection reports shall be resolved pursuant to the dispute resolution process set forth in Section 14.6.

9.9 **Substantial Completion.** Whenever ODOT believes that any Phase has reached Substantial Completion, ODOT shall provide KYTC no less than three (3) business days advance notice of, and an opportunity to attend, the inspection to confirm Substantial Completion of the applicable Phase and shall provide a written notice of Substantial Completion of such Phase together with a copy of any remaining contract items for the applicable Phase and punch-list items from the inspection, to KYTC. KYTC shall have fourteen (14) days following such inspection to provide comments pertaining to those portions of the Project located in Kentucky. It shall be within ODOT's reasonable discretion, consistent with customary practices on similar projects, to determine whether Substantial Completion for any Phase has been achieved. Disputes regarding whether Substantial Completion has been achieved for any Phase shall be resolved pursuant to the dispute resolution provisions in Section 14.6. Notwithstanding anything to the contrary contained herein, KYTC shall have the foregoing inspection rights and opportunities with respect to Substantial Completion over those portions of the Project located in Kentucky. For avoidance of doubt, ODOT shall be solely responsible for conducting all inspections to confirm Substantial Completion of Brent Spence Bridge Corridor Phase I and Brent Spence Bridge Corridor Phase II.

9.10 **Final Completion.** Whenever ODOT believes that any Phase has achieved Final Completion, ODOT shall provide KYTC no less than three (3) business days advance notice of, and an opportunity to attend, the final inspection to confirm Final Completion of the applicable Phase and shall provide a written notice of Final Completion of the applicable Phase together with a copy of any punch-list items from the inspection to KYTC. KYTC shall have fourteen (14) days following such inspection to provide comments pertaining to those portions of the Project located in Kentucky. It shall be within ODOT's reasonable discretion, consistent with customary practices on similar projects, to determine

whether Final Completion for any Phase has been achieved. Disputes regarding such Final Completion shall be resolved pursuant to the dispute resolution provisions in Section 14.6. Notwithstanding anything to the contrary contained herein, KYTC shall have the foregoing inspection rights and opportunities with respect to Final Completion over those portions of the Project located in Kentucky. For avoidance of doubt, ODOT shall be solely and exclusively responsible for conducting all inspections to confirm Final Completion for Brent Spence Bridge Corridor Phase I and Brent Spence Bridge Corridor Phase II.

- 9.11 Workforce Goals.** Because the Project is a single project to be built with Federal Funds, and as such, is subject to federal law, it is anticipated that ODOT, in cooperation with KYTC, will agree with FHWA on DBE goals appropriate for its procurement of the Project as applicable. ODOT will include provisions in its procurement advertisements and contract documents and/or Design-Build Agreement(s), as applicable, requiring the Design-Build Team(s) to meet the DBE/good faith effort goals applicable to its procurements and agreements as well as aggressively create and monitor opportunities for “race neutral” and other broader community participation. In addition to the foregoing DBE requirements and goals, the Parties will comply with such other workforce and hiring goals as may be applicable to the Project based on the underlying funding sources.
- 9.12 Federal Highway Administration Requirements.** The Parties shall comply and/or conform with all applicable rules, regulations, and any other requirements of whatever kind of FHWA, and any other governmental agency having jurisdiction relating to the design, construction, operation and maintenance of the Project.
- 9.13 Permitting.** KYTC shall provide all reasonable assistance to ODOT, its contractors, sub-contractors, agents, and consultants in obtaining the necessary permits required to perform construction work in Kentucky.
- 9.14 Insurance.** Except as provided herein, ODOT shall require the Construction Teams to procure and maintain, or cause to be procured and maintained, the insurance policies and coverages identified in the construction and materials specifications prepared in conjunction with the procurement of the Project.
- 9.15 As-Built Drawings.** Upon Substantial Completion of the applicable Phase, the applicable Construction Team shall deliver as-built drawings to ODOT and KYTC, including all approved submittals and shop drawings.
- 9.16 Ownership/License of Design and Construction Documents.** ODOT and KYTC shall have joint and undivided ownership rights in the design and construction documents for the Project.
- 9.17 Prevailing Wage Law.** Notwithstanding anything contained herein to the contrary, ODOT shall require the Construction Teams to comply with the state and/or federal prevailing and/or statutory common wage law(s) applicable to the Project, when performing or when contracting for the performance of its obligations on the Project. Without limiting the foregoing, to the extent that FHWA and the U.S. Department of Labor approve project-specific wage rates for the Project based upon the higher rate for each labor classification

of the two geographic areas (the “**Project-Specific Wage Rates**”), ODOT shall comply and shall require the Construction Teams to comply with such Project-Specific Wage Rates when performing or when contracting for the performance of obligations on the Project.

ARTICLE 10. OPERATIONS AND MAINTENANCE.

- 10.1 Traffic Plan During Construction.** From commencement of construction of the Project until Final Completion of the entire Project, ODOT and KYTC, shall be responsible for jointly developing a traffic management plan to safely and efficiently manage, direct, and/or divert through-traffic affected by construction of each Phase of the Project.
- 10.2 Brent Spence Bridge Corridor Phases O&M.** At such time as ODOT has certified to KYTC that Substantial Completion of the Brent Spence Bridge Corridor Phase III has occurred pursuant to the provisions hereof, Kentucky shall be responsible for maintaining the Kentucky Brent Spence Bridge Corridor and Ohio shall be responsible for maintaining the Ohio Brent Spence Bridge Corridor.
- 10.3 Companion Bridge Phase O&M.** At such time as ODOT has certified to KYTC that Substantial Completion of the Companion Bridge Phase has occurred pursuant to the provisions hereof, Kentucky shall be responsible for performing the Bridge O&M for the Companion Bridge. The costs of Bridge Inspection, Routine Maintenance with respect to the Companion Bridge, and Major Maintenance and Rehabilitation with respect to the Companion Bridge Phase will be shared equally between Ohio and Kentucky. In the event KYTC advances funds to pay Ohio’s share of the costs for Bridge Inspection, Maintenance, and Major Maintenance and Rehabilitation of the Companion Bridge, and thereafter Ohio fails to reimburse KYTC for such payment within thirty (30) days of the date on which such payment is due to KYTC (an “**ODOT Delayed Payment**” and, together with any KYTC Delayed Payment(s), “**Delayed Payments**”), then interest shall accrue on the amount of such ODOT Delayed Payment at a per annum rate of interest equal to the Cost of Funds Rate (computed by applying the ratio of the Cost of Funds Rate over a year of 360 days, multiplied by the amount of the ODOT Delayed Payment, multiplied by the actual number of days the ODOT Delayed Payment is unpaid) until such time that Ohio makes the reimbursement payment to KYTC. Each year, KYTC and ODOT will reconcile the interest due on all ODOT Delayed Payments under this Section with the interest due on all KYTC Delayed Payments in accordance with Section 10.6 hereof.
- 10.4 Existing Brent Spence Bridge O&M.** At such time as ODOT has certified to KYTC that Substantial Completion of the Existing Brent Spence Bridge Rehabilitation has occurred pursuant to the provisions hereof, Kentucky shall be responsible for performing the Bridge O&M of the Existing Brent Spence Bridge. The costs of Bridge Inspection and Routine Maintenance with respect to the Existing Brent Spence Bridge will be the sole responsibility of Kentucky. Costs attributable to Major Maintenance and Rehabilitation with respect to the Existing Brent Spence Bridge will be shared equally between Ohio and Kentucky. In the event KYTC advances funds to pay Ohio’s share of the costs for Major Maintenance and Rehabilitation, and thereafter Ohio fails to reimburse KYTC for such payment within thirty (30) days of the date on which such ODOT Delayed Payment is due to KYTC, then the interest due on such ODOT Delayed Payment shall be determined in

accordance with Section 10.3 above. Each year, KYTC will reconcile the interest due on all ODOT Delayed Payments under this Section in accordance with Section 10.6 hereof.

- 10.5 Companion Bridge and Existing Brent Spence Bridge Replacement.** At such time as ODOT and KYTC mutually agree that either the Existing Brent Spence Bridge or the Companion Bridge requires replacement, separate agreements for that work will be executed by the Parties.
- 10.6 Annual Reconciliation of Interest Due on Delayed Payments.** On December 15th of each calendar year, KYTC, with reference to Sections 10.3 and 10.4 above, will deliver to ODOT a statement setting forth the aggregate amount of interest, if any, due on all ODOT Delayed Payments during the corresponding calendar year, and ODOT, with reference to Section 7.2.3 above, will deliver to KYTC a statement setting forth the aggregate amount of interest, if any, due on all KYTC Delayed Payments during the corresponding calendar year. Thereafter, within thirty (30) days from the date on which such statements are delivered, the Parties will reconcile the amounts due from each Party to the other, and if it is determined that the amount due from one Party exceeds the amount due from the other Party, then the Party responsible for the excess amount shall remit such excess amount to the other Party by no later than thirty (30) days after the date on which such reconciliation is finalized. Any dispute pertaining to the foregoing reconciliation process shall be resolved in accordance with Section 14.6 hereof.

ARTICLE 11. REPRESENTATIONS AND WARRANTIES.

- 11.1 KYTC Representations and Warranties.** KYTC makes the following representations and warranties to ODOT:
- 11.1.1 KYTC is a cabinet of Kentucky exercising essential public functions and is duly organized and existing under KRS 12.250 and KRS Chapter 174.
 - 11.1.2 The Secretary of KYTC has approved the execution and delivery of this Agreement by KYTC and is duly authorized to execute and deliver this Agreement on behalf of KYTC.
 - 11.1.3 KYTC and the Commonwealth of Kentucky are authorized to perform their obligations hereunder and such obligations constitute legal, valid, and binding obligations of KYTC and the Commonwealth.
 - 11.1.4 As of the Effective Date, KYTC is not aware of any environmental, archeological, or hazardous materials on or near the Project that require remediation other than those that are identified in the NEPA Documents.
 - 11.1.5 KYTC is not aware of any pending litigation relating to the Project other than the matter(s) identified on **Appendix C**.
- 11.2 ODOT Representations and Warranties.** ODOT makes the following representations and warranties to the KYTC:

- 11.2.1 ODOT is a department of the State of Ohio exercising essential public functions and is duly organized and existing under ORC Chapter 5501.
- 11.2.2 The Ohio Governor, Ohio Attorney General, and Director of ODOT have approved the execution and delivery of this Agreement by ODOT and are duly authorized to execute and deliver this Agreement on behalf of ODOT.
- 11.2.3 ODOT and the State of Ohio are authorized to perform their obligations hereunder and such obligations constitute legal, valid, and binding obligations of ODOT and the State Ohio.
- 11.2.4 As of the Effective Date, ODOT is not aware of any environmental, archeological, or hazardous materials on or near the Project that require remediation other than those that are identified in the NEPA Documents.
- 11.2.5 ODOT is not aware of any pending litigation relating to the Project other than the matter(s) identified on **Appendix C**.

ARTICLE 12. TERMINATION/ALTERNATIVE PROCUREMENTS.

- 12.1 **Material Delay.** In the event that the planned work for the Project has been cancelled or materially delayed, the Parties shall use their respective best efforts and work together in good faith to identify and implement appropriate measures to ensure that construction of the entire Project will be completed as contemplated in the NEPA Documents, this Agreement, and the Project Management Plan.
- 12.2 **Extraordinary Conditions.** In the event that unexpected state, federal, local or other conditions of extraordinary significance occur that are beyond the control of either of the Parties, causing the Parties or either of them to believe that (a) the Project in general cannot or will not proceed to completion as contemplated herein and that (b) termination, modification, suspension, interruption or amendment of this Agreement, and/or the Construction Agreements is necessary, then the Parties shall proceed as follows:
 - 12.2.1 The Party seeking to invoke the provisions of this Article shall provide written notice to the other Party of the condition requiring action by the Party.
 - 12.2.2 Within thirty (30) days after receipt of such written notice, the Parties shall meet in person, and shall use their best efforts and work together in good faith to address fairly and equitably, for both Parties, the changed conditions and to the extent reasonably practicable, to identify the measures by which construction of the entire Project may be completed as contemplated in the NEPA Documents and the Project Management Plan.
 - 12.2.3 In the event the Parties cannot identify measures by which construction of the entire Project may be completed with the aforementioned thirty

(30) day period, the Parties will proceed in accordance with the dispute resolution procedures set forth under Section 14.6 below.

ARTICLE 13. RESTORATION AND FORCE MAJEURE.

- 13.1 Destruction Prior to Substantial Completion.** If all or any part of the Project (excluding any part of Brent Spence Bridge Corridor Phase I or Brent Spence Bridge Corridor Phase II) shall be destroyed or damaged prior to Substantial Completion by casualty or other cause of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or extraordinary, foreseen or unforeseen, ODOT shall, subject to any procedures set forth in the applicable Construction Agreement, at the shared cost and expense of ODOT and KYTC, whether or not insurance proceeds, if any, shall be equal to the estimated cost of repairs, alterations, restoration, replacement and rebuilding the applicable portion of the Project, proceed diligently to repair, restore, or rebuild the same to the applicable Project requirements. ODOT shall be entitled to pursue cost recovery against applicable third parties having responsibility for such damages or insurance; and KYTC shall reasonably assist with such cost recovery efforts. In the event of casualty to all or a portion of Brent Spence Bridge Corridor Phase I or Brent Spence Bridge Corridor Phase II prior to Substantial Completion of Brent Spence Bridge Corridor Phase I or Brent Spence Bridge Corridor Phase II, ODOT shall be solely and exclusively responsible for the cost of repairs, alterations, restoration, replacement and rebuilding of Brent Spence Bridge Corridor Phase I or Brent Spence Bridge Corridor Phase II, and, subject to any procedures set forth in the applicable Construction Agreement, to pursue cost recovery against applicable third parties or insurance having responsibility for such damages to Brent Spence Bridge Corridor Phase I or Brent Spence Bridge Corridor Phase II.
- 13.2 Destruction Subsequent to Substantial Completion.** If all or any part of the Project (excluding any portion of Brent Spence Bridge Corridor Phase I or Brent Spence Bridge Corridor Phase II) shall be destroyed or damaged subsequent to Substantial Completion by casualty or other cause of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary, or extraordinary, foreseen or unforeseen, KYTC and ODOT, subject to any procedures set forth in the applicable Construction Agreement, shall allocate their respective costs and expenses based upon the allocation of O&M Costs under Section 10.3 and 10.4 whether or not insurance proceeds, if any, shall be equal to the estimated cost of repairs, alterations, restoration, replacement and rebuilding of the applicable portion of the Project, proceed diligently to repair, restore, or rebuild the same to the original project requirements for the applicable portion of the Project. ODOT and KYTC with the reasonable cooperation of the other shall be entitled to pursue cost recovery against applicable third parties having responsibility for such damages or insurance. In the event of damage or destruction affecting all or a portion of Brent Spence Bridge Corridor Phase I or Brent Spence Bridge Corridor Phase II subsequent to Substantial Completion of Brent Spence Bridge Corridor Phase I or Brent Spence Bridge Corridor Phase II, ODOT shall be solely and exclusively responsible for the cost of repairs, alterations, restoration, replacement and rebuilding of Brent Spence Bridge Corridor Phase I or Brent Spence Bridge Corridor Phase II, and, subject to any procedures set forth in the applicable Construction Agreement, to pursue cost recovery against applicable insurance or third

parties having responsibility for such damages to Brent Spence Bridge Corridor Phase I or Brent Spence Bridge Corridor Phase II.

- 13.3 Force Majeure.** Neither of ODOT or KYTC shall be excused from any obligation under this Agreement as a result of events such as those referenced in Section 13.1, Section 13.2, or as a result of a Force Majeure Event, nor shall such casualty or Force Majeure Event be considered grounds for terminating this Agreement. Notwithstanding the foregoing, the Party suffering the casualty and/or Force Majeure Event shall nonetheless have its obligations to deliver a completed crossing or fulfill its obligation to maintain an open, usable crossing, equitably suspended, but only for the period of time reasonably commercially necessary to undertake and complete the repairs or restoration.

ARTICLE 14. GENERAL MATTERS.

- 14.1 Access to Records.** Each Party shall require its contractors or consultants (including the Design-Build Team) to: (a) maintain all documents relating to the Project, including but not limited to design and construction documents, operations and maintenance documents, investigations, expert analyses, notices, claims, settlements, and correspondence, (including all such documents that are in electronic media), and (b) permit access thereto at such contractors'/consultants' facilities as requested by the applicable contracting Party. Each Party shall cooperate with the other Parties' reasonable requests for copies of, or inspection of such documents or material.
- 14.2 Federal Project Number.** ODOT and KYTC agree that each shall provide to the other the federal project number under which the Party's Federal Funds and Federal Grant Funding for the Project have been obligated.
- 14.3 Approval of Public Statements or Press Releases.** Prior to any press release regarding the Project or the making or releasing of any other major announcements concerning the Project, the Parties shall consult the PMP for the applicable procedure.
- 14.4 Confidentiality.** The Parties, and the Project consultants and Project contractors (including the Construction Teams) shall not disclose to third parties confidential factual data or information provided by the Parties except as may be required by statute, ordinance, or order of the court, or as authorized by the Party who provided the data or information. The Parties and the Project consultants and Project contractors shall provide notice to the other Parties of any request for such information as provided in this Agreement.
- 14.5 Dispute Resolution.** The Parties shall use best efforts to resolve any disputes between them. To this end, the Parties shall consult and negotiate with each other in good faith, recognizing their mutual interest in achieving a just and equitable solution satisfactory to both Parties. It is expressly acknowledged and agreed that the overriding consideration and goal is that the Project be accomplished on time in accordance with the Project Development Schedule and on budget in accordance with the Project Budget. In the event there is a dispute between the Parties, the applicable work may continue pending resolution of the dispute. The complaining Party shall immediately call a dispute resolution meeting with the Executive Oversight Committee. For disputes involving the proper application or

interpretation of the Environmental Requirements, or other federal issues, FHWA shall be consulted as part of a resolution.

14.6 Resolution of Claims and Disputes. All claims, disputes and other issues in question between ODOT and KYTC shall, as a condition precedent to litigation, first be subject to alternative dispute resolution (“**ADR Procedures**”) as provided in Subsection 14.6.2 regardless of (I) whether such matters relate to execution and progress of the Project, or (II) the extent to which the Project has been completed. Following receipt of a claim regarding a Dispute, the Executive Oversight Committee may comment on, and suggest a resolution for the Dispute. To assist the Executive Oversight Committee in this role, ODOT and KYTC shall furnish information relating to the claim to the Executive Oversight Committee, as requested by the Executive Oversight Committee, if such Dispute is not resolved.

14.6.1 **ADR Procedures.** ODOT and KYTC agree to exercise good faith efforts to resolve Disputes amicably and in a timely matter in accordance with a cooperative approach to problem-solving and, if mutual agreement is not achieved, by using negotiations and mediation (collectively, “**Mediation**”) prior to either ODOT and KYTC submitting a Dispute to litigation subject to the limitations described herein. If a Dispute is resolved by the cooperative process described in Subsection 14.6.1, 14.6.2 or an ADR Procedure, the Executive Oversight Committee will prepare or obtain appropriate documentation.

14.6.2 **Initial ADR Procedures.** The parties agree to proceed with dispute resolution as provided herein:

14.6.2.1 **Definitions; Disputes Governed by this Article 14; Priorities.** A “Dispute” is a written demand that seeks relief in any form arising out of or relating to this Agreement, the Construction Agreements or the work, including, without limitation, all contract Disputes, statutory Disputes and equitable Disputes.

14.6.2.2 **Procedure for Submitting a Dispute for Resolution; Time Limits.** ODOT or KYTC (the “**Initiating Party**”) shall follow the procedure provided below in submitting a Dispute for resolution against the other party or parties (the “**Responding Party**”):

- a) The Initiating Party shall give written notice to the Responding Party of the basis for the Dispute within fifteen (15) Days after the Initiating Party first recognizes the condition giving rise to the Dispute, provided, however, that the Initiating Party shall use its best efforts to furnish the Responding Party and the other parties, as expeditiously as possible, with notice of any Dispute once such Dispute is recognized, and shall cooperate with the Responding Party in an effort to mitigate the alleged or potential damages,

delay or other adverse consequences arising out of the condition which is the cause of such a Dispute.

- b) The Responding Party shall within fifteen (15) days of receipt of the Dispute, provide documents, backup data and other information with respect to the Dispute.
- c) Within forty-five (45) Days after receipt of the notice of Dispute, the Executive Oversight Committee shall meet in a good faith effort to compromise and settle the Dispute.
- d) Failure or refusal of a party to follow the procedure for submitting a Dispute for resolution constitutes a waiver of the right to make a claim for the Dispute.

14.6.2.3 **Mediation.** Unless delay in initiating or prosecuting a claim in litigation would irrevocably prejudice ODOT or KYTC, any Dispute which is not resolved by direct discussions and negotiations as provided in Subsection 14.6.3 shall be submitted to Mediation such rules as the Parties may promptly agree to utilize. If ODOT or KYTC cannot agree on the selection of a mediator within ten (10) Days of the request for mediation, either party may immediately request the appointment of a mediator in accordance with the governing mediation rules. Mediation shall occur at any location to which the Parties and mediator agree or, in the absence of agreement, at the location of the Project. Each party shall be responsible for an equal share of the mediation expenses.

14.6.2.4 **Timely Resolution.** The Parties agree to conduct and conclude Mediation proceedings under this Section 14.6 within sixty (60) Days from the designation of the mediator. In the event that mediation proceedings do not resolve the claim within such period, either party may initiate other means of dispute resolution with respect to the claim. Notwithstanding any other provision herein, no Dispute shall be subject to any form of arbitration.

14.6.3 **No Prejudice to Rights or Remedies.** Provided the Parties have complied with the requirements for giving notice of the existence of a Dispute, no delay in disposing of such Dispute while the Parties pursue resolution as provided by this Article shall prejudice the rights of either party; however, nothing contained in this Article shall be deemed to relax any requirement contained elsewhere in the Agreement for the giving of notice between the Parties.

14.7 **Jurisdiction and Venue.** ODOT and KYTC agree that, subject to those claims, counterclaims, disputes and other matters in question between the Parties that are resolved pursuant to Articles 14.6.1 – 14.6.3, all other actions or proceedings arising in connection

with this Agreement shall be governed in accordance with the laws of the State of Ohio (without regard to any conflict of laws principles) tried and litigated only in state courts located in the United States District Court for the Southern District of Ohio, having subject matter jurisdiction over the matter in controversy. The Parties further agree that this choice of venue is to be considered mandatory, and not permissive in nature, thereby precluding the possibility of litigation in any venue or jurisdiction other than that specified in this Section 7. The Parties agree that any final judgment rendered in any such action or such proceeding as provided herein shall be conclusive as to the subject matter of such final judgment, subject only to any right of appeal provided by the laws of the State of Ohio, and that once any such right of appeal has been exhausted or waived, such final judgment may be enforced in other jurisdictions in any manner provided by law. Each of the Parties hereby irrevocably consents to the jurisdiction of such court (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in such court or that any such suit, action or proceeding that is brought in such court has been brought in an inconvenient form.

14.8 Third Party Claims. Subject to the Kentucky and Ohio Constitutions, and without waiving any claim of sovereign immunity, the Parties shall share equally, on a 50/50 basis, all losses or liabilities arising from tort claims for personal injury or property damage asserted by third parties with respect to the Project not covered by insurance, the Indemnitors or any other third party. Each of the Parties shall bear responsibility for its own attorneys' fees and costs incurred as a result of any third-party claims arising out of or relating to the Project, unless otherwise agreed by the Parties in writing.

14.9 Indemnification/Third Party Beneficiary Rights. ODOT shall cause the Indemnitors to name KYTC as an express beneficiary under an indemnity clause to be included in each such contract pertaining to the Project which protects the Parties against any and all third-party claims, losses, expenses and/or damages arising from the Indemnitors' performance on the Project. To the extent applicable, KYTC shall cause any KYTC contractors, consultants or agents that have agreed to indemnify KYTC under an indemnity clause or agreement to name ODOT as an express beneficiary under such indemnity clause or agreement. ODOT shall provide in the Design-Build Agreement(s) for the Project that KYTC shall be a third-party beneficiary under the Design-Build Agreement only as to any direct damages resulting from design or construction defects in the Project.

14.10 Liability Between the Parties.

14.10.1 Except to the extent set forth in this Agreement, neither Party shall be liable to the other for claims and/or actions (whether alleging negligence, breach of contract, strict liability, warranty, breach of professional services or otherwise) relating to the quality, suitability, operability or condition of any design, construction, operation or maintenance of any portion of the Project, and each Party expressly disclaims any and all express or implied representations or warranties with respect thereof, including any warranties of suitability or fitness for use. The limitation

of liability provided herein shall not apply to the following:

- 14.10.1.1 damages to the extent covered and paid for by insurance;
- 14.10.1.2 damages to the extent covered and paid for by an Indemnitor pursuant to an indemnity obligation described in Sections 14.8 and 14.9; and
- 14.10.1.3 damages to the extent paid for by a responsible party (other than a Party to this Agreement) pursuant to applicable federal and state environmental laws.

14.10.2 Notwithstanding Subsection 14.10.1, the Parties are entitled to seek injunctive relief for specific performance of any obligation set forth in this Agreement, provided such relief is timely sought so as to not result in prejudice to the other Party.

In the event the Project is not completed or is significantly delayed other than as a result of action or inaction on the part of ODOT, the Parties shall be equally responsible for any claims or costs that may be asserted by FHWA or the United States Department of Transportation for reimbursement under 23 CFR 630.112 or otherwise.

14.11 Appropriation.

- 14.11.1 **Ohio Appropriation.** This Agreement is 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.
- 14.11.2 **Kentucky Appropriation.** Pursuant to the Commonwealth of Kentucky Constitution, Kentucky cannot enter into any contract or agreement which would obligate Kentucky beyond the current fiscal biennium. Therefore, work to be performed under this Agreement is to be continued in succeeding fiscal years for the term of the contract or agreement, contingent upon necessary funds being appropriated by the legislature to satisfy the obligations under this Agreement. Notwithstanding anything to the contrary contained herein, KYTC acknowledges and agrees that as of the Effective Date, the Kentucky General Assembly has appropriated that portion of the Kentucky State Funds attributable to fiscal years 2022-2024 and such funds are irrevocably committed to the Project and are not subject to a Non-Appropriation Event (as defined below).
- 14.11.3 **Non-Appropriation Event.** In the event of non-appropriation of State Funds (a “**Non-Appropriation Event**”) by either the Ohio General Assembly or the Kentucky General Assembly, ODOT shall first take into account the amount, if any, of Federal Funds, Federal Grant Funding, and State Funds available to complete the Project and determine, in its

reasonable discretion within ninety (90) days of the Non-Appropriation Event (the “**Project Evaluation Period**”), whether the Project can proceed to Final Completion while remaining in compliance with the terms and conditions of such available State Funds, Federal Grant Funding, and Federal Funds. If prior to the expiration of the Project Evaluation Period ODOT determines, in its reasonable discretion, that the amounts of such available Federal Funds, Federal Grant Funding, and State Funds are sufficient to bring the Project to Final Completion in compliance with all funding requirements and Environmental Requirements, then ODOT may proceed in accordance with the terms of this Agreement to Final Completion; provided however, prior to Final Completion, the Party whose legislature failed to appropriate the required State Funds shall undertake commercially reasonable efforts to secure the amount of such non-appropriated State Funds from any other source available to such non-appropriating Party and upon receipt of the same make them available for disbursement in accordance with Section 7.2.3 hereof. If prior to the expiration of the Project Evaluation Period ODOT determines, in its reasonable discretion, that (i) the amounts of such available Federal Funds, Federal Grant Funding, and State Funds are insufficient to bring the Project to Final Completion, or (ii) the Project cannot proceed to Final Completion and remain in compliance with the applicable funding requirements or Environmental Requirements, then ODOT shall deliver notice of the same to KYTC, and this Agreement shall be canceled in whole without penalty to either of the Parties at the end of the then current fiscal year for such non-appropriating Party, with this Agreement becoming null and void at the end of said fiscal year. The Parties hereby covenant and agree to provide written notice to the other Party in the event of a Non-Appropriation Event by no later than thirty (30) days prior to the end of the fiscal year in which such Non-Appropriation Event for the next fiscal year occurs. Notwithstanding anything to the contrary contained herein, during the Project Evaluation Period, ODOT may continue to expend Kentucky State Funds then on deposit with ODOT to pay Project Costs that were incurred prior to the Non-Appropriation Event and shall further be permitted to budget for the expenditure of such Kentucky State Funds should ODOT determine that the Project can be brought to Final Completion.

14.12 Amendment and Assignment. This Agreement may be further amended, supplemented, or modified only by a written document executed by the Parties. Except as otherwise provided herein, neither this Agreement nor any of the rights, duties, or obligations described herein shall be assigned by either Party without the prior express written consent of the other Party.

14.13 Notice to Parties.

As to KYTC: Secretary Kentucky Transportation Cabinet
200 Mero Street, 6th Floor

Frankfort, KY 40622

With copies to: General Counsel
Kentucky Transportation Cabinet
200 Mero Street, 6th Floor
Frankfort, KY 40622

DBL Law
109 East Fourth Street
Covington, KY 41011
Attn: Patrick Hughes, Esq.

As to ODOT: Director
Ohio Department of Transportation
1980 West Broad Street
Columbus, OH 43223

With copies to: Chief Legal Counsel
Ohio Department of Transportation
1980 W. Broad Street
Columbus, OH 43223

Frost Brown Todd, LLC
Great American Tower
301 East Fourth Street, Suite 3300
Cincinnati, OH 45202
Attn: Thomas L. Gabelman, Esq.

14.14 Reporting Requirements. The Design-Build Agreement(s) shall require the applicable contractors and consultants to comply with reporting requirements applicable to their portion of the Project that may be imposed from time to time by FHWA, the Office of Management and Budget, and any other federal agency with oversight authority over the Project or its financing.

14.15 State Sovereignty. To the fullest extent permitted by law, ODOT and KYTC have entered into this Agreement as representatives of their respective sovereign states. Nothing herein shall be construed as consent by any Party to suit in the courts of the other state, or waiver of tort claim protections, or waiver of sovereign immunity or rights under the Eleventh Article of Amendment to the Constitution of the United States. This Agreement does not grant any rights to any party except the Parties herein. Nothing in this Agreement shall be deemed to create or give rise to any right of action in, or any liability to, any third party claiming to have suffered a loss, damage or injury by virtue of any alleged failure by any Party hereto to comply with the terms of this Agreement. ODOT shall be entitled to assert sovereign immunity and/or all other applicable protections in Kentucky courts to the same extent KYTC is able to assert sovereign immunity and all other such applicable protections in Kentucky courts, and KYTC shall be entitled to assert sovereign immunity and all other

applicable protections in Ohio courts to the same extent Ohio is able to assert sovereign immunity and/or all other such applicable protections in Ohio courts. This provision shall survive termination of this Agreement.

14.16 Organizational Conflicts of Interest.

14.16.1 The Parties agree to establish a policy to avoid organizational conflicts of interest. Such policies shall require application of the standards of 23 CFR §§ 636.103 and 636.116. The Parties shall independently have the discretion to waive nonmaterial conflicts of any person or entity previously under contract with ODOT or KYTC to prepare preliminary plans, planning reports or other project development products with respect to their respective procurements to allow such person or entity to participate on a proposer team.

14.16.2 Upon approval of the other Party, additional exceptions to this policy may be granted by either of the Parties upon written request from such person or entity, if it is determined that the involvement of such person or entity is in the best interest of the public and does not constitute an unfair advantage to such person or entity.

14.17 Noncollusion. Each of the undersigned attests that he/she is the properly authorized representative, agent, member or officer of the Party indicated, that he/she has not, nor has any other member, employee, representative, agent or officer of that Party directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

14.18 Severability. If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions hereof shall not be affected thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue. This provision shall not be interpreted to materially alter the relationships of the Parties as set forth in this Agreement or materially affect the ability of the Parties to achieve the purpose of this Agreement.

14.19 No Third-Party Beneficiaries. This Agreement is solely for the benefit of the Parties hereto, and to the extent provided herein, their respective directors, officers, employees, agents and representatives; and no provision in this Agreement shall be deemed to confer upon other persons any remedy, claim, reimbursement, cause of action or other right.

14.20 Limitation on Recourse. No recourse shall be had for the payment or performance of any obligation or covenant in this Agreement, or for any claim against a Party to this Agreement, personally against any past, present or future director, member, officer, employee, agent or official of any of the Parties under any rule of law or equity, statute, or

constitution or by the enforcement of any assessment or penalty or otherwise, and all such personal liability is hereby expressly waived.

- 14.21 Entire Understanding.** This Agreement sets forth the entire understanding and agreement of the Parties hereto with respect to the transactions contemplated hereby and supersedes any and all prior agreements, arrangements, and understandings among the Parties relating to the subject matter hereof, including without limitation the Prior Agreement as amended or supplemented through the date hereof.
- 14.22 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. An electronically transmitted duplicate signature of any Party shall be considered to have the same binding effect as an original signature.
- 14.23 Non-Waiver of Rights.** The failure of a Party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a Party of any condition or any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in other instances.
- 14.24 Cooperation between the Parties.** Approvals and consents required by any Party shall not be unreasonably withheld, conditioned or delayed.
- 14.25 Time is of the Essence.** The times for performance provided for in this Agreement are essential due to the obligations and expenditures of the Parties. If a time is not specified, performance shall be required promptly and with due regard to the conditions of performance of other Parties in reliance thereon.
- 14.26 Continued Access to Consultants and Advisors.** The Parties will cooperate and put such arrangements or contracts in place to ensure their continued mutual access to consultants that are deemed to be shared resources of the Project. The costs of any such consultation shall be borne by the Party requesting the particular access. Nothing herein shall be construed to require a Party to provide access to its own consultants and advisors.
- 14.27 Term.** This Agreement shall remain in full force and effect until terminated per the terms of this Agreement, or by written agreement of the Parties.

[signature page to follow]

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

COMMONWEALTH OF KENTUCKY


Governor Mike DeWine



Governor Andrew Beshear




OHIO
DEPARTMENT OF TRANSPORTATION

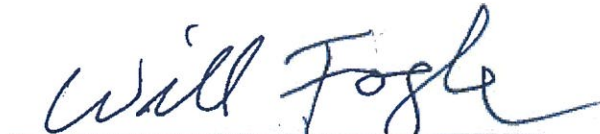
KENTUCKY
TRANSPORTATION CABINET


Director Jack Marchbanks


Secretary Jim Gray

Approved as to Form and Legality:


Attorney General (Ohio)
David Yost

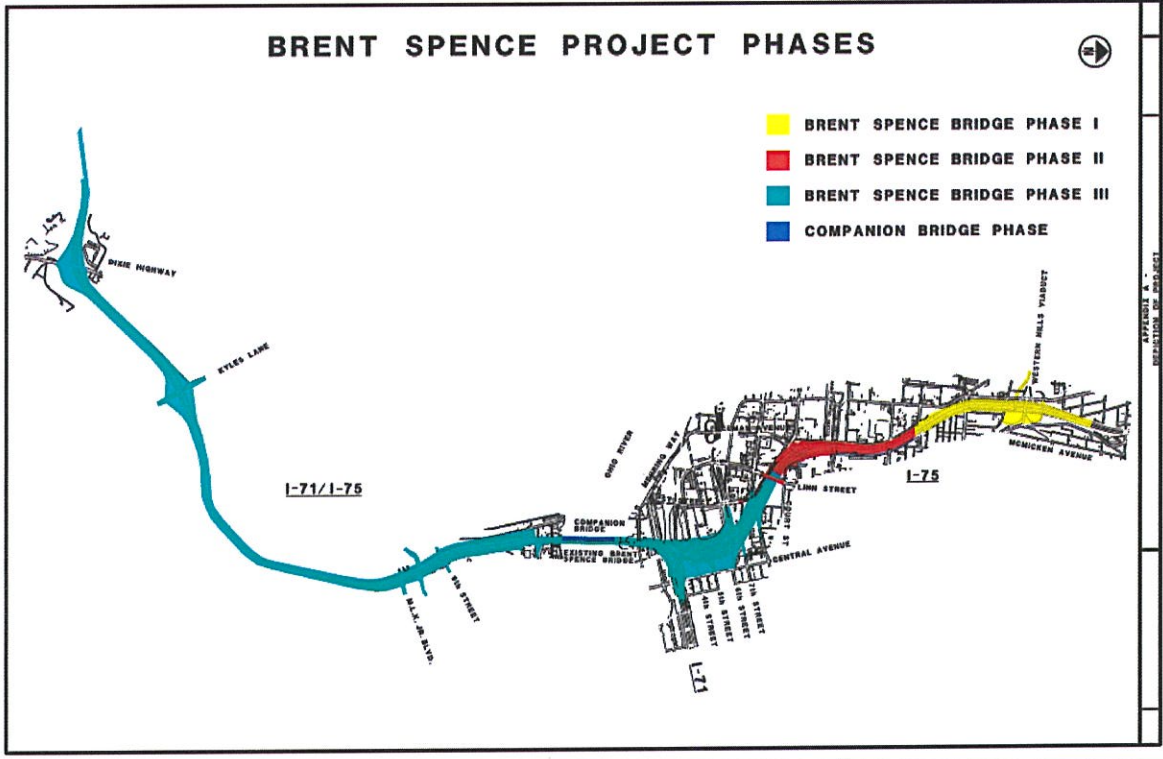

Office of Legal Services (Kentucky)

APPENDICES

Appendix A: Depiction of Project

Appendix B: Project Development Schedule

Appendix C: Pending Litigation



DEPICTION OF PROJECT

APPENDIX A

APPENDIX B

PROJECT DEVELOPMENT SCHEDULE

Task	Anticipated / Actual Completion Date
Authorize Design Build Procurement Support Contract	August 2022
Cost Schedule and Risk Assessment Workshop	October 2022
Execute Interstate Cooperative Agreement	January 2023
Progressive Design Build RFP Release Date	February 2023
Progressive Design Build Proposals Due	March 2023
Design Build Team Interviews	April 2023
Design Build Team Selection Announcement	May 2023
Final Supplemental Environmental Assessment	May 2023
Progressive Design Build Contract Award	May 2023
Initial Financial Plan Submitted	June 2023
Project Management Plan Submitted	June 2023
Progressive Design Build Contract Phase 1A Notice to Proceed	July 2023
Authorize Independent Cost Estimator Contract	July 2023
Authorize Quality Assurance Manager (Owner's Representative.)	October 2023
Updated FONSI Issued by FHWA	October 2023
Authorize Construction Engineering and Inspection Contract	January 2024
Progressive Design Build Contract Phase 1B Notice to Proceed	April 2024
Ohio and Kentucky R/W Activities	December 2024
Progressive Design Build Contract Phase 2 Notice to Proceed	November 2024
Anticipated Progressive Design Build Contract End Construction	November 2030
Project Acceptance and Closeout	June 2030

Revision Date: 1/18/23

APPENDIX C

PENDING LITIGATION

N/A