

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and among the National Trust for Historic Preservation in the United States (“National Trust”), River Fields, Inc. (“River Fields”), the Kentucky Transportation Cabinet (“KYTC”), and the Indiana Department of Transportation (“INDOT”) (collectively, “Parties”). For purposes of this Agreement, “Plaintiffs” refers only to the National Trust and River Fields, and “Defendants” refers only to KYTC and INDOT.

WHEREAS, the National Trust and River Fields filed a Complaint in the United States District Court for the District of Columbia on September 4, 2009, asserting claims pursuant to the National Environmental Policy Act, 42 U.S.C. § 4321 et seq. (“NEPA”) and Section 4(f) of the Department of Transportation Act, 49 U.S.C. § 303(c), 23 U.S.C. § 138, and challenging a Record of Decision (“ROD”) issued by the Federal Highway Administration (“FHWA”) on September 6, 2003 for the Louisville-Southern Indiana Ohio River Bridges Project (Dkt. # 1);

WHEREAS, the case was transferred to the United States District Court for the Western District of Kentucky on January 5, 2010 (Dkt. # 11), and assigned Case Number 3:10-cv-00007-JGH;

WHEREAS, the Court issued an order on April 30, 2010, staying all litigation deadlines, pending settlement negotiations (Dkt. # 27);

WHEREAS, FHWA issued a Notice of Intent to prepare a supplemental environmental impact statement (“SEIS”) for the project on February 15, 2011;

WHEREAS, the Court granted permission for KYTC and INDOT to intervene as defendants in this case on September 12, 2011 (Dkt. # 71);

WHEREAS, FHWA issued a Supplemental Draft Environmental Impact Statement (“SDEIS”) for the Project in November 2011, and issued a Supplemental Final Environmental Impact (“SFEIS”) for the Project in April 2012;

WHEREAS, the FHWA issued a revised Record of Decision (“RROD”) approving the Project on June 20, 2012;

WHEREAS, the National Trust and River Fields filed an amended complaint challenging the RROD on September 5, 2012 (Dkt. # 127);

WHEREAS, the Court issued an order on December 6, 2012, establishing the deadlines for the filing of cross-motions for summary judgment (Dkt. # 173), and amended that order without changing the deadlines on December 11, 2012 (Dkt. # 175);

WHEREAS, on October 15, 2012, Kentucky and Indiana announced that they had entered into a Bi-State Development Agreement, which creates the framework under which Kentucky will have responsibility for implementing the Downtown Crossing, while Indiana will have responsibility for implementing the East End Crossing, and which requires essentially simultaneous construction of both Crossings;

WHEREAS, on November 15, 2012, KYTC announced that it had preliminarily selected a contractor to construct the Downtown Crossing by the end of December 2016, at a cost of \$860 million, approximately 19 months ahead of schedule;

WHEREAS, on November 16, 2012, INDOT announced that IFA had preliminarily selected a contractor to construct the East End Crossing by the end of October 2016, at a cost of \$763 million, approximately eight months ahead of schedule;

WHEREAS, on December 7, 2012, KYTC awarded the contract for the design and construction of the Downtown Crossing;

WHEREAS, on December 28, 2012, INDOT entered into an agreement with a contractor for design and construction of the East End Crossing;

WHEREAS, the Parties have entered this Agreement without any admission of fact or law;

WHEREAS, the Parties consider this Agreement to be an acceptable resolution of the claims that were or potentially could have been raised in the Litigation; and

WHEREAS, the Parties have determined that the resolution of the Litigation as called for in this Agreement is in the best interests of the Parties, the public, and judicial economy, and is not contrary to law;

NOW, THEREFORE, the Parties agree as follows:

I. Definitions

For purposes of this Agreement, the following definitions apply:

1. “Area of Potential Effects” or “APE” means the Area of Potential Effects for the Project, including the Original APE and the Extensions to the Original APE, as described in Attachment C to the First Amended MOA and Section 4.3.1 of the SFEIS.

2. “Bi-State Management Team” or “BSMT” means a committee formed by KYTC and INDOT for purposes of carrying out certain shared decision-making responsibilities with regard to the Project, as defined in Section 4.2 of the Project Management Plan.

3. “Contractor” means the private-sector entities retained by Indiana and Kentucky, respectively, to carry out the design and construction (and in Indiana’s case, the financing and operation) of the East End Crossing and Downtown Crossing, respectively.

4. “Court” means the United States District Court for the Western District of Kentucky.

5. “CTS” means Community Transportation Solutions, Inc., the General

Engineering Consultant for the Project.

6. “Defendants” means only KYTC and INDOT.
7. “Downtown Crossing” means the portion of the Project for which Kentucky has primary responsibility for financing and construction, generally consisting of construction of a new I-65 bridge, re-decking of the existing I-65 bridge, construction and reconstruction of approach roadways in Indiana and Kentucky, and reconstruction of the existing Kennedy Interchange in Louisville, Kentucky;
8. “East End Crossing” means the portion of the Project for which Indiana has primary responsibility for financing and construction, generally consisting of construction of a Ohio River bridge connecting Indiana to Kentucky east of downtown Louisville, and approach roadways connecting that bridge to existing SR 265 in Indiana and KY 841 in Kentucky;
9. “Effective Date” means the date on which all Parties have signed the Agreement.
10. “FHWA” means the Federal Highway Administration.
11. “Financial Assistance” means the provision of any monetary contribution, support, or aid, or the provision of any professional work product, technical or scientific reports or information, or any other tangible materials developed or obtained by or on behalf of the National Trust or River Fields in connection with the Litigation or the underlying environmental and historic preservation review processes for the Project.
12. “First Amended MOA” means the First Amended Memorandum of Agreement executed by FHWA, INDOT, KYTC, and the Indiana and Kentucky SHPOs for the Project, pursuant to Section 106 of the NHPA, as contained in Appendix D.9 of the SFEIS.
13. “Former Harrods Creek Post Office” means the former post office located at the intersection of Wolf Pen Branch Road and Upper River Road in Harrods Creek, Kentucky.

14. “Fund” means the Historic Preservation and Enhancement Fund established under this Agreement with contributions from KYTC and INDOT.

15. “Historic property” means any district, site, building, structure, or object that is listed in the National Register or has been determined eligible for the National Register by the SHPO of the State in which the property is located. This includes properties that have been identified as “contributing” to a historic district.

16. “Historic structure” means any building or other above-ground structure that is listed in the National Register or has been determined eligible for the National Register by the SHPO of the State in which the property is located. This includes structures that have been identified as “contributing” to a historic district.

17. “HPAT” means Historic Preservation Advisory Team as defined in the First Amended MOA, and includes both the Kentucky HPAT and the Indiana HPAT.

18. “IFA” means the Indiana Finance Authority.

19. “INDOT” means the Indiana Department of Transportation.

20. “Indiana SHPO” means the Division of Historic Preservation and Archeology of the Indiana Department of Natural Resources, in its capacity as the SHPO for Indiana.

21. “Jefferson Jacob School” means the Rosenwald School located at 6517 Jacob School Road, Louisville, Kentucky, and listed in the National Register on August 6, 2012.

22. “Kentucky SHPO” means the Kentucky Heritage Council, in its capacity as the SHPO for Kentucky.

23. “KPTIA” means the Kentucky Public Transportation Infrastructure Authority.

24. “KYTC” means the Kentucky Transportation Cabinet.

25. “Litigation” means *National Trust for Historic Preservation et al. v. Federal*

Highway Administration, et al., Case Number 3:10-cv-00007, in the United States District Court for the Western District of Kentucky.

26. “Louisville and Southern Indiana Bridges Authority” or “LASIBA” means the bi-state governmental agency organized by Kentucky and Indiana to develop a financial plan for the Project.

27. “Merriwether House” means the historic property located at 6421 River Road, Louisville, Kentucky.

28. “National Register” means the National Register of Historic Places maintained by the National Park Service in the U.S. Department of the Interior.

29. “National Trust” means the National Trust for Historic Preservation in the United States.

30. “NEPA” means the National Environmental Policy Act, 42 U.S.C. 4231, et seq.

31. “NHPA” means the National Historic Preservation Act, 16 U.S.C. 470, et seq.

32. “Plaintiffs” means only the National Trust and River Fields.

33. “Project” means the Louisville-Southern Indiana Ohio River Bridges Project, as approved in the RROD, consisting of the Downtown Crossing and the East End Crossing;

34. “Project email distribution list” means an email distribution list, maintained jointly by KYTC and INDOT, or by contractors on their behalf, pursuant to Section II.A of this Agreement.

35. “Project Management Plan” or “PMP” means the *Louisville-Southern Indiana Ohio River Bridges Project, Project Management Plan, 2012 Update* (dated July 30, 2012).

36. “Project Website” means the official website for the Project, www.kyinbridges.com, and any successor to that website;

37. “Public Meeting” means a meeting that is defined as public by the Kentucky and Indiana open-meeting statutes. KRS 61.800 to 61.850; IC 5-14-1.5.

38. “Rehabilitation” means rehabilitation of a Historic Property consistent with the *Secretary of the Interior’s Standards for Rehabilitation of Historic Properties*, 36 C.F.R. § 67.7, and *Guidelines for Rehabilitating Historic Buildings*, as interpreted by the SHPO for the state in which the Historic Property is located;

39. “RROD” means the Revised Record of Decision issued by FHWA for the Project on June 20, 2012;

40. “River Fields” means River Fields, Inc.

41. “SHPO” means State Historic Preservation Officer.

42. “SFEIS” means the Supplemental Final Environmental Impact (“SFEIS”) for the Project, issued by FHWA, KYTC, and INDOT in April 2012.

II. Obligations of INDOT and KYTC

A. Communications and Public Involvement

1. Advance Notice of Public Meetings.

INDOT and KYTC will establish and post on the Project Website advance notice procedures for public meetings related to the construction of the Project. These public notice procedures will require, as a general rule, at least seven (7) days’ advance notice for Public Meetings hosted by INDOT, KYTC, and/or their Contractors related to construction of the Project, including but not limited to Public Meetings hosted jointly by INDOT and KYTC through the Bi-State Management Team. Posting to the Project Website and sending notice through the Project email distribution list shall constitute notice for purposes of this provision. The advance notice procedures required by this section will not apply to KPTIA, IFA, LASIBA,

or any other entity besides KYTC, INDOT, and their Contractors. HPAT meetings will continue to be subject to a 15-day notice requirement as stated below in section II.C.

2. Project Website.

INDOT and KYTC will continue to maintain the Project Website (www.kyinbridges.com) with current information throughout the construction period as a “one-stop shop” for Project information related to the East End Crossing and the Downtown Crossing. The Website will include a “Meetings” page, which will include a list of all upcoming public meetings convened by INDOT, KYTC, and/or their Contractors for the Project, including times, locations and agendas.

3. Key Contacts.

INDOT and KYTC will list names, titles and contact information of key contacts for KYTC, KPTIA, INDOT, IFA, and their construction contractors on the Project Website, and will keep this information current during the construction period of the Project.

4. Project Email Distribution List.

INDOT and KYTC will establish and maintain a Project email distribution list, which will be used to provide public notice of upcoming Public Meetings and comment deadlines regarding the construction of the Project. The Project Website will include information for the public about how to be placed on the Project email distribution list. The Project email distribution list will incorporate names from existing email distribution lists developed by CTS and LASIBA, and also will include names of any additional individuals who request to be added to the Project email distribution list.

B. Historic Preservation and Enhancement Fund

INDOT and KYTC will provide a total of \$1.7 million in State funds (50% from each State) to a Historic Preservation and Enhancement Fund (“Fund”), in accordance with the terms and conditions set forth in this section.

1. Purpose.

The sole purpose of the Fund is to provide grants to Eligible Applicants to carry out Eligible Projects within the APE.

2. Eligible Projects (Initial List).

Except as provided below, Eligible Projects will include only the following activities, provided that the total amount of the grants shall not exceed the amount in the Fund:

- a. Relocation of some or all of the five historic homes within the Jeffersonville Historic District slated for demolition by the City of Jeffersonville in connection with the landscaping plans for the area surrounding the approach ramp to the Big Four Bridge (to be given priority consideration in the distribution of grants from the Fund);
- b. Acquisition of one or more lime kilns (including a portion of the associated quarries) identified in the Utica Lime Industry Multiple Property Listing, and/or permanent protection through preservation easements and/or public ownership;
- c. Acquisition of one or more igloo structures within the INAAP Igloo Storage Historic District, and/or permanent protection through a preservation easement and/or public ownership.

- d. Streetscape improvements in the Butchertown Historic District (in addition to the streetscape improvements for East Main Street required pursuant to Stipulation III.K.12 of the First Amended MOA);
- e. Rehabilitation of, and placement of a preservation easement on, the Jefferson Jacob School;
- f. Acquisition and rehabilitation of, and/or placement of a preservation easement on, the Merriwether House;
- g. Acquisition and rehabilitation of, and/or placement of a preservation easement on, the Former Harrods Creek Post Office; and
- h. Preservation, enhancement, and interpretation of the Garvin Brown Preserve to maintain and enhance public access to and enjoyment of its environmental and historic features, through a grant of \$200,000 to the Garvin Brown Preserve Endowment Fund created as of July 28, 1998 (to be given priority consideration in the distribution of grants from the Fund).

3. Eligible Projects (Additional Activities).

If funds remain uncommitted in the Fund two years from the date of the establishment of the Fund (as specified in Section II.B.8, below), Eligible Projects will include all of the items listed in Section II.B.2 of this Agreement, as well as any of the following types of activities within the APE for the Project:

- a. Rehabilitation of Historic Structures,
- b. Relocation of Historic Structures,
- c. Conservation/preservation easements for Historic Properties, including necessary contributions to stewardship endowments, if any,

- d. Streetscape improvements within a historic district, and
- e. Preparation of National Register nominations for Historic Properties, including the expansion of historic districts.

4. Eligible Applicants.

Eligible Applicants will include only the following entities (and therefore would not include KYTC and INDOT):

- a. Local governments and other local public authorities; and
- b. Section 501(c)(3) non-profit organizations.

5. Responsibilities of SHPOs.

The funds contributed by KYTC and INDOT under this Agreement will be administered jointly by the State Historic Preservation Officers (“SHPOs”) for Kentucky and Indiana. The authority and responsibilities of the SHPOs will include all matters reasonably necessary for managing the Fund, including without limitation:

- a. maintaining funds contributed by INDOT and KYTC pursuant to this Agreement, in an appropriate account or combination of accounts;
- b. establishing eligibility criteria for applicants and projects in accordance with this Agreement;
- c. establishing a grant application process, including a standard application form;
- d. establishing standard provisions for grant agreements, including grant conditions required by the terms of this Agreement;
- e. selecting projects for grant funding and announcing grant awards;
- f. entering into grant agreements and distributing funds;
- g. overseeing the use of grant funds under a grant agreement;

- h. receiving monies that are returned to the Fund for any reason; and
- i. winding down operations of the Fund and returning any remaining funds to INDOT and KYTC when the Fund is terminated.

The SHPOs shall provide an opportunity for involvement by the HPATs in developing procedures for implementing this section. At a minimum, the opportunity for involvement shall include a briefing for the HPATs on the SHPOs' proposed procedures and an opportunity for HPAT members to submit recommendations to the SHPOs before the SHPOs adopt final procedures for implementing this section.

By separate agreement, KYTC and INDOT may allow a portion of the monies from the Fund to be used for SHPO administrative expenses related to the Fund, subject to a cap of \$30,000 total.

6. Combining Grant Funds with Other Funds.

A grant from the Fund may be made for less than the full cost of an Eligible Project. If an applicant is proposing to combine a grant with other sources of funding, the grant application shall identify the other sources of funding that may be used. If other sources of funding are proposed by an applicant for an Eligible Project in addition to a grant from the Fund, the SHPO shall include appropriate conditions in the grant agreement to ensure that full funding from all sources is obtained before the applicant proceeds with the Eligible Project.

7. Grant Conditions.

Grant agreements must include the grant conditions as determined by the SHPOs, including at a minimum:

- a. Acquisition by the grant applicant of any necessary consents from the owners of, and any other legal interest holders in, the subject properties;

- b. Cancellation of a grant commitment and/or requiring return of grant monies from grant applicants (in whole or in part) if the grant applicant is unable to complete an Eligible Project as provided in the grant agreement, or under such other circumstances as the SHPOs may determine;
- c. Return of funds that were used to acquire a property, if the property is sold within 10 years after being purchased with grant funds;
- d. Use of grant monies solely for the purposes set forth in the grant agreement; and
- e. Compliance with any audit requirements and related record retention rules, policies, and procedures under applicable State laws.

8. Establishment of the Fund.

KYTC and INDOT will provide the monies to the SHPOs for establishment of the Fund no later than 120 days after the Effective Date of this Agreement.

The Fund is to be established and operated solely with the monies contributed by KYTC and INDOT under this Agreement.

9. Re-Use of Monies Returned to the Fund.

Any monies that are returned to the Fund on or before December 31, 2016 will be available to be committed by the SHPOs to a new Eligible Project, provided that such commitment occurs on or before July 31, 2017.

Any monies that are returned to the Fund after December 31, 2016 shall remain in the Fund until termination of the Fund, after which the total amount remaining in the Fund shall revert to INDOT and KYTC in equal proportions.

10. Deadline for Commitment and Disbursement of Funds.

Monies in the Fund may be committed to Eligible Projects no later than July 31, 2017.

Monies that have been committed to Eligible Projects must be disbursed from the Fund to a grant applicant no later than December 31, 2017.

11. Termination of the Fund.

The Fund shall terminate on December 31, 2017. Any funds remaining in the Fund after December 31, 2017 shall be returned to KYTC and INDOT in equal proportions as soon as reasonably possible and no later than 60 days after termination of the Fund. The Fund itself shall be terminated in an orderly manner following return of Funds to INDOT and KYTC.

If a grant recipient is required to return monies to the SHPOs after the Fund has been terminated, pursuant to terms of a grant agreement, the monies shall be returned by the SHPOs directly to KYTC and INDOT in equal proportions.

C. Historic Preservation Commitments

1. Clarification of "No Work Zone" Commitment.

INDOT and KYTC will transmit a letter to all Section 106 consulting parties within 60 days after the execution of this Agreement confirming that the "No Work Zone" requirements in Stipulation II.N. of the First Amended MOA apply to properties that are either listed in, or eligible for, the National Register of Historic Places, not only those listed in the National Register.

2. Historic Preservation Advisory Team (HPAT) Meetings.

INDOT and KYTC, in cooperation with the Indiana and Kentucky SHPOs, will:

- a. Ensure that HPAT meetings are held on a quarterly basis through completion of construction;

- b. Ensure that HPAT meeting agendas and any materials to be discussed at an HPAT meeting will be circulated to all HPAT members at least 15 days in advance of the meeting, except in exigent circumstances; and
- c. Ensure that HPAT meetings will include an opportunity for HPAT members to request additional time to review documents and/or additional time for discussion, and seek in good faith to accommodate such concerns to the extent practicable.

3. Additional INDOT Commitments.

In addition to other commitments in this Agreement, INDOT will:

- a. Ensure that all five of the contributing historic homes within the Jeffersonville Historic District that are being displaced by the Downtown Crossing will be relocated prior to construction, rather than being demolished (*i.e.*, beyond the requirements of Stipulation III.E.7 of the First Amended MOA); preference will be given to relocation sites within a historic district;
- b. Exercise good faith efforts to facilitate discussions between historic preservation groups and the City of Jeffersonville regarding the relocation of some or all of the five historic homes within the Jeffersonville Historic District planned for demolition by the City of Jeffersonville in connection with the landscaping plans for the area surrounding the approach ramp to the Big Four Bridge;
- c. Exercise good faith efforts to acquire, and permanently protect through the placement of a preservation easement, the lime kiln located within the right-

of-way of Upper River Road, owned by Clark County, Indiana (kiln # IE-HC-48004);

- d. Develop a roadside historical marker for the Utica lime kilns with input from the Indiana HPAT, and install the marker no later than December 31, 2016;
- e. Develop a roadside historical marker for the INAAP igloos with input from the Indiana HPAT, and install the marker no later than December 31, 2016; and
- f. Prepare National Register nomination documentation for the Colgate-Palmolive Historic District, as provided in Stipulation III.B of the First Amended MOA, no later than December 31, 2013.

The costs associated with these commitments would be borne by INDOT and would not be deducted from the funds contributed by INDOT to the Fund.

4. Additional KYTC Commitments.

In addition to other commitments in this Agreement, KYTC will:

- a. Develop an African-American Heritage Interpretive Plan for the following: Jefferson Jacob School, Jacob School Lane, and James Taylor Subdivision (based on the Dr. Orloff Miller report), no later than December 31, 2013;
- b. Prepare National Register Nomination documentation for the following properties in the LSIORB project area, and make such documentation available to any organization wishing to pursue such nomination, no later than December 31, 2014:
 - i. Jacob School Lane
 - ii. James Taylor Subdivision

- iii. Historic Village of Harrods Creek; and
- c. Submit a National Scenic Byway nomination for a segment of Upper River Road, to be determined by KYTC, including at a minimum the portion of Upper River Road that is currently designated as a State Scenic Byway, no later than December 31, 2014.

The costs associated with these commitments would be borne by KYTC and would not be deducted from the funds contributed by KYTC to the Fund.

D. Vibration and Blasting

Except as specifically set forth in the final paragraph of this Section II.D. below, the commitments in this section apply only to the East End Crossing project and are the sole responsibility of INDOT.

INDOT will provide HPAT members with a briefing regarding the development of the Blasting and Vibration Monitoring Plans for historic properties under the First Amended MOA;

INDOT will consider in good faith requests from HPAT members or the general public to prepare and implement Blasting and Vibration Monitoring Plans for additional historic properties, within or outside the APE, and will respond in writing to such requests if the requests are accompanied by technical documentation, signed by a licensed professional engineer, which concludes that there is the reasonable potential for harm to the historic property as a result of blasting activities involved in construction of the East End Crossing.

INDOT will provide HPAT members with an opportunity to comment on the draft Blasting and Vibration Monitoring Plans that are developed under the First Amended MOA or under this Agreement.

INDOT will hold an open house regarding construction impacts (including vibration and blasting impacts) associated with the East End Crossing, and will provide information at the

open house regarding the public's opportunity to submit technical documentation in support of a request for Blasting and Vibration Monitoring Plans. INDOT will provide a minimum of 15 days' advance notice of this open house and will include information about the open house on the Meetings page of the Project website.

KYTC will provide HPAT members with an opportunity to comment on the draft Blasting and Vibration Monitoring Plans that are developed under the First Amended MOA for the Downtown Crossing.

E. Stormwater Discharge

INDOT will provide current information on the Project website regarding coordination with the Louisville Water Company and Kentucky Division of Water with respect to the final design of stormwater management features of the East End Crossing, including timely notice of the filing of permit applications and public comment deadlines for any permits sought by INDOT or its contractor for the stormwater management features of the East End Crossing.

F. Contingency of INDOT and KYTC Commitments

KYTC's and INDOT's commitments in this Agreement are contingent upon the Court issuing a final order dismissing all of the National Trust's and River Fields' claims in the Litigation with prejudice.

III. Obligations of the National Trust and River Fields

A. Dismissal of Pending Litigation

The Parties will, within three working days following execution of this Agreement by all Parties, file a joint motion to dismiss the Plaintiffs' Amended Complaint with prejudice, pursuant to Fed. R. Civ. P. 41(a)(2).

B. Waiver of Other Claims

The National Trust and River Fields hereby waive the right to challenge any decisions,

permits, or other approvals that have been issued for the Project as of December 28, 2012, to the extent that such approvals are listed on Attachment A to this Agreement. The National Trust and River Fields do not waive the right to challenge decisions, permits, or approvals that may be issued in the future to KYTC, INDOT, or others.

C. Financial Assistance to Others

The National Trust and River Fields will not provide Financial Assistance to plaintiffs who are engaged in or commence litigation against the Project in any proceeding that challenges decisions that the Plaintiffs themselves have waived the right to challenge in this Agreement.

D. Parties Bound

The commitments in this Agreement are binding on the National Trust, River Fields, their affiliates, and their successors in interest.

IV. Remedies for Non-Compliance

If at any time a Plaintiff believes a Defendant is not in compliance with any provision of this Agreement, the Plaintiff shall notify both Defendants of the alleged breach in writing, in accordance with the Notice procedures in Section V.D of this Agreement.

The alleged breaching party shall then have thirty (30) days to cure the breach or otherwise respond to the claim. The Parties shall make a good faith effort to resolve any dispute arising from or regarding this Agreement before seeking judicial intervention.

If a Defendant fails to cure any alleged breach in a timely manner, the sole remedy shall be limited to the filing of a new action. Defendants do not waive or limit any defense relating to such litigation. Contempt of court is not an available remedy under this Agreement.

V. Additional Provisions

A. Announcement of Agreement

All Parties to this Agreement will issue a joint press release announcing the agreement,

on the same day that this Agreement is filed with the Court.

B. Confidentiality of Settlement Discussions

All Parties to this Agreement will preserve the confidentiality of the discussions that resulted in this Agreement, to the maximum extent allowed by law.

C. Authority to Enter into Agreement

Each undersigned representative of the Parties certifies that he or she is fully authorized by the party to enter into this Agreement and to bind such party to comply with the terms and conditions of this Agreement.

D. Choice of Law.

This Agreement shall be governed by Kentucky law.

E. Notice

Any notice to a Party required under this Agreement shall be provided to each Party via both email and United States postal service, registered mail, to the following individuals:

If to the National Trust:

Elizabeth S. Merritt, Deputy General Counsel
National Trust for Historic Preservation
1785 Massachusetts Ave., N.W.
Washington, DC 20036
(202) 588-6026
emerritt@savingplaces.org

If to River Fields:

Meme Sweets Runyon, Executive Director
River Fields, Inc.
455 South Fourth Street, Suite 990
Louisville, KY 40202
(502) 583-3060
memerunyon@riverfields.org

If to KYTC:

Rebecca W. Goodman, Esq.
Executive Director
Office of Legal Services
Kentucky Transportation Cabinet
200 Mero Street
Frankfort, KY 40601
(502) 564-7650
Rebecca.Goodman@ky.gov

With a copy to:

Timothy J. Hagerty
Frost Brown Todd LLC
400 W. Market Street, Suite 3200
Louisville, KY 40202
(502) 568-0268
thagerty@fbtlaw.com

If to INDOT:

Jennifer L. Jansen
Attorney
Indiana Department of Transportation
100 N. Senate Ave., Room N730
Indianapolis, IN 46204-2216
(317) 234-5402
jjansen@indot.in.gov

With a copy to:

William G. Malley
Perkins Coie LLP
700 13th St. NW
Washington, DC 20005
(202) 654-6250
wmalley@perkinscoie.com

If there is any change in the name of the individual responsible for receiving notice on behalf of a party, that party shall inform each of the other Parties to this Agreement by providing notice in the manner prescribed by this Agreement.

F. Counterpart Originals

Each party acknowledges that this Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original Agreement, and all of which shall constitute one Agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.

G. Federal Involvement

Nothing in this Agreement shall be construed to impose any obligation or limitation on, or to require the approval of, the Federal Highway Administration or any other agency or instrumentality of the United States of America.

H. Third-Party Beneficiary

Nothing in this Agreement shall be construed to make any person or entity not executing this Agreement a third-party beneficiary of this Agreement.

I. Force Majeure

The possibility exists that extraordinary and unforeseen circumstances outside the reasonable control of a Defendant could delay compliance with any commitments contained in this Agreement. Should such a delay occur, the Defendant shall immediately provide Notice to the other parties that the Defendant considers the delay to result from force majeure. A delay that results from a force majeure event shall not constitute a failure to comply with the applicable deadline(s) under this Agreement. Any deadlines affected by the force majeure event shall be extended one day for each day of the delay.

J. Litigation Expenses

The Parties will bear their own attorneys' fees, costs, and expenses for all aspects of the Litigation to date, including any attorneys' fees, costs, and/or expenses related to the negotiation of this Agreement, and no funds provided to any person pursuant to KYTC's and INDOT's

obligations under Section II.B. of this Agreement shall be used to compensate any Party for its attorneys' fees, costs, or expenses related to this Litigation or the underlying environmental review process for the Project.

K. Integration

This Agreement constitutes the final, complete, and exclusive agreement and understanding between the National Trust, River Fields, KYTC, and INDOT with respect to the matters addressed in this Agreement. There are no representations, agreements, or understandings relating to this settlement other than those expressly contained in this Agreement.

L. Amendments

The Parties may agree, in a written document signed by all of the Parties, to amend this Agreement.

M. Construction of the Agreement

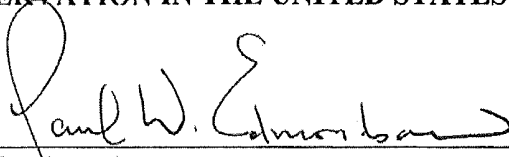
The Parties acknowledge that the preparation of this Agreement was collaborative in nature, and so agree that any presumption or rule that an agreement is construed against its drafter shall not apply to the interpretation of this Agreement or any term or provision hereof.

M. No Admission

This Agreement shall not constitute an admission of any facts, wrongdoing, misconduct, or liability on the part of any Party, their officers, or any person affiliated with them.

WHEREFORE, after having reviewed the terms and conditions of this Agreement, the National Trust, River Fields, KYTC, and INDOT hereby consent and agree to the terms and conditions of this Agreement.

**FOR THE NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES:**



Paul W. Edmondson
Chief Legal Officer

3 January 2013
Date

FOR RIVER FIELDS, INC.:

Kenneth W. Moore
Chairman of the Board

Date

Lee T. Cory
President of the Board

Date

FOR THE KENTUCKY TRANSPORTATION CABINET:

Michael Hancock
Secretary

Date

Approved for Form and Legality:

Rebecca W. Goodman
Executive Director
Office of Legal Services

Date

**FOR THE NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES:**

Paul W. Edmondson
Chief Legal Officer

Date

FOR RIVER FIELDS, INC.:

Kenneth W. Moore
Kenneth W. Moore
Chairman of the Board

January 4, 2013
Date

Lee T. Cory
Lee T. Cory
President of the Board

January 4, 2013
Date

FOR THE KENTUCKY TRANSPORTATION CABINET:

Michael Hancock
Secretary

Date

Approved for Form and Legality:

Rebecca W. Goodman
Executive Director
Office of Legal Services

Date

**FOR THE NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES:**

Paul W. Edmondson
Chief Legal Officer

Date

FOR RIVER FIELDS, INC.:

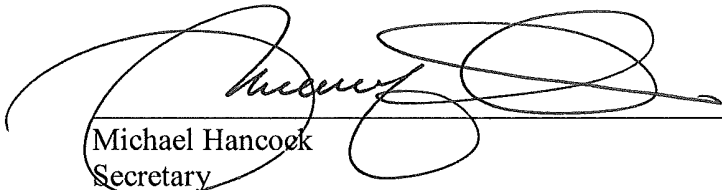
Kenneth W. Moore
Chairman of the Board

Date

Lee T. Cory
President of the Board

Date

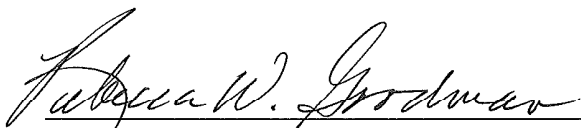
FOR THE KENTUCKY TRANSPORTATION CABINET:



Michael Hancock
Secretary

Date 1/2/13

Approved for Form and Legality:



Rebecca W. Goodman
Executive Director
Office of Legal Services

Date 01/02/13

FOR THE INDIANA DEPARTMENT OF TRANSPORTATION:

Indiana Department of
Transportation

Gregory F. Zoeller,
Attorney General of Indiana
Atty. No. 1958-98

By: Michael B. Cline
Michael B. Cline
Commissioner

By: Timothy J. Junk
Timothy J. Junk
Dep. Atty. Gen.
Atty. No. 5587-02

Office of the Attorney General
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204

Date: 1-2-13

ATTACHMENT A

Other Permits and Approvals (as of December 28, 2012)

Downtown Crossing:

- Section 2 (Downtown Bridge): Construction in a Floodway/Indiana Navigable Waterways Permit (IDNR/IDEM)
- Section 2 (Downtown Bridge): Section 401 Water Quality Certification (IDEM)
- Section 3 (Indiana I-65 Approaches Downtown): Section 401 Water Quality Certification (IDEM)
- Section 3 (Indiana I-65 Approaches Downtown): Section 404 Permit, Discharge of Fill into Waters of the United States (USACE)
- Section 2 (Downtown Bridge): 7460 Tall Crane/Bridge Permit (FAA) x 2

East End Crossing:

- Section 5 (East End Bridge): Construction in a Floodway/Indiana Navigable Waterways Permit (IDNR/IDEM)
- Section 5 (East End Bridge): Section 401 Water Quality Certification (IDEM)
- Section 6 (Indiana Approaches on the East End): Section 401 Water Quality Certification (IDEM)
- Section 6 (Indiana Approaches on the East End): Section 404 Permit, Discharge of Fill into Waters of the United States (USACE)
- Section 5 (East End Bridge): 7460 Tall Crane/Bridge Permit (FAA) x 2

Permits Key:

IDNR: Indiana Department of Natural Resources

IDEM: Indiana Department of Environmental Management

USACE: U.S. Army Corps of Engineers, Louisville District

FAA: Federal Aviation Administration

Additional FHWA Approvals:

- *Louisville-Southern Indiana Ohio River Bridges Project, 2012 Initial Financial Plan* (dated July 30, 2012)

· *Louisville-Southern Indiana Ohio River Bridges Project, Project Management Plan, 2012 Update* (dated July 30, 2012)

· *Section 129 Tolling Agreement by and between FHWA, KYTC, KPTIA, INDOT, and IFA* (dated July 30, 2012)