

RESOLUTION NO. 2014-0311-AD07

RESOLUTION AUTHORIZING THE ILLINOIS FINANCE
AUTHORITY TO ENTER INTO AN INTERGOVERNMENTAL
AGREEMENT WITH THE DEPARTMENT OF
TRANSPORTATION OF THE STATE OF ILLINOIS, AND
CONCERNING RELATED MATTERS

WHEREAS, the Illiana Expressway is a proposed east-west transportation corridor between Illinois and Indiana, which the Illinois General Assembly has found will promote development and investment in the State of Illinois and serve as a critical transportation route in the region, 605 ILCS 130/5(b); and

WHEREAS, the Illinois Finance Authority (the "*Authority*") was created by the Illinois Finance Authority Act, 20 ILCS 3501/801-1 *et seq.*, as amended (the "*IFA Act*"), as a body politic and corporate of the State of Illinois and is authorized by the laws of the State of Illinois, including without limitation the IFA Act, to, *inter alia*, (i) apply for financing available under any federal law or program for the purpose of financing the Illiana Expressway under the Public Private Agreements for the Illiana Expressway Act, 605 ILCS 130/1 *et seq.*, as amended (the "*Illiana Expressway Act*"), and (ii) assist units of local government in borrowing money to finance and refinance "public purpose projects" (as defined in the IFA Act), capital facilities and infrastructure and to finance other public purposes of such units of local government; and

WHEREAS, the Department of Transportation of the State of Illinois (the "*Department*") is an executive branch department of State government created by the Departments of State Government Law, 20 ILCS 5/5-1, 5-15, with the powers set forth in the Department of Transportation Law, 20 ILCS 2707/2705-1 *et seq.* (the "*Transportation Law*"); and

WHEREAS, Section 2705-220 of the Transportation Law provides that the Department may exercise all powers granted to it under the Illiana Expressway Act; and

WHEREAS, the Illiana Expressway Act provides that the Department may, *inter alia*, "take any action to obtain federal, State, or local assistance for the Illiana Expressway project that serves the public purpose" of the Act, and "may enter into any contracts required to receive the federal assistance," including "federal credit assistance pursuant to the Transportation Infrastructure Finance and Innovation Act ("*TIFIA*")," 605 ILCS 130/95(b); and

WHEREAS, the Authority has been informed that the Department needs to provide a preliminary rating opinion(s) from one or more rating agencies on the credit instrument; and

WHEREAS, pursuant to the authority set forth herein and in the intergovernmental agreement described below, the Department has requested that the Authority assist it by procuring one or more rating agencies to deliver such preliminary rating(s); and

WHEREAS, the Authority is willing to provide such assistance; and

WHEREAS, Article 7, Section 10(a) of the 1970 Constitution of Illinois and the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, as amended, authorize "public agencies" to contract with other "public agencies" to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform, and the Authority and the Department are "public agencies" as that term is defined and used in the Intergovernmental Cooperation Act; and

WHEREAS, there has been prepared a draft of an intergovernmental agreement to be entered into by the Authority and the Department pursuant to the authority described herein and therein (the "*Intergovernmental Agreement*"), pursuant to which the Authority will assist the Department in financing the Illiana Expressway project by selecting one or more rating agencies to provide preliminary rating opinion(s) on the credit instrument; and

WHEREAS, the Department has obtained or will obtain any approvals from the Department, the Governor, and federal agencies required in connection with the execution of the Intergovernmental Agreement, as provided in Section 115(b) of the Illiana Expressway Act:

NOW, THEREFORE, BE IT RESOLVED by the members of the Illinois Finance Authority, as follows:

Section 1. Recitals. The foregoing recitals are incorporated into and made a part of this resolution by this reference.

Section 2. Intergovernmental Agreement. An Intergovernmental Agreement containing terms and provisions consistent with the intent of this resolution is authorized, approved and confirmed, and the form, terms and provisions of the Intergovernmental Agreement are approved, and the officers of the Authority executing and attesting the same, shall constitute conclusive evidence of such approval.

Section 3. Execution of Intergovernmental Agreement. The Chairperson, the Vice Chairperson, the Executive Director, the Secretary and any Assistant Secretary of the Authority (or any person appointed to such office on an interim basis) are authorized and directed to execute, attest, seal and deliver this Resolution, the Intergovernmental Agreement, and any and all documents and do any and all things deemed necessary to carry out the intent and purposes of this Resolution.

Section 4. Professional Services. Pursuant to the terms and conditions of the Intergovernmental Agreement and in accordance with Section 1-10(b)(12) of the Procurement Code (30 ILCS 500/1-10(b)(12)) and the Authority's Procurement Policy, the Authority will select one or more rating agencies for the purpose of assisting with securing rating opinion(s).

Section 5. Certain Actions Ratified and Approved. All acts of the officials of the Authority which are in conformity with the purposes and intent of this Resolution and the Intergovernmental Agreement are, in all respects, ratified, approved and confirmed.

Section 6. Severability. The provisions of this Resolution are declared to be separable and if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions.

Section 7. Conflicting Resolutions Repealed. All resolutions and parts of resolutions in conflict with this Resolution are repealed to the extent of such conflict.

Section 8. Resolution Effective. This Resolution shall be in full force and effect immediately upon its passage, as by law provided.

Adopted this 11th day of March, 2014, by vote as follows:

Ayes: 10
Nays: 0
Abstain: 0
Absent: 5
Vacant: 0

ILLINOIS FINANCE AUTHORITY

By _____

Chairperson

ATTEST:

Assistant Secretary



[SEAL]

INTERGOVERNMENTAL AGREEMENT

BETWEEN

ILLINOIS FINANCE AUTHORITY

AND

ILLINOIS DEPARTMENT OF TRANSPORTATION

This Agreement is made and executed this 7th day of April, 2014, by and between the Illinois Finance Authority, a body politic and corporate of the State of Illinois (the "Authority"), and the Department of Transportation of the State of Illinois, a department of the State of Illinois (the "Department"):

WITNESSETH:

WHEREAS, the Department is a department of State government created by the Departments of State Government Law, 20 ILCS 5/5-1, 15, with the powers set forth in the Department of Transportation Law, 20 ILCS 2705/2705-1 *et seq.*, (the "Transportation Law"); and

WHEREAS, Section 2705-220 of the Transportation Law, 20 ILCS 2705/2705-220, provides that the Department may exercise all power granted to it under the Public Private Agreements for the Illiana Expressway Act, 605 ILCS 130/1 *et seq.*, (the "Act"), and

WHEREAS, the legislative findings of the Act state, *inter alia*, that "[t]he State of Illinois and the State of Indiana are engaged in collaborative planning efforts to build a new interstate highway connecting Interstate Highway 55 in northeastern Illinois to Interstate Highway 65 in northwestern Indiana to serve the public at large;" that "[t]he Illiana Expressway will promote development and investment in the State of Illinois and serve as a critical transportation route in the region;" that "[p]ublic private agreements between the State of Illinois and one or more private entities to develop, finance, construct, manage, or operate the Illiana Expressway have the potential of maximizing value and benefit to the People of the State of Illinois and the public at large;" and that "[p]ublic private agreements may enable the Illiana Expressway to be developed, financed, constructed, managed, or operated in an entrepreneurial and business-like manner," 605 ILCS 130/5 (a) (b) (c) and (d); and

WHEREAS, the Act provides that the Department may "apply for, execute, or endorse applications submitted by contractors and other third parties to obtain federal, State, or local credit assistance to develop, finance, maintain, or operate the Illiana Expressway project;" "take

any action to obtain federal, State, or local assistance for the Illiana Expressway project that serves the public purpose” of the Act; and “enter into any contracts required to receive the federal assistance,” including “federal credit assistance pursuant to the Transportation Infrastructure Finance and Innovation Act (“TIFIA”),” 605 ILCS 130/ 95(a) and (b); and

WHEREAS, the Act provides that for “the purpose of financing the Illiana Expressway project, the Department is authorized to apply for, execute, or endorse applications for an allocation of tax-exempt bond financing authorization provided by Section 142(m) of the United States Internal Revenue Code, as well as financing available under any other federal law or program,” 605 ILCS 130/95(g); and

WHEREAS, the Act provides that “[t]he Department may exercise any powers provided under this Act in participation or cooperation with any governmental entity and enter into any contracts to facilitate that participation or cooperation,” and states that the “Department shall cooperate with other governmental entities under this Act,” 605 ILCS 130/115(a); and

WHEREAS, the Act provides that “[t]he Department may make and enter into all contracts and agreements necessary or incidental to the performance of the Department’s duties and the execution of the Department’s powers” under the Act, 605 ILCS 130/115(b); and

WHEREAS, the Act provides that such contracts or agreements are not, except as otherwise required by law, subject to any approvals other than the approval of the Department, Governor, or federal agencies, 605 ILCS 130/115(b); and

WHEREAS, the Act provides that the “powers conferred by this Act shall be liberally construed in order to accomplish their purposes and shall be in addition and supplemental to the powers conferred by any other law,” 605 ILCS 130/125; and

WHEREAS, pursuant to the authority granted in the Act, the Department has submitted to the U.S. Department of Transportation (“USDOT”) a Letter of Interest for credit assistance through the TIFIA loan program for the “Illinois Project,” the portion of the Illiana Expressway project located in Illinois; and

WHEREAS, before the USDOT completes its creditworthiness review and renders a determination of eligibility, the TIFIA statute requires the project sponsor to provide a preliminary rating from one or more rating agencies on the TIFIA credit instrument and the senior obligations of the project; and

WHEREAS, the Department has requested the assistance of the Authority for the purpose of procuring bids from rating agencies for an indicative rating for the TIFIA loan; and

WHEREAS, the Authority is a body politic and corporate of the State of Illinois and is authorized by the Illinois Finance Authority Act, 20 ILCS 3501/801-1 *et seq.*, as amended (the "IFA Act"), to "apply for an allocation of tax-exempt bond financing authorization provided by Section 142(m) of the United States Internal Revenue Code, as well as financing available under any other federal law or program," for the purpose of "financing the Illiana Expressway under the Public Private Agreements for the Illiana Expressway Act," 20 ILCS 3501/825-105; and

WHEREAS, the Authority is also authorized under the IFA Act to assist units of local government in borrowing money to finance and refinance "public purpose projects" and "municipal bond program projects" (as such terms are defined in the IFA Act), capital facilities and infrastructure, and to finance other public purposes of such units of local government, 20 ILCS 3501/801-5, 820-5, 20; and

WHEREAS, the Authority is authorized to enter into all agreements or contracts necessary or convenient to accomplish the purposes of the IFA Act, 20 ILCS 3501/801-30(a); 820-20(o); and

WHEREAS, the Authority is willing to provide the assistance requested by the Department; and

WHEREAS, the 1970 Constitution of the State of Illinois (the "1970 Constitution"), provides for the sharing, combination, and transfer of powers among units of local government, and expressly provides that: "The State shall encourage intergovernmental cooperation and use its technical and financial resources to assist intergovernmental activities," 1970 Ill. Const., Art. 10, sec. 10(a) and (c); and

WHEREAS, Section 2 of the Intergovernmental Cooperation Act, 5 ILCS 220/2, provides that a "public agency" includes "any unit of local government" as defined in the 1970 Constitution, and "any agency of the State government"; and

WHEREAS, the Department and the Authority are units of local government and/or public agencies within the meaning of the 1970 Constitution and Intergovernmental Cooperation Act; and

WHEREAS, the Department, as a department of the State, is also a “unit of government” and “unit of local government” as defined in the IFA Act, 20 ILCS 3501/801-10(i) and 820-10); and

WHEREAS, Section 3 of the Intergovernmental Cooperation Act, 5 ILCS 220/3, provides that: “Any power or powers, privileges, functions, or authority exercised or which may be exercised by a public agency of this State may be exercised, combined, transferred, and enjoyed jointly with any other public agency of this State and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States do not prohibit joint exercise or enjoyment and except where specifically and expressly prohibited by law;” and

WHEREAS, Section 5 of the Intergovernmental Cooperation Act, 5 ILCS 220/5 provides that: “Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking or to combine, transfer, or exercise any powers, functions, privileges, or authority which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be approved by the governing bodies of each party to the contract and except where specifically and expressly prohibited by law;” and

WHEREAS, the Illinois Procurement Code provides that, subject to certain restrictions, contracts for legal, financial, and other professional and artistic services entered into on or before December 31, 2018 by the Authority shall be awarded through a competitive process authorized by the Board of the Authority, 30 ILCS 500/1-10(b) (12); and

WHEREAS, the professional services provided by a rating agency are required in connection with the application for a loan under the TIFIA program; and

WHEREAS, the parties hereto have authorized the execution of this Agreement as an exercise of their respective governmental authority, as an exercise of their intergovernmental cooperation authority under the Constitution and laws of the State of Illinois, and specifically pursuant to statutory authority to enter into contracts for the purposes set forth herein; and their purposes, powers, rights, objectives, and responsibilities hereunder are fully set forth herein;

NOW, THEREFORE, in consideration of the mutual agreements contained herein and upon the further consideration of the recitals hereinabove set forth, it is hereby agreed by, between and among the parties hereto, as follows:

I. INCORPORATION OF RECITALS

The foregoing recitals to this Agreement are incorporated in this Agreement as if set out in full by this reference.

II. THE AUTHORITY'S COMMITMENTS

A. The Authority shall, in accordance with the provisions of the Illinois Procurement Code, 30 ILCS 500/1-10(b)(12) and the Authority's Procurement Policy, select one or more rating agencies, on behalf of the Department, for the purpose of providing a preliminary rating on the TIFIA credit instrument. The selection, procurement and engagement, as applicable, of any rating agency by the Authority shall be conducted in collaboration with the Department.

B. The Authority shall conduct all necessary proceedings and execute all documents required to implement this Agreement. The Chairperson, the Vice Chairperson, the Treasurer, the Executive Director, and Secretary and any Assistant Secretary of the Authority (or any person appointed to such office on an interim basis) are authorized and directed to execute, attest, seal and deliver this Agreement, and any and all documents and do any and all things deemed necessary to carry out the intent and purpose of this Agreement.

III. THE DEPARTMENT'S COMMITMENTS

A. The Department has obtained any necessary approvals described in Section 115(b) of the Act for the execution and delivery of this Agreement.

B. The Department shall conduct all necessary proceedings and execute all documents required to implement this Agreement and shall, to the extent requested by the Authority, assist the Authority with the procurement described herein. The Secretary of the Department (or any person appointed to such office on an interim basis) are authorized and directed to execute, attest, seal and deliver this Agreement, and any and all documents and do any and all things deemed necessary to carry out the intent and purpose of this Agreement.

IV. TERM AND TERMINATION

The term of this Agreement shall commence on the date first above written and shall terminate at such time as a rating agency has been procured and issued a preliminary rating on the TIFIA credit instrument and any reimbursements described in the following paragraph have been paid. This Agreement shall also terminate if, by December 31, 2014, the parties have not

taken the actions described in Sections II(A) and III(A); provided, however, that the Agreement may be extended by mutual agreement of the parties.

The Department will reimburse the Authority for direct costs and reasonable fees, to be agreed upon by the Secretary of the Department and the Executive Director of the Authority, associated with the selection of one or more credit rating agencies and the issuance of a preliminary rating on the TIFIA credit instrument.

V. GENERAL PROVISIONS

A. This Agreement shall be governed by, subject to and construed under the laws of the State of Illinois.

B. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument.

C. This Agreement will constitute the entire agreement between the parties with respect to the subject matter hereof, and will supersede any other negotiations, agreements and understandings, whether written or oral.

D. The parties represent and warrant to each other that this Agreement has been duly authorized, executed and delivered by and on their behalf, and constitutes the legal, valid and binding agreement between the Department and the Authority.

E. This Agreement may be amended only by a written instrument signed by the parties hereto.

F. The parties agree to execute such documents and take such action as shall be reasonably requested by the other party to confirm or clarify the intent of the provisions of this agreement and to effectuate the agreements herein contained.

G. In the event that any provision of this Agreement shall be determined to be invalid, unlawful, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall be unaffected.

H. Any notice, demand or request from one party to another party shall be deemed to have been sufficiently given or served for all purposes if, and as of the date, if is delivered by hand, overnight courier, facsimile (with confirmation) or within three (3) business days of being sent by registered or certified mail, postage prepaid, to the party at the following addresses:

If to the Authority: Executive Director
 180 North Stetson Avenue, Suite 2555
 Chicago, Illinois 60601

If to the Department: Secretary
 2300 Dirksen Parkway
 Springfield, Illinois 62702

IN WITNESS WHEREOF, the parties have made and entered into this Agreement as of the date first written above.

Illinois Finance Authority

By:  _____
Executive Director

Attest:

 _____
Assistant Secretary

Illinois Department of Transportation

By:  _____
Secretary

Attest:

If to the Authority: Executive Director
180 North Stetson Avenue, Suite 2555
Chicago, Illinois 60601

If to the Department: Secretary
2300 Dirksen Parkway
Springfield, Illinois 62702

IN WITNESS WHEREOF, the parties have made and entered into this Agreement as of the date first written above.

Illinois Finance Authority

By: 
Executive Director

Attest:


Assistant Secretary

Illinois Department of Transportation

By: 
Secretary

Attest:
