

## **INDIANA FINANCE AUTHORITY**

### **RESOLUTION G17-2015**

#### **A RESOLUTION AUTHORIZING (1) THE EXECUTION AND DELIVERY OF DOCUMENTS IN CONNECTION WITH THE SELECTION OF A TRANSFEREE AND REPLACEMENT OPERATOR UNDER THE INDIANA TOLL ROAD CONCESSION AND LEASE AGREEMENT AND (2) OTHER ACTIONS RELATED THERETO**

WHEREAS, the Indiana Finance Authority (the "Finance Authority") and ITR Concession Company, LLC, a Delaware limited liability company (referred to herein as the "Concessionaire" for the time period prior to the Closing (as defined below) and as the "Transferee" for the time period as of and after the Closing), are parties to that certain Indiana Toll Road Concession and Lease Agreement dated as of April 12, 2006, as amended by (1) a First Amendment to the Concession and Lease Agreement, dated as of April 12, 2006, (2) a Second Amendment to the Concession and Lease Agreement, dated as of June 29, 2006, (3) a Third Amendment to the Concession and Lease Agreement, dated as of August 10, 2007, (4) a Fourth Amendment to the Concession and Lease Agreement, dated as of February 5, 2008, and (5) a Fifth Amendment to the Concession and Lease Agreement, dated as of November 1, 2010 (collectively, the "CLA"); and

WHEREAS, on September 21, 2014, Statewide Mobility Partners LLC, a Delaware limited liability company ("Statewide"), ITR Concession Company Holdings LLC, a Delaware limited liability company ("Seller"), and the Concessionaire (together with Statewide and Seller, the "Debtors") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), commencing cases before the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the "Bankruptcy Court"), administratively consolidated under Case No. 14-34284 (PSH) (collectively, the "Cases"); and

WHEREAS, pursuant to the Joint Prepackaged Plan of Reorganization of ITR Concession Company LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code (with Technical Modifications) (the "Plan"), as confirmed by order of the Bankruptcy Court entered in the Cases on October 28, 2014, the Special Committee of the Board of Directors of Statewide (the "Special Committee") was granted the authority to oversee and manage a sale process relating to a potential Sale Transaction (as defined below) and to approve a Sale Transaction; and

WHEREAS, the CLA requires the Finance Authority to approve the transfer of any interest in the Concessionaire to any person and the replacement of any operator (the "Replacement Operator") of the Toll Road Operations (as defined in the CLA) in accordance with the terms thereof; and

WHEREAS, in accordance with the Plan and pursuant to the CLA, the Finance Authority actively participated in the process of determining the purchaser of the interests in the Concessionaire and the Replacement Operator to ensure that they could comply with the terms of, and would be qualified to act in such capacities under, the CLA; and



WHEREAS, Concession Acquisitions, LLC, a Delaware limited liability company (the “Purchaser”), was chosen and approved as the purchaser of the interests of the Concessionaire by the Special Committee pursuant to its authority granted by the Bankruptcy Court, and accordingly, the Purchaser, Statewide, Seller and the Concessionaire have entered into that certain Purchase and Sale Agreement, dated as of March 10, 2015 (the “PSA”), pursuant to which the Purchaser has agreed to purchase from the Seller and the Seller has agreed to sell and convey to the Purchaser all of the outstanding membership interests of the Concessionaire (the “Sale Transaction”); and

WHEREAS, after the closing of the Sale Transaction (the “Closing”), the Purchaser will own and control the identical and same legal entity referenced in this Resolution as both (1) the Concessionaire for the time period and other purposes prior to the Closing and (2) the Transferee for the time period and other purposes as of and after the Closing; and

WHEREAS, immediately after the Closing, the Purchaser will be merged with and into the Transferee, with the Transferee being the sole surviving entity after such merger; and

WHEREAS, upon the Closing, the Transferee will be entirely owned and controlled ultimately (through intermediate wholly-owned entities) by IFM Global Infrastructure Fund, a Cayman Islands Unit Trust advised and managed by IFM Investors Pty. Ltd. of Australia; and

WHEREAS, the Sale Transaction will result in a Change in Control of the Concessionaire Interest (as both such terms are defined in the CLA), in connection with which the Transferee is required pursuant to Section 17.1(a) of the CLA to enter into an agreement in form and substance reasonably satisfactory to the Finance Authority, acting reasonably, wherein the Transferee acquires the rights and assumes the obligations of the Concessionaire and agrees to perform and observe all of the obligations and covenants of the Concessionaire under the CLA (hereinafter, the “Concessionaire Approval”); and

WHEREAS, the Sale Transaction will result in a Change in Control of the Operator (as defined in the CLA), in connection with which the Finance Authority has the right to reasonably condition its Approval (as defined in the CLA) of the Transferee as the replacement Operator in accordance with Section 3.3(b) of the CLA (the “Operator Approval”); and

WHEREAS, in connection with the Sale Transaction, Article IV.N. of the Plan requires the Concessionaire to (1) cure, or provide adequate assurance that the Concessionaire will cure, any existing monetary or nonmonetary defaults under the CLA that may have arisen at any time before the effective date of the Plan (the “Effective Date”) and that would be required to be cured in accordance with section 365(b)(1)(A) and section 365(b)(1)(B) of the Bankruptcy Code as of the Effective Date (or promptly thereafter), and (2) provide adequate assurance of future performance from and after the Effective Date to the extent required under section 365(b)(1)(C) or section 365(f)(2)(B) of the Bankruptcy Code, subject to the respective rights of the Debtors, the Committee of Secured Parties and the Finance Authority set forth in paragraphs 3 and 4 of that certain Stipulation filed in the Cases on September 22, 2014, approved by order of the

Bankruptcy Court entered on October 2, 2014, and incorporated into the Plan (collectively, the "Plan Requirements"); and

WHEREAS, in accordance with the CLA and the Plan, the Finance Authority is willing to grant the Concessionaire Approval, to grant the Operator Approval and to acknowledge satisfaction of the Plan Requirements, effective upon the Closing, subject to the terms, conditions and other provisions to be set forth in the Assumption Agreement (the "Assumption Agreement") to be entered into among the Purchaser, the Finance Authority and the Concessionaire and Transferee; and

WHEREAS, in connection with the Closing, it will be necessary for the Finance Authority to execute and deliver a certain Consent of the Indiana Finance Authority (the "Consent") to the Purchaser, the Concessionaire and Citibank, N.A. (the "Collateral Agent"), pursuant to Section 10.2 of the CLA, by and in which the Finance Authority will consent to the pledge and assignment of, and the granting of the lien and security interest in, the Concessionaire Interest by the Concessionaire to the Collateral Agent, for the benefit of certain secured parties, pursuant to the Leasehold Mortgages (as defined in the CLA) and subject to the terms and conditions of the CLA;

NOW, THEREFORE, BE IT RESOLVED BY THE INDIANA FINANCE AUTHORITY, as follows:

Section 1. Approval of Documents. Upon the recommendation of the Public Finance Director of the State of Indiana (the "Public Finance Director") and the Toll Road Oversight Director, based on their participation in the proposed Sale Transaction through the date hereof and their review and negotiation of the terms and provisions of the Assumption Agreement and the Consent (collectively, the "Transaction Documents"), the Finance Authority hereby determines that it is appropriate for the Transferee to be the Concessionaire pursuant to the terms of the Assumption Agreement and the CLA. Accordingly, the forms of the Transaction Documents presented to the Finance Authority are hereby approved in their substantially final forms.

Section 2. Assumption Agreement. The Chairman of the Finance Authority (the "Chairman"), the Public Finance Director and the Toll Road Oversight Director are hereby authorized to negotiate with the Purchaser and the Concessionaire regarding the terms, conditions and other provisions of the Assumption Agreement, in order to facilitate the Transferee succeeding to the rights and assuming the obligations of the Concessionaire under the CLA upon the Closing of the Sale Transaction.

Section 3. Consent. The Chairman, the Public Finance Director and the Toll Road Oversight Director are hereby authorized to negotiate with the Concessionaire and the Collateral Agent regarding the terms, conditions and other provisions of the Consent, in order to cooperate with the Concessionaire with respect to the documentation reasonably necessary to replace and maintain financing for the performance of the obligations of the Transferee, as the Concessionaire, under the CLA pursuant to Section 10.2 of the CLA.



Section 4. Execution of Documents. The Finance Authority hereby authorizes the Chairman and the Public Finance Director to execute the Transaction Documents in substantially the forms presented at this meeting, with such changes in form and substance as the Chairman and the Public Finance Director shall approve, with such approval to be conclusively evidenced by the execution thereof.

Section 5. Ratification of Prior Actions. Any and all actions previously taken by the Chairman, the Public Finance Director, the Toll Road Oversight Director or any other staff member of the Finance Authority in connection with the Sale Transaction and the negotiation of the terms of the Transaction Documents are hereby approved, ratified and affirmed.

Section 6. Any Other Necessary Actions. On behalf of the Finance Authority, the Chairman and the Public Finance Director are each authorized and directed to execute, attest and deliver, as appropriate, beneficial, desirable or necessary, such other documents and instruments as may be appropriate, beneficial, desirable or necessary in connection with the execution and delivery of the Transaction Documents or in accordance with Indiana Code 4-4-10.9, as amended, Indiana Code 4-4-11, as amended, or Indiana Code 8-15.5, as amended, and this Resolution. The Public Finance Director and such other members, service providers and firms as the Public Finance Director may direct are hereby authorized and directed to take any and all other actions on behalf of the Finance Authority as may be appropriate, beneficial, desirable or necessary to carry out the purposes of this Resolution.

Section 7. Signature Stamp. The Finance Authority hereby authorizes the use of a signature stamp of the Chairman and the Public Finance Director on all documents necessary or desirable in connection with the transactions contemplated herein. The Chairman or the Public Finance Director may authorize, in a writing executed with a manual signature, Finance Authority General Counsel or a similar person to affix a stamp of his or her signature to the various documents and such stamp to indicate the approval of such officer, and the Finance Authority agrees to be bound by a document executed in such manner.

Section 8.     Future Reports. The staff of the Finance Authority shall, at the meeting of the Finance Authority immediately following the execution and delivery of the Transaction Documents, provide to the Finance Authority a report thereon and any other information requested by the Finance Authority.


Approved and adopted this 12th day of May, 2015.

INDIANA FINANCE AUTHORITY



Christopher D. Atkins, Chairman

Attest:



Dennis L. Bassett, Public Finance Director  
of the State of Indiana