

# OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION

## **A Resolution Authorizing the Issuance of State of Ohio Turnpike Junior Lien Revenue Bonds, 2013 Series A, Authorizing Various Related Documents and Instruments and Authorizing Other Actions in Connection with the Issuance of Such Bonds**

WHEREAS, the Ohio Turnpike and Infrastructure Commission (the “Commission”) is, by virtue of Chapter 5537 of the Ohio Revised Code, as amended (the “Act”), authorized and empowered, among other things, (a) to issue revenue bonds of the State of Ohio (the “State”) for the purpose of paying all or a portion of the cost of Infrastructure Projects as defined in the Act (“Infrastructure Projects”) and (b) to enact this Resolution and execute and deliver the documents hereinafter identified; and

WHEREAS, the Commission has, pursuant to Resolution No. 44-2013 adopted July 15, 2013, authorized a Junior Lien Master Trust Agreement between the Commission and The Huntington National Bank, as Trustee (the “Junior Lien Master Trust Agreement”), which authorizes the issuance of Junior Lien Bonds for the purposes provided therein, including, but not limited to, financing all or a portion of the cost of Infrastructure Projects, and to secure the Junior Lien Bonds by a pledge of and lien on the System Pledged Revenues on a basis that is junior and subordinate to Senior Lien Bonds (as defined in the Junior Lien Master Trust Agreement) and by a first pledge and lien on the Junior Lien Special Funds established under the Junior Lien Master Trust Agreement; and

WHEREAS, the Junior Lien Master Trust Agreement provides for the issuance from time to time of Junior Lien Bonds, with each issue of Junior Lien Bonds to be authorized by a Supplemental Authorizing Resolution and a Supplemental Trust Agreement; and

WHEREAS, the Commission has determined, based on information from the Ohio Department of Transportation, that it is necessary to issue State of Ohio Turnpike Junior Lien Revenue Bonds, 2013 Series A (Infrastructure Projects) (the “2013 Series A Bonds”), in the maximum principal amount of \$1,150,000,000 for the purpose of financing all or a portion of the costs of Infrastructure Projects, including costs of funding a debt service reserve and costs of issuance of the 2013 Series A Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION:

Section 1. **Definitions.** In addition to the words and terms defined in the recitals and elsewhere in this Resolution, those words and terms not expressly defined herein and used herein with initial capitalization where rules of grammar do not otherwise require capitalization shall have the meanings assigned to them in the Junior Lien Master Trust Agreement, as amended and supplemented by the First Supplemental Junior Lien Trust Agreement authorized herein (the “First Supplemental Junior Lien Trust Agreement”), between the Commission and The Huntington National Bank, as Trustee (the “Trustee”). The Junior Lien Master Trust Agreement and the First Supplemental Junior Lien Trust Agreement are collectively referred to herein as the “Junior Lien Trust Agreement.”

Section 2. **Recitals, Titles and Headings.** The terms and phrases used in the recitals of this Resolution have been included for convenience of reference only, and the meaning, construction and interpretation of such words and phrases for purposes of this Resolution shall be determined solely by reference to Article I of the Junior Lien Master Trust Agreement and the First Supplemental Junior Lien Trust Agreement. The titles and headings of the articles and sections of this Resolution and the Junior Lien Trust Agreement have been inserted for convenience of reference only and are not to be construed as a part hereof or thereof, shall not in any way modify or restrict any of the terms or provisions hereof or thereof, and shall never be considered or given any effect in construing this Resolution or the Junior Lien Trust Agreement or any revisions hereof or in ascertaining intent, if any question of intent should arise.

Section 3. **Interpretation.** Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the single number shall be construed to include correlative words of the plural number and vice versa. This Resolution, the Junior Lien Trust Agreement and the terms

and provisions hereof and thereof shall be liberally construed to effectuate the purposes set forth herein to sustain the validity of the Junior Lien Trust Agreement.

Section 4. Tax Matters. The Commission hereby covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the 2013 Series A Bonds under Section 103(a) of the Internal Revenue Code of 1986, as amended, and applicable temporary, proposed or permanent regulations promulgated thereunder (collectively, the “Code”) or cause that interest to be treated as an item of tax preference under Section 57 of the Code. Without limiting the generality of the foregoing, the Commission hereby covenants as follows:

(a) The Commission will not directly or indirectly use or permit the use of any proceeds of the 2013 Series A Bonds or any other funds of the Commission, or take or omit to take any action that would cause the 2013 Series A Bonds to be “arbitrage bonds” within the meaning of Sections 103(b)(2) and 148 of the Code. To that end, the Commission will comply with all requirements of Sections 103(b)(2) and 148 of the Code to the extent applicable to the 2013 Series A Bonds. If it is necessary to restrict or limit the yield on the investment of moneys held by the Trustee under the Junior Lien Trust Agreement in connection with the 2013 Series A Bonds, the Commission shall so instruct the Trustee in writing, and the Trustee shall take such action as may be necessary in accordance with such instructions. The Executive Director, or any other officer of the Commission having responsibility with respect to the issuance of the 2013 Series A Bonds, is authorized and directed to give an appropriate certificate on behalf of the Commission, on the date of delivery of the 2013 Series A Bonds for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the proceeds thereof and the provisions of such Sections 103(b)(2) and 148, and to execute and deliver on behalf of the Commission an IRS Form 8038G in connection with the issuance of the 2013 Series A Bonds.

Without limiting the generality of the foregoing, the Commission agrees that there shall be paid from time to time all amounts required to be rebated to the United States pursuant to Section 148(f) of the Code. This covenant shall survive payment in full or defeasance of the 2013 Series A Bonds. The Commission specifically covenants to pay or cause to be paid to the United States at the times and in the amounts determined under the Junior Lien Trust Agreement the Rebate Amounts, as described in the Tax Regulatory Agreement.

Notwithstanding any provision of this subsection (a), if the Commission shall provide to the Trustee an opinion of Bond Counsel to the effect that any action required under this Section and the Junior Lien Trust Agreement is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of the interest on the 2013 Series A Bonds pursuant to Section 103(a) of the Code, the Commission and the Trustee may rely conclusively on such opinion in complying with the provisions hereof.

(b) So long as any of the 2013 Series A Bonds, or any obligations issued to refund the 2013 Series A Bonds, remain unpaid, the Commission will not operate or use, or permit the operation or use of, the Infrastructure Projects or any part thereof in any trade or business carried on by any person within the meaning of the Code which would cause the 2013 Series A Bonds to be “private activity bonds” within the meaning of Section 141 of the Code.

(c) The Chairman or the Assistant Secretary Treasurer/Executive Director, and in their absence any other officer of the Commission having responsibility with respect to the issuance of the 2013 Series A Bonds, is authorized (i) to make or effectuate any election, selection, designation, choice, consent, approval or waiver on behalf of the Commission with respect to the 2013 Series A Bonds as the Commission is permitted or required to make or give under the federal income tax laws, including, without limitation, any of the elections available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting the favorable tax treatment or status of the 2013 Series A Bonds or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amount or payments, as determined by that officer, (ii) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the Commission, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the 2013 Series A Bonds, and (iii) to give one or more appropriate certificates of the Commission, for inclusion in the

transcript of proceedings for the 2013 Series A Bonds, setting forth the reasonable expectations of the Commission regarding the amount and use of all the proceeds of the 2013 Series A Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment or status of the 2013 Series A Bonds and interest thereon.

Section 5. Authorization of 2013 Series A Bonds. It is hereby determined to be necessary to, and the Commission shall, issue, sell and deliver an aggregate principal amount not to exceed \$1,150,000,000 of State of Ohio Turnpike Junior Lien Revenue Bonds, 2013 Series A (Infrastructure Projects) for the purpose of financing all or a portion of the costs of Infrastructure Projects, including costs of funding a debt service reserve and costs of issuance of the 2013 Series A Bonds, all in accordance with the provisions of the Junior Lien Trust Agreement and the Bond Purchase Agreement relating to the 2013 Series A Bonds (the “Bond Purchase Agreement”) between the Commission and Citigroup Global Markets Inc., as representative of the Underwriters named in the Bond Purchase Agreement (collectively, the “Underwriters”).

If it is determined to be in the best interest of the Commission, the Commission is authorized to combine the marketing and sale of the 2013 Series A Bonds with a Series of Senior Lien Bonds, in which case a single Bond Purchase Agreement, official statement and certain other transcript and other documents may be utilized for the combined marketing and sale if appropriate and consistent with the terms of this Resolution.

Section 6. Terms of the 2013 Series A Bonds.

(a) Authorization and Authorized Amount of 2013 Series A Bonds. The 2013 Series A Bonds shall be issued in the aggregate principal amount not to exceed \$1,150,000,000, with such amount sufficient to provide a deposit of up to \$930,000,000 into the Infrastructure Projects Fund to be used to pay costs of Infrastructure Projects, to provide for the funding of a debt service reserve in accordance with paragraph (d) below, and to pay costs of issuance of the 2013 Series A Bonds.

No additional Junior Lien Bonds may be issued under the provisions of this Resolution or the Junior Lien Trust Agreement on a parity with the Junior Lien Bonds, except in accordance with the Junior Lien Trust Agreement.

(b) Form, Date, Number and Denominations of the 2013 Series A Bonds. The 2013 Series A Bonds shall be issued in the form of global book entry bonds, registered in the name of Cede & Co., as nominee for The Depository Trust Company, for use in a book-entry system. The 2013 Series A Bonds shall be issued in the form of a single, fully registered bond representing each maturity, or interest rate within a maturity, and shall be dated the date of their original issuance. The 2013 Series A Bonds shall be initially numbered in such manner as to distinguish each 2013 Series A Bond from any other 2013 Series A Bond, and shall be in substantially the form set forth in the First Supplemental Junior Lien Trust Agreement.

(c) Interest Payment Dates and Interest Accretion Dates. The 2013 Series A Bonds shall bear interest from their date. Interest on Junior Lien Current Interest Bonds and following their Conversion Dates, Junior Lien Convertible Capital Appreciation Bonds shall be payable semiannually on February 15 and August 15 of each year, commencing on the applicable first Interest Payment Date determined in accordance with paragraph (d) below and as provided in the Junior Lien Trust Agreement. Interest on Junior Lien Capital Appreciation Bonds and, prior to the Conversion Date, Junior Lien Convertible Capital Appreciation Bonds, shall accrete and compound as determined in accordance with paragraph (d) below and as provided in the Junior Lien Trust Agreement.

(d) Pricing. The Chairman or the Assistant Secretary-Treasurer/Executive Director, and in their absence the Vice Chairman or the Secretary-Treasurer, are each alone, or in any combination, hereby authorized, empowered and directed to determine and set forth in a certificate at the time of signing and delivery of the Bond Purchase Agreement the following with respect to the 2013 Series A Bonds, consistent with this Resolution and the Junior Lien Trust Agreement:

(i) the aggregate principal amount of the 2013 Series A Bonds to be issued in accordance with paragraph (a) above, and the respective principal amounts of the 2013

Series A Bonds to be issued as Junior Lien Current Interest Bonds, Junior Lien Capital Appreciation Bonds and Junior Lien Convertible Capital Appreciation Bonds ;

(ii) the purchase price to be paid to the Commission by the Underwriter, which amount shall be not less than 98% of the amount determined by adding to the aggregate principal amount of the 2013 Series A Bonds any aggregate original issue premium and subtracting from the amount any aggregate original issue discount;

(iii) whether any 2013 Series A Bonds are to be subject to optional redemption prior to maturity, and, if so:

a. for any Junior Lien Current Interest Bonds and after their Conversion Dates, Junior Lien Convertible Capital Appreciation Bonds, the earliest optional redemption date for those Junior Lien Current Interest Bonds and Junior Lien Convertible Capital Appreciation Bonds subject to prior redemption, which shall be not earlier than seven years, and the applicable redemption price, which shall be not greater than 102% of the principal amount redeemed; and

b. for any Junior Lien Capital Appreciation Bonds and prior to their Conversion Dates, Junior Lien Convertible Capital Appreciation Bonds, the earliest optional redemption date for those Junior Lien Capital Appreciation Bonds subject to prior redemption, which shall be not earlier than seven years from the date of original issuance of the 2013 Series A Bonds, and the applicable redemption price, which may be expressed as a percentage (not to exceed 102%) or as a make whole formula of the Compounded Amount as of the date of redemption to be redeemed;

(iv) the dates on which and amounts in which principal of the 2013 Series A Bonds is to be paid, with an identification of whether the payment is due by stated maturity or by mandatory sinking fund redemption of 2013 Series A Bonds of a particular maturity and interest rate;

(v) the interest rates to be borne by the Junior Lien Current Interest Bonds and, after their Conversion Dates, the Junior Lien Convertible Capital Appreciation Bonds and the compounding rates of interest per year to be borne by the Junior Lien Capital Appreciation Bonds and, prior to their Conversion Dates, the Junior Lien Convertible Capital Appreciation Bonds, all of which shall result in a true interest cost to the Commission of not more than 6.75% per annum, the first Interest Payment Dates of the Junior Lien Current Interest Bonds, the first Interest Accretion Dates for the Junior Lien Capital Appreciation Bonds and, prior to the Conversion Dates, the Junior Lien Convertible Capital Appreciation Bonds, and the Conversion Dates for the Junior Lien Convertible Capital Appreciation Bonds;

(vi) whether the 2013 Series A Bonds shall be designated as Junior Lien Debt Service Reserve Fund Bonds, and, if so designated, the amount and source of any money to be deposited in the Junior Lien Debt Service Reserve Fund in order to cause the balance therein to equal the Junior Lien Debt Service Reserve Requirement, and any determination as to whether a Junior Lien Reserve Account Credit Facility shall be provided in lieu of cash in the Junior Lien Debt Service Reserve Fund; and

(vii) whether the 2013 Series A Bonds are to be secured by or payable from any Junior Lien Bond Credit Facility.

(e) Redemption of 2013 Series A Bonds Prior to Maturity. If any 2013 Series A Bonds are subject to redemption prior to maturity, the procedures for selection of 2013 Series A Bonds to be redeemed and giving notice of redemption shall be as set forth in the First Supplemental Junior Lien Trust Agreement.

(f) Execution of 2013 Series A Bonds. In accordance with Section 5537.08(B) of the Act, the 2013 Series A Bonds shall be executed by the manual or facsimile signatures of the Chairman or the Vice Chairman of the Commission and shall be attested by the manual or facsimile signature of the Secretary-Treasurer or Assistant Secretary-Treasurer of the

Commission, and the seal of the Commission shall be impressed thereon or a facsimile of such seal placed thereon. No 2013 Series A Bond shall be valid for any purpose unless and until a certificate of authentication thereon shall have been duly executed by the Trustee.

Section 7. Security for the 2013 Series A Bonds. The 2013 Series A Bonds shall be payable solely from the System Pledged Revenues and shall be secured by a pledge of and lien on the System Pledged Revenues and the Junior Lien Special Funds on a parity with any additional Junior Lien Bonds to be issued in accordance with the Junior Lien Trust Agreement in the future, all as set forth in the Junior Lien Trust Agreement. The pledge of and lien on the System Pledged Revenues created by the Junior Lien Trust Agreement is subordinate to the pledge of and lien on the System Pledged Revenues created by the Senior Lien Trust Agreement to secure Senior Lien Bonds, all as defined in the Junior Lien Master Trust Agreement. Anything in this Resolution, the Junior Lien Trust Agreement, the 2013 Series A Bonds or any other agreement or instrument to the contrary notwithstanding, the 2013 Series A Bonds shall not constitute a debt or pledge of the faith and credit or the taxing power of the State, or of any political subdivision of the State, and each 2013 Series A Bond shall contain on the face thereof a statement to that effect.

Section 8. Official Statement and Continuing Disclosure.

(a) Primary Offering Disclosure – Official Statement. An official statement shall be used in connection with the original issuance of the 2013 Series A Bonds. The preliminary official statement of the Commission, a substantially final form of which has been presented at this meeting (the “Preliminary Official Statement”), is hereby approved and the distribution and use of the Preliminary Official Statement is hereby authorized and approved. The Executive Director is authorized and directed, on behalf of the Commission and in that officer’s official capacity, to (i) make or authorize modifications, completions or changes of or supplements to, the Preliminary Official Statement in connection with the original issuance of the 2013 Series A Bonds, (ii) determine, and to certify or otherwise represent, when the revised official statement (the “Official Statement”) is to be “deemed final” (except for permitted omissions) by the Commission as of its date or is a final official statement for purposes of Rule 15c2-12 prescribed by the SEC pursuant to the Securities Exchange Act of 1934 (the “Rule”), (iii) use and distribute, or authorize the use and distribution of the Official Statement and any supplements thereto in connection with the original issuance of the 2013 Series A Bonds, (iv) complete and sign the final Official Statement as so approved, together with such certificates, statements or other documents in connection with the finality, accuracy and completeness of the Official Statement as that officer deems necessary or appropriate, and (v) contract for services for the production and distribution of the Preliminary Official Statement and Official Statement, including by printed and electronic means.

(b) Agreement to Provide Continuing Disclosure. In order to comply with the Rule, the Commission hereby covenants and agrees with respect to the 2013 Series A Bonds that it will comply with and carry out all of the provisions of the Continuing Disclosure Commitment dated as of May 1, 1996, as amended by a First Amendment to Continuing Disclosure Commitment dated as of February 23, 2006, and by a Second Amendment to Continuing Disclosure Commitment dated as of November 18, 2010, and as further amended from time to time (the “Continuing Disclosure Commitment”). For purposes of the Continuing Disclosure Commitment, “Annual Information” with respect to the 2013 Series A Bonds means the Comprehensive Annual Financial Report of the Commission and the operating data contained in the Section of the Official Statement relating to Tolls, including the Schedule of Tolls, Statistical Traffic Information and Summary of Gross Revenues and Cost of Operation, Maintenance and Administration.

Section 9. First Supplemental Junior Lien Trust Agreement and Bond Purchase Agreement. The Chairman or the Assistant Secretary-Treasurer/Executive Director, and in their absence the Vice Chairman or the Secretary-Treasurer, are each alone, or in any combination, hereby authorized, empowered and directed to execute, acknowledge and deliver on behalf of the Commission, the First Supplemental Junior Lien Trust Agreement and the Bond Purchase Agreement, the forms of which have been presented at this meeting, which forms are hereby approved with such changes or insertions therein not inconsistent with the Act or this Resolution and not substantially adverse to the Commission as may be permitted by the Act and this Resolution, and approved upon advice of General Counsel to the Commission and Bond Counsel, by the Executive Director and the officers executing the same. The approval of such changes

and insertions by such officers, and the determination that such changes are not substantially adverse to the Commission, shall be conclusively evidenced by the execution of the First Supplemental Junior Lien Trust Agreement and the Bond Purchase Agreement by such officers.

Section 10. Authorization of Other Documents and Actions. The Chairman, Assistant Secretary-Treasurer/Executive Director, Vice Chairman or Secretary-Treasurer, are each alone, or in any combination, hereby authorized to take any and all actions and to execute such financing statements, certificates, commitments with bond insurers, amendments to the Continuing Disclosure Commitment and other instruments or documents that may be necessary or appropriate in the opinion of General Counsel to the Commission or Bond Counsel, in order to effectuate the issuance of the 2013 Series A Bonds and the intent of this Resolution. The Secretary-Treasurer, Assistant Secretary-Treasurer/Executive Director, or other appropriate officer of the Commission, shall certify a true transcript of all proceedings had with respect to the issuance of the 2013 Series A Bonds, along with such information from the records of the Commission as is necessary to determine the regularity and validity of the issuance of the 2013 Series A Bonds.

Section 11. Ratings. The Chairman or the Assistant Secretary-Treasurer/Executive Director, and in their absence the Vice Chairman or the Secretary-Treasurer, are each alone, or in any combination, hereby authorized, to apply for a rating from one or more national rating services with respect to the 2013 Series A Bonds, and any such actions heretofore taken are hereby approved, ratified and confirmed. The payment of the fees and expenses relating to any such rating from the proceeds of the 2013 Series A Bonds is hereby authorized.

Section 12. Sale of the 2013 Series A Bonds. The 2013 Series A Bonds are hereby awarded to the Underwriters, in accordance with the terms of the Bond Purchase Agreement. The Chairman or the Assistant Secretary-Treasurer/Executive Director, and in their absence the Vice Chairman or the Secretary-Treasurer, are each alone, or in any combination, hereby authorized and directed to make on behalf of the Commission the necessary arrangements with the Underwriters to establish the price, date, location, procedure and conditions for the delivery of the 2013 Series A Bonds, and to take all steps necessary to effectuate the due execution and delivery of the 2013 Series A Bonds to the Underwriters under the terms of this Resolution, the Bond Purchase Agreement and the Junior Lien Trust Agreement.

Section 13. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Resolution, or in the 2013 Series A Bonds, or in the Junior Lien Trust Agreement or the Bond Purchase Agreement, or under any judgment obtained against the Commission or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against any member or officer or attorney, as such, past, present, or future, of the Commission, either directly or through the Commission, or otherwise, for the payment for or to the Commission or any receiver thereof, or for or to any Holder of the 2013 Series A Bonds secured thereby, or otherwise, of any sum that may be due and unpaid by the Commission upon any of such 2013 Series A Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member or officer or attorney, as such, to respond by reason of any act or omission on that person's part, or otherwise, for, directly or indirectly, the payment for or to the Commission or any receiver thereof, or of any sum that may remain due and unpaid upon the 2013 Series A Bonds hereby secured or any of them, shall be expressly waived and released as a condition of and consideration for the execution and delivery of the First Supplemental Junior Lien Trust Agreement, and acceptance of the Bond Purchase Agreement and the issuance of the 2013 Series A Bonds.

Section 14. Repeal of Conflicting Resolutions. All resolutions and orders, or parts thereof, in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

Section 15. Compliance With Sunshine Law. It is hereby determined that all formal actions of the Commission relating to the adoption of this Resolution were taken in an open meeting, and that all deliberations of the Commission and of its committees, if any, which resulted in formal action were in meetings open to the public, in full compliance with Section 121.22 of the Ohio Revised Code.

Section 16. Certified Copies. A certified copy of this Resolution shall be sent to the newly designated Trustee at The Huntington National Bank, Bond Counsel and to the Rating Agencies.

**(Resolution No. 46-2013 adopted July 15, 2013)**