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## **Fitch: Indiana Finance Authority's MOU a Positive Development for I-69.**

Fitch Ratings-New York-23 February 2017: [Fitch Ratings views positively the Memorandum of Understanding (MOU) signed on Feb. 13, 2017 by the Indiana Finance Authority (IFA) and I-69 Development Partners (I-69 DP), as it appears to address key issues and unresolved disputes in conjunction with construction delays on the I-69 development project. Fitch will assess the implications for the transaction upon receiving further details from the Technical Advisor (TA). Fitch anticipates taking the appropriate rating action on the IFA private activity bonds (PABs, 'B'/Rating Watch Negative) subsequently.

The MOU extends the project's longstop date (i.e., the date when the project defaults if not completed) and requires additional payment contributions by I-69 DP, the IFA and the construction contractor, Isolux Corsan LLC (Isolux). The MOU revised the substantial completion date of the project to May 31, 2018, with various sections to be completed no later than August 2017 and March 2018. Fitch notes that the longstop date under the concession agreement will be revised to Nov. 30, 2018 from its original date of Oct. 31, 2017, which provides additional cushion for the concessionaire to complete the project. The term of the concession will remain unchanged and in effect until the earliest of: 34 years after the baseline substantial completion date, 34 years after the substantial completion date or termination of the PPA.

The MOU requires I-69 DP and Isolux to contribute \$23.3 million and \$52.0 million to the project, respectively. Of Isolux's \$52.0 million additional payment, \$23.0 million has already been contributed through funds drawn from its letter of credit (LC). Furthermore, the IFA will make an additional \$28.2 million milestone payment to I-69 DP during the remaining construction period and availability payments will be delayed to coincide with the new schedule, commencing in June 2018. A partial milestone payment will be made by the IFA with the payment equal to the percentage of work completed under milestone 4 at the time of closing. All additional contributions will be made at the time of the closing of the definitive documents, which will reflect the terms and conditions set forth in the MOU. At closing, existing relief claims will be extinguished with current disputes no longer active. Specifically, I-69 DP will forgo any relief events that were previously claimed. Additionally, after the revised project schedule has been agreed upon by all parties, an updated cash flow projection will be made and will reflect the plan for paying for the D&C work and the debt service on the outstanding bonds.

Prior to taking any rating action, Fitch will assess the impact of the MOU on the project and the PABs rating after the TA opines on the reasonableness of I-69 DP and Isolux to achieve the revised completion dates as well as the sufficiency of the additional funds to cover the revised cost to complete. In addition, Fitch will review the updated financial model, the remaining scope, any deviations from the original concession agreement, the achievability of the revised schedule, the remaining critical path items, the flexibility to absorb unexpected future delays, and any potential impact on the operating period. Fitch expects additional information from the TA in the next few weeks.

Fitch previously downgraded the PABs on Oct. 26, 2016 from 'BB'/Rating Watch Negative to 'B'/Rating Watch Negative due to continued construction delays and unresolved disputes between the construction contractor and the IFA, which resulted in a limited margin remaining to complete the project by the prior long-stop date. The disputes culminated in six Notices of Default issued by I-69 DP to the construction contractor and a Notice of Non-Performance issued by the IFA to I-69 DP. In particular, Fitch noted that the fifth default, issued on Sept. 26, 2016, pertained to the failure of the contractor to replenish the LC, which was drawn upon two weeks prior (Sept. 15, 2016), for a total of \$23 million. The subcontractors are now fully paid; however, the construction contractor has not replenished the LC as required.

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