

**EARLY DEVELOPMENT AGREEMENT  
BETWEEN  
THE FEDERAL HIGHWAY ADMINISTRATION AND  
THE VIRGINIA DEPARTMENT OF TRANSPORTATION FOR  
THE POCAHONTAS PARKWAY - VIRGINIA ROUTE 895**

THIS EARLY DEVELOPMENT AGREEMENT (hereinafter "ED A"), made and entered into this 19<sup>th</sup> day of July 2007 by and between the VIRGINIA DEPARTMENT OF TRANSPORTATION (hereinafter "VDOT") and the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION, (hereinafter "FHWA"):

WITNESSETH:

WHEREAS, on June 29, 2006, VDOT executed an Amended and Restated Comprehensive Agreement with Transurban (895) LLC (hereinafter "TUSA") under which TUSA acquired the rights to operate, manage, and collect tolls on the Pocahontas Parkway - Virginia Route 895 for a period of 99 years, and is obligated to construct, maintain, and operate the Richmond Airport Connector (hereinafter "RAC") to securing credit assistance under the Transportation Infrastructure Finance and Innovation Act Program (collectively, "TIFIA Credit Program");

WHEREAS, on July 14, 2006, VDOT submitted an application under the Special Experimental Program No. 15 (collectively, "SEP-15") to deviate from the current requirements and policies contained in title 23 of the United States Code to expand the definition of "eligible project costs" under 23 U.S.C. § 601(a)(3) to include the cost of the acquisition of the Pocahontas Parkway and construction of the Richmond Airport Connector;

WHEREAS, on October 6, 2004, FHWA announced, in the Federal Register at 60 FR 59983, a new special experimental project to explore alternative and innovative approaches to the overall project development process known collectively as SEP-15 pursuant to the authority in 23 U.S.c. § 502(b)(1)(B);

WHEREAS, SEP-15 is designed to permit tests and experimentation in the project development process for projects carried out under title 23 of the United States Code and title 23 of the Code of Federal Regulations, that are specifically aimed at attracting private investment and lead to increased project management, flexibility, more innovation, improved efficiency, timely project implementation, and new revenue streams;

WHEREAS, under SEP-15, in order to facilitate tests and experimentation in the project development process, FHWA may grant modifications or deviations from the current requirements contained in title 23 of the United States Code and title 23 of the Code of Federal Regulations;

WHEREAS, on August 10, 2006, FHWA approved VDOT's SEP-15 application;

WHEREAS, under SEP-15, an Early Development Agreement ("EDA" or "Agreement") between VDOT and FHW A is required in order to specify the conditions relating to the modifications or deviations from Federal requirements that are granted for the Project as well as to identify the reporting requirements that will be used to evaluate the extent to which the modifications or deviations contributed to the success of the process;

NOW THEREFORE, VDOT and FHW A hereby agree as follows:

## SECTION 1. SCOPE OF EARLY DEVELOPMENT AGREEMENT

This EDA is intended to identify and establish the parameters of the modifications or deviations, which shall be hereinafter referred to as the "experimental feature," from title 23 of the United States Code in connection with the use of TIFIA credit assistance for the Project, Nothing in this EDA shall be construed as a relinquishment of any Federal oversight or stewardship responsibility.

## SECTION 2. DEFINITIONS

### 2.1 DOT

"DOT" means United States Department of Transportation.

### 2.2 Project

"Project" means the acquisition of the existing Pocahontas Parkway and the construction of the Richmond Airport Connector as described in VDOT's July 14, 2006 SEP-15 Application.

### 2.3 TIFIA

"TIFIA" means the Transportation Infrastructure Finance and Innovation Act of 1998, § 1501 *et seq.* of Public Law 105-178 (as amended by the Public Law 105-206 and Public Law 109-59). codified as 23 U.S.c. § 601 *et. seq.*

### 2.4 TIFIA JPO

"TIFIA JPO" means the Joint Program Office, which administers the TIFIA Credit Program on behalf of the Secretary of the DOT.

### 2.5 TIFIA Program Guide

"TIFIA Program Guide" means the 2007 TIFIA Program Guide that supplements the TIFIA regulations (49 c.F.R. Part 80) and describes how the DOT administers the TIFIA Credit Program, covering the application, evaluation, and selection process that DOT will use to determine who receives credit assistance.

## SECTION 3. GENERAL PROVISIONS

### 3.1 Applicability of Federal Law

A. All Federal laws, rules and regulations shall be applicable to any project using Federal funds, including, but not limited to, the requirements set forth in titles 23 and 49 of the United States Code, and titles 23 and 49 of the Code of Federal Regulations, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601, *et seq.*, and the FHWA's implementing regulations found at 49 C.F.R. Part 24, and the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 to 437f, with respect to any related facility, except as otherwise specified herein.

B. With respect to title 23 of the United States Code and title 23 of the Code of Federal Regulations, the experimental feature described in Section 4 shall be deemed to be in full compliance with Federal law, rules and regulations.

### 3.2 Withdrawal of Approval for Experimental Feature

FHW A's approval of the SEP-15 experimental feature identified in Section 4 may be withdrawn at any time by FHW A prior to execution of the TIFIA secured loan documents if FHWA determines that the experimental feature is not in the public interest. Prior to such withdrawal, FHWA will issue a written notice to VOOT describing FHWA's findings and provide VODT a reasonable period of time to address FHWA's concerns. Upon withdrawal of approval the experimental feature, the applicable requirements of the TIFIA Program Guide shall immediately apply to the Project.

### 3.3 Access to Documents

As provided in 23 C.F.R. § 1.5, VDOT shall furnish, or make available, to FHWA such information as FHW A deems necessary, as more particularly described in this Agreement, to administer the TIFIA Credit Program in connection with the Project and ensure compliance with any applicable Federal requirements. Any records that a private party does not want to be made publicly available shall be reviewed by FHW A in accordance with the procedures outlined in FHW A January 26, 2005, memorandum concerning "Pre-submission Evaluation of Information under the Freedom of Information Act." The confidentiality of any records obtained by the FHW A shall be determined in accordance with 49 C.F.R. Part 7.

### 3.4 Order of Precedence

Except as otherwise specified herein, this EDA supersedes the July 14,2006, VDOT SEP-15 application and the August 10,2006, FHWA SEP-15 acceptance letter. The July 14,2006, VDOT SEP-15 application and the August 10, 2006, FHW A SEP-15 acceptance letter are attached to this EDA as Exhibits A & B, and may be used for historical and interpretive purposes, provided that this EDA shall be given effect to the extent there is any conflict. Any modifications to this EDA shall

supersede any conflicting provisions of the July 14, 2006 application, August 10, 2006, SEP-15 acceptance letter and any prior modifications to the EDA.

#### SECTION 4. EXPERIMENTAL FEATURES - INITIAL APPLICATION PROCESS

##### 4.1 Deviation from 23 U.S.c. § 602(a)(3) and 49 C.F.R. 80.5 - Definition of TIFIA "Eligible Project Costs"

A. FHWA acknowledges and agrees to VDOT's request to deviate from 23 *V.S.C.* § 602(a)(3) and 49 C.F.R. 80.5, as provided in the August 10, 2006, FHW A SEP-15 acceptance letter, to expand the definition of "eligible project costs," to include the total acquisition price for the Project in the amount of \$548 million plus a \$55 million liquidity facility provided by an affiliated company of TVSA to cover interest expenses for the initial years of the project when toll revenue is insufficient to service debt payments.

B. Federal credit assistance provided under TIFIA is available to cover only eligible project costs. A calculation of total eligible project costs is important in order to determine whether the eligible project costs are reasonably anticipated to total at least \$50 million and that the amount of TIFIA credit assistance does not exceed 33 percent of eligible project costs as required by 23 U.S.c. § 602 (a)(3).

C. Eligible project costs are defined, in the absence of the deviations permitted by this Agreement, as those expenses associated with the following: (1) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other pre-construction activities; (2) construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment; and (3) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction. (23 *V.S.C.* § 602(a)(3)»

D. In section 1601 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109-59, 119 Stat. 1144, codified at 23 U.S.c. § 601(a)(1), Congress gave the Secretary of Transportation the discretionary authority to allow TIFIA to assist with refinancing long-term debt but did not address how to determine the maximum amount of TIFIA credit assistance that may be provided when the Secretary approves the use of the refinancing provision.

#### SECTION 5. EVALUATION CRITERIA

##### 5.1 Financial Justification for TIFIA Loan Size

VDOT will evaluate the following with respect to the TIFIA loan size for the Project:

(1) The total amount of TIFIA loan required to provide sufficient economic incentive for TUSA to assume the risks associated with the RAC;

(2) Identification of major risks associated with assumption of the RAC construction and operation; probability of achievement of certain cash flow projections and cost/benefit of assumption of such risk under those probabilities;

(3) Identification of financial benefit provided by the use of TIFIA in refinancing project costs; and

(4) Assessment of the financial benefit provided by the use of TIFIA compared with the RAC construction risks, taking into account projected cash flows and potential investment returns.

## 5.2 Innovation in Financing

VOOT will provide a detailed description of those aspects of the financing structure that are being uniquely applied to the United States transportation finance market as well as the key business terms with potential ongoing application for the TIFIA credit program policies.

## 5.3 Time Savings

VDOT will evaluate the following to assess time-savings associated with the use of TIFIA:

(1) The nature and timing of the design-build and/or any other significant contract used for the RAC and the resulting timeline for construction;

(2) The potential timing of receipt of grant monies or other funds that likely would have been used in lieu of TIFIA funding and the potential timeline for the RAC construction under an alternative funding plan; and

(3) Any time savings methods for bidding and overseeing the RAC construction proposed by TUSA.

## SECTION 6. REPORTING

### 6.1 Initial Report- Post Financial Close

VDOT shall contract with a third-party to draft an initial report within 120 days after the execution of the TIFIA Loan Agreement. This report will:

(1) Present an assessment of the financial justification for the size of the TIFIA loan;

(2) Document any major financial innovations;

(3) Present a timeline for construction of the RAC and discussion of alternatives that would have been used in lieu of TIFIA;

(4) Discuss any major problems or issues that - occurred and how they were resolved;

(5) Describe lessons learned, including issues that were addressed and suggestions for improvements on future approaches to using the TIFIA Credit Program for refinancing; and

(6) Provide recommendations on any statutory or regulatory change or change in standard TIFIA procedures or policies.

## 6.2 Final Report - Post Substantial Completion

A. VDOT shall contract with a third-party to draft a final report within 180 days following substantial completion of the RAC. This report will provide an overall evaluation of the role of the TIFIA experimental process in the delivery of the Project. The final report will include:

- (1) An overall evaluation of the use of TIFIA Program credit assistance as described in this agreement, including re-examining those items presented in the initial report; and
- (2) An evaluation of the SEP-15 experimental feature used including a final assessment of the extent to which it contributed to the Project's success.

## SECTION 7. MISCELLANEOUS PROVISIONS

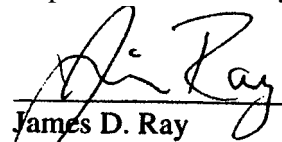
### 7.1 Amendments

This EDA may be amended at any time by written agreement of FHW A and VDOT. Amendments to this EDA may include, but are not limited to, the addition or deletion of SEP-15 experimental features, modification of evaluation criteria, and modification of reporting requirements. The FHWA Virginia Division Administrator shall have the authority to amend this EDA for the FHWA, subject to the concurrence of VDOT and the TIFIA JPO.

### 7.2 Original Copies

This EDA shall be prepared in duplicate original copies so that each signatory has an original copy.

IN WITNESS THEREOF, the parties hereto have caused this EDA to be duly executed in duplicate as of the day and year first written above.

  
**James D. Ray**  
**Acting Deputy Administrator and Chief Counsel**  
**Federal Highway Administration**

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David S. Ekern, P.E.  
Commissioner  
Virginia Department of Transportation