

EARLY DEVELOPMENT AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION AND
THE ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES AND
THE KNIK ARM BRIDGE AND TOLL AUTHORITY FOR
WAIVERS OF THE TIFIA CREDIT PROGRAM PROCEDURES

THIS EARLY DEVELOPMENT AGREEMENT (hereinafter "EDA"), made and entered into this ~ day of July 2007, by and among the ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES (hereinafter "ADOT &PF"), the KNIK ARM BRIDGE AND TOLL AUTHORITY (hereinafter "KABAT A"), and the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION, (hereinafter "FHWA"):

WITNESSETH:

WHEREAS, on March 30, 2007, ADOT &PF submitted an application under Special Experimental Project Number 15 ("SEP-15") for waivers of the Transportation Infrastructure Finance and Innovation Act ("TIFIA") program procedures to obtain conditional credit assistance under the TIFIA Credit Program for the Knik Arm Crossing in Anchorage, Alaska ("Project"), a project to be carried out by KABAT A;

WHEREAS, on October 6, 2004, FHWA announced, in the Federal Register at 60 Fed. Reg. 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, in an effort to more effectively use and streamline the TIFIA Credit Program approval process, ADOT &PF's SEP-15 application proposes the use of an innovative approach for procuring the Project, which included certain specified modifications or deviations from the current requirements and policies contained in title 23 of the United States Code, title 23 of the Code of Federal Regulations, and the TIFIA Program Guide, to advance the Project under SEP-15;

WHEREAS, SEP-15 is designed to permit tests and experimentation in the project development process for title 23 projects 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, title 23 of the Code of Federal Regulations, and the TIFIA Program Guide; and,

WHEREAS, on June 6, 2007, FHW A approved ADOT &PF' s SEP-15 application;

WHEREAS, under SEP-15, an Early Development Agreement ("EDA" or "Agreement") among ADOT &PF, KABAT A, 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, ADOT &PF, KABAT A, 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 features") from title 23 of the United States Code, title 23 Code of Federal Regulations, and the TIFIA Program Guide in connection with the use of TIFIA credit assistance to provide financing 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 Conditional Term Sheet

"Conditional Term Sheet" means the contractual agreement between DOT and KABAT A by which DOT reserves TIFIA funding for the Project and commits to providing Federal credit assistance to the Project at a future point W. time upon satisfaction of specified conditions and subject to the future availability of obligation authority.

2.2 Credit Agreement

"Credit Agreement" means the definitive agreement between DOT and the borrower that specifies all terms and conditions of the credit assistance and authorizes funding of the TIFIA credit instrument ..

2.3 Developer

"Developer" means the Proposer that is awarded the contract for the Knik Arm Crossing Project.

2.4 DOT

"DOT" means United States Department of Transportation.

2.5 DOT Credit Council

"DOT Credit Council" means the nine-member body which provides policy direction and makes recommendations to the Secretary of DOT regarding the selection of projects for TIFIA credit assistance composed of representatives of the Department of Transportation Offices of Budget, General Counsel, Policy, and Small and Disadvantaged Business Utilization, and the Administrators of FHW A, Federal Railroad Administration, Federal Transit Administration, and the Maritime Administration.

2.6 KABAT A

"KABAT A" means the Knik Arm Bridge and Toll Authority which is a public corporation and instrumentality of the State of Alaska organized under the laws of the State of Alaska.

2.7 Preliminary Rating Opinion Letter

"Preliminary Rating Opinion Letter" means the conditional credit assessment from a nationally recognized credit rating agency that provides a preliminary indication of a project's overall creditworthiness and that specifically addresses the potential of the project's senior debt obligations to achieve an investment grade rating.

2.8 Plan of Finance

"Plan of Finance" means the comprehensive document reflecting the cost and revenue structure of a project that includes, but is not limited to, estimated project costs and activity breakdowns, sources and uses of funds descriptions, and cash flow pro forma, as specified in Appendix D of the TIFIA Program Guide.

2. Project 9

"Project" means the Knik Arm Crossing as described in ADOT &PF's March 30, 2007 SEP15 application.

2.10 Proposer

"Proposer" means each entity or team of entities that submits a proposal in response to a Request for Final Proposals.

2.11 Request for Final Proposals

"Request for Final Proposals" ("RFP") means a Request for Final Proposals issued by KABATA for the Project.

2.12 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.*

2.13 TIFIA JPO

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

2.14 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 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 FHW A'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 4370f, 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, KABATA may apply to the Project the SEP-15 experimental features described in Sections 4,5, and 6 of this EDA. KABATA's use of such experimental features shall be deemed to be in full compliance with Federal law, rules and regulations.

3.2 Withdrawal of Approval for Experimental Features

FHW A's approval of any or all of the SEP-15 experimental features identified in Sections 4, 5, and 6 may be withdrawn at any time by FHW A if FHW A determines that the experimental features are not in the public interest. Prior to any such withdrawal, FHW A will issue a written notice to ADOT &PF and KABAT A describing FHW A's findings and provide ADOT &PF and KABAT A a reasonable period of time to address FHW A's concerns. However, during such period of time, except as specified below, no further work shall be conducted based on the approval at issue until such time as FHWA determines that ADOT&PF and KABATA have fully addressed FHWA's concerns. Upon withdrawal of approval of an experimental feature, the applicable requirements of title 23 of the United States Code, titles 23 and 49 of the Code of Federal Regulations, and the TIFIA Program Guide shall immediately apply. Notwithstanding the foregoing, any withdrawal of an approval under this paragraph shall not (a) invalidate or require modification of any previously executed Conditional Term Sheet or Credit Agreement entered into in reliance upon such approval, (b) affect the obligations of the parties under a previously executed Conditional Term Sheet or Credit Agreement, and (c) otherwise apply retroactively to any completed elements or activities.

3.3 Access to Documents

As provided in 23 C.F.R. 1.5, ADOT&PF and KABATA shall furnish, or make available, to FHW A 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 Proposer or other private party does not want to be made publicly available shall be reviewed by FHW A in accordance with the procedures outlined in the FHW A January 26, 2005, memorandum concerning "Pre-submission Evaluation of Information under the Freedom of Information Act." (Attached as Exhibit A) The confidentiality of any records obtained by FHW A shall be determined in accordance with 49 C.F.R. Part 7. The TIFIA JPO and FHW A agree to require their outside consultants on the Project to sign confidentiality agreements in the form provided by KABAT A.

3.4 Order of Precedence

Except as otherwise specified herein, this EDA supersedes the March 30, 2007, ADOT &PF SEP-15 application and the June 6, 2007, FHWA SEP-15 acceptance letter. The March 30, 2007, ADOT &PF SEP-15 application and the June 6, 2007, FHW A SEP-15 acceptance letter are attached to this EDA as Exhibits B & C, 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 March 30, 2007 SEP-15 application, the June 6, 2007 SEP-15 acceptance letter and any prior modifications to the EDA.

SECTION 4. EXPERIMENTAL FEATURES - INITIAL APPLICATION PROCESS

4.1 Deviations from the TIFIA Program Guide, Section Chapter 4, Section 4-1 - SEP-15 Application serves as the Letter of Intel'est (LOI) for the Project advanced under the EDA

- A. FHW A acknowledges and agrees to KABATA's deviation from Chapter 4, Section 4-1 of the TIFIA Program Guide, as provided in the June 6, 2007, FHW A SEP-15 acceptance letter, by waiving the LOI submission and the requirement that KABATA provide information about the Developer and a proposed Plan of Finance.
- B. The LOI serves three purposes. First, it familiarizes DOT with the basic information relating to the project and sponsor. Second, it permits DOT and the sponsor to ensure that the project meets the most basic eligibility requirements for participation. Third, it allows DOT to designate an appropriate evaluation team for the project.
- C. Each potential TIFIA applicant must first submit a detailed LOI describing the project and outlining the proposed plan of finance, including the requested credit assistance. The LOI should contain a description of the project, information about proposed financing for the project, background on the project sponsor, a discussion of the benefits of the proposed project and its use of TIFIA credit assistance, and a summary of the project's status in the environmental review process.
- D. In order to ensure that the purposes and requirements of Chapter 4, Section 4-1, as listed in 4.1.B and 4.1.C, are protected, the following conditions must be met:

(i) As the procurement process proceeds, KABAT A shall provide timely notice to the FHW A Alaska Division Office and the TIFIA JPO concerning the Proposers, their qualifications, and their legal structures. Once the KABAT A RFP has been issued with or amended to include the Conditional Term Sheet and the substantially final form of the Credit Agreement, Proposers will negotiate outstanding conditions directly with the TIFIA JPO beginning the earliest of RFP solicitation or 60 days prior to the KABAT A RFP submittal date. The Proposers will be required to directly provide to the TIFIA JPO any supplemental information consistent with the TIFIA Program Guide requirements.

(ii) Prior to solicitation of the RFP and/or issuance of the Conditional Term Sheet and substantially final form of the Credit Agreement, KABAT A will seek input from prospective Proposers concerning plan of finance information such as project costs and revenues and will keep the FHW A Alaska Division Office and the TIFIA JPO informed concerning the Proposers' plans to use TIFIA credit assistance, the type of credit assistance, any special terms that may pertain to the Credit Agreement, and their proposed plans of finance before the issuance of the RFP. After the issuance of the RFP, Proposers will negotiate any outstanding conditions directly with the TIFIA JPO.

(iii) At the time of application, KABAT A will confirm that FHW A has circulated a Draft Environmental Impact Statement (DEIS). In the event that FHW A's environmental decision making responsibilities for this project have been assumed by ADOT &PF under 23 D.S.C. § 327, KABAT A shall confirm that ADOT &PF has circulated the DEIS.

SECTION 5. EXPERIMENTAL FEATURES - APPLICATION PROCESS

5.1 Deviations from TIFIA Program- Guide, Chapter 4, Section 4-2 Application Requirements A and E - Contact, Organizational, and Legal Information about the Project Sponsor

A. FHW A acknowledges and agrees to the deviation from Chapter 4, Section 4-2 Application Requirements A and E of the TIFIA Program Guide, as provided in the June 6, 2007, FHW A SEP-15 acceptance letter, by waiving the requirement that when an application for TIFIA credit assistance is submitted the applicant provide information about where and how to contact the borrower, its organizational structure, experience, and legal authority to carry out the activities described in the application.

B. The purpose of Chapter 4, Section 4-2 Application Requirements A and E is to determine whether the project sponsor (or borrower) has the qualifications, financial resources, legal authority, and demonstrated capabilities to develop a project and can comply with TIFIA requirements.

C. In order to ensure that the purposes of Chapter 4, Section 4-2 Application Requirements A and E of the TIFIA Program Guide are fulfilled, the following conditions must be met:

(i) KABAT A will pay to DOT the nonrefundable application fee of \$30,000 for the Project.

(ii) KABATA's RFP will require Proposers that desire to use TIFIA credit assistance to submit information and certifications that address all applicable TIFIA requirements as set forth in the TIFIA Program Guide to the TIFIA JPO prior to submitting their proposals.

(iii) As the procurement process proceeds, KABAT A will timely inform the FHW A Alaska Division Office and the TIFIA JPO concerning the Proposers and their qualifications, organizational structure, and legal authority to carry out the activities described in the application. Once the KABAT A RFP has been issued with or amended to include the Conditional Term Sheet and the substantially final form of the Credit Agreement, Proposers will negotiate outstanding conditions directly with the TIFIA JPO beginning the earlier of RFP solicitation or 60 days prior to the KABAT A RFP submittal date.

(iv) Prior to the release of the RFP, and in accordance with 23 C.F.R. 635.112, KABAT A will transmit the draft RFP documents to the FHW A Alaska Division Office and the TIFIA JPO for timely review and concurrence on TIFIA-related provisions to confirm that TIFIA requirements are addressed. The FHWA Alaska Division Office will be notified of all industry meetings. The FHW A Alaska Division Office will participate in all informational meetings with Proposers. Further, the TIFIA JPO may at its discretion participate in any or all informational meetings with Proposers during which TIFIA-related matters are discussed.

5.2 Deviation from TIFIA Program Guide, Chapter 4, Section 4-2 Application Requirement D - Requirement to Submit a Detailed Financial Plan

A. FHW A acknowledges and agrees to KABAT A's deviation from Chapter 4, Section 4-2 Application Requirement D of the TIFIA Program Guide, as provided in the June 6, 2007, FHW A SEP-15 acceptance letter, by waiving the requirement that when an application for TIFIA credit assistance is submitted the applicant provide a detailed plan of finance, including estimated project costs and activity breakdowns, sources and uses of funds descriptions, cash flow pro forma, supplementary narratives on borrowed funds and revenue sources, proposed terms for the requested TIFIA credit instrument, and risk and mitigation strategies.

B. The purpose of Chapter 4, Section 4-2 Application Requirement D of the TIFIA Program Guide is to determine a project's overall creditworthiness and provide reasonable assurance that there will be sufficient financial resources available to implement and complete the project as planned, and repay all borrowed funds, including TIFIA credit assistance.

C. In order to ensure that the purposes of Chapter 4, Section 4-2 Requirement D of the TIFIA Program Guide are protected, the following conditions must be met:

(i) The KABAT A TIFIA application for the Project must demonstrate that the Project meets eligibility and project selection criteria set out in 23 V.S.C. § 602(a) and (b)(2)(A).

(ii) The KABATA TIFIA application will include a pro forma Plan of Finance based on internal KABAT A assumptions and input from Proposers which includes a financing model prepared by Citigroup Global Markets Inc., and forecast of revenues prepared by Wilbur Smith Associates. The pro forma Plan of Finance will include preliminary information on estimated project costs with activity breakdowns, projected revenues, the senior lien debt, the type and amount of TIFIA credit assistance, repayment terms, and amortization schedules for all project debt with coverage calculations. Sufficient information must be provided in the pro forma Plan of Finance to enable DOT to conduct a formal risk assessment and to determine the maximum amount of TIFIA credit assistance based on eligible Project costs. The initial plan must demonstrate to the reasonable satisfaction of DOT that the Project's future revenue will be sufficient to support repayment of the Federal credit assistance to DOT and that it will endeavor to follow FHWA's Major Project Finance Plan guidelines.

(iii) The pro forma Plan of Finance for the Project must demonstrate to the satisfaction of the TIFIA JPO that the financing can be structured such that the senior obligations have the potential to achieve an investment grade rating.

(iv) The KABATA TIFIA application will include an intermediate traffic and revenue forecast for the Project prepared by Wilbur Smith Associates to provide a basis for the projected revenues in the pro forma Plan of Finance included in the application. KABAT A will promptly provide to the TIFIA JPO any additional traffic and revenue reports prepared by Wilbur Smith Associates through completion of the Conditional Term Sheet and substantially final form of the Credit Agreement.

(v) Once the KABATA RFP has been issued with or amended to include the Conditional Term Sheet and the substantially final form of the Credit Agreement, Proposers that desire to use TIFIA credit assistance will negotiate directly with the TIFIA JPO and will be required to directly provide to the TIFIA JPO and the FHWA Alaska Division Office a Plan of Finance that contains all of the required elements specified in the TIFIA Program Guide.

(vi) If the Plan of Finance submitted by the Developer in its proposal to KABATA demonstrates that at least the pre-negotiated terms are met using the approved forecasted revenues prepared by Wilbur Smith Associates, the TIFIA JPO does not anticipate a need to conduct an additional formal risk assessment prior to financial close as part of its due diligence, but reserves the right to do so at its sole discretion.

5.3 Deviation from 23 V.S.C. § 602(b)(2)(B), 49 C.F.R. 80.11(a) and 80.15(b) and the TIFIA Program Guide, Chapter 3, Section 3-5, Rating Opinions - Requirement to Submit a Preliminary Rating Opinion Letter

A. FHWA acknowledges and agrees to KABATA's deviation from 23 V.S.C. § 602(b)(2)(B), 49 C.F.R. 80.11(a) and 80.15(b), and the TIFIA Program Guide, Chapter 3, Section 35, as provided in the June 6, 2007, FHWA SEP-15 acceptance letter, by waiving the requirement that KABAT A submit with its application for TIFIA credit assistance a preliminary rating opinion letter from at least one rating agency indicating that the project's senior obligations have the potential to achieve an investment grade rating.

B. The purpose of the preliminary rating opinion letter in 23 D.S.C. § 602(b)(2)(B), 49 C.F.R. 80.1 I (a) and 80.15(b), and the TIFIA Program Guide, Chapter 3, Section 3-5, is to provide a preliminary assessment of the project's proposed financing structure indicating the project's potential for senior obligations to receive an investment grade rating, a statutory requirement for receiving TIFIA credit assistance.

C. In order to ensure that the purposes of 23 D.S.C. § 602(b)(2)(B), 49 C.F.R. 80.1 I (a) and 80.15(b), and the TIFIA Program Guide, Section 3-5, are protected, the following conditions must be met:

(i) The pro forma Plan of Finance in the KABAT A TIFIA application must demonstrate to the satisfaction of the TIFIA JPO that the Project's financing can be structured such that the senior obligations have the potential to achieve an investment grade rating.

(ii) The KABATA RFP will require each Proposer that plans to use TIFIA credit assistance to provide to KABATA and the TIFIA JPO a preliminary rating opinion letter indicating that the senior obligations have the potential to achieve an investment grade rating.

5.4 Deviation from TIFIA Program Guide, Chapter 4, Section 4-2 Application Requirement B - Requirement to Submit a Project Management and Compliance Monitoring Plan and a Description of Project Operations and Maintenance.

A. FHWA acknowledges and agrees to KABATA's deviation from the TIFIA Program Guide, Chapter 4, Section 4-2, as provided in the June 6, 2007, FHW A SEP-15 acceptance letter, by waiving the requirement that KABAT A submit with its application for TIFIA credit assistance a project management and compliance monitoring plan and a description of project operations and maintenance.

B. The purpose of these requirements in Chapter 4, Section 4-2 Application Requirement B of the TIFIA Program Guide is to assure DOT of the project sponsor's ability to deliver the project as planned, fulfill all project commitments, ensure compliance with all terms of the credit agreement including all applicable regulations and provisions of law, and effectively operate/maintain the project to minimize risk of operational default.

C. In order to ensure that the purposes of the TIFIA Program Guide, Chapter 4, Section 4.2 Application Requirement B are protected, the following conditions must be met:

(i) The KABAT A RFP will require Proposers that plan to use TIFIA credit assistance to submit with their proposals a project management and compliance monitoring plan and a description of project operations and maintenance. Proposers may at their option provide a project management plan directly to the TIFIA JPO and FHW A Alaska Division Office after the KABAT A RFP has been issued with or amended to include the Conditional Term Sheet and the substantially final form of Credit Agreement.

(ii) If the Proposer decides to submit to the TIFIA JPO a project management plan prior to selection of a Developer, the TIFIA JPO will review the project management and compliance monitoring plan and description of project operations and maintenance submitted by the Proposer for compliance with TIFIA requirements.

(iii) If the Developer did not already submit to the TIFIA JPO a project management plan, it must provide for a project management plan in its proposal and upon selection, the TIFIA JPO will review the project management and compliance monitoring plan and description of project operations and maintenance for compliance with TIFIA requirements.

SECTION 6. EXPERIMENTAL FEATURES - CONTRACTUAL DOCUMENTS AND COMMITMENT PROCEDURES

6.1 Form of Credit Agreement

A. KABATA requests and FHWA acknowledges and agrees to provide a substantially final form of the Credit Agreement for inclusion by KABATA in the RFP for the Project as provided in the June 6, 2007, FHWA SEP-15 acceptance letter. KABATA and TIFIA will negotiate the majority of the terms of the credit agreement, leaving open a few key terms to be negotiated with the Proposers. KABATA will then include the Conditional Term Sheet and substantially final form of the Credit Agreement as part of its RFP package. This will provide the Proposers certainty regarding availability, terms, and conditions of TIFIA credit assistance and allow each potential Proposer the ability to incorporate TIFIA credit assistance in its financial proposal to KABATA with reasonable confidence of financial close.

B. The purpose of the Credit Agreement, which is a contractual agreement between DOT and the project sponsor, is to formalize all final terms and conditions of the credit assistance and authorize the funding of the TIFIA credit instrument. The contents of the Credit Agreement include both standard TIFIA provisions and transaction-specific provisions. Prior to execution of a Credit Agreement, the project sponsor must satisfy all program requirements.

C. In order to ensure that the purpose described in 6.1.B is satisfied, the following stipulations shall apply:

(i) The KABATA TIFIA application for the Project must meet the requirements specified in the EDA, all applicable Federal statutory and regulatory requirements, and the TIFIA Program Guide requirements not waived under the EDA.

(ii) The Credit Agreement will resemble TIFIA's standard credit agreement template and will include all business terms and conditions that must be satisfied by a Proposer to receive TIFIA credit assistance, including the terms and conditions set forth in the Conditional Term Sheet.

(iii) The DOT Credit Council must approve the key terms and conditions for the award of conditional credit assistance.

6.2 Deviation from TIFIA Program Guide Chapter 6, Section 6-1 Approval and Term Sheet Prerequisites - Project Selection and Conditional Term Sheet

A. KABAT A requests and FHW A acknowledges and agrees to the deviation from Chapter 6, Section 6-1 Term Sheet Prerequisites of the TIFIA Program Guide, as provided in the June 6, 2007 FHW A SEP-15 acceptance letter, by waiving certain prerequisites for project selection and issuance of a Conditional Term Sheet, including the preliminary rating opinion letter and detailed information on the financial structure and the Developer.

B. The purpose of the term sheet is to set forth key business terms and conditions of TIFIA credit assistance for a project, binding DOT and the project sponsor to the specified terms. Further, the term sheet obligates budget authority for the project. A conditional term sheet reserves TIFIA funding for a project and commits to providing credit assistance to a project at a future point in time upon satisfaction of specified conditions by the project sponsor and subject to the future availability of obligation authority.

C. In order to ensure that the purpose described in 6.2.B is satisfied, the following stipulations shall apply:

(i) Project selection and issuance of a Conditional Term Sheet for the Project is subject to DOT Credit Council approval and a final determination by the Secretary of DOT.

(ii) The TIFIA JPO will incorporate the terms and conditions set forth in the Conditional Term Sheet in the form of Credit Agreement to be provided to KABATA to be included in the RFP.

(iii) KABATA will make the Conditional Term Sheet and the substantially final form of the Credit Agreement available to each qualified Proposer and include a provision in the RFP, or addendum to the RFP, notifying the Proposer that they will be expected to be bound by these documents if they want to use TIFIA credit assistance. KABATA shall also notify the Proposers that the Credit Agreement is in substantially final form, but that each Proposer may negotiate certain outstanding terms directly with the TIFIA JPO, and that those final terms will be subject to DOT approval. KABATA shall also notify Proposers in the RFP that they will be expected to reimburse DOT for all credit processing costs (e.g. outside financial and legal consultant costs in connection with the evaluation of proposals which include TIFIA credit assistance, negotiation of final terms, and execution of the TIFIA Credit Agreement) if they are the successful Proposer. In the event that a TIFIA Credit Agreement is not executed for the Project, KABATA agrees to reimburse DOT for the expenses incurred by DOT in connection with the Project.

(iv) The Conditional Term Sheet and substantially final form of the Credit Agreement issued to KABATA can either provide for assignment of rights to a third party acceptable to the DOT or the issuance of an amended and restated term sheet with the Developer. The Conditional Term Sheet and substantially final form of the Credit Agreement will require the Developer to reimburse DOT for credit processing costs (outside financial and legal consultant costs in connection with the evaluation of the proposals, negotiation of final terms, and execution of the TIFIA credit agreement).

(v) Following DOT's determination that the Developer has met the requirements for TIFIA credit assistance, DOT will issue a final term sheet obligating budget authority and will finalize negotiations with respect to TIFIA credit assistance with the Developer.

(vi) To facilitate KABATA's procurement process, within 30 days of execution of the EDA, the TIFIA JPO will provide to KABATA its standard business terms for inclusion in KABATA's RFP. DOT reserves the right to change these terms, in connection with negotiation and issuance of the Conditional Term Sheet for the Project.

6.3 One-on-One Meeting with Pre-qualified Proposers

A. KABATA requests and FHWA acknowledges and agrees that the TIFIA JPO may participate in one-on-one meetings with the Proposers once the KABATA RFP has been issued with or amended to include the Conditional Term Sheet and the substantially final Credit Agreement and prior to the submission of proposals pursuant to the KABATA RFP.

B. Proposers may request to meet with the TIFIA JPO and its outside advisors to discuss a specific, limited list of terms which remain open for negotiation in the substantially final form of the Credit Agreement which has been negotiated between KABATA and DOT. Proposers could then base their final proposal decisions on the substantially final form of the Credit Agreement included in the RFP and their discussions with the TIFIA JPO. No TIFIA statutes or rules prohibit DOT from meeting with Proposers prior to submission of a proposal in response to a RFP.

C. TIFIA JPO's participation in one-on-one meetings is predicated on Proposer's adherence to all TIFIA program requirements, including the terms and conditions pre-negotiated with KABATA, and the following stipulation~

(i) Pre-qualified Proposers will be allowed to meet with the TIFIA JPO for a period starting not later than 60 days before the due date for proposals set by KABATA, and continuing until the submission deadline.

(ii) Only the key terms of credit identified for negotiation with the Proposers may be discussed. No other terms of the substantially final form of the Credit Agreement negotiated between KABATA and TIFIA will be open for negotiation with the TIFIA JPO.

(iii) The TIFIA JPO may discuss the terms of TIFIA credit assistance that the Proposers are considering, as well as the other provisions of their proposed financial proposals to determine if the Proposers satisfy the eligibility requirements for TIFIA credit assistance and meet the terms and conditions set forth in the Conditional Term Sheet.

(iv) The TIFIA JPO will not participate in KABATA's review of the proposal submissions. If TIFIA credit assistance is sought by the Developer selected by KABATA, the TIFIA JPO will then negotiate the final Credit Agreement directly with such Developer.

(v) In connection with such meetings, Proposers may be required to submit to FHWA financial models, documents, reports, and other written information necessary to inform FHWA concerning the proposed terms of TIFIA credit assistance and other aspects of the proposed financial plan, including project cost information, operating expenses, sources and uses of funds, repayment schedules, coverage ratios, traffic and revenue studies, and lender commitments.

(vi) In the conduct of such meetings, FHWA will not knowingly take any action that discriminates for or against any prospective Proposer. FHWA will allocate its resources, staffing and time for consultations and review of preliminary financial plans in an equitable and timely manner so that no Proposer gains a competitive advantage over another Proposer who requests meetings with FHWA by reason of the disproportionate allocation of resources, staffing and time.

(vii) The confidentiality of any documents, reports, or other written information provided by the Proposers to FHWA shall be determined in accordance with 49 C.F.R. Part 7. Prior to the submission of any documents, reports, or other written information that a Proposer or the Developer does not want to be made publicly available, the Proposer may request FHWA to conduct a review of the information in accordance with Section 3.3.

SECTION 7. EVALUATION CRITERIA

7.1 Time Savings

KABATA, through ADOT&PF, will evaluate the following to measure time-savings:

(1) Compare the actual schedule for receiving TIFIA credit assistance approval and execution of a credit agreement with the Developer with the estimated schedule based on a traditional procurement process and TIFIA standard process;

(2) Evaluate the effect of the SEP-IS experiments on the receipt of final proposals and financial close; and

(3) Attempt to assess the value of the streamlined TIFIA credit approval approach described herein.

7.2 Innovation in Financing

KABATA, through ADOT&PF, will analyze the financing structures and methods developed in connection with the Project and how those structures and methods compare to historical project financing structures and methods for comparable projects. As part of this analysis and comparison, KABATA will particularly focus upon the levels of financing and project risk shifted to the private sector and strategies employed to minimize risk to the State of Alaska and KABATA. KABATA will also evaluate the benefits and value of the inclusion of a pro forma financial plan in the RFP.

KABATA, through ADOT &PF, shall also analyze how the experimental process for TIFIA was perceived by the industry. KABATA will collect and evaluate the final Proposers' observations about the experiments carried out pursuant to this EDA, including the process used to develop the pro forma financial plan in the RFP.

KABATA, through ADOT&PF, shall attempt to measure the extent to which the experimental process for TIFIA encouraged additional private participation in Knit Arm Crossing procurement.

SECTION 8. REPORTING

8.1 Initial Report

KABATA, through ADOT&PF, will submit an initial report within 120 days after the execution of the contract for the Project and will include a preliminary analysis of the public-private partnership procurement. This report will:

- (1) Describe the process used to select the Developer team;
- (2) Identify any reaction by the industry to use of the TIFIA experimental process as described herein;
- (3) Document major innovations contained in the proposals received; and
- (4) Discuss any major problems or issues that have occurred and how they were resolved.

8.2 Post Acceptance Reports

KABATA, through ADOT&PF, shall prepare or commission a third-party to prepare a post acceptance report within 180 days following financial close for the Project. This report will provide an overall evaluation of the role of the TIFIA experimental process in the procurement of detailed proposals and the execution of the procurement process for the Project. The post acceptance report will include:

- (1) An overall evaluation of the process used to obtain TIFIA Credit Program assistance as described in this agreement in the procurement of detailed proposals and the execution of the final contract for the Project;
- (2) A description of lessons learned, including problems to avoid and suggestions for improvements on future innovative procurements and approaches utilizing the TIFIA Credit Program;
- (3) An evaluation of the SEP-15 experimental features used and the extent to which those features contributed to the Project's success; and
- (4) A recommendation on any statutory or regulatory change or change in standard TIFIA procedures or policies.

SECTION 9. MISCELLANEOUS PROVISIONS

9.1 Amendments

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9.1 Amendments

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

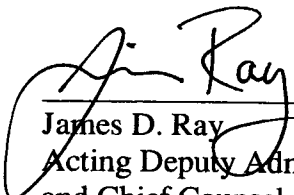
9.2 Withdrawal of Application

FHW A acknowledges and agrees that KABATA and the Proposers may, in their discretion, decide to withdraw the KABAT A application for TIFIA credit assistance for the Project at any time without further obligation or prejudice and if such application is withdrawn, KABATA shall be responsible to FHWA only for the TIFIA application fee and credit processing fees for outside consultant costs incurred by FHWA in connection with the Project.

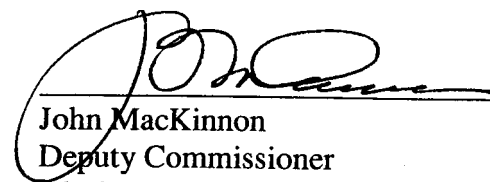
9.3 Original Copies

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


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



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



John MacKinnon
Deputy Commissioner
Alaska Department of Transportation



Andrew Niemiec
Executive Director
Knik Arm Bridge and Toll Authority