

**EARLY DEVELOPMENT AGREEMENT
BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION
AND
THE FLORIDA DEPARTMENT OF TRANSPORTATION
FOR
WAIVERS OF THE TIFIA CREDIT PROGRAM PROCEDURES**

THIS EARLY DEVELOPMENT AGREEMENT (hereinafter "EDA"), made and entered into this 28th day of July 2008, by and between the FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter "FDOT"), and the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION, (hereinafter "FHWA").

WITNESSETH

WHEREAS, on March 24, 2008 FDOT 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 I-595 Corridor Roadway Improvements Project ("I-595") and three projects to be named in the future ("Projects");

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, FDOT's SEP-15 application proposes the use of an innovative financing approach for procuring the Projects, 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 Projects 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 April 22, 2008, FHWA accepted FDOT's SEP-15 application for the I-595 project and three projects to be named in the future;

WHEREAS, under SEP-15, an EDA between FDOT and FHWA is required in order to specify the conditions relating to the modifications or deviations from Federal requirements that are granted for the Projects 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, FDOT and FHWA hereby agree as follows:

SECTION 1. SCOPE OF EARLY DEVELOPMENT AGREEMENT

1.1 This EDA is intended to identify and establish the parameters of the modifications or deviations 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, which shall be hereinafter referred to as the "experimental features." Nothing in this EDA shall be construed as a relinquishment of any Federal oversight or stewardship responsibility.

1.2 The experimental features in Sections 4, 5, and 6 of this EDA shall apply to the I-595 project. Application of the experimental features described in Sections 4, 5, and 6 for the three projects to be named, shall be conditioned upon FDOT's submission of a written request to proceed with the next Project which shall include a statement explaining the benefit of repeating the experimental features.

SECTION 2. DEFINITIONS

2.1 Applicant

"Applicant" means the FDOT.

2.2 Conditional Term Sheet

"Conditional Term Sheet" means contractual agreement between the United States Department of Transportation ("DOT") and each of the short listed proposers containing the key terms and conditions that will be incorporated into the final Credit Agreement by which DOT reserves TIFIA funding for a specific project and commits to providing Federal credit assistance to that project at a future point in time upon satisfaction of specified conditions and subject to the future availability of obligation authority.

2.3 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.

2.4 Developer

"Developer" means the Proposer that is awarded the contract for a Project.

2.5 DOT

“DOT” means United States Department of Transportation.

2.6 DOT Credit Council

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

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.

2.9 Projects

“Projects” means the I-595 project as described in FDOT’s March 24, 2008 SEP-15 application and three additional projects to be named in the future.

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 FDOT in connection with each Project.

2.12 TIFIA

“TIFIA” means the Transportation Infrastructure Finance and Innovation Act of 1998, 23 U.S.C. § 601-609.

2.13 TIFIA JPO

“TIFIA JPO” means the Joint Program Office, which administers the TIFIA credit program, on behalf of the Secretary of the 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 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 to 4655, 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 4370(f), 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, FDOT may apply to the I-595 project the SEP-15 experimental features described in Sections 4, 5, and 6 of the EDA. FDOT’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

FHWA’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 FHWA if FHWA determines that the experimental features are not in the public interest. Prior to any such withdrawal, FHWA will issue a written notice to FDOT describing the FHWA’s findings and provide FDOT a reasonable period of time to address the FHWA’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 FDOT has 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 entered into in reliance upon such approval, (b) affect the obligations of the parties under a previously executed Conditional Term Sheet, 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, FDOT shall furnish, or make available, to FHWA such information as the FHWA deems necessary, as more particularly described in this Agreement, to administer the TIFIA credit program in connection with the Projects 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 FHWA in accordance with the procedures outlined in the FHWA 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 the FHWA 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 March 24, 2008, FDOT SEP-15 application and the FHWA April 22, 2008, SEP-15 acceptance letter. The March 24, 2008, FDOT SEP-15 application and the April 22, 2008, FHWA 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 24, 2008 SEP-15 application, the April 22, 2008 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 4-2 – SEP-15 Application serves as the Letter of Interest (LOI) for the Projects advanced under this EDA

A. FHWA acknowledges and agrees to FDOT's deviation from Section Chapter 4, Section 4-2 of the TIFIA Program Guide, as provided in the FHWA April 22, 2008, SEP-15 acceptance letter, by waiving the LOI submission and the requirement that FDOT provide information about the Developer and a proposed Plan of Finance.

B. The LOI serves three purposes. First, it familiarizes the DOT with the basic information relating to the project and sponsor. Second, it permits the DOT and the sponsor to ensure that the project meets the most basic eligibility requirements for participation. Third, it allows the 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 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 4-2, as listed in 4.1.B and 4.1.C, are protected, the following conditions must be met:

(i) Prior to issuance of a RFP for a Project, FDOT will submit to the FHWA Florida Division Office a request to proceed with the next Project no later than 90 days before the issuance of a RFP. The request will identify the Project and will include a development schedule, a summary of the project's status in the environmental review process, information regarding the prospective proposers including their qualification and legal structures, and information about the payment mechanism and limited pro forma data based upon the Major Project Financial Plan. The request should be accompanied by a timetable showing the major steps and dates in the procurement process. This requirement does not apply to the I-595 project as the SEP-15 Application contains sufficient information for the TIFIA JPO to assess whether the project meets the basic eligibility requirements for TIFIA credit assistance. The FHWA Florida Division Office and the TIFIA JPO will determine whether the Project meets the conditions of this EDA, and if so, will notify FDOT that it may proceed with the issuance of a RFP.

(ii) As the procurement process proceeds, FDOT shall provide timely notice to the FHWA Florida Division Office and the TIFIA JPO concerning the Proposers, their qualifications, and their legal structures.

(iii) Further, FDOT will seek input from prospective Proposers concerning Plan of Finance information such as project costs and revenues and will keep the FHWA Florida 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 apply to the Credit Agreement, and their proposed Plan of Finance before the issuance of a RFP. After issuance of the RFP, Proposers may negotiate a Conditional Term Sheet directly with the TIFIA JPO.

(iv) At the time FDOT requests to proceed with the next Project, it will provide written confirmation that the FHWA has approved the Project with a Finding of No Significant Impact or Categorical Exclusion, or that a Draft Environmental Impact Statement has been circulated.

SECTION 5. EXPERIMENTAL FEATURES – APPLICATION PROCESS

5.1 Deviations from 49 C.F.R. § 80.7(b) – Application Process and TIFIA Program Guide, Chapter 4, Section 4-2 Application Requirements A and E – Contact, Organizational, and Legal Information about the Project Sponsor – SEP-15 Application serves as the TIFIA Application for the Projects Advanced under this EDA

A. FHWA acknowledges and agrees to the deviation from 49 C.F.R. § 80.7(b) – Application Process and Chapter 4, Section 4-2 Application Requirements A and E of the TIFIA Program Guide, as provided in the FHWA April 22, 2008, 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 Developer, its organizational structure, experience, and legal authority to carry out the activities described in the application.

B. The purpose of 49 C.F.R. § 80.7(b) and 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) FDOT will pay to DOT the nonrefundable application fee of \$30,000 for each Project advanced under the terms of this EDA.

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

(iii) As the procurement process proceeds for each Project, FDOT will timely inform the FHWA Florida 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 RFP for each Project has been issued, the pre-qualified proposers may negotiate a Conditional Term Sheet directly with the TIFIA JPO. The Proposers will be required to directly provide all information pre-negotiated with the TIFIA JPO in the submittal of their proposals.

(iv) Prior to the release of the RFP for each Project, and in accordance with 23 C.F.R. § 635.112, FDOT will transmit the draft RFP documents to the FHWA Florida Division Office and the TIFIA JPO for review and concurrence on TIFIA-related provisions to confirm that TIFIA requirements are addressed. The FHWA Florida Division Office will be notified of, and allowed to participate in, all industry meetings. The FHWA Florida Division Office and the TIFIA JPO will participate at their discretion in 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. FHWA acknowledges and agrees to FDOT's deviation from Chapter 4, Section 4-2 Application Requirement D of the TIFIA Program Guide, as provided in the FHWA April 22, 2008, 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) FDOT must demonstrate that each Project meets eligibility and project selection criteria set out in 23 U.S.C. § 602(a) and (b)(2)(A).

(ii) For each Project, FDOT will submit to the TIFIA JPO 60 days before issuance of a RFP for a Project a pro forma plan of finance based on internal FDOT assumptions which includes a financial model and forecast of revenues. 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 pro forma 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 the DOT and that it will follow the 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 FDOT RFP for each Project will require Proposers that plan to use TIFIA credit assistance to submit with their proposals a Plan of Finance that contains all of the required elements specified in the TIFIA Program Guide. Once the FDOT RFP has been issued 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 Florida Division Office a Plan of Finance that contains all of the required elements specified in the TIFIA Program Guide.

5.3 Deviation from 23 U.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 FDOT's deviation from 23 U.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, as provided in the FHWA April 22, 2008, SEP-15 acceptance letter, by waiving the requirement that when an application for TIFIA credit assistance is submitted the Applicant provide 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 U.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, 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 U.S.C. § 602(b)(2)(B), 49 C.F.R. §§ 80.11(a) and 80.15(b), and the TIFIA Program Guide, Section 3-5, are protected, the following conditions must be met:

(i) FDOT may defer providing a Preliminary Rating Opinion Letter if the plan of finance submitted for each Project demonstrates 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 FDOT RFP will require each Proposer that plans to use TIFIA credit assistance to provide to the TIFIA JPO a Preliminary Rating Opinion Letter to supplement the Plan of Finance submitted by the Proposer to the TIFIA JPO.

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 FDOT's deviation from the TIFIA Program Guide, Chapter 4, Section 4-2, as provided in the FHWA April 22, 2008, SEP-15 acceptance letter, by waiving the requirement that when an application for TIFIA credit assistance is submitted the Applicant provide 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 FDOT RFP for each Project 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.

(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 selected Proposer did not already submit to the TIFIA JPO a project management plan, it must provide 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 Deviation from TIFIA Program Guide Chapter 6, Section 6-1 Approval and Term Sheet Prerequisites – Project Selection and Conditional Term Sheet

A. FDOT requests and FHWA acknowledges and agrees to the deviation from Chapter 6, Section 6-1 Term Sheet Prerequisites of the TIFIA Program Guide, as provided in the FHWA April 22, 2008, 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 the 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 6.1.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 the DOT.

(ii) FDOT shall also notify Proposers in the RFP for each Project that they will be required to reimburse DOT for all credit processing costs (e.g., outside financial and legal consultant costs in connection with the evaluation of all proposals which include TIFIA credit assistance, negotiation of Conditional Term Sheets, negotiation of final terms in the Credit Agreement, 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, FDOT agrees to reimburse DOT for all such credit processing expenses incurred by DOT in connection with the Project.

(iii) The Conditional Term Sheet will require the Developer to reimburse the DOT for all credit processing costs (e.g., outside financial and legal consultant costs in connection with the evaluation of all proposals, negotiation of Conditional Term Sheets, negotiation of final terms in the Credit Agreement, and execution of the TIFIA Credit Agreement) related to the Project.

(iv) 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.

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

A. FDOT requests and FHWA acknowledges and agrees that the TIFIA JPO may participate in one-on-one meetings with the Proposers once the FDOT RFP has been issued for the I-595 and for the three projects to be named prior to the submission of proposals pursuant to the FDOT RFP.

B. TIFIA JPO's participation in one-on-one meetings is predicated on the Proposer's adherence to all TIFIA program requirements, including any terms and conditions pre-negotiated with FDOT, and the following stipulations:

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

(ii) 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.

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

(iv) In connection with such meetings, Proposers must provide, upon request, to the TIFIA JPO financial models, documents, reports, and other written information necessary to inform the TIFIA JPO 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) 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

FDOT 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-15 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

FDOT 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, FDOT 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 Florida. FDOT will also evaluate the benefits and value of the inclusion of a pro forma financial plan in the RFP.

FDOT shall also analyze how the experimental process for TIFIA was perceived by the industry. FDOT 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.

FDOT shall attempt to measure the extent to which the experimental process for TIFIA encouraged additional private participation in each Project procurement.

SECTION 8. REPORTING

8.1 Initial Report

FDOT 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

A. FDOT shall prepare or commission a third-party to prepare a post acceptance report within 180 days following execution of the contract and financial close for each 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

This EDA may be amended at any time by written agreement of FHWA and FDOT. 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 Florida Division Administrator shall have the authority to amend this EDA for the FHWA, subject to the concurrence of the TIFIA JPO and FDOT.


9.2 Original Copies

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

SIGNATURE PAGE FOLLOWS

IN WITNESS THEREOF, the Parties hereto have caused this Early Development Agreement to be duly executed in duplicate as of the day and year first written above, either on one original document or via multiple counterparts through facsimile, which, when taken together, shall constitute one and the same instrument.

FEDERAL HIGHWAY ADMINISTRATION

By:  _____
James D. Ray
Acting Administrator

FLORIDA DEPARTMENT OF TRANSPORTATION

By:  _____
Stephanie Kopelousos
Secretary