

UNITED STATES DEPARTMENT OF TRANSPORTATION

Re: TIFIA Loan Term Sheet Template – [Project Name]  
(TIFIA Application for Credit Assistance No. [\_\_\_\_\_])

Ladies and Gentlemen:

This TIFIA Loan Term Sheet, including Attachment 1 (collectively, the “**Term Sheet**”) constitutes the commitment of the United States Department of Transportation (hereinafter the “**Department**”) to proceed on an expedited basis to provide a secured loan (the “**TIFIA Loan**”) for the [Insert Project Name] (hereinafter the “**Project**”, as described below), pursuant to the Transportation Infrastructure Finance and Innovation Act of 1998 (“**TIFIA**”), §1501 *et. seq.* of Public Law 105-178 (as amended by Public Law 105-206 and Public Law 109-59) (the “**Act**”), as codified as 23 U.S.C. §601 *et seq.*

The Project consists of [Insert Project Description], to be developed, designed and constructed pursuant to a Concession Agreement, [dated as of \_\_\_\_\_] (the “**Concession Agreement**”) between \_\_\_\_\_ (the “**Borrower**”) and \_\_\_\_\_ (“\_\_\_\_\_”). Your current estimated total Project cost is \$\_\_\_\_\_.

While the Department’s commitment to provide the TIFIA Loan to the Project is based on your application received in \_\_\_\_\_, your presentation of \_\_\_\_\_, and the supplemental information you have submitted, the final terms of the TIFIA Loan will be specified in the TIFIA Loan Agreement (the “**TIFIA Loan Agreement**”). This Term Sheet establishes the parties, the maximum original principal amount of the TIFIA Loan, the dedicated repayment sources, the term, the method of determining the interest rate, and credit terms set forth in Attachment 1. The Term Sheet is a commitment of the Department to proceed on an expedited basis to provide the TIFIA Loan, subject only to the terms specified herein, and is subject to the completion of a due diligence review by [the TIFIA JPO] of the relevant traffic and revenue studies, senior loan documents, the Concession Agreement, a Subordination and Intercreditor Agreement, rating letters[, a Collateral Agency Agreement and such other documentation as the Department may require,] all on terms and conditions acceptable to the Department. This commitment is conditioned on your acceptance of the terms set forth herein [and insert additional conditions, if any]. This commitment expires on [45 days from date of execution].

Capitalized terms used in this Term Sheet and not otherwise defined shall have the respective meanings ascribed thereto in the TIFIA Template Loan Agreement, the form of which is attached hereto as Attachment 2.

If the terms and the provisions of this Term Sheet are acceptable, please countersign this Term Sheet in the space indicated below.

*Draft TIFIA Loan Term Sheet Template as of 9/11/08*

Sincerely,

UNITED STATES DEPARTMENT  
OF TRANSPORTATION

By: \_\_\_\_\_

[\_\_\_\_\_]

Administrator  
Federal Highway Administration

Date: \_\_\_\_\_

ACKNOWLEDGED AND AGREED TO:

[BORROWER]

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT 1: TERMS FOR TIFIA LOAN AGREEMENT**

THE TERMS SET FORTH HEREIN REPRESENT THE STANDARD TERMS FOR A TIFIA LOAN AGREEMENT THAT MUST BE ACCEPTED BY THE BORROWER IN ORDER TO PROCEED TO EXECUTION OF A TIFIA LOAN AGREEMENT ON AN EXPEDITED BASIS. .

TIFIA LENDER United States Department of Transportation (the “TIFIA “Lender”)

BORROWER The Borrower shall be \_\_\_\_\_ (the “Borrower”), [describe corporate entity].

PRINCIPAL AMOUNT OF TIFIA LOAN The TIFIA Loan shall be in an amount no to exceed \$ \_\_\_\_\_ , provided that the maximum original principal amount of the TIFIA Loan shall not exceed the lesser of 33 percent of reasonably anticipated Eligible Project Costs, as defined in the Act or, if the TIFIA Loan does not receive an Investment Grade Rating, the amount of the Initial Senior Obligations.

DEDICATED REPAYMENT SOURCES The dedicated source of repayment of the TIFIA Loan shall be a lien on Project Revenues (as defined below).

SECURITY The security for the TIFIA Loan shall be a security interest in the Project Revenues [and liens and security interests in other assets as specified in this Term Sheet].

INTEREST RATE The TIFIA Loan shall bear interest at a fixed rate calculated by adding one basis point (.01%) to the rate of securities of a similar maturity as published on the execution date of the TIFIA Loan Agreement in the United States Treasury Bureau of Public Debt’s daily rate table for State and Local Government Series (SLGS) securities, currently located on the internet at [www.treasurydirect.gov/govt/rates/slgs/slgs.htm](http://www.treasurydirect.gov/govt/rates/slgs/slgs.htm). Interest will be computed on the Outstanding TIFIA Loan Balance (as well as on any past due interest) from time-to-time on the basis of a 365-day or 366-day year, as appropriate, for the actual number of days elapsed and will be compounded semi- annually; provided, however, in the event of a Payment Default, the Borrower shall pay interest on any overdue amount from its due date to the date of actual payment at the Default Rate.

DEFAULT RATE If the Borrower fails to pay when due interest on or principal of the TIFIA Loan, the Borrower shall pay interest on such overdue amount from its due date to the date of actual payment at an interest rate of 200 basis points (2.00%) above the TIFIA interest rate.

*Draft TIFIA Loan Term Sheet Template as of 9/11/08*

TERM The final maturity of the TIFIA Loan shall be [\_\_\_\_\_], but in any event not later than 35 years after the date of substantial completion of the Project.

ELIGIBLE PROJECT COSTS Eligible Project Costs shall include those costs defined in the Act, including costs associated with concession payments made to [agency], if any, by the Borrower, and prior Project expenditures for the three-year period preceding the application date of [\_\_\_\_\_].

Eligible Project Costs incurred prior to execution of the TIFIA Loan Agreement shall be verified by the TIFIA Lender and must be consistent with title 23 U.S.C. and 48 C.F.R. §31.105 relating to construction and architect-engineer contracts and the cost principles in subpart §31.2 of 48 C.F.R.

PROJECT REVENUES Project Revenues shall include (i) all income, tolls, revenues, rates, fees, charges, rentals, or other receipts derived by or related to the operation or ownership of the Project, including all amounts from joint development or leasing of air space lease rights, (ii) any revenues assigned to the Borrower and proceeds of the sale or other disposition of all or any part of the Project, and (iii) all income derived from Permitted Investments.

SECURITY AND PRIORITY The TIFIA Loan shall be secured by a second priority security interest in Project Revenues and liens and security interests in other project assets subordinate only to the lien of the Senior Obligations. The TIFIA Loan Agreement shall be secured by a first priority security interest in Project Revenues on parity with the lien of the Senior Debt Obligations upon the occurrence of a Bankruptcy Related Event.

The flow of funds will be as follows:\*

1. Operating and Maintenance Expenses [may include revenue sharing amount payable to [State Agency];
2. Required Capital Expenditures;
3. Fees, costs and expenses due under Senior Loan Agreement and TIFIA Loan Agreement;
4. Interest portion of Senior Debt Service and Hedging Obligations;
5. Principal portion of Senior Debt Service and Hedging Termination Obligations, if any, from repayment of Senior Debt Service, Hedging Termination Obligations (other than Partially Subordinated Hedges) and Hedging Termination Obligations for tax, illegality or failure of Borrower to pay Hedging Obligations when due;
6. Interest portion of TIFIA Debt Service;
7. Principal portion of TIFIA Debt Service;

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\* May be modified depending on structure of TIFIA Loan and Project cash flows.

8. Deposits to Debt Service Reserve Account, if any and repayment of obligations to any provider of a liquidity facility held for the benefit of any Debt Service Reserve Account;
9. Deposits to Major Maintenance Reserve Account, if any;
10. Deposits to Hedging Acquisition Account, if any;
11. Discretionary Capital Expenditures;
12. Voluntary prepayments of Senior Loans and related Hedging Termination Obligations; and
13. Deposits to Distribution Account.

In the event [applicable state agency] revenue sharing payments are subordinate to any debt service obligation in the flow of funds, the TIFIA Lender will require that such payments also be subordinate to TIFIA debt service.

The TIFIA Lender shall approve the priority status of the Borrower's obligations under any hedging contracts entered into in connection with the Senior Obligations.

**BANKRUPTCY RELATED EVENT**

Bankruptcy Related Event means (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any of its debts, or of a substantial part of the assets of the Borrower, under any Insolvency Law, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Borrower for a substantial part of the assets of the Borrower, and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered; or (b) the Borrower shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Borrower or for a substantial part of the assets of the Borrower, or (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, or (iii) make a general assignment for the benefit of creditors, or (iv) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, or (v) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, or (vi) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (v), inclusive, of this clause (b), or (vii) take any action for the purpose of effecting any of the foregoing; or (c) (i) all or a substantial part of the Collateral (other than the Equity Interests) shall be sold or otherwise disposed of in a

public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the Senior Obligations, or (ii) all or a substantial part of the Collateral (other than the Equity Interests) shall be transferred pursuant to a sale or disposition of such Collateral in lieu of foreclosure; or (d) (i) all or a substantial part of the Equity Interests shall be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the Senior Obligations, or (ii) all or a substantial part of the Equity Interests shall be transferred pursuant to a sale or disposition of such Collateral in lieu of foreclosure, if in either such case such action or exercise of rights or remedies results in any release or impairment of the Liens of the Collateral Agent in the Collateral (other than the Equity Interests) granted for the benefit of the TIFIA Lender or (e) the Collateral Agent shall transfer, pursuant to directions issued by the Administrative Agent, funds or deposit in any of the Project Accounts upon the occurrence and during the continuation of an Event of Default under the Senior Loan Documents for application to the prepayment or repayment of any principal amount of the Senior Obligations pursuant to the Collateral Agency Agreement or otherwise (other than any transfer from any Project Account to another Project Account and any disposition of funds pursuant to and in accordance with the Collateral Agency Agreement).

REQUIRED RESERVE FUNDS

The TIFIA Lender may require a Debt Service Reserve Account, a Major Maintenance Reserve Account, a rate stabilization fund and other reserves depending on the specific requirements of the Project.

SUBSTANTIAL  
COMPLETION DATE

The Substantial Completion Date for the Project is the date on which [applicable project segment] is open to tolled vehicular or passenger traffic.

TIFIA DEBT SERVICE

Repayment of the TIFIA Loan shall be structured as follows:\*

1. Capitalized Interest Period - deferred interest and principal payments from the Effective Date to the fifth anniversary of the Substantial Completion Date.
2. Interest Only Period – mandatory interest payments from end of Capitalized Interest Period to the end of the 10<sup>th</sup> consecutive Payment Period. Principal of the TIFIA Loan may be deferred during this period.
3. Fixed Level Payment Period – mandatory fixed level payments of principal of and interest on the outstanding

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\* May be modified depending on structure of TIFIA Loan and Project cash flows.

balance of the TIFIA Loan from the end of the interest only period to Final Maturity.

CONDITIONS PRECEDENT

In addition to the Conditions Precedent set forth in Section 13 of the Template Loan Agreement attached hereto as Attachment 2, the TIFIA Loan Agreement shall not become effective and the TIFIA Lender shall have no obligation to disburse any loan proceeds to the Borrower until each of the following additional conditions precedent shall have been satisfied:

[To be determined after completion of due diligence review.]

REPRESENTATIONS AND  
WARRANTIES OF BORROWER

In addition to the Representations and Warranties of the Borrower set forth in Section 14 of the Template Loan Agreement attached hereto as Attachment 2, the TIFIA Loan Agreement shall not become effective and the TIFIA Lender shall have no obligation to disburse any loan proceeds to the Borrower unless the Borrower shall agree to represent and warrant that as of the date of execution of the TIFIA Loan Agreement and as of each date on which any disbursement of the TIFIA Loan is made:

[To be determined after completion of due diligence review.]

RESTRICTED PAYMENTS  
(I.E. PAYMENTS TO EQUITY  
FROM SURPLUS FUNDS)

There shall be no distribution of any kind of surplus funds to the Borrower or any Equity Sponsor prior to Substantial Completion of the Project.

After Substantial Completion, there shall be no distribution of any kind of surplus funds to the Borrower or any Equity Sponsor unless and until (i) payment of TIFIA Debt Service is current and (ii) the Total Debt Service Coverage Ratio is equal to at least 1.20 for the preceding Calculation Period and is projected to be at least 1.20 in the next Calculation Period.

PROJECT EQUITY

The Equity Sponsors that are funding equity commitments shall provide binding obligations for the Equity Contribution on the Effective Date.

A standby letter of credit or equivalent support acceptable to the TIFIA Lender shall be required for equity commitments to be made subsequent to the Effective Date.

NEGATIVE AMORTIZATION  
OF TIFIA LOAN

On the Effective Date, the Base Case Financial Plan shall not reflect amortization of Senior Indebtedness until all currently accruing TIFIA interest is paid.

*Draft TIFIA Loan Term Sheet Template as of 9/11/08*

NET CASH FLOW

Net Cash Flow, for any period, shall mean an amount equal to (i) aggregate Project Revenues for such period less the sum of (ii) the Operations and Maintenance Expenses, Major Maintenance Costs, all Capital Expenditures and deposits to the Major Maintenance Reserve Account for such period.

RATE COVENANT

Rates and charges shall be set such that Net Cash Flow in any year will produce (i) a Senior Debt Service Coverage Ratio at least equal to 1.25 in such year and (ii) a Total Debt Service Coverage Ratio at least equal to 1.10 in such year.

The TIFIA Lender shall require a remedial plan if Net Cash Flow is inadequate to comply with the Rate Coverage Test.

TOTAL DEBT SERVICE  
COVERAGE RATIO

Total Debt Service Coverage Ratio shall mean, for the period specified, the ratio of Net Cash Flow to Senior Debt Service and TIFIA Debt Service.

PREPAYMENT

TIFIA Loan may be prepaid in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid shall be determined by the Borrower; provided, however, that such prepayments shall be in the principal amounts of \$1,000,000 or any integral multiple thereof), at any time or from time to time, without penalty or premium, by paying to the TIFIA Lender such principal amount of the TIFIA Loan to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment.

Accelerated prepayment from excess revenues may be required by the TIFIA Lender in the event the TIFIA Loan is not repaid on a fixed level basis.

ADDITIONAL SENIOR DEBT

Additional indebtedness on a parity with the Initial Senior Obligations may be incurred as described below, provided no Event of Default under the Senior Loan Agreement or the TIFIA Loan Agreement has occurred or is occurring. Except for additional indebtedness for the purpose of Project completion, an investment grade rating is required and certain coverage tests must be met.

1. To complete the Project, provided the Borrower certifies to the TIFIA Lender and the Independent Engineer certifies that the additional investment is necessary for project completion and the requested amount is sufficient for project completion. However, the aggregate amount may not, without the prior written consent of the TIFIA Lender, exceed 5% of the maximum principal amount of the Initial Senior Obligations.
2. To refurbish, upgrade, modify, expand or add to the Project is allowed, provided such debt has an investment



grade rating and the borrower certifies to the TIFIA Lender, and the Independent Engineer confirms, that (i) there will be no fundamental change in the use of the Project; (ii) the proceeds of such Additional Senior Obligations, together with other funds available, shall be sufficient for the proposed purpose; and (iii) either (a) the additional investment is not expected to have a Material Adverse Effect, or (b) the Total Debt Service Coverage Ratio for each Calculation Period during the term of the Additional Senior Obligations and the TIFIA Loan is not less than 1.15 (based on a certified revenue forecast prepared by the Traffic Consultant).

3. To refinance the Senior Obligations for savings so long as (i) the Additional Senior Obligations have an Investment Grade Rating, (ii) the net proceeds (after deducting any deposits required to satisfy the Debt Service Reserve Required Balance and costs of issuance not to exceed 2% of the principal amount of such Additional Senior Obligations) do not exceed the principal amount outstanding and being refinanced of the Senior Loan and (iii) Senior Debt Service, after the incurrence of such Additional Senior Obligations, in each year for the remaining term of the TIFIA Loan is less than Senior Debt Service forecast for each year in the Base Case Projection on the Effective Date.
4. Other Additional Senior Obligations to add to, refinance or replace the existing Senior Obligations for purposes not covered in 1-3 above, so long as (i) at least fifty percent of the net proceeds (after repayment of any outstanding Senior Obligations refinanced with such Additional Senior Obligations and after any deposits required to satisfy the Debt Service Reserve Required Balance and costs of issuance not to exceed 2% of the principal amount of such Additional Senior Obligations) of each such Additional Senior Obligations is used to prepay the TIFIA Loan; (ii) the Additional Senior Obligations have an Investment Grade Rating; and (iii) the Total Debt Service Coverage Ratio, after giving effect to such Additional Senior Obligations, is 1.25 or more for each year of the remaining term of the TIFIA Loan (based on actual revenues for the prior 12 month period and a revenue forecast certified by the Traffic Consultant).

Subject to the above provisions, the remaining balance of such net proceeds of any such Additional Senior Obligations may, at the option of the Borrower, be distributed to the Equity Sponsors.

PERMITTED INVESTMENTS

Permitted Investments shall include those listed in the

Template Loan Agreement and such additional investments as shall conform with Nationally Recognized Rating Agency guidelines.

Amounts on deposit in any Project Account during the period on or before one year after the Substantial Completion Date and amounts on deposit in the Debt Service Reserve Account and other reserves shall be held uninvested or invested in Permitted Investments; provided, however, that in no event shall this restriction apply to amounts on deposit in any operating reserve account.

HEDGING

Qualified Hedge must be in place at all times while Senior Loan bears interest at Variable Interest Rate.

Initial Qualified Hedge must terminate not less than stated maturity date of Initial Senior Obligations and must have notional amount not less than 98% of the principal amount of Senior Obligations projected to be Outstanding.

Must always have a Qualified Hedge with notional amount not less than 98% of principal amount of Senior Obligations projected to be Outstanding and (x) at least 75% of notional amount must have termination date not earlier than final maturity of TIFIA Loan and (y) the balance must be for at least one year.

Must be, together with Bank Lending Margin, less than or equal to the Loan Underwriting Rate.

TIFIA consent required for process for selecting Subsequent Qualified Hedges and third party fair price certificate required.

Hedge Acquisition Account required for Subsequent Qualified Hedges.

TIFIA DISBURSEMENTS

Disbursements shall be made monthly to the Borrower to reimburse Eligible Project Costs incurred in connection with the Project pursuant to requisition procedures set forth in the TIFIA Loan Agreement and the Borrower's compliance with disbursement conditions. All disbursement requests must be received by the TIFIA Lender on or before the first Business Day of a calendar month in order to obtain a disbursement by the fifteenth day of such calendar month or if either such day is not a Business Day, the next succeeding Business Day. In no event shall disbursements be made more than once each month.

The Borrower shall provide an annual, cumulative schedule of projected disbursements prior to the Effective Date, such schedule to be included in the TIFIA Loan Agreement. The

Borrower may modify such schedule upon written notice to the TIFIA Lender.

Monthly disbursements shall be on a pro rata basis with disbursements of the proceeds of the Senior Obligations, unless otherwise agreed to by the TIFIA Lender and Borrower.

EVENTS OF DEFAULT AND  
REMEDIES

Events of Default under the TIFIA Loan Agreement shall include, but not be limited to, the following:

1. The Borrower shall fail to pay any principal amount of or interest on the TIFIA Loan when and as the payment thereof shall be required under the TIFIA Loan Agreement or the Note or on the Final Maturity Date (each a "Payment Default").
2. Any of the Borrower's representations, warranties or certifications under the TIFIA Loan Agreement, the Senior Loan Agreement, or other related Agreement(s) is materially false or misleading, or the Borrower fails to comply with any covenants or agreements under the TIFIA Loan Agreement or the Senior Loan Agreement, in each case after a permitted 30 day cure period provided, however, that if it is not possible to correct such breach within such 30-day period, it shall not constitute an Event of Default if corrective action is instituted by the Borrower within such period and diligently pursued until such breach is corrected.
3. The occurrence of a "Development Default" under the Concession Agreement.
4. An acceleration occurs with respect to the Senior Obligations or any other indebtedness of the Borrower that is senior to or on a parity with the TIFIA Loan.
5. The occurrence of a material default by the Borrower under any other documents executed in connection with the Project and the occurrence thereof shall cause a material adverse effect on the Borrower's ability to comply with its obligations under the TIFIA Loan Agreement subject to an appropriate cure period to be determined in the TIFIA Loan Agreement.
6. A Bankruptcy Related Event occurs.
7. The Project shall be abandoned, or the operation of the Project shall cease for an extended period (other than for force majeure or other reasons covered by insurance).

8. A judgment in excess of \$1 million and not otherwise covered by insurance is rendered against the Borrower and remains undischarged for 30 days.
9. A Change of Control shall have occurred.
10. Borrower fails to maintain its existence as a \_\_\_\_\_.
11. Any Equity Contribution shall fail to be made when due as required by [Equity Contribution Agreement].
12. The Concession Agreement expires or terminates or for any reason ceases to be in full force and effect.

Upon an Event of Default under the TIFIA Loan Agreement, the TIFIA Lender may take any one or more of the following actions, at its sole option and discretion:

1. For a Development Default, all obligations of the TIFIA Lender to make disbursements are immediately deemed terminated.
2. For failure to make an Equity Contribution, the TIFIA Lender may direct the Collateral Agent to draw on any line of credit securing such obligation.
3. For a Bankruptcy Related Event, all obligations of the TIFIA Lender to make disbursements are immediately deemed terminated and all amounts due under the TIFIA Loan Agreement, the Note and other TIFIA loan documents shall automatically become due and payable.
4. Whenever any Event of Default shall have occurred and be continuing, the TIFIA Lender (a) may institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid under the TIFIA Loan Agreement, the Note or the other TIFIA Loan documents, (b) may prosecute any judgment or final decree against the Borrower, (c) shall have all the rights and remedies of a secured creditor under the UCC and (d) may take whatever action by law or in equity as may appear necessary or desirable to collect the amounts payable by the Borrower, then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower, including termination of the TIFIA Loan Agreement.
5. Whenever any Event of Default shall have occurred and be continuing, the TIFIA Lender may suspend or debar the Borrower from further participation in any Government program administered by the TIFIA Lender

and to notify other departments and agencies of such default.

6. No action pursuant to an Event of Default shall relieve the Borrower from its obligations pursuant to the TIFIA Loan Agreement, all of which shall survive any such action.

**INDEMNIFICATION**

The Borrower shall indemnify and hold the TIFIA Lender harmless from and against any and all claims by reason of the execution and delivery of the TIFIA Loan Agreement and related documents, except as may result from Lender's gross negligence or willful misconduct or failure to honor the terms of the TIFIA Loan Agreement.

**ASSIGNABILITY AND SALE**

The Borrower may have the right to sell or assign its rights in and to the Project, the Concession Agreement and any subsequent lease of the Project as well as its rights and obligations under this Term Sheet and the TIFIA Loan Agreement provided such sale or assignment in and of itself is not expected to result in any material change in the amount of revenues projected to be received from the operation of the Project and is upon terms and conditions which are acceptable to the TIFIA Lender in its sole discretion and subject to such additional terms and conditions as the TIFIA Lender may require.

**SALE OF TIFIA LOAN**

One year after the Substantial Completion Date, the TIFIA Lender may sell the TIFIA Loan or any portion thereof to another entity or offer the TIFIA Loan into the capital markets. In making such sale or offering of the TIFIA Loan the TIFIA Lender shall not change the original terms and conditions of the TIFIA Loan or the Intercreditor Agreement without the prior written consent of the Borrower. The TIFIA Lender shall provide at least sixty (60) days notice to the Borrower of any intention to sell or offer the TIFIA Loan. The TIFIA Lender and the Borrower agree that for so long as any Senior Loans remain outstanding, the provisions in the TIFIA Loan Agreement which provide that the TIFIA Loan will be deemed to be and will automatically be on parity with the Senior Loans upon a Bankruptcy Related Event shall be of no force or effect following the sale of the TIFIA Loan to any third party other than for a sale made to a U.S. federal government agency or instrumentality, in which event, the U.S. federal government shall have the same benefits with respect to a Bankruptcy Related Event as the TIFIA Lender.

**INFORMATION AND REPORTING OBLIGATIONS**

The TIFIA Loan Agreement shall set forth the Borrower's information and reporting obligations.

The TIFIA Lender shall also be provided with such information as is required, from time to time, to be provided

to the Senior Lender pursuant to the Senior Loan Agreement or as is provided to the rating agencies.

DOLLARS

All references to dollar amounts in this Term Sheet are references to United States dollars.

FEES AND EXPENSES

The Borrower shall be responsible for paying to the TIFIA Lender the following fees and expenses:

1. Commencing in Federal Fiscal Year (FFY) [\_\_\_\_\_] and continuing thereafter each year throughout the term of the TIFIA Loan Agreement, the Borrower shall pay to the TIFIA Lender a loan servicing fee on or before the [insert date]. The TIFIA Lender shall establish the amount of this annual fee, and the Servicer shall notify the Borrower of the amount, at least 30 days before payment is due.

In establishing the amount of the fee, the TIFIA Lender will adjust the previous year's base amount utilizing the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100, or its successor(s), published by the Bureau of Labor Statistics, or its successor(s). For the FFY [\_\_\_\_\_] calculation, the TIFIA Lender will use the FFY [\_\_\_\_\_] base amount of \$[\_\_\_\_\_] , which applies to other TIFIA borrowers, as the previous year's base amount. The TIFIA Lender will calculate the percentage change in the CPI-U, before seasonal adjustment, from [\_\_\_\_\_] of the previous year to [\_\_\_\_\_] of the current year and will then adjust the previous year's base amount in proportion to the CPI percentage change. To calculate the amount of the fee, the TIFIA Lender shall round the current year's base amount using increments of \$500. Results with the ending integers between 250-499 or between 750-999 shall be rounded upward, and results with the ending integers between 001-249 or between 501-749 shall be rounded downward. The CPI adjustments in the following years shall begin with the base amount, not the rounded fee.

2. The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the TIFIA Lender on demand from time to time on and after the date hereof for any and all reasonable fees, costs, charges and expenses actually incurred by it (including the reasonable fees, costs and expenses of counsel and other advisors) in connection with the negotiation, preparation, execution, delivery and performance of the TIFIA Loan Agreement and the other Related Documents and the transactions hereby and thereby contemplated, including without limitation, reasonable attorney's, engineer's, and planning fees and professional costs,

including all such fees, costs and expenses actually incurred as a result of or in connection with the enforcement of or attempt to enforce any provision of the TIFIA Loan Agreement or any of the other Related Documents; any amendment or requested amendment of, or waiver or consent or requested waiver or consent under or with respect to, the TIFIA Loan Agreement or any of the other Related Documents, or advice in connection with the administration of the TIFIA Loan Agreement or any of the other Related Documents or the rights of the TIFIA Lender thereunder; and any work-out, restructuring or similar arrangement of the obligations of the Borrower under the TIFIA Loan Agreement or the other Related Documents during the pendency of one or more Events of Default.

3. The obligations of the Borrower under the TIFIA Loan Agreement shall survive the payment or prepayment in full or transfer of the Note, the enforcement of any provision of the TIFIA Loan Agreement or the other Related Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring or similar arrangement.