

## FORM OF SPONSOR PAYMENT LETTER

*[Place on Sponsor/Borrower Letterhead]*

*[Date]*

*[Name and Address of Outside Counsel/Law Firm]*

RE: Sponsor Payment Letter for the Legal Services to be Provided to the Build America Bureau (the “Bureau”), an office within the Office of the Under Secretary for Policy of the U.S. Department of Transportation (“DOT”) in Connection with the Proposed Financing of *[Project Name]* (the “Transaction”)

Dear [\_\_\_\_\_]:

We understand that the Bureau, which administers the Transportation Infrastructure Finance and Innovation Act (TIFIA) credit program and the Railroad Rehabilitation and Improvement Financing (RRIF) credit program (together, the “Credit Programs”), requires the engagement of outside legal counsel to represent it in connection with the Transaction.

We further understand that:

- (1) pursuant to a series of indefinite delivery indefinite quantity contracts (the “IDIQ Contracts”), DOT has retained law firms that DOT can designate as transactional counsel to provide legal advisory services to the Bureau in connection with its administration of the Credit Programs, and *[Name of Outside Counsel]* is one of such retained law firms;
- (2) the Bureau requires an outside legal counsel to represent it in the Transaction due to the complexity of the proposed financing structure and timetable on which the Transaction is expected to close;
- (3) with certain exceptions, DOT requires the borrowers or sponsors seeking financing from DOT in circumstances such as those described above to pay all documented fees and expenses of the Bureau’s outside counsel;
- (4) DOT has selected *[Name of Outside Counsel]* as transactional counsel for the Transaction (the “Transaction Counsel”), and the Transaction Counsel has agreed to represent DOT and the Bureau in connection with the Transaction and related matters (the “DOT Representation”); and
- (5) the Transaction Counsel may require the services of other sub-contractors in connection with the DOT Representation (for example, local counsel) (each, a “Sub-contractor”, and together with the Transaction Counsel, the “DOT Counsel”).

*[Name]* is the sponsor of the project for which we are seeking DOT financing (the “Project Sponsor”),

and [Name] will be the borrower for purposes of the Transaction (the "Borrower").<sup>1</sup>

By our execution of this Sponsor Payment Letter, each of the Project Sponsor and the Borrower [and][*please include all entities who will be responsible for legal fees*] (collectively, the "Responsible Parties") agrees that:

- (1) it shall be jointly and severally responsible for the payment of all documented fees and expenses of the DOT Counsel in connection with the DOT Representation, regardless of (a) when incurred, (b) whether DOT ultimately provides credit assistance to the Borrower, and (c) whether Sub-contractors enter into a sponsor payment letter with the Responsible Parties;
- (2) it shall not seek reimbursement from the United States of America, its departments or agencies, including DOT and the Bureau, or any of their employees or agents (the "Government"), for any fees and expenses of the DOT Counsel, and the Government shall not be liable to the Responsible Parties, the DOT Counsel or any other person for such fees and expenses;
- (3) it shall pay all fees and expenses charged by the DOT Counsel (a) promptly (and, in any event, no later than [30 days] after receipt of each invoice by the Responsible Parties from the DOT Counsel), (b) in U.S. dollars in immediately available funds in [New York, NY], and (c) without any deduction or withholding;
- (4) the correctness, completeness and reasonableness of the fees and expenses invoiced by the DOT Counsel shall be reviewed by DOT through the statements submitted to and verified by DOT; and
- (5) upon a failure by either or both of the Responsible Parties to comply with the terms and conditions of this Sponsor Payment Letter, DOT, in its sole discretion, in addition to all of its other rights, may (a) direct the Transaction Counsel to stop all work on the Transaction, and/or (b) instruct the Transaction Counsel to direct all Sub-contractors to stop all work on the Transaction. Upon a failure by the Responsible Parties to make any payment of invoiced fees and expenses as provided in this Sponsor Payment Letter, the DOT Counsel may stop all work on the Transaction, as directed by DOT.

In connection with the DOT Representation, the Transaction Counsel, by its execution of this Sponsor Payment Letter, acknowledges and agrees that:

- (1) it shall only look to the Responsible Parties for any payment of fees and expenses and

---

<sup>1</sup> This form should be modified as necessary in the event that (a) the sponsor and borrower are the same entity, in which case the term "Responsible Party" will refer to such entity throughout this Sponsor Payment Letter or (b) the sponsor is a contracting authority in connection with a public-private partnership (P3) transaction, in which case (i) the term "Responsible Party" will refer to the contracting authority throughout this Sponsor Payment Letter and (ii) the sponsor will be permitted to assign its rights and obligations under this Sponsor Payment Letter to the members of the consortium comprising the preferred bidder for the procurement following bid award, as described in the second-to-last paragraph of this Sponsor Payment Letter.

it does not and shall not have any expectation of payment from the Government for any of the services that it renders, or expenses that it incurs, including the fees and expenses of any Sub-contractors, in connection with the Transaction.

- (2) it assumes the related credit risk of the Responsible Parties and, accordingly, shall not seek payment from the Government for such fees and expenses, and further acknowledges and agrees that the Government shall not be liable to the DOT Counsel for any such fees or expenses.
- (3) it shall closely coordinate its efforts with the DOT Contracting Officer's Representative (the "COR"), and other designated representatives of DOT and the Bureau, and focus its efforts on those tasks required by DOT and the Bureau to achieve their objectives, which tasks and objectives are set forth in the task order [*insert the applicable task order number*] issued by DOT to the Transaction Counsel under the IDIQ Contract between the Transaction Counsel and DOT (the "Task Order");
- (4) during the course of the DOT Representation, it shall promptly respond to inquiries from the Government regarding past and expected fees and expenses;
- (5) it shall retain any Sub-contractors only with the prior written consent of DOT;
- (6) each engagement letter or other arrangement with its Sub-contractors shall contain provisions in form and substance similar to the foregoing clauses (1) through (5);
- (7) its fees and the fees of any Sub-contractors shall be based upon (a) the hourly rates agreed with DOT in the Task Order, which are listed on Appendix A, or, in the case of any Sub-contractor retained after execution of the Task Order, the hourly rates agreed with DOT as part of DOT's consent to such retention, and notice of such rates shall be provided to the Responsible Parties by the Transaction Counsel promptly after retention of such Sub-contractor, and (b) the time it actually devotes to the DOT Representation, as reflected in the invoices of the DOT Counsel;
- (8) attached hereto as Appendix B are the names of the individual attorneys and paraprofessionals who will (subject to any subsequent adjustments approved by DOT) constitute the team handling the DOT Representation (such team, the "DOT Team," and each member of such team, a "DOT Team Member"), and the attorney who will have primary responsibility for the DOT Representation (the "Team Leader");
- (9) on a monthly basis, unless otherwise agreed to by DOT, it shall provide to the COR for concurrence, prior to sending the summary invoice statement described in paragraph (10) below to the Responsible Parties, one copy of each invoice, together with a detailed description of services rendered, fees and expenses incurred, and required supporting documents, as specified in more detail in the IDIQ Contract between the Transaction Counsel and DOT; and
- (10) upon DOT's review and verification of such monthly invoice submissions, the Transaction Counsel shall promptly submit a summary invoice statement to the

Responsible Parties that consists of (a) a brief summary description of the services rendered (having due respect for maintaining attorney-client privilege), (b) a list of reimbursable expenses itemized by category, and (c) the total amount of fees and expenses billed by the DOT Counsel on the DOT Representation for the relevant month, and all outstanding amounts, if any, for the previous billing period.

Each of the Responsible Parties and the Transaction Counsel understands and agrees that the Government has no obligation to, and shall not, pay any of the DOT Counsel's fees, costs and expenses for the DOT Representation. Pursuant to the terms of this Sponsor Payment Letter and in consideration of the fees that have been paid or are to be paid to the DOT Counsel by the Responsible Parties, the Transaction Counsel and Responsible Parties release and discharge the Government from all financial obligations, claims and liabilities arising out of, or in connection with, the DOT Representation.

The Responsible Parties understand that, notwithstanding their obligation to pay the fees and expenses of the DOT Counsel with regard to the services rendered and expenses incurred in respect of the DOT Representation, the attorney-client relationship is solely between the Bureau and DOT, and the DOT Counsel. The Responsible Parties hereby specifically disclaim any inference of an attorney-client relationship between the DOT Counsel and themselves as a result of this arrangement. Accordingly, the Responsible Parties acknowledge, in particular, that the DOT Counsel's duties of confidentiality and loyalty in the Transaction run exclusively to DOT and the Bureau, and there shall be no inference of confidentiality, fiduciary, or other client relationship between the DOT Counsel and the Responsible Parties as a result of this Sponsor Payment Letter. The Responsible Parties further agree that they will not interfere with DOT's or the Bureau's relationship with the DOT Counsel. The Responsible Parties agree that the foregoing provisions of this paragraph shall apply to all Sub-contractors that are attorneys for the Transaction.

Each Sub-contractor is an intended third-party beneficiary of the Responsible Parties' undertakings set forth in this Sponsor Payment Letter in respect of amounts owed to each such Sub-contractor.

The parties agree that this Sponsor Payment Letter shall be subject to review and approval by DOT for all purposes and shall not be amended, modified, altered, or changed in any way without DOT's prior consent. All proposed amendments, modifications, alterations, or other changes shall be submitted to the DOT's Contracting Officer (the "CO") and the COR identified below, or their respective successors.

All invoices, supporting documentation, and notices provided to DOT hereunder shall be sent by email to the COR at the following address: [*Insert COR's email*], with a cc to the CO at: [*Insert CO's email*].

This Sponsor Payment Letter shall be governed by the law of the State of Florida, and may be executed in counterparts, all of which together shall constitute a single instrument. Additionally, any signatory may execute this Sponsor Payment Letter by electronic means, and any counterpart so executed shall be treated for all purposes as the original signature of the relevant party.

This Sponsor Payment Letter, and the rights and obligations hereunder shall not be assignable by the Responsible Parties (or either of them) without the prior written consent of each of the Transaction Counsel and DOT, and any purported assignment in violation of this sentence shall be null and void; [provided that, with the prior written consent of the Transaction Counsel (which shall not be

unreasonably withheld), the Responsible Parties shall be permitted to assign their rights and obligations hereunder to the members of the consortium that is selected as the preferred bidder by the Responsible Parties (or either of them) in connection with the competitive bidding process for the concession to design, build, finance, operate and/or maintain [*Project Name*]].<sup>2</sup>

Please sign and return a copy of this Sponsor Payment Letter to confirm your understanding of, and agreement with, the foregoing.

Very truly yours,

*[Signature Page to Follow]*

---

<sup>2</sup> To be inserted as necessary in connection with a P3 transaction.

**[NAME OF SPONSOR]**

By: \_\_\_\_\_  
Name:  
Title:

**[NAME OF SPONSOR AFFILIATES RESPONSIBLE FOR LEGAL FEES]<sup>3</sup>**

By: \_\_\_\_\_  
Name:  
Title:

**[NAME OF BORROWER]**

By: \_\_\_\_\_  
Name:  
Title:

**ACCEPTED AND AGREED:**

**[NAME OF TRANSACTION COUNSEL]**

By: \_\_\_\_\_  
Name:  
Title:

Attachments

Appendix A  
Appendix B

cc: [\_\_\_\_], Contracting Officer, U.S. Department of Transportation  
[\_\_\_\_], Contracting Officer's Representative, U.S. Department of Transportation

---

<sup>3</sup> This form should be modified as necessary to reflect the parties responsible for payment of legal fees.

**Appendix A**  
Billing Rates

**Appendix B**  
DOT Team Members