

EXHIBIT M

PUBLIC FUNDS AMOUNT PAYMENT TERMS

Section 1 Department Payments and Adjustments

(a) Starting on the Financial Close Date, the Department will make Public Funds Amount payments in accordance with the terms in this Agreement and the schedule included in Attachment 3 of this Exhibit M.

(b) Each scheduled payment of the Public Funds Amount, and the resulting Public Funds Amount Maximum Payment Curve, shall reflect the Public Funds Amount Payment Ratio.

(c) If the provisions of Section 7.06 of the Agreement result in a decrease or increase to the Public Funds Amount set on the Agreement Date, the Public Funds Amount, Public Funds Amount Payment Ratio and respective schedule of payments in Attachment 3 of this Exhibit M shall be updated accordingly within five business days of the Financial Close Date.

(d) On the Financial Close Date:

(i) the Developer shall repay to the Department amounts related to the SIB Loan and Early Work Department Funding in accordance with Section 7.06(e)(ii) of the Agreement.

(ii) the Developer may also request payment by the Department from the Public Funds Amount in an amount equal to (i) the amount corresponding to the Early Work completed, multiplied by (ii) the Public Funds Amount Payment Ratio.

Section 2 Disbursement Requests

The Developer will submit a request for disbursement (“Disbursement Request”) to the Department at a frequency not to exceed once every month of an Agreement Year. The Developer will submit each Disbursement Request no earlier than three Days following the end of each calendar month from the Financial Close Date. The Disbursement Request will be comprised of a certificate (“Disbursement Request Certificate”) signed by the Authorized Representative of the Developer, in the form attached as Attachment 1, and the following information attached thereto:

- (a) Department assigned contract number and title;
- (b) Invoice number (numbered consecutively starting with “1”);
- (c) Period covered by the Disbursement Request;
- (d) Progress report on the activities performed during the period covered by the Disbursement Request;

- (e) Amount requested in the Disbursement Request;
- (f) Detailed list of Design-Build Contract costs incurred that will be funded with the amount requested in the Disbursement Request, including invoices and other documentation supporting such costs;
- (g) Calculation demonstrating that the amount requested in the Disbursement Request is no more than the Public Funds Amount Payment Ratio times the Design-Build Contract costs incurred up to and including those in such Disbursement Request, and when that amount aggregated with all other amounts previously disbursed to the Developer by the Department from the Public Funds Amount, it does not exceed the Public Funds Amount Maximum Payment Curve set forth in Attachment 3 to this Exhibit M;
- (h) Cumulative disbursements made to date;
- (i) Certificate of lien and claim waiver, in the case of the Design-Build Contractor, in the form attached as [Exhibit B] or [Exhibit D] to the Design-Build Contract, as applicable, signed by the Design-Build Contractor with respect to Work performed by the Design-Build Contractor for which payment was received under the previous Disbursement Request, or, in the case of another Prime Contractor, substantially in the form attached as Attachment 2 or 2A, as applicable, signed by each Prime Contractor performing Work for which payment was received under the previous Disbursement Request;
- (j) Affidavit submitted by each Prime Contractor certifying that Davis-Bacon wages for which payment was received under the previous Disbursement Request have been paid in accordance with the Federal Requirements and Exhibit S of the Agreement; and
- (k) Letter signed by the Developer certifying that the amounts requested under the Disbursement Request are eligible for reimbursement from federal-aid funds.

Section 3 Review and Approval of Disbursement Request; Payment by the Department

- (a) The Department and the Developer acknowledge and agree that the Disbursement Request is a submission requiring an approval for purposes of Section 10.05 of the Agreement.
- (b) Within 30 Days after approval by the Department of a Disbursement Request in compliance with Section 3(d) of this Exhibit M, the Department will pay such amount to or to the order of the Developer.
- (c) Unless otherwise provided under this Agreement, payments by the Department to the Developer (excluding SIB Loan disbursements, Early Work Department Funding advances, and associated reimbursements according to Section 1(d) of this Exhibit M) shall not exceed the Public Funds Amount.
- (d) If the Department determines that any portion of the Disbursement Request is not eligible for funding pursuant hereto, the Department may disapprove the requested funds corresponding to such portion of the Disbursement Request. The Department will notify the Developer for the reasons of such disapproval, however will pay undisputed amounts to the

Developer within 30 Days after such approval. Any disapproved amounts will be available in a subsequent Disbursement Request if the reasons for disapproval are remedied.

Section 4 No Waiver

No approvals by the Department, or payments or disbursements by the Department, will be construed as an acceptance of any Work that is not in accordance with the requirements of the Agreement.

Section 5 Accounting of Payments Received

No later than 180 Days from the Project Completion Date, the Developer will provide a final accounting to the Department documenting the use of the Public Funds Amount.

ATTACHMENT 1

DISBURSEMENT REQUEST CERTIFICATE

In accordance with Exhibit M of the Comprehensive Agreement dated as of [•] (the “Comprehensive Agreement”), between the Virginia Department of Transportation (the “Department”) and [•] (the “Developer”), the Developer hereby submits to the Department this Disbursement Request, dated as of the date set forth below. Capitalized terms used but not defined herein shall have the meanings given to them in the Comprehensive Agreement.

The Developer hereby requests a disbursement in the amount of: \$ ____ (such amount, the “Requested Disbursement”).

In connection with such request, the Developer hereby certifies to the Department as follows:

(a) The Requested Disbursement, when aggregated with all other amounts previously disbursed to the Developer by the Department pursuant to Exhibit M of the Comprehensive Agreement, does not exceed the amount set forth in Attachment 3 of such Exhibit M for the relevant period in which such Disbursement Request is submitted to the Department.

(b) Attached hereto are all documents required by Section 2 of Exhibit M of the Comprehensive Agreement to support its request for payment, and the Developer hereby certifies to the Department that such documents are true, complete and correct in all material respects.

(c) The Work associated with this Disbursement Request has been performed and furnished in compliance with the requirements of the Agreement.

(d) The amount specified in this Disbursement Request has been computed in accordance with, and is due and payable under, the terms and conditions of the Agreement, has not been the subject of any previous Disbursement Request (unless disputed or rejected for payment) and is not the subject of any pending Disbursement Request from the Developer.

(e) As of the date of this Disbursement Request, neither the Design-Build Contractor nor any other Contractor performing the Work that has a direct Contract with the Developer (collectively, “Prime Contractors”) for which payment is sought under the Disbursement Request is barred or suspended from providing goods or services to any Governmental Authority. Except for any specific Contractor listed as barred or suspended in an attachment to this Disbursement Request Certificate, each Contractor who has a direct Contract with the Prime Contractors has certified in its respective invoice to the applicable Prime Contractor that such Contractor is not barred or suspended from providing goods or services to any Governmental Authority, and to the Developer’s knowledge, no such Contractor has been so barred or suspended.

(f) As of the date of this Disbursement Request, the Developer has paid the Prime Contractors the amount previously disbursed to the Developer on account of the Work performed by the Prime Contractors, in accordance with the terms and conditions of its Contracts with such Prime Contractors.

[•],
a [•]

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

improvements and materials placed on the Project Right-of-Way, for all services done and materials furnished to the date hereof have been obtained in such a form as to constitute an effective defense against the assertion of all such liens and encumbrances under the laws of the Commonwealth of Virginia, if and to the extent required under the Agreement.

The Commonwealth of Virginia may rely on the statements made in this Waiver and is a beneficiary hereof.

Signed this ____ day of _____.

PRIME CONTRACTOR

By: _____
Name:
Title: [Authorized Representative]

Subscribed and sworn to before me this ____ day of 20____.

Notary Public in and for said County and State

ATTACHMENT 2A

FORM OF PRIME CONTRACTOR'S FINAL LIEN AND CLAIM WAIVER

FINAL LIEN AND CLAIM WAIVER – PRIME CONTRACTOR

COMMONWEALTH OF VIRGINIA)
 :
COUNTY OF)

TO WHOM IT MAY CONCERN:

The undersigned is the [Title] of [_____], a [_____] (“Prime Contractor”), which has contracted to furnish [_____] services in connection with the Transform 66 P3 Project, located in the Commonwealth of Virginia, pursuant to that certain Comprehensive Agreement, dated as of [_____], 20[•] (the “Agreement”), with [•], a [•], as developer (“Developer”). Capitalized terms used herein that are not otherwise defined herein have the respective meanings set forth in the Agreement.

The undersigned, on behalf of Prime Contractor, DOES HEREBY WAIVE AND RELEASE:

Any and all claims, liens, security interests, or encumbrances in the nature of mechanics’, labor or materialmen’s liens or otherwise, with respect to and on the Project, the Project Right-of-Way and any and all interests and estates therein, and all improvements and materials placed on the Project Right-of-Way, in each case on account of the Work performed by or on behalf of Prime Contractor for the Project;

and DOES HEREBY CERTIFY THAT:

There are no claims, liens, security interests or encumbrances in the nature of mechanics’, labor or materialmen’s liens or claims or otherwise, arising out of or in connection with, the performance by Prime Contractor or any of the Subcontractors of the Work performed under the Agreement, the Project, the Project Right-of-Way and any and all interests and estates herein and all improvements and materials placed on the Project Right-of-Way, outstanding or known to exist at the date of this certification; all bills with respect to the Work to be performed under the Agreement have been paid (except for \$_____ withheld by Developer pursuant to Section [____] of the Agreement and disputed amounts for additional work equal to \$_____), and there is no known basis for filing of any claims, liens, security interests or encumbrances in the nature of mechanics’, labor or materialmen’s liens or claims or otherwise arising out of or in connection with the performance by Prime Contractor or any of the Subcontractors of the Work under the Agreement; and releases, assignments and waivers from all Subcontractors that would otherwise have had the right to place a lien or encumbrance with respect to and on the Project, the Project Right-of-Way and any and all interests and estates therein, and all improvements and materials placed on the Project Right-of-Way, for all services done and materials furnished have been obtained in such a form as to

constitute an effective defense against the assertion of all such liens and claims under the laws of the Commonwealth of Virginia.

The Commonwealth of Virginia may rely on this Waiver and is a third party beneficiary thereof.

Signed this ____ day of _____.

PRIME CONTRACTOR

By: _____
Name:
Title: [Authorized Representative]

Subscribed and sworn to before me this _____ day of 20_____.

Notary Public in and for said County and State

ATTACHMENT 3

PUBLIC FUNDS AMOUNT

Notice to Proceed+	Monthly Public Funds Amount (nominal \$ millions)	Public Funds Amount Maximum Payment Curve (nominal \$ millions)	Notice to Proceed+	Monthly Public Funds Amount (nominal \$ millions)	Public Funds Amount Maximum Payment Curve (nominal \$ millions)
At Financial Close*			25 months		
1 month			26 months		
2 months			27 months		
3 months			28 months		
4 months			29 months		
5 months			30 months		
6 months			31 months		
7 months			32 months		
8 months			33 months		
9 months			34 months		
10 months			35 months		
11 months			36 months		
12 months			37 months		
13 months			38 months		
14 months			39 months		
15 months			40 months		
16 months			41 months		
17 months			42 months		
18 months			43 months		
19 months			44 months		
20 months			45 months		
21 months			46 months		
22 months			47 months		
23 months			48 months		
24 months					

*Includes amount related to Early Work, payable by the Department to the Developer on the Financial Close Date, according to the terms of this Exhibit M.

Total Public Funds Amount (nominal \$ millions)	
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