

**EXHIBIT M**

**PUBLIC FUNDS AMOUNT PAYMENT TERMS**

**Section 1     Deposit of Public Funds Amount**

(a)     The Department will deposit \$362 million (“Public Funds Amount”) into the VDOT Funding Account on or before the Financial Close Date, minus any payments to the Concessionaire prior to the Financial Close Date (not to exceed \$2 million in the aggregate) for Early Work performed pursuant to the First Amendment to the Interim Agreement dated as of August 19, 2011 (“Early Work Amendment”) or pursuant to the Agreement.

(b)     If the provisions of Section 7.03(b) of the Agreement results in an increase to the Public Funds Amount, the Department will deposit such additional amounts into the VDOT Funding Account within 180 Days of the Financial Close Date. If the provisions of Section 7.03(b) of the Agreement results in a decrease to the Public Funds Amount, the parties will provide written notice to the Trustee to make available to the Department such amount from the VDOT Funding Account within 10 Days after the Financial Close Date.

(c)     Funds on deposit in the VDOT Funding Account, including earned interest, will be the property of the Department until such funds and any earned interest are disbursed to the Concessionaire. In the event the Agreement is terminated for any reason before disbursement of all of the funds in the VDOT Funding Account, the Trustee will make available to the Department the funds remaining in the VDOT Funding Account within 10 Days of the effective date of termination of the Agreement.

(d)     Any interest earned on the balance of the VDOT Funding Account will be eligible for disbursement to the Concessionaire in accordance with this Exhibit M.

**Section 2     Disbursement Request**

The Concessionaire will submit a request (“Disbursement Request”) to the Department at a frequency not to exceed once every month of an Agreement Year. The Concessionaire 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 Concessionaire, 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 costs incurred that will be funded with the amount requested in the Disbursement Request, including invoices or other documentation supporting such costs;

- (g) Cumulative disbursements made to date;
- (h) Certificate of lien and claim waiver, substantially in the form attached as Attachment 2, signed by each Prime Contractor performing Work for which payment was received under the previous Disbursement Request;
- (i) 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, Exhibit BB of the Agreement; and
- (j) Letter signed by the Concessionaire certifying that the amounts requested under the Disbursement Request are eligible for reimbursement from federal-aid funds pursuant to applicable Law.

### **Section 3 Review and Approval of Disbursement Request; Payment By the Trustee**

(a) No Disbursement Request will be reviewed or processed by the Department until the Department receives a Disbursement Request in compliance with Section 2.

(b) Within 27 Days after receipt by the Department of a Disbursement Request in compliance with Section 2, the Department will provide written authorization to the Trustee to disburse funds from the VDOT Funding Account to the Department for the amount approved by the Department. Following disbursement to the Department by the Trustee of the amount approved by the Department, the Department will pay such amount to the Concessionaire within such 27-Day period.

(c) 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 Concessionaire for the reasons of such disapproval within such 27-Day period, and provide written authorization to the Trustee to disburse funds from the VDOT Funding Account to the Department to pay undisputed amounts to the Concessionaire within such 27-Day period. Any such disapproved amounts will be available in a subsequent Disbursement Request if the reasons for disapproval are satisfied.

(d) The requirements of Section 2 will not apply to the payment of any portion of the Early Work performed prior to the execution of the Agreement for which an application for payment was submitted in accordance with the Early Work Amendment. Upon approval of such application, and upon approval of any Disbursement Request for additional Early Work (whether performed under the Early Work Amendment or the Agreement) submitted prior to the Financial Close Date, the Department will (i) pay the approved amounts directly to the Concessionaire if payment for such Early Work will be made prior to Financial Close; or (ii) provide written authorization to the Trustee to pay the approved amounts from the VDOT Funding Account to the Concessionaire if payment for such Early Work will be made on or after Financial Close.

(e) The requirements of Section 2 will not apply to the payment of any portion of the Mobilization Payment. The Mobilization Payment will be paid in accordance with the provisions below.

(i) Upon issuance of the earlier of an LNTP pursuant to Section 8.02 of the Agreement or notice to proceed pursuant to Section 8.03 of the Agreement, the Concessionaire may submit to the Department an invoice for 50% of the Mobilization Payment. Within 27 Days of receipt of such invoice, the Department will provide written authorization to the Trustee to disburse 50% of the Mobilization Payment from the VDOT Funding Account to the Department. Following disbursement to the Department by the Trustee of such amount, the Department will pay such amount to the Concessionaire within such 27-Day period.

(ii) Beginning on the month following receipt of payment of the first 50% of the Mobilization Payment, the Concessionaire may submit to the Department an invoice for the remaining 50% of the Mobilization Payment. Within 27 Days after receipt of such invoice, the Department will provide written authorization to the Trustee to disburse the remaining 50% of the Mobilization Payment from the VDOT Funding Account to the Department. Following disbursement to the Department by the Trustee of such amount, the Department will pay such amount to the Concessionaire within such 27-Day period.

#### **Section 4 No Waiver**

No approvals by the Department, or payments or disbursements by the Trustee, 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 Final Completion, the Concessionaire will provide a final accounting to the Department, documenting the use of the Public Funds Amount.

#### **Section 6 Definitions**

Capitalized terms used but not otherwise defined in this Exhibit M have the respective meanings set forth in Exhibit A to the Agreement. In addition, the following terms have the meanings specified below:

**Indenture** means the Master Trust Indenture between the Commonwealth Transportation Board and the trustee named therein, as supplemented by the First Supplemental Trust Indenture, related to the \$350 million GARVEE bond proceeds used to fund a portion of the Public Funds Amount.

**Mobilization Payment** means \$147,409,000.

**Prime Contractors** means the Design-Build Contractor and any other Contractors performing the Work that has a direct Contract with the Concessionaire.

**Trustee** means the trustee under the Indenture.

**VDOT Funding Account** means the project account in the project fund maintained by the Trustee pursuant to the Indenture.

**Attachment 1**

**DISBURSEMENT REQUEST CERTIFICATE**

In order to induce the Department to provide written authorization to disburse funds from the VDOT Funding Account as requested by this Disbursement Request, the Concessionaire hereby certifies and represents to the Department as follows:

(a) The information contained in the documents attached hereto is true, complete and correct in all material respects.

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

(c) The amount specified in the 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 Concessionaire.

(d) 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 Concessionaire (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 Concessionaire's knowledge, no such Contractor has been so barred or suspended.

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

Unless otherwise indicated, capitalized terms used herein shall have the meanings set forth in the Comprehensive Agreement.

**Elizabeth River Crossings Opco LLC,**  
a Delaware limited liability company

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

*EXECUTION VERSION – DECEMBER 5, 2011*

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

Name: \_\_\_\_\_

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

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



*EXECUTION VERSION – DECEMBER 5, 2011*

of mechanics', labor or materialmen's liens or other similar liens arising out of or in connection with the performance by Prime Contractor or any of the Subcontractors of the Work under the Agreement.

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



**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 authorized representative of \_\_\_\_\_ (“Prime Contractor”), which has contracted to \_\_\_\_\_ (the “Work”) in connection with the Project, located in the Commonwealth of Virginia, pursuant to that certain contract relating to the Downtown Tunnel/Midtown Tunnel/MLK Extension Project, dated as of [\_\_\_\_\_] (the “Agreement”), with ELIZABETH RIVER CROSSINGS OPCO LLC (“Concessionaire”). 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 liens, security interests, encumbrances and other claims, including, but not limited to, claims 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 Site, in each case on account of labor, services, improvements, materials, fixtures, apparatus or machinery furnished by Prime Contractor for the Project;

and DOES HEREBY CERTIFY THAT:

There are no liens, security interests, encumbrances and other claims, including, but not limited to, claims 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 its 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 Concessionaire pursuant to the Agreement, and disputed amounts for additional work equal to \$\_\_\_\_\_ ), and there is no known basis for filing of any liens, security interests, encumbrances and other claims, including, but not limited to, claims 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.

Signed this \_\_\_\_ day of 20\_\_\_\_\_.

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