

## **EXHIBIT N**

### **PUBLIC FUNDS AMOUNT PAYMENT TERMS**

#### **Section 1     Deposit of Initial Public Funds Amount**

(a)     The Department will deposit or will cause to be deposited \$94 million into the VDOT Funding Account held by the GARVEE Trustee on or before the Financial Close Date, constituting the parties' pre-Financial Close estimate of the Initial Public Funds Amount.

(b)     If the provisions of Section 7.03(b) of the Agreement results in an increase to the Initial Public Funds Amount, the Department will deposit such additional amounts into the VDOT Funding Account within 90 Days of the Financial Close Date. If the provisions of Section 7.03(b) of the Agreement results in a decrease to the Initial Public Funds Amount, the parties will provide written notice to the GARVEE Trustee to make available to or to the order of 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 PABs Trustee. In the event the Agreement is terminated for any reason before disbursement of all of the funds in the VDOT Funding Account, the GARVEE Trustee will make available to or to the order of 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 N.

(e)     This Section 1 applies neither to the 395 Project nor the Fred Ex Project.

#### **Section 2     Deposit of Department TIFIA Protection Amount**

The Department will pay the Department TIFIA Protection Amount at the times and in the amounts set forth in Section 7.07 of the Agreement. This Section 2 applies to neither the 395 Project nor the Fred Ex Project.

#### **Section 3     Disbursement Request**

When required, the Concessionaire will submit a request ("Disbursement Request") to the Department for any payments of the Public Funds Amount at a frequency not to exceed once every month of an Agreement Year. The Concessionaire will submit separate Disbursement Requests for each of the Original Project, the 395 Project, and the Fred Ex Project (treating each as an independent project for the purposes of this Section 3). The Concessionaire will submit each Disbursement Request within three Days following the 15<sup>th</sup> Day of each calendar month. 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; provided that with respect to any Disbursement Request submitted pursuant to Section 4B for the Fred Ex Project, the information described in (c), (d), (h), (i) and (j) shall not apply:

- (a) Department assigned contract number and title;
- (b) Invoice or Disbursement Request 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 and other documentation supporting such costs;
- (g) Cumulative disbursements made to date;
- (h) Certificate of lien and claim waiver 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, Attachment 2A for the 395 Project, or Attachment 2B for the Fred Ex Project, as applicable, 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 Labor, Employment, and DBE/SwaM Related Matters, Exhibit AA 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, including funds constituting proceeds of GARVEE bonds (if applicable) or other bonds secured by federal-aid funds, pursuant to applicable Law.

**Section 4 Review and Approval of Disbursement Request; Payment By the GARVEE Trustee**

(a) The Department and the Concessionaire acknowledge and agree that: (i) the Disbursement Request is a submission requiring an Approval for purposes of Section 10.05 of the Agreement; and (ii) the “deemed approval” provisions of Section 10.05(e) of the Agreement do not apply to a Disbursement Request submitted pursuant to Section 3.

(b) Within seven Days after approval by the Department of a Disbursement Request in compliance with Section 3, the Department will provide written authorization to the GARVEE 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 GARVEE Trustee of the amount approved by the Department, the Department will pay such amount to or to the order of the Concessionaire within such seven-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, and provide written authorization to the GARVEE Trustee to disburse funds from the VDOT Funding Account to the Department to pay undisputed amounts to the Concessionaire within seven Days after the Department approves the undisputed amounts. Any such disapproved amounts will be available in a subsequent Disbursement Request if the reasons for disapproval are satisfied.

(d) In the event that the mobilization payment is to be paid out of the Public Funds Amount, it will be paid in accordance with the provisions below in lieu of the provisions set forth in Section 3.

(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 GARVEE Trustee to disburse 50% of the mobilization payment from the VDOT Funding Account to the Department. Following disbursement to the Department by the GARVEE 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 GARVEE 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 GARVEE Trustee of such amount, the Department will pay such amount to the Concessionaire within such 27-Day period.

Within 90 days of receiving the mobilization payment, the Concessionaire will provide documentation supporting the investment and expenditure of those funds to include:

(A) Records on how the mobilization payment has been invested to include the dollar amounts and balances, investments owned (including the purchase and sale prices of such investments), and earnings on those funds;

(B) Detailed list of expenses paid including invoices and other documentation supporting such costs; and

(C) Letter signed by the Concessionaire certifying that the expenditures are eligible for reimbursement from federal-aid funds, including funds constituting proceeds of GARVEE bonds or other bonds secured by federal-aid funds, pursuant to applicable Law.

In the event that the mobilization payment has not been spent within 120 days, the Department will have the right to have the funds returned and disbursed according to the normal request process described in Section 4.

- (e) This Section 4 applies neither to the 395 Project nor the Fred Ex Project.

**Section 4A Review and Approval of Disbursement Requests for the 395 Project; Payment by the Department**

(a) The Department and the Concessionaire acknowledge and agree that for the 395 Project: (i) the Disbursement Request is a submission requiring an Approval for purposes of Section 10.05 of the Agreement; and (ii) the “deemed approval” provisions of Section 10.05(e) of the Agreement do not apply to a Disbursement Request submitted pursuant to Section 3.

(b) Unless otherwise *provided* under the Agreement (including Section 7.03A(b)(i)(B)), payments by the Department to the Concessionaire shall not exceed the 395 Public Funds Amount.

(c) Within seven Days after approval by the Department of a Disbursement Request in compliance with Section 3, the Department will disburse funds for such amount approved by the Department to or to the order of the Concessionaire. Disbursement payments for the 395 Early Work shall be made in accordance with Section 8.17(c) of the Agreement.

(d) If the Department determines that any portion of the Disbursement Request for the 395 Project 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, and disburse funds to pay undisputed amounts to or to the order of the Concessionaire within seven Days after the Department approves the undisputed amounts. Any such disapproved amounts will be available in a subsequent Disbursement Request if the reasons for disapproval are satisfied.

(e) To the extent that the Concessionaire has received a Virginia Transportation Investment Bank (“VTIB”) loan for the 395 Project, the Concessionaire shall follow all requirements for requesting disbursement of such loan proceeds in accordance with the policies and procedures of the Virginia Resources Authority (“VRA”). Funds from the VTIB loan shall be disbursed upon written request of the Concessionaire and approval by the Department, according to VRA’s procedures.

**Section 4B Review and Approval of Disbursement Requests Covering Fred Ex Financial Protections and Fred Ex Pooled Contingency-Covered Costs; Payment by the Department**

(a) For any Fred Ex Financial Protections for which the Department will make an actual payment to the Concessionaire under Section 7.03B(c)(v), the Concessionaire shall submit to the Department a Disbursement Request within the first 90 Days after the Fred Ex Financial Close Date (or Fred Ex Additional Financial Close Date, if applicable), for an amount equal to the remaining unpaid Fred Ex Financial Protections, in accordance with Section 7.03B(c)(v).

(b) If the Concessionaire requires any funds from the Fred Ex Department Committed Contingency pursuant to Section 8.22(b) of the Agreement, then the Concessionaire shall submit to the Department a Disbursement Request, together with the corresponding Fred Ex Pooled Contingency Fund Report required under Section 8.22(b) of the Agreement, and in the case of amounts in excess of \$300,000 (individually or in the aggregate invoiced on any work order), following receipt of the Fred Ex Pooled Contingency Approval or deemed approval, and the Department will pay undisputed amounts to the Concessionaire within 30 days. Any such Disbursement Request shall include the total amount of the Fred Ex Department Committed Contingency (or any additional funds for the Department's share of Fred Ex Pooled Contingency-Covered Costs) requested by the Concessionaire at the time, without regard to whether some or all of the corresponding Fred Ex Pooled Contingency-Covered Costs were the subject of a prior Fred Ex Pooled Contingency Approval.

(c) The Department and the Concessionaire acknowledge and agree that Section 10.05 of the Agreement do not apply with respect to any Disbursement Requests submitted with respect to any Fred Ex Pooled Contingency-Covered Costs.

## **Section 5 No Waiver**

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

## **Section 6 Accounting of Payments Received**

(a) No later than 180 Days from the Final Acceptance Date (or the Substantial Completion Date, but only if none of the Public Funds Amount is used to pay costs incurred after the Substantial Completion Date), the Concessionaire will provide a final accounting to the Department, documenting the use of the Public Funds Amount.

(b) No later than 180 Days from the 395 Final Completion Date, the Concessionaire will provide a final accounting to the Department, documenting the use of the 395 Public Funds Amount.

(c) No later than 180 Days from the Fred Ex Final Completion Date, the Concessionaire will provide a final accounting to the Department, documenting the use of any funds paid by the Department to cover or reimburse Fred Ex Pooled Contingency-Covered Costs.

## **Section 7 Definitions**

Capitalized terms used but not otherwise defined in this Exhibit N 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 GARVEE Trustee, as the same may be supplemented from time to time in connection with the issuance of GARVEE Bonds, the proceeds of which are used to fund a portion of the Public Funds Amount.

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

## **Attachment 1**

### **DISBURSEMENT REQUEST CERTIFICATE**

In order to induce the Department to provide written authorization to disburse: (i) funds from the VDOT Funding Account as requested by this Disbursement Request, (ii) funds for the 395 Project, or (iii) the Fred Ex Department Committed Contingency (or any additional funds for the Department's share of Fred Ex Pooled Contingency-Covered Costs), 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.

**95 Express Lanes LLC,**  
a Delaware limited liability company

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

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





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 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



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



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 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

FINAL LIEN AND CLAIM WAIVER

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 395 Project, located in the Commonwealth of Virginia, pursuant to that certain Amended and Restated Comprehensive Agreement, dated as of June 8, 2017 (the “Agreement”), with 95 Express Lanes LLC, as concessionaire (“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 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 the Concessionaire 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





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 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



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