

EXHIBIT L

SCHEDULE OF TERMS OF DISBURSEMENTS OF PUBLIC FINANCING

**SECTION 1
DEFINITIONS**

As used in this Exhibit L (unless otherwise specified therein), the following terms shall have the following meanings. All other capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement.

1.1 **"Developer's Engineer"** means the professional engineering company engaged by the Developer with respect to the Developer's Site and Traffic Improvements.

1.2 **"Direct Construction Costs"** means direct construction costs incurred by the Developer as set forth in the Developer's Site and Traffic Improvements Budget in connection with the construction of the 101 Tunnels and Driveways, the relocation of the Drainage Pipe (if required), the construction of the Streetscape Improvements, the construction of the Developer's On-Site Public Improvements, and the traffic maintenance and protections improvements to be undertaken by the Developer described in Section 5.4(B) of the Agreement (collectively the Developer's Site and Traffic Improvements).

1.3 **"General Contractor"** means any general contractor or construction manager engaged by the Developer for the Developer's Site and Traffic Improvements providing construction management and supervisory services.

1.4 **"Other Developer's Site and Traffic Improvements Costs"** means costs (other than Direct Construction Costs) incurred by Developer in connection with the construction of the Developer's Site and Traffic Improvements., including, but not limited to, soft costs and fees payable to professionals and consultants, as itemized in the Developer's Site and Traffic Improvements Budget.

1.5 **"Plans and Specifications"** means the plans and specifications, including, without limitation, all maps, sketches, diagrams, surveys, drawings and lists of materials, for the construction of the Developer's Site and Traffic Improvements, prepared by the Developer's Engineer and/or the architect engaged by the Developer and approved by the City and/or any other applicable Reviewing Authority , and any and all modifications thereof approved by the City and/or an any other applicable Reviewing Authority.

1.6 **"Developer's Site and Traffic Improvements Budget"** means the budget of Direct Construction Costs and Other Developer's Site and Traffic Improvements Costs for the Developer's Site and Traffic Improvements setting forth line items and costs to be funded by Public Financing and the Developer and the reimbursement guidelines and/or regulations of the applicable Reviewing Authority, if any to be developed and agreed upon by the City and the Developer. Line item amounts may be reallocated by Developer from time to time if allowed by applicable guidelines above, but the total amount of the City's disbursements of Public Financing to or on behalf of the Developer as set forth in the Developer's Site and Traffic Improvements Budget shall not exceed \$10 million based upon drawings for the 101 College Tunnels and Driveways dated 12/6/19 (Exhibit D) and a budget for the same dated 1/10/20(Exhibit K) plus the Contingency of \$2 million funded by Public Financing which may be disbursed to the Developer for the costs of the Developer's Site and Traffic Improvements under the circumstances set forth in Section 4.1(E)(2) of the Agreement, and, if the City requires changes to the Developer's Site and Traffic Improvements which result in costs in excess of the foregoing amounts, the City shall disburse the costs of such additional changes to the Developer as provided in Section 4.1(E)(2) of the Agreement. The City and the Developer agree that extensive coordination has occurred following the schematic design drawings dated December 6, 2019 (Exhibit D) and the budget dated January 10, 2020 (Exhibit K). The Developer has continued to advance the design, and has made subsequent submissions of the 10%/30%, and 60% plan sets to the City (the 60% plan set is behind Exhibit J). The City has reviewed and responded with comments to the 10%/30% plan set submission. The Working Group has met bi-weekly during this period and has addressed many issues of coordination on the Developer's design, as well as the City's procurement documents for the solicitation of the City's Design-Build Contractor. The

City has worked with the City's Program Manager for Downtown Crossing, HNTB, to produce a draft update to the Air Rights Improvements Guidelines (Exhibit V). The Developer has since submitted a 60% plan set to the City (Exhibit J). The 60% plan set is currently under review by the City and its Program Manager, and the January 10, 2020 budget has not been revised at this time. The Working Group has begun discussing the design implications in view of Exhibit V, and the Developer continues to review the budget (Exhibit K) relative to the 60% plan set (Exhibit J). All of these updates and interactions have been completed in the spirit of collaboration to advance the mutually shared objective of completing the Development, and the City's Traffic Improvements to enable the Project in a coordinated fashion..

1.7 **"Retainage"** means the amount actually held back by Developer from the General Contractor and each subcontractor and supplier engaged in the construction of the Developer's Site and Traffic Improvements, but in no event less than five percent (5%) of the contract sum as it is advanced as work progresses, and in accordance with applicable law.

1.8 **"Reviewing Authority"** means that for the particular work being contemplated, the City and/or any Agency whose review and input is necessary for some aspect of the work or the funding of the work as per applicable statute, regulation, ordinance, guideline, or agreement.

1.9 **"Verified Developer's Site and Traffic Improvements Costs"** means the aggregate, from time to time, of costs actually incurred by the Developer for work in place as part of the Developer's Site and Traffic Improvements, as set forth in the Developer's Engineer's certificate for payment from time to time pursuant to the provisions of this Schedule, minus a sum equal to the Retainage.

1.10 **"Approval"** or **"Approve"** means a person's consent, such consent not to be unreasonably withheld, conditioned or delayed and to be deemed granted if a request for an approval is made in writing and such request is not disapproved in writing within ten (10) business days after receipt of such request, notwithstanding any provision regarding the Review Period in the Agreement with such disapproval setting forth in reasonable detail the reasons for such disapproval

SECTION 2
DISBURSEMENTS OF PUBLIC FINANCING

2.1 **Disbursements**. The City shall make disbursements of Public Financing for the construction of the Developer's Site and Traffic Improvements ("Disbursements") to the Developer for Direct Construction Costs and Other Developer's Site and Traffic Improvements Costs up to a maximum of \$10 million, which sum is based upon drawings of the 101 Tunnels and Driveways dated 12/6/19 and a budget for the same dated 1/10/20. In addition, the City shall make disbursements from the Contingency to the Developer for the costs of the Developer's Site and Traffic Improvements in excess of \$10 million resulting from any of the circumstances set forth in Section 4.1(E)(2), and the City shall make additional disbursements from public financing to the Developer for the costs of changes to the Developer's Site and Traffic Improvements resulting from requests from the City which cost in excess of \$12 million (the "Additional Disbursements"). The Disbursements and the Additional Disbursements shall be subject to retainage from each advance of an amount equal to the Retainage. Upon the earlier of the completion of the relocation of the Drainage Pipe (if required) or the satisfaction of the conditions set forth in Section 2.3 herein, the Retainage for the Drainage Pipe relocation work shall be disbursed to the Developer. Similarly, upon the earlier of the acceptance the 101 Tunnels and Driveways by the City Engineer in accordance with Article IV of the Agreement or the satisfaction of the conditions set forth in Section 2.3, the Retainage for the construction of the 101 Tunnels and Driveways shall be disbursed to the Developer. Likewise, upon the earlier of the completion of the Streetscape Improvements and the Developer's On-Site Public Improvements or the satisfaction of the conditions set forth in Section 2.3, the Retainage for such work shall be disbursed to the Developer. Likewise, upon the earlier of the completion of the traffic maintenance and protections improvements to be undertaken by the Developer described in Section 5.4(B) of the Agreement or the satisfaction of the conditions set forth in Section 2.3, the Retainage for such work shall be disbursed to the Developer. The disbursement of the Retainage shall be in accordance with the regulations (if any) of any Reviewing Authority. Notwithstanding the foregoing, the Retainage for any of the foregoing work shall not be distributed to the Developer, if such disbursement is in conflict with the requirements of any Reviewing Authority.

2.2 **Conditions Precedent to Disbursements.** Upon satisfaction of the following conditions, which shall be conditions precedent to making Disbursements and Additional Disbursements, the City shall make Disbursements and Additional Disbursements as follows:

2.2.1 The Developer or the General Contractor, acting on behalf of the Developer, shall have submitted to the Developer's Engineer for certification, an itemized and verified application for payment for Direct Construction Costs and Other Developer's Site and Traffic Improvements Costs which have been incurred as of such date in accordance with the Developer's Site and Traffic Improvements Budget (the "Request") and in compliance with the reimbursement guidelines and/or regulations of any applicable Reviewing Authority. The Request shall be submitted using AIA Document G-702, Application and Certification for Payment, or other form approved by the City. Each Request must specify the cost of the labor that has been performed and the materials that have been incorporated into the Developer's Site and Traffic Improvements since the date of the previous Request, if any. The Request must be certified to be true and correct by the General Contractor and must be accompanied by the General Contractor's application for payment, all applicable invoices that the Developer's Engineer may request to substantiate the application for payment, including executed releases and/or lien waivers or partial releases and waivers, as the case may be, from the General Contractor, subcontractors, equipment suppliers and material suppliers for work performed or equipment or material supplied to the job as of the date of the application for payment, and any and all other documentation required by the guidelines or regulations of the applicable Reviewing Authority. The Developer further agrees to provide such additional documentation/back-up as is reasonably requested by the City to substantiate the Request.

2.2.2 The Developer's Engineer will, within seven (7) days after receipt of the Request, either issue to the City a certificate for payment, with a copy to the Developer and the General Contractor, for such amount as the Developer's Engineer determines is properly due, or notify the General Contractor and the Developer in writing of the Developer's Engineer's reasons for withholding certification in whole or in part as provided below;

2.2.3 Prior to submitting the Request, the Developer shall have delivered to the Developer's Engineer, the City and any other Reviewing Authority, if required for the review and approval of the City and any other Reviewing Authority, if required, any proposed material modifications to the Developer's Site and Traffic Improvements Budget, including any changes

due to the circumstances set forth in Section 4.1(E)(2) of the Agreement, and/or any proposed material modifications to the Plans and Specifications for the Developer's Site and Traffic Improvements, which have not been approved by a Reviewing Authority, and any changes orders, and in the case of the initial application for payment, copies of any permits required by law as a condition to commencing such construction work;

2.2.4 The issuance of a certificate for payment will constitute a representation by the Developer's Engineer to the City and the Developer based on the Developer's Engineer's periodic observations at the site, the Developer's Engineer's attendance at weekly construction meetings convened by the Developer and the data comprising the Request, that the work on the Developer's Site and Traffic Improvements has progressed to the point indicated and is in substantial accordance with the Plans and Specifications. Such representations are subject to an evaluation of the work for conformance with the Plans and Specifications by the City and any other Reviewing Authority at any time, and also upon substantial completion of the work. Such representations are also subject to (i) the results of subsequent tests and inspections, (ii) identified variations from the Plans and Specifications which are minor and correctable prior to the completion and (iii) specific qualifications expressed by the Developer's Engineer. The issuance of a certificate for payment will further constitute a representation that the Developer or General Contractor is entitled to payment of the amount certified provided that it will not be a representation that the Developer's Engineer has made an exhaustive or continuous on-site inspection of the site to check the quality or quantity of the work, has reviewed construction methods, procedures or reviewed copies of requisitions received from subcontractors and material suppliers to substantiate the Developer or the General Contractor's right to payment or made examination to ascertain how or to what purpose the General Contractor or the Developer has used the money previously paid for the Developer's Site and Traffic Improvements.;

2.2.5 The Developer's Engineer may withhold a certificate for payment in whole or in part to the extent reasonably necessary, if in the Developer's Engineer's opinion, the representation to the City required by Section 2.2.4 above cannot be made. If the Developer's Engineer is unable to certify payment in the amount of the Request, the Developer's Engineer will notify the Developer, the General Contractor and the City of the same within seven (7) days of receipt of the Request. If the Developer and the Developer's Engineer cannot agree on a

revised amount, the Developer's Engineer will promptly issue a certificate for payment for the amount for which the Developer's Engineer is able to make such representation to the City.

2.3 **Conditions Precedent to Final Advance.** The City's obligations hereunder to make the final advance of proceeds of the Public Financing, including, but not limited to, the Contingency (if applicable) and the Retainage, are conditioned upon the satisfaction of each of the following conditions:

2.3.1 The Developer shall cause to be furnished to the City such permits, lien waivers and releases and/or certificates (including a certificate of substantial completion from the Developer's Engineer as described below), consents of surety, as-built record documents (both digitally and in hard copy), job records (inspections, testings, etc.), signed change orders, contractor warranties and guarantees for work performed and materials supplied as required under Section 4.1(A)(8) of the Agreement, and other documents as shall be reasonably required to establish to the City's reasonable satisfaction that the Developer's Site and Traffic Improvements have been properly completed;

2.3.2 The Developer's Site and Traffic Improvements shall have been substantially completed in all material respects in accordance with any applicable Plans and Specifications, as verified by a certification to the City and the Developer from the Developer's Engineer that subject to the matters described in Section 2.2.4, it is the Developer's Engineer's belief that the Developer's Site and Traffic Improvements have been constructed in substantial accordance with the Plans and Specifications;

2.3.3 The 101 Tunnels and Driveways shall have been accepted by the City Engineer in accordance with the provisions of Article VI of the Agreement and a Certificate of Completion shall have been issued for the Developer's Private Improvements, Developer's On-Site Improvements and the Streetscape Improvements. .

2.4 **Procedures.** All Disbursements and Additional Disbursements made hereunder shall be disbursed from time to time by the City as the work progresses upon receipt by the City from the Developer's Engineer of the Developer's Engineer's certificate of payment. The Developer or the General Contractor will make the Request, and the Developer's Engineer shall prepare and deliver to the City certificates for payment no more frequently than monthly, covering work performed since the prior application for payment. The City shall pay the amount set forth in the certificate for payment within ten (10) business days after its receipt of same or

within such time, it shall notify the Developer and the Developer's Engineer of its reasons for disapproving such advance setting forth such reasons in detail.

2.5 **Funding.** Disbursements shall be made by City check or wire transfer to the order of Developer.

2.6 **Conflicts.** Notwithstanding the paragraphs of this Exhibit N, the City and the Developer agree that this Schedule and Terms of Disbursements of Public Financing may conflict with and is subject to specific requirements of Reviewing Authorities other than the City and that the terms of this Exhibit N and the Agreement, where in conflict with those requirements, will be superseded by those requirements, which shall control the application for payment and disbursement process. Further, in the event of a conflict between this Exhibit N and the Agreement, the terms of this Exhibit N shall govern.