

EXHIBIT H

ASSIGNED GROSS REVENUE AND REFINANCING GAIN SHARE CALCULATION

Section 1 Concessionaire Responsibilities and Department Rights

The Concessionaire will pay the Assigned Gross Revenues and Refinancing Gain Share to the Department in accordance with Section 4.01(c) of the Agreement and this Exhibit H. Such payments shall never be negative (except solely for purposes of the calculation of any credit in Section 2(f)), and the Department shall never have any obligation to the Concessionaire for any such payments.

Section 2 Assigned Gross Revenues

(a) **General.** The Concessionaire hereby agrees to collect and remit to the Department the Gross Revenues generated by the Project that are specified in Section 2(c)(i) (the “Assigned Gross Revenues”) which shall be paid to the Department as provided herein.

(b) **Deliverables.** Within 120 Days following the end of each calendar year, the Concessionaire shall provide to the Department:

(i) a calculation of Assigned Gross Revenues in accordance with Section 2(c) reflecting Gross Revenues received starting from the New Midtown Tunnel Tolling and O&M Work Commencement Date up to the end of that calendar year, together with all other data relevant to such calculation (including, without limitation, revenue bands, financial statements and any other data reasonably requested by the Department supporting such calculation);

(ii) the amount of Assigned Gross Revenues previously paid, deposited into or released from the Assigned Gross Revenue Sharing Account, as applicable; and

(iii) a notice of deposit into or release from the Assigned Gross Revenue Sharing Account or a calculation of any credit, as applicable, to the Lender’s Agent of any Assigned Gross Revenues calculated pursuant to Section 2(c) for that calendar year, in the forms set forth in Attachment 2.

(c) **Calculation.** The Concessionaire shall calculate the amount of Assigned Gross Revenues following the end of each calendar year, commencing at the end of the calendar year in which the New Midtown Tunnel Tolling and O&M Work Commencement Date occurs and continuing for each calendar year until the end of the Term.

(i) The Assigned Gross Revenues shall equal the sum of the following amounts (calculated based on the Bands and Revenue Payment Percentages reflected in Attachment 1):

(A) the amount of Cumulative Gross Revenues above the Band 1 Band Floor and up to the Band 1 Band Ceiling as reflected in Attachment 1 for the current year times the Band 1 Revenue Payment Percentage; plus

(B) the amount of the Cumulative Gross Revenues above the Band 2 Band Floor and up to the Band 2 Band Ceiling as reflected in Attachment 1 for the current year times the Band 2 Revenue Payment Percentage; plus

(C) the amount of the Cumulative Gross Revenues above the Band 3 Band Floor and up to the Band 3 Band Ceiling as reflected in Attachment 1 for the current year times Band 3 Revenue Payment Percentage; plus

(D) the amount of the Cumulative Gross Revenues above the Band 4 Band Floor and up to the Band 4 Band Ceiling as reflected in Attachment 1 for the current year times the Band 4 Revenue Payment Percentage; plus

(E) the amount of the Cumulative Gross Revenues above the Band 5 Band Floor as reflected in Attachment 1 for the current year times the Band 5 Revenue Payment Percentage; less

(F) any amounts paid by the Concessionaire to the Department in previous calendar years; less

(G) any deferred amounts available in the Assigned Gross Revenue Sharing Account, pursuant to Section 2(f).

(ii) In the calculation performed pursuant to this Section 2(c), if the period in the last calendar year of the Term is different than the period in the last calendar year identified in Attachment 1 of this Exhibit H, the respective amounts of each Band Floor and Band Ceiling will be adjusted pro rata based on the number of operating Days in the last calendar year of the Term. For the last calendar year of the Term, Gross Revenues shall include those revenues that are accrued or earned but not yet received in such calendar year.

(d) **Gross Revenues Held in Trust.** All Gross Revenues received by the Concessionaire constituting Assigned Gross Revenues shall be received and held in trust by the Concessionaire for the benefit of the Department, and shall be deemed to be trust funds until the final calculation of the amount of the Assigned Gross Revenues payable to the Department, and any payments by the Concessionaire of costs or expenses or other application of funds shall be deemed, to the maximum extent possible, to be an application of Gross Revenues other than Assigned Gross Revenues.

(e) **Payment to the Lender's Agent.** If the calculation performed pursuant to Section 2(c) results in Assigned Gross Revenues greater than zero, the Concessionaire shall submit to the Lender's Agent or other Person designated by the Parties a deposit for such amount into the Assigned Gross Revenue Sharing Account not later than 120 days following the end of the calendar year to which such Assigned Gross Revenues relate.

(f) **Concessionaire Option for Deferral.** Notwithstanding anything to the contrary in this Section 2, the Concessionaire shall have the option, in accordance with this Section 2(f), to instruct the Lender’s Agent to defer releasing the balance of the Assigned Gross Revenue Sharing Account owed to the Department pursuant to this Section 2 up to the date of the payment of the first Distribution. For each period up to the end of any such deferral period that the amount of the Assigned Gross Revenues is calculated, any Assigned Gross Revenues will be deposited to the Assigned Gross Revenue Sharing Account. For any calculation of the Assigned Revenues up to the end of any such deferral period that the Assigned Revenues is less than zero, there will be a release from the Assigned Gross Revenue Sharing Account to the Project Account of the balance as may be permitted pursuant to the Project Financing Agreements and subject to availability of such funds in the Assigned Gross Revenue Sharing Account. Any excess amount that was not released to the Concessionaire due to unavailability of such funds in the Assigned Gross Revenue Sharing Account will be a credit to be applied to the amount of Assigned Revenues owed by the Concessionaire to the Department in future years. Any amounts for which payment has been deferred pursuant to this Section 2(f) shall be payable by the Concessionaire to the Department upon payment of the first Distribution; *provided*, that upon termination of the Agreement for any reason, any such deferred amounts plus interest earning on such amounts shall be due on the date of termination.

(g) **Release of Assigned Gross Revenues to the Department.** Within 120 days from the end of each year, the Lender’s Agent shall release to the Department the balance of the Assigned Gross Revenue Sharing Account, unless the Concessionaire has elected to defer releasing the balance of the Assigned Gross Revenue Sharing Account pursuant to Section 2(f). At the end of the Term the Lender’s Agent shall release to the Department the balance of the Assigned Gross Revenue Sharing Account as of the effective date of termination.

(h) **Incorporation into Base Case Financial Model Update.** Following the agreement by each of the Concessionaire and the Department to the calculation pursuant to Section 2(c), the Concessionaire will incorporate such calculation into the proposed Base Case Financial Model Update to be provided pursuant to Article 6 of the Agreement.

Section 3 Refinancing Gain Share

(a) **General.** Except as set forth in Section 4.01(c) of the Agreement, the Concessionaire agrees to share any Refinancing Gain resulting from a Refinancing (the “Refinancing Gain Share”) in accordance with this Section 3 with the Department. The Refinancing Gain Share will be a percentage of any such Refinancing Gain. Refinancing Gain shall be derived from the changes in Distributions projected to take place after the Refinancing by comparison with the position immediately before the Refinancing.

(b) **Deliverables.** The Concessionaire shall provide to the Department with the items set forth in and in accordance with Section 7.05(a) of the Agreement.

(c) **Calculation.** The Concessionaire shall calculate the Refinancing Gain Share in accordance with this Section 3(c).

(i) Refinancing Gain shall be an amount equal to the greater of zero or $[(A - B) - C]$, where:

- Factor A equals the sum of the value of each of the projected Distributions to be made over the Remaining Term following the Refinancing, in each case calculated as of the estimated date of the Refinancing and discounted using the Initial Refinancing Case Equity IRR, as projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Base Case Financial Model Update (or, if there has been no undisputed Base Case Financial Model Update, the Base Case Financial Model), as updated for the performance of the Project so as to be current immediately prior to the Refinancing);
- Factor B equals the sum of the value of each of the projected Distributions to be made over the Remaining Term following the Refinancing, in each case calculated as of the estimated date of the Refinancing and discounted using the Initial Refinancing Case Equity IRR, as projected immediately prior to the Refinancing (without taking into account the effect of the Refinancing but using the Base Case Financial Model Update (or, if there has been no undisputed Base Case Financial Model Update, the Base Case Financial Model), as updated for the performance of the Project so as to be current immediately prior to the Refinancing);
- Factor C equals the lesser of (i) Maximum Refinancing Credit and (ii) Maximum Credit Use, where:
 - Maximum Refinancing Credit equals the greater of (i) the future value of the cumulative Distributions projected in the Base Case Financial Model less the future value of the actual cumulative Distributions, and (ii) zero. Future values will be determined by applying the Initial Refinancing Case Equity IRR to the respective cash flow from the date the cash flow occurred up to the time of the Refinancing.
 - Maximum Credit Use equals the greater of (i) Factor A less Factor B and (ii) zero.

(d) **Payment.** If Refinancing Gain is greater than zero, the Concessionaire shall pay to the Department, as a part of the Refinancing Gain Share, an amount equal to 50% of any such Refinancing Gain.

(i) If the Concessionaire receives a lump sum net amount of money (net of any debt repayment, break costs or expenses associated with the Refinancing) as a result of a Refinancing Gain, the Concessionaire shall pay to the Department a lump sum payment in an amount equal to 50% of the Refinancing Gain no later than 10 Days following the receipt by the Concessionaire of the initial lump sum amount.

(ii) The Concessionaire shall pay any other portion of such Refinancing Gain Share (i) no later than 10 Days following the receipt by the Concessionaire of the benefit it projects to receive from the Refinancing Gain following the Refinancing Gain calculation or (ii) in any other manner as agreed by the parties in writing, or (iii) as may be determined through the dispute resolution procedures set forth in Article 21 of the Agreement; *provided*, that for any payment schedule that differs from the projected timing of such a benefit, the present value of the payments will be calculated using the appropriate risk adjusted discount rate.

(iii) In the case of any lump-sum payment of the Refinancing Gain Share with respect to a benefit the Concessionaire projects to receive from the Refinancing Gain following the Refinancing Gain calculation, the present value of such payment to the Department shall be discounted at the then appropriate risk adjusted discount rate, as agreed between the Department and the Concessionaire, with respect to the expected future cash flows of the Project.

(e) **Incorporation into Base Case Financial Model Update.** The Concessionaire will incorporate the anticipated Refinancing Gain into the proposed Base Case Financial Model Update to be provided to the Department pursuant to Article 6 of the Agreement.

Section 4 Definitions

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

Assigned Gross Revenues has the meaning set forth Section 2(a) of this Exhibit H.

Band means the difference between a Band Floor and the next highest Band Ceiling (inclusive) or, where there is no higher Band Ceiling, any amount in excess of the highest Band Floor as set out in Attachment 1 of this Exhibit H.

Band Ceiling means, in respect of each Band Floor, the next highest Band Floor less one cent, if such a Band Floor exists.

Band Floor means each amount specified as the minimum amount for a Band as set out in Attachment 1 to this Exhibit H.

Cumulative Gross Revenues means the total amount of Gross Revenues from the New Midtown Tunnel Tolling and O&M Work Commencement Date up to the end of the most recent calendar year.

Lender's Agent means the Person responsible for administering the Project Account pursuant to the Project Financing Agreements.

Project Account means the account established pursuant to the Project Financing Agreements.

Refinancing Gain Share has the meaning set forth Section 3(a) of this Exhibit H.

Remaining Term means the period between the Refinancing Date and the expiration of the Term.

Revenue Payment Percentage means the applicable percentages for each of the Bands as shown in Attachment 1 to this Exhibit H used to determine the Assigned Gross Revenues.

Attachment 1 to Exhibit H

Band	Revenue Percentage	Payment
1	0.00%	
2	5.00%	
3	15.00%	
4	30.00%	
5	60.00%	

Year	Band 1		Band 2		Band 3		Band 4		Band 5
	Floor - Cumulative Gross Revenues from:	Ceiling - Cumulative Gross Revenues to and including:	Floor - Cumulative Gross Revenues from:	Ceiling - Cumulative Gross Revenues to and including:	Floor - Cumulative Gross Revenues from:	Ceiling - Cumulative Gross Revenues to and including:	Floor - Cumulative Gross Revenues from:	Ceiling - Cumulative Gross Revenues to and including:	Floor - Cumulative Gross Revenues from:
1	0	108,488	108,488	113,654	113,654	123,986	123,986	134,318	134,318
2	0	223,215	223,215	233,844	233,844	255,103	255,103	276,361	276,361
3	0	344,158	344,158	360,546	360,546	393,323	393,323	426,100	426,100
4	0	471,569	471,569	494,024	494,024	538,936	538,936	583,847	583,847
5	0	605,843	605,843	634,693	634,693	692,392	692,392	750,092	750,092
6	0	746,391	746,391	781,933	781,933	853,018	853,018	924,103	924,103
7	0	893,334	893,334	935,874	935,874	1,020,953	1,020,953	1,106,033	1,106,033
8	0	1,048,044	1,048,044	1,097,951	1,097,951	1,197,765	1,197,765	1,297,578	1,297,578
9	0	1,210,792	1,210,792	1,268,449	1,268,449	1,383,762	1,383,762	1,499,076	1,499,076
10	0	1,381,889	1,381,889	1,447,693	1,447,693	1,579,302	1,579,302	1,710,910	1,710,910
11	0	1,560,726	1,560,726	1,635,046	1,635,046	1,783,687	1,783,687	1,932,328	1,932,328
12	0	1,748,217	1,748,217	1,831,466	1,831,466	1,997,963	1,997,963	2,164,460	2,164,460
13	0	1,944,438	1,944,438	2,037,031	2,037,031	2,222,215	2,222,215	2,407,400	2,407,400
14	0	2,150,184	2,150,184	2,252,574	2,252,574	2,457,353	2,457,353	2,662,133	2,662,133
15	0	2,365,694	2,365,694	2,478,346	2,478,346	2,703,650	2,703,650	2,928,955	2,928,955
16	0	2,591,550	2,591,550	2,714,958	2,714,958	2,961,772	2,961,772	3,208,586	3,208,586
17	0	2,828,458	2,828,458	2,963,146	2,963,146	3,232,523	3,232,523	3,501,900	3,501,900
18	0	3,076,416	3,076,416	3,222,912	3,222,912	3,515,904	3,515,904	3,808,896	3,808,896
19	0	3,334,725	3,334,725	3,493,521	3,493,521	3,811,114	3,811,114	4,128,707	4,128,707
20	0	3,603,841	3,603,841	3,775,452	3,775,452	4,118,675	4,118,675	4,461,898	4,461,898
21	0	3,884,048	3,884,048	4,069,003	4,069,003	4,438,912	4,438,912	4,808,822	4,808,822
22	0	4,175,861	4,175,861	4,374,711	4,374,711	4,772,412	4,772,412	5,170,114	5,170,114
23	0	4,479,989	4,479,989	4,693,322	4,693,322	5,119,987	5,119,987	5,546,653	5,546,653
24	0	4,796,997	4,796,997	5,025,425	5,025,425	5,482,282	5,482,282	5,939,139	5,939,139
25	0	5,125,969	5,125,969	5,370,063	5,370,063	5,858,251	5,858,251	6,346,438	6,346,438

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	Band 1		Band 2		Band 3		Band 4		Band 5
	Floor -	Ceiling -	Floor -	Ceiling -	Floor -	Ceiling -	Floor -	Ceiling -	Floor -
26	0	5,467,653	5,467,653	5,728,017	5,728,017	6,248,746	6,248,746	6,769,475	6,769,475
27	0	5,822,593	5,822,593	6,099,859	6,099,859	6,654,392	6,654,392	7,208,925	7,208,925
28	0	6,191,243	6,191,243	6,486,064	6,486,064	7,075,706	7,075,706	7,665,348	7,665,348
29	0	6,574,007	6,574,007	6,887,055	6,887,055	7,513,151	7,513,151	8,139,247	8,139,247
30	0	6,970,734	6,970,734	7,302,674	7,302,674	7,966,553	7,966,553	8,630,432	8,630,432
31	0	7,381,765	7,381,765	7,733,278	7,733,278	8,436,303	8,436,303	9,139,329	9,139,329
32	0	7,808,280	7,808,280	8,180,102	8,180,102	8,923,748	8,923,748	9,667,394	9,667,394
33	0	8,250,287	8,250,287	8,643,158	8,643,158	9,428,899	9,428,899	10,214,641	10,214,641
34	0	8,708,690	8,708,690	9,123,389	9,123,389	9,952,788	9,952,788	10,782,187	10,782,187
35	0	9,183,452	9,183,452	9,620,759	9,620,759	10,495,374	10,495,374	11,369,988	11,369,988
36	0	9,674,992	9,674,992	10,135,706	10,135,706	11,057,134	11,057,134	11,978,562	11,978,562
37	0	10,184,065	10,184,065	10,669,021	10,669,021	11,638,932	11,638,932	12,608,843	12,608,843
38	0	10,711,950	10,711,950	11,222,043	11,222,043	12,242,229	12,242,229	13,262,415	13,262,415
39	0	11,258,853	11,258,853	11,794,988	11,794,988	12,867,260	12,867,260	13,939,532	13,939,532
40	0	11,825,063	11,825,063	12,388,161	12,388,161	13,514,357	13,514,357	14,640,554	14,640,554
41	0	12,411,323	12,411,323	13,002,338	13,002,338	14,184,369	14,184,369	15,366,399	15,366,399
42	0	13,018,428	13,018,428	13,638,353	13,638,353	14,878,203	14,878,203	16,118,054	16,118,054
43	0	13,646,933	13,646,933	14,296,787	14,296,787	15,596,495	15,596,495	16,896,203	16,896,203
44	0	14,298,079	14,298,079	14,978,940	14,978,940	16,340,662	16,340,662	17,702,384	17,702,384
45	0	14,972,386	14,972,386	15,685,356	15,685,356	17,111,298	17,111,298	18,537,239	18,537,239
46	0	15,670,767	15,670,767	16,416,994	16,416,994	17,909,448	17,909,448	19,401,902	19,401,902
47	0	16,394,002	16,394,002	17,174,669	17,174,669	18,736,003	18,736,003	20,297,336	20,297,336
48	0	17,143,191	17,143,191	17,959,534	17,959,534	19,592,218	19,592,218	21,224,903	21,224,903
49	0	17,919,004	17,919,004	18,772,290	18,772,290	20,478,861	20,478,861	22,185,433	22,185,433
50	0	18,722,111	18,722,111	19,613,640	19,613,640	21,396,698	21,396,698	23,179,756	23,179,756
51	0	19,552,840	19,552,840	20,483,927	20,483,927	22,346,102	22,346,102	24,208,278	24,208,278
52	0	20,411,102	20,411,102	21,383,059	21,383,059	23,326,974	23,326,974	25,270,888	25,270,888
53	0	21,298,201	21,298,201	22,312,401	22,312,401	24,340,801	24,340,801	26,369,201	26,369,201

The above figures in the Band columns are all United States dollar amounts in 000's.

Attachment 2 to Exhibit H

Form of Notice of Deposit

DEPOSIT NOTICE

Virginia Department of Transportation
1401 E. Broad Street
Richmond, Virginia 23219

[Date]

[Elizabeth River Crossings Opco LLC]
[address]

Attention: [_____]

Re: Deposit Notice

Ladies and Gentlemen:

The undersigned, an authorized officer of Elizabeth River Crossings Opco LLC hereby notifies the Department with reference to the provisions of Exhibit H of the Comprehensive Agreement relating to the Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension Project between the Department and the Concessionaire, that an amount of \$_____ has been deposited into the Assigned Gross Revenue Sharing Account for amount of Assigned Gross Revenues calculated for the period [_____] to [_____].

Elizabeth River Crossings Opco LLC

By: _____

Name:

Title:

Attachment: Deposit statement

Form of Notice of Release

RELEASE NOTICE

Virginia Department of Transportation
1401 E. Broad Street
Richmond, Virginia 23219

[Date]

[Elizabeth River Crossings Opco LLC]

[address]

Attention: [_____]

Re: Release Notice

Ladies and Gentlemen:

The undersigned, an authorized officer of Elizabeth River Crossings Opco LLC hereby notifies the Department with reference to the provisions of Exhibit H of the Comprehensive Agreement relating to the Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension Project between the Department and the Concessionaire, that an amount of \$_____ has been released from the Assigned Revenue Sharing Account for amount of Assigned Gross Revenues calculated for the period [_____] to [_____].

Elizabeth River Crossings Opco LLC

By: _____

Name:

Title:

Attachment: Release statement