

## **EXHIBIT J-2**

### **GROSS TOLL SHARE PAYMENTS**

#### **1. Definitions**

- 1.1 “Cumulative Gross Toll Revenues” means for any given date during the Term, the cumulative amount of nominal Gross Toll Revenues collected or received by the Concessionaire from July 1, 2017 to such given date.
- 1.2 “Cumulative Projected Gross Toll Revenues” means the cumulative Gross Toll Revenues projected to be earned from July 1, 2017 through December 28, 2087, as set forth in the Fred Ex Project Binding Proposal Base Case Financial Model.
- 1.3 “Disputed Payment” is defined in Section 2.6 below.
- 1.4 “Gross Toll Revenue” is defined in Exhibit A of the Agreement.
- 1.5 “Gross Toll Share” is defined in Section 3.1 below.
- 1.6 “Gross Toll Share Payment” is defined in Section 3.1 below.
- 1.7 “Gross Toll Share Payment Date” means (a) each date that is 150 days after the last day of an Agreement Year after the Gross Toll Share Payment Trigger Date, and (b) in the case of early termination of the Agreement, the date the Department pays termination compensation to the Concessionaire under Section 25.19(c) of the Agreement.
- 1.8 “Gross Toll Share Payment Reserve Fund” is defined in Section 5.1 below.
- 1.9 “Gross Toll Share Payment Trigger” means the one point in time when the Cumulative Gross Toll Revenues surpass the Gross Toll Share Payment Trigger Amount.
- 1.10 “Gross Toll Share Payment Trigger Amount” means 145% of the Cumulative Projected Gross Toll Revenues.
- 1.11 “Gross Toll Share Payment Trigger Date” means the date of the Gross Toll Share Payment Trigger.
- 1.12 “Project Revenues Waterfall” means the priority of uses for funds in the Revenue Account stated in Section 5.02 of the Collateral Agency Agreement, or any successor provision that governs the priority of uses of revenues related to the Project.

#### **2. Concessionaire Responsibilities and Department Rights**

- 2.1 The Concessionaire shall create and maintain a tab within each version of the Base Case Financial Model Update (Fred Ex Final) and each succeeding Base

Case Financial Model Update, which tab compares the actual Cumulative Gross Toll Revenues to the Gross Toll Share Payment Trigger Amount in accordance with Section 6.02(e) of the Agreement. In addition, the Concessionaire shall continue to report to the Department its Actual Equity IRR within each Base Case Financial Model Update.

- 2.2 On or before each date that is 150 days after the last day of an Agreement Year, the Concessionaire shall provide to the Department:
  - a. a calculation of the Cumulative Gross Toll Revenues as of the end of such Agreement Year, including a line item account of the items that comprise the Cumulative Gross Toll Revenues for such Agreement Year;
  - b. the Concessionaire's audited calculation of the Gross Toll Revenues for such Agreement Year; and
  - c. if a Gross Toll Share Payment is due for such Agreement Year, the Concessionaire's audited calculation of the Gross Toll Share Payment for such Agreement Year.
- 2.3 If, based on quarterly unaudited financial data, the Concessionaire reasonably believes that the Gross Toll Share Payment Trigger has occurred, then it shall provide written notice of such occurrence to the Department within 10 days of its finalization of the relevant quarterly unaudited financial data that supports such reasonable belief. The Concessionaire shall confirm the Gross Toll Share Payment Trigger has occurred (and at what point in time it occurred) as part of the annual calculation required under Section 2.2 above.
- 2.4 For Agreement Years where no Gross Toll Share Payment is payable, the Concessionaire shall explicitly note this as part of Section 2.2(b).
- 2.5 The Gross Toll Share Payment will be payable by the Concessionaire to the Department immediately below the Annual Transit Investment in the Project Revenues Waterfall.
- 2.6 The Department shall have the right to dispute the Concessionaire's calculation of the Gross Toll Revenues or the Gross Toll Share Payment or to request reasonable additional information, clarification or amendment of such calculation, at any time for a period of one year following the submission of the audit and other data referenced in Section 2.2 above. The Concessionaire shall deliver to the Department such information, clarification or amendment within 30 Days following the delivery of the Department's reasonable request. If, after reasonable efforts, the Department still does not agree with the calculation of the Gross Toll Revenues or the Gross Toll Share Payment, the dispute shall be resolved according to the Dispute Resolution Procedures of Article 21 of the Agreement. The Concessionaire shall not be required to deposit additional cash in the Gross Toll Share Payment Reserve Fund to reflect disputed amounts pending the resolution of any such dispute. Within 30 days of the resolution of

any such dispute in the Department's favor (in whole or in part), the Concessionaire shall pay to the Department the amounts resolved in the Department's favor (each such payment a "Disputed Payment"). Disputed Payments are not subject to extinguishment under Section 3.2 below, but will only be satisfied and extinguished by full payment to the Department.

- 2.7 The Concessionaire's duty under Section 2.2 above shall continue until the earlier of: (i) 150 days following the expiration of the Term, or (ii) 150 days following the earlier termination of the Agreement.
- 2.8 The Parties agree to place the Fred Ex Project Binding Proposal Base Case Financial Model into escrow to use in connection with the calculation of the Cumulative Projected Gross Toll Revenues.

### **3. Gross Toll Share Payment Trigger; Duty to Pay the Gross Toll Share**

- 3.1 Prior to the Gross Toll Share Payment Trigger Date, the Concessionaire shall be under no obligation to make any Gross Toll Share Payment. Upon and after the Gross Toll Payment Share Trigger Date, the Concessionaire shall be obligated to pay to the Department an amount equal to 20% of the Gross Toll Revenues received by or on behalf of the Concessionaire during the remainder of the Term (the "Gross Toll Share"), in accordance with this Exhibit J-2. The Concessionaire shall pay the Gross Toll Share for a given Agreement Year on an annual basis no later than the Gross Toll Share Payment Date (each such annual payment a "Gross Toll Share Payment").
- 3.2 If, on any Gross Toll Share Payment Date, Gross Revenues are insufficient for the Concessionaire to make the entire Gross Toll Share Payment due to the Department, then from such time until the next-occurring Gross Toll Share Payment Date, the Concessionaire shall apply all funds that are otherwise available for application to any purpose below Annual Transit Investment in the Project Revenues Waterfall toward the outstanding Gross Toll Share Payment, and any unpaid portion of a Gross Toll Share Payment will be extinguished and deemed no longer payable upon the next-occurring Gross Toll Share Payment Date, and the Concessionaire shall have no further liability for such extinguished amounts.
- 3.3 Under no circumstance may the Concessionaire pay a Distribution when there is an outstanding, unpaid Gross Toll Share Payment or any portion thereof due to the Department.

### **4. Formula for the Gross Toll Share Payments**

- 4.1 Calculation of First Gross Toll Share Payment. The formula for the Gross Toll Share Payment for the Agreement Year in which the Gross Toll Share Payment Trigger occurs is:

[(The audited Cumulative Gross Toll Revenues as of the last day of the Agreement Year in which the Gross Toll Share Payment Trigger occurs *minus* Gross Toll Share Payment Trigger Amount) x 0.2].

- 4.2 Calculation of Subsequent Gross Toll Share Payments. The formula for the Gross Toll Share Payment for any Agreement Year after the Agreement Year in which the Gross Toll Share Payment Trigger occurs is:

[T x 0.2], where:

T = the audited Gross Toll Revenues received by the Concessionaire during the relevant Agreement Year.

## 5. **Timing of Gross Toll Share Payments**

- 5.1 Gross Toll Share Payment Reserve Fund. Once the Concessionaire has provide written notice to the Department under Section 2.3 above, the Concessionaire will establish a cash reserve fund for the Gross Toll Share Payments (the “Gross Toll Share Payment Reserve Fund”) with the Collateral Agent. After the Gross Toll Share Payment Trigger Date, no later than 30 days following the end of each quarter during the Term (other than the last Agreement Year of the Term), the Concessionaire shall cause the Collateral Agent to deposit into the Gross Toll Share Payment Reserve Fund the portion of the Gross Toll Share Payment collected or received by the Concessionaire during the corresponding quarter. Funds in the Gross Toll Share Payment Reserve Fund shall only be used to pay Gross Toll Share Payments and shall not be available for any other use, including the payment of debt service on Concessionaire Debt and the payment of Distributions. If the Concessionaire uses funds in the Gross Toll Share Payment Reserve Fund in violation of this Section 5.1, the same will be deemed to be held in trust by the Concessionaire for the benefit of the Department and will be payable to the Department.
- 5.2 Timing of Gross Toll Share Payments. Unless otherwise agreed by the parties, the Concessionaire shall pay each Gross Toll Share Payment in arrears, no later than the Gross Toll Share Payment Date that falls in the immediately-succeeding Agreement Year (*e.g.*, the Gross Toll Share Payment for Agreement Year 2082 (if any) is due no later than the 150<sup>th</sup> day of Agreement Year 2083). The Concessionaire’s duty to pay the final Gross Toll Share Payment shall survive the expiration of the Term or the earlier termination of the Agreement, whichever applies.
- 5.3 Final Gross Toll Share Payment. The final Gross Toll Share Payment Date is 150 days after the expiration of the Term (or in the case of early termination of the Agreement, the date the Department pays termination compensation to the Concessionaire under Section 25.19(c) of the Agreement). Accordingly, the final Gross Toll Share Payment shall be secured by the Letter of Credit or Performance Bond required in Section 20.02(e) of the Agreement. Within 30 days of the

beginning of the final Agreement Year (or, if the Agreement is terminated early, no later than 30 days prior to the date of termination), the Concessionaire shall increase the amount of such Letter of Credit or Performance Bond by the projected amount of the final Gross Toll Share Payment. After the Concessionaire pays to the Department the final Gross Toll Share Payment, the Concessionaire may reduce the amount of such Letter of Credit or Performance Bond by the amount attributable to securing the final Gross Toll Share Payment.