

EXHIBIT R-7

FORM OF FRED EX DIRECT AGREEMENT (COMPREHENSIVE AGREEMENT)

This **FRED EX DIRECT AGREEMENT (COMPREHENSIVE AGREEMENT)** (this "Agreement") relates to the **THIRD AMENDED AND RESTATED COMPREHENSIVE AGREEMENT RELATING TO THE I-95/395 HOV/HOT LANES PROJECT**, is dated as of [____], 20[____], and is among the VIRGINIA DEPARTMENT OF TRANSPORTATION (the "Department"), an agency of the Commonwealth of Virginia (the "State"), the address of which Department is 1401 East Broad Street, Richmond, Virginia 23219; 95 EXPRESS LANES LLC, a Delaware limited liability company (the "Concessionaire") whose address is 6440 General Green Way, Alexandria, Virginia 22312; and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as agent for the Lenders in accordance with the terms of the Project Financing Agreements (the "Collateral Agent"), whose address is Three James Center, 1051 East Cary Street, Suite 600, Richmond, Virginia 23219.

RECITALS

WHEREAS, the Department and the Concessionaire have entered into a Third Amended and Restated Comprehensive Agreement Relating to the I-95/395 HOV/HOT Lanes Project (the "Project"), dated as of [____], 20[____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Comprehensive Agreement"), pursuant to which the Department has granted a permit to the Concessionaire, which includes (i) the right and obligation to develop, design, finance, construct, operate, and maintain the Project and (ii) the right to establish, impose, charge, collect, use, and enforce payment of tolls and related charges; and

WHEREAS, the provision of Concessionaire Debt to the Concessionaire is conditioned upon the Department providing the Lenders with certain assurances (as more particularly set forth in this Agreement) regarding the Lenders' rights in the event of a Fred Ex Concessionaire Breach by the Concessionaire under the Comprehensive Agreement or a default under the Combined Project Financing Agreements; and

WHEREAS, the purpose of this Agreement is to govern the rights of the Collateral Agent and the Lenders regarding a Fred Ex Concessionaire Breach occurring prior to the Fred Ex Final Completion Date.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows.

ARTICLE 1.
DEFINITIONS, CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

Section 1.01 Definitions

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

2022 Project Financing Agreements means the Project Financing Agreements entered into on or about the Series 2022 Financial Close Date, together with any and all amendments and supplements thereto.

395 Project Financing Agreements has the meaning set forth in the Comprehensive Agreement, as the same may be amended or modified from time to time.

395 Public Funds Amount has the meaning set forth in the Comprehensive Agreement, as the same may be amended or modified from time to time.

Collateral Agent Notice has the meaning given to it in Section 2.02(d)(i).

Combined Project Financing Agreements means the Initial Project Financing Agreements, the 395 Project Financing Agreements, the Fred Ex Project Financing Agreements, the Series 2022 Project Financing Agreements and the Opitz Boulevard Ramp Project Equity Contribution Agreement.

Cure Period means the period commencing on the date that the Collateral Agent receives a Department Notice pursuant to Section 2.02(a) and ending on the relevant Cure Period Completion Date.

Cure Period Completion Date means:

(a) with respect to any Payment Breach, the date falling 30 Days after the later of (i) the date that the Collateral Agent receives the relevant Department Notice, and (ii) expiration of any applicable cure period granted to the Concessionaire pursuant to Section 19.09(c) of the Comprehensive Agreement;

(b) with respect to any Non-Completion Breach, the date falling 90 Days after the date that the Collateral Agent receives the relevant Department Notice; provided, however, that such period will be extended by such reasonable period of time as may be required to achieve Fred Ex Final Completion (subject to a maximum extension of 275 days), but only to the extent that:

(i) in the reasonable opinion of the Department, there is a reasonable prospect of achieving Fred Ex Final Completion within 365 days of the relevant Department Notice; and

(ii) within the 90-Day period, the Collateral Agent and the Department (each acting reasonably) agree to a plan in relation to achieving Fred Ex Final Completion; and

(c) with respect to any Fred Ex Concessionaire Breach not referred to in clauses (a) and (b) above, the date falling 90 Days after the later of (i) date that the relevant Department Notice is received by the Collateral Agent and (ii) expiration of any applicable cure period granted to the Concessionaire pursuant to Section 19.09 of the Comprehensive Agreement; provided, however, that such period will, at the request of the Collateral Agent, be extended up to a maximum of 60 additional Days, but only to the extent that:

(i) within the 90 Day period, the Collateral Agent and the Department (each acting reasonably) agree to a plan specifying the remedial action to be taken in respect of the relevant Fred Ex Concessionaire Breach; and

(ii) the extension requested by the Collateral Agent represents (in the reasonable opinion of the Department) a reasonable period of time to remedy the relevant Fred Ex Concessionaire Breach.

Department Funding Sub-Account has the meaning given to such term in the Third Restated Collateral Agency and Account Agreement.

Department Notice has the meaning given to it in Section 2.02(a).

Designated Account means the Concessionaire Damages Account as defined in the Third Amended and Restated Collateral Agency and Account Agreement, dated as of July 25, 2017 (the “Third Restated Collateral Agency Agreement”) between the Concessionaire and U.S. Bank Trust Company, National Association, as Collateral Agent, or such other account in accordance with the terms of the Third Restated Collateral Agency Agreement.

Fred Ex Project Financing Agreements has the meaning set forth in the Comprehensive Agreement, as the same may be amended or modified from time to time.

Future Borrower Damages has the meaning given to such term in the Third Restated Collateral Agency and Account Agreement.

Initial Equity Member means the Equity Member as of the date of this Agreement, which is Transurban Express Lanes LLC.

Initial Period means:

(a) with respect to any Payment Breach, the later of (i) the date falling 30 Days after the date that the Collateral Agent received the relevant Department Notice and (ii) expiration of any applicable cure period granted to the Concessionaire pursuant to the Comprehensive Agreement;

(b) with respect to any Fred Ex Concessionaire Breach not referred to in (a) above, the later of (i) the date falling 90 Days after the date that the Collateral Agent receives the relevant Department Notice and (ii) expiration of any applicable cure period granted to the Concessionaire pursuant to the Comprehensive Agreement.

Initial Project Financing Agreements has the meaning set forth in the Comprehensive Agreement, as the same may be amended or modified from time to time.

Non-Completion Breach means a Fred Ex Concessionaire Breach that arises pursuant to Section 19.09(d) of the Comprehensive Agreement.

Opitz Boulevard Ramp Project Equity Contribution Agreement has the meaning set forth in the Comprehensive Agreement, as the same may be amended or modified from time to time.

Payment Breach means a Fred Ex Concessionaire Breach that arises pursuant to Section 19.09(c) of the Comprehensive Agreement that has not been cured within a period of thirty (30) days of the Concessionaire receiving written notice from the Department of such Fred Ex Concessionaire Breach.

Property means any right or interest in or to property of any kind whatsoever, whether real, personal, or mixed and whether tangible or intangible.

Qualified Substitute Concessionaire means a Person who has the legal capacity, power and authority to become a party to, and perform the obligations of the Concessionaire under, the Comprehensive Agreement:

(a) who has the resources available to it (including committed financial resources) to perform the obligations of the Concessionaire under the Comprehensive Agreement;

(b) who employs or subcontracts with Persons having the appropriate qualifications, experience and technical competence available to it that are sufficient to enable it to perform the obligations of the Concessionaire under the Comprehensive Agreement; and

(c) who has not been:

(i) debarred or prohibited from participating in State or federally-funded projects;

(ii) indicted, convicted, pled guilty or nolo contendere to a violation of law involving fraud, conspiracy, collusion, bribery, perjury, material misrepresentation, or any other violation that show a similar lack of moral or ethical integrity; or

(iii) barred or prohibited from owning or operating the Project under law, including the Foreign Investment and National Security Act of 2007, 50 USC App. 2170 (HR 556).

Revenue Account has the meaning given to such term in the Third Restated Collateral Agency and Account Agreement.

Series 2022 Financial Close Date means February 10, 2022.

Step-in Date has the meaning given to it in Section 4.01(c).

Step-in Entity has the meaning given to it in Section 4.01(b).

Step-in Entity Accession Agreement means the agreement to be entered into by a Step-in Entity pursuant to Section 4.01(c).

Step-in Notice has the meaning given to it in Section 4.01(a).

Step-in Period in relation to a Step-in Entity means the period from and including the Step-in Date until the earliest of:

- (a) the last day of the Cure Period;
- (b) the Substitution Effective Date;
- (c) the Step-out Date;
- (d) the date of termination of the Comprehensive Agreement by the Department in accordance with this Agreement and the Comprehensive Agreement; or
- (e) the last day of the Term.

Step-out Date in relation to a Step-in Entity means the date upon which any Step-out Notice is served by such Step-in Entity pursuant to Section 4.03.

Step-out Notice has the meaning given to it in Section 4.03(a).

Substitute has the meaning given to it in Section 5.01.

Substitute Accession Agreement means the agreement to be entered into by a Substitute pursuant to Section 6.01.

Substitution Effective Date has the meaning given to it in Section 6.01.

Substitution Notice has the meaning given to it in Section 5.01.

Section 1.02 Order of Precedence

In the event of any conflict, ambiguity or inconsistency between the provisions of the Comprehensive Agreement and the provisions of this Agreement, the provisions of this Agreement will prevail.

Section 1.03 No Effect on Comprehensive Agreement

Nothing in this Agreement amends or modifies any of the Concessionaire's obligations to the Department under the Comprehensive Agreement.

ARTICLE 2.
CONSENT TO SECURITY AND NOTICES

Section 2.01 Consent to Security

Notwithstanding anything to the contrary in the Comprehensive Agreement:

- (a) the Department acknowledges notice and receipt of and consents to:
- (i) the assignment by the Concessionaire to the Collateral Agent of all of the Concessionaire's Interest pursuant to the Combined Project Financing Agreements; and
 - (ii) the grant by the Equity Member to the Collateral Agent of a security interest in its equity interests in the Concessionaire pursuant to the Combined Project Financing Agreements; and
 - (iii) the grant by the Concessionaire to the Collateral Agent of the security interests in all of the property and assets of the Concessionaire pursuant to the Combined Project Financing Agreements;
- (b) none of the security interests referred to in Section 2.01(a):
- (i) constitute (or with the giving of notice or lapse of time, or both, could constitute) a Fred Ex Concessionaire Breach; or
 - (ii) require any consent of the Department that is either additional or supplemental to those granted pursuant to this Section 2.01;
- (c) without prejudice to the rights granted to the Collateral Agent pursuant to this Agreement, the Collateral Agent will not, by virtue of the security interests referred to in Section 2.01(a), acquire any greater rights to the Concessionaire's Interest than the Concessionaire itself has at any particular time pursuant to the Comprehensive Agreement; and
- (d) for so long as any amount under the Combined Project Financing Agreements is outstanding, the Department will not, without the prior written consent of the Collateral Agent, consent to any assignment, transfer, pledge or hypothecation by the Concessionaire of the Comprehensive Agreement or any interest therein by the Concessionaire, other than as specified in this Agreement.

Section 2.02 Notice Requirements

(a) The Department will give the Collateral Agent written notice (a "Department Notice") promptly upon becoming aware of the occurrence of any Fred Ex Concessionaire Breach or other event that permits the Department to suspend its performance under the Comprehensive Agreement with respect to the Fred Ex Project or terminate the Fred Ex Project (whether immediately, with the giving of notice, or upon the passage of time (or any combination of the foregoing)) and will specify in the Department Notice:

(i) the unperformed obligations of the Concessionaire with respect to the Fred Ex Project under the Comprehensive Agreement of which the Department is aware (having made reasonable inquiry) and grounds for termination of the Fred Ex Project in sufficient detail to enable the Collateral Agent to assess the scope and amount of any liability of the Concessionaire resulting therefrom;

(ii) all amounts due and payable by the Concessionaire to the Department under the Comprehensive Agreement with respect to the Fred Ex Project, if any, on or before the date of the Department Notice and which remain unpaid at such date and, by cross-reference to the applicable provision(s) of the Comprehensive Agreement, the nature of the Concessionaire's obligation to pay such amounts; and

(iii) the amount of any payments that the Department reasonably foresees will become due from the Concessionaire during the applicable Cure Period.

(b) The Department will update any Department Notice issued pursuant to Section 2.02(a) as and when it becomes aware of any unperformed obligations of the Concessionaire with respect to the Fred Ex Project (including non-payment of amounts that have become due) under the Comprehensive Agreement that were not specified in the relevant Department Notice.

(c) For the avoidance of doubt, nothing in this Agreement will prevent multiple Department Notices running concurrently.

(d) The Collateral Agent will:

(i) promptly upon becoming aware of any Fred Ex Concessionaire Breach (whether or not a Department Notice has been served in connection with the same event) give the Department written notice (a "Collateral Agent Notice");

(ii) specify in any Collateral Agent Notice the circumstances and nature of the Fred Ex Concessionaire Breach to which the Collateral Agent Notice relates; and

(iii) notify the Department of any decision to accelerate amounts outstanding under the Combined Project Financing Agreements or to exercise any enforcement remedies under the Combined Project Financing Agreements.

Section 2.03 Department Payments under the Comprehensive Agreement

(a) With the exception of Future Borrower Damages, the Department will, unless directed otherwise by the Collateral Agent, deposit all amounts payable by it under the Comprehensive Agreement (other than the 395 Public Funds Amount, which the Department shall deposit into the Department Funding Sub-Account, and other than Fred Ex Department Committed Contingency, which, at the option of the Department, in its sole discretion, may be netted by the Concessionaire as a deduction from the Final Permit Fee Buyout Payment) into the Revenue Account and the Concessionaire agrees that any payment made in accordance with this Section 2.03 will constitute a complete discharge of the Department's relevant payment obligations under the Comprehensive Agreement.

(b) The Department will, unless directed otherwise by the Collateral Agent, deposit all lump sum payments with respect to Future Borrower Damages payable by it under the Comprehensive Agreement, into the Designated Account.

(c) The Collateral Agent acknowledges that all of the Department's payment obligations to the Concessionaire pursuant to the Comprehensive Agreement are subject to Section 25.19 of the Comprehensive Agreement.

ARTICLE 3.
RIGHTS AND OBLIGATIONS DURING THE CURE PERIOD

Section 3.01 No Termination of the Fred Ex Project during the Cure Period

At any time during a Cure Period, the Department will not, subject to the terms of this Agreement:

(a) terminate or give notice terminating the Fred Ex Project for Fred Ex Concessionaire Breach or exercise any rights under Section 19.11 of the Comprehensive Agreement; or

(b) suspend its performance under the Comprehensive Agreement with respect to the Fred Ex Project.

Section 3.02 Collateral Agent Rights

(a) At any time during a Fred Ex Concessionaire Breach, only for so long as the Initial Period has not expired, the Collateral Agent may (but shall have no obligation), at its sole option and discretion, perform or arrange for the performance of any act, duty, or obligation required of the Concessionaire under the Comprehensive Agreement with respect to the Fred Ex Project, or remedy any Fred Ex Concessionaire Breach at any time, which performance or remedy by or on behalf of the Collateral Agent will be accepted by the Department in lieu of performance by the Concessionaire and in satisfaction of the Concessionaire's obligations under the Comprehensive Agreement with respect to the Fred Ex Project. To the extent that any Fred Ex Concessionaire Breach is remedied and/or any payment liabilities or obligations of the Concessionaire are performed by the Collateral Agent under this Section 3.02(a), such action will discharge the relevant liabilities or obligations of the Concessionaire to the Department. No such performance by or on behalf of the Collateral Agent under this Section 3.02(a) will be construed as an assumption by the Collateral Agent, or any person acting on the Collateral Agent's behalf, of any of the covenants, agreements or other obligations of the Concessionaire under the Comprehensive Agreement.

Section 3.03 Extension of Cure Period Completion Date and Initial Period

If the Collateral Agent:

(a) is prohibited by any court order, bankruptcy or insolvency proceedings from remedying the Fred Ex Concessionaire Breach that is the subject of a Department Notice; or

(b) pursues with good faith, diligence and continuity lawful processes and steps to obtain the appointment of a court receiver for the Fred Ex Project and possession, custody and control of the Fred Ex Project, but despite such efforts the Collateral Agent is unable to obtain such possession, custody and control of the Fred Ex Project;

then each of the relevant Cure Period Completion Date and Initial Period will be extended by a period of time equal to the shorter of the period of such prohibition or 180 Days.

ARTICLE 4. **STEP-IN ARRANGEMENTS**

Section 4.01 Step-in Notice

(a) Provided that all unperformed payment obligations of the Concessionaire identified in a Department Notice will have been remedied in full or waived by the Department on or before the Step-in Date, the Collateral Agent may provide the Department with a written notice (“Step-in Notice”) under this Section 4.01 at any time during any Cure Period or Fred Ex Concessionaire Breach.

(b) The Collateral Agent will nominate, in any Step-in Notice, any one of:

(i) subject to the Department’s approval, which will not to be unreasonably withheld or delayed, the Collateral Agent, a Lender or any of their respective Affiliates; or

(ii) any Person approved by the Department, such approval not to be unreasonably withheld or delayed if such Person meets all the criteria to be a Qualified Substitute Concessionaire and the Department has been provided with the relevant information required under Section 5.03 with respect to such Person (each a “Step-in Entity”), stating that the Step-in Entity is to become a joint and several obligor with the Concessionaire under the Comprehensive Agreement and this Agreement in accordance with the terms hereof.

(c) The Step-in Entity named in the Step-in Notice will be deemed to become a party to the Comprehensive Agreement and this Agreement on and from the date it executes a duly completed Step-in Entity Accession Agreement, substantially in the form attached hereto as Annex 1 (Form of Step-in Entity Accession Agreement), and submits it to the Department (the “Step-in Date”).

Section 4.02 Rights and Obligations on Step-in

(a) On and from the Step-in Date and during the Step-in Period, the Step-in Entity will be:

(i) jointly and severally entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to the Concessionaire under the Comprehensive Agreement and this Agreement;

(ii) entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to a Step-in Entity under this Agreement; and

(iii) jointly and severally liable with the Concessionaire for the payment of all sums due from the Concessionaire under or arising out of the Comprehensive Agreement at the Step-in Date and for the performance of all of the Concessionaire's obligations under or arising out of the Comprehensive Agreement on or after the Step-in Date.

(b) Without prejudice to Article 7 (Reinstatement of Remedies), during the Step-in Period:

(i) the Department undertakes:

A. not to terminate or give notice terminating the Fred Ex Project for Fred Ex Concessionaire Breach under Section 19.11(a) of the Comprehensive Agreement, unless:

(1) the grounds for termination or giving notice of termination or exercise of any of its rights under Section 19.11 of the Comprehensive Agreement arose during the Step-in Period; or

(2) the Step-in Entity fails to comply with the requirements of any plan agreed between the Department and the Collateral Agent in connection with the extension of the relevant Cure Period Completion Date; and

B. not to take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of the Concessionaire or for the composition or readjustment of the Concessionaire's debts, or any similar insolvency procedure in relation to the Concessionaire, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for the Concessionaire or for any part of the Concessionaire's Property;

C. not to suspend its performance (including in connection with any insolvency or bankruptcy proceeding in relation to Concessionaire) under the Comprehensive Agreement, unless the grounds for suspension of performance arose during the Step-in Period; and

D. to continue to make payments required to be made to Concessionaire under the Comprehensive Agreement to the Designated Account and the Revenue Account.

(ii) the Department will owe its obligations under the Comprehensive Agreement and this Agreement to the Concessionaire and such Step-in Entity jointly; provided, however, that:

A. subject to Section 4.02(b)(ii)(B), the performance of such obligations by the Department in favor of either such Step-in Entity or the Concessionaire will be a good and effective discharge of such obligations under this Agreement and the Comprehensive Agreement; and

B. the Collateral Agent will be entitled at any time by notice in writing to the Department to direct (such direction being binding on the Collateral Agent, the Department and the Concessionaire) that, at all times thereafter while such Step-in Entity is deemed to be a party to the Comprehensive Agreement and this Agreement and subject to any further notice from the Collateral Agent, such Step-in Entity will be solely entitled to make any decisions, to give any directions, approvals or consents, to receive any payments or otherwise to deal with the Department under the Comprehensive Agreement and this Agreement.

(c) The Concessionaire will not be relieved from any of its obligations under the Comprehensive Agreement, whether arising before or after the Step-in Date, by reason of the Step-in Entity becoming a party to the Comprehensive Agreement pursuant to a Step-in Entity Accession Agreement, except to the extent provided in Section 3.02.

Section 4.03 Step Out

(a) A Step-in Entity may, at any time, by giving not less than 30 Days' prior written notice ("Step-out Notice") to the Department, terminate its obligations to the Department under the Comprehensive Agreement and this Agreement, whereupon the Step-in Entity will, upon the expiry of such notice, no longer be deemed to be a party to the Comprehensive Agreement and this Agreement and, except as provided in Section 4.03(b), will be released from all obligations under the Comprehensive Agreement and this Agreement. The obligations of the Department to the Step-in Entity in such capacity under the Comprehensive Agreement and this Agreement will also terminate upon the expiry of such notice.

(b) Nothing in this Section 4.03 will have the effect of releasing the Step-in Entity from any liability that relates to the performance or non-performance of the Comprehensive Agreement or this Agreement by the Concessionaire or the Step-in Entity during the Step-in Period.

ARTICLE 5. SUBSTITUTION PROPOSALS

Section 5.01 Notice of Proposed Substitute

To the extent that the Collateral Agent or the Lenders at any time propose to require the Concessionaire to assign its rights and obligations under the Comprehensive Agreement and/or this Agreement to a Person (a "Substitute") designated by the Collateral Agent or the Lenders (whether by mutual agreement or enforcement of rights under the Combined Project Financing Agreements), the effectiveness of such assignment will be conditional upon:

(a) the Collateral Agent issuing a notice (a "Substitution Notice") to the Department requesting the Department's prior approval of the proposed Substitute;

(b) the Department approving the identity of the proposed Substitute pursuant to Section 5.02; and

(c) the proposed Substitute executing a Substitute Accession Agreement in accordance with Section 6.01.

Section 5.02 Grounds for Refusing Approval

The Department will only be entitled to withhold its approval to any proposed Substitute that is the subject of a Substitution Notice if:

- (a) In the Department's reasonable opinion, the proposed Substitute is not a Qualified Substitute Concessionaire; or
- (b) subject to Section 6.04, there are outstanding breaches of the Comprehensive Agreement that have been previously notified by the Department to the Collateral Agent and have not, to the reasonable satisfaction of the Department, been remedied or waived prior to the date of the Substitution Notice; unless the Department has approved (such approval not to be unreasonably withheld or delayed) a plan specifying the remedial action that the Substitute will be required to take after the Substitution Effective Date in order to remedy each such breach.

Section 5.03 Provision of Information

The Collateral Agent will, as soon as practicable, provide to the Department such information in relation to the proposed Substitute and any Person who, it is proposed, will enter into a material subcontract with the proposed Substitute in relation to the Project, as the Department will reasonably require to enable it to reasonably determine whether the proposed Substitute is a Qualified Substitute Concessionaire, including:

- (a) the name and address of the proposed Substitute;
- (b) unless such proposed Substitute is a publicly-traded entity, the names of the proposed Substitute's shareholders or members and the share capital or partnership or membership interests, as the case may be, held by each of them;
- (c) the manner in which it is proposed to finance the proposed Substitute and the extent to which such financing is committed (to the extent relevant);
- (d) copies of the proposed Substitute's most recent financial statements (and if available, such financial statements will be for the last three financial years and audited), or in the case of a special purpose company, its opening balance sheet;
- (e) a copy of the proposed Substitute's organizational documents;
- (f) details of the resources available to the proposed Substitute and the proposed Substitute's appropriate qualifications, experience and technical competence available to the proposed Substitute to enable it to perform the obligations of the Concessionaire under the Comprehensive Agreement; and
- (g) the names of the proposed Substitute's directors and any key personnel who will have responsibility for the day-to-day management of its participation in the Project.

ARTICLE 6.
SUBSTITUTION

Section 6.01 Substitution Effective Date

If the Department approves the identity of a proposed Substitute pursuant to Article 5, the Substitute will execute a duly completed Substitute Accession Agreement substantially in the form set out in Annex 2 to this Agreement and submit it to the Department (with a copy of it to the other parties to this Agreement). Such assignment will become effective on and from the date on which the Department countersigns the Substitute Accession Agreement (the “Substitution Effective Date”).

Section 6.02 Effectiveness of Substitution

On and from the Substitution Effective Date:

(a) such Substitute will become a party to the Comprehensive Agreement and this Agreement in place of the Concessionaire who will be immediately released from its obligations arising under, and cease to be a party to, the Comprehensive Agreement and this Agreement from that Substitution Effective Date; and

(b) such Substitute will exercise and enjoy the rights and perform the obligations of the Concessionaire under the Comprehensive Agreement and this Agreement, and

(c) the Department shall owe its obligations (including, without limitation, any undischarged liability in respect of any loss or damage suffered or incurred by the Concessionaire prior to the Substitution Effective Date) under the Comprehensive Agreement and this Agreement to such Substitute in place of the Concessionaire and any Step-in Entity.

Section 6.03 Facilitation of Transfer

The Department will use its reasonable efforts to facilitate the transfer to the Substitute of the Concessionaire’s obligations under the Comprehensive Agreement and this Agreement.

Section 6.04 Settlement of Outstanding Financial Liabilities

(a) The Substitute will pay to the Department within 30 Days after the Substitution Effective Date any amount due from the Concessionaire to the Department under the Comprehensive Agreement and this Agreement as of the Substitution Effective Date (as notified by the Department to the Substitute reasonably in advance of such Substitution Effective Date).

(b) If the Substitute fails to satisfy its obligations pursuant to Section 6.04(a), the Department will be entitled to exercise its rights under the Comprehensive Agreement in respect of the amount so due and unpaid.

Section 6.05 Consequences of Substitution

On and from the Substitution Effective Date:

(a) subject to Section 6.04, any right of termination or any other right suspended by virtue of Section 3.01 will be of no further effect, however, the Department will not be entitled to terminate the Comprehensive Agreement and this Agreement based on any act, omission, or circumstance that occurred prior to such Substitution Effective Date; and

(b) if any Step-in Entity is a party to or has any obligations under the Comprehensive Agreement and this Agreement on the Substitution Effective Date, such Step-in Entity will cease to be a party thereto and hereto and will be discharged from all obligations thereunder and hereunder; and the Department will enter into an equivalent direct agreement on substantially the same terms as this Agreement, save that the Concessionaire will be replaced as a party by the Substitute.

ARTICLE 7. **REINSTATEMENT OF REMEDIES**

If a Department Notice has been given, the grounds for that notice are continuing and have not been remedied or waived by the Department and:

(a) no Step-in Entity or Substitute becomes a party to the Comprehensive Agreement and this Agreement before the Cure Period Completion Date relating thereto; or

(b) a Step-in Entity becomes a party to the Comprehensive Agreement and this Agreement, but the Step-in Period relating to such Step-in Entity ends without a Substitute becoming a party thereto and hereto,

then, on and from the Cure Period Completion Date or the date such Step-in Period expires, the Department will be entitled to:

(i) act upon any and all grounds for termination of the Fred Ex Project available to it in respect of Fred Ex Concessionaire Breaches under the Comprehensive Agreement that have not been remedied or waived by the Department;

(ii) pursue any and all claims and exercise any and all remedies against the Concessionaire in respect of Fred Ex Concessionaire Breaches under the Comprehensive Agreement; and

(iii) if and to the extent that it is then entitled to do so under the Comprehensive Agreement, take or support any action of the type referred to in Section 3.01(b).

ARTICLE 8. **TERMINATION OF THIS AGREEMENT**

This Agreement will remain in effect until Fred Ex Final Completion.

ARTICLE 9.
PRESERVATION OF FUNDS

Notwithstanding the other provisions of this Agreement and the terms and conditions of the Combined Project Financing Agreements, the Collateral Agent agrees for itself and on behalf of the Lenders that it will not exercise any rights under the Combined Project Financing Agreements or take any other steps that would prejudice the operation of Sections 5.11 (Annual Transit Investment), 9.05 (Major Maintenance Reserve Fund), 17.07 (Restoration; Insurance Proceeds), and 20.02 (Handback Obligations and Reserve) of the Comprehensive Agreement.

ARTICLE 10.
GENERAL PROVISIONS

Section 10.01 Representations and Warranties

(a) The undersigned signatory for the Collateral Agent hereby represents and warrants that he or she is an officer of the Collateral Agent and that he or she has full and complete authority to enter into this Agreement on behalf of the Collateral Agent.

(b) The Collateral Agent hereby represents and warrants that the Collateral Agent has full power, right and authority to execute and perform each and all of its obligations under this Agreement. These representations and warranties are made for the purpose of inducing the Department and the Concessionaire to enter into this Agreement.

(c) The Collateral Agent represents and warrants that this Agreement has been duly authorized, executed and delivered by the Collateral Agent and constitutes a valid and legally binding obligation of the Collateral Agent, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(d) The undersigned signatory for the Concessionaire hereby represents and warrants that he or she is an officer of the Concessionaire and that he or she has full and complete authority to enter into this Agreement on behalf of the Concessionaire.

(e) The Concessionaire hereby represents and warrants that the Concessionaire has full power, right and authority to execute and perform each and all of its obligations under this Agreement and the Comprehensive Agreement. These representations and warranties are made for the purpose of inducing the Department and the Collateral Agent to enter into this Agreement.

(f) The Concessionaire represents and warrants that each of this Agreement and the Comprehensive Agreement has been duly authorized, executed and delivered by the Concessionaire and constitutes a valid and legally binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(g) The Concessionaire represents and warrants that there is no Concessionaire Default or Fred Ex Concessionaire Breach or, to the best of its knowledge, no Department Default, there

exists no event or condition that would, with the giving of notice or passage of time or both, constitute such a Concessionaire Default or Fred Ex Concessionaire Breach or, to the best of its knowledge, a Department Default, and no such Concessionaire Default or Fred Ex Concessionaire Breach or, to the best of its knowledge, Department Default has occurred prior to the date hereof.

(h) The undersigned signatory for the Department hereby represents and warrants that he or she is an authorized official of the Department and has full and complete authority to enter into this Agreement on behalf of the Department.

(i) The Department has full power, right and authority to execute and perform each and all of its obligations under this Agreement and the Comprehensive Agreement. These representations and warranties are made for the purpose of inducing the Collateral Agent to enter into this Agreement.

(j) The Department represents and warrants that each of this Agreement and the Comprehensive Agreement has been duly authorized, executed and delivered by the Department and constitutes a valid and legally binding obligation of the Department, enforceable against the Department in accordance with the terms hereof and thereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(k) The Department represents and warrants that there is no Department Default or, to the best of its knowledge, no Concessionaire Default or Fred Ex Concessionaire Breach, there exists no event or condition that would, with the giving of notice or passage of time or both, constitute such a Department Default or, to the best of its knowledge, a Concessionaire Default or Fred Ex Concessionaire Breach, and no such Department Default or, to the best of its knowledge, Concessionaire Default or Fred Ex Concessionaire Breach has occurred prior to the date hereof.

Section 10.02 Public Information and Confidentiality

The Department and the Collateral Agent will, for each other's benefit, comply with the requirements of Section 18.02 of the Comprehensive Agreement as if any reference to the Concessionaire therein was a reference to the Collateral Agent.

Section 10.03 Amendments and Waivers

(a) No amendment of this Agreement, and no waiver of any term, covenant or condition of this Agreement, will be effective unless in writing and signed by the parties to this Agreement.

(b) The exercise by a party of any right or remedy provided under this Agreement or law will not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. The remedies provided herein are cumulative and not exclusive of any remedies provided by law and may be exercised by the Collateral Agent or the Lenders and any permitted designee, transferee or assignee thereof from time to time. No waiver by any party of any right or remedy under this Agreement or law will be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or law. The consent by one party to any act by the other party requiring such consent will not be deemed to render unnecessary the obtaining of consent to

any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

Section 10.04 Non-Collusion

(a) The Collateral Agent warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Collateral Agent, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from making of this Agreement.

(b) For breach or violation of this warranty, the Department will have the right to terminate this Agreement without liability.

Section 10.05 Disputes

(a) In the event of any dispute between the Department and the Collateral Agent under this Agreement, the parties will resolve the dispute according to the dispute resolution procedures set forth in the Comprehensive Agreement, with the Collateral Agent having the same rights and obligations of the Concessionaire under the disputes resolution procedures set forth in Article 21 of the Comprehensive Agreement.

(b) Nothing in Section 10.05(a) affects the Collateral Agent's rights and remedies against the Concessionaire and the Concessionaire's Interest under the Combined Project Financing Agreements or the procedures available to the Collateral Agent under law to exercise its security interests thereunder.

Section 10.06 Successors and Assigns

(a) No party to this Agreement may assign or transfer any part of its rights or obligations hereunder without the prior written consent of the other parties; *provided*, however, that the Collateral Agent may assign or transfer its rights and obligations hereunder to a successor Collateral Agent in accordance with the Combined Project Financing Agreements and the Department may transfer its rights or obligations hereunder in accordance with and subject to the terms and conditions set forth in Section 25.03 of the Comprehensive Agreement. In connection with any such assignment or transfer, the Department agrees to enter into a new direct agreement with the successor Collateral Agent on terms that are substantially the same as those of this Agreement.

(b) This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 10.07 Severability

In the event any one or more of the provisions contained in this Agreement will, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision thereof and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 10.08 Prior Contracts Superseded

This Agreement constitutes the sole agreement of the parties hereto with respect to the subject matter set forth herein and supersedes any prior understandings or written or oral contracts between the parties respecting such subject matter.

Section 10.09 Notices and Communications

(a) Whenever under the provisions of this Agreement it will be necessary or desirable for one party to serve any approval, notice, request, demand, report or other communication on another party, the same will be in writing and will not be effective for any purpose unless and until actually received by the addressee or unless served (i) personally, (ii) by independent, reputable, overnight commercial courier, (iii) by facsimile transmission, where the transmitting party includes a cover sheet identifying the name, location and identity of the transmitting party, the phone number of the transmitting device, the date and time of transmission and the number of pages transmitted (including the cover page), where the transmitting device or receiving device records verification of receipt and the date and time of transmission receipt and the phone number of the other device, and where the facsimile transmission is immediately followed by service of the original of the subject item in another manner permitted herein or (iv) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to the Department:

Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219
Attention: Chief Financial Officer
Facsimile: (804) 786-2940

With copies to:

Office of the Attorney General
202 N. 9th Street
Richmond, VA 23219
Attention: Chief, Transportation Section
Facsimile: (804) 786-9136

If to the Concessionaire:

95 Express Lanes LLC
6440 General Green Way
Alexandria, Virginia 22312
Attention: President
Facsimile: (571) 419-6101

If to the Collateral Agent:

U.S. Bank Trust Company, National Association
Three James Center
1051 East Cary Street, Suite 600

Richmond, Virginia 23219
Attention: Stephanie E. Haysley
Facsimile: (804) 343-1572

(b) Any party may, from time to time, by notice in writing served upon the other parties as aforesaid, designate an additional and/or a different mailing address or an additional and/or a different person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed. Any notice, request, demand, report or other communication served personally will be deemed delivered upon receipt, if served by mail or independent courier will be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the United States Postal Service or independent courier, and if served by facsimile transmission will be deemed delivered on the date of receipt as shown on the received facsimile (*provided*, that the original is thereafter delivered as aforesaid).

Section 10.10 Effect of Breach

Without prejudice to any rights a party may otherwise have, a breach of this Agreement will not of itself give rise to a right to terminate the Fred Ex Project.

Section 10.11 Counterparts

This instrument may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Section 10.12 No Third-Party Beneficiaries

Nothing contained in this Agreement is intended or will be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.

Section 10.13 No Partnership

Nothing contained in this Agreement will be deemed to constitute a partnership between the parties hereto. None of the parties will hold itself out contrary to the terms of this Section 10.13.

Section 10.14 No Interference

The Concessionaire joins in this Agreement to acknowledge and consent to the arrangements set out and agrees not to knowingly do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.

Section 10.15 Collateral Agent

(a) Notwithstanding anything to the contrary in this Agreement, but subject to Section 10.01 and Section 10.15(b), neither the Collateral Agent nor any Lender shall have any liability to

the Department under this Agreement, unless the Collateral Agent or such Lender expressly assumes such liability in writing.

(b) The Department acknowledges and agrees that the Collateral Agent shall not be obligated or required to perform any of the Concessionaire's obligations under the Comprehensive Agreement except during any Step-in Period (solely to the extent the Collateral Agent or any of its Affiliates is the Step-In Entity).

(c) The Department acknowledges and agrees that no Lender shall be obligated or required to perform any of the Concessionaire's obligations under the Comprehensive Agreement.

Section 10.16 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Virginia applicable to contracts executed and to be performed within the State, without regard to conflicts of law principles that would result in the application of the laws of another jurisdiction. Venue for any legal action arising out of this Agreement will lie in the Circuit Court in the City of Richmond, Virginia, Division I.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement as of the date first written above.

VIRGINIA DEPARTMENT OF TRANSPORTATION,
an agency of the Commonwealth of Virginia

By: _____
Name: _____
Title: _____

95 EXPRESS LANES LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

ANNEX 1

FORM OF STEP-IN ENTITY ACCESSION AGREEMENT

[Date]

To: Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219
Attention: Chief Financial Officer
Facsimile: (804) 786-2940

Copied to: Office of the Attorney General
202 North 9th Street
Richmond, VA 23219
Attention: Chief Transportation Section
Facsimile: (804) 786-9136

[Lenders and other parties to Finance Documents to be listed]

[insert address]

For the attention of: [•]

From: [Step-in Entity]

FRED EX HOT LANES PROJECT

STEP-IN ENTITY ACCESSION AGREEMENT

Ladies and Gentlemen:

Reference is made to the Third Amended and Restated Comprehensive Agreement Relating to the I-95/395 HOV/HOT Lanes Project, dated as of [____], 20[____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Comprehensive Agreement"), between the Virginia Department of Transportation (the "Department") and 95 Express Lanes, LLC (the "Concessionaire") and the Fred Ex Direct Agreement (Comprehensive Agreement), dated as of [____], 20[____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Fred Ex Direct Agreement"), among the Department, the Concessionaire, and U.S. Bank Trust Company, National Association, as Collateral Agent.

Terms not otherwise defined herein will have the same meaning given to them in the Fred Ex Direct Agreement.

We hereby confirm that we are a Step-in Entity pursuant to Article 4 of the Fred Ex Direct Agreement.

We acknowledge and agree that, upon and by reason of our execution of this Step-in Entity Accession Agreement, we will become a party to the Comprehensive Agreement and the Fred Ex Direct Agreement jointly and severally with the Concessionaire as a Step-in Entity and, accordingly, will have the rights and powers and assume the obligations of the Concessionaire under the Comprehensive Agreement and the Fred Ex Direct Agreement in accordance with the terms of the Fred Ex Direct Agreement.

Our address, fax and telephone number and address for electronic mail for the purpose of receiving notices are as follows:

[contact details of Step-in Entity]

This Step-in Entity Accession Agreement will be governed by, and construed in accordance with, the law of the Commonwealth of Virginia, without regard for conflict of laws principles that would result in the application of the laws of another jurisdiction. Venue for any legal action arising out of this Agreement will lie in the Circuit Court in the City of Richmond, Virginia, Division I.

The terms set forth herein are hereby agreed to:

[Step-in Entity]

By _____
Name:
Title:

ANNEX 2

FORM OF SUBSTITUTE ACCESSION AGREEMENT

[Date]

To: Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219
Attention: Chief Financial Officer
Facsimile: (804) 786-2940

Copied to: Office of the Attorney General
202 North 9th Street
Richmond, VA 23219
Attention: Chief Transportation Section
Facsimile: (804) 786-9136

From: [Substitute]

FRED EX HOT LANES PROJECT

SUBSTITUTE ACCESSION AGREEMENT

Ladies and Gentlemen:

Reference is made to the Third Amended and Restated Comprehensive Agreement Relating to the I-95/395 HOV/HOT Lanes Project, dated as of [____], 20[____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Comprehensive Agreement”), between the Virginia Department of Transportation (the “Department”) and 95 Express Lanes, LLC (the “Concessionaire”) and the Fred Ex Direct Agreement (Comprehensive Agreement), dated as of [____], 20[____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Fred Ex Direct Agreement”), among the Department, the Concessionaire and U.S. Bank Trust Company, National Association, as Collateral Agent.

Terms defined not otherwise defined herein will have the same meaning given to them in the Fred Ex Direct Agreement.

We, [entity name and entity type and state of formation], hereby confirm that we are a Substitute pursuant to Article 6 of the Fred Ex Direct Agreement.

We acknowledge and agree that, upon and by reason of our execution of this Substitute Accession Agreement, we will become a party to the Comprehensive Agreement and the Fred Ex Direct Agreement, and we will assume all rights, duties, and obligations of the “Concessionaire” under the Comprehensive Agreement and the Fred Ex Direct Agreement and will complete the Work for the benefit of the Department.

Our address, fax and telephone number and address for electronic mail for the purpose of receiving notices are as follows:

[contact details of Substitute]

This Substitute Accession Agreement will be governed by, and construed in accordance with, the law of the Commonwealth of Virginia, without regard for conflict of laws principles that would result in the application of the laws of another jurisdiction. Venue for any legal action arising out of this Agreement will lie in the Circuit Court in the City of Richmond, Virginia, Division I.

The terms set forth herein are hereby agreed to:

[Substitute]

By: _____

Name:

Title:

Agreed for and on behalf of:

Virginia Department of Transportation

By: _____

Name:

Title:

[Provided under separate cover]