

**CITY OF BALTIMORE
COUNCIL BILL 09-0266
(Resolution)**

Introduced by: The Council President
At the request of: The Administration (Department of Finance)
Introduced and read first time: January 12, 2009
Assigned to: Taxation, Finance and Economic Development Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Planning Commission, Department of Housing and Community Development, Baltimore Development Corporation, Department of Finance

A RESOLUTION ENTITLED

1 A RESOLUTION OF THE MAYOR AND CITY COUNCIL concerning

2 **Maryland Department of Transportation –**
3 **County Transportation Revenue Bonds - Series 2009**

4 FOR the purpose of authorizing the Mayor and City Council of Baltimore to enter into an
5 agreement with the Maryland Department of Transportation in connection with the
6 participation by the City in the proceeds derived from the sale of certain bonds, to be known
7 as Department of Transportation of Maryland - County Transportation Revenue Bonds,
8 Series 2009 and to be issued pursuant to State Transportation Article, Title 3, Subtitle 5;
9 authorizing the City to take any other action that may be necessary and proper to secure the
10 share to which it is entitled of the proceeds derived from the sale of these bonds; and
11 providing for a special effective date.

12 **Recitals**

13 State Transportation Article, Title 3, Subtitle 5 (the "Enabling Law") authorizes the
14 Maryland Department of Transportation (the "Department") to issue its bonds and to
15 provide the Mayor and City Council of Baltimore (the "City") with funds to finance the
16 City's share of the cost of certain transportation facilities, subject to the condition that the
17 City enter into an appropriate agreement with the Department to secure the payment of
18 the City's proportionate share of the principal of and interest on the bonds.

19 The City has notified the Department of its desire to participate in the proceeds of the
20 series of bonds to be issued by the Department in the fiscal year beginning July 1, 2008,
21 to the extent of \$30,000,000.

22 The Department has submitted to the City a proposed agreement to comply with the
23 requirements of the Enabling Law. A copy of that proposed agreement is attached to and
24 made a part of this Resolution.

25 **SECTION 1. BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE**, That the
26 Mayor and City Council authorizes and approves the proposed agreement for participation
27 between the Maryland Department of Transportation and the Mayor and City Council of
28 Baltimore (the "Participation Agreement"), in substantially the form attached to this Resolution,

EXPLANATION: Underlining indicates matter added by amendment.
~~Strike out~~ indicates matter deleted by amendment.

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1 for the participation by the Mayor and City Council, to the extent of \$30,000,000, in the
2 proceeds of a bond issue to be known as Department of Transportation of Maryland - County
3 Transportation Revenue Bonds, as part of a financing program for certain transportation facilities
4 under State Transportation Article, Title 3, Subtitle 5, with the proceeds to be used to finance
5 (including reimbursement for) the City's share of the cost of certain transportation facilities (as
6 defined in State Transportation Article § 3-101), and to pay the City's share of all the necessary
7 expenses of preparing, printing, executing, issuing, delivering, and selling the bonds (including,
8 but not limited to, professional fees).

9 **SECTION 2. AND BE IT FURTHER RESOLVED**, That the Board of Finance may approve, by
10 resolution, the final terms and provisions of the Participation Agreement so long as the
11 Participation Agreement is substantially similar to the form attached to this Resolution, and that,
12 when executed by the Mayor or the Director of Finance, the agreement constitutes a binding
13 contract between the Maryland Department of Transportation and the Mayor and City Council of
14 Baltimore, in accordance with its terms.

15 **SECTION 3. AND BE IT FURTHER RESOLVED**, That the Mayor and the Director of Finance are
16 authorized to take any other action that might be necessary and proper to secure for the City its
17 share of the bond issue, in accordance with State Transportation Article, Title 3, Subtitle 5.

18 **SECTION 4. AND BE IT FURTHER RESOLVED**, That the provisions of this Resolution are
19 severable, and if any provision, sentence, clause, section, or part of this Resolution is held
20 illegal, invalid, or unconstitutional or inapplicable to any person or circumstances, that illegality,
21 invalidity, unconstitutionality, or inapplicability does not affect or impair any of the remaining
22 provisions, sentences, clauses, sections, or parts of this Resolution or its application to other
23 persons or circumstances. It is the intent of the Mayor and City Council that this Resolution
24 would have been adopted even if the illegal, invalid, or unconstitutional provision, sentence,
25 clause, section, or part had not been included in this Resolution, and even if the person or
26 circumstances to which this Resolution or any part of it is inapplicable had been specifically
27 exempted from this Resolution.

28 **SECTION 5. AND BE IT FURTHER RESOLVED**, That this Resolution takes effect on the date it
29 is enacted.

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**DEPARTMENT OF TRANSPORTATION OF MARYLAND
COUNTY TRANSPORTATION REVENUE BONDS
SERIES 2009**

PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT (this “Participation Agreement”) is made as of this ___ day of _____, 2009 by and between the DEPARTMENT OF TRANSPORTATION OF MARYLAND (the “Department”) and the MAYOR AND CITY COUNCIL OF BALTIMORE (the “Participant”).

INTRODUCTION

Subtitle 5 of Title 3 (“Subtitle 5”) of the Transportation Article (the “Transportation Article”) of the Annotated Code of Maryland (enacted by Chapter 539 of the Laws of Maryland of 1993) (the “Act”) authorizes the Department to issue County Transportation Revenue Bonds (“County Transportation Revenue Bonds”) to finance the Participant’s (and other counties’) share of the cost of certain Transportation Facilities, as defined in Section 3-101 of the Transportation Article. County Transportation Revenue Bonds issued under Subtitle 5 are obligations of the Participant and the other participating counties and are not obligations of the State of Maryland (the “State”) or the Department.

The Department has prepared and distributed to the Participant and other subdivisions of the State information concerning participation in the proceeds of the Bonds (as defined below). In response, the Participant submitted to the Department a request that the Department issue Bonds to fund certain Transportation Facilities described in that request for which the Participant has responsibility. The Department has approved that request.

As required by Section 3-517 of Subtitle 5, the Department and the Participant have entered into this Participation Agreement to describe the source and nature of the revenues the Participant will pledge to repay the Bonds and fees as described in Section 5 herein, and to set forth the other relevant terms and conditions of the bond issue. The Participant has duly adopted an ordinance or resolution authorizing the execution and delivery of this Participation Agreement and has complied fully with the provisions of the Act, including, without limitation, Section 3-516 of Subtitle 5.

The Department proposes to issue and sell its Department of Transportation of Maryland County Transportation Revenue Bonds, Series 2009 (the “Bonds”) in an aggregate principal amount of up to \$30,000,000, which will be sufficient, together with any other funds available therefor, for the purpose of paying (1) the Participant’s share of the cost of the Transportation Facilities, (2) the cost of the issuance of the Bonds, and (3) the Participant’s share of the Department’s cost of administering the program established under the Act to the extent that such costs are attributable to the issuance of the Bonds. The Bonds will be issued pursuant to the Act.

AGREEMENTS

In consideration of the premises and in accordance with applicable law, the parties hereto agree as follows:

Section 1. The Bonds. Subject to the terms and conditions in this Section 1, as soon as practicable after the date hereof, the Department will sell the Bonds. The Bonds shall be dated as of a date to be determined by the Department, shall bear interest payable semi-annually

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1 accruing from the date of the Bonds, shall mature not later than fifteen (15) years after the date
2 of their issue, shall bear interest at the rate or rates agreed upon by the purchasers of (or, in the
3 case of a public sale, designated by the successful bidder for) the Bonds and accepted by the
4 Secretary of the Department, and may be subject to prior redemption by the Department in the
5 circumstances and at prices specified by it prior to the issuance thereof and subject to the
6 provisions of this Participation Agreement.

7 The obligation of the Department to issue any of the Bonds is subject to its absolute
8 discretion to determine when and under what conditions the Bonds shall be issued and the form
9 and contents thereof and of any official statement issued with respect thereto. The Department
10 may, in its absolute discretion, determine not to issue and sell the Bonds.

11 Section 2. Use of Proceeds. In the event that the Bonds are issued, then promptly after
12 settlement therefor and delivery thereof, the Department will cause the proceeds to be applied as
13 follows:

14 (a) There shall first be deducted from the proceeds and paid to the Department an amount
15 to reimburse the Department for: (1) all expenses incurred by the Department in connection with
16 effecting the issuance of the Bonds, including, but not limited to, expenses of printing,
17 advertising, delivery, and financial, administrative and legal fees; and (2) the Department's costs
18 of administering the program established under the Act to the extent that such costs are
19 attributable to the issuance of the Bonds.

20 (b) Any premium received on the Bonds as a result of the sale may be used by the
21 Participant to: (i) offset debt service, (ii) reduce par value, or (iii) pay the cost of the
22 Transportation Facilities.

23 (c) The balance of the proceeds shall be used by the Department to pay the Participant's
24 share of the costs of the Transportation Facilities. The Department shall retain the Participant's
25 share of the net proceeds of the Bonds and remit to the Director of Finance or other designated
26 Fiscal Officer of the Participant (the "Fiscal Officer") amounts in reimbursement for payments
27 made by the Participant to contractors or other third parties for the Transportation Facilities
28 approved by the Department. The Department expects to remit payment to the Participant within
29 thirty (30) days after the Department has received a reimbursement request, together with written
30 verification satisfactory to the Department that the Participant has paid the contractor or other
31 third party for the work related to the Transportation Facilities financed with the proceeds of the
32 Bonds. The Department may require an audit, at the Participant's expense, of the Participant's
33 records to verify the expenditures of Bond proceeds.

34 Section 3. Reimbursement Schedule. To enable the Department to comply with provisions
35 in the Internal Revenue Code of 1986, as amended (the "Code"), restricting the investment of the
36 proceeds of the Bonds, the Participant shall, on or before the date of sale of the Bonds, provide
37 the Department with a projected schedule of reimbursement requests in a form satisfactory to the
38 Department. The term and nature of the investment of the proceeds of the Bonds will be based
39 on the reimbursement schedules so submitted.

40 Section 4. Payment of Bonds is Obligation of the Participant. The Participant acknowledges
41 and agrees that the payment of the Bonds is solely and exclusively the obligation of the
42 Participant. Neither the State nor the Department is obligated to pay the principal of or interest
43 on the Bonds. Neither the faith and credit nor the taxing power of the State or the Department is
44 pledged to the payment of the principal of or the interest on the Bonds.

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1 Section 5. Payment of the Bonds and Pledge of Highway User Revenues. The Participant
2 hereby covenants and agrees that it will pay the debt service due and payable on the Bonds so
3 long as the Bonds are outstanding. Specifically, the Participant hereby pledges its share of
4 Highway User Revenues under and as defined in Subtitle 4 of Title 8 of the Transportation
5 Article to the payment of the Bonds. The Participant further authorizes the Comptroller of the
6 State (the "Comptroller") and the Treasurer of the State (the "Treasurer") to withhold the
7 Participant's share of Highway User Revenues and to pay the amount of such moneys necessary
8 to pay debt service on the Bonds and any administrative cost of the Department attributable to
9 the Bonds or to any trustee or other person designated for that purpose by the Department with
10 respect to the Bonds as described in this Participation Agreement.

11 In the event that the Participant's share of Highway User Revenues is inadequate to provide
12 for the payment of any installment of debt service due on the Bonds at any time, the Participant
13 hereby covenants and agrees that it will request the Baltimore City Council to adopt a budget
14 amendment authorizing payment of the amount due from any funds of the Participant lawfully
15 available for such purpose.

16 The Participant hereby acknowledges and agrees that the Department may pledge or assign
17 all or a portion of the Department's rights under this Participation Agreement to guarantee
18 repayment of the bonds.

19 Section 6. Sinking Fund. To provide for the payment of the Bonds, the Department may
20 establish a separate account designated "County Transportation Revenue Bonds, Series 2009
21 Sinking Fund," or other appropriate designation (the "Sinking Fund"), to which will be credited
22 any accrued interest received upon settlement for the Bonds. In the Department's discretion, the
23 Sinking Fund may be held and maintained by the Comptroller or by a trustee or other person
24 designated by the Department. Pursuant to the Participant's authorization granted under this
25 Participation Agreement, the Department will cause the Comptroller to credit and transfer to the
26 Sinking Fund the amounts withheld by him from distribution to the Participant as provided
27 below.

28 The Comptroller shall withhold, during each fiscal year, from Highway User Revenues
29 allocated to, or held for the credit of, the Participant under Subtitle 4 of Title 8 of the
30 Transportation Article, an amount which is at least equal to the Participant's debt service payable
31 on the Bonds by the Department in the current fiscal year and in the next succeeding fiscal year
32 (the "Participant's Debt Service Requirement"). All funds so allocated to, or held for the credit
33 of, the Participant shall be so withheld until an amount that is at least equal to the Participant's
34 Debt Service Requirement shall have been accumulated. In each fiscal year (or in the discretion
35 of the Department, the six-month period immediately preceding the beginning thereof), the
36 Comptroller shall withhold from the funds allocated to, or held for the credit of, the Participant,
37 the amount necessary to maintain in the Sinking Fund an amount which is at least equal to the
38 Participant's Debt Service Requirement. Participant's share of interest and gain, if any, realized
39 on investments in the Sinking Fund (unless required to be rebated to the United States of
40 America) shall be credited to the Participant's Debt Service Requirement.

41 All payments on account of debt service payable on the Bonds by the Department shall be
42 made from the Sinking Fund. The Department or its designee shall keep accurate records of the
43 total deposits and disbursements credited and charged to the Sinking Fund and of the deposits
44 and disbursements made on behalf of the Participant.

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1 In the event deposits to the Sinking Fund shall be continuously made as herein provided, the
2 authority to withhold hereby conferred on the Comptroller shall terminate not later than the end
3 of the fiscal year next preceding the fiscal year of the final maturity of the Bonds.

4 The Department shall have the right from time to time, in its discretion, to invest any and all
5 monies credited to the Sinking Fund in accordance with applicable State law. Any profit
6 realized from such investment shall be credited to the Sinking Fund and any loss resulting from
7 such investment shall be charged to the Sinking Fund. The Department shall not be responsible
8 for any loss that may occur as a result of such investments directed to be made in accordance
9 with applicable provisions of law and the Trust Indenture, dated as of November 1, 1993, as
10 amended and supplemented, pursuant to which the Bonds are issued.

11 The Participant shall be entitled to reimbursement of any balance remaining in the Sinking
12 Fund (after payment of all costs and fees in connection therewith), after all of the Bonds shall
13 have matured and been paid, or provision acceptable to the Department has been made for such
14 payment.

15 In the event the Participant shall elect to pay debt service, as set forth above, from the
16 proceeds of taxes to be levied by it directly or other revenues, the Participant shall notify the
17 Department and the Comptroller, in writing, not later than the first day of January in the calendar
18 year in which the Participant proposes to make such payments and, upon receipt of such notice,
19 the Comptroller shall not withhold in accordance with this Section 6 any of the Highway User
20 Revenues allocated to, or held for the credit of, the Participant after the first day of July in such
21 year, unless and until the Comptroller shall receive further written notice from the Participant so
22 to withhold, or unless and until the Comptroller shall receive written notice from the Department
23 that the Participant has failed to make the necessary deposit into the Sinking Fund, at the times
24 and in the amounts necessary to maintain it.

25 Section 7. Termination and Redemption. The Participant may prepay and terminate its
26 obligations under this Participation Agreement upon at least thirty (30) days' written notice to
27 the Department (or such fewer number of days as shall be acceptable to the Department) and
28 payment to the Department of the prepayment price set forth below, together with an amount to
29 reimburse the Department for any costs or expenses it incurs in connection with such
30 prepayment (including, without limitation, any fees of bond counsel, financial advisor,
31 verification agent or other advisor to the Department).

32 The prepayment price shall be an amount determined by the Department to be equal to: (A)
33 the sum of (i) the Participant's principal amount of the Bonds, (ii) interest accrued and to accrue
34 on such principal amount until the date on which Bonds in an amount equal to the Participant's
35 principal amount of the Bonds are redeemed or retired, calculated at the rate or rates of interest
36 borne by such Bonds, (iii) redemption premiums, if any, payable upon the redemption of the
37 Bonds, and (iv) any amounts to be rebated to the United States of America (the "United States")
38 in connection with interest earned on the Bonds, less (B) the amount accumulated in the Sinking
39 Fund.

40 The prepayment price shall be deemed to be paid within the meaning of this Section upon
41 deposit with the Department of either (1) cash or cash equivalents sufficient to cover such
42 prepayment price without investment or (2) Government Obligations as defined in Section 6-222
43 of the State Finance and Procurement Article of the Annotated Code of Maryland (2006
44 Replacement Volume and 2008 Supplement) maturing as to principal and interest on such dates
45 and in such amounts as shall be sufficient without reinvestment to pay the principal amount of

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1 the Bonds to be redeemed or retired, together with the interest accrued and to accrue on such
2 Bonds to the date of such redemption or retirement and any redemption premiums payable upon
3 the redemption of such bonds.

4 Prior to any defeasance by the Participant becoming effective under this Section, there shall
5 have been delivered to the Department an opinion, certification or verification report from a
6 nationally recognized firm reasonably acceptable to the Department stating that any deposit of
7 cash or of Government Obligations made pursuant to this Section is sufficient to defease the
8 Participant's portion of the Bonds in accordance with the terms hereof.

9 Prepayments shall be applied to the redemption of a proportionate share of each maturity of
10 the Bonds on the earliest practicable redemption date following receipt by the Department of the
11 prepayment price.

12 Section 8. Other Covenants and Representations by the Participant. The Participant further
13 covenants and represents as follows:

14 (a) there are no liens upon, or pledges of, the Participant's share of Highway User
15 Revenues allocated to, or held for the credit of, the Participant under Subtitle 4 of Title 8 of the
16 Transportation Article prior or superior to the withholding for the purposes of this Participation
17 Agreement, which impair or interfere with the withholdings;

18 (b) the Participant will not pledge any such revenues nor create or permit the creation of
19 any liens thereon prior, superior, or equal to the commitments made by it hereunder, subject to
20 the provisions of Section 9 of this Participation Agreement, and will not do or suffer to be done
21 any act or thing which will impair or interfere with the security of the Bonds or which will
22 impair or interfere with its ability or the ability of the Department, the Comptroller and the
23 Treasurer, or any trustee to perform in accordance with this Participation Agreement;

24 (c) the Participant has complied fully with the Act, including, without limitation, the
25 requirements of Section 3-516 of the Act;

26 (d) the Participant will comply fully with Subtitle 4 of Title 8 of the Transportation
27 Article, as amended from time to time, including the requirement that the Participant certify to
28 the State Highway Administration that it will use Highway User Revenues in compliance with
29 all applicable laws; and

30 (e) by the issuance of the Bonds by the Department, no debt limit or referendum
31 requirements will be exceeded or violated and the Participant's involvement in such bond issue
32 will not require approval by its qualified voters.

33 Section 9. Pledge of Net Highway User Revenues for Other Borrowings of Participant.

34 (a) It is expressly understood by both parties to this Participation Agreement that the
35 covenants and representations made by the Participant herein with respect to pledges of Highway
36 User Revenues shall not preclude the Participant from having made or making temporary
37 borrowings through the issuance of Highway User Revenue anticipation notes, or any other debt
38 issuance, the payment of which is secured by the net amount of Highway User Revenues
39 distributed to the Participant after withholding by the Department and the Comptroller of the
40 annual Participant's Debt Service Requirement and the Participant's obligations under any other
41 participation agreements with the Department relating to County Transportation Bonds issued

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1 pursuant to Section 3-301 through 3-310, inclusive (“Subtitle 3”), of Title 3 of the Transportation
2 Article (the “County Transportation Bonds”) or County Transportation Revenue Bonds.

3 (b) It is also expressly understood by both parties to this Participation Agreement that the
4 covenants and representations made by the Participant herein with respect to pledges of Highway
5 User Revenues shall not preclude the Participant from having made or making borrowings
6 through the issuance of its Stormwater Special Revenue Bond (West Branch Moores Run
7 Stormwater Project), Series 2004 (issued in the original amount of \$6,881,961 to the Maryland
8 Water Quality Financing Administration), or any other debt issuance, the payment of which is (i)
9 secured by the net amount of Highway User Revenues distributed to the Participant after
10 withholding by the Department and the Comptroller of the annual Participant’s Debt Service
11 Requirement and the Participant’s obligations under any other participation agreements with the
12 Department relating to County Transportation Bonds or County Transportation Revenue Bonds
13 or (ii) subject to annual appropriation by the Participant.

14 Section 10. Agreements for Benefit of Bondholders; Bonds Are Parity Bonds. It is hereby
15 agreed that the provisions of this Participation Agreement shall and are intended to be for the
16 benefit and security of the bona fide holders from time to time of the Bonds and that the
17 covenants therein and herein contained shall be enforceable by such holders to the same extent
18 as though they were parties to this Participation Agreement. The Participant’s allocation of
19 Highway User Revenues will be applied proportionately to pay debt service on the Bonds and on
20 all series of County Transportation Bonds and County Transportation Revenue Bonds issued
21 under Subtitle 3 or Subtitle 5 of Title 3 of the Transportation Article in which the Participant
22 participated or will participate in the future.

23 Section 11. Validity. It is hereby agreed that the parties hereto will take all action within
24 their respective delegated powers to assure the legal validity of this Participation Agreement and
25 of the Bonds and that, in the event further legislation by the General Assembly of Maryland
26 should at any time be deemed necessary to assure such validity, they will use their best efforts to
27 obtain the passage of such legislation.

28 Section 12. Approval. This Participation Agreement shall become effective when duly
29 authorized and executed by both parties hereto.

30 Section 13. Rebate Fund. The Department may cause to be created on the books of the
31 Treasurer’s Office a Rebate Fund, the complete designation of which shall be “Department of
32 Transportation of Maryland County Transportation Revenue Bonds, Series 2009, Rebate Fund.”
33 The Rebate Fund shall be held by the Treasurer or a trustee or other person designated for that
34 purpose by the Department. To the extent that the Department determines, upon the advice of
35 bond counsel, that it is necessary or desirable in order to assure and maintain the exemption from
36 federal income taxation of interest on the Bonds that certain interest earnings on amounts held in
37 connection with the issuance of the Bonds be rebated to the United States, the Treasurer (or other
38 holder of the Rebate Fund) shall, upon the written direction of an authorized officer of the
39 Department, transfer from any fund or account created in connection with the Bonds to the
40 Rebate Fund the amount specified in such written direction, which amount shall be determined in
41 consultation with bond counsel. Such funds, while held in the Rebate Fund, shall not be
42 available to pay debt service on the Bonds or to pay the costs of Transportation Facilities.

43 Amounts on deposit in the Rebate Fund from time to time required to be rebated to the
44 United States shall be applied by the Treasurer (or other holder of the Rebate Fund) to the
45 payment of such rebates and shall not be charged with the payment of principal or interest on the

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1 Bonds. If the Department determines, upon the advice of bond counsel, that any amounts on
2 deposit in the Rebate Fund are not required for the payment of such rebates, the Treasurer (or
3 other holder of the Rebate Fund) may pay over or transfer such amount (as the case may be) to
4 the Sinking Fund or otherwise as the Department directs.

5 Section 14. Ordinance or Resolution. The execution of this Participation Agreement has
6 been duly authorized by an ordinance or resolution, which has been duly adopted by the
7 Participant and is in full force and effect.

8 Section 15. Relating to Federal Tax. The Participant covenants that it shall comply with the
9 provisions of the Code including, without limitation, compliance with the provisions regarding
10 the timing of the expenditure of the proceeds of the Bonds, the use of such proceeds, the
11 restriction of investment yields, the filing of information with the Internal Revenue Service, the
12 use and control of the Transportation Facilities financed with the proceeds of the Bonds and the
13 rebate of certain earnings resulting from the investment of the proceeds of the Bonds. The
14 Participant further covenants that it shall make such use of its share of the proceeds of the Bonds,
15 regulate the investment of such proceeds, and take, or refrain from taking, such other and further
16 actions as may be required of it by the Department from time to time, to the extent deemed
17 necessary or appropriate by bond counsel to the Department, so as to maintain the exemption
18 from Federal income taxation of interest on the Bonds.

19 Section 16. Relating to Arbitrage, Private Activity Bond, and Reimbursement Restrictions.

20 (a) As of the date hereof, the Participant reasonably expects the following with respect to
21 the proceeds from sale of the Participant's share of the issue including costs of issuance ("sale
22 proceeds"):

23 1. within six (6) months after the date of issue of the Bonds, the Participant will
24 incur binding obligations to expend, with respect to the Transportation Facilities to be financed
25 with the proceeds of the Bonds, an amount at least equal to five percent (5%) of the sale
26 proceeds of the Bonds;

27 2. after incurring the binding obligation described in this Section, completion of
28 the Transportation Facilities and expenditure of the sales proceeds of the Bonds will proceed
29 with due diligence;

30 3. at least eighty-five percent (85%) of the sale proceeds will be expended on the
31 Transportation Facilities within three (3) years after the date of issue of the Bonds; and

32 4. none of the Transportation Facilities financed with the proceeds of the Bonds
33 will be sold or otherwise disposed of, in whole or in part, prior to the last maturity of the Bonds.

34 (b) Not more than five percent (5%) of the Participant's share of the sale proceeds of the
35 Bonds will be used directly or indirectly to make or finance loans.

36 (c) On the basis of the reasonable expectations of the Participant, the proceeds of the
37 Bonds paid to the Participant will not be used in a manner that would cause the Bonds to be
38 either "arbitrage bonds" under Section 148 of the Code and the Arbitrage Regulations or "Private
39 Activity Bonds" under Section 141 of the Code. To the best of the knowledge and belief of the
40 undersigned, there are no other facts, estimates or circumstances, which would materially change
41 the foregoing conclusion.

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1 (d) For purposes of this Section 16, the term “Arbitrage Regulations” means Treasury
2 Regulations 1.148-1 through 1.148-10.

3 (e) The Participant shall comply fully with Treasury Regulation § 1.150-2, concerning
4 the use of Bond proceeds for reimbursement of prior expenditures.

5 (f) Prior to delivery of the Bonds, the Participant agrees to execute and deliver to the
6 Department a certificate or other documentation satisfactory to the Department confirming the
7 matters contained in this Section 16.

8 Section 17. Fiscal Officer of Participant. The Participant represents that it will designate the
9 Fiscal Officer that is authorized by law to receive and hold custody of all monies due and
10 payable to the Participant under this Participation Agreement and to certify as provided in
11 Sections 8 (d) and 16 hereof. Any payments hereunder shall be deemed to have been made to
12 the Participant if made to the designated Fiscal Officer.

13 Section 18. Rules of Construction.

14 (a) Unless otherwise specified, the words “hereof”, “herein”, “hereunder”, “hereto”,
15 “thereof”, “therein”, “thereunder”, “thereto” and other words of similar import, when used in this
16 Participation Agreement, refer to this Participation Agreement, and when used in each of the
17 other documents, refer to each of the other documents in their entirety.

18 (b) The terms “agree” and “agreements” are intended to include and mean “covenant”
19 and “covenants.”

20 (c) The headings of the Articles, Sections and other subsections of each document are
21 provided only for convenience of reference and shall not be considered in any way in construing
22 the contents of any of the documents or any part thereof.

23 (d) All references made in the neuter, masculine or feminine gender shall be deemed to
24 have been made in all such genders; and in the singular or plural number shall be deemed to have
25 been made, respectively, in the plural or singular number as well.

26 Section 19. Notices. Any notice or other instrument authorized or required to be given
27 pursuant to this Participation Agreement shall be sent by telex or other telecommunication
28 device capable of creating a written record and shall be delivered personally or sent by registered
29 or certified mail, postage prepaid, addressed as follows (or to such other address as may be
30 designated by written notice given hereunder):

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1 In the case of the Department:

2 Director of Finance
3 Maryland Department of Transportation
4 Department of Finance, 4th Floor
5 7201 Corporate Center Drive
6 Hanover, Maryland 21076

In the case of the Participant:

Chief, Bureau of Treasury
Management
200 Holliday Street, Room 7
Baltimore, Maryland 21202

7 (with a copy to):

8 Department of Law
9 City Hall, Room 144
10 Chief, Real Estate/Corp.

11 Division

12 Baltimore, Maryland 21202

13 Section 20. Maryland Law. This Participation Agreement shall be governed by and
14 construed in accordance with the laws of the State of Maryland.

15 (signatures on following page)

