

**CITY OF BALTIMORE
COUNCIL BILL 14-0383
(Resolution)**

Introduced by: The Council President
At the request of: The Administration (Department of Finance)
Introduced and read first time: June 2, 2014
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 Transportation, 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 2014**
4

5 FOR the purpose of authorizing the Mayor and City Council of Baltimore (the “City”) to enter
6 into an agreement with the Maryland Department of Transportation in connection with the
7 participation by the City in the proceeds derived from the sale of certain bonds, to be known
8 as Department of Transportation of Maryland County Transportation Revenue Bonds, Series
9 2014 or as otherwise designated by the Secretary of Transportation and to be issued pursuant
10 to Title 3, Subtitle 5 of the Transportation Article of the Annotated Code of Maryland, as
11 amended; authorizing certain officials of the City to take certain actions in connection with
12 the City’s participation in the proceeds of the sale of such bonds; providing for the pledge of
13 the City’s share of Highway User Revenues to the payment of such bonds; providing that
14 neither the faith and credit nor the taxing power of the City shall be pledged to the City’s
15 payment obligations under the Participation Agreement identified herein; providing for the
16 severability of the provisions of this Resolution; providing that this Resolution shall be
17 liberally construed; and providing for a special effective date.

18 **Recitals**

19 Title 3, Subtitle 5 of the Transportation Article (the “Transportation Article”) of
20 the Annotated Code of Maryland, as amended (the “Enabling Law”), authorizes
21 the Maryland Department of Transportation (the “Department”) to issue its bonds
22 and to provide the Mayor and City Council of Baltimore (the “City”) with funds to
23 finance or reimburse the City’s share of the cost of certain transportation facilities,
24 subject to the condition that the City enter into an appropriate agreement with the
25 Department to secure the payment of the City’s proportionate share of the
26 principal of and interest on the bonds.

27 The City has notified the Department of its desire to participate, in an aggregate
28 principal amount not to exceed \$30,500,000, in the proceeds of the series of bonds
29 to be issued by the Department in the fiscal year beginning July 1, 2014.

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

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

4 **SECTION 1. BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That the
5 Mayor and City Council authorizes and approves the proposed agreement for participation
6 between the Maryland Department of Transportation and the Mayor and City Council of
7 Baltimore (the “Participation Agreement”), in substantially the form attached as Exhibit A to this
8 Resolution, for the participation by the City, in an aggregate principal amount not to exceed
9 \$30,500,000, in the proceeds of a bond issue to be known as Department of Transportation of
10 Maryland County Transportation Revenue Bonds, Series 2014 (or as otherwise designated by the
11 Secretary of Transportation), as part of a financing program for certain transportation facilities
12 under the Enabling Law, with the proceeds to be used to finance or reimburse the City’s share of
13 the cost of certain transportation facilities (as defined in Transportation Article § 3-101), and to
14 pay the City’s share of all the appropriate expenses of preparing, printing, executing, issuing,
15 delivering, and selling the bonds (including, but not limited to, professional fees). The City’s
16 share of any premium payable on the Department’s bonds shall be applied as provided in the
17 Participation Agreement.

18 **SECTION 2. AND BE IT FURTHER RESOLVED,** That any one of the Mayor, the Director of
19 Finance or the Chief, Bureau of Treasury Management may approve the final terms and
20 provisions of the Participation Agreement (including, without limitation, modifications to reflect
21 whether the City is the sole participant or one of multiple participants in the Department’s
22 bonds), such approval to be evidenced conclusively by such official’s execution and delivery of
23 the final Participation Agreement; provided that, the final Participation Agreement shall be
24 substantially similar to the form attached to this Resolution as Exhibit A. When executed by the
25 Mayor, the Director of Finance or the Chief, Bureau of Treasury Management, the Participation
26 Agreement shall constitute a binding contract between the Maryland Department of
27 Transportation and the Mayor and City Council of Baltimore, in accordance with its terms.

28 **SECTION 3. AND BE IT FURTHER RESOLVED,** That the Mayor, the Director of Finance and
29 the Chief, Bureau of Treasury Management are each authorized to take any other action that
30 might be necessary and proper to secure for the City its share of the bond issue, to obligate the
31 City to make payments in accordance with the Participation Agreement and with the Enabling
32 Law, or to carry out the provisions of the Participation Agreement, and such officials and such
33 other officials of the City as may be appropriate are hereby authorized to approve, execute and
34 deliver any closing documents, instruments or certificates as may be deemed necessary or
35 appropriate by the Department, its counsel or counsel to the City.

36 **SECTION 4. AND BE IT FURTHER RESOLVED,** That as provided in the Participation
37 Agreement, the City shall pledge its share of Highway User Revenues (as defined in Subtitle 4 of
38 Title 8 of the Transportation Article) to the payment of debt service on the Department’s bonds
39 and, to the extent permitted by applicable law, the expenses and costs of the Department related
40 to the issuance, sale, delivery, payment and administration of the Bonds. Neither the faith and
41 credit nor the taxing power of the City is or shall be pledged to the City’s payment obligations
42 under the Participation Agreement.

43 **SECTION 5. AND BE IT FURTHER RESOLVED,** That the provisions of this Resolution are
44 severable, and if any provision, sentence, clause, section, or part of this Resolution is held illegal,
45 invalid, or unconstitutional or inapplicable to any person or circumstances, that illegality,

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1 invalidity, unconstitutionality, or inapplicability does not affect or impair any of the remaining
2 provisions, sentences, clauses, sections, or parts of this Resolution or its application to other
3 persons or circumstances. It is the intent of the Mayor and City Council that this Resolution
4 would have been adopted even if the illegal, invalid, or unconstitutional provision, sentence,
5 clause, section, or part had not been included in this Resolution, and even if the person or
6 circumstances to which this Resolution or any part of it is inapplicable had been specifically
7 exempted from this Resolution.

8 **SECTION 6. AND BE IT FURTHER RESOLVED,** That the provisions of this Resolution shall be
9 liberally construed in order to effectuate the City’s participation in the proceeds of the
10 Department’s bonds.

11 **SECTION 7. AND BE IT FURTHER RESOLVED,** That this Resolution takes effect on the date it
12 is enacted.

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EXHIBIT A

FORM OF PARTICIPATION AGREEMENT

DEPARTMENT OF TRANSPORTATION OF MARYLAND
COUNTY TRANSPORTATION REVENUE BONDS
SERIES 201_

PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT (this “Participation Agreement”) is made as of this ___ day of _____, 201_ by and between the DEPARTMENT OF TRANSPORTATION OF MARYLAND (the “Department”) and the MAYOR AND CITY COUNCIL OF BALTIMORE (the “Participant”).

ARTICLE 1. INTRODUCTION

Subtitle 5 of Title 3 of the Transportation Article (the “Transportation Article”) of the Annotated Code of Maryland (as amended, the “Act”) authorizes the Department to issue County Transportation Revenue Bonds (“County Transportation Revenue Bonds”) to finance the share of the cost of certain Transportation Facilities (as defined in Section 3-101 of the Transportation Article) of participating counties (as defined in the Act), including the Participant. County Transportation Revenue Bonds issued under the Act are obligations of the 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 County Transportation Revenue Bonds to be issued by the Department in fiscal year 2015. In response, the Participant submitted to the Department a request that the Department issue County Transportation Revenue Bonds to fund certain Transportation Facilities described in that request for which the Participant has responsibility. The Department has approved that request.

The Participant will be the only participant in the proceeds of the Bonds (as defined below).

As required by Section 3-517 of the Act, 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 [(as defined below)] and fees as described in Section 5 herein, and to set forth the other relevant terms and conditions of the Bond issue. As required with respect to the Bonds, the Participant has duly adopted a 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 the Act.

The Department proposes to issue and sell its Department of Transportation of Maryland County Transportation Revenue Bonds, Series 201_ , (the “Bonds”), in an aggregate principal amount not to exceed \$ _____, 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.

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ARTICLE II. AGREEMENTS

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

Section 1. The Bonds. The Department expects to sell the Bonds, subject to the terms and conditions in this Section 1, during the fiscal year beginning July 1, 2014. The Bonds shall be dated as of a date to be determined by the Department, shall bear interest payable semi-annually accruing from the date of the Bonds, shall mature not later than fifteen (15) years after the date of their issue, shall bear interest at the rate or rates agreed upon by the purchasers of (or, in the case of a public sale, designated by the successful bidder for) the Bonds and accepted by the Secretary of the Department, and may be subject to prior redemption by the Department in the circumstances and at prices specified by it prior to the issuance thereof and subject to the provisions of this Participation Agreement.

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

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

- (a) There shall first be deducted from the proceeds and paid to the Department an amount to pay or reimburse the Department for: (1) all expenses incurred by the Department in connection with effecting the issuance of the Bonds, including, but not limited to, expenses of printing, advertising, delivery, and financial, administrative and legal fees; and (2) the Department's costs of administering the program established under the Act to the extent that such costs are attributable to the issuance of the Bonds.
- (b) Any premium received on the Bonds as a result of the sale may be used by the Participant to: (i) offset debt service, (ii) reduce par value, or (iii) pay the cost of the Transportation Facilities.
- (c) The balance of the proceeds shall be used by the Department to pay the Participant's share of the costs of the Transportation Facilities. The Department shall retain the Participant's share of the net proceeds of the Bonds and remit to the Director of Finance or other designated fiscal officer of the Participant (the "Fiscal Officer") amounts in reimbursement for payments made by the Participant to contractors or other third parties for the Transportation Facilities approved by the Department. (See Exhibit A Requisition Form.) The Department expects to remit payment to the Participant within thirty (30) days after the Department has received a reimbursement request, together with written verification satisfactory to the Department that the Participant has paid the contractor or other third party for the work related to the Transportation Facilities financed with the proceeds of the Bonds. The Department may require an audit, at the Participant's expense, of the Participant's records to verify the expenditures of funds for which reimbursement is requested, the expenditure of Bond proceeds, and the costs of the Transportation Facilities which are financed or reimbursed in whole or in part from proceeds of the Bonds.

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1 Section 3. Reimbursement Schedule. To enable the Department to comply with provisions
2 in the Internal Revenue Code of 1986, as amended (the “Code”), restricting the investment of the
3 proceeds of the Bonds, the Participant shall, on or before the date of sale of the Bonds, provide
4 the Department with a projected schedule of reimbursement requests in a form satisfactory to the
5 Department. The term and nature of the investment of the proceeds of the Bonds will be based
6 on the reimbursement schedules so submitted.

7 Section 4. Payment of Bonds is Obligation of the Participant. The Participant acknowledges
8 and agrees that the payment of the Bonds is solely and exclusively the obligation of the
9 Participant. Neither the State nor the Department is obligated to pay the principal of or interest
10 on the Bonds. Neither the faith and credit nor the taxing power of the State or the Department is
11 pledged to the payment of the principal of or the interest on the Bonds.

12 Section 5. Payment of the Bonds and Pledge of Highway User Revenues. The Participant
13 hereby covenants and agrees that it will pay the debt service due and payable on the Bonds so
14 long as the Bonds are outstanding. Specifically, the Participant hereby pledges its share of
15 Highway User Revenues under and as defined in Subtitle 4 of Title 8 of the Transportation
16 Article to the payment of the Bonds. The Participant further authorizes the Comptroller of the
17 State (the “Comptroller”) and the Treasurer of the State (the “Treasurer”) to withhold the
18 Participant’s share of Highway User Revenues and to pay the amount of such moneys necessary
19 to pay debt service on the Bonds and, to the extent permitted by applicable law, any
20 administrative cost of the Department attributable to the Bonds, to any trustee or other person
21 designated for that purpose by the Department with respect to the Bonds as described in this
22 Participation Agreement.

23 In the event that the Participant’s share of Highway User Revenues is inadequate to provide
24 for the payment of any installment of debt service due on the Bonds to any trustee or other person
25 designated for that purpose by the Department or any administrative cost of the Department
26 attributable to the Bonds at any time, the Participant hereby covenants and agrees that it will
27 request the Baltimore City Council to adopt a budget amendment authorizing payment of the
28 amount due from any funds of the Participant lawfully available for such purpose.

29 The Participant hereby acknowledges and agrees that the Department may pledge or assign
30 all or a portion of the Department’s rights under this Participation Agreement to guarantee
31 repayment of the Bonds.

32 NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF PARTICIPANT
33 IS PLEDGED TO THE PARTICIPANT’S PAYMENT OBLIGATIONS UNDER THIS
34 PARTICIPATION AGREEMENT.

35 Section 6. Sinking Fund. To provide for the payment of the Bonds, the Department may
36 establish a separate account designated “County Transportation Revenue Bonds, Series 201
37 Sinking Fund,” or other appropriate designation (the “Sinking Fund”), to which will be credited
38 any accrued interest received upon settlement for the Bonds. In the Department’s discretion, the
39 Sinking Fund may be held and maintained by the Comptroller or by a trustee or other person
40 designated by the Department. Pursuant to the Participant’s authorization granted under this
41 Participation Agreement, the Department will cause the Comptroller to credit and transfer to the
42 Sinking Fund the amounts withheld by such official from distribution to the Participant as
43 provided below.

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1 The Comptroller shall withhold, during each fiscal year, from Highway User Revenues
2 allocated to, or held for the credit of, the Participant under Subtitle 4 of Title 8 of the
3 Transportation Article, as amended and supplemented, an amount which is at least equal to the
4 Participant's debt service payable on the Bonds in the current fiscal year and in the next
5 succeeding fiscal year (the "Participant's Debt Service Requirement"). All funds so allocated to,
6 or held for the credit of, the Participant shall be so withheld until an amount that is at least equal
7 to the Participant's Debt Service Requirement shall have been accumulated. In each fiscal year
8 (or in the discretion of the Department, the six-month period immediately preceding the
9 beginning thereof), the Comptroller shall withhold from the funds allocated to, or held for the
10 credit of, the Participant, the amount necessary to maintain in the Sinking Fund an amount which
11 is at least equal to the Participant's Debt Service Requirement. The Participant's share of interest
12 and gain, if any, realized on investments in the Sinking Fund (unless required to be rebated to the
13 United States of America) shall be credited to the Participant's Debt Service Requirement.

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

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

21 The Department shall have the right from time to time, in its discretion, to invest any and all
22 monies credited to the Sinking Fund in accordance with applicable State law. Any profit realized
23 from such investment shall be credited to the Sinking Fund and any loss resulting from such
24 investment shall be charged to the Sinking Fund. Neither the Department nor the State shall be
25 responsible for any loss that may occur as a result of such investments directed to be made in
26 accordance with applicable provisions of law and the Trust Indenture, dated as of November 1,
27 1993, as amended and supplemented, pursuant to which the Bonds are issued (the "Trust
28 Indenture").

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

33 In the event the Participant shall elect to pay debt service in amounts equal to the
34 Participant's Debt Service Requirement, as set forth above, from the proceeds of taxes to be
35 levied by it directly or other revenues, the Participant shall notify the Department and the
36 Comptroller, in writing, not later than the first day of January in the calendar year in which the
37 Participant proposes to make such payments and, upon receipt of such notice, the Comptroller
38 shall not withhold in accordance with this Section 6 any of the Highway User Revenues allocated
39 to, or held for the credit of, the Participant after the first day of July in such year, unless and until
40 the Comptroller shall receive further written notice from the Participant so to withhold, or unless
41 and until the Comptroller shall receive written notice from the Department that the Participant
42 has failed to make the necessary deposit into the Sinking Fund, at the times and in the amounts
43 necessary to maintain it.

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1 Section 7. Termination and Redemption. The Participant may prepay and terminate its
2 obligations under this Participation Agreement upon at least thirty (30) days' written notice to the
3 Department (or such fewer number of days as shall be acceptable to the Department) and
4 payment to the Department of the prepayment price set forth below, together with an amount to
5 reimburse the Department for [the Participant's allocable share of] any costs or expenses it incurs
6 in connection with such prepayment (including, without limitation, any fees of bond counsel,
7 financial advisor, verification agent, escrow agent, or other advisor to the Department).

8 The prepayment price shall be an amount determined by the Department to be equal to: (A)
9 the sum of (i) the Participant's principal amount of the Bonds, (ii) interest accrued and to accrue
10 on such principal amount until the date on which Bonds in an amount equal to the Participant's
11 principal amount of the Bonds are redeemed or retired, calculated at the rate or rates of interest
12 borne by such Bonds, (iii) redemption premiums, if any, payable upon the redemption of the
13 Bonds, (iv) [the Participant's allocable share of] all fees, costs and expenses incurred by the
14 Department or to be incurred by the Department related to the prepayment of the Bonds, and (v)
15 [the Participant's allocable share of] any amounts to be rebated to the United States of America
16 (the "United States") in connection with interest earned on the Bonds, less (B) [the Participant's
17 allocable share of] the amount accumulated and available in the Sinking Fund.

18 The prepayment price shall be deemed to be paid within the meaning of this Section upon
19 deposit with the Department of (1) cash or cash equivalents sufficient to cover such prepayment
20 price without investment and/or (2) government obligations identified in Section 6-222 of the
21 State Finance and Procurement Article of the Annotated Code of Maryland, as amended and
22 supplemented, maturing as to principal and interest on such dates and in such amounts as shall be
23 sufficient without reinvestment to pay the principal amount of the Bonds to be redeemed or
24 retired, together with the interest accrued and to accrue on such Bonds to the date of such
25 redemption or retirement and any redemption premiums payable upon the redemption of such
26 Bonds, and the satisfaction of the provisions for defeasance under the Trust Indenture.

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

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

35 The Participant may cause a portion of the Bonds to be prepaid and defeased by complying
36 with this Section 7 with respect to such portion to be prepaid.

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

- 39 (a) subject to the provisions of Section 9 of this Participation Agreement, there are no
40 liens upon, or pledges of, the Participant's share of Highway User Revenues allocated
41 to, or held for the credit of, the Participant under Subtitle 4 of Title 8 of the
42 Transportation Article, as amended and supplemented, prior or superior to the

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1 withholding for the purposes of this Participation Agreement, which impair or
2 interfere with the withholdings;

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

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

12 (d) the Participant will comply fully with Subtitle 4 of Title 8 of the Transportation
13 Article, as amended and supplemented, including (i) the requirement that the
14 Participant certify to the State Highway Administration that it will use Highway User
15 Revenues in compliance with all applicable laws and (ii) the requirement codified in
16 Section 8-412 of the Transportation Article, as amended and supplemented, that on or
17 before January 1 of each year, the Participant shall give to the Governor of the State
18 and the State Highway Administration an accounting report that: (1) shows the actual
19 costs of the preceding fiscal year, (2) shows the expenditure budget of the current
20 fiscal year, and (3) as to each of (1) and (2), accurately identifies the costs enumerated
21 in Section 8-408(a) of the Transportation Article, as amended and supplemented;

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

25 (f) the Participant is not in breach of any provision of any other participation agreements
26 that it may have entered into with the Department and has not taken any action or
27 omitted to take any action that with the passage of time would cause such a breach.

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

29 (a) It is expressly understood by both parties to this Participation Agreement that the
30 covenants and representations made by the Participant herein with respect to pledges
31 of Highway User Revenues shall not preclude the Participant from having made or
32 making short-term borrowings through the issuance of Highway User Revenue
33 anticipation notes, or any other debt issuance, the payment of which is secured by the
34 net amount of Highway User Revenues distributed to the Participant after withholding
35 by the Department and the Comptroller of the annual Participant's Debt Service
36 Requirement and the Participant's obligations under any other participation
37 agreements with the Department relating to County Transportation Bonds issued
38 pursuant to Section 3-301 through 3-310, inclusive ("Subtitle 3"), of the
39 Transportation Article (the "County Transportation Bonds") or County Transportation
40 Revenue Bonds.

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1 (b) It is also expressly understood by both parties to this Participation Agreement that the
2 covenants and representations made by the Participant herein with respect to pledges
3 of Highway User Revenues shall not preclude the Participant from having made a
4 pledge of such Highway User Revenues in connection with the issuance of its
5 Stormwater Special Revenue Bond (West Branch Moores Run Stormwater Project),
6 Series 2004 (issued in the original amount of \$6,881,961 to the Maryland Water
7 Quality Financing Administration) (the “2004 Stormwater Bond”), or any other debt
8 issuance, the payment of which is (i) secured by the net amount of Highway User
9 Revenues distributed to the Participant after withholding by the Department and the
10 Comptroller of the annual Participant’s Debt Service Requirement and the
11 Participant’s obligations under any other participation agreements with the
12 Department relating to County Transportation Bonds or County Transportation
13 Revenue Bonds 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 or a trustee acting on
18 behalf of such holders to the same extent as though they were parties to this Participation
19 Agreement. The Participant’s allocation of Highway User Revenues will be applied
20 proportionately to pay debt service on the Bonds, on all series of County Transportation Bonds
21 and County Transportation Revenue Bonds issued under Subtitle 3 of Title 3 of the
22 Transportation Article and the Act, respectively, in which the Participant participated or will
23 participate in the future, and the 2004 Stormwater Bond (to the extent so provided in the loan
24 agreement entered into by the Participant and the Maryland Water Quality Financing
25 Administration in connection with the issuance of the 2004 Stormwater Bond).

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

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

33 Section 13. Rebate Fund. The Department may cause to be created on the books of the
34 Treasurer’s Office a Rebate Fund, the complete designation of which shall be “Department of
35 Transportation of Maryland County Transportation Revenue Bonds, Series 201_ Rebate Fund” or
36 such other designation as may be made by the Secretary of Transportation. The Rebate Fund
37 shall be held by the Treasurer or a trustee or other person designated for that purpose by the
38 Department. To the extent that the Department determines, upon the advice of bond counsel, that
39 it is necessary or desirable in order to assure and maintain the exemption from federal income
40 taxation of interest on the Bonds that certain interest earnings on amounts held in connection
41 with the issuance of the Bonds be rebated to the United States, the Treasurer (or other holder of
42 the Rebate Fund) shall, upon the written direction of an authorized officer of the Department,
43 transfer from any fund or account created in connection with the Bonds to the Rebate Fund the
44 amount specified in such written direction, which amount shall be determined in consultation
45 with bond counsel. Such funds, while held in the Rebate Fund, shall not be available to pay debt
46 service on the Bonds or to pay the costs of Transportation Facilities.

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1 Amounts on deposit in the Rebate Fund from time to time required to be rebated to the
2 United States shall be applied by the Treasurer (or other holder of the Rebate Fund) to the
3 payment of such rebates and shall not be charged with the payment of principal or interest on the
4 Bonds. If the Department determines, upon the advice of bond counsel, that any amounts on
5 deposit in the Rebate Fund are not required for the payment of such rebates, the Treasurer (or
6 other holder of the Rebate Fund) may pay over or transfer such amount (as the case may be) to
7 the Sinking Fund or otherwise as the Department directs.

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

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

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

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

- 26 1. within six (6) months after the date of issue of the Bonds, the Participant will
27 incur binding obligations to expend, with respect to the Transportation Facilities
28 to be financed with the proceeds of the Bonds, an amount at least equal to five
29 percent (5%) of the sale proceeds of the Bonds;
- 30 2. after incurring the binding obligation described in this Section, completion of the
31 Transportation Facilities and expenditure of the sales proceeds of the Bonds will
32 proceed with due diligence;
- 33 3. at least eighty-five percent (85%) of the sale proceeds of the Bonds will be
34 expended on the Transportation Facilities within three (3) years after the date of
35 issue of the Bonds; and
- 36 4. none of the Transportation Facilities financed with the proceeds of the Bonds will
37 be sold or otherwise disposed of, in whole or in part, prior to the last maturity of
38 the Bonds.

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

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- 1 (c) On the basis of the reasonable expectations of the Participant, the proceeds of the
2 Bonds paid to the Participant will not be used in a manner that would cause the Bonds
3 to be either “arbitrage bonds” under Section 148 of the Code and the Arbitrage
4 Regulations or “Private Activity Bonds” under Section 141 of the Code. To the best
5 of the knowledge and belief of the undersigned, there are no other facts, estimates or
6 circumstances, which would materially change the foregoing conclusion.
- 7 (d) For purposes of this Section 16, the term “Arbitrage Regulations” means Treasury
8 Regulations §§ 1.148-1 through 1.148-10.
- 9 (e) The Participant shall comply fully with Treasury Regulation § 1.150-2, concerning the
10 use of Bond proceeds for reimbursement of prior expenditures.
- 11 (f) Prior to delivery of the Bonds, the Participant agrees to execute and deliver to the
12 Department a certificate or other documentation satisfactory to the Department
13 confirming the matters contained in this Section 16.

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

19 Section 18. Rules of Construction.

- 20 (a) Unless otherwise specified, the words “hereof”, “herein”, “hereunder”, “hereto”,
21 “thereof”, “therein”, “thereunder”, “thereto” and other words of similar import, when
22 used in this Participation Agreement, refer to this Participation Agreement, and when
23 used in each of the other documents, refer to each of the other documents in their
24 entireties.
- 25 (b) The terms “agree” and “agreements” are intended to include and mean “covenant”
26 and “covenants.”
- 27 (c) The headings of the Articles, Sections and other subsections of each document are
28 provided only for convenience of reference and shall not be considered in any way in
29 construing the contents of any of the documents or any part thereof.
- 30 (d) All references made in the neuter, masculine or feminine gender shall be deemed to
31 have been made in all such genders; and in the singular or plural number shall be
32 deemed to have been made, respectively, in the plural or singular number as well.

33 Section 19. Notices. Any notice or other instrument authorized or required to be given
34 pursuant to this Participation Agreement shall be sent by telex, email or other telecommunication
35 device capable of creating a written record and shall be delivered personally, delivered by an
36 overnight delivery service that maintains a record of evidence of receipt (e.g., FedEx or UPS) or
37 sent by registered or certified mail, postage prepaid, addressed as follows (or to such other
38 address as may be 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

7 (written copy to):

8 Office of General Counsel
9 7201 Corporate Center Drive, 4th Floor
10 Hanover, Maryland 21076
11
12

In the case of the Participant:

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

(written copy to):

Department of Law
City Hall, Room 141
Chief, Real Estate/Corp.
Division
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)

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1 IN WITNESS WHEREOF the parties hereto have set their hands and seals as of
2 the day and year first above written.

3 WITNESS: DEPARTMENT OF TRANSPORTATION
4 OF MARYLAND

5 _____
6 By _____
7 Secretary of Transportation

8 APPROVED AS TO FORM AND LEGAL
9 SUFFICIENCY THIS _____ DAY OF
10 _____, 201_.

11 By _____
12 Assistant Attorney General

13 MAYOR AND CITY COUNCIL
14 WITNESS: OF BALTIMORE

15 _____
16 By _____
17 Name:
 Title:

18 APPROVED AS TO FORM AND LEGAL
19 SUFFICIENCY THIS _____ DAY OF
20 _____, 201_

21 By _____
22 Chief Solicitor

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EXHIBIT A TO PARTICIPATION AGREEMENT - REQUISITION FORM

DEPARTMENT OF TRANSPORTATION OF MARYLAND

COUNTY TRANSPORTATION REVENUE BONDS

SERIES 201_

REQUEST FOR REIMBURSEMENT

Requisition No. _____

NAME OF PARTICIPANT: Mayor and City Council of Baltimore

Pursuant to the Participation Agreement dated as of _____, 201_ (the “Agreement”) by and between the Department of Transportation of Maryland (the “Department”) and the Mayor and City Council of Baltimore (the “Participant”), the Participant requests that the Department make a disbursement of funds from the proceeds of the Department of Transportation of Maryland, County Transportation Revenue Bonds, Series 201_ (the “Bonds”) to reimburse the Participant for expenditures for Transportation Facilities (as defined in the Agreement).

Payee (Participant): Mayor and City Council of Baltimore

Payee’s Address Department of Finance
452 City Hall
100 Holliday Street
Baltimore, Maryland 21202

Total Amount Requested: _____

Total Amount Previously Requisitioned: _____

Total Amount Requisitioned To Date: _____

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- 1 The Participant certifies the following:
- 2 1. The cost of each of the items for which a requisition is being made was paid by the
3 Participant after _____, 201_ or otherwise complies with the
4 requirements of Treas. Reg. § 1.150-2 regarding reimbursement.

5 Attached are paid invoices or other documentation evidencing such payment.

 - 6 2. Attachment 1 includes a description of each of the costs of the Transportation Facility for
7 which a draw is being made, indicating the purpose of the payment.
 - 8 3. None of the items for which amounts are being requisitioned has formed the basis for any
9 disbursements previously made from the proceeds of the Bonds or any other series of
10 County Transportation Revenue Bonds.
 - 11 4. Each item for which funds are being requisitioned is a part of a Transportation Facility.
 - 12 5. All prior disbursements have been used to pay for Transportation Facilities.
 - 13 6. All of the funds being requisitioned are being used in compliance with the Agreement and
14 all of the covenants, representations and warranties of the Participant relating to the use of
15 the proceeds of the Bonds contained in the Agreement are true and correct as of the date
16 of this Request for Reimbursement.
 - 17 7. The proceeds of the Bonds paid to the Participant will not be used in a manner that would
18 cause the Bonds to be either “arbitrage bonds” under section 148 of the Internal Revenue
19 Code of 1986 (as amended) (the “Code”), or “private activity bonds” under section 141 of
20 the Code.
 - 21 8. The Participant shall comply with the provisions of the Code, including, without
22 limitation, compliance with the provisions regarding the timing of the expenditure of the
23 proceeds of the Bonds, the use of such proceeds, and the rebate of certain earnings, if any,
24 resulting from the investment by the Participant of the proceeds of the Bonds. The
25 Participant further covenants that it shall make such use of the proceeds of the Bonds, and
26 take, or refrain from taking, such other and further actions as may be required of it by the
27 Department from time to time, to the extent deemed necessary or appropriate by bond
28 counsel to the Department, so as to maintain the exemption from Federal income taxation
29 of interest on the Bonds.
 - 30 9. The Participant will be responsible for the payment of any amounts that must be rebated,
31 or otherwise owed, to the United States under the Code as a result of any act, error or
32 omission of the Participant. Any such amount will be withheld from Highway User
33 Revenues allocable to or held for the credit of the Participant or, at the Department’s
34 discretion, paid directly to the Department by the Participant.

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1 The Participant shall maintain a copy of this Request for Reimbursement until three years after
2 the final maturity of the Bonds.

3 We do solemnly declare and affirm under the penalty of our perjury that to the best of our
4 knowledge the contents hereof are true and correct and that there are no other facts, estimates or
5 circumstances not disclosed in this certificate that would materially change matters set forth
6 herein.

7 Mayor and City Council of Baltimore

8 By: _____
9 Authorized Officer

10 Date: _____

11 APPROVED:

12 MARYLAND DEPARTMENT OF TRANSPORTATION

13 By: _____
14 Authorized Officer

15 Date: _____

16 This approval by the Maryland Department of Transportation shall not constitute a certification,
17 agreement or acknowledgment that the information in this Request for Reimbursement meets the
18 requirements of the Request for Reimbursement or the Code.

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Attachment 1
Request for Reimbursement

1
2

3

List of Expenditures

4

(To be prepared by the Participant at time of requisitions)