

**CITY OF BALTIMORE
COUNCIL BILL 12-0076
(Resolution)**

Introduced by: The Council President
At the request of: The Administration (Department of Finance)
Introduced and read first time: May 7, 2012
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 2012**

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 2012 or as otherwise designated by the Secretary of Transportation and to be issued
9 pursuant to State Transportation Article, Title 3, Subtitle 5; authorizing certain officials of the
10 City to take certain actions in connection with the City's participation in the proceeds of the
11 sale of such bonds; providing for the pledge of the City's share of Highway User Revenues to
12 the payment of such bonds; providing that neither the faith and credit nor the taxing power of
13 the City shall be pledged to the City's payment obligations under the Participation Agreement
14 identified herein; providing for the severability of the provisions of this Resolution; providing
15 that this Resolution shall be liberally construed; and providing for a special effective date.

16 **Recitals**

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

24 The City has notified the Department of its desire to participate, in an
25 aggregate principal amount not to exceed \$28,500,000, in the proceeds of the
26 series of bonds to be issued by the Department in the fiscal year beginning July 1,
27 2012.

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
2 with 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 \$28,500,000, in the proceeds of a bond issue to be known as Department of Transportation of
10 Maryland - County Transportation Revenue Bonds, Series 2012 (or as otherwise designated by
11 the Secretary of Transportation), as part of a financing program for certain transportation
12 facilities under State Transportation Article, Title 3, Subtitle 5, with the proceeds to be used to
13 finance (including reimbursement for) the City's share of the cost of certain transportation
14 facilities (as defined in State Transportation Article § 3-101), and to pay the City's share of all the
15 appropriate expenses of preparing, printing, executing, issuing, delivering, and selling the bonds
16 (including, but not limited to, professional fees). The City's share of any premium payable on the
17 Department's bonds shall be applied as provided in the Participation Agreement.

18 **SECTION 2. AND BE IT FURTHER RESOLVED,** That anyone 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 bonds),
22 such approval to be evidenced conclusively by such official's execution and delivery of the final
23 Participation Agreement; provided that, the final Participation Agreement shall be substantially
24 similar to the form attached to this Resolution as Exhibit A. When executed by the Mayor, the
25 Director of Finance or the Chief, Bureau of Treasury Management, the Participation Agreement
26 shall constitute a binding contract between the Maryland Department of Transportation and the
27 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 State
32 Transportation Article, Title 3, Subtitle 5, or to carry out the provisions of the Participation
33 Agreement, and such officials and such other officials of the City as may be appropriate are
34 hereby authorized to approve, execute and deliver any closing documents, instruments or
35 certificates as may be deemed necessary or appropriate by the Department, its
36 counsel or counsel to the City.

37 **SECTION 4. AND BE IT FURTHER RESOLVED,** That as provided in the Participation
38 Agreement, the City shall pledge its share of Highway User Revenues (as defined in Subtitle 4 of
39 Title 8 of the State Transportation Article) to the payment of debt service on the Department's
40 bonds. Neither the faith and credit nor the taxing power of the City is or shall be pledged to the
41 City's payment obligations under the Participation Agreement.

42 **SECTION 5. AND BE IT FURTHER RESOLVED,** That the provisions of this Resolution are
43 severable, and if any provision, sentence, clause, section, or part of this Resolution is held illegal,
44 invalid, or unconstitutional or inapplicable to any person or circumstances, that illegality,
45 invalidity, unconstitutionality, or inapplicability does not affect or impair any of the remaining

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

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

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

12 Certified as passed this ____ day of _____, 2012

13 _____
14 President of the City Council

15 Certified as delivered to Her Honor, the Mayor,
16 This ____ day of _____, 2012

17 _____
18 Chief Clerk

19 Approved this ____ day of _____, 2012

20 _____
21 Mayor, Baltimore City

22 Approved for form and legal sufficiency
23 this ____ day of _____, 2012

24 _____
25 Chief Solicitor

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EXHIBIT A

FORM OF PARTICIPATION AGREEMENT

DEPARTMENT OF TRANSPORTATION OF MARYLAND
COUNTY TRANSPORTATION REVENUE BONDS
SERIES 2012

PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT (this “Participation Agreement”) is made as of this day of _____, 2012 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) (as amended, 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 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 Subtitle 5.

The Department proposes to issue and sell its Department of Transportation of Maryland County Transportation Revenue Bonds, Series 2012, or as they may be otherwise designated by the Secretary of Transportation (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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AGREEMENTS

1
2 In consideration of the premises and in accordance with applicable law, the parties hereto
3 agree as follows:

4 Section 1. The Bonds. The Department expects to sell the Bonds, subject to the terms and
5 conditions in this Section 1, during the fiscal year beginning July 1, 2012. The Bonds shall be
6 dated as of a date to be determined by the Department, shall bear interest payable semi-annually
7 accruing from the date of the Bonds, shall mature not later than fifteen (15) years after the date of
8 their issue, shall bear interest at the rate or rates agreed upon by the purchasers of (or, in the case
9 of a public sale, designated by the successful bidder for) the Bonds and accepted by the Secretary
10 of the Department, and may be subject to prior redemption by the Department in the
11 circumstances and at prices specified by it prior to the issuance thereof and subject to the
12 provisions of this Participation Agreement.

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

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

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

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

29 (c) The balance of the proceeds shall be used by the Department to pay the Participant's
30 share of the costs of the Transportation Facilities. The Department shall retain the Participant's
31 share of the net proceeds of the Bonds and remit to the Director of Finance or other designated
32 fiscal officer of the Participant (the "Fiscal Officer") amounts in reimbursement for payments
33 made by the Participant to contractors or other third parties for the Transportation Facilities
34 approved by the Department. The Department expects to remit payment to the Participant within
35 thirty (30) days after the Department has received a reimbursement request, together with written
36 verification satisfactory to the Department that the Participant has paid the contractor or other
37 third party for the work related to the Transportation Facilities financed with the proceeds of the
38 Bonds. The Department may require an audit, at the Participant's expense, of the Participant's
39 records to verify the expenditures of funds for which reimbursement is requested, the expenditure
40 of Bond proceeds, and the costs of the Transportation Facilities which are financed or reimbursed
41 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 any administrative cost of the Department attributable to the
20 Bonds or to any trustee or other person designated for that purpose by the Department with
21 respect to the Bonds as described in this Participation Agreement.

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

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

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

33 Section 6. Sinking Fund. To provide for the payment of the Bonds, the Department may
34 establish a separate account designated “County Transportation Revenue Bonds, Series 2012
35 Sinking Fund,” or other appropriate designation (the “Sinking Fund”), to which will be credited
36 any accrued interest received upon settlement for the Bonds. In the Department’s discretion, the
37 Sinking Fund may be held and maintained by the Comptroller or by a trustee or other person
38 designated by the Department. Pursuant to the Participant’s authorization granted under this
39 Participation Agreement, the Department will cause the Comptroller to credit and transfer to the
40 Sinking Fund the amounts withheld by such official from distribution to the Participant as
41 provided below.

42 The Comptroller shall withhold, during each fiscal year, from Highway User Revenues
43 allocated to, or held for the credit of, the Participant under Subtitle 4 of Title 8 of the

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

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

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

19 The Department shall have the right from time to time, in its discretion, to invest any and
20 all monies credited to the Sinking Fund in accordance with applicable State law. Any profit
21 realized from such investment shall be credited to the Sinking Fund and any loss resulting from
22 such investment shall be charged to the Sinking Fund. The Department shall not be responsible
23 for any loss that may occur as a result of such investments directed to be made in accordance
24 with applicable provisions of law and the Trust Indenture, dated as of November 1, 1993, as
25 amended and supplemented, pursuant to which the Bonds are issued (the "Trust Indenture").

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

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

40 Section 7. Termination and Redemption. The Participant may prepay and terminate its
41 obligations under this Participation Agreement upon at least thirty (30) days' written notice to the
42 Department (or such fewer number of days as shall be acceptable to the Department) and
43 payment to the Department of the prepayment price set forth below, together with an amount to
44 reimburse the Department for any costs or expenses it incurs in connection with such prepayment

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1 (including, without limitation, any fees of bond counsel, financial advisor, verification agent or
2 other advisor to the Department).

3 The prepayment price shall be an amount determined by the Department to be equal to:
4 (A) the sum of (i) the Participant’s principal amount of the Bonds, (ii) interest accrued and to
5 accrue on such principal amount until the date on which Bonds in an amount equal to the
6 Participant’s principal amount of the Bonds are redeemed or retired, calculated at the rate or rates
7 of interest borne by such Bonds, (iii) redemption premiums, if any, payable upon the redemption
8 of the Bonds, (iv) all fees, costs and expenses incurred by the Department or to be incurred by the
9 Department related to the prepayment of the Bonds, and (v) any amounts to be rebated to the
10 United States of America (the “United States”) in connection with interest earned on the Bonds,
11 less (B) the amount accumulated and available in the Sinking Fund.

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

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

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

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

31 (a) Subject to the provisions of Section 9 of this Participation Agreement, there are no
32 liens upon, or pledges of, the Participant’s share of Highway User Revenues allocated to, or held
33 for the credit of, the Participant under Subtitle 4 of Title 8 of the Transportation Article, as
34 amended and supplemented, prior or superior to the withholding for the purposes of this
35 Participation Agreement, which impair or interfere with the withholdings;

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

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

3 (d) The Participant will comply fully with Subtitle 4 of Title 8 of the Transportation
4 Article, as amended and supplemented, including the requirement that the Participant certify to
5 the State Highway Administration that it will use Highway User Revenues in compliance with all
6 applicable laws; and

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

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

11 (a) It is expressly understood by both parties to this Participation Agreement that the
12 covenants and representations made by the Participant herein with respect to pledges of Highway
13 User Revenues shall not preclude the Participant from having made or making short-term
14 borrowings through the issuance of Highway User Revenue anticipation notes, or any other debt
15 issuance, the payment of which is secured by the net amount of Highway User Revenues
16 distributed to the Participant after withholding by the Department and the Comptroller of the
17 annual Participant's Debt Service Requirement and the Participant's obligations under any other
18 participation agreements with the Department relating to County Transportation Bonds issued
19 pursuant to Section 3-301 through 3-310, inclusive ("Subtitle 3"), of Title 3 of the Transportation
20 Article (the "County Transportation Bonds") or County Transportation Revenue Bonds.

21 (b) It is also expressly understood by both parties to this Participation Agreement that the
22 covenants and representations made by the Participant herein with respect to pledges of Highway
23 User Revenues shall not preclude the Participant from having made a pledge of such Highway
24 User Revenues in connection with the issuance of its Stormwater Special Revenue Bond (West
25 Branch Moores Run Stormwater Project), Series 2004 (issued in the original amount of
26 \$6,881,961 to the Maryland Water Quality Financing Administration) (the "Series 2004 Bond"),
27 or any other debt issuance, the payment of which is (i) secured by the net amount of Highway
28 User Revenues distributed to the Participant after withholding by the Department and the
29 Comptroller of the annual Participant's Debt Service Requirement and the Participant's
30 obligations under any other participation agreements with the Department relating to County
31 Transportation Bonds or County Transportation Revenue Bonds or (ii) subject to annual
32 appropriation by the Participant.

33 Section 10. Agreements for Benefit of Bondholders; Bonds Are Parity Bonds. It is hereby
34 agreed that the provisions of this Participation Agreement shall and are intended to be for the
35 benefit and security of the bona fide holders from time to time of the Bonds and that the
36 covenants therein and herein contained shall be enforceable by such holders or a trustee acting on
37 behalf of such holders to the same extent as though they were parties to this Participation
38 Agreement. The Participant's allocation of Highway User Revenues will be applied
39 proportionately to pay debt service on the Bonds, the Series 2004 Bond (to the extent so provided
40 in the loan agreement entered into by the Participant and the Maryland Water Quality Financing
41 Administration in connection with the issuance of the Series 2004 Bond) and on all series of
42 County Transportation Bonds and County Transportation Revenue Bonds issued under Subtitle 3
43 or Subtitle 5 of Title 3 of the Transportation Article in which the Participant participated or will
44 participate in the future.

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

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

8 Section 13. Rebate Fund. The Department may cause to be created on the books of the
9 Treasurer's Office a Rebate Fund, the complete designation of which shall be "Department of
10 Transportation of Maryland County Transportation Revenue Bonds, Series 2012, Rebate Fund"
11 or such other designation as may be made by the Secretary of Transportation. The Rebate Fund
12 shall be held by the Treasurer or a trustee or other person designated for that purpose by the
13 Department. To the extent that the Department determines, upon the advice of bond counsel, that
14 it is necessary or desirable in order to assure and maintain the exemption from federal income
15 taxation of interest on the Bonds that certain interest earnings on amounts held in connection
16 with the issuance of the Bonds be rebated to the United States, the Treasurer (or other holder of
17 the Rebate Fund) shall, upon the written direction of an authorized officer of the Department,
18 transfer from any fund or account created in connection with the Bonds to the Rebate Fund the
19 amount specified in such written direction, which amount shall be determined in consultation
20 with bond counsel. Such funds, while held in the Rebate Fund, shall not be available to pay debt
21 service on the Bonds or to pay the costs of Transportation Facilities.

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

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

32 Section 15. Relating to Federal Tax. The Participant covenants that it shall comply with the
33 provisions of the Code including, without limitation, compliance with the provisions regarding
34 the timing of the expenditure of the proceeds of the Bonds, the use of such proceeds, the
35 restriction of investment yields, the filing of information with the Internal Revenue Service, the
36 use and control of the Transportation Facilities financed with the proceeds of the Bonds and the
37 rebate of certain earnings resulting from the investment of the proceeds of the Bonds. The
38 Participant further covenants that it shall make such use of its share of the proceeds of the Bonds,
39 regulate the investment of such proceeds, and take, or refrain from taking, such other and further
40 actions as may be required of it by the Department from time to time, to the extent deemed
41 necessary or appropriate by bond counsel to the Department, so as to maintain the exemption
42 from Federal income taxation of interest on the Bonds.

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

2
3 (a) As of the date hereof, the Participant reasonably expects the following with respect to
4 the proceeds from sale of the Participant’s share of the issue including costs of issuance (“sale
5 proceeds”):

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

10 2. After incurring the binding obligation described in this Section, completion of the
11 Transportation Facilities and expenditure of the sales proceeds of the Bonds will proceed with
12 due diligence;

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

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

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

19 (c) On the basis of the reasonable expectations of the Participant, the proceeds of the
20 Bonds paid to the Participant will not be used in a manner that would cause the Bonds to be
21 either “arbitrage bonds” under Section 148 of the Code and the Arbitrage Regulations or “Private
22 Activity Bonds” under Section 141 of the Code. To the best of the knowledge and belief of the
23 undersigned, there are no other facts, estimates or circumstances, which would materially change
24 the foregoing conclusion.

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

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

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

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

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1 Section 18. Rules of Construction.

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

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

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

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

14 Section 19. Notices. Any notice or other instrument authorized or required to be given
15 pursuant to this Participation Agreement shall be sent by telex or other telecommunication device
16 capable of creating a written record and shall be delivered personally, delivered by an overnight
17 delivery service that maintains a record of evidence of receipt (e.g., FedEx or UPS) or sent by
18 registered or certified mail, postage prepaid, addressed as follows (or to such other address as
19 may be designated by written notice given hereunder):

20 In the case of the Department:
21 Director of Finance
22 Maryland Department of Transportation
23 Department of Finance, 4th Floor
24 7201 Corporate Center Drive
25 Hanover, Maryland 21076
26

In the case of the Participant:
Chief, Bureau of Treasury
Management
200 Holliday Street, Room 7
Baltimore, Maryland 21202

(with a copy to):

27 Department of Law
28 City Hall, Room 144
29 Chief, Real Estate/Corp.
30 Division
31 Baltimore, Maryland 21202

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

34 (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:
4

DEPARTMENT OF TRANSPORTATION
OF MARYLAND

5 _____ By _____
6 Secretary of Transportation
7

8 APPROVED AS TO FORM AND LEGAL
9 SUFFICIENCY THIS _____ DAY OF
10 _____, 2012.

11 _____ By _____
12 Assistant Attorney General

13 WITNESS:
14

MAYOR AND CITY COUNCIL
OF BALTIMORE

15 _____ By _____
16 Name:
17 Title:

18 APPROVED AS TO FORM AND LEGAL
19 SUFFICIENCY THIS _____ DAY OF
20 _____, 2012

21 _____ By _____
22 Chief Solicitor