



City of Baltimore

City Council
City Hall, Room 408
100 North Holliday Street
Baltimore, Maryland 21202

Legislation Text

File #: 12-0076, Version: 0

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INTRODUCTORY*

CITY OF BALTIMORE COUNCIL BILL

Introduced by: The Council President
At the request of: The Administration (Department of Finance)

A RESOLUTION ENTITLED

A RESOLUTION OF THE MAYOR AND CITY COUNCIL concerning **Maryland Department of Transportation - County Transportation Revenue Bonds - Series 2012**

FOR the purpose of authorizing the Mayor and City Council of Baltimore to enter into an agreement with the Maryland Department of Transportation in connection with the participation by the City in the proceeds derived from the sale of certain bonds, to be known as Department of Transportation of Maryland - County Transportation Revenue Bonds, Series 2012 or as otherwise designated by the Secretary of Transportation and to be issued pursuant to State Transportation Article, Title 3, Subtitle 5; authorizing certain officials of the City to take certain actions in connection with the City's participation in the proceeds of the sale of such bonds; providing for the pledge of the City's share of Highway User Revenues to the payment of such bonds; providing that neither the faith and credit nor the taxing power of the City shall be pledged to the City's payment obligations under the Participation Agreement identified herein; providing for the severability of the provisions of this Resolution; providing that this Resolution shall be liberally construed; and providing for a special effective date.

Recitals

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

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

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

SECTION 1. BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the Mayor

and City Council authorizes and approves the proposed agreement for participation between the Maryland Department of Transportation and the Mayor and City Council of Baltimore (the "Participation Agreement"), in substantially the form attached as Exhibit A to this Resolution, for the participation by the City, in an aggregate principal amount not to exceed \$28,500,000, in the proceeds of a bond issue to be known as Department of Transportation of Maryland - County Transportation Revenue Bonds, Series 2012 (or as otherwise designated by the Secretary of Transportation), as part of a financing program for certain transportation facilities under State Transportation Article, Title 3, Subtitle 5, with the proceeds to be used to finance (including reimbursement for) the City's share of the cost of certain transportation facilities (as defined in State Transportation Article § 3-101), and to pay the City's share of all the appropriate expenses of preparing, printing, executing, issuing, delivering, and selling the bonds (including, but not limited to, professional fees). The City's share of any premium payable on the Department's bonds shall be applied as provided in the Participation Agreement.

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

SECTION 3. AND BE IT FURTHER RESOLVED, That the Mayor, the Director of Finance and the Chief, Bureau of Treasury Management are each authorized to take any other action that might be necessary and proper to secure for the City its share of the bond issue, to obligate the City to make payments in accordance with the Participation Agreement and with State Transportation Article, Title 3, Subtitle 5, or to carry out the provisions of the Participation Agreement, and such officials and such other officials of the City as may be appropriate are hereby authorized to approve, execute and deliver any closing documents, instruments or certificates as may be deemed necessary or appropriate by the Department, its counsel or counsel to the City.

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

SECTION 5. AND BE IT FURTHER RESOLVED, That the provisions of this Resolution are severable, and if any provision, sentence, clause, section, or part of this Resolution is held illegal, invalid, or unconstitutional or inapplicable to any person or circumstances, that illegality, invalidity, unconstitutionality, or inapplicability does not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this Resolution or its application to other persons or circumstances. It is the intent of the Mayor and City Council that this Resolution would have been adopted even if the illegal, invalid, or unconstitutional provision, sentence, clause, section, or part had not been included in this Resolution, and even if the person or circumstances to which this Resolution or any part of it is inapplicable had been specifically exempted from this Resolution.

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

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

Certified as passed this ____ day of _____, 2012

President of the City Council

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

Chief Clerk

Approved this ____ day of _____, 2012

Mayor

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

Chief Solicitor

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.

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, 2012. 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 issue and sell 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. 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.

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

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

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

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

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

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

Section 6. Sinking Fund. To provide for the payment of the Bonds, the Department may establish a separate

account designated “County Transportation Revenue Bonds, Series 2012 Sinking Fund,” or other appropriate designation (the “Sinking Fund”), to which will be credited any accrued interest received upon settlement for the Bonds. In the Department’s discretion, the Sinking Fund may be held and maintained by the Comptroller or by a trustee or other person designated by the Department. Pursuant to the Participant’s authorization granted under this Participation Agreement, the Department will cause the Comptroller to credit and transfer to the Sinking Fund the amounts withheld by such official from distribution to the Participant as provided below.

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

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

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

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

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

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

Section 7. Termination and Redemption. The Participant may prepay and terminate its obligations under this Participation Agreement upon at least thirty (30) days’ written notice to the Department (or such fewer number of

days as shall be acceptable to the Department) and payment to the Department of the prepayment price set forth below, together with an amount to reimburse the Department for any costs or expenses it incurs in connection with such prepayment (including, without limitation, any fees of bond counsel, financial advisor, verification agent or other advisor to the Department).

The prepayment price shall be an amount determined by the Department to be equal to: (A) the sum of (i) the Participant's principal amount of the Bonds, (ii) interest accrued and to accrue on such principal amount until the date on which Bonds in an amount equal to the Participant's principal amount of the Bonds are redeemed or retired, calculated at the rate or rates of interest borne by such Bonds, (iii) redemption premiums, if any, payable upon the redemption of the Bonds, (iv) all fees, costs and expenses incurred by the Department or to be incurred by the Department related to the prepayment of the Bonds, and (v) any amounts to be rebated to the

United States of America (the "United States") in connection with interest earned on the Bonds, less (B) the amount accumulated and available in the Sinking Fund.

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

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

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

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

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

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

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

(d) The Participant will comply fully with Subtitle 4 of Title 8 of the Transportation Article, as amended and

supplemented, including the requirement that the Participant certify to the State Highway Administration that it will use Highway User Revenues in compliance with all applicable laws; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 18. Rules of Construction.

(a) Unless otherwise specified, the words "hereof", "herein", "hereunder", "hereto", "thereof", "therein", "thereunder", "thereto" and other words of similar import, when used in this Participation Agreement, refer to this Participation Agreement, and when used in each of the other documents, refer to each of the other documents in their entireties.

(b) The terms "agree" and "agreements" are intended to include and mean "covenant" and "covenants."

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

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

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

In the case of the Department:
Director of Finance
Maryland Department of Transportation

In the case of the Participant:
Chief, Bureau of Treasury
Management

Department of Finance, 4th Floor
7201 Corporate Center Drive
Hanover, Maryland 21076

200 Holliday Street, Room 7
Baltimore, Maryland 21202

(with a copy to):

Department of Law
City Hall, Room 144
Chief, Real Estate/Corp. Division
Baltimore, Maryland 21202

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

(signatures on following page)

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

WITNESS:
TRANSPORTATION OF MARYLAND

DEPARTMENT OF

Secretary of Transportation

By _____

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

By _____
Assistant Attorney General

MAYOR AND CITY COUNCIL

WITNESS:

OF BALTIMORE

Name:
Title:

By _____

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

By _____
Chief Solicitor

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