

AMENDED AND RESTATED

DISTRICT CONTRACT

by and among

THE COMMONWEALTH TRANSPORTATION BOARD,

THE FAIRFAX COUNTY ECONOMIC DEVELOPMENT AUTHORITY,

and

THE STATE ROUTE 28 HIGHWAY TRANSPORTATION IMPROVEMENT
DISTRICT COMMISSION

Dated as of
_____, 2012

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AMENDED AND RESTATED
DISTRICT CONTRACT

THIS AMENDED AND RESTATED DISTRICT CONTRACT is made as of _____, 2012, by and among the COMMONWEALTH TRANSPORTATION BOARD (the “Board”), the FAIRFAX COUNTY ECONOMIC DEVELOPMENT AUTHORITY (the “Authority”), and the STATE ROUTE 28 HIGHWAY TRANSPORTATION IMPROVEMENT DISTRICT COMMISSION (the “Commission”) (the Board, the Authority, and the Commission sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties”).

RECITALS

A. The Board and the State Route 28 Highway Transportation Improvement District (the “District”) entered into a contract, dated as of September 1, 1988 (the “Original Contract”), providing for improvements to State Route 28 in Fairfax and Loudoun Counties. Under the Original Contract, the District agreed to request the Boards of Supervisors to levy a special improvements tax and collect special tax revenues in accordance with the Primary Highway Transportation Improvement District in Multi-County Areas Act of 1987, being Virginia Code §15.1-1372.1 et seq., now found at § 15.2-4600 et seq. (the “District Act”), and to pay for a portion of the costs of building a limited access freeway, commencing with the specified Phase I Transportation Improvements to State Route 28, as provided in the Concurrent Resolutions.

B. The Board and the District entered into a First Amendment to the Original Contract, dated as of April 1, 1992 (the “First Amendment”) as a result of a reduction in the actual costs of the Phase I Transportation Improvements.

C. The Board and the District entered into a Second Amendment to the Original Contract, dated as of September 1, 1993 (the “Second Amendment”), to provide for lump-sum payments by landowners of commercially- and industrially-zoned land in the District in connection with the rezoning of such land for residential use as authorized under Chapter 870 of the Acts of Assembly of 1993 (the “First District Act Amendment”) and to make certain other changes.

D. Chapter 435 of the Acts of Assembly of 2000 (the “Second District Act Amendment”) amended and reenacted the District Act, in pertinent part, to extend the life of the District for a period of fifteen (15) years beyond the thirty-five (35) year term originally provided for in the District Act.

E. Chapter 770 of the Acts of Assembly of 2002 (the “Third District Act Amendment”) amended and reenacted the District Act to provide, inter alia, that the District shall not be abolished so long as any District Obligation remains outstanding.

F. The Parties now desire to enter into this District Contract in order to (1) further amend and reenact the Original Contract; (2) complete payment for Phase I Transportation Improvements; (3) undertake those Phase II Transportation Improvements

included in the District Project; (4) set forth the agreement of the Parties regarding the method of financing the District Project; (5) request the Board of Supervisors to levy a Special Improvements Tax and collect Special Tax Revenues in accordance with the District Act; (6) have such revenues paid to the bank or trust company designated for the purpose pursuant to Section 302(f) for the accounts of the Board and the Authority as partial payment for the Costs of the District Project; and (7) establish the District Obligation for the payment of such Costs.

NOW, THEREFORE, in consideration of the foregoing, the continuing services to be provided, and the mutual representations, warranties and agreements contained in this District Contract, the Parties agree as follows:

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 101. Definitions. The following words as used in this District Contract shall have the following meanings unless a different meaning clearly appears from the context:

“Annual Authority Share” means the Authority Proportion multiplied by the total amount of Special Tax Revenues available in a particular Fiscal Year to pay the Combined Debt Service for that Fiscal Year, but not more than the total annual debt service scheduled to become due in that Fiscal Year on all outstanding Authority Bonds.

“Annual Board Share” means the Board Proportion multiplied by the amount of Special Tax Revenues available in a particular Fiscal Year to pay the Combined Debt Service for that Fiscal Year, but not more than the total annual debt service scheduled to become due in that Fiscal Year on all outstanding State Bonds of 2002. The Annual Board Share in the first Fiscal Year shall be reduced in accordance with and to the extent provided in Section 401(a).

“Authority” means the Fairfax County Economic Development Authority, created pursuant to the EDA Act, and its successors.

“Authority Bonds” means the bonds that may be issued by the Authority to provide approximately \$176,000,000 in construction funds in accordance with the District Contract in connection with the financing of the Phase II Transportation Improvements. This definition also includes any bonds issued by the Authority to refund all or any of the Authority Bonds or bonds that shall have refunded bonds that have refunded Authority Bonds, provided that either (i) the annual debt service on such refunding bonds shall be equal to or less than the annual debt service on the bonds refunded and the final maturity of such refunding bonds shall occur no later than the final maturity of the bonds refunded or (ii) the Board and the Boards of Supervisors shall have given their prior written consent to the issuance of such refunding bonds.

“Authority Proportion” means the aggregate annual debt service obligation on all outstanding Authority Bonds scheduled to become due in a particular Fiscal Year divided by the Combined Debt Service for that Fiscal Year.

“Board” means the Commonwealth Transportation Board and its successors.

“Board of Supervisors” or “Boards of Supervisors” means either or both of the boards of supervisors as the governing bodies of Fairfax and Loudoun Counties, as appropriate.

“Board Proportion” means the aggregate annual debt service obligation scheduled to become due on all outstanding State Bonds of 2002 in a particular Fiscal Year divided by the Combined Debt Service for that Fiscal Year.

“Board Statute” means Virginia Code § 33.1-1 et seq., establishing the Board and providing for its powers and duties.

“Combined Debt Service” means the aggregate annual debt service obligation on all outstanding Authority Bonds and State Bonds of 2002 scheduled to become due in any particular Fiscal Year.

“Commission” means the State Route 28 Highway Transportation Improvement District Commission appointed by the Boards of Supervisors pursuant to the District Act and the Chairman of the Board, or his designee, as an ex officio member.

“Concurrent Resolutions” means the resolutions adopted by the Boards of Supervisors in December 1987 to establish the District pursuant to the District Act.

“Cost” or “Cost of the Project Improvements” means the cost as set forth in Section 303 of this District Contract of transportation improvements included in the District Project.

“County” or “Counties” means either or both Fairfax and Loudoun Counties, as appropriate.

“Department” means the Virginia Department of Transportation, a department of the Commonwealth of Virginia, and any other state agency succeeding to the power, authorities and responsibilities of the Department.

“District” means the State Route 28 Highway Transportation Improvement District created by Fairfax and Loudoun Counties pursuant to the District Act.

“District Act” means the Primary Highway Transportation Improvement in Multi-County Areas Act, being Virginia Code § 15.1-1372 et seq., as restated and amended as Virginia Code § 15.2-4600 et seq., as amended, pursuant to which Fairfax and Loudoun Counties established the District.

“District Contract” means this contract between the Parties, and any and all modifications, alterations, amendments and supplements thereto, which as of the Effective Date shall supersede the Original Contract dated September 1, 1988, and all amendments thereto.

“District Obligation” means the portion of the Cost of transportation improvements included in the District Project that has been or is to be paid with Special Tax Revenues in accordance with Article IV of this District Contract.

“District Project” means the Phase I Transportation Improvements, the Phase II Project Improvements and the Phase II Final Four Improvements.

“District Project Completion Fund” means the special fund created with the Fiscal Agent to which are credited Excess Revenues held by or on behalf of the Commission for the purposes set forth in Section 401(e).

“EDA Act” means Chapter 643 of the 1964 Acts of the General Assembly of the Commonwealth of Virginia, as amended.

“Effective Date” means the date of the defeasance of all of the Board’s outstanding Commonwealth of Virginia Transportation Contract Revenue Refunding Bonds (Route 28 District Project), Series 1992.

“Excess Revenues” means the amount, if any, of Special Tax Revenues available in any Fiscal Year in excess of the sum of the Combined Debt Service.

“Fiscal Agent” means the bank or trust company designated as such pursuant to Section 302(f).

“Fiscal Year” means the twelve-month period beginning on July 1 of one year and ending on June 30 of the following year or such other fiscal year of twelve months as may be determined by the Parties.

“Highway Funds” means funds for the District Project in Fiscal Years 2003 through 2007 from the Virginia Transportation Six Year Program for Fiscal Years 2002-2008, approved and adopted by the Board on June 20, 2002, in the total amount of \$66,500,366.

“Local Contract” means the contract between the Commission and the Boards of Supervisors of Fairfax and Loudoun Counties as amended and restated as of the date hereof, providing for, among other things, the request for the levy of the Special Improvements Tax and the collection and payment of Special Tax Revenues.

“Lump Sum Payments” means the payments provided for in the First District Act Amendment calculated under the formula set forth in Appendix F.

“Net Debt Service” means actual principal and interest payments on all bonds issued by the Board or the Authority to pay for the District Project less investment

earnings credited to such payments under the terms of the agreements of trust for such bonds.

“Petition” means the Joint Petition to the Board of Supervisors of Fairfax County and to the Board of Supervisors of Loudoun County from landowners seeking the establishment of the Primary Highway Transportation Improvement District known as the State Route 28 Highway Transportation Improvement District.

“Phase II Final Four Improvements” means the Phase II Transportation Improvements described by: (1) paragraph 1, subparagraphs g, h, i and j of Appendix A2; and (2) paragraph 3 of Appendix A2, with respect to the elimination of signalized intersections and access points at Dulles Center Boulevard, Severn Way, Steeplechase Drive, Park Center Drive, and Access Road from Southbound Route 28 between Route 50 and Willard Road.

“Phase II Project Improvements” means the Phase II Transportation Improvements included in the District Project, as more particularly described in Appendix A3.

“Phase I Transportation Improvements” means initial modifications to State Route 28, including six (6) lanes with a twenty-six foot median from Interstate 66 in Fairfax County to Route 7 in Loudoun County and three (3) grade-separated interchanges at Route 50, Dulles Airport Access Toll Road and Route 7, as more particularly described in Appendix A1.

“Phase II Transportation Improvements” means additional modifications to State Route 28, including the construction of ten (10) interchanges and two (2) additional lanes for Route 28 between its intersection with Route 50 in Fairfax County and its intersection with Sterling Boulevard in Loudoun County, as more particularly described in Appendix A2.

“Project Improvements” means the transportation improvements included in the District Project.

“Proportionately” means *pro rata* based on the relative sizes of the Authority Proportion and the Board Proportion for a particular Fiscal Year, each compared to the sum of the Authority Proportion and the Board Proportion for that Fiscal Year.

“Sales Tax Funds” has the meaning given such term by Section 302(g) of this District Contract.

“Special Improvements Tax” means a special improvements tax levied and payable not less frequently than annually on taxable real estate zoned for commercial or industrial use or used for such purposes and taxable leasehold interests zoned for commercial or industrial use or used for such purposes and located within the District.

“Special Tax Revenues” means the revenues collected from the levy of the Special Improvements Tax and the collection of Lump Sum Payments.

“State Bonds of 1992” means the \$111,680,000 in Commonwealth of Virginia Transportation Contract Revenue Refunding Bonds, Series 1992 (Route 28 Project) issued by the Board.

“State Bonds of 2002” means the State Refunding Bonds and the State New Money Bonds. This definition also includes any bonds issued by the Board to refund all or any of the State Bonds of 2002 or bonds that shall have refunded bonds that refunded the State Bonds of 2002, provided that either (i) the annual debt service on such refunding bonds shall be equal to or less than the annual debt service on the bonds refunded and the final maturity of such refunding bonds shall occur no later than the final maturity of the bonds refunded or (ii) the Authority and both Boards of Supervisors shall have given their prior written consent to the issuance of such refunding bonds.

“State New Money Bonds” means bonds which have been previously authorized for issuance by the Board in connection with the construction of improvements to Route 28, in the amount of \$36,396,246 for new construction, plus associated costs of issuance and other financing costs but which have not yet been issued.

“State Obligation” means the portion of the Cost of the transportation improvements included in the District Project that has been or is to be paid other than with (i) Special Tax Revenues in accordance with this District Contract or (ii) Sales Tax Funds.

“State Refunding Bonds” means the bonds that will be issued by the Board to refund the outstanding State Bonds of 1992.

“Term” means the period specified in Section 501 of this District Contract.

“Virginia Code” means the Code of Virginia of 1950, as amended.

Section 102. Rules of Construction. Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this District Contract:

(a) Words importing the singular number shall include the plural number and vice versa.

(b) Unless otherwise indicated, all references herein to particular Articles or Sections are references to Articles or Sections of this District Contract.

(c) The headings and Table of Contents herein are solely for convenience and shall not constitute a part of this District Contract.

(d) Computations of debt service payable in any Fiscal Year shall exclude any debt service payable on the first day of such Fiscal Year and shall include any debt service payable on the first day of the next succeeding Fiscal Year.

ARTICLE II

REPRESENTATIONS

Section 201. Representations of Board. The Board makes the following representations as of the Effective Date in connection with its undertakings under this District Contract:

- (a) The Board is duly organized under the Board Statute.
- (b) The Board (i) has the power to enter into this District Contract and the transactions contemplated hereby; (ii) has the power to carry out its obligations under this District Contract; and (iii) by proper action has duly authorized the execution and delivery of and the performance of its obligations under this District Contract.
- (c) The Board is not in default in the payment of the principal of or interest on any indebtedness for borrowed money and is not in default under any instrument under or subject to which any indebtedness for borrowed money has been incurred, and no event has occurred and is continuing under the provisions of any such agreement that with the lapse of time or the giving of notice, or both, would constitute or result in such an event of default.
- (d) The execution and delivery of and compliance by the Board with the terms and conditions of this District Contract will not conflict with or constitute or result in a default under, or violation of, (i) the Board Statute or any other existing law, rule or regulation applicable to the Board or (ii) any indenture, deed of trust, lien, lease, contract, note, order, judgment, decree or other agreement, instrument or restriction of any kind to which the Board or any of its assets is subject, and no event has occurred and is continuing that with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation.
- (e) Except as identified in Appendix B, no further approval, consent or withholding of objection on the part of any regulatory body or any federal, state, or local official is required as a condition precedent to the execution or delivery of or performance by the Board of its obligations under this District Contract.
- (f) Except as identified in Appendix C, no litigation, inquiry or investigation of any kind in or by any judicial or administrative court or agency is pending or, to the Board's knowledge, threatened against it with respect to (i) the creation and existence of the Board, (ii) its authority to execute and deliver this District Contract, (iii) the validity or enforceability of this District Contract, (iv) the title of any officer of the Board who executed this District Contract, or (v) any authority or proceedings related to the execution and delivery of this District Contract on behalf of the Board, and no such authority or proceedings have been repealed, revoked, rescinded or amended, but each is in full force and effect.

Section 202. Representations of the Authority. The Authority makes the following representations as of the Effective Date in connection with its undertakings under this District Contract:

(a) The Authority is duly organized under the EDA Act.

(b) The Authority (i) has the power to enter into this District Contract and the transactions contemplated hereby; (ii) has the power to carry out its obligations under this District Contract; and (iii) by proper action has duly authorized the execution and delivery of and the performance of its obligations under this District Contract.

(c) The Authority is not in default in the payment of the principal of or interest on any indebtedness for borrowed money and is not in default under any instrument under or subject to which any indebtedness for borrowed money has been incurred, and no event has occurred and is continuing under the provisions of any such agreement that with the lapse of time or the giving of notice, or both, would constitute or result in such an event of default; provided, however, that this representation shall be limited to bonds and other obligations of the Authority for which the Counties, or either of them, is directly or indirectly liable for the debt service thereon or for deficiencies in reserves that secure such bonds.

(d) The execution and delivery of and compliance by the Authority with the terms and conditions of this District Contract will not conflict with or constitute or result in a default under or violation of (i) the EDA Act or any other existing law, rule or regulation applicable to the Authority, or (ii) any indenture, deed of trust, lien, lease, contract, note, order, judgment, decree or other agreement, instrument or restriction of any kind to which the Authority or any of its assets is subject where the default or violation does or could materially adversely affect the ability of the Authority to discharge its obligations under this District Contract, and no event has occurred and is continuing that with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation.

(e) No further approval, consent or withholding of objection on the part of any regulatory body or any federal, state, or local official is required as a condition precedent to the execution or delivery of or performance by the Authority of its obligations, other than its commitment to issue Authority Bonds, under this District Contract.

(f) To the Authority's knowledge, no litigation, inquiry or investigation of any kind in or by any judicial or administrative court or agency is pending or, to the Authority's knowledge, threatened against it with respect to (i) the creation and existence of the Authority, (ii) its authority to execute and deliver this District Contract, (iii) the validity or enforceability of this District Contract, (iv) the title of any officer of the Authority who executed this District Contract, or (v) any authority or proceedings related to the execution and delivery of this District Contract on behalf of the Authority, and no such authority or proceedings have been repealed, revoked, rescinded or amended, but each is in full force and effect.

Section 203. Representations of Commission. The Commission makes the following representations as of the Effective Date in connection with its undertakings under this District Contract:

(a) The District is duly organized under the District Act.

(b) The Commission (i) has the power to enter into this District Contract and the transactions contemplated hereby; (ii) has the power to carry out its obligations under this District Contract and (iii) by proper action has duly authorized the execution and delivery of and the performance of its obligations under this District Contract.

(c) The District has no outstanding indebtedness of any kind whatsoever other than its obligations under this District Contract if and to the extent any such obligations may constitute outstanding indebtedness.

(d) The execution, delivery and compliance by the Commission with the terms and conditions of the Local Contract and this District Contract will not conflict with, or constitute or result in a default under or violation of, (i) the District Act or any other existing law, rule or regulation applicable to the District or (ii) any lien, lease, contract, order, judgment, decree or other agreement, instrument or restriction of any kind to which the District or any of its assets is subject, and no event has occurred and is continuing that with the lapse of time or the giving of notice, or both, would constitute or result in such default or violation.

(e) No further approval, consent or withholding of objection on the part of any regulatory body or any federal, state, or local official is required as a condition precedent to the execution or delivery of, or performance by the Commission in accordance with the terms and conditions of this District Contract.

(f) To the Commission's knowledge, no litigation, inquiry or investigation of any kind in or by any judicial or administrative court or agency is pending or threatened against it with respect to: (i) the creation and existence of the District; (ii) its authority to execute and deliver this District Contract; (iii) the validity or enforceability of this District Contract; (iv) the title of any officer of the Commission who executed this District Contract; or (v) any authority or proceedings related to the execution and delivery of this District Contract on behalf of the District, and no such authority or proceedings have been repealed, revoked, rescinded or amended, but each is in full force and effect.

ARTICLE III

UNDERTAKING AND FINANCING THE DISTRICT PROJECT

Section 301. Agreement to Construct and Complete District Project. In accordance with the Department's specifications and on behalf of the Commonwealth of

Virginia, the Board, either directly or through the Department, shall be responsible for construction and completion of the District Project and shall own, operate and maintain the District Project. The responsibility of the Board to complete the District Project as set forth in this District Contract is contingent upon the availability of sufficient revenue for that purpose, including without limitation issuance of the Authority Bonds, but the Parties anticipate that the Plan described in Section 302 will provide revenue sufficient for that purpose. The Commission shall have no right to approve or otherwise exercise control over the design or construction of the District Project. The Board shall notify the Authority and the Commission prior to any major change in the design or construction of the District Project. The Board shall use its best efforts to cause the completion of the District Project by December 31, 2009.

Section 302. Financing the District Project. The Parties wish to implement a new plan of financing and refinancing for Project Improvements (the "Plan"), as set forth herein, subject to such qualifications as also are set forth herein. Also, attached hereto as Appendix E is the schedule of financings as currently anticipated by the Parties.

(a) As the first component of the Plan, the Board and the Department will designate, allocate, and program the Highway Funds, subject to annual appropriation by the General Assembly, to pay a portion of the Cost of Phase II Project Improvements. The Board agrees to use its best efforts to have the Governor and the General Assembly of Virginia take such actions as are necessary to annually appropriate such funds in amounts needed in each such Fiscal Year to continue with the construction of the Phase II Project Improvements in a timely fashion.

(b) As the second component of the Plan, the Board will issue State Refunding Bonds in an amount sufficient, together with other available funds, to defease the outstanding State Bonds of 1992. The State Refunding Bonds will have a final maturity in 2018, will be structured as current interest bonds only, and will be structured to provide substantially level annual savings. The proceeds of the sale of the State Refunding Bonds will be applied to refund, defease, and redeem in full the outstanding State Bonds of 1992.

(c) As the third component of the Plan, the Board also will issue State New Money Bonds which will have a final maturity in 2032 and will be structured as capital appreciation bonds maturing in the years 2019 through 2032. The proceeds of the State New Money Bonds will be sufficient to pay at least \$ 36,395,000 of the Cost of the Phase II Project Improvements and to pay the issuance costs of the State Bonds of 2002, and will be used only for those purposes. The State New Money Bonds will be structured to produce debt service that is substantially level during the years 2019 to 2032.

(d)(1) The Board will issue the State Bonds of 2002 pursuant to a Master Agreement of Trust between the Board and a trustee, which may be the same bank or trust company that serves as Fiscal Agent under this District Contract, which agreement will not provide for the establishment of any debt service reserve, repair and replacement or similar funds to be funded or maintained with the proceeds of the State Bonds of 2002

or Special Tax Revenues, except for the refunding escrow fund for the State Bonds of 1992, a debt service fund, and a project fund.

(2) State Bonds of 2002 that are issued to refund State Refunding Bonds or State New Money Bonds may be structured and sized in a manner, as determined by the Board, Commission and Counties, that best utilizes the available capacity of the Special Tax Revenues to provide for debt service payments of both State Bonds of 2002 and Authority Bonds. Such refunding State Bonds of 2002 may modify the original structure of the State Refunding Bonds or the State New Money Bonds

(e)(1) As the fourth component of the Plan, the Board will request the Authority, no later than when and as monies, in addition to those available from Highway Funds and the proceeds of the State New Money Bonds, are needed to construct the Phase II Project Improvements, to issue bonds in a total amount sufficient to provide approximately \$90,000,000 in construction funds. The Authority will plan to issue Authority Bonds in accordance with Appendix E unless otherwise requested by the Board based on the progress of the District Project.

(2) As the fifth component of the Plan, no later than when and as monies are needed to construct the Phase II Final Four Improvements, in addition to those available from the proceeds of any grants received by the Commission from the Transportation Partnership Opportunity Fund (“TPOF”), the proceeds of any loan received by the Commission from TPOF (“TPOF Loans”), and amounts available from other sources, the Authority shall issue additional Authority Bonds in a total amount sufficient to provide approximately \$86,100,000 in construction funds. The Authority will plan to issue Authority Bonds in accordance with Appendix E2, unless otherwise necessary based on the progress of the District Project.

(3) The Authority has the discretion to issue the Authority Bonds pursuant to Section 302 (e) (1) and (2), in a single or multiple series when and as needed to pay Costs of the District Project in coordination with the scheduled availability of other available funding for the District Project. The obligation of the Authority to issue Authority Bonds is contingent upon the determination by the Authority and the Counties at the time of issuance that, based on existing collections and anticipated growth rates, Special Tax Revenues available are projected to be sufficient to provide at least 1.1 to 1 debt service coverage ratio for all State Bonds of 2002, the Authority Bonds outstanding and the additional Authority Bonds to be issued. The Parties understand that the Counties will provide appropriate credit enhancements to the Authority Bonds, but will not back them with the full faith and credit of the Counties. Authority Bonds will be structured and sized in a manner, as determined by the Board, Commission and Counties, that best utilizes the available capacity of the Special Tax Revenues to provide for debt service payments of both State New Money Bonds and Authority Bonds.

(f) The Parties will designate a bank or trust company to serve as Fiscal Agent to which, upon the full defeasance of all the State Bonds of 1992, the Board, the Commission, and the Authority will assign and transfer, subject to appropriation, all of the Special Tax Revenues first, to pay Proportionately the Combined Debt Service,

second, to the funding of the Authority Revenue Stabilization Fund, other than on account of a withdrawal therefrom, until the amount deposited thereto shall equal the amount required by Section 401(c); third, to reimburse the Counties to the extent that any debt service on any Authority Bonds or obligation with respect to reserve funds securing Authority Bonds has been paid from funds other than Special Tax Revenues appropriated by the Counties; fourth, to the Authority Revenue Stabilization Fund to the extent of any deficiency in the amount required therein by Section 401(c) on account of a withdrawal therefrom; fifth, to reimburse the Board to the extent that any debt service on any State Bonds of 2002 has been paid from funds described in Section 406, such reimbursement to be credited to the source from which the funds were drawn; and sixth, to the District Project Completion Fund.

(g) The Parties recognize the possibility that funds in an amount up to \$50,000,000 may be made available by the Northern Virginia Transportation Authority (the "NVRTA") to fund Phase II Transportation Improvements in the Counties if a referendum approving an increase in the sales and use tax passes in Northern Virginia (the "Sales Tax Funds"). Any such Sales Tax Funds shall not be considered to be Highway Funds. Any such Sales Tax Funds made available for this purpose by the NVRTA will be used to pay the Cost of Phase II Transportation Improvements, provided, however, that if any such Sales Tax Funds are used to pay the Cost of any Phase II Project Improvements, an equivalent amount of funds that otherwise would have been used for that purpose according to the Plan shall be used instead to pay a portion of the Cost of Phase II Transportation Improvements that are not included in the District Project as of the Effective Date.

(h) The Cost of Phase II Project Improvements shall be paid first, from available Highway Funds; second, from the proceeds from the sale of State New Money Bonds of 2002; third, from the available proceeds from the sale of Authority Bonds; fourth, from Sales Tax Funds used in accordance with Section 302(g) if available for that purpose; and fifth, from the District Project Completion Fund.

(i) The Authority Bonds and the State Bonds of 2002 will be repaid from Special Tax Revenues as set forth in Article IV below.

Section 303. Cost of Project Improvements. The Cost of Project Improvements includes the cost of acquisition, construction, reconstruction, alteration, landscaping, or enlargement of State Route 28, including the cost of the acquisition of land, rights-of-way, property rights, easements and interests acquired for such construction, alteration or expansion, the cost of demolishing or removing any structure on land so acquired, including the cost of acquiring any lands to which such structures may be removed, the cost of all labor, materials, machinery and equipment, the costs of environmental mitigation, financing charges, insurance, interest on all bonds prior to and during construction and, for a reasonable period after completion of such construction, reserves for principal and interest and for replacements, renovations and improvements, provisions for working capital, the cost of surveys, engineering and architectural expenses, borings, plans and specifications and other engineering and architectural services, legal expenses, studies, estimates of costs and revenues, administrative expenses

and such other expenses as may be necessary, or incident to the construction of the District Project, and to determining the feasibility or practicability of such construction, the cost of financing such construction, and placing the District Project in operation. The Cost shall be reduced by the amount of any cash proffers received by the Counties and used for purposes of funding a portion of the Project Improvements.

Section 304. No Assignment, Sale or Encumbrance of Project Improvements. The Board shall not sell, assign or otherwise dispose of or encumber the Project Improvements or any integral part thereof, or consent to any such sale, assignment, disposal, or encumbrance.

ARTICLE IV

PAYMENT OF SPECIAL TAX REVENUES

Section 401. District Payments.

(a) Each Fiscal Year the District shall pay to the Fiscal Agent the Annual Authority Share and the Annual Board Share. The Commission, on behalf of the District, shall make payments as described below through the Boards of Supervisors of the Counties. Within 30 days of the closing of any State Bonds of 2002 secured in whole or part by the Annual Board Share or any Authority Bonds secured in whole or part by the Annual Authority Share, the issuer of such bonds, being the Board or Authority as the case may be, shall provide to the Commission a schedule of payments necessary to pay the scheduled debt service on such bonds in a timely manner. Notwithstanding any other provision of this District Contract, the Board agrees that in its calculations of the schedule of payments necessary to pay scheduled debt service on its State Bonds of 2002, it shall credit against the first payments necessary to pay such scheduled debt service and thus against the Annual Board Share of Combined Debt Service all Special Tax Revenues that it shall have received prior, and shall retain subsequent, to the Effective Date, and not used to defease the State Bonds of 1992.

(b) As of the Effective Date, the Commission shall request that the Counties set the Special Improvements Tax rate at the maximum rate permissible under the District Act. A reduction in the Special Improvements Tax rate shall not occur unless (i) available Special Tax Revenues in each of the two Fiscal Years immediately preceding the Fiscal Year in which the tax rate reduction is proposed have been greater than the product of 1.1 and the Combined Debt Service in each of those Fiscal Years as calculated based on the schedule or schedules of payments provided pursuant to Section 401(a), and (ii) it is reasonably anticipated by the Commission that available Special Tax Revenues in each subsequent Fiscal Year will be greater than the product of 1.1 and the Combined Debt Service in each such Fiscal Year, at which time the rate may be reduced to a level sufficient, in the judgment of the Commission, to pay the product of 1.1 and the Combined Debt Service due in any subsequent Fiscal Year. Any such Special Improvements Tax rate reduction may be reversed to the extent necessary to meet the requirements of this Section 401 and Section 402.

(c) Any available Excess Revenues on hand immediately after the final debt service payment in any Fiscal Year shall be allocated first to the creation and funding of the Authority Revenue Stabilization Fund until it contains \$8,500,000. However, after all Authority Bonds to be issued pursuant to this District Contract have been issued, the Authority Revenue Stabilization Fund shall be increased or reduced, as the case may be, so that it equals the maximum annual debt service on all such Authority Bonds. Once the Authority Revenue Stabilization Fund is fully funded, then any Excess Revenues shall be applied as provided in Section 401(e).

(d) The Authority Revenue Stabilization Fund, together with actual interest earnings thereon (subject to any limitations imposed by the Internal Revenue Code), shall be held by the trustee for the Authority Bonds and applied to pay debt service on any outstanding Authority Bonds in any Fiscal Year in the event that the Annual Authority Share for that Fiscal Year is insufficient to pay such debt service in that Fiscal Year. When all Authority Bonds have been fully defeased, any amount remaining in the Authority Revenue Stabilization Fund shall be transferred to the District Project Completion Fund. The Fiscal Agent shall act as the fiduciary agent of the Commission with respect to the District Project Completion Fund, and shall keep the funds of the District Project Completion Fund in a separate account.

(e) Excess Revenues not needed for the purpose set forth in Section 401(c) shall be deposited in the District Project Completion Fund. Any funds in the District Project Completion Fund shall be used first, to make up any deficiency in the amount of Special Tax Revenues available to pay the Combined Debt Service in any Fiscal Year; thereafter, for the purposes and in the order of priority set forth in Section 302(f) third, fourth, and fifth. Any funds in the District Project Completion Fund not needed for the foregoing purposes shall be used first by the Commission to pay scheduled debt service, if any, on any TPOF Loans and then any funds remaining may be used by the Commission in its discretion to pay for any Phase II Transportation Improvements described in the Petition, or to purchase, redeem or defease Authority Bonds or State New Money Bonds issued to finance or refinance Phase II Transportation Improvements or may be released to the Boards of Supervisors for disbursement under applicable law. At such time as all Phase II Transportation Improvements described in the Petition have been constructed and paid for, and all State Bonds of 2002 and Authority Bonds have been fully defeased, redeemed or paid, the Commission shall release any remaining amount in the District Project Completion Fund to the Boards of Supervisors for disbursement under applicable law.

(f) Notwithstanding anything herein to the contrary:

(i) Special Tax Revenues shall be used to provide no more than seventy-five percent (75%) of the final aggregate Cost of all of the Phase I Transportation Improvements and Phase II Transportation Improvements, calculated as set forth in Appendix F attached hereto;

(ii) the maximum limit on the Special Improvements Tax during the term of the District Contract is fixed at \$ 0.20 per \$100 of assessed fair market value

of any real estate, including the assessable value of taxable leasehold interests, of all real property within the District which is zoned for commercial or industrial use or used for such purpose, which is subject to the Special Improvements Tax;

(iii) any financial obligation of the Counties to any entity arising under or related to this District Contract, other than with respect to credit enhancements of Authority Bonds mentioned in Section 302(e), is limited to the annual payment to the Fiscal Agent for the account of the Commission of all assessed Special Tax Revenues actually collected by the Counties after reasonable efforts consistent with those undertaken by the Counties to assess, levy and collect real estate tax levies generally; and

(iv) the State Obligation is subject to annual appropriations made by the General Assembly of Virginia and allocations by the Board.

Section 402. Special Improvements Tax. In order to pay the District Obligation, the Commission shall request the Boards of Supervisors by April 1 of each year to levy the Special Improvements Tax and collect Special Tax Revenues for the next Fiscal Year at a rate sufficient to generate Special Tax Revenues to meet the requirements of Section 401, subject to the limitations herein. The Commission shall request the Counties to pay over to the Fiscal Agent all collected Special Tax Revenues by the first day of each month. The Fiscal Agent shall deposit or cause to be deposited in a special account or accounts all Special Tax Revenues received, and any interest earnings thereon shall be credited towards the payment of the District Obligation.

Section 403. Records and Reports.

(a) The Fiscal Agent shall maintain adequate records of the outstanding balance of the District Obligation and shall forward to the Commission and the Board a financial report and statement setting forth such information by February 15 and August 15 of each year in a form that is acceptable to the Parties. The statement shall indicate the amount of the District Obligation for the current Fiscal Year. The Board and the Authority annually shall supply such information to the Fiscal Agent as is necessary for the Fiscal Agent to fulfill its responsibilities under this Section 403.

(b) The Board shall maintain adequate records of the outstanding balance of the State Obligation and shall forward to the Commission a financial report and statement setting forth such information by February 15 and August 15 of each year in a form that is acceptable to the Parties. The statement shall indicate the amount of the State Obligation for the current Fiscal Year and the sources and dates of funding anticipated to meet such obligation.

Section 404. Annual Audit. Pursuant to the District Act, the Commission shall have an annual verification and audit of its financial obligations and revenues, and such audit shall be prepared by an independent certified public accountant selected by the Commission. The audit report for each Fiscal Year shall be submitted to the Board on or before the March 31st next succeeding the end of such fiscal year.

Section 405. Prepayment of District Obligation. Upon notice to and consent of the Board and the Authority, which consent shall not be unreasonably withheld, the Commission may from time to time prepay the District Obligation. All the terms of such prepayment are subject to the approval of the Board and the Authority.

Section 406. Failure to Pay Special Tax Revenues. The Parties acknowledge and expressly agree that if, and for so long as, (i) the amount of Special Tax Revenues required to be collected and paid to the Fiscal Agent to be allocated to the Annual Board Share is not paid to the Fiscal Agent for a period of sixty (60) days from the date such payment was due pursuant to this District Contract, or (ii) the amount so paid is not sufficient to pay the aggregate annual debt service on all outstanding State Bonds of 2002 in any Fiscal Year, and any resulting deficiency is not paid with Excess Revenues within such sixty day period as provided in Section 401(e) of this District Contract, then the provisions of Section 15.2-4608 (A) of the Virginia Code in effect as of that date shall apply.

Section 407. Zoning Changes. The Commission shall use its best efforts to ensure that if Fairfax or Loudoun County changes the zoning classification for any property within the District from commercial or industrial use to residential use upon the written request or approval of the owner of such property, or in any other case permitted by law, then pursuant to Section 303 of the Local Contract, the County making the zoning change shall require the payment to the County by the property owner of a sum representing the present value of the future Special Improvements Taxes to be lost as a result of such zoning change estimated in accordance with the formula set forth in Appendix G as a condition precedent to such rezoning.

Section 408. Transfer or Assignment of Rights to Receive Payments.

(a) The Parties expressly agree that the Board shall have the right, in its sole discretion, to transfer or assign its rights to receive payments from the Fiscal Agent or otherwise hereunder in connection with fulfilling its obligations under this District Contract; provided however, that no such transferee or assignee, except the trustee or trustees for the State Bonds of 2002, shall have any right to enforce any rights of the Board by means of any judicial or administrative proceeding against the District, the Commission, Loudoun County, Fairfax County, or any officer, employee or agent thereof, and the Board shall be responsible for informing any such transferees or assignees of this limitation on their rights prior to any such transfer or assignment by the Board. Notwithstanding such transfer or assignment, the Board shall retain the obligation to withhold funds in accordance with Section 406 in the event of any deficiency in Special Tax revenues.

(b) The Parties expressly agree that the Authority shall have the right, in its sole discretion, to transfer or assign its rights to receive payments from the Fiscal Agent or otherwise hereunder in connection with fulfilling its obligations under this District Contract; provided however, that no such transferee or assignee, except the trustee or trustees for the Authority Bonds, shall have any right to enforce any rights of the Authority by means of any judicial or administrative proceeding against the District,

the Commission, Loudoun County, Fairfax County, or any officer, employee or agent thereof, and the Authority shall be responsible for informing any such transferees or assignees of this limitation on their rights prior to any such transfer or assignment by the Authority.

ARTICLE V

MISCELLANEOUS

Section 501. Term of Contract. The Term of this District Contract shall commence on the Effective Date and terminate upon payment in full of the District Obligation.

Section 502. Priority and Amendments. As of the Effective Date, this District Contract constitutes the entire agreement between the Parties with respect to the subject matter herein, and supersedes the Original Contract between the District and the Board dated September 1, 1988, and all amendments thereto, which shall be null and void. This District Contract may be amended in writing by the Parties.

Section 503. Other Contracts. The Parties hereto may enter into other contracts concerning the request and levy of an additional Special Improvements Tax and the collection of additional Special Tax Revenues so long as: (i) the provisions of such contracts do not conflict with or affect the request and levy of the Special Improvements Tax and the collection of Special Tax Revenues under the terms of this District Contract and the Local Contract; and (ii) the aggregate amount of all Special Improvements Tax payable by the Commission does not exceed the limit set forth in the District Act.

Section 504. Amendments of Local Contract. The Commission shall not agree to any amendment of the Local Contract without the approval of the other Parties to this District Contract.

Section 505. Successors. This District Contract shall be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective successors.

Section 506. Severability. If any provision of this District Contract shall be held to be illegal or invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof, and this District Contract shall be construed and enforced as if such illegal or invalid provision had not been contained in it, provided, however, that in no circumstance shall the financial obligation of the Commission, the District, the Board or either County be any greater than as expressly set forth in this District Contract.

Section 507. Counterparts. This District Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

Section 508. Notices. Unless otherwise provided in this District Contract, all notices, approvals, consents, requests and other communications under this District Contract shall be in writing and shall be deemed to have been given when delivered in person, or when sent by Federal Express or a comparable express courier service, or when mailed by registered or certified mail, postage prepaid, addressed (a) if to the Board, at 1401 E. Broad Street, Richmond, Virginia 23219 (Attention: Chair), (b) if to the Authority, at 12000 Government Center Parkway, Suite 561, Fairfax, Virginia 22035 (Attention: Chief Financial Officer), or (c) if to the Commission, at both 12000 Government Center Parkway, Suite 552, Fairfax, Virginia 22035 (Attention: County Executive), and 1 Harrison Street, S.E. Leesburg, Virginia 20177-7000 (Attention: County Administrator). The Parties may, by notice given under this District Contract, designate any additional or different addresses or persons to which subsequent demands, notices, approvals, consents, requests and other communications shall be sent.

IN WITNESS WHEREOF, the Parties have caused this District Contract to be executed on their behalf by their duly authorized officers.

COMMONWEALTH TRANSPORTATION BOARD

By: _____

Title: _____

Date: _____

FAIRFAX COUNTY ECONOMIC DEVELOPMENT
AUTHORITY

By: _____

Title: _____

Date: _____

STATE ROUTE 28 HIGHWAY TRANSPORTATION
IMPROVEMENT DISTRICT COMMISSION

By: _____

Title: _____

Date: _____