

AMENDED AND RESTATED  
FISCAL AGENT AGREEMENT

by and among

BOARD OF SUPERVISORS OF  
FAIRFAX COUNTY, VIRGINIA

and

BOARD OF SUPERVISORS OF  
LOUDOUN COUNTY, VIRGINIA

and

U.S. BANK NATIONAL ASSOCIATION  
as Fiscal Agent

\_\_\_\_\_ 1, 2012

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This AMENDED AND RESTATED FISCAL AGENT AGREEMENT, dated as of \_\_\_\_\_, 2012 (this “Agreement” or this “Fiscal Agent Agreement”) by and among the BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, the governing body of Fairfax County, Virginia (“Fairfax County”), the BOARD OF SUPERVISORS OF LOUDOUN COUNTY, VIRGINIA, the governing body of Loudoun County, Virginia (“Loudoun County”, together with Fairfax County, the “Counties”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America and having a corporate trust office in Richmond, Virginia, which is authorized under such laws to exercise corporate trust powers and is subject to examination under such authority, as Fiscal Agent (said national banking association and any bank, banking association or trust company becoming successor fiscal agent under this Fiscal Agent Agreement being hereinafter sometimes called the “Fiscal Agent”),

**WITNESSETH:**

**WHEREAS**, the Counties and State Route 28 Highway Transportation Improvement District Commission (the “Commission”), a political subdivision appointed by the Fairfax County, Virginia Board of Supervisors and the Loudoun County, Virginia Board of Supervisors (together with the Fairfax County, Virginia Board of Supervisors the “Boards of Supervisors”) pursuant to the Primary Highway Transportation Improvement in Multi-County Areas Act (Virginia Code § 15.1-1372 et seq., as restated and amended as Virginia Code § 15.2-4600 et seq as amended (the “District Act”), have entered into an Amended and Restated Local Contract, dated November 1, 2006 (the “Local Contract”), which provides, among other things, the duty of the Commission to make requests to the Board of Supervisors for the levy of a special improvements tax and the collection of special tax revenues and a copy of which appears as Annex A hereto; and

**WHEREAS**, the Commonwealth Transportation Board (the “Board”), the Commission and the Fairfax County Economic Development Authority (the “Authority”) have entered into an Amended and Restated District Contract, dated as of \_\_\_\_\_, 2012 (the “District Contract”) which provides among other things, an agreement to undertake certain 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 (the “District Project”), an agreement among the parties regarding the method of financing the District Project and the procedures to follow for requesting the Boards of Supervisors to levy a special improvements tax and collect special tax revenues in accordance with the District Act and a copy of which appears as Annex B hereto; and

**WHEREAS**, the Board under a Master Indenture of Trust dated as of October 1, 2002 (the “Board Master Indenture”) with a corporate trustee (the “Board Trustee”) has issued Commonwealth of Virginia Transportation Contract Revenue Bonds (Route 28 Project) Series 2002 to provide funding for certain transportation projects on State Route 28 and to refund obligations incurred by the Board for such purposes and contemplates the issuance of additional bonds and refunding bonds (collectively, the “Board Bonds”); and

**WHEREAS**, the Board Master Indenture provides for each County to transfer to the Fiscal Agent by the first day of each month, an amount equal to the special tax revenues collected by that County by the first day of the prior month and not yet paid to the Fiscal Agent.

**WHEREAS**, the Authority under an Amended and Restated Trust Agreement dated as of November 1, 2006 (the “Authority Trust Agreement”) with U.S. Bank National Association (in its capacity as trustee under the Authority Trust Agreement, the “Authority Trustee”) has issued a series in each of 2003, 2004, 2007 and 2008 of Fairfax County Economic Development Authority Transportation Contract Revenue Bonds (Route 28 Project) to provide funding for certain transportation projects on State Route 28, and such Authority Trust Agreement allows for the refunding of such bonds, in whole or in part (collectively, the “Authority Bonds”); and

**WHEREAS**, in order to allocate appropriately the special tax revenues collected in the District and keep such payments for payment of the Board Bonds and Authority Bonds in the manner contemplated in the District Contract, the Counties and the Fiscal Agent have entered into this Agreement; and

**WHEREAS**, the Board Master Indenture provided that upon the initial issuance by Authority of Authority Bonds, the Revenue Stabilization Fund was transferred to the Authority Trustee and the Revenue Fund and the District Project Completion Fund were transferred to the Fiscal Agent under this Fiscal Agent Agreement and the duties and responsibilities imposed on the Fiscal Agent under the Board Master Indenture were transferred to and allocated between the Authority Trustee and the Fiscal Agent under this Fiscal Agent Agreement, all subject to the prior written consent of the Board; and

**WHEREAS**, the Board has heretofore granted its written consent to such transfers and allocations of Funds, duties and responsibilities; and

**WHEREAS**, the Fiscal Agent under this Fiscal Agent Agreement has received, among other things, the transfer of the Revenue Fund and the corpus of cash and investments to the credit thereof and of the District Project Completion Fund and the corpus of cash and investments to the credit thereof, the records of the Board Trustee relating to such Funds and certain material information provided by the Board Trustee to the Fiscal Agent and shall thereafter hold and administer such Funds in accordance with the provisions hereof;

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS AND RULES OF CONSTRUCTION

Section 101. Definitions. Unless otherwise defined herein, words defined in the Authority Trust Agreement, are used in this Agreement with the meanings assigned to them in the Authority Trust Agreement. Any word used in this Agreement and not defined herein or in the Authority Trust Agreement is used in this Agreement with the meanings assigned to it in the

District Contract, including those definitions amended in Section 201 of the First Amendment to Amended and Restated District Contract.

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

(a) Words importing the singular 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 Agreement.

(c) The headings and Table of Contents herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

## ARTICLE II

### DUTIES OF COUNTIES AND FISCAL AGENT

Section 201. Special Tax Revenues. Pursuant to the requirements of Sections 301 and 302 of the Local Contract and Sections 401 and 402 of the District Contract and the directions of the District, the Counties agree to collect all Special Tax Revenues received from the imposition of the Special Improvements Tax within each County's boundaries. Furthermore, the Counties agree to pay over to the Fiscal Agent all collected Special Tax Revenues by the first day of each month. Such payment of Special Tax Revenues is to be no later than forty-five (45) days after receipt.

Section 202. Establishment of Funds. There are hereby created with the Fiscal Agent the Revenue Fund and the District Project Completion Fund that are to be held as trust funds by the Fiscal Agent for the benefit of the Counties, the Board and the Commission.

Section 203. Deposit and Allocation of Special Tax Revenues by Fiscal Agent.

(a) The Fiscal Agent shall deposit all Special Tax Revenues, as received from the Counties, in the Revenue Fund. The Fiscal Agent shall also credit to the Revenue Fund any investment earnings on amounts in the Revenue Fund. The Fiscal Agent shall credit the Revenue Fund with any other moneys which are received by it and which are accompanied by instructions that such moneys are to be deposited into the Revenue Fund.

(b) Based upon schedules of debt service required to be provided to the Fiscal Agent by the Board regarding Board Bonds and the Authority regarding Authority Bonds and any cash then on hand in the Revenue Fund, the Fiscal Agent shall calculate the Annual Authority Share, the Authority Proportion, the Annual Board Share, the Board Proportion and the Combined Debt Service on each March 15, commencing March 15, 2004. The Fiscal Agent is to send a copy of such calculations to the parties to the District Contract at the addresses set forth therein.

(c) By each January 25 and August 15, the Fiscal Agent shall send notifications to the Board Trustee and the Authority Trustee (together, the "Trustees") that indicate the moneys

then on deposit in the Revenue Fund (after deducting the Fiscal Agent's fees and expenses then due) and in the District Project Completion Fund and available to be transferred to each Trustee on the second Business Day prior to the next April 1 or October 1 for the payment of debt service due on such dates on the Authority Bonds or the Board Bonds as applicable (the "first notice"). If the amount indicated in the first notice as available to be so transferred is less than the debt service for the Authority Bonds and the Board Bonds, by the following March 15 or September 15, respectively, the Fiscal Agent shall send a second notification to the Trustees (the "second notice") that indicates the moneys then on deposit in the Revenue Fund and the District Project Completion Fund and available to be transferred to the Trustees on the second Business Day prior to the next April 1 or October 1, as the case may be, for the payment of debt service due on the Authority Bonds and the Board Bonds on that April 1 or October 1.

Section 204. Transfers from the Revenue Fund.

(a) The Fiscal Agent shall transfer from the Revenue Fund to the Board Trustee and the Authority Trustee on the second Business Day prior to the next April 1 and October 1 an amount equal to the principal and interest or interest scheduled to become due on the Board Bonds and the Authority Bonds, respectively, on such April 1 or October 1, as the case may be; provided, however, that if the amount in the Revenue Fund is less than the total amount of the principal and interest or interest coming due on such April 1 or October 1, then the Fiscal Agent shall pay to the Board Trustee an amount equal to the Board Proportion of the amount in the Revenue Fund and to the Authority Trustee an amount equal to the Authority Proportion of the amount on deposit in the Revenue Fund, and make the further transfer described in Section 205.

(b) Under Section 508 of the Board Master Indenture, the Board Trustee is required to provide notice to the Fiscal Agent if such Trustee holds moneys on any January 20 or July 20 that are available to pay principal and interest on the Board Bonds on the next April 1 or interest on the Board Bonds on October 1. The Fiscal Agent is to take into account such amounts when determining the amount of moneys required to be transferred to the Board Trustee to meet the debt service on the Board Bonds and the Fiscal Agent may deduct such amounts from any potential shortfall amount or actual shortfall amount.

(c) In accordance with Section 401 of the District Contract and Sections 502(iv) and 506 of the Authority Trust Agreement, on or after April 2 of each year, after the last of the payments of the Annual Authority Share and the Annual Board Share for the Fiscal Year have been made, any moneys remaining in the Revenue Fund shall be transferred by the Fiscal Agent to the Authority Trustee for deposit into the Revenue Stabilization Subfund until the balance in the Revenue Stabilization Subfund equals the Revenue Stabilization Subfund Requirement.

(d) Any Excess Revenues in the Revenue Fund remaining after the required transfers to the Board Trustee and the Authority Trustee pursuant to Section 204 (a) and (c) are to be set aside, immediately following the transfer, if any, pursuant to subsection (c) above, with the Fiscal Agent and credited to the District Project Completion Fund.

Section 205. District Project Completion Fund.

(a) If there has been a shortfall in the amounts paid from the Revenue Fund pursuant to Section 204 as the Annual Authority Share and the Annual Board Share from the Combined Debt Service, the Fiscal Agent shall transfer from the District Project Completion Fund on the second Business Day preceding each April 1 (1) to the Authority Trustee for deposit in the Authority Debt Service Subfund an amount equal to the shortfall in the Annual Authority Share from the debt service on the Authority Bonds and (2) to the Board Trustee for deposit in the appropriate debt service fund an amount equal to the shortfall in the Annual Board Share from the scheduled debt service on the Board Bonds. If the moneys to be so transferred from the District Project Completion Fund are less than the aggregate shortfall, the Authority Proportion and the Board Proportion shall be used to calculate the amounts of the moneys to be transferred to the Authority Trustee or to the Board Trustee.

(b) On or before each scheduled principal payment date on the TPOF loan referred to in the Transportation Partnership Opportunity Fund Loan Financing Agreement of October 23, 2006, by and among the Commission and the Department, the Fiscal Agent shall transfer from available moneys in the District Project Completion Fund to the Director of the Department's Fiscal Division an amount equal to the principal payment due on such date.

(c) Except as noted in the immediately two preceding paragraphs, the Fiscal Agent shall transfer moneys from the District Project Completion Fund based solely upon the written directions from the Commission. Upon each requested transfer, the Commission will certify to the Fiscal Agent that the written directions are in conformity with Sections 302(f) and 401(e) of the District Contract.

Section 206 Counties to Determine Any Reserve Subfund Deficiency, Budget Replenishment and Give Notice.

(a) In furtherance of its several commitments in Section 302(f) of the Local Contract to pay to the Authority Trustee for credit to the Reserve Subfund one-half of the amount of any deficiency in the amount required by the Authority Trust Agreement to be to the credit of the Reserve Subfund, each Board of Supervisors further agrees that it will cause the County's chief executive officer, in preparing the County's operating budget for each Fiscal Year that any Authority Bonds remain outstanding, to identify or estimate and include as separate line items therein one-half of the amount of (i) any existing deficiency in the amount to the credit of the Reserve Subfund and (ii) any other deficiency in the amount to the credit of the Reserve Subfund that such executive estimates will likely occur during the period beginning on or about April 1 of the current Fiscal Year and ending on the last day of the Fiscal Year for which the budget is proposed.

(b) In estimating the occurrence (or not) and amount of any deficiency described in clause (ii) of subsection (a) above, the chief executive shall take into account, among other things such executive shall deem relevant, actual collections in both Counties of the Special Improvements Tax due on December 5 of the current Fiscal Year, the current fund balances, if any, of the Revenue Stabilization Subfund and the District Project Completion Subfund, the amount of Combined Debt Service for the current and succeeding Fiscal Year, the assessed value

of the property subject to the Special Improvements Tax in both Counties, and the product of the rate of the Special Improvements Tax and such assessed value.

(c) For purposes of facilitating the preparation of the estimates referred to in subsection (b) above, the Counties will cause their chief executive officers to share with each other information relative to their respective Counties, including the assessed value of property subject to the Special Improvements Tax and the Special Improvements Tax levied and collected therein, as shall be necessary to enable the chief executive officers to prepare such estimates.

(d) Each Board of Supervisors covenants to cause its chief executive officer, having made the estimates and prepared the proposed operating budget as described in subsection (a) above, (i) to notify the Fiscal Agent and the Authority Trustee on or before June 1 of the current Fiscal Year if such executive shall have estimated any deficiency described in clause (i) or (ii) of subsection (a) above, (ii) in such case, to furnish to the Fiscal Agent and the Authority Trustee a copy of the relevant section of the proposed budget containing the proposed appropriations, and (iii) in such case, to confirm to the Fiscal Agent and to the Authority Trustee on or before the last day of the current Fiscal Year the adoption by the Board of Supervisors of an operating budget for the County that includes the appropriations contained in the chief executive's proposed budget.

(e) Each Board of Supervisors further covenants to, after a review of Special Tax revenues collected, cause its chief executive officer to identify or make estimates of any deficiencies described in clause (i) or (ii) of subsection (a) above and if such deficiencies exist or will exist (i) to notify the Fiscal Agent and the Authority Trustee on or about August 15 or January 20 that a deficiency or estimated deficiency in clause (i) or (ii) of subsection (a) above exists, (ii) in such case such chief executive officer will propose a budget amendment, amendment to the adopted appropriation or increase any approval to the extent of the deficiency or estimate of the deficiency, and (iii) in such case, to confirm to the Fiscal Agent and to the Authority Trustee such amendments or increases to the budget.

### ARTICLE III

#### DEPOSITARIES OF MONEYS, SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 301. Security for Deposits. Any and all moneys deposited under the provisions of this Agreement shall, to the extent provided herein, be trust funds under the terms hereof and shall not be subject to any lien or attachment by any creditor of the Authority or the Board. Such moneys shall be held in trust and applied in accordance with the provisions of this Agreement.

All moneys deposited with the Fiscal Agent hereunder in excess of the amount guaranteed by the Federal Deposit Insurance Corporation or other federal agency shall be continuously secured, for the benefit of the Authority, the Board and the Holders, in the manner provided by State law for the security for public funds; provided, however, that it shall not be necessary for the Bond Registrar or any Paying Agent to give security for the deposit of any

moneys with it for the payment of the principal of or the redemption premium or the interest on any Bonds, or, except as specifically required by this Agreement, for the Authority, the Board or any Trustee to give security for any moneys that shall be represented by obligations purchased under the provisions of this Article as an investment of such moneys.

All moneys shall be credited to the particular Fund to which such moneys belong.

Section 302. Investment of Moneys. Amounts in the Funds held by the Fiscal Agent shall be separately invested and reinvested by the Fiscal Agent, as directed by the Commission in Investment Obligations, so long as such investments are authorized for investment of public funds by the Investment of Public Funds Act, Chapter 45, Title 2.2 of the Virginia Code, or any successor provision of law.

Section 303. Valuation. For the purpose of determining the amount on deposit to the credit of any Fund, obligations in which money in such Fund shall have been invested shall be valued at amortized cost if the average weighted life of the investments to the credit of such fund is five years or less or if more than five years at the market value or the amortized cost thereof, whichever is lower.

The Fiscal Agent shall value the Investment Obligations in the Funds and accounts held by it at least once in every Bond Year and report such balances to Authority, the Board, the Commission and the Counties. In addition, the Investment Obligations shall be valued by the Fiscal Agent at any time requested by an Authority Representative or Board Representative on reasonable notice (which period of notice may be waived or reduced by the Fiscal Agent); provided, however, that the Fiscal Agent shall not be required to value the Investment Obligations more than once in any calendar month.

#### ARTICLE IV

##### CONCERNING THE FISCAL AGENT

Section 401. Protections and Standards of Care. The Fiscal Agent is entitled to the same protections and subject to the same standards of care as are set forth, and may resign and be removed as provided for the Authority Trustee, in Article IX of the Authority Trust Agreement. Such provisions are hereby incorporated into this Agreement. In the event of a resignation or removal of the Fiscal Agent, the successor Fiscal Agent must meet the standards applicable to a successor to the Authority Trustee under Section 912 of the Authority Trust Agreement.

#### ARTICLE V

##### MISCELLANEOUS

Section 501. Agreement Effective. This Agreement shall take effect immediately upon its execution and delivery.

Section 502. Amendments. This Agreement may be amended in writing signed by the parties; provided, however, that no amendment may be made that affects the rights or

responsibilities of the Authority or the Authority Trustee or the Board or the Board Trustee without the written consent of the affected person.

Section 503. Parties Alone Have Rights under Agreement; Exceptions. Except as herein otherwise expressly provided, nothing in this Fiscal Agent Agreement, express or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the parties, any right, remedy or claim, legal or equitable, under or by reason of this Fiscal Agent Agreement or any provision hereof, this Fiscal Agent Agreement and all its provisions being intended to be and being for the sole and exclusive benefit of the parties; provided, however, that the parties hereby agree and acknowledge that the Authority and the Board and their respective assigns including the Authority Trustee and the Board Trustee shall have the rights of a third party beneficiary under this Fiscal Agent Agreement with respect to those provisions hereof that relate to the rights and responsibilities of the Authority and its assigns, including the Authority Trustee, and the Board and its assigns, including the Board Trustee.

Section 504. Successors. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors.

Section 505. Severability. If any provision of the Agreement 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 Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained in it.

Section 506. Counterparts. This Agreement 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 507. Notices. Unless otherwise provided in this Agreement, all notices, approvals, consents, requests and other communications under this Fiscal Agent Agreement 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 of Supervisors of Fairfax County, at 12000 Government Center Parkway, Fairfax, Virginia 22035 (Attention: County Executive); (b) if to the Board of Supervisors of Loudoun County, at 1 Harrison Street, S.E., Leesburg, Virginia 20177-7000 (attention: County Administrator), (c) if to the Fiscal Agent, at U.S. Bank National Association, U.S. Bank Corporate Trust Services, 1051 East Cary Street, Suite 1150, Richmond, Virginia 23219 (attention: Lee Bedell), (d) if to the Fairfax County Economic Development Authority, at 8300 Boone Boulevard, Suite 450, Vienna, VA 221803 (attention: President), (e) if to the Authority Trustee, at U.S. Bank National Association, U.S. Bank Corporate Trust Services, 1051 East Cary Street, Suite 1150, Richmond, Virginia 23219 (attention: Lee Bedell), (f) if to the Commonwealth Transportation Board, at c/o Department of Transportation, 1401 East Broad Street, Richmond, Virginia 23219 (attention: Chairman) and (g) if to the Board Trustee, at SunTrust Bank, Corporate Trust Division, HDQ 5310, 919 East Main Street, 10<sup>th</sup> Floor, Richmond, Virginia 23219 (attention: Nancy Harrison). Copies of any notice sent by any one of the persons listed above (“a “Notice Party”) to any other Notice Party with respect to the subject matter of this Fiscal Agent Agreement shall be sent to all the other Notice Parties at the same time and by the same means of delivery as the original notice is given. The Notice Parties

may, by notice given under this Fiscal Agent Agreement, 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 Fiscal Agent Agreement to be executed on their behalf by their duly authorized officers.

BOARD OF SUPERVISORS OF  
FAIRFAX COUNTY, VIRGINIA

By: \_\_\_\_\_

BOARD OF SUPERVISORS OF  
LOUDOUN COUNTY, VIRGINIA

By: \_\_\_\_\_

U.S. BANK NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Title