



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Shannon Valentine
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 786-2701
Fax: (804) 786-6940

Agenda Item # 10

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

January 12, 2022

MOTION

Made By: Ms. Hynes **Seconded By:** Mr. Merrill

Action: Motion carried, unanimously

Title: Action on the Second Amended 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

WHEREAS, 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” and referred to collectively with each of the Board and the Authority, the “Parties”) have entered into an Amended and Restated District Contract, dated as of May 1, 2012 (including previous amendments and collectively, the “District Contract”), a copy of which is attached hereto as Exhibit A, which includes, 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 regarding the method of financing the District Project and the procedures to follow for requesting the Boards of Supervisors of the Counties (as defined below) to levy a special improvements tax and collect special tax revenues in accordance with the District Act; and

WHEREAS, the Board of Supervisors of Fairfax County, Virginia (“Fairfax County”), and the Board of Supervisors of Loudoun County, Virginia (“Loudoun County”, together with Fairfax County, the “Counties”), and the Commission 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

WHEREAS, the Board under a Master Indenture of Trust dated as of October 1, 2002 (the “Board Master Indenture”), has issued Commonwealth of Virginia Transportation Contract Revenue Bonds (Route 28 Project) Series 2002 and Series 2012 (the “Board Bonds”), to provide

funding for certain transportation projects on State Route 28 and to refund obligations incurred by the Board for such purposes; and

WHEREAS, the Authority under an Amended and Restated Trust Agreement dated as of November 1, 2006 (as supplemented, the “Authority Trust Agreement”) with U.S. Bank National Association in its capacity as trustee (the “Authority Trustee”) has issued Fairfax County Economic Development Authority Transportation Contract Revenue Bonds (Route 28 Project) Series 2003, Series 2004, Series 2007A, Series 2008, Series 2012 and Series 2016 (each a series of “Authority Bonds”) to provide funding for certain transportation projects on State Route 28 and to refund obligations incurred by the Authority for such purposes; and

WHEREAS, the Counties and U.S. Bank National Association in its capacity as fiscal agent (in such capacity, the “Fiscal Agent”) have entered into an Amended and Restated Fiscal Agent Agreement dated as of November 1, 2006 (the “Fiscal Agent Agreement”) in order to allocate appropriately the special tax revenues collected in the District and provide for the application thereof to the payment of the Board Bonds and Authority Bonds in the manner contemplated in the District Contract; and

WHEREAS, there has been presented to the Board the proposed form of a Second Amended and Restated District Contract by and among the Board, the Commission and the Authority the terms of which would amend the District Contract such that the terms and conditions of the District Contract allow for increased flexibility for structuring the refunding of Authority Bonds, including allowing a portion of funds in the District Project Completion Fund to be transferred to fund the Reserve Subfund in connection with the issuance of refunding Authority Bonds, including a Series 2022 refunding issue of Authority Bonds (the “2022 Authority Bonds”), as well as incorporating the prior amendments to the District Contract (the “Second Amended and Restated District Contract”), a copy of which is attached hereto as Exhibit B; and

WHEREAS, the Counties and the Fiscal Agent propose to execute a Second Amended and Restated Fiscal Agent Agreement (the “Second Amended and Restated Fiscal Agent Agreement”), the terms of which would amend the Fiscal Agent Agreement to contemplate the refunding of certain Authority Bonds, the issuance of the 2022 Authority Bonds and related transfer of a portion of funds in the District Project Completion Fund to the Reserve Subfund for 2022 Authority Bonds, a copy of which is attached hereto as Exhibit C.

Resolution of the Commonwealth Transportation Board
Action on the Second Amended 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
January 12, 2022
Page 3

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMONWEALTH
TRANSPORTATION BOARD:**

1. The Board hereby approves of and endorses the Second Amended and Restated District Contract and authorizes the Chair, and Secretary of Transportation, or his/her designee to execute the Second Amended and Restated District Contract on behalf of the Board and any and all Resolution of the Board documents required to comply with this resolution, with such additions and changes deemed necessary by the Chair, and Secretary of Transportation, or his/her designee.

2. The Board hereby approves the Second Amended and Restated Fiscal Agent Agreement substantially in the form presented to this meeting.

3. This resolution shall take effect immediately upon its adoption.

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
May 1, 2012

Table of Contents

	<u>Page</u>
Parties	1
Recitals	1-2
Granting Clause	2
ARTICLE I <u>DEFINITIONS AND RULES OF CONSTRUCTION</u>	
Section 101. Definitions	2-6
Section 102. Rules of Construction	6
ARTICLE II <u>REPRESENTATIONS</u>	
Section 201. Representations of Board	7
Section 202. Representations of Authority	8
Section 203. Representations of Commission	9
ARTICLE III <u>UNDERTAKING AND FINANCING THE DISTRICT PROJECT</u>	
Section 301. Agreement to Construct and Complete District Project	9-10
Section 302. Financing the District Project	10-12
Section 303. Cost of Project Improvements	12
Section 304. No Assignment, Sale or Encumbrance of Project Improvements	13
ARTICLE IV <u>PAYMENT OF SPECIAL TAX REVENUES</u>	
Section 401. District Payments	13
Section 402. Special Improvements Tax	15
Section 403. Records and Reports	15
Section 404. Annual Audit	15
Section 405. Prepayment of District Obligation	15
Section 406. Failure of District to Pay Special Tax Revenues	15
Section 407. Zoning Changes	16
Section 408. Transfer or Assignment of Rights to Receive Payments	16

ARTICLE V
MISCELLANEOUS

Section 501. Term of Contract	17
Section 502. Priority and Amendments	17
Section 503. Other Contracts	17
Section 504. Amendments of Local Contract	17
Section 505. Successors	17
Section 506. Severability	17
Section 507. Counterparts	17
Section 508. Notices	17
Testimonium	19
Signatures	19
Appendix A1 Description of Phase I Transportation Improvements	
Appendix A2 Description of Phase II Transportation Improvements	
Appendix A3 Description of Phase II Project Improvements	
Appendix B Approvals	
Appendix C Litigation	
Appendix D District Project Construction Schedule	
Appendix E Anticipated Schedule of Financings	
Appendix F Formula for calculation of 75:25 Cost Allocation Upon Completion of the Transportation Improvements	
Appendix G Residential Rezoning Formula	

AMENDED AND RESTATED
DISTRICT CONTRACT

THIS AMENDED AND RESTATED DISTRICT CONTRACT is made as of May 1, 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 "NVTA") 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 NVTA 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.

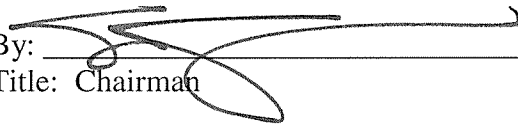
Section 506. Severability. If any provision of this District Contract shall be held to be illegal or invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof, and this District Contract shall be construed and enforced as if such illegal or invalid provision 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: Chairman

Date: _____

FAIRFAX COUNTY ECONOMIC DEVELOPMENT
AUTHORITY

By: _____

Title: _____

Date: _____

STATE ROUTE 28 HIGHWAY TRANSPORTATION
IMPROVEMENT DISTRICT COMMISSION

By: _____

Title: _____

Date: _____

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: Stuart L. Davis

Title: Chairman

Date: _____

STATE ROUTE 28 HIGHWAY TRANSPORTATION
IMPROVEMENT DISTRICT COMMISSION

By: _____

Title: _____

Date: _____

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

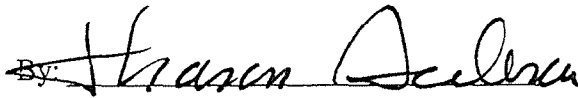
COMMONWEALTH TRANSPORTATION BOARD

By: _____
Title: _____
Date: _____

FAIRFAX COUNTY ECONOMIC DEVELOPMENT
AUTHORITY

By: _____
Title: _____
Date: _____

STATE ROUTE 28 HIGHWAY TRANSPORTATION
IMPROVEMENT DISTRICT COMMISSION

* By: 

Title: Secretary, Rt. 28 District Commission

Date: 5/18/12 _____

SECOND AMENDED AND RESTATED DISTRICT CONTRACT

by and among

COMMONWEALTH TRANSPORTATION BOARD,

FAIRFAX COUNTY ECONOMIC DEVELOPMENT AUTHORITY,

and

STATE ROUTE 28 HIGHWAY TRANSPORTATION
IMPROVEMENT DISTRICT COMMISSION

Dated as of _____ 1, 2022

Table of Contents

	<u>Page</u>
Parties	1
Recitals	1-2
Granting Clause	2
ARTICLE I <u>DEFINITIONS AND RULES OF CONSTRUCTION</u>	
Section 101. Definitions	2-6
Section 102. Rules of Construction	6
ARTICLE II <u>REPRESENTATIONS</u>	
Section 201. Representations of Board	7
Section 202. Representations of Authority	8
Section 203. Representations of Commission	9
ARTICLE III <u>UNDERTAKING AND FINANCING THE DISTRICT PROJECT</u>	
Section 301. Agreement to Construct and Complete District Project	9-10
Section 302. Financing the District Project	10-12
Section 303. Cost of Project Improvements	12
Section 304. No Assignment, Sale or Encumbrance of Project Improvements	13
ARTICLE IV <u>PAYMENT OF SPECIAL TAX REVENUES</u>	
Section 401. District Payments	13
Section 402. Special Improvements Tax	15
Section 403. Records and Reports	15
Section 404. Annual Audit	15
Section 405. Prepayment of District Obligation	15
Section 406. Failure of District to Pay Special Tax Revenues	15
Section 407. Zoning Changes	16
Section 408. Transfer or Assignment of Rights to Receive Payments	16

ARTICLE V
MISCELLANEOUS

Section 501. Term of Contract	17
Section 502. Priority and Amendments	17
Section 503. Other Contracts	17
Section 504. Amendments of Local Contract	17
Section 505. Successors	17
Section 506. Severability	17
Section 507. Counterparts	17
Section 508. Notices	17
Testimonium	19
Signatures	19
Appendix A1 Description of Phase I Transportation Improvements	
Appendix A2 Description of Phase II Transportation Improvements	
Appendix A3 Description of Phase II Project Improvements	
Appendix B Approvals	
Appendix C Litigation	
Appendix D District Project Construction Schedule	
Appendix E Anticipated Schedule of Financings	
Appendix F Formula for calculation of 75:25 Cost Allocation Upon Completion of the Transportation Improvements	
Appendix G Residential Rezoning Formula	

SECOND AMENDED AND RESTATED
DISTRICT CONTRACT

THIS SECOND AMENDED AND RESTATED DISTRICT CONTRACT is made as of _____ 1, 2022, 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 previously entered into an Amended and Restated District Contract, dated as of May 1, 2012, 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.

G. The Parties now desire to enter into this Amended and Restated District Contract in connection with the refunding of the Authority's Transportation Contract Revenue Refunding Bonds (Route 28 Project) Series 2012.

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 "NVTA") 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 NVTA 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, in connection with the refunding of Authority Bonds, to transfer to the Reserve Subfund established under the trust agreement for the Authority Bonds an amount sufficient to cause the amount deposited in the Reserve Subfund to equal the Reserve Subfund Requirement as defined in such trust agreement, 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: _____

SECOND 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, 2022

Table of Contents

Page

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 101. Definitions..... 2
Section 102. Rules of Construction 3

ARTICLE II

DUTIES OF COUNTIES AND FISCAL AGENT

Section 201. Collection of Special Tax Revenues 3
Section 202. Establishment of Funds..... 3
Section 203. Deposit and Allocation of Special Tax Revenues by Fiscal Agent. 3
Section 204. Transfers from the Revenue Fund..... 4
Section 205. District Project Completion Fund. 5
Section 206. Counties to Determine Any Reserve Subfund Deficiency, Budget
Replenishment and Give Notice.....5

ARTICLE III

DEPOSITARIES OF MONEYS, SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 301. Security for Deposits..... 6
Section 302. Investment of Moneys..... 7
Section 303. Valuation..... 7

ARTICLE IV

CONCERNING THE FISCAL AGENT

Section 401. Protections and Standards of Care 7

ARTICLE V

MISCELLANEOUS

Section 501. Agreement Effective 7
Section 502. Amendments 7
Section 503. Parties Alone Have Rights under Agreement; Exceptions 8
Section 504. Successors 8

Section 505. Severability 8
Section 506. Counterparts 8
Section 507. Notices 8

Annex A
Annex B

This SECOND AMENDED AND RESTATED FISCAL AGENT AGREEMENT, dated as of _____ 1, 2022 (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 a Second Amended and Restated District Contract, dated as of _____ 1, 2022 (as so amended and restated, the “District Contract”) which provides among other things, an agreement to undertake refunding of certain of the Fairfax County Economic Development Authority’s Transportation Contract Revenue Refunding Bonds (Route 28 Project) Series 2012, 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; and

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, 2008, 2012, 2016, and 2022 of Fairfax County Economic Development Authority Transportation Contract Revenue Bonds (Route 28 Project) to provide funding for certain transportation projects on State Route 28, or refunding of all or portions of such bonds 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, 10th 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: _____
Title

BOARD OF SUPERVISORS OF
LOUDOUN COUNTY, VIRGINIA

By: _____
Title

U.S. BANK NATIONAL ASSOCIATION

By: _____
Title