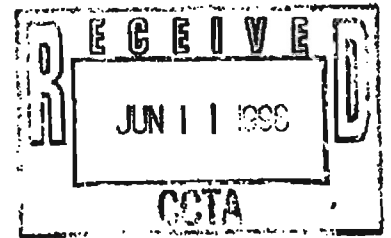


ORIGINAL



JOINT EXERCISE OF POWERS AGREEMENT

BY AND AMONG

THE CITY OF LAFAYETTE,

THE CITY OF ORINDA

AND

THE TOWN OF MORAGA

RELATING TO THE

LAMORINDA FEE

AND FINANCING AUTHORITY

LAMORINDA FEE AND FINANCING AUTHORITY

JOINT EXERCISE OF POWERS AGREEMENT

THIS AGREEMENT, dated June 8, 1998, by and among the **CITY OF LAFAYETTE** ("Lafayette"), a municipal corporation duly organized and existing under the laws of the State of California, the **CITY OF ORINDA** ("Orinda"), a municipal corporation duly organized and existing under the laws of the State of California and the **TOWN OF MORAGA** ("Moraga," and together with the other cities and towns, the "Cities"), a municipal corporation duly organized and existing under the laws of the State of California.

WITNESSETH:

WHEREAS, Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California authorizes the Cities to create a joint exercise of powers entity which has the power to jointly exercise the powers common to the Cities,

WHEREAS, the Cities are each empowered by law to undertake certain Projects and Programs;

WHEREAS, by this Agreement, the Cities desire to create and establish the Lamorinda Fee and Financing Authority in order (i) to implement the requirements of the Growth Management Program element of the Measure C Sales Tax Program to establish a development mitigation program to ensure that new growth is paying its share of the costs associated with such growth; and (ii) for the purposes set forth herein and to exercise the powers described herein;

NOW, THEREFORE, the Cities, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

SECTION 1
DEFINITIONS

Unless the context otherwise requires, the terms defined in this Section 1 shall for all purposes of this Agreement have the meanings herein specified:

"Authority" means the Lamorinda Fee and Financing Authority created by this Agreement.

"Board" means the governing board of the Authority.

"City" and "Cities", individually and collectively respectively, means the City of Lafayette, the City of Orinda and the Town of Moraga, each an existing municipal corporation under the laws of the State of California.

"City Project" means new projects not on the Expenditure Plan, which are added by a City in accordance with the procedure set forth in Attachment 2, paragraph B hereof.

"County" and "Contra Costa County" means the County of Contra Costa, a legal subdivision and body corporate and politic duly existing under the laws of the State of California.

"Expenditure Plan" means the list of Projects which is included in Attachment 2 hereof.

"Lamorinda" means the Lafayette-Orinda-Moraga area, including the territories of the Cities and the unincorporated portions of the Contra Costa County, the boundaries of which are generally coterminous with the boundaries of the Contra Costa Transportation Authority's Southwest Area Transportation Committee, excluding Danville, San Ramon and surrounding unincorporated areas.

"Lamorinda Project Management Committee" or "LPMC" means the transportation planning committee, consisting of one elected official from each of the Cities and organized for the purpose of collectively planning for transportation programs and projects within Lamorinda.

"Law" means Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (Sections 6500-6599).

"Measure C Sales Tax Program" is the one half cent sales tax and program of projects and programs approved by the voters of the County in November, 1988 and contained in the Measure C Expenditure Plan and Ordinance.

"Program" means the program of development fees to be adopted by the Cities for the purpose of funding the Projects.

"Projects" means the list of projects identified in the Expenditure Plan which is included in Attachment 2, as such Expenditure Plan list of Projects may be amended from time to time in accordance with this Agreement and Attachment 2 hereof.

"SWAT" means the Southwest Area Transportation Committee which is the designated Contra Costa Transportation Authority Regional Transportation Planning Committee for the cities of Lafayette, Orinda, Moraga, Danville and San Ramon and the unincorporated portion of the County within its southwest region.

SECTION 2

PURPOSE

This Agreement is made pursuant to the Law for the purposes set forth below.

- A. Establish Development Fee Program. To establish a development fee program within Lamorinda as more fully set forth in Attachment 1 to this Agreement, which attachment

is incorporated by this reference as if fully set forth herein, and to coordinate planning and implementation of the Program within a single public agency.

- B. Identify Projects. To identify Projects to be funded by the development fee solely or in conjunction with other funding sources as more fully set forth in Attachment 2 to this Agreement, which attachment is incorporated by this reference as if fully set forth herein.
- C. Establish Funding Goals. To establish funding goals for identified Projects and to seek commitments from the parties to this Agreement regarding funding for the Projects as more fully set forth in Attachment 2.
- D. Establish Funding Schedule. To establish a funding schedule for projects as more fully set forth in Attachment 2.
- E. Establish Fee Schedule and Mechanisms. To establish fee collection, financing and management mechanisms and to formalize institutional arrangements for the funding of the Program as more fully set forth herein and in Attachment 1.
- F. Exercise Powers. To exercise all the powers described in Section 5 herein.

SECTION 3

TERM, TERMINATION AND WITHDRAWAL

- A. Effective Date, Term and Termination. This Agreement shall become effective as of the date hereof and shall continue in full force until terminated by a supplemental agreement of the parties hereto, provided that in no event shall the Agreement terminate while any payments are due by any City to the Authority. The foregoing notwithstanding, the Agreement shall terminate not later than the termination date of the Measure C Sales Tax Program (March 31, 2009) or the date of termination of any extension of or replacement for such Measure C Sales Tax Program.

- B. Withdrawal. A party may withdraw from the Authority, provided it gives written notice of its intention to withdraw to the Authority and to the other parties not later than March 1 of such year. If given in a timely manner, the withdrawal shall be effective as of the end of the fiscal year in which such notice is given. The decision of a party to withdraw shall be made by that party in accordance with its own rules and procedures. The notice of withdrawal shall be in resolution form and shall be approved and adopted by the governing body of the withdrawing party. If the notice of withdrawal is not given in accordance with the provisions of Section 19 hereof on or before March 1 of the fiscal year, the withdrawal shall be effective as of the end of the next fiscal year. The withdrawing party shall continue to be responsible for any cost or charge assumed or incurred by the party arising from its being a party to the Agreement, up to and including the effective date of its withdrawal.

SECTION 4

THE AUTHORITY

- A. Creation of Authority. There is hereby created pursuant to the Law an agency and public entity to be known as the "Lamorinda Fee and Financing Authority". As provided in the Law, the Authority shall be a public entity separate from the Cities. The debts, liabilities and obligations of the Authority shall not constitute the debts, liabilities or obligations of the Cities. Within 30 days after the effective date of this Agreement or any amendment hereto, the Authority will cause a notice of this Agreement and any amendment hereof to be prepared and filed with the office of the Secretary of State of the State of California in the manner set forth in Section 6503.5 of the Law.
- B. Governing Board. The Authority shall be administered by the Board, whose members shall be elected council members from the Cities. Each party shall have one representative on the Board. Each Board Member shall be appointed by the governing body of the party which such member represents. Members of the Board shall serve at

the pleasure of their respective governing bodies, provided that, in any event, the term of office as a member of the Board of any Board member shall terminate when such member shall cease to be an elected official of the governing body of the party which such member represents. Each City may also appoint an Alternate Board Member from among its members to serve in the event of the unavailability of the Board Member.

- C. Board Compensation; Reimbursement of Expenses. Members of the Board shall not receive any compensation for serving as such, but shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a member if the Board shall determine that such expense shall be reimbursed and there are unencumbered funds available for such purpose.
- D. Staff Support. If requested by the Authority, a City will provide staff to support the activities of the Authority, the costs of such staff to be reimbursed by the Authority from its funds, or by pro rata assessment of each member.
- E. Technical Advisory Committee. The Authority shall establish a Technical Advisory Committee to be comprised of one staff member from each member and such other participants as shall be determined by the Authority to be advisable or necessary. The Technical Advisory Committee shall provide technical assistance, review and oversight on an advisory basis, of the Authority's Program and Projects.
- F. Meetings of Board.
 - (1) Regular and Special Meetings. The Board shall hold a regular meeting on the first Monday of each of April and October, and, by resolution, may provide for the holding of regular meetings at more frequent intervals; provided that if the Chair determines that there will be no business to transact at such meeting, such meeting may be canceled. The hour and place at which each such regular meeting shall be held shall be fixed by resolution of the Board. Special or emergency meetings

may be called, noticed, held and conducted as set forth in (2) below, in the event that a matter arises which requires action by the Board prior to the next scheduled regular meeting of the Board.

- (2) Legal Notice. All meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California (Sections 54950-54961)) or any successor legislation hereinafter enacted.
- (3) Minutes. The Secretary of the Authority shall cause minutes of all meetings of the Board to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Board and to the clerk of the governing body of each of the Cities.
- (4) Quorum. All regular Board Members (excluding ex officio Members) of the Board shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn meetings from time to time.

G. Officers: Duties: Bonding.

- (1) Chair. The Board members shall select from the members a Chair who shall serve as Chair of the Authority. The Chair shall have the duties set forth in the by-laws of the Authority.
- (2) Secretary. The Secretary of the Authority shall be designated by the Board and shall be a member of the staff of one of the Cities. The Secretary shall keep the records of the Authority, shall act as Secretary at the meetings of the Authority and record all votes, and shall keep a record of the proceedings of the Authority in a journal of proceedings to be kept for such purpose, and shall perform all duties incident to the office.

- (3) Treasurer. The Town Manager of the Town of Moraga is hereby designated as Treasurer of the Authority. Subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent, the Treasurer is designated as the depository of the Authority to have custody of all the money received by the Authority, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Law.
- (4) Auditor Controller. The Town Manager of the Town of Moraga, who performs the functions of auditor and/or controller for the Town of Moraga is hereby designated as Controller of the Authority, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Law. The Controller shall draw checks to pay demands against the Authority when the demands have been approved by the Authority.
- (5) Reimbursement. The Town of Moraga shall be reimbursed upon approval of the Board of charges to be made against the Authority for the services of the Treasurer and Auditor-Controller.
- (6) Duties of the Treasurer and Auditor-Controller; Filing of Official Bond. The Treasurer and Auditor-Controller of the Authority are designated as the public officers or persons who have charge of, handle, or have access to any property of the Authority, and each such officer shall file an official bond in the amount each such officer determines is necessary as required by Section 6505.1 of the Law; provided, that such bond shall not be required if the Authority does not possess or own property or funds with an aggregate value of greater than \$1,500.00.
- (7) Special Audit. The Treasurer and Auditor-Controller of the Authority are hereby authorized and directed to prepare or cause to be prepared: (a) a special audit as required pursuant to Section 6505 of the Law every year during the term of this

Agreement; and (b) a report in writing on the first day of February, May, August and November of each year to each member of the Board and to the clerk of the governing body of each of the Cities, which report shall describe the amount of money held by the Treasurer and Controller of the Authority for the Board, the amount of receipts since the last such report, and the amount paid out since the last such report.

- (8) Other Officers, Counsel, Consultants and Accountants. The Board shall have the power to appoint such other officers and employees as it may deem necessary and to retain independent counsel, consultants and accountants.

SECTION 5

POWERS

- A. Powers of the Authority. The Authority shall have all of the powers granted to joint powers authorities in Article 1 of the Law. Additionally, the Authority is authorized, in its own name, to do all acts necessary for the exercise of said powers for said purposes, including but not limited to any or all of the following: to make and enter into contracts; to employ agents and employees; and to sue and be sued in its own name.
- B. Restrictions on Exercise of Powers of the Authority. Except as otherwise provided herein, such power shall be exercised subject only to such restrictions upon the manner of exercising such power as are imposed upon the Cities in the exercise of similar powers, as provided in Section 6509 of the Law. The parties hereto agree that the Authority shall not have and shall not exercise the power of eminent domain.
- C. Additional Powers. Notwithstanding the foregoing, the Authority shall have any additional powers conferred under the Law, insofar as such additional powers may be necessary to accomplish the purposes set forth in Section 2 hereof.

SECTION 6
TERMINATION OF POWERS

The Authority shall continue to exercise the powers herein conferred upon it until the termination of this Agreement or until the Cities shall have rescinded this Agreement in accordance with the provisions hereof.

SECTION 7
FISCAL YEAR

Unless and until changed by resolution of the Board, the fiscal year of the Authority shall be the period from July 1 of each year to and including the following June 30, except for the first fiscal year which shall be the period from the date of this Agreement to the following June 30.

SECTION 8
DISPOSITION OF ASSETS

At the end of the term hereof or upon the earlier termination of this Agreement as set forth in Section 6 hereof, all assets of the Authority shall be distributed to the parties, subject to Section 9 hereof, pro rata, in accordance with their respective total contribution of development fees and other funds to the Authority.

SECTION 9
CONTRIBUTIONS AND ADVANCES

- A. Funds Contributions. Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by the Cities for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of any such contribution. Any such advance shall be made subject to repayment, and shall be repaid, in the manner agreed upon by the City, as the case may be, and the Authority at the time

of making such advance. It is mutually understood and agreed that, except as otherwise expressly provided in this Agreement, no City has any obligation to make advances or contributions to the Authority to provide for the costs and expenses of administration of the Authority, even though any may do so. The Cities may allow the use of personnel, equipment or property in lieu of other contributions or advances to the Authority.

- B. Reimbursement of Project Costs. Fees imposed in accordance with this Agreement, received by any City and payable to the Project sponsor for any Authority Project shall be retained by the City in accordance with applicable provisions of the law. The fee setaside amount provided for in Attachment 1, paragraph 1 L shall be deposited in a separate segregated account which shall be limited to the proceeds of such setaside amount. The funds in such account may be used by the City only to fund projects which are included for such City in the Expenditure Plan in Attachment 2 and City Projects added to the Expenditure Plan in accordance with Attachment 2, paragraph B. Any fees collected in excess of such fee setaside amount shall be promptly, but in no event later than thirty (30) days following receipt by the City, forwarded to the Authority to the attention of the Treasurer/Auditor/Controller.

SECTION 10

AGREEMENT NOT EXCLUSIVE

This Agreement shall not be exclusive and shall not be deemed to amend or alter the terms of other agreements between the Cities, or any two or more of them, related to the subject matter hereof, except as the terms of this Agreement shall conflict therewith, in which case the terms of this Agreement shall prevail.

SECTION 11
ACCOUNTS AND REPORTS

- A. **Establishment of Accounts; and Maintenance and Inspection of Books and Records.** The Authority shall establish and maintain such funds and accounts as may be required by good accounting practice. The books and records of the Authority shall be open to inspection at all reasonable times by the Cities, their representatives and to members of the public in accordance with applicable law. The Authority shall give an audited written report of all financial activities for each fiscal year to the Cities within twelve (12) months after the close of each fiscal year.
- B. **Retention of Independent Certified Public Accountant.** To the extent required by Section 6505.6 of the Law, the Controller of the Authority shall contract with a certified public accountant or public accountant to make, an annual audit of the accounts and records of the Authority in compliance with Section 6505.6 of the Law. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California and shall conform to generally accepted auditing standards. When such an audit of an account and records is made by a certified public accountant or public accountant, a report thereof shall be filed as public records with the Cities and, if required by Section 6505.6 of the Law, with the County Auditor/Controller of the Contra Costa County. Such report shall be filed within twelve (12) months of the end of the fiscal year or years under examination.
- C. **Audit Costs.** Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants, in making an audit pursuant to this Section shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for the purpose.

- D. Two-Year Audit. In any year the Authority may, by unanimous request of the Board, replace the annual special audit with an audit covering a two year period.
- E. Member Reports. Each of the Cities shall prepare and submit to the Authority not later than 90 days following the last day of each fiscal year of such City, a report of all fees received pursuant to this Agreement during the preceding fiscal year and retained by it in accordance with Section 9 hereof. The form and detailed contents of such reports shall be as determined by the Authority in accordance with the foregoing authorization..

SECTION 12
CONFLICT OF INTEREST CODE

The Authority shall adopt and from time to time may amend a Conflict of Interest Code as required by applicable law.

SECTION 13
BREACH

If default shall be made by any City in any covenant contained in this Agreement, such default shall not excuse the City from fulfilling its obligations under this Agreement and the Cities shall continue to be liable for the payment of contributions and the performance of all conditions herein contained. The Cities hereby declare that this Agreement is entered into for the benefit of the Authority created hereby and the Cities hereby grant to the Authority the right to enforce by whatever lawful means the Authority deems appropriate all of the obligations of each of the parties hereunder. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative and the exercise of one right of the Authority shall not impair the right of the Authority to any or all other remedies.

SECTION 14
LIABILITY AND INDEMNIFICATION

- A. **Authority Indemnification.** The Authority shall indemnify, defend and hold harmless each of the Cities and their respective officers, agents and employees, from any liability imposed for injury or damages occurring by reason of anything done or omitted to be done by the Authority under this Agreement or in conjunction with any obligation, responsibility or duty delegated to or assumed by the Authority under this Agreement. As described in C below, the Authority shall bear all expenses and costs and shall pay all settlements or final judgments arising out of any claim, action, or proceeding arising out of any obligation, responsibility or duty delegated to or assumed by the Authority under this Agreement, including the costs of defense as incurred.
- B. **City Indemnification.** Each City shall indemnify, defend and hold harmless the Authority and the other Cities, and their respective officers, agents and employees, from any liability imposed for injury or damages occurring by reason of anything done or omitted to be done by such indemnifying City under this Agreement or in conjunction with any obligation, responsibility or duty delegated to or assumed by such indemnifying City under this Agreement, including any challenge to the validity of a City Project added by the City to the Expenditure Plan. As described in C below, each such indemnifying City shall bear all expenses and costs and shall pay all settlements or final judgments arising out of any claim, action, or proceeding arising out of any obligation, responsibility or duty delegated to or assumed by such indemnifying City under this Agreement, including the costs of defense.
- C. **Costs and Expenses.** The indemnifying party shall bear all expenses, costs and shall pay all settlements or final judgments arising out of any claim, action or proceeding involving the injury to and/or death of any person or damages to or any loss of any property arising from any indemnification obligation of the indemnifying party under A or B above, including the costs of defense and settlement. Should a claim, action or proceeding of any

nature be brought at any time against a party entitled to indemnification pursuant to A or B above, asserting liability on the part of the such party for such injury, death, damage or loss, the party entitled to such indemnification shall promptly provide notice to the indemnifying party of such claim, action or proceeding and shall tender the defense of such claim, action or proceeding to the indemnifying party which shall thereafter provide all such defense, indemnity and protections as are necessary under the provisions of this Agreement. The party entitled to indemnification shall provide such additional information or assistance as is reasonably requested by the indemnifying party to assist in the defense, prosecution or settlement of any such claim, action or proceeding. The indemnifying party may engage counsel of its choice to defend the indemnified party subject to the indemnified party's consent, such consent not to be unreasonably withheld.

SECTION 15

SEVERABILITY

Should any part, term, or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

SECTION 16

SUCCESSORS: ASSIGNMENT

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties. Except to the extent expressly provided herein, no party may assign any right or obligation hereunder without the consent of the other parties.

SECTION 17
AMENDMENT OF AGREEMENT

This Agreement, including Attachments 1 and 2, may be amended by supplemental agreement executed by each of the Cities at any time; provided however that no such amendment shall be entered into if such amended would conflict with the provisions of any bonds (as defined by Section 6585(c) of the Law), indenture, trust agreement, contract or other agreement securing or relating to any outstanding bonds of the Authority issued pursuant to the Law; and, provided further that the Expenditure Plan which is included in Attachment may also be amended to add new City Projects in accordance with the provisions of Attachment 2 hereof.

SECTION 18
FORM OF APPROVALS

Whenever an approval is required in this Agreement, unless the context specifies otherwise, it shall be given, in the case of any City, by resolution duly and regularly adopted by the city or town council of the City, and, in the case of the Authority, by resolution duly and regularly adopted by the Board. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

SECTION 19
NOTICES

Notices to a City hereunder shall be sufficient and effective upon delivery to the City Clerk. Notices to the Authority shall be sufficient upon delivery to the Secretary of the Authority.

SECTION 20
SECTION HEADINGS

All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

CITY OF LAFAYETTE

By: *Anne Goodin*

Attest:

City Clerk

Susan M. Juraitis

CITY OF ORINDA

By: *Alan Rubin*

Attest:

City Clerk

Mary R. Ellsworth

TOWN OF MORAGA

By: 

Attest: 

Town Clerk

ATTACHMENT 1

to

Lamorinda Fee and Financing Authority

Joint Exercise of Powers Agreement

IMPLEMENTATION OF DEVELOPMENT MITIGATION FEE PROGRAM

I. Imposition and Modification of Fees; Credit for Existing Congestion Mitigation and Similar Fees used to fund Projects, and Fee Setaside.

A. Each party shall adopt the Lamorinda Transportation Development Fee Program (each fee individually a "Fee" and all such fees, the "Fees"), identifying fees to be charged and the list of projects to be funded with the Fees (individually, a "Project" and collectively, the "Projects.") on or before May 15, 1998; provided, that the Fee is not required to be applied to any project which has a fully executed development agreement on or before July 1, 1998.

B. Initial Fees shall be as follows:

<u>Land Use Category</u>	<u>Fee Schedule</u>
Single Family	\$3,795 per dwelling unit
Multi-family	\$2,367 per dwelling unit
College/University ^{1/}	\$ 902 per student
Commercial ^{2/}	\$1.60 per square foot
Cost per peak hour trip end ^{3/}	\$3,757

1/ This category covers new students at four-year college/university. It is not equivalent to group housing (college dormitories), which usually involve special circumstances that require a project-specific traffic impact analysis. The fee amounts shown here is based on a trip generation rate that reflects the national average (TTE Trip Generators, 5th Edition, page 804).

2/ Includes but is not limited to retail, office and other commercial uses.

3/ A "trip end" is one trip from origin to destination. A round trip would constitute two trip ends. Any proposed land use which does not fit into one of the categories preceding this

C. No party may adjust the above Fee structure without the consent of the other parties after a comprehensive review by all of the members with respect to equity and the impact of any such proposed adjustment on the Projects to be funded with the Fees.

D. Reimbursement of a party for funds advanced shall, as provided in Section 9, not include any interest on the amount due.

E. Fee rates have been calculated and may be adjusted as set forth herein, based on the average of AM and PM peak hour trips and land use categories and, except as otherwise provided herein, shall be uniformly adopted by the parties.

F. Fees may be updated and adjusted if needed not less frequently than every five years, in order to take into account changes in cost estimates for the Projects, development rates within Lamorinda, Project priorities and other funding commitments. The Authority shall prepare, circulate and approve by unanimous vote of the Members of the Governing Board within six (6) months of the effective date of its organization, a Strategic Plan which provides an overview of Project status, the level of plan development, projected revenues accounting for inflation and projected expenditures over a ten (10) year period. Not less frequently than every five years, the Authority shall prepare, circulate and adopt by unanimous vote of the Governing Board, a Strategic Plan update, providing a status report as to Projects and plan development and projected revenues and expenditures which includes cash flows and Project estimates for a ten (10) year period from the date of the Strategic Plan update. To the extent that Fees are updated, such update shall be included in a Strategic Plan update.

G. Effective January 1, 1999 and on each subsequent anniversary date of such date, each party shall increase the amount of each of the Fees set forth above over the amounts in effect for the next preceding calendar year, by the amount of the increase in the Engineering

category will pay a fee based on this calculation and as determined by a traffic study performed by the project proponent and reviewed and approved by the City.

News-Record Construction Cost Index for the San Francisco Bay Area for the period ending September 30 of the preceding fiscal year over the year-earlier amount.

H. The parties agree to continue to seek other funding sources for the Projects and to the extent that other funding is secured for a Project, any surplus Fees shall be shifted to another Project then not fully funded.

I. Fees shall be levied by each party on each development within its jurisdiction which is not exempt from or otherwise precluded from imposition of the Fee, including to the extent it may lawfully do so, in connection with the renegotiation or replacement of any development agreement in place at the time of imposition of the Fee Program by the party.

J. By rule or regulation unanimously adopted by the parties hereto, the parties may exempt certain classes or types of development, or any specific or single development, from imposition of the Fees. Such exemption may be in the form of a partial or full reduction in the amount of the Fees. Types of developments which might be exempted include, but would not be limited to, low-moderate income housing and transit-based development. Should a party grant an exception or exemption which has not been approved as herein set forth, such party shall be in violation of this Agreement.

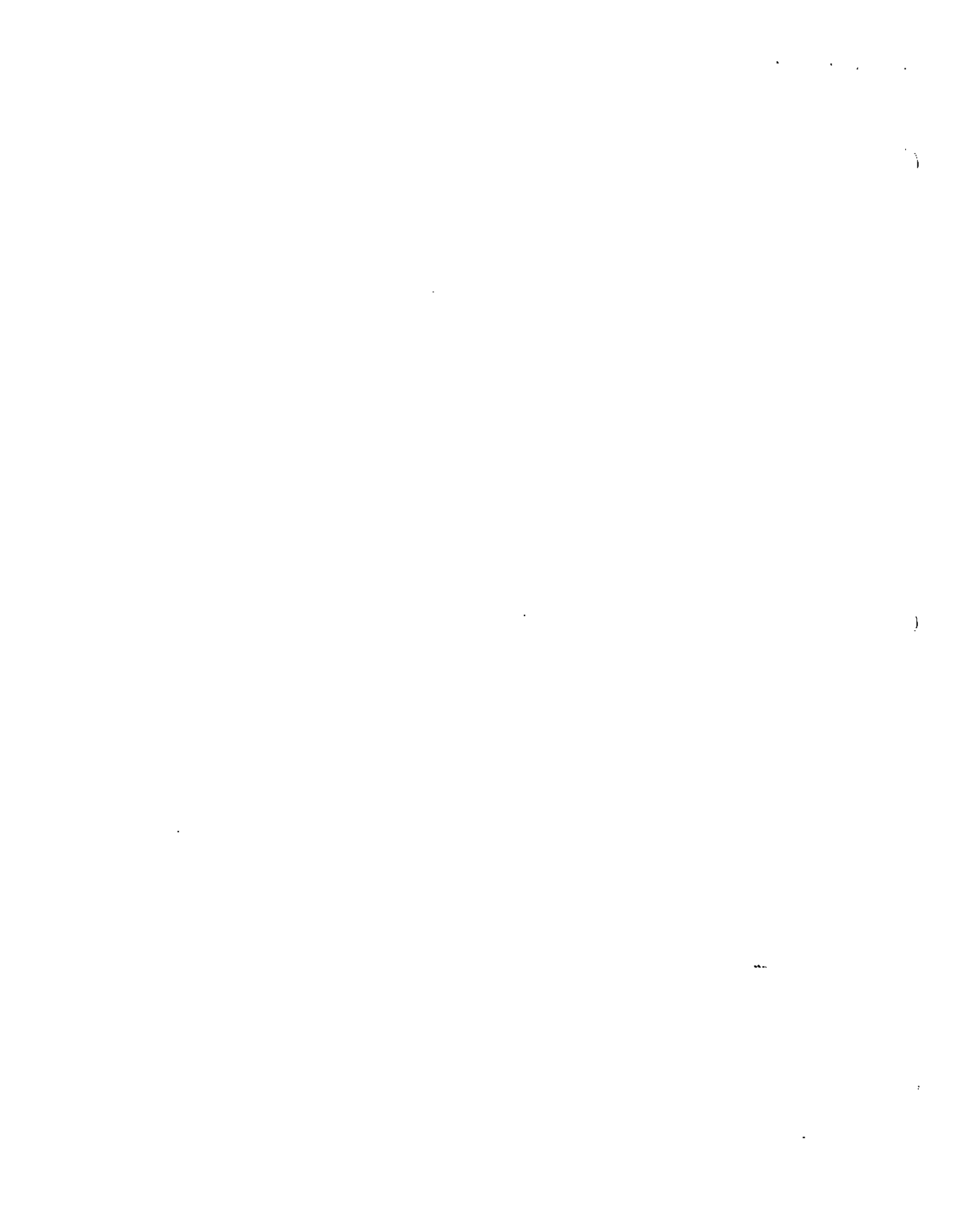
K. A party may receive a credit against the payment of Fees for construction of a usable section of any of the Projects identified in the Agreement. The amount of credit shall be the cost of construction of the portion of the Project and the cost of the land acquired to complete that segment as determined by the Authority. The credit may be used to reduce the Fee obligation of the developer which is constructing the usable section and/or, if the developer pays the Fees as well as contributing the usable section, may be used by the party to reduce or eliminate the Fee obligation of another developer or class of developments; provided that the aggregate credit shall not exceed in value the value of the usable section contributed as set forth above.

L. Each of the Cities shall be entitled to set aside a portion of collected fees for local transportation fee programs which have been adopted and implemented (the "setaside" portion herein.) Such setaside amount may be used to fund Projects, and new City Projects added to the Expenditure Plan in accordance with Attachment 2, paragraph B below, within the jurisdiction of the City making the setaside. The maximum allowable setaside shall be in the following amounts:

<i>Category</i>	<i>Total Fee</i>	<i>Setaside</i>	<i>Regional Fee</i>
<i>Orinda and Lafayette</i>			
Single Family	\$3,795	\$3,000	\$795
Multi-Family	\$2,367	\$1,867	\$500
Commercial	\$1.60 s/f	\$1.26 s/f	\$0.34 s/f
College and Univ.	\$902/student	\$713/student	\$189/student
Peak hour trip	\$3,757	\$2,968	\$789
<i>Moraga</i>			
Single Family	\$3,795	\$800	\$2,995
Multi-Family	\$2,367	\$500	\$1,867
Commercial	\$1.60 s/f	\$0.34 s/f	\$1.26 s/f
College and Univ.	\$902/student	\$189/student	\$713/student
Peak hour trip	\$3,757	\$789	\$2,968

II. Fee Collection and Management.

A. Fees collected in excess of setaside shall be promptly, but in no event later than thirty (30) days following the date of receipt of the fees by the City, forwarded to the Authority to the attention of the Treasurer/ Auditor/Controller to be deposited in the Authority's accounts in accordance with the provisions of this Agreement. The fee setaside retained by the parties shall be maintained in an account of the City retaining the fee in a separated segregated account in accordance with applicable law, and such amount shall be available for disbursement for the purpose of reimbursing an incurred Project cost, including any incurred City Project cost. Fees and other revenue in the possession of the Authority shall be held by the Authority in an account in accordance with applicable law. The Treasurer shall deposit all Authority funds (excluding setaside amounts) in a separate, segregated account of the Town of Moraga, which is hereby designated as fiscal agent for the Authority. Funds shall be maintained in such account to the credit of the Authority. The Treasurer/ Auditor/Controller shall be responsible upon his official bond for the safekeeping and disbursement of all Authority funds so held by him. Interest accruing on funds held in the Authority shall be deemed general funds available for any lawful purpose of the Authority. Unless otherwise agreed by the parties hereto, the total obligation of each party shall be the agreed upon contribution of Fees provided for in this Attachment 1. The obligation to contribute Fees to the Authority shall terminate on the earlier of the date on which the Projects have been fully funded and completed or the date on which the level of funding specified in Attachment 2, Paragraph C has been achieved, or upon the withdrawal of the contributing member (subject to any obligation to reimburse the Authority in accordance with this Agreement), or upon termination of the Agreement.



ATTACHMENT 2

Lamorinda Fee and Financing Authority Joint Exercise of Powers Agreement

PROJECTS; FUNDING COMMITMENTS AND ELIGIBLE COSTS; **IMPLEMENTATION SCHEDULE**

A. . List of Projects. The fees provided for in this Agreement shall be used exclusively for the Projects, including City Projects, listed in the Expenditure Plan which follows, as such Expenditure Plan may be amended from time to time, each of which is a highway or arterial improvement or transit project of sub-regional or regional significance. In the event that the Authority determines that one or more of the Projects cannot proceed, or if sufficient Fees become available to fund additional projects, new or substitute projects may be implemented, subject to nomination by one or more of the members, and to approval by unanimous vote of all the members of the Authority. Eligible projects shall be of regional significance and, if a replacement project, shall not receive funding under the Program in an amount in excess of the amount allocated to the replaced Project set forth in the Expenditure Plan in paragraph C below, unless additional Fees not required for Projects identified herein are available for the project.

B. Amendment to the Expenditure Plan to Add New City Projects. The nonsetaside portion of fees collected may only be used for Projects included on the Expenditure Plan as of the effective date of this Agreement. Anything in this Agreement to the contrary notwithstanding, each City may, in its sole discretion and subject to the following, from time to time and by action of its city or town council, amend the Expenditure Plan to add a City Project or City Projects for such City to be funded with the setaside portion of the fees collected in accordance with this Agreement by such City. In connection with the adoption of such amendment to the list of Projects for such City in the Expenditure Plan, the council of the City adopting the amendment shall make findings (i) that there is a reasonable relationship between

the City Project or City Projects which is/are to be added to the Expenditure Plan and for which setaside fees are proposed to be expended, and the impact on sub-regional traffic of the development upon which the fees are imposed or intended to be imposed; and (ii) that such City Project has a regional benefit. Promptly upon approval by the town or city council of the new City Project or City Projects, the City shall notify the Authority and the other parties hereto, and the Expenditure Plan shall be amended to include such new City Project or City Projects.

C. Funding Commitments and Eligible Costs. Program revenues shall be available for all necessary Project costs through completion of construction. Costs include, but are not limited to, environmental clearance, conceptual engineering, traffic studies, design, right of way acquisition, utility relocation, litigation and settlement costs and costs of construction; provided, however, that no more than 25% of any Program year's Fee revenues shall be expended in the aggregate for conceptual engineering, environmental clearance, traffic studies or design activities. The commitment to each Project shall be considered complete when the Project is accepted by Project's sponsor or sponsors. Funding amounts are in 1998 dollars. The following amounts are intended to be maximum commitments; actual funding commitments will depend upon Fee revenues.

EXPENDITURE PLAN*

Joint Jurisdictional	Project Cost	LTIP Funding	Unfunded
Joint Jurisdictional Expansion of School Bus Program	\$500,000	\$0	\$500,000
Lafayette			
Lafayette Principal Arterials Structural Improvements	9,011,100	0	9,011,100
Signal Coordination - Mt. Diablo Blvd., Moraga Rd.	220,000	220,000	0
Mt. Diablo/Oak Hill/Moraga Rd. Circulation	4,000,000	824,000	3,176,000
Deer Hill Rd./Oak Hill Rd. Capacity/Circulation	200,000	0	200,000
Oak Hill Rd. Park & Ride Facility	150,000	0	150,000
Reliez Valley Rd. Capacity & Safety Improvements	1,000,000	0	1,000,000
Pleasant Hill Rd. Improvements (capacity, signal upgrade)	1,000,000	0	1,000,000
Hidden Valley Rd./El Nido Ranch Rd. Improvements	800,000	0	800,000
Pleasant Hill Rd./Olympic Blvd. Signalization	200,000	0	200,000
Happy Valley Rd Safety Improvements	850,000	0	850,000
Lafayette Subtotal	\$17,431,100	\$1,044,000	\$16,387,100
Moraga			
Moraga Principal Arterials Structural Improvements	\$5,946,100	\$0	\$5,946,100
Carpool Lot Moraga Way near School Street	300,000	32,000	268,000
Moraga Subtotal	\$6,246,100	\$32,000	\$6,214,100
Orinda			
Orinda Principal Arterials Structural Improvements	\$6,804,300	\$0	\$6,804,300
Moraga Way Bike Lane Improvements	110,000	0	110,000
Moraga Way Pedestrian Improvements	275,000	0	275,000
Upper Happy Valley Rd Safety Improvements	600,000	0	600,000
Signal Coordination	40,000	40,000	0
Camino Pablo/Santa Maria NB Right Turn Lane	32,000	32,000	0
Santa Maria - third WB lane at Camino Pablo	152,000	152,000	0
Improve Pedestrian Access at Bus Stops	24,000	24,000	0
Bicycle Safety Improvements - Crossroads	65,000	0	65,000
Traffic Safety Improvements - Calming	165,000	0	165,000
Improvements to Moraga Way at Steinway	750,000	0	750,000
Orinda Subtotal	\$9,017,300	\$248,000	\$8,769,300
GRAND TOTAL	\$32,694,500	\$1,324,000	\$31,370,500

* All amounts in 1998 Dollars.

Administrative costs shall not exceed 1% of program revenues. Administrative costs shall not include the development of the JEPA, but shall include the administration of duties included in the Agreement.

Eligible Project costs will be determined by the Authority based on cost guidelines and other criteria to be developed by it. Where the Authority deems it advisable in

order to avoid undue burdens on Project sponsors, the Authority may advance fund Project expenses on a monthly, quarterly or other basis; Project costs will otherwise be reimbursed pursuant to procedures to be determined by the Authority.

D. Protecting Right of Way. Project sponsors, as a condition of Project funding through Fees, commit to protect Project rights of way, by, among other things, requiring dedication of right of way as a condition of development project approval or otherwise, pending Project commencement. Project sponsors further commit not to take actions which could adversely impact the cost of Projects, including, but not limited to, utility location or relocation, public development and the granting of easements in a proposed right of way.

E. Allocation of Regional Fees. Regional fees collected by the Authority shall be appropriated to projects included in the Expenditure Plan. As used herein, "regional fee" consists of the total Lamorinda Transportation Development Fee, less the setaside portion of the fee. Over the term of this Agreement, the regional fee proceeds shall be allotted by the Authority such that at the time this Agreement is terminated, the total appropriations from Agreement inception to termination shall be in accordance with the following percentages

- 55% of the regional fees collected shall be utilized to fund projects identified as Lafayette projects;
- 35% of the regional fees collected shall be utilized to fund projects identified as Orinda projects;
- 10% of the regional fees collected shall be utilized to fund projects identified as Moraga projects.

The foregoing percentages are an overall allotment of regional fees, as defined above, over the term of the Agreement, as defined in Section 3, and, other than with respect to regional fees allocated to Joint Jurisdictional projects identified in the Expenditure Plan, are not required to be applied to each appropriation of regional fees by the Authority. Overall percentage allotments shall be calculated using constant 1998 dollars.

For purposes of calculating the above percentages, funds allocated to projects identified in the Expenditure Plan as "Joint Jurisdictional" shall be deemed to have a relative

dollar value benefit to each of the three jurisdictions according to the above-listed percentages (i.e., 55% to Lafayette; 35% to Orinda; 10% to Moraga.)

F. Defense and Indemnification. Any costs of defense and any liability incurred in connection with implementation of the Fee proposal shall be borne by the Authority. The Authority agrees to the fullest extent legally permitted to indemnify and hold harmless the parties to this Agreement from any liability, loss, costs and claims related to the adoption or implementation of the Fee program. Fee revenues and any other revenues transferred to the Authority by the parties pursuant to this Agreement may be used for this purpose.

G. Implementation Schedule. Subject to environmental clearance, right of way acquisition and dedication, utility relocation and other factors the timing of which may be beyond the control of the Authority, and subject to the availability of regional fee and other funding sources as may be required, implementation guidelines shall apply to Project development as set forth in the Strategic Plan referenced in paragraph H of Attachment 1.

