

JOINT EXERCISE OF POWERS AGREEMENT

**Establishing the Tri-Valley Transportation Council for
Planning and Facilitating the Implementation of
Transportation Improvement Projects in the
Tri-Valley Transportation Area**

BY AND AMONG

The County of Alameda

The County of Contra Costa

The City of Dublin

The City of Livermore

The City of Pleasanton

The City of San Ramon, and

The Town of Danville

October 17, 2013

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**JOINT EXERCISE OF POWERS AGREEMENT
ESTABLISHING THE TRI-VALLEY TRANSPORTATION COUNCIL**

THIS AGREEMENT is made and entered into as of Oct. 17 2013 ("the Effective Date") by and among the Parties (the County of Alameda, the County of Contra Costa, the Town of Danville, the City of Dublin, the City of Livermore, the City of Pleasanton, and the City of San Ramon) signatory hereto, each of which is a public entity duly organized and existing under the Constitution and other laws of the State of California.

WHEREAS, Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (commencing at Section 6500) authorizes the Parties to enter into an agreement for the joint exercise of any power common to them and, by that agreement, create an entity that is separate from each of the Parties; and

WHEREAS, the Parties recognize that adequate transportation planning is essential to the orderly development of the Tri-Valley Area (defined in Section 1.bb), and that review and coordination of planning and implementation of transportation facilities in the Tri-Valley Area is to the benefit of all parties hereto and their constituents; and

WHEREAS, the Parties desire for adequate transportation planning resulted in the creation of the Tri-Valley Transportation Council's first Joint Powers Agreement (JPA) in 1991 that provided for coordinated transportation efforts; and

WHEREAS, the Parties also recognized that traffic impacts from new residential and commercial developments forecast by the Association of Bay Area Governments in the Tri-Valley Area would adversely affect the quality of life for the existing residents of the Cities and Counties unless those regional impacts are mitigated by off-site street improvement; and

WHEREAS, through the adoption of the Tri-Valley Transportation Plan/Action Plan for Routes of Regional Significance ("Action Plan"), the Parties identified regional Transportation Improvement Projects designed to help mitigate the regional impacts of forecast development within the Tri-Valley Area; and

WHEREAS, the Parties entered into a Joint Exercise of Powers Agreement (JEPA) in 1998, with two subsequent addendums in 2003 and 2009, for purposes of collecting traffic impact fees for the Transportation Improvement Projects on a uniform basis and to use the fees collected in a coordinated manner to provide for financing and construction of the Transportation Improvement Projects; and

WHEREAS, substantial time has passed since the initial execution of the 1991 JPA and the execution of the 1998 JEPA; and

WHEREAS, the Parties wish to establish a separate entity known as the Tri-Valley Transportation Council pursuant to the provisions of the Joint Exercise of Powers Act;

NOW, THEREFORE, in consideration of the facts stated above, the mutual advantages to be derived, and the mutual covenants contained herein, it is agreed by and among the Parties hereto as follows:

SECTION 1 Definitions

- a. Act means the Joint Exercise of Powers Act, Chapter 5 of Division 7 of Title 1 of the California Government Code, commencing with Section 6500, as it may be amended from time to time.
- b. Agreement means this joint exercise of powers agreement as it now exists or as it may from time to time be amended, and which is made effective only upon the signature and execution of all the Parties.
- c. Alameda County Transportation Commission ("Alameda CTC") is a joint powers authority, governed by a 22-member commission, that serves as the Congestion Management Agency for Alameda County and delivers the projects and programs in the Expenditure Plan of its transportation sales tax measure.
- d. Auditor means an independent certified accountant selected by the Governing Council to audit the records and accounts of the TVTC.
- e. Bylaws means the rules, regulations, and other operational and organizational directives adopted by the Governing Council for the conduct of the TVTC's meetings and other affairs.
- f. City (or Town) means each municipality that is a Party to this Agreement.
- g. Contra Costa Transportation Authority ("CCTA") is an 11-member joint powers agency that serves as the Congestion Management Agency for Contra Costa County and delivers the projects and programs in the expenditure plan of its half-cent sales tax measure.
- h. County means the agency representing the unincorporated geographic areas, within the county of Contra Costa or Alameda, that is a Party to this Agreement.

- i. Fiscal Year means the period from each July 1st to and including the following June 30th.
- j. Governing Council means the governing body constituted herein to administer this Agreement and manage the affairs of the TVTC.
- k. Gross Floor Area refers to the sum of the area of all floor levels of a structure, including, but not limited to, cellars, basements, mezzanines, penthouses, corridors, lobbies, retail areas, and offices, that are included within the principal outside faces of exterior walls, not including architectural setbacks or projections. Included are all stories or areas that have floor surfaces with clear standing head room (six feet, six inches, minimum) regardless of their use. Where a ground level area, or part thereof, within the principal outside faces of the exterior walls is left unenclosed, the gross area of the unenclosed portion is to be considered as a part of the overall square footage of the building. All unroofed areas and unenclosed roofed-over spaces, except as defined above, are to be excluded from area calculations. The gross area of any parking garages within the building shall not be included within the gross area of the entire building.
- l. Industrial Use is a land use category that refers to land designated for the purpose of manufacture or fabrication of products, the processing of materials, the warehousing of merchandise for sale or distribution, research and development of industrial products and processes, and the wholesaling of merchandise.
- m. Joint Exercise of Powers Agreement means this agreement of the Parties to jointly exercise their power or powers, privileges and authority, as authorized by the Act, to implement purposes of the TVTC as described in Section 2.a and 2.b.
- n. Land Use Entitlement means a permit or approval granted for a development project as that term is defined in Government Code Section 66000.
- o. Land Use Type means Industrial Use, Multi-Family Residential use, Office Use, Other Use, Retail Use, and Single Family Residential Use.
- p. Legislative Body means the governing board of each Party.
- q. Member (or Members) means the individual appointed by a Party to the TVTC's Governing Council.
- r. Multi-Family Residential Use is a land use category that refers to land

designated for buildings or parts thereof designed and used exclusively as a dwelling unit among other dwelling units, either on the same parcel (e.g., apartments and mobile home parks) or under separate ownership (e.g., condominiums, townhomes, duplexes, or duets).

- s. Office Use is a land use category that refers to land designated for buildings or parts thereof designed and used for non-retail, non-manufacturing businesses.
- t. Other Uses refers to land use categories not implicitly included within the land use categories of "Single Family Residential", "Multi Family Residential", "Retail", "Office", or "Industrial", and for which alternative rates can be found in the *Institute of Transportation Engineers Trip Generation Manual* or in a list of peak-hour trip rates that the Tri-Valley Transportation Council has explicitly approved.
- u. Party (or Parties) refers to the following signatory agencies to this Agreement: the County of Alameda, the County of Contra Costa, the Town of Danville, the City of Dublin, the City of Livermore, the City of Pleasanton, and the City of San Ramon.
- v. Project Sponsor means a Party designated in the Strategic Expenditure Plan to oversee the use of Tri-Valley Transportation Development Fee revenues in the development of a specific regional Transportation Improvement Project. The Party designated as Project Sponsor may be, but need not be, the lead agency for environmental clearance or the agency responsible for the design or construction of the project itself
- w. Retail Use is a land use category that refers to land designated for buildings or parts thereof designed and used for retail sale of merchandise and services
- x. Single Family Residential Use is a land use category that refers to land for buildings or parts thereof designed and used for occupation as the residence of one family.
- y. Strategic Expenditure Plan ("SEP") refers to the TVTC's May 16, 2011 funding and project prioritization plan, adopted by TVTC by execution of this agreement, and as may be amended from time to time, but at least every five years, by the TVTC with a supermajority vote of six.
- z. Subsidized Housing Development refers to housing facilities developed by public agencies, limited dividend housing corporations, or non-profit corporations, and maintained exclusively for persons or families of very low, low or moderate income, as defined in Section 50093 of the Health and Safety Code.

- aa. Transportation Improvement Projects (or "Projects") refer to those public improvements required to implement the 2011 Update to the Tri-Valley Transportation Council Strategic Expenditure Plan, adopted by TVTC by execution of this agreement, and as that plan may be amended from time to time.
- bb. Transportation Plan/Action Plan for Routes of Regional Significance ("Action Plan") refers to the transportation planning document prepared by the TVTC to establish coordinated transportation plans including routes of regional significance, multi-modal transportation service objectives (MTSOs) for these routes and specific actions to be implemented by each participating jurisdiction among the TVTC Parties. The TVTC Action Plan helps TVTC parties in the county of Contra Costa comply with the Measure J Growth Management Program and is incorporated into the Contra Costa Countywide Comprehensive Transportation Plan (CTP).
- cc. Tri-Valley Area refers to the geographic area that encompasses the town of Danville, the cities of Dublin, Livermore, Pleasanton and San Ramon, and portions of the counties of Alameda and Contra Costa immediately adjacent to the cities and town referenced in this definition.
- dd. Tri-Valley Transportation Council ("TVTC") means the separate entity created by this Agreement, whose purpose and membership is defined herein.
- ee. Tri-Valley Transportation Development Fee ("TVTDF" or "TVTD Fee") refers to the fees to be imposed by the Cities and Counties on development within the Tri-Valley Area.

SECTION 2 General Provisions

- a. Purpose. The purpose of this Agreement is to establish a separate agency that is responsible for coordinating transportation planning efforts within the Tri-Valley Area by facilitating the implementation of Transportation Improvement Projects identified in its Strategic Expenditure Plan and:
 - i. Establishing a framework for the enactment by the Parties of a TVTD Fee to fund all or part of the necessary transportation improvements identified in the SEP.
 - ii. Establishing funding goals and seeking commitments, for identified Transportation Improvement Projects.

- iii. Establishing mechanisms for collecting, managing and disbursing the TVTD Fee and to formalize institutional arrangements for the implementation of the Projects to be constructed with fee revenues.
 - iv. Facilitating cooperative regional planning efforts through the adoption and implementation of the regional transportation plans (such as the Transportation Plan/ Action Plan for Routes of Regional Significance), the SEP and the TVTD Fee program.
- b. Creation of Agency. There is hereby created a public entity to be known as the "Tri-Valley Transportation Council." The TVTC is formed by this Agreement pursuant to the provisions of the Act. The TVTC is a public agency separate from the Parties to this Agreement and shall exercise in the manner set forth in this Agreement the powers common to each of the Parties, for the purposes stated in this Agreement.
- c. Supersede. This Agreement supersedes the 1991 JPA and the 1998 JEPA, as amended.

SECTION 3 Governing Council

- a. Governing Council. The TVTC shall be governed by the TVTC Governing Council, which shall exercise all powers and authority on behalf of the TVTC.
- b. Membership. The Governing Council shall consist of seven (7) members appointed by the Parties as follows: one (1) Member appointed by the Board of Supervisors of Alameda County, one (1) Member appointed by the Board of Supervisors of Contra Costa County, one (1) Member appointed by the Town Council of Danville, one (1) Member appointed by City Council of the City of Dublin, one (1) Member appointed by City Council of the City of Livermore, one (1) Member appointed by City Council of the City of Pleasanton, and one (1) Member appointed by City Council of the City of San Ramon
- i. Each Member shall have one vote.
 - ii. Each Member must be a member of the Legislative Body for the Party that appointed the Member.
 - iii. Each Party may appoint an alternate, or alternates, for its appointed Member, who may serve as the Member in the Member's absence. The

alternate Member must be a Member of the Legislative Body for the Body that appointed the Member.

iv. All Members and their alternates serve at the pleasure of their appointing Party.

v. All vacancies on the TVTC Governing Council shall be filled by the Party's respective Legislative Body as soon as practicable following the effective date of the vacancy. Any Member or alternate shall cease to be a Member when such person ceases to hold office as a member of the respective appointing Legislative Body.

c. Meetings of the Governing Council. All TVTC meetings shall be held in accordance with the provisions of the Ralph M. Brown Act. All meeting shall be public unless a specified closed session is held in accordance with the California Government Code.

i. Quorum. At least five (5) Members must be present in order for the Governing Council to act.

ii. Regular Meetings. The Governing Council shall establish a date, time, and place for regular meetings fixed by the Bylaws.

iii. Special Meetings. Special meetings and emergency meetings of the Governing Council may be called in accordance with State law.

iv. Call, Notice, and Conduct of Meetings. All meetings of the Governing Council, including without limitation, regular, adjourned regular, and special meetings, shall be called, noticed, held, and conducted in accordance with the provisions of Section 54950, *et seq.*, of the California Government Code, as may be amended from time to time.

d. Required Votes and Approvals. Actions of the TVTC shall require the following votes:

i. Supermajority of Six. A vote of at least six (6) members, is required to: Adopt or amend the Strategic Expenditure Plan; amend the TVTD Fee structure, with the exception of the annual automatic Construction Cost Index adjustment, as described in Section 6d(i), "TVTD Fee Adjustments," which may be amended by a simple majority; amend this Agreement under Section 9(a) below; and terminate this Agreement under Section 9(c)(i) below.

ii. Supermajority of Five. A vote of at least two-thirds (2/3) of the entire Governing Council, or five (5) Members, shall be required for the TVTC to: Adopt or amend a regional transportation plan that has required performance objectives that a Party to this Agreement must meet, such as the Tri-Valley Transportation Plan/Action Plan for Routes of Regional Significance or other future transportation plans prepared for the Tri-Valley Transportation Council; adopt a budget of TVTC expenditures; or amend the Bylaws.

iii. Simple majority. A vote by a simple majority of the Members at any meeting of the TVTC at which a quorum is present for any action other than those described in subsection i or ii above.

- e. Bylaws. The TVTC shall create and adopt, and from time to time amend, Bylaws as are necessary or convenient to achieve or facilitate the conduct of the Governing Council's meetings and procedures.
- f. Principal Office. The principal office of the TVTC shall be designated by the TVTC Governing Council and shall be located within the boundaries of one of the Members.
- g. Committees. The TVTC may have such committees as established pursuant to the Bylaws.

SECTION 4 Officers and Administration

- a. Chair and Vice Chair. The Governing Council shall elect a Chair and Vice-Chair from among its Members at its initial meeting. These officers shall serve a term as defined by the Bylaws, starting on July 1st of each Fiscal Year. The Chair shall preside at the meetings of the Governing Council, call meetings to order, adjourn meetings, put to vote all questions moved and seconded, announce result of votes, execute documents and official actions on behalf of the Governing Council when duly approved, and carry out other duties set forth in the Bylaws. The Vice Chair shall serve as Chair in the absence of the Chair.
- b. Secretary. The Governing Council shall appoint a Secretary who may be a Member of the Governing Council. The Secretary shall record votes, prepare, distribute, and maintain minutes, and maintain the official records of the TVTC, and perform other duties set forth in the Bylaws. The Secretary shall cause a copy of this Agreement to be filed with the California Secretary of State and the State of California pursuant to Government Code section 6503.5.

- c. **Treasurer.** The Governing Council shall designate a treasurer pursuant to Government Code section 6505.5. The Treasurer shall have the responsibility and accountability for the management and disbursement of TVTD Fee funds. The Treasurer shall perform the following duties:
- i. Serve as custodian of all of the accounts, funds and monies of the TVTC from whatever source, and shall have the duties and obligations set forth in Government Code sections 6505 and 6505.5; and
 - ii. Keep a record of all TVTD Fees disbursements and expenditures made by the Treasurer in accordance with this Agreement; and
 - iii. Transmit monies, based on direction from an approved TVTC resolution, from the TVTD Fee Account to Project Sponsors for the planning, design and construction of the Transportation Improvement Projects as listed, and in accordance with, the SEP; and
 - iv. Transmit monies from the TVTD Fee Account for TVTC expenditures as authorized in the TVTC annual budget; and
 - v. Account for all monies from the TVTD Fee Account received in accordance with Government Code §6505; and
 - vi. Other duties as specified by law or as required by the Bylaws and the TVTC.
- d. **Auditor.** The Governing Council shall designate, or select, an auditor pursuant to Section 6505.5 of the Act to assure that there shall be strict accountability of all funds and reporting of all receipts and disbursements of the TVTC. As provided in Government Code sections 6505 and 6505.5, the Auditor shall make arrangements with a certified public accountant or firm of certified public accountants for the annual audit of accounts and records of the TVTC.
- e. **Officers in Charge of Records, Funds and Accounts.** Pursuant to Government Code section 6505.5, the Treasurer and Auditor shall have charge of, handle, and have access to all accounts, funds, and money of the TVTC and all records of the TVTC relating thereto. The public officer or officers or persons who have charge of, handle, or have any access to any property of the TVTC shall be bonded, and the amount of their bond shall be designated and fixed in the TVTC budget for each fiscal year, and may be covered by bonds of a Party. The Secretary shall have charge of, handle and have access to all other records of the TVTC.
- f. **Staffing.** The Governing Council may employ, contract, or appoint an

Administrator to implement the objectives of the TVTC and as may be necessary for the functions and purposes of this Agreement. Any officer, employee, or agent of the Governing Council may also be an officer, employee, or agent of any of the Parties.

SECTION 5 Powers of the Agency

- a. General Powers. The TVTC shall exercise in the manner herein provided the powers common to all of the Parties, as provided by the Constitution and laws of the State of California, and all incidental, implied, expressed, or necessary powers for the accomplishment of the purposes of this Agreement, subject to the restrictions set forth in subsection 5(c). As provided in the Act, the TVTC shall be a public entity separate from the Parties. The TVTC shall have the power to plan, coordinate and receive disbursements of traffic impact fee revenues from the Parties to help implement Transportation Improvement Projects in the Tri-Valley Area. The TVTC shall have all of the powers provided in Articles 2 and 4 of the Act, unless specifically prohibited or restricted by this Agreement.

The TVTC shall have the powers to do the following in its own name:

- i. To make and enter into contracts; and
 - ii. To retain consultants, contractors, agents or personnel; and
 - iii. To sue and be sued in its own name; and
 - iv. To apply for, accept, receive, and disburse grants, loans, and other aids from any agency for the United States of America or of the State of California; and
 - v. Perform such other functions as may be necessary or appropriate to carry out this Agreement, so long as such other functions performed are not prohibited by any provision of law.
- b. Specific Powers. The TVTC is hereby authorized, in its own name, to conduct all acts necessary for the exercise of the foregoing powers, including but not limited to, any of the following.
- i. Prepare and adopt a regional transportation plan (such as the Tri-Valley Transportation Plan/Action Plan for Routes of Regional Significance) that coordinates transportation planning efforts in the Tri-Valley Area; and

- ii. Prepare and implement a Strategic Expenditure Plan; and
 - iii. Prepare and adopt a budget for the TVTC's administrative functions; and
 - iv. Establish Bylaws and such other rules and regulations as may be necessary for its operation and for the conduct of the TVTC's business including an appropriate conflict of interest/disclosure policy; and
 - v. Exercise a power common to the parties so long as the power is exercised in furtherance of the purposes of the Agreement; and
 - vi. Collect TVTD Fees imposed by its Member agencies on development within the Tri-Valley Area, in accordance with Section 5; and
 - vii. Use TVTD Fees to fund a portion of the costs of Transportation Improvement Projects, in accordance with the SEP, within the Tri-Valley Area; and
 - viii. Perform such other functions as may be necessary or appropriate to carry out this Agreement, so long as such other functions performed are not prohibited by any provision of law.
- c. Restrictions on Exercise of Powers. The TVTC shall exercise in the manner herein provided the powers common to each of the Parties as appropriate to the accomplishment of the purposes of this Agreement. For purposes of Government Code Section 6509, the powers of the TVTC shall be exercised subject to the restrictions upon the manner of exercising such powers as are imposed upon the City of San Ramon, a Charter City. The TVTC shall exist as an agency legally and financially self-sufficient from and independent of the Parties to this Agreement. The TVTC has no authority to condemn property, or impose a debt or obligation upon or incur one for or on behalf of a Party to this Agreement.
- d. Obligations of Agency. The debts, liabilities, and obligations of the TVTC shall not be the debts, liabilities, and obligations of any Party or Member.

SECTION 6 Tri-Valley Transportation Development Fees

The revenues from the TVTD Fees are used to fund the regional Transportation Improvement Projects ("Projects") identified in the Tri-Valley Transportation Plan/Action Plan (TVTP/AP) for Regional Significance and the Strategic Expenditure

Plan (SEP), and to pay for TVTC administrative costs as authorized in the TVTC annual budget. The maximum allowable traffic impact fees that can be imposed to fund the total unfunded cost of Projects are established by the Tri-Valley Transportation Council Nexus Study ("2008 Nexus Study"), adopted on January 30, 2008 and amended on February 26, 2008, and in any subsequent nexus study.

With regard to subsequent TVTD Fee updates:

- a. Adoption of Fee Nexus Study. The TVTC shall conduct, as needed, a fee nexus study to establish the legal basis for regional development impact fee amounts.
- b. Recommendation of TVTD Fee Amounts. The TVTC shall through resolution, based on the findings of a nexus study, recommend regional impact fee amounts for categories of land use entitlements within the Tri-Valley Area for purposes of funding a portion of the costs of the Projects. The TVTC may recommend an exemption from the fee public schools, Subsidized Housing Developments and the governmental buildings owned by any public entity unless a Party can and does impose the TVTD Fee on governmental buildings of a public entity other than one of the Parties.
- c. Party's Adoption of TVTD Fee Ordinances and Collection of TVTD Fees. If the TVTD Fees are amended, each Party shall consider the adoption, by ordinance or resolution, of TVTD Fees in amounts recommended by the TVTC, and will consider including as part of the proposed ordinance or resolution, the following:
 - i. Require each project developer to pay TVTD Fees prior to issuance of building permits for the project, or no later than occupancy, and to the extent permitted by law; and
 - ii. Levy TVTD Fees on all development projects not exempt from payment of the fee; and
 - iii. Apply TVTD Fees on all significant changes to existing development agreements adopted after the execution of this Agreement. The TVTD Fee shall be applied to all components of a project that are subject to an amended or renewed development agreement. As used herein, significant means any of the following: (a) change in land use type (e.g., office to retail); (b) intensification of land use types (e.g., increases in square footage of approved Office); (c) extension of term of development agreements; and (d) reduction or removal of project mitigation requirements or conditions of approval.

d. TVTD Fee Adjustments.

- i. Each Party shall consider, as part of a TVTD Fee resolution or ordinance, implementing an automatic adjustment of the TVTD Fee as of July 1 of each year, based on the increase or decrease in the Engineering News Record Construction Cost Index for the San Francisco Bay Area for the period ending December 31 of the preceding calendar year; and
- ii. In addition to considering the automatic adjustment described in Section 6d(i), each Party shall consider adjusting TVTD Fees to reflect revisions in the Project list, program revenue, and other factors. The amount of such adjustments shall be included in a written addendum to the SEP that shall be approved by the TVTC with a supermajority vote of six. Concerted efforts shall be made to attract and obtain other funds from other available revenue sources for which the projects are eligible.

e. TVTD Fee Accounts. Each Party to this Agreement agrees to the following if it adopts TVTD Fees:

- i. To place the TVTD Fees in an interest-bearing individual account to be used specifically for the Projects, in a manner consistent with the law. The deposits in each account shall be invested in the same manner as other funds of the Party; and
- ii. Each Party shall transmit to the Treasurer within 30 days of the end of each quarter not less than 80% of all TVTD Fees collected by that Party during the quarter, and any interest or income generated on such 80% amount, together with notification of the Projects that the Party intends to fund with any retained portion of the revenues; and
- iii. To maintain a current record of all TVTD Fee revenue collected and retained by that Party, including interest or income on such funds, and make available to the Treasurer an accounting for inclusion in any audit of TVTD Fees.

SECTION 7

Transportation Improvement Projects

- a. The TVTC shall use the TVTD Fees it collects from the Parties to fund a portion of the costs of the Transportation Improvement Projects outlined in the adopted SEP. Notwithstanding the foregoing, the TVTD Fee imposed and collected by the County of Contra Costa shall not be used to fund any Projects that are not

authorized by Government Code sections 66484 or 66484.7 and Contra Costa County's implementing ordinance.

- b. Project Sponsors are eligible to receive TVTD Fees in accordance with the SEP only if they have adopted the uniform TVTD Fees (including all subsequent fee adjustments and the annual CCI adjustments) as recommended by the TVTC with a vote of a supermajority of six.
- c. The TVTC shall comply with the requirements of the Mitigation Fee Act and shall provide each Party with all information necessary for each Party to comply with its separate Mitigation Fee Act requirements.

SECTION 8 Strategic Expenditure Plan

- a. SEP Preparation and Adoption. The TVTC shall adopt or update the Strategic Expenditure Plan every five years. The Strategic Expenditure Plan shall include a list of Projects, the estimated project cost of each Project, revenue estimates for the TVTD Fee, as well as a prioritization plan and a timeline for project delivery. It shall also include reasonable requirements for indemnification and insurance, as appropriate for individual projects, and shall include requirements that Project Sponsors or other entities which construct any of the Projects defend and indemnify the Parties. The SEP shall also include guidelines governing credit and/or reimbursement for any entity-constructed Projects and developer-constructed Projects.
- b. Project Prioritization. The TVTC shall consider the following criteria when establishing the priority of Projects:
 - i. **Project Readiness:** Ability of Project Sponsors to move directly to final design and construction, which could be represented by, among other things, completion of environmental documentation, inclusion of the project in the Regional Transportation Improvement Program, preparation of plans, specifications and estimates; and
 - ii. **Project Funding:** Ability of project to leverage other funding, eligibility of the project for external funding, or commitment of external funding; and
 - iii. **Project Effectiveness:** Ability of the project to address traffic congestion or safety problems.
- c. Review Period. The SEP must be reviewed at least once every five years by the TVTC. Each revision shall require approval by the TVTC with a vote of a

supermajority of six.

SECTION 9
Miscellaneous

a. Amendments. This Agreement may be amended at any time only by a supermajority of six votes, as approved by resolution adopted by the Legislative Body of each Party.

b. Liability and Indemnity.

- i. Nothing in this Agreement shall be construed to hold any Party liable to any other Party, or any person not a party hereto, for the design, construction, installation, inspection, operation, maintenance and/or repair of any of the Transportation Improvement Projects. This Agreement is designed to implement the subvention or disbursement of public funds from one public agency to another and accordingly is not an agreement as defined in Government Code section 895.
- ii. A Party is not liable to any other Party for the inadvertent failure or legal inability to collect a TVTD Fee.
- iii. Each Party shall defend, hold harmless and indemnify the other Parties and their officers, agents and employees from any and all claims, costs and liability arising out of or in connection with an act or failure to act under this Agreement, or breach of any term of this Agreement, and caused by the negligence or willful misconduct of the indemnitor, its officers, agents or employees.
- iv. The TVTC shall defend, hold harmless and indemnify the Parties and their officers, agents and employees from any and all claims, costs and liability arising out of or in connection with an act or failure to act under this Agreement, or breach of any term of this Agreement, by the TVTC, except to the extent such claims, costs or liability arise from the negligence or willful misconduct of an indemnitee or its officers, agents, or employees.
- v. TVTC Project Sponsors shall require, in all consultant and contractor contracts used to implement Transportation Improvement Projects, that such consultant and contractor agree to defend, indemnify and hold harmless the TVTC, and each Party to this Agreement, and their respective council members, board members, officers and employees, from all claims, losses, damages, costs, injury and liability arising out of the provision of services provided pursuant to the consultant or contractor's contract with the Project Sponsor.

- c. Term; Termination.
 - i. Term. The term of this Agreement is from the Effective Date until terminated pursuant to its terms. This Agreement may be terminated at any time only by a supermajority of six vote of the Parties, as approved by resolution adopted by the Legislative Body of each Party.
 - ii. Effective Date of Termination. Termination shall not under any circumstances become effective until June 30 of a Fiscal Year, provided such date is a minimum of six (6) months following the effective date of a written notice of termination to the TVTC Governing Council approved by the Legislative Bodies for all the Parties.
- d. Withdrawal. Any Party may withdraw from this Agreement on one years' written notice to the other Parties, given at least 30 days prior to the end of any Fiscal Year. Any withdrawing Party shall be obligated for its proportionate share of any expenses incurred prior to the effective date of the withdrawal. The withdrawal of any Party from this Agreement shall in no way affect the rights and obligations of the remaining Parties. If a Party withdraws from this Agreement, that Party shall not be entitled to the return of any funds contributed to the TVTC, if any, nor to the return in cash or in kind of any materials or supplies until termination of this Agreement.
- e. Disposition and Distribution of Assets. Upon dissolution of the TVTC, any assets of the TVTC shall be distributed to the respective grantors or assignors thereof, in the amounts and at the time or times as may be determined by the Governing Council. Upon completion of the purposes of this Agreement, any surplus money on hand shall be returned to the Parties in proportion to the contributions made to the TVTC.
- f. Continued Existence of Agency. Upon dissolution, this Agreement and the TVTC shall continue to exist as required or necessary for the limited purpose of distributing the Assets and Cash Reserves and winding up and closing out the business, accounts and affairs of the TVTC.
- g. Section Headings. All section headings in this Agreement are for convenience of reference only and are not to be construed as modifying or governing language in the section referred to or to define or limit the scope of any provision of this Agreement.

- h. Law Governing. This Agreement is made under the Constitution and laws of the State of California and is to be so construed.
- i. Severability. In the event any provision of this Agreement is determined to be illegal or invalid for any reason, all other provisions and articles of this Agreement shall remain in full force and effect unless and until otherwise determined. The illegality of any provision of this Agreement shall in no way affect the legality and enforceability of any other provisions of this Agreement.
- j. Notice. Any notice required to be given or delivered by any provision of this Agreement shall be personally delivered or deposited in the U.S. mail, postage prepaid, addressed to the TVTC Chair and to the Members at their addresses as reflected in the records of the TVTC, and shall be deemed to have been received by the party to which the notice is addressed upon the earlier of receipt or 72 hours after mailing
- k. Agreement Not Exclusive. This Agreement shall not be exclusive and shall not be deemed to amend or alter the terms of other agreements between or among the Parties, unless the terms of this Agreement conflict, in which case the terms of this Agreement shall prevail.
- l. Breach. Any default made by any Party in any covenant contained in this Agreement shall not excuse any Member from fulfilling its respective obligations under this Agreement. The Parties declare that this Agreement is entered into for the benefit of the TVTC created hereby. The TVTC is authorized to take any or all legal or equitable actions, including but not limited to injunction and specific performance, necessary or permitted by law to enforce this Agreement.
- m. Insurance. The TVTC shall procure such general liability insurance as the Governing Council shall approve.
- n. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the Parties. Except to the extent provided herein, none of the Parties may assign any right or obligation hereunder without the written consent of the others.

EXECUTION OF AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereupon duly authorized and their official seals to be hereto affixed on the dates as shown herein.

MEMBERS

APPROVED AS TO FORM:

COUNTY OF ALAMEDA, a political subdivision of the State of California

By: [Signature]
Its: Deputy County Counsel
Date: 10/2/13

By: [Signature]
Its: PRESIDENT OF THE BOARD OF SUPERVISORS OF ALAMEDA COUNTY, CALIFORNIA
Date: 10-15-2013

ATTEST:

By: [Signature]
Its: Deputy Clerk
Date: 10-15-2013

APPROVED AS TO FORM:

COUNTY OF CONTRA COSTA, a political subdivision of the State of California

By: [Signature]
Its: Deputy County Counsel
Date: 10/16/13

By: [Signature]
Its: County Administrator
Date: 4/22/14

ATTEST:

By: [Signature]
Its: _____
Date: _____

APPROVED AS TO FORM:

By: *Paul B. Ewing*
Its: *City Attorney*
Date: *4/4/14*

TOWN OF DANVILLE, a municipal corporation

By: *[Signature]*
Its: *Mayor*
Date: *4/7/14*

ATTEST:

By: *[Signature]*
Its: *City Clerk*
Date: *4/7/14*

APPROVED AS TO FORM:

By: *[Signature]*
Its: *City Attorney, City of Dublin*
Date: *3/18/2014*

CITY OF DUBLIN, a municipal corporation

By: *Tom Abruti*
Its: *Mayor, City of Dublin*
Date: *3/18/14*

ATTEST:

By: *Caroli P. East*
Its: *City Clerk, City of Dublin*
Date: *3/18/14*

APPROVED AS TO FORM:

By: *[Signature]*
Its: *Assistant City Attorney*
Date: *10 March 2014*

CITY OF LIVERMORE, a municipal corporation

By: *[Signature]*
Its: *Acting City Manager*
Date: *3/11/14*

ATTEST:

By: Misaw Neer
Its: City Clerk
Date: May 19, 2014

APPROVED AS TO FORM:

By: Laws
Its: Assist. City Atty
Date: 3/20/2014

CITY OF PLEASANTON, a municipal corporation

By: [Signature]
Its: City Manager
Date: 3/21/2014

ATTEST:

By: Karen Diaz
Its: City Clerk
Date: 3/21/14

APPROVED AS TO FORM:

By: [Signature]
Its: City Attorney
Date: Nov 7, 2013

CITY OF SAN RAMON, a Charter City

By: [Signature]
Its: Mayor
Date: 11-7-13

ATTEST:

By: Patricia Edwards
Its: City Clerk
Date: 11-7-2013