

**FIRST AMENDMENT TO JOINT EXERCISE OF POWERS
AGREEMENT BY AND AMONG CITY OF LAFAYETTE, THE CITY
OF ORINDA AND THE TOWN OF MORAGA RELATING TO THE
LAMORINDA FEE AND FINANCING AUTHORITY**

This FIRST AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT (“**First Amendment**”) is made by and between the City of Lafayette, a California municipal corporation (“**Lafayette**”), the City of Orinda, a California municipal corporation (“**Orinda**”) and the Town of Moraga, a California municipal corporation (“**Moraga**”) as of _____ the (“**Effective Date**”). Lafayette, Orinda and Moraga may each be referred to as a “**City**,” and collectively as the “**Cities**.”

Recitals

- A. On June 8, 1998, the Cities entered into that certain First Amendment to Joint Exercise of Powers Agreement by and among City Of Lafayette, the City Of Orinda and the Town Of Moraga relating to the Lamorinda Fee and Financing Authority (the “**Original JPA**”).
- B. The Original JPA included a program to implement the Development Mitigation Fee Program, as well as an Expenditure Plan.
- C. The Cities are currently in the process of updating the fee program and project list and desire to amend the Original JPA to include provisions regarding the updated fee and expenditure plan.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Cities agree as follows:

1. Addition to Definitions. The following definition is hereby added to Section 1 of the Original JPA:

“Measure J 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, 2004, and contained in the Measure J Expenditure Plan and Ordinance.”

2. Extension of Term. The last sentence of Section 3(A) is hereby deleted and replaced with the following: “Notwithstanding the foregoing, the Agreement shall terminate no later than the termination date of the Measure J Sales Tax Program (currently March 31, 2034), including any addition, extension or replacement that may be adopted from time to time.”

3. Amendment of Section 4(G)(3). The first sentence of Section 4(G)(3) is hereby deleted and replaced with the following: “The City Manager of the City of Lafayette, or his or her designee, is hereby designated as Treasurer of the Authority. Such designation may be amended without amendment of this Agreement by unanimous approval of the Board.”

4. Amendment of Section 4(G)(4). The first sentence of Section 4(G)(4) is hereby deleted and replaced with the following: "The City Manager of the City of Lafayette, or his or her designee, 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. Such designation may be amended without amendment of this Agreement by unanimous approval of the Board."

5. Amendment of Section 4(G)(5). The first sentence of Section 4(G)(5) is hereby deleted and replaced with the following: "The City of Lafayette, or such alternative City or Cities, as may be designated by the Board, shall be reimbursed upon approval of the Board for the its services as Treasurer and/or Controller."

6. Amendment to Miscellaneous References to City Auditor. Reference to the title "Auditor" is hereby deleted in the following Sections: 4(G)4, 4(G)6, 4(G)7, and 9(B).

7. Replacement of Attachment No. 1. Attachment No. 1 to the Original JPA is hereby deleted in its entirety and replaced with Attachment No. 1-A, attached hereto and incorporated herein by this reference.

8. Replacement of Attachment No. 2. Attachment No. 2 to the Original JPA is hereby deleted in its entirety and replaced with Attachment No. 2-A, attached hereto and incorporated herein by this reference.

9. Original JPA in Full Force and Effect. Except as amended by this First Amendment, the Original JPA remains in full force and effect.

IN WITNESS WHEREOF, the Cities enter into this First Amendment as of the Effective Date.

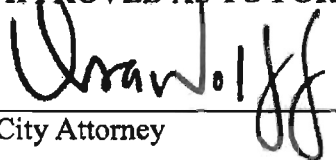
CITY OF ORINDA, a
California municipal corporation

By: 
Victoria Smith, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney

**CITY OF LAFAYETTE, a
California municipal corporation**

By: _____
Mark Mitchell, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

**TOWN OF MORAGA, a
California municipal corporation**

By: _____
Michael Metcalf, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

Attachment No. 1-A

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. [reserved]

B. Fees shall be as established in the 2015 Nexus Study for the Lamorinda Development Mitigation Fee Program and as may be updated and unanimously adopted by the parties from time to time.

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 not include any interest on the amount due.

E. Fee rates have been calculated and may be adjusted as set forth herein, based on an updated study unanimously adopted by the parties and, except as otherwise provided herein, shall be uniformly adopted by the parties.

F. Fees may be updated and adjusted unanimously by the parties if needed in order to take into account changes in cost estimates for the Projects, development rates within Lamorinda, Project priorities and other funding commitments, in accordance with the California Mitigation Fee Act, AB 1600. Ongoing reporting and accounting shall also be performed by each party in accordance with the California Mitigation Fee Act, AB 1600.

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 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, very low, low- or moderate income housing and transit-oriented 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. Each City may approve a credit of its portion of the Fees in the amount of the local share amount. 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 or City as to the setaside. 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, also referred to as each Cities' "local share"). Such setaside or local share amount may be used to fund Projects and new City Projects added to the Expenditure Plan in accordance with Attachment 2-A, paragraph B below, within the jurisdiction of the City making the setaside. The maximum allowable setaside or local share shall be as established in the 2015 Nexus Study for the Lamorinda Development Mitigation Fee Program, or as updated and unanimously adopted by the parties from time to time.

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/ 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, excluding 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 City designated as fiscal agent for the Authority. Funds shall be maintained in such account to the credit of the Authority. The Treasurer/ 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-A. 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-A, 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 No. 2-A

**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 in the 2015 Nexus Study for the Lamorinda Development Mitigation Fee Program, as such Expenditure Plan may be updated and unanimously adopted by the parties from time to time, each of which is a highway or arterial improvement, transit project, or pedestrian or bicycle improvement 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 may be updated and unanimously adopted by the parties. 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 Fee revenues shall be expended in the aggregate for conceptual engineering, environmental clearance, traffic studies or design activities for a Project. The commitment to each Project shall be considered complete when the Project is accepted by Project's sponsor or sponsors. The amounts listed in the Expenditure Plan are intended to be maximum commitments; actual funding commitments will depend upon Fee revenues.

Administrative costs shall not exceed 1% of program revenues. Administrative costs shall not include the development of the JPA, 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. The regional fee proceeds shall be allotted by the Authority in accordance with the percentages included in the applicable adopted nexus study, including the 2015 Nexus Study for the Lamorinda Development Mitigation Fee Program, for the period from the Effective Date of adoption of such nexus study to such time as the nexus study may be updated and unanimously adopted by the parties.

The percentages allocated to each city's projects are an overall allotment of regional fees, as defined above, over the term of the Agreement, as defined in Section 3 of the JPA, and, other than with respect to regional fees allocated to any Joint Jurisdictional projects identified in the Expenditure Plan, are not required to be applied to each appropriation of regional fees by the Authority.

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 listed percentages.

F. Defense and Indemnification. Any costs of defense and any liability incurred in connection with implementation of the Fee program 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, project implementation shall be in accordance with each

cities' adopted Capital Improvement Program or as otherwise determined by its City/Town Council.