



Memorandum

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1111 Broadway, Suite 800, Oakland, CA 94607 • 510.208.7400 • www.AlamedaCTC.org

DATE: February 21, 2019

TO: Alameda County Transportation Commission

FROM: Patricia Reavey, Deputy Executive Director of Finance and Administration

SUBJECT: Approve the Second Amended and Restated Joint Powers Agreement Establishing the Sunol Smart Carpool Lane Joint Powers Authority

Recommendation

It is recommended that the Commission approve the Second Amended and Restated Joint Powers Agreement Establishing the Sunol Smart Carpool Lane Joint Powers Authority (Second Amended and Restated JPA).

Summary

In fiscal year 2017-18, Meyers, Nave, Riback, Silver & Wilson, PLC (Meyers Nave) took over the general counsel responsibilities for the I-680 Sunol Smart Carpool Lane Joint Powers Authority (Sunol JPA). As such, they were tasked with the review and editing of Sunol JPA historical governance documents, including the Amended and Restated Joint Powers Agreement (JPA) and the Administrative Code to ensure Alameda CTC compliance with requirements and accuracy with how the carpool lane operates today. The Administrative Code contains language that is dependent upon items in the JPA, so amendments to the JPA must be approved first. The suggested edits in the Second Amended and Restated JPA mostly contains clean up and administrative changes which will allow the Sunol JPA to continue to operate within its area of authority. The most significant change is in section 9. FUNDING, where the prorated basis in which shortfalls in operational costs or other unfunded obligations will be assessed was changed to 90 percent for Alameda CTC and 10 percent for VTA, from 80 percent for Alameda CTC and 20 percent for VTA. This change was necessary to better reflect the percentage of lane miles that will be located in Santa Clara County once the I-680 Express Lanes project is fully built end-to-end.

Background

Meyers Nave completed an administrative review of both the JPA and the Administrative Code for the Sunol JPA some time ago, however, amendments to the JPA must be approved by both the Santa Clara Valley Transportation Authority (VTA) Board and the Alameda County Transportation Commission (Commission). This amendment is the second amendment to the JPA. The first amendment was approved by the Commission in June 2011 and reflected statutory changes with the development to operations of the southbound I-680 Express Lane. Since the first amendment took some time to go before the VTA board for approval, staff thought it would be best to wait for the VTA approval to occur before bringing the Second Amended and Restated JPA to the Commission for approval. The VTA Board approved the Second Amended and Restated Joint Powers Agreement Establishing the Sunol Smart Carpool Lane Joint Powers Authority at their January 10, 2019 board meeting.

Fiscal Impact: There is no significant fiscal impact related to the approval of this Second Amended and Restated Joint Powers Agreement.

Attachment:

- A. Second Amended and Restated Joint Powers Agreement Establishing the Sunol Smart Carpool Lane Joint Powers Authority

**SECOND AMENDED AND RESTATED
JOINT POWERS AGREEMENT
ESTABLISHING
THE SUNOL SMART CARPOOL LANE JOINT POWERS AUTHORITY**

INTRODUCTION

This Second Amended and Restated Joint Powers Agreement (“Agreement”) is made and entered into in the State of California as of _____, ~~2019-2016~~ (“Effective Date”), by and among the following public agencies (“Member Agencies”) that are parties to this Agreement:

- (a) Alameda County Transportation Commission (“Alameda CTC” or “Managing Agency”)
- (b) Santa Clara Valley Transportation Authority (“VTA”)

RECITALS

WHEREAS the parties to this Amended and Restated Agreement recognize the need under Section 149.5 of the Streets and Highways Code of the State of California for a joint powers agency to plan, design, construct and administer the operation of a value pricing high-occupancy vehicle program on the Sunol Grade segment of Interstate/State Highway Route 680 (“I-680”) between the interchange with Alcosta Boulevard in the City of Dublin in Alameda County and State Route 237 (Calaveras Boulevard) in the City of Milpitas in Santa Clara County;

WHEREAS this Second Amended and Restated Agreement is intended to and shall replace and supersede in its entirety the Amended and Restated Joint Powers Agreement Establishing the Sunol Smart Carpool Lane Joint Powers Authority dated ~~February 23, 2006~~ June 23, 2016 (the “Original-First Amended Agreement”);

WHEREAS each party to this Agreement is authorized to contract with the others for the joint exercise of any common power under the Joint Powers Act, Article 1, Chapter 5, Division 7, Title I of the Government Code of the State of California; and

NOW THEREFORE, in consideration of the recitals and the rights, duties and covenants set forth herein, the parties to this Agreement agree to the following:

1. CREATION AND CONTINUATION OF THE AUTHORITY

The Sunol Smart Carpool Lane Joint Powers Authority (also known as the “I-680 Express Lane JPA,” and referenced herein as the “Authority”), which shall constitute a public entity separate and apart from either Member Agency, was created and established by the original Joint Powers Agreement Establishing the Sunol Smart Carpool Lane Joint Powers Authority dated February 23, 2006 (“Original Agreement”), which Original Agreement was superseded and replaced by the First Amended Agreement. From and after the Effective Date,

the Authority shall be governed by the terms of this Agreement and by any rules and regulations passed and adopted by its Governing Board.

The Executive Director of the Authority shall cause to be filed a notice of the amendment and restatement of the ~~Original~~First Amended Agreement by this Agreement with the office of the Secretary of State within 30 days after its effective date, as required by Section 6503.5 of the Joint Powers Act.

2. PURPOSE

It is the purpose of the Authority to advance the planning, design and construction, and then to administer the operation of a value pricing high-occupancy vehicle program on the Sunol Grade segment of I-680 in Alameda and Santa Clara Counties (the “Project” or the “I-680 Express Lane”) in the I-680 Express Lane Corridor as defined herein, and to adopt and administer an Expenditure Plan for the use of the net revenue generated by the Project.

3. PROJECT BOUNDARIES

The I-680 Express Lane Corridor extends on I-680 from the interchange of Alcosta Boulevard in the City of Dublin in Alameda County to State Route 237 (Calaveras Boulevard) in the city of Milpitas in Santa Clara County (the “Project Corridor” or “I-680 Express Lane Corridor”).

The Project Corridor is split into two sections: The 14-mile long southern section spans approximately 11.7 miles in Alameda County and 2.3 miles in Santa Clara County between State Route 84 in Alameda County and State Route 237 in Santa Clara County. The northern section spans approximately 10 miles between Alcosta Boulevard and State Route 84, all within Alameda County. In Alameda County, the cities or county areas that are in the Project Corridor or that are directly benefited by the Project are Dublin, Livermore, Pleasanton, Fremont, and the unincorporated areas of Alameda County in the immediate vicinity of these cities and I-680. In Santa Clara County, the cities or county areas that are in the Project Corridor or that are directly benefited by the Project are Milpitas and San Jose, and the unincorporated areas of Santa Clara County in the immediate vicinity of these cities and I-680.

4. EFFECTIVE DATE/TERM

This Agreement shall become effective upon approval by the governing board of the Member Agency that last approves the Agreement, which date shall be reflected in the introductory paragraph of this Agreement. The term of this Agreement shall commence on the Effective Date and continue unless and until terminated pursuant to Section 14 below.

5. FUNCTIONS AND RESPONSIBILITIES OF THE AUTHORITY

The Authority shall have the following functions and responsibilities:

5.1 Prepare, adopt, revise, amend, administer and implement the Authority’s Administrative Code, which is the separate document adopted by the Governing Board of the Authority from time to time as may be needed, that outlines, among other things, the

organizational structure of the Authority, the duties and powers of the Executive Director of the Authority who shall be hired by the Governing Board, the conduct of Authority meetings, and stipulates the delegation of power and authority to carry out the business and operations of the Authority.

5.2 Prepare, adopt, revise, amend, administer and implement the annual Budget, which is the separate document adopted annually by the Governing Board of the Authority that sets forth the annual expenses and revenues for Project administration, operations, maintenance and capital projects. The Budget shall consist of a capital budget and an operating budget.

5.3 Prepare, adopt, revise, amend, administer and implement an “Expenditure Plan,” which shall allocate all net revenue generated by the Project that remains after payment of direct expenses pursuant to Section 9.2 to transportation projects and/or programs within the Project Corridor pursuant to Section 9.3. The Expenditure Plan shall be adopted biennially and may be revised from time to time as may be needed by the Governing Board of the Authority.

5.4 Establish, and review from time to time, the fee (toll) structure for the use of the I-680 Express Lane.

5.5 Establish and review the appropriate traffic flow guidelines for the I-680 Express Lane Corridor to ensure optimal use of the express lanes by high-occupancy vehicles at level of service C, or level of service D with approval by the California Department of Transportation, and as otherwise provided in Section 149.5(b) of the Streets and Highways Code of the State of California.

5.6 Coordinate transportation planning and programming with Alameda CTC and VTA for the purposes of the Project.

5.7 Approve, adopt, revise and amend required reports to the California State Legislature.

5.8 Assess Member Agencies for shortfalls in operational costs or other unfunded obligations pursuant to Section 9.1.

5.9 Seek state and federal funding for the construction, administration, and operation of the Project, and other duties described in this Agreement.

5.10 Other functions and responsibilities as may be added by amendments to this Agreement pursuant to Section 16.

5.11 Other functions and responsibilities that are consistent with the purpose, objectives, functions and responsibilities described in this Agreement or are imposed or allowed by state or federal law.

6. POWERS OF THE AUTHORITY

As may be necessary for the accomplishment of the purposes of the Agreement and the functions and responsibilities of the Authority, the Authority shall have the power in its own name to undertake the following:

6.1 To make and enter into any and all contracts to accomplish the purpose and function of the Authority.

6.2 To employ or contract for the services of agents, employees, consultants, and such other persons or firms as it deems necessary.

6.3 To contract for any and all services deemed necessary to meet the purposes of the Authority.

6.4 To make plans and conduct studies and to review, recommend or adopt revisions or amendments thereto to the extent allowed by law.

6.5 To acquire by lease, purchase or lease-purchase, and to hold and dispose of any and all real and personal property necessary to carry out the purposes of this Agreement.

6.6 To construct, manage and maintain facilities and services, or enter into contracts for construction, management and maintenance of facilities and services.

6.7 To sue and be sued in its own name.

6.8 To incur debts, liabilities and obligations; however, the debts, liabilities and obligations of the Authority shall not constitute any debt, liability or obligation of any of the Member Agencies which are parties to this Agreement.

6.9 To issue bonds, refunding bonds, or bond anticipation notes, at any time to finance construction and construction-related expenditures of the Project and other projects in the Expenditure Plan, pursuant to and in compliance with Section 149.5(f) of the Streets and Highways Code of the State of California.

6.10 To apply for and accept grants for financial aid pursuant to any applicable state or federal statutes.

6.11 To adopt, as authorized by law, ordinances or resolutions necessary to carry out the purposes of this Agreement.

6.12 To seek state and federal or other funding to defray the cost of the design, construction, administration and operation of projects in the Project Corridor.

6.116.13 To the extent not set forth herein and in Section 149.5 of the Streets and Highways Code of the State of California, the Authority may exercise any and all powers granted to VTA, under Article 5 of Chapter 5 of Part 12 of the California Public Utilities Code, commencing with section 100160, and is subject to the restrictions imposed upon VTA by California ~~Statutes~~ statutes to the extent such restrictions apply to the activities of the Authority.

7. GOVERNING BOARD OF THE AUTHORITY

7.1 Members of the Governing Board

All powers of the Authority shall be exercised by a five member Governing Board. The Governing Board shall be composed as follows:

- (a) Four representatives of Alameda CTC;
- (b) One representative of VTA.

7.2 Selection of Members

(a) Members of the Governing Board shall be selected by the Boards of each respective Member Agency using the following criteria:

(i) Alameda CTC shall select its Members of the Governing Board of the Authority from elected officials who represent jurisdictions within the Project Corridor, or jurisdictions that will benefit from the Project, but Members of the Governing Board need not be members of the governing board of Alameda CTC;

(ii) VTA shall select its Members of the Governing Board of the Authority from members or alternate members of its governing board.

(b) The California Department of Transportation may designate one person who shall be entitled to receive all notices sent to Members and to participate in all Board Meetings and discussions, but who shall not be entitled to vote or hold office.

(c) Each Board Member shall hold office from the first meeting of the Authority after his or her appointment until a successor is appointed, or until the date such Board Member no longer serves as an elected official representing a jurisdiction in the Project Corridor or a jurisdiction that will otherwise benefit from the Project, whichever date is first. Each Board Member shall serve at the pleasure of the appointing Member Agency.

(d) Alternate Members of the Governing Board shall be selected by the boards of each respective Member Agency using the criteria outlined above in a manner determined by their respective Boards. Such Alternate Members may serve in the event that the appointed Governing Board Member is unable to attend a Board Meeting.

7.3 Officers of the Governing Board

The Governing Board shall elect a Chair and a Vice-Chair from among its Board Members at its first meeting. Thereafter at the first meeting held in each succeeding calendar year, or as otherwise determined by the Board in its discretion, the Authority shall elect its Chair and Vice-Chair for that year. If the Chair or Vice-Chair so elected ceases to be a member of the Governing Board, the resulting vacancy shall be filled at the next meeting of the Authority held after each vacancy occurs. In the absence or inability of the Chair to act, the Vice-Chair shall act

as Chair. The Chair, or in his or her absence, the Vice-Chair, shall preside at and conduct all meetings of the Authority.

7.4 Appointment of Treasurer

Pursuant to Sections 6505.5 and 6505.6 of the Government Code of the State of California, the Governing Board shall designate as Treasurer of the Authority one who is either Treasurer of any Member Agency, or a certified public accountant, or an employee of the Authority ~~or of the Managing Agency~~. The appointed Treasurer shall serve until the Authority designates a different Treasurer. If the Treasurer so appointed becomes ineligible or ceases to be able to perform his or her duties, the resulting vacancy shall be filled at the next meeting of the Authority held after each vacancy occurs. The roles and responsibilities of the Managing Agency are set forth in Section 89 below, and in the Administrative Code. The Treasurer is required to perform the functions specified in Section 11 below and in the Administrative Code.

7.5 Appointment of Auditor/Controller

Pursuant to Sections 6505.5 and 6505.6 of the Government Code of the State of California, the Governing Board shall designate from the same agency as the Treasurer an Auditor/Controller at its first meeting.

However, if a certified public accountant has been designated as Treasurer of the Authority, the Governing Board shall designate from the auditors of the Member Agencies an Auditor/Controller for the Authority at its first meeting. The Authority may also designate one of its officers or employees ~~or an employee of the Managing Agency as Auditor/Controller~~.

~~Thereafter at the first meeting held in each succeeding calendar year, the Governing Board shall elect its Auditor/Controller for that year pursuant to these requirements. The appointed Auditor/Controller shall serve until the Authority designates a different Auditor/Controller. If the Auditor/Controller becomes ineligible or ceases to be able to perform his or her duties, the resulting vacancy shall be filled at the next meeting of the Authority held after such vacancy occurs.~~

7.6 Appointment of Secretary

The Governing Board shall designate a Secretary at its first meeting and that Secretary shall serve until the Authority designates a different Secretary. If the Secretary so elected becomes ineligible or ceases to be able to perform his or her duties, the resulting vacancy shall be filled at the next meeting of the Authority held after each vacancy occurs. The Secretary may be an employee of the Authority or of the Managing Agency.

7.7 Meetings of the Governing Board

(a) Regular Meetings

The Governing Board shall establish a schedule for its regular meetings provided that it shall hold at least one regular meeting in each quarter of each year and such further meetings as may be reasonable depending on the pressure of business.

(b) Special Meetings

Special meetings of the Governing Board may be called by the Governing Board, Chair, Vice-Chair, or Executive Director of the Authority in accordance with the provisions of law.

(c) Notice of Meetings

All meetings of the Governing Board shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, commencing with Section 54950 of the Government Code of the State of California.

(d) Teleconferenced Meetings

Pursuant to Section 54953 of the Government Code of the State of California, meetings may be held when one or more members of the Governing Board attend telephonically, provided that the teleconferenced meeting or proceeding shall comply with all requirements of the Ralph M. Brown Act and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding. All votes taken during a teleconferenced meeting shall be by roll call. If the Governing Board elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the Governing Board. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the Governing Board shall participate from locations within the boundaries of the territory over which the Member Agencies exercise jurisdiction. The agenda shall provide an opportunity for members of the public to address the Governing Board directly pursuant to Section 54954.3 of the Government Code of the State of California at each teleconference location. For the purposes of this section, "teleconference" means a meeting of the Governing Board, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit the Authority from providing the public with additional teleconference locations.

(e) Quorum

A majority of Members shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn for lack of quorum. A minimum of 3 votes of the Governing Board is required to take action.

(f) Reimbursement For Expense of Meeting

The Governing Board is authorized to fix a reasonable sum to be paid to Members for their attendance of Governing Board Meetings. Such compensation shall be for mileage and other incidental costs associated with meeting attendance.

(g) Minutes

The Secretary of the Governing Board shall cause minutes of all meetings to be kept, and shall, after each meeting, cause a copy of the minutes to be forwarded to each Board Member of the Authority.

8. MANAGING AGENCY

While the Authority will oversee the implementation of the Project, the support of the Member Agencies is required. Therefore:

8.1 Alameda CTC, ~~as successor to the Alameda County Congestion Management Agency~~, shall continue to serve as the Managing Agency for the Project on behalf of the Authority.

8.2 The roles and relationships between the Managing Agency and the Authority shall be set forth in this Agreement and as further described in an Administrative Code, which shall be adopted by the Governing Board. The Managing Agency, together with the Executive Director, shall work in cooperation with the Member Agencies and endeavor to achieve consensus on Authority issues and matters that go before the Governing Board. If consensus cannot be reached, the Managing Agency, together with the Executive Director, shall prepare a report to the Governing Board that reflects the position of each Member Agency.

The Managing Agency shall have the following authority and responsibilities under the direction of the Governing Board, a portion of which could be delegated to the Executive Director:

(a) Prepare or oversee the production of items required for Governing Board approval, including:

(i) The Administrative Code, which shall be updated or otherwise amended from time to time as necessary;

(ii) The Budget, a draft of which shall be submitted to the Governing Board at least three months prior to the first fiscal year of operation of the Project, and thereafter submitted annually by June 1, at least one month prior to the start of each new fiscal year;

(iii) Two-year Expenditure Plan, a draft of which shall be submitted to the Governing Board at least three months prior to the first fiscal year of operation of the Project, and thereafter submitted biennially by April 1 to the Governing Board;

(iv) Annual Audit pursuant to Section 6505 of the Government Code of the State of California;

Agencies;

(v) Annual Report to the Governing Board and the Member

(vi) Project Report to the California State Legislature pursuant to Section 149.5(f) of the Streets and Highways Code of the State of California;

(b) Execute and administer agreements and contracts on behalf of the Authority for the construction, administration, operation and maintenance of the Project.

(c) File grant applications or submit requests for funding of the construction, administration and operation of the Project.

(d) Manage, implement and administer grants related to the Project.

(e) Prepare and submit to the Governing Board reports quarterly, or more frequently as requested by the Governing Board, comparing the actual expenses and revenues to the Budget.

(f) Report regularly to the staff of the Member Agencies and the Governing Board regarding issues that affect the Authority and the Project.

(g) Coordinate the development of the Governing Board agendas and staff reports with the staff of the Member Agencies prior to mailing.

(h) Provide information and support to Member Agencies for satisfying the requirements of local funding sources.

(i) Provide and manage all personnel utilized in providing or supporting the Project, and manage all contracts for professional services consistent with the Administrative Code as defined in Section 5.1.

(j) Pay all invoices properly charged to the Authority, if within and in accordance with the adopted Budget.

(k) Assess Member Agencies for shortfalls in operational costs or other unfunded obligations pursuant to Sections 5.8 and 9.1.

8.3 The Authority shall compensate the Managing Agency for its management services pursuant to the limitation of the Budget; however, the Member Agency serving as the Managing Agency shall not be entitled to compensation for its activities in representing that Member Agency on the Governing Board, except as set forth in Section 7.7(f).

9. FUNDING

9.1 In addition to any funds derived from grants as provided in this Agreement, the Member Agencies will contribute the funds necessary to carry out the purposes and powers of the Authority as follows: All shortfalls in operational costs or other unfunded obligations ~~in the northern section shall be assessed to Alameda CTC. Any shortfalls in~~

~~operational costs or other unfunded obligations in the southern section~~ will be assessed on a pro-rated basis, with ~~eighty ninety~~ percent (~~980~~%) assessed to Alameda CTC and ~~tentwenty~~ percent (~~120~~%) assessed to VTA.

9.2 Any revenues generated from the Project shall be available to the Authority for the direct expenses related to the operation (including collection and enforcement), maintenance, and administration of the Project. As required by Section 149.5 of the Streets and Highways Code of the State of California, the administrative expenses of the Authority shall not exceed 3 percent of the revenues.

9.3 All net revenue generated by the Project that remains after payment of direct expenses pursuant to Section 9.2 shall be allocated to projects and/or programs pursuant to an Expenditure Plan adopted biennially by the Authority for transportation purposes within the Project Corridor. The net revenues shall, over the term of the Expenditure Plan, generally be allocated in the proportions of express lane project lane miles within the Alameda and Santa Clara Counties. The Expenditure Plan may include, but is not limited to, funding for the following:

(a) The construction of high-occupancy vehicle facilities, including the design, preconstruction, construction, and other related costs of a northbound Interstate 680 Express Lane project in the southern section.

(b) The construction of high-occupancy vehicle facilities, including the design, preconstruction, construction, and other related costs of northbound and/or southbound Interstate 680 Express Lane projects on the northern section.

(c) Transit capital and operations that directly serve the I-680 Express Lane Corridor.

10. BUDGET

The Governing Board shall adopt a final Budget prior to the start of each fiscal year beginning with the first fiscal year of operation of the Project. The fiscal year shall begin July 1 of each year and shall include the following June 30. The Budget shall include separate components for administrative, operations, and capital costs anticipated to be incurred by the Authority during the fiscal year. No funding or financial obligations shall be created against any Member Agency solely as a result of adopting an annual Budget.

11. AUDIT AND ACCOUNTING

Pursuant to the requirements of section 6505.5 of the Government Code of the State of California, the Treasurer is designated to be the depository and to have custody of all funds from whatever source, and to perform the following functions:

11.1 Receive and receipt for all money and place it in a bank account or other investment instrument approved by the Authority for the credit of the Authority.

11.2 Be responsible upon official bond for the safekeeping and disbursement of all Authority money so held.

11.3 Pay, when due, out of money of the Authority, all sums payable on outstanding bonds and coupons of the Authority.

11.4 Pay any sums due from Authority money, or any portion thereof, only upon warrants of the public office performing the functions of auditor or controller who has been so designated pursuant to this Agreement.

11.5 Verify and report to the Governing Board and to the Member Agencies in writing quarterly, or more frequently as requested by the Governing Board, the amount of money the Treasurer holds for the Authority, and the amount of receipts and the amounts paid out since the last report.

Pursuant to the requirements of section 6505.6 of the Government Code of the State of California, if the Governing Board appoints one of its officers or employees as either Treasurer or Auditor/Controller, the Treasurer or Auditor/Controller shall cause an independent audit to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Government Code of the State of California.

The Authority shall provide for the accountability of all funds and shall provide for an annual independent audit.

12. LIABILITY OF AUTHORITY, OFFICERS AND EMPLOYEES

The debts, liabilities, and obligations of the Authority shall not be the debts, liabilities and obligations of the Member Agencies. The Governing Board Members, the Managing Agency, and officers, employees, and staff of the Authority ("Authority Representatives") shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. They shall not be liable for any mistakes of judgment or any other action made, taken or omitted by them in good faith, nor for any action with reasonable care, nor for loss incurred through investment of joint powers agency funds, or failure to invest. No Governing Board Member, nor any officers, employees or staff of either Member Agency, nor any Authority Representatives officer or employee shall be responsible for any action taken or omitted by any other Governing Board Member, director, officer, employee or staff of either Member Agency, nor any Authority Representatives. officer or employee. No director=Governing Board Member, officer or employee nor any Authority Representatives shall be required to give a bond or other security to guarantee the faithful performance of his or her duties pursuant to this Agreement. The Authority shall indemnify and hold harmless the Authority's individual Governing Board Members, its officers, ~~and~~ employees, and agents -and the Managing Agency, its officers, employees and agents, for any action taken lawfully and in good faith pursuant to this Agreement. Nothing in this section shall be construed to limit any defenses available to the Authority, its officers, employees, staff, Governing Board Members, or Member Agencies under any law, including the Government Tort Claims Act found in the Government Code of the State of California, commencing with section 830.

13. REPORT TO CALIFORNIA LEGISLATURE

As required by Section 149.5 of the Streets and Highways Code of the State of California, not later than three years after the Authority first collected revenues from the Project, the Authority presented a report to the California State Legislature on its findings, conclusions, and recommendations concerning the Project. The report included an analysis of the effect of the value pricing high-occupancy vehicle lanes on the adjacent mixed-flow lanes and any comments submitted by the California Department of Transportation and the Department of the California Highway Patrol regarding operation of the Project.

14. TERMINATION OF AGREEMENT BY AUTHORITY

If the Project is not successful as determined by the Governing Board, this Agreement may be terminated by a resolution approved by a four-fifths (4/5) vote of the Members of the Governing Board at a regularly noticed Governing Board meeting. Such termination will be effective on the date specified in the resolution of the Governing Board. In the event of a termination under this Section, the Authority and this Agreement will continue to exist for the purpose of restoring the Project Corridor to its pre-Project condition, and once the Project Corridor has been restored to its pre-Project condition, distributing any money or assets in possession of the Authority after the payment of all liabilities, costs, expenses, and charges validly incurred under this Agreement, to the Member Agencies in proportion to their contributions determined as of the time of termination to be used for transit capital and operations that directly serve the I-680 Express Lane Corridor.

15. AMENDMENTS TO THE AGREEMENT

This Agreement may be further amended at any time by the ~~unanimous agreement~~ mutual consent and approval of the Boards of the Member Agencies.

16. ARBITRATION

In the event of a dispute between the Authority and its Member Agencies, or any one Member Agency, which those parties cannot satisfactorily resolve, the dispute shall be submitted to arbitration by a panel of three arbitrators pursuant to the rules of the American Arbitration Association. The panel of arbitrators shall consist of one arbitrator appointed by the governing body of the Authority and one arbitrator appointed by the Member Agencies with whom the dispute exists and the third member shall be appointed by mutual consent of the other two arbitrators. The arbitration panel shall resolve the dispute in accordance with the terms of this Agreement.

17. SUCCESSOR STATUTES

All statutes cited herein shall be deemed to include amendments and successor statutes to the cited statutes as they presently exist.

18. NOTICE

All notices, requests, payments and all other communications to be made or given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally, or on the second day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, and properly addressed as follows:

If to Alameda CTC:

Alameda County Transportation Commission
1111 Broadway, Suite 800
Oakland, CA 94607
Attn: Arthur L. Dao

If to VTA:

Santa Clara Valley Transportation Authority
3331 North First Street
San Jose, CA 95134-1906
Attn: ~~Carolyn Gonot~~ ~~John Ristow~~

19. CONSTRUCTION: NUMBER, GENDER AND CAPTIONS

This Agreement has been executed in the State of California and shall be construed according to the law of the State of California. Numbers and gender as used herein shall be construed to include that number and/or gender which is appropriate in the context of the text in which either is included. Captions are included herein for the purposes of ease of reading and identification. Neither gender, number nor captions used herein shall be construed to alter the plain meaning of the text in which any or all of them appear.

20. EXECUTION IN COUNTERPART

The Agreement may be executed in one or more counterparts and may include multiple signature pages, all of which shall be deemed to be one instrument. Copies of this Agreement will be used in lieu of the original.

21. COMPLETE AGREEMENT

This Agreement constitutes the full and complete agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by authorized officials indicated below.

ALAMEDA COUNTY TRANSPORTATION COMMISSION

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY

By: _____
ARTHUR L. DAO
Executive Director

By: _____
NURIA I. FERNANDEZ
General Manager

APPROVED AS TO FORM:

REVIEWED AS TO BUDGET/~~FINANCIAL~~ CONTROL

By: _____
General Counsel

By: _____
PATRICIA REAVEY
Deputy Executive Director of Finance and
Administration

APPROVED AS TO FORM:

By: _____
~~Wendel, Rosen, Black & Dean LLP~~ Meyers, Nave, Riback, Silver & Wilson, PLC
General Counsel