JOINT EXERCISE OF POWERS AGREEMENT

between

METROPOLITAN TRANSPORTATION COMMISSION

and

BAY AREA TOLL AUTHORITY

Dated as of August 1, ~~2006~~2006,

as amended September 28, 2011

Creating the

BAY AREA INFRASTRUCTURE FINANCING AUTHORITY

This JOINT EXERCISE OF POWERS AGREEMENT dated as of August 1, ~~2006~~**2006, as amended September 28, 2011** (this "Agreement") between METROPOLITAN TRANSPORTATION COMMISSION ("MTC") and BAY AREA TOLL AUTHORITY ("BATA")

W I T N E S S E T H:

WHEREAS, MTC was created pursuant to the Metropolitan Transportation Commission Act (California Government Code section 66500 et seq. (the "MTC Act")) and has the power to accept grants, contributions, and appropriations ~~from~~ from any public agency, private foundation, or individual under California Government Code section 66506 and to seek to assist in the development of adequate funding sources to develop, construct, and support transportation projects that it determines essential pursuant to California Government Code section 66530; and

WHEREAS, BATA was created pursuant to Chapter 4.3 of Division 17 of the California Streets and Highways Code (California Streets and Highways Code section 30950 et seq. (the "BATA Act")) and has the power under California Streets and Highways Code section 30951 to apply for, accept, receive, and disburse grants, loans, and other assistance from any agency of the United States or of the State of California, and to plan projects within its jurisdiction under California Streets and Highways Code section 30950.3; and

WHEREAS, pursuant to the California Joint Exercise of Powers Act, consisting of Sections 6500 through 6599.2 of the California Government Code, as amended from time to time (the "Joint Powers Act"), two or more public agencies may enter into an agreement to establish an agency to exercise any power common to the contracting parties; and

WHEREAS, each of MTC and BATA is a "public agency" as that term is defined in Section 6500 of the Joint Powers Act; and

WHEREAS, a public entity established by MTC and BATA pursuant to the Joint Powers Act is empowered, in exercising the authorized common powers of its members and the powers separately conferred by statute upon such entity, to undertake the activities specified in this Agreement, including without limitation, the issuance of Bonds (as used herein ~~"~~"Bonds~~"~~" means bonds as defined in Section 6585(c) of the Joint Powers Act~~) under~~ or **issued** in accordance with the ~~Joint Powers Act~~**California Transportation Financing Authority Act (Division 3 of Title 6.7 of the Government Code, the "CTFA Act")** or other applicable provisions of law**)**; and

WHEREAS, each of MTC, with the approval of MTC Resolution No. 3769 adopted on July 26, ~~2006,~~**2006 and amended September 28, 2011** and BATA, with the approval of BATA Resolution No. 70, adopted on July 26, ~~2006,~~**2006 and amended September 28, 2011,** has determined that it is to the advantage of such public agency and in the public interest of the area and persons served by such public agency, to enter into this Agreement in order to establish an agency (the "Bay Area Infrastructure Financing

Authority," "BAIFA" or the "Authority") that will undertake programs and projects, **including the development, financing, and operation of high-occupancy toll lanes in MTC's jurisdiction,** as herein provided by exercising the common powers of MTC and BATA relating to such programs and projects and such other powers as are granted to ~~such agency by~~**the Authority by or pursuant to** the Joint Powers Act, **the CTFA Act, Streets and Highways Code section 149.7 (the "Express Lanes Statute"),** and other laws**; and**

WHEREAS, MTC is a transportation planning agency as defined in Streets and Highways Code section 143 and has consented to the Authority's serving as a regional transportation agency for the purpose of applying to develop and operate high-occupancy toll lanes in MTC's jurisdiction pursuant to the Express Lanes Statute;

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

SECTION 1. PURPOSE.

This Agreement is made pursuant to the Joint Powers Act to provide for the joint exercise of powers common to MTC and BATA and the powers separately conferred by **or pursuant to** law upon the Authority to plan projects and obtain funding in the form of grants, contributions, appropriations, loans and other assistance from the United States and from the State of California and apply money received to pay debt service on Bonds issued by the Authority to finance or refinance public capital improvements (as defined in the Joint Powers Act) **and to develop and operate high-occupancy toll lane facilities pursuant to the Express Lanes Statute and to finance and refinance those facilities pursuant to the Joint Powers Act, the CTFA Act, and other laws**. The purpose of this Agreement is to plan, develop**, operate,** and fund ~~transportation and related~~**such** projects and **facilities and** to exercise such powers jointly by pooling efforts and activities to achieve those ends. This purpose will be accomplished and said powers exercised in the manner set forth in this Agreement and in accordance with the Joint Powers Act**, the CTFA Act, the Express Lanes Statute,** and all other applicable laws of the State of California.

SECTION 2. TERM.

This Agreement shall become effective as of the date hereof and shall continue in full force and effect for a period of 50 years from such date unless extended or earlier terminated by a supplemental written agreement of MTC and BATA, provided that this Agreement shall not terminate or be terminated until the date on which: (i) all Bonds issued by the Authority shall have been paid or deemed paid in accordance with the resolution, indenture or other instrument or proceeding authorizing or securing such Bonds (each such resolution, indenture, instrument and proceeding being herein referred to as an "Indenture"); and (ii) all other indebtedness and liabilities incurred by the Authority shall have been paid or provided for. The Authority shall cause all records regarding its formation, existence, operations and proceedings pertaining to its termination to be retained for at least six years following termination of the Authority.

SECTION 3. AUTHORITY.

A. Creation of Authority.

There is hereby created under and pursuant to the Joint Powers Act an authority and public entity, separate and apart from MTC and BATA, to be known as the Bay Area Infrastructure Financing Authority ("BAIFA" or the "Authority"). The Authority's debts, liabilities and obligations shall not constitute debts, liabilities or obligations of MTC or BATA.

Within 30 days after the effective date of this Agreement, or any amendment hereto, the Authority will cause a notice of this Agreement or amendment to be prepared and filed with the office of the Secretary of State of the State of California in the manner set forth in Section 6503.5 of the Joint Powers Act.

B. Governing Board

The Authority shall be administered by a governing board (the "Board"), which shall consist of six members: the chair and the vice chair of MTC; the chair and the vice chair of the BATA oversight committee; and the chair and the vice chair of the MTC programming and allocations committee. If either the BATA oversight committee or the MTC programming and allocations committee is reconstituted, the succeeding committee shall be responsible for the respective appointments to the Board. The members of the Board shall serve without compensation, but shall receive reimbursement for actual and necessary expenses incurred in connection with the performance of their duties. However, in lieu of this reimbursement for attendance at Authority or committee meetings, each member may receive a per diem of one hundred dollars ($100), but not to exceed a combined total of five meetings in any one calendar month, plus the necessary traveling expenses as may be authorized by the Authority.

C. Meetings of Board

(1) Regular Meetings and Special Meetings. The Board shall hold at least one regular meeting each year, and, by resolution, may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each such regular meeting shall be fixed by resolution of the Board but may be changed by the chair or vice chair of the Authority upon not less than 48 hours prior notice in order to coordinate the date, hour and place of the meeting with the date, hour and place of an MTC meeting or a BATA meeting. Special meetings of the Board may be called by the chair or the vice chair of the Authority or by a majority of the members of the Board on the date and at the hour and place fixed by notice to all of the members of the Board.

(2) Legal Notice. All regular and special meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (codified at California Government Code sections 54950 and following).

(3) Minutes. The secretary of the Authority shall cause minutes of all meetings of the Board to be kept and shall, as soon as practicable after each meeting,

cause a copy of the minutes to be forwarded to each member of the Board and to MTC and BATA.

(4) Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business.

D. Officers; Duties

(1) The chair of MTC shall be the chair of the Authority. The vice chair of MTC shall be the vice chair of the Authority. The Board shall by resolution appoint a secretary of the Authority.

(2) The Chief Financial Officer of MTC is hereby designated as Treasurer of the Authority. The Treasurer is designated as the depositary of the Authority to have custody of all the money of the Authority, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Joint Powers Act.

(3) The Chief Financial Officer of MTC is hereby designated as Auditor of the Authority, and, as such, shall have the powers, duties and responsibilities specified in Section 6505 and Section 6505.5 of the Joint Powers Act. The Auditor shall draw checks to pay demands against the Authority when the demands have been approved by the Authority.

(4) MTC shall determine the charges, if any, to be made against the Authority for the services of the Treasurer and Auditor. MTC may provide staff for the Authority and shall determine the charges to be paid by the Authority for such services.

(5) The Treasurer and Auditor of the Authority are designated as the public officers or persons who have charge of, handle, or have access to any property of the Authority, and such officers shall file an official bond as required by Section 6505.1 of the Joint Powers Act in the amount of $25,000.

(6) The Treasurer of the Authority is hereby authorized and directed to prepare or cause to be prepared a report in writing on the first day of July, October, January, and April of each year to the Board and the Authority, which report shall describe the amount of money held by the Treasurer and Auditor of the Authority for the Authority, the amount of receipts since the last such report, and the amount paid out since the first such report.

(7) The Executive Director of MTC is hereby designated as Executive Director of the Authority.

(8) The General Counsel for MTC shall be and act as General Counsel to the Authority.

(9) The Board shall have the power to appoint such other officers and employees as it may deem necessary.

E. Conflict of Interest Code.

MTC's conflict of interest code shall apply to the Authority.

F. Rules And Regulations.

The Authority may adopt, from time to time, by resolution of the Board, such rules and regulations for the conduct of its meetings and affairs as the Board determines are necessary or convenient.

SECTION 4. POWERS.

The Authority shall have any and all powers ~~which~~**that** are common powers of MTC and BATA, and the powers separately conferred by law upon the Authority, with respect to obtaining funding in the form of grants, contributions, appropriations, loans and other assistance from the United States and from the State of California and applying money received to pay debt service on Bonds issued by the Authority to finance or refinance public capital improvements (as defined in the Joint Powers Act)~~ and to issuing such Bonds.~~ **, to issuing such Bonds, to developing and operating high-occupancy toll lane facilities pursuant to the Joint Powers Act and the Express Lanes Statute and other laws and to finance and refinance those facilities pursuant to the Joint Powers Act, the CTFA Act and other laws.** All such powers, whether common to the Parties or separately conferred by **or pursuant to** law upon the Authority, are specified as powers of the Authority except any such powers which are specifically prohibited to the Authority by applicable law.

The Authority is hereby authorized, in its own name, to do all acts necessary or convenient for the exercise of its powers, including, but not limited to, any or all of the following: to sue and be sued; to make and enter into contracts; to employ agents, consultants, attorneys, accountants, and employees; to acquire, hold or dispose of property, whether real or personal, tangible or intangible, wherever located; to issue Bonds or otherwise incur debts, liabilities or obligations to the extent authorized **under the CTFA Act or** by the Joint Powers Act, including Article 2 and Article 4 thereof, or any other applicable provision of law and to pledge any grants, contributions, appropriations, loans or other assistance or **toll lane facilities or** other property or **toll revenues or other** revenues or the rights thereto as security for such Bonds and other indebtedness; and to receive grants, contributions, appropriations, loans and other assistance from the United States and from the State of California and any other persons, firms, corporations or governmental entities. The Authority shall have all additional powers conferred under the Joint Powers Act **or the CTFA Act or implied therefrom**.

The Authority shall continue to exercise the powers herein conferred upon it until the end of the term of this Agreement as provided in Section 2.

SECTION 5. MANNER OF EXERCISING POWERS.

To the extent required by the Joint Powers Act, the manner in which the Authority shall exercise its powers and perform its duties is and shall be subject to the

restrictions upon the manner in which BATA could exercise such powers and perform such duties pursuant to Section 6509 of the Joint Powers Act. The manner in which the Authority shall exercise its powers and perform its duties shall not be subject to any restrictions applicable to the manner in which any other public agency could exercise such powers or perform such duties, whether such agency is a party to this Agreement or not.

SECTION 6. FISCAL YEAR.

For the purposes of this Agreement, the term "Fiscal Year" shall mean the fiscal year of the Authority being, until changed by resolution of the Board, the period from July 1 to and including the following June 30 except for the first Fiscal Year which shall be the period from the date of this Agreement to and including June 30, 2007.

SECTION 7. CONTRIBUTIONS AND ADVANCES.

Contributions or advances of funds and property may be made to the Authority by MTC and BATA for any of the purposes of this Agreement and shall be deposited by the Authority in a fund hereby authorized to be established and operated by the Authority as the BAIFA Operating Fund. Any such advance may, but need not, be made subject to repayment, and if made subject to repayment shall be repaid in the manner agreed upon by the contributor and the Authority at the time of making such advance. It is mutually understood and agreed that neither MTC nor BATA has any obligation to make advances or contributions to the Authority. MTC and BATA may allow the use of personnel, equipment or property in lieu of other contributions or advances to the Authority. After termination of this Agreement pursuant to Section 2, any surplus money in possession of the Authority shall be returned to MTC and BATA in proportion to the unreimbursed advances each has made or as otherwise agreed to by MTC and BATA.

SECTION 8. DISPOSITION OF ASSETS.

Upon the termination of this Agreement as set forth in Section 2, after payment of all expenses and liabilities of the Authority, all property of the Authority both real and personal shall be distributed to MTC, subject to the provisions of Section 7.

SECTION 9. BONDS.

A. Authority To Issue Bonds.

When authorized by **or pursuant to the CTFA Act or** the Joint Powers Act or other applicable provisions of law and by resolution of the Board, the Authority may issue Bonds for the purpose of raising funds for the exercise of any of its powers or to otherwise carry out its purposes under this Agreement. Said Bonds shall have such terms and conditions as are authorized by the Board.

B. Bonds Limited Obligations.

The Bonds, including the principal and any purchase price thereof, and the interest and premium, if any, thereon, shall be special obligations of the Authority payable

solely from, and secured solely by, the revenues, funds and other assets pledged therefor under the applicable Indenture(s) and shall not constitute a charge against the general credit of the Authority. The Bonds shall not be secured by a legal or equitable pledge of, or lien or charge upon or security interest in, any property of the Authority or any of its income or receipts except the property, income and receipts pledged therefor under the applicable Indenture(s). The Bonds shall not constitute a debt, liability or obligation of the State or any public agency thereof, including MTC and BATA, other than the special obligation of the Authority as described above. Neither the faith and credit nor the taxing power of the State of California or any public agency thereof, including MTC and BATA, shall be pledged to the payment of the principal or purchase price of, or the premium, if any, or interest on the Bonds nor shall the State of California or any public agency or instrumentality thereof, including MTC and BATA, in any manner be obligated to make any appropriation for such payment. The Authority shall have no taxing power.

No covenant or agreement contained in any Bond or Indenture shall be deemed to be a covenant or agreement of any director, officer, agent or employee of the Authority, in his or her individual capacity and no director or officer of the Authority executing a Bond shall be liable personally on such Bond or be subject to any personal liability or accountability by reason of the issuance of such Bond.

SECTION 10. SWAPS AND OTHER FINANCIAL PRODUCTS.

In the exercise of a common power of MTC and BATA or when the Authority is separately authorized by the Joint Powers Act or other applicable provisions of law, the Authority, when authorized by resolution of the Board, may enter into hedging or other arrangements authorized by California Government Code sections 5920-5923 on terms and conditions authorized by the Board.

SECTION 11. ACCOUNTS AND REPORTS.

A. Books And Records.

All funds of the Authority shall be strictly accounted for in books of account and financial records maintained by the Authority, including a report of all receipts and disbursements. The Authority shall establish and maintain such funds and accounts as may be required by generally accepted accounting principles and by each Indenture for outstanding Bonds (to the extent such duties are not assigned to a trustee for owners of Bonds). The books and records of the Authority shall be open to inspection at all reasonable times by MTC and BATA.

The Authority shall require that each Indenture provide that the trustee appointed thereunder shall establish suitable funds, furnish financial reports and provide suitable accounting procedures to carry out the provisions of such Indenture. Said trustee may be given such duties in said Indenture as may be desirable to carry out the requirements of this Section.

B. Audits.

The Auditor of the Authority shall cause an independent audit to be made of the books of accounts and financial records of the Authority in compliance with the requirements of the Joint Powers Act. Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants in making an audit pursuant to this Section, shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for that purpose.

C. Audit Reports.

The Treasurer of the Authority, as soon as practicable after the close of each Fiscal Year but in any event within the time necessary to comply with the requirements of the Joint Powers Act shall file a report of the audit performed pursuant to Subsection B of this Section 11 as required by the Joint Powers Act and shall send a copy of such report to public entities and persons in accordance with the requirements of the Joint Powers Act.

SECTION 12. FUNDS.

Subject to the provisions of each Indenture for outstanding Bonds providing for a trustee to receive, have custody of and disburse funds which constitute Authority funds, the Treasurer of the Authority shall receive, have the custody of and disburse Authority funds pursuant to accounting procedures approved by the Board and shall make the disbursements required by this Agreement or otherwise necessary to carry out the provisions and purposes of this Agreement.

SECTION 13. NOTICES.

Notices and other communications hereunder to the parties shall be sufficient if delivered to the clerk or secretary of the governing body of each party.

SECTION 14. WITHDRAWAL

Neither MTC nor BATA may withdraw from this Agreement prior to the end of the term of this Agreement determined in accordance with Section 2.

SECTION 15. INDEMNIFICATION.

To the full extent permitted by law, the Board may authorize indemnification by the Authority of any person who is or was a director, officer, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a director, officer, employee or other agent of the Authority, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful and, in the case of any action by or in the right of the Authority, acted with such care,

including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

SECTION 16. IMMUNITIES.

All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, employees or other representatives of MTC or BATA when performing their respective functions within the territorial limits of their public agency, shall apply to them to the same degree and extent while engaged as a director, officer, agent, employee or other representative of the Authority or while engaged in the performance of any of their functions or duties under the provisions of this Agreement whether within or outside of the boundaries of MTC or BATA.

SECTION 17. COUNSEL, CONSULTANTS AND ADVISORS.

The Authority may employ the services of independent counsel, including bond and other special counsel, financing, engineering, construction, utility and other consultants and advisors, and accountants and auditors in connection with the programs undertaken pursuant to this Agreement, including the issuance of Bonds and the entry into financial products authorized by Section 10 hereof. The fees and expenses of such counsel, consultants, advisors, accountants and auditors, and the expenses of the Authority in connection with such programs and projects, shall be paid from the proceeds of Bonds or any other unencumbered funds of the Authority available for such purpose.

SECTION 18. AMENDMENTS.

This Agreement shall not be amended, modified, or altered except by a written instrument duly executed by MTC and BATA.

SECTION 19. EFFECTIVENESS.

This Agreement shall become effective and be in full force and effect and a legal, valid and binding obligation of MTC and BATA at 9:00 a.m., California time, on the first date as of which each of MTC and BATA has delivered to the other party an executed counterpart of this Agreement, together with a certified copy of a resolution of the governing body of such party approving this Agreement and the execution and delivery hereof.

SECTION 20. PARTIAL INVALIDITY.

If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

SECTION 21. SUCCESSORS.

This Agreement shall be binding upon and shall inure to the benefit of the successors of MTC and BATA. Except to the extent expressly provided herein, neither party may assign any right or obligation hereunder without the consent of the other.

SECTION 22. MISCELLANEOUS.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Where reference is made to duties to be performed for the Authority by a public official or employee, such duties may be performed by that person's duly authorized deputy or assistant. Where reference is made to actions to be taken by MTC or BATA, such action may be exercised through the officers, staff or employees of MTC or BATA, as the case may be, in the manner provided by law.

The section and subsection headings herein are for convenience only and are not to be construed as modifying or governing the language in the section or subsection referred to.

This Agreement is made in the State of California, under the Constitution and laws of the state and is to be construed as a contract made and to be performed in the State of California.

This Agreement is the complete and exclusive statement of the agreement among the parties with respect to the subject matter hereof, which supersedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between the parties relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement, **as amended,** to be executed by their proper officers thereunto duly authorized~~, as of the day and year first above written.~~ **on September 28, 2011.**

~~Dated: _____, 2006~~

METROPOLITAN TRANSPORTATION COMMISSION

By_____
Name: Steve Heminger
Title: Executive Director

By_____
Name: Brian Mayhew
Title: Chief Financial Officer

Attest:

By_____
Name: Rosy Leyva
Title: Secretary

~~Dated: _____, 2006~~

BAY AREA TOLL AUTHORITY

By_____
Name: Steve Heminger
Title: Executive Director

By_____
Name: Brian Mayhew
Title: Chief Financial Officer

Attest:

By_____
Name: Rosy Leyva
Title: Secretary