

San Mateo County Express Lanes Joint Powers Authority Board of Directors Meeting Notice

Meeting No. 1

DATE: Thursday, June 6, 2019
TIME: 3:00 P.M.
PLACE: San Mateo County Transit District Office
1250 San Carlos Avenue, Second Floor Auditorium
San Carlos, CA

(Board of Directors: A. Aguirre, E. Beach, M. Freschet, D. Horsley, D. Kim, D. Papan)

1.0 CALL TO ORDER/ ROLL CALL

2.0 PLEDGE OF ALLEGIANCE

3.0 PUBLIC COMMENT

Note: Public comment is limited to two minutes per speaker. Public comment permitted on both items on the agenda and items not on the agenda.

4.0 ELECTION OF OFFICERS

- a) Election of a Chair and a Vice Chair to serve one-year terms. p. 1
- b) Appointment of Secretary.

5.0 CONSENT AGENDA

This item is to set the final consent and regular agenda, and to approve the items listed on the consent agenda. All items on the consent agenda are approved by one action. There will be no separate discussion on these items unless members of the Board, staff or public request specific items to be removed for separate action.

- a) Approval of regular board meeting calendar for 2019. p. 3
- b) Authorization to file the Joint Exercise Powers Agreement as required by law. p. 5

6.0 REGULAR AGENDA

- a) Review and approval of Resolution SMCEL 19-01 authorizing Board of Directors compensation and expense reimbursement. p. 7

- b) Approval of Conflict-of-interest code. p. 10
- c) Review and adoption of Resolution SMCEL 19-02 authorizing the Express Lanes Joint Powers Authority Chair to execute the Agreement between the County Counsel of the County of San Mateo and the Express Lanes Joint Powers Authority. p. 16
- d) Review and adoption of Resolution SMCEL 19-03 authorizing the Express Lanes Joint Powers Authority Chair to execute the Reimbursement Agreement between the Express Lanes Joint Powers Authority and California Transportation Commission for Reimbursement of expenses related to the review of the San Mateo County Toll Facility Application. p. 25
- e) Receive information on:
 - 1. Update on the development of the Fiscal Year 2020 JPA Budget. p. 34
 - 2. Procurement Process for the San Mateo County Express Lanes Joint Powers Authority (JPA) Policy/Program Manager (PPM) services. p. 36

7.0 REPORTS

- a) Chairperson Report.
- b) Member Report.
- c) Committee Report.
- d) Executive Council Report.

8.0 WRITTEN COMMUNICATIONS

9.0 NEXT REGULAR MEETING

July 12, 2019

10.0 ADJOURN

PUBLIC NOTICING: All notices of San Mateo County Express Lanes Joint Powers Authority regular Board meetings, standing committee meetings, and special meetings will be posted at the San Mateo County Transit District Office, 1250 San Carlos Ave., San Carlos, CA.

PUBLIC RECORDS: Public records that relate to any item on the open session agenda for a regular Board meeting, standing committee meeting, or special meeting are available for public inspection. Those public records that are distributed less than 72 hours prior to a regular Board meeting are available for public inspection at the same time they are distributed to all members, or a majority of the members, of the Board. The Board has designated the location of XXXXX, for the purpose of making public records available for inspection.

PUBLIC PARTICIPATION: Public comment is limited to two minutes per speaker. Persons with disabilities who require auxiliary aids or services in attending and participating in this meeting should contact Mima Guilles at (650) 599-1406, five working days prior to the meeting date.

If you have any questions about this agenda, please contact:

Mima Guilles (650) 599-1406

**San Mateo County Express Lanes Joint Powers Authority
AGENDA REPORT**

Date: June 6, 2019
To: San Mateo County Express Lanes Joint Powers Authority (JPA) Board of Directors
From: Sandy Wong
Subject: Election of a Chairperson and a Vice Chairperson and appointment of a Secretary.
(For further information, contact Jean Higaki at 650-599-1462)

RECOMMENDATION

That the San Mateo County Express Lanes Joint Powers Authority (JPA) Board of Directors take the following actions:

- a) Elect a Chair and Vice Chair to serve one-year terms, effective of June 6, 2019.
- b) Appoint a Secretary.

FISCAL IMPACT

None

SOURCE OF FUNDS

N/A

BACKGROUND

The Joint Exercise of Powers Agreement (JEPA) for the San Mateo County Express Lanes, Article IV Section 4.6 states the Board will elect a Chair and Vice-Chair from among its members, and will appoint a Secretary who may, but need not be, a member of the Board.

Chairperson and Vice Chairperson

The Chair and Vice Chair will serve one-year terms and must be appointees of different Members (Members are in reference to the City/County Association of Governments of San Mateo County and the San Mateo County Transportation Authority). Further, the Chair and Vice Chair positions must be held by appointees of alternating Members in alternating years (e.g., in Year 1, one of Member A's appointees will be the Chair and one of Member B's appointees will be the Vice Chair; the opposite will be true in Year 2). This rotation and the term of office may be altered as designated in rules or bylaws established by the Board.

Staff recommends election of the Chairperson to precede election of the Vice Chairperson. The voting shall be public. According to legal counsel, this can be done by hand or in writing as long as the Board member's name appears on the ballot and it becomes part of the official record. Written ballots will be available if the Board wants to use them.

The Chair will preside over all meetings of the board and will sign all contracts on behalf of the Express Lanes JPA, except contracts that the Board may authorize an officer or agent, or employee of the Express Lanes JPA to sign. The Chair will perform such other duties as may be imposed by the Board in accordance with law and the JEPA.

The Vice Chair will act, sign contracts, and perform all of the Chair's duties in the absence of the Chair.

Secretary

The Secretary must countersign contracts signed on behalf of the Express Lanes JPA, and will be the official custodian of all records of the Express Lanes JPA. The Secretary will attend to such filings as required by applicable law. The Secretary will perform such other duties as may be imposed by the Board. The JEPA does not specify any term length for the Secretary.

Voting

In accordance with the JEPA, voting on the Chair and Vice Chair, appointment of a Secretary, will require five (5) Board members to be present, and requires the affirmative vote of at least four (4) Board members.

ATTACHMENTS

None

**San Mateo County Express Lanes Joint Powers Authority
AGENDA REPORT**

Date: June 6, 2019
To: San Mateo County Express Lanes Joint Powers Authority (JPA) Board of Directors
From: Sandy Wong, Executive Council
Subject: Review and approval of regular Board meeting calendar for 2019
(For further information, contact Jean Higaki at 650-599-1462)

RECOMMENDATION

That the San Mateo County Express Lanes Joint Powers Authority (JPA) Board of Directors review and approve the regular Board meeting calendar for 2019.

FISCAL IMPACT

None

SOURCE OF FUNDS

N/A

BACKGROUND

At the May 24, 2019 San Mateo County Express Lanes Joint Ad Hoc Committee meeting, the Committee discussed the scheduling of future San Mateo County Express Lanes Joint Powers Authority (JPA) Board meetings. It was confirmed that the first JPA meeting would be scheduled for June 6, 2019 from 3:00pm to 4:30 pm in the SamTrans auditorium. Further, the Committee agreed to set the new JPA Board regular meeting for calendar year 2019 on the second Friday of each month from 9:00 am to 10:30 am, starting in July.

The Joint Exercise of Powers Agreement for the San Mateo County Express Lanes (JEPA) states the Board will meet quarterly, or more often as needed. Staff recommends the Board adopt the 2019 meeting calendar as shown in Attachment 1.

ATTACHMENT

1. Proposed 2019 JPA meeting calendar

San Mateo County Express Lanes Joint Powers Authority

Board of Directors 2019 Meeting Calendar

Time: 9:00 a. m. to 10:30 a.m. (except as noted otherwise)

Location: TBD
San Mateo County Transit District
1250 San Carlos Avenue
San Carlos

June 6 – (from 3:00 p.m. to 4:30 p.m. SamTrans Auditorium)

July 12

August 9

September 13

October 11

November 8

December 13

NOTE: This schedule is subject to change should significant issues arise or develop over the course of the year.

**San Mateo County Express Lanes Joint Powers Authority
AGENDA REPORT**

Date: June 6, 2019
To: San Mateo County Express Lanes Joint Powers Authority (JPA) Board of Directors
From: Sandy Wong, Executive Council
Subject: Authorization to file the Joint Exercise Powers Agreement as required by law
(For further information, contact Sandy Wong at 650-599-1409)

RECOMMENDATION

That the Board of Directors for the San Mateo County Express Lanes Joint Powers Authority (JPA) direct staff to file and/or submit any and all necessary documents on behalf of the JPA to comply with the provisions of Article II Section 2.1 of the Joint Exercise of Powers Agreement and relevant California Government Codes.

FISCAL IMPACT

There is no fiscal impact.

SOURCE OF FUNDS

Not applicable

BACKGROUND

Pursuant to Article II Section 2.1 of the Joint Exercise of Powers Agreement for the San Mateo County Express Lanes (JEPA), and relevant California Government Codes, the following are required:

- (a) Within thirty (30) days after the effective date of this Agreement, and after any amendment, the Express Lanes JPA must cause a notice of such Agreement or amendment to be prepared and filed with the office of the California Secretary of State containing the information required by California Government Code Section 6503.5.
- (b) Within thirty (30) days after the effective date of this Agreement, and after any amendment, the Express Lanes JPA must cause a copy of such Agreement or amendment to be filed with the State Controller pursuant to California Government Code Section 6503.6.
- (c) Within ten (10) days after the effective date of this Agreement, the Express Lanes JPA must cause a statement of the information concerning the Express Lanes JPA, required by California Government Code Section 53051, to be filed with the office of the California Secretary of State and with

the County Clerk, amending and clarifying the facts required to be stated pursuant to subdivision (a) of Government Code Section 53051.

C/CAG staff requests authorization to file and/or submit the foregoing documents on behalf of the JPA.

ATTACHMENT

None.

**San Mateo County Express Lanes Joint Powers Authority
AGENDA REPORT**

Date: June 6, 2019
To: San Mateo County Express Lanes Joint Powers Authority (JPA) Board of Directors
From: Sandy Wong, Executive Council
Subject: Review and approval of Resolution SMCEL 19-01 authorizing Board of Directors compensation and expense reimbursement

(For further information, contact Sandy Wong at 650-599-1409)

RECOMMENDATION

That the San Mateo County Express Lanes Joint Powers Authority (JPA) Board of Directors review and approve Resolution SMCEL 19-01 authorizing Board of Directors compensation and directing staff to recommend an expense reimbursement policy at a future meeting.

FISCAL IMPACT

TBD.

SOURCE OF FUNDS

TBD.

BACKGROUND

The Joint Exercise of Powers Agreement (JEPA) for the San Mateo County Express Lanes, Article IV Section 4.2 states that:

(a) All Board members are entitled to a stipend for attending each Board meeting upon the enactment of a resolution of the Board to authorize such stipends.

(b) A Board member may waive the compensation to which he or she would otherwise be entitled under the preceding paragraph by notifying the Secretary in writing that he or she expressly and irrevocably waives any such compensation that he or she would otherwise be entitled to be paid in the future for services as a Board member. This written waiver must: (i) be voluntary; (ii) be irrevocable; (iii) expressly waive any and all future compensation to which the Board member may be entitled under this Section 4.2; (iv) acknowledge that, by waiving compensation, the Board member understands he or she is not entitled to any compensation he or she would otherwise be eligible to receive pursuant to this Section 4.2; (v) acknowledge that the amount of the waived compensation will be retained in the Express Lane JPA's general assets; and (vi) be dated and signed by the Board Member and filed with the Secretary

before the compensation is paid. The Secretary must retain the original copy of a Board member compensation waiver in accordance with a record retention policy established by the Board in full accordance with all applicable statutory requirements.

(c) Each Board member will be reimbursed for reasonable and necessary expenses actually incurred in the conduct of the Managed Lane JPA's business, pursuant to an expense reimbursement policy established by the Board in full accordance with all applicable statutory requirements.

ATTACHMENT

Resolution SMCEL 19-01.

RESOLUTION SMCEL 19-01

RESOLUTION OF THE BOARD OF DIRECTORS OF THE EXPRESS LANES JOINT POWERS AUTHORITY (JPA) AUTHORIZING THE BOARD OF DIRECTORS COMPENSATION AND EXPENSE REIMBURSEMENT

BE IT RESOLVED by the Board of Directors of the Express Lanes Joint Powers Authority (JPA); that

WHEREAS, the Joint Exercise of Powers Agreement (JEPA) for the San Mateo County Express Lanes was approved by the C/CAG Board of Directors and the SMCTA Board of Directors at their respective board meetings on April 11, 2019 and May 2, 2019; and

WHEREAS, the JEPA Article IV Section 4.2 states in relevant part, “All Board members are entitled to a stipend for attending each Board meeting upon the enactment of a resolution of the Board to authorize such stipends;”

WHEREAS, the JEPA Article IV Section 4.2 further states, “Each Board member will be reimbursed for reasonable and necessary expenses actually incurred in the conduct of the Managed Lane JPA’s business, pursuant to an expense reimbursement policy established by the Board in full accordance with all applicable statutory requirements.”

NOW THEREFORE BE IT RESOLVED, by the Board of Directors of the JPA that board members will be entitled to receive a stipend of \$_____ for attending each Board meeting; and that staff are directed to recommend an expense reimbursement policy for conduct of the San Mateo County Express Lanes JPA’s business, to be adopted by the Board.

PASSED, APPROVED, AND ADOPTED, THIS 6TH DAY OF JUNE 2019.

_____, *Chair*
Express Lanes Joint Powers Authority

**San Mateo County Express Lanes Joint Powers Authority
AGENDA REPORT**

Date: June 6, 2019
To: San Mateo County Express Lanes Joint Powers Authority (JPA) Board of Directors
From: Sandy Wong, Executive Council
Subject: Approval of Conflict of Interest Code for the San Mateo County Express Lanes Joint Powers Authority (JPA)

(For further information, contact Sandy Wong at 650-599-1409)

RECOMMENDATION

That the San Mateo County Express Lanes Joint Powers Authority (JPA) review and approve the Conflict of Interest Code of Express Lanes JPA.

FISCAL IMPACT

There is no fiscal impact associated with the approval of the Conflict of Interest Code for the JPA.

SOURCE OF FUNDS

Not Applicable.

BACKGROUND

The Political Reform Act (Act) prohibits a public official from using his or her official position to influence a governmental decision in which he or she has a financial interest. Every state and local agency must adopt a conflict of interest code that identifies all officials and employees within the agency who make governmental decisions based on the positions they hold. The individuals in the designated positions must disclose their financial interests as specified in the agency's conflict of interest code.

To help identify potential conflicts of interest, the law requires public officials and employees in designated positions in a conflict of interest code to report their financial interests on a form called Statement of Economic Interests (Form 700). The conflict of interest codes and the Form 700s are fundamental tools in ensuring that officials are acting in the public's best interest and not their own.

As a newly formed public agency, the JPA must approve its first Conflict of Interest Code that:

1. Provides reasonable assurance that all foreseeable potential conflict of interest situations will be disclosed or prevented;

2. Provides to each affected person a clear and specific statement of his or her duties under the conflict of interest code; and
3. Adequately differentiate between designated employees with different powers and responsibilities.

There are three components of a Conflict of Interest Code. These are:

1. Incorporation Section (Terms of the Code) - This section designates where the Form 700s are filed and retained (i.e., the agency or the FPPC). This section also must reference Regulation 18730, which provides the rules for disqualification procedures, reporting financial interests, and references the current gift limit.
2. List of Designated Positions - The code must list all agency positions that involve the making or participation in making of decisions that “may foreseeably have a material effect on economic interests.” This covers agency members, officers and employees, and it may include volunteers on a committee if the members make or participate in making government decisions.
3. Detailed Disclosure Categories - A disclosure category is a description of the types of financial interests’ officials in one or more job classifications must disclose on their Form 700s. The categories must be tailored to the financial interests affected and must not require public officials to disclose private financial information that does not relate to their public employment.

General Counsel has drafted the Conflict of Interest Code, attached hereto as Attachment 1, to comply with these requirements.

ATTACHMENT

1. Conflict of Interest Code.

**Conflict of Interest Code of
EXPRESS LANES JPA
A Joint Powers Authority**

**County of San Mateo
State of California**

The Political Reform Act (Government Code Section 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 California Code of Regulations Section 18730) that contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's code. After public notice and hearing, the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendix, designating positions and establishing disclosure categories, shall constitute the conflict of interest code of the Express Lanes JPA.

As directed by Government Code Section 82011, the code reviewing body is the Board of Supervisors for the County of San Mateo. Pursuant to 2 Cal. Code of Regs. Section 18227 and Government Code Section 87500, the County Clerk for the County of San Mateo shall be the official responsible for reviewing and retaining statements of economic interests and making the statements available for public inspection and reproduction.

Individuals holding designated positions shall file their statements of economic interests with the Express Lanes JPA, which will make the statements available for public inspection and reproduction (Gov. Code Sec. 81008). Upon receipt of the statements, the Express Lanes JPA shall make and retain copies and forward the originals to the County Clerk.

**Express Lanes JPA
Conflict of Interest Code**

List of Designated Positions for Express Lanes JPA and Financial Disclosure Categories

Each person holding any position listed below must file statements disclosing the kinds of financial interest shown for the designated employee's position. Statements must be filed at the times and on the forms prescribed by law. Failure to file statements on time may result in penalties including but not limited to late fines.

Designated Employees	Disclosure Category
Members, Board of Directors	1,2,3,4
Alternate Members, Board of Directors	1,2,3,4
Secretary, Board of Directors	1,2,3,4
Members, Executive Council	1,2,3,4
General Counsel	1,2,3,4
Policy/Program Manager	1,2,3,4
San Mateo County Transit Authority Executive Director	1,2,3,4
San Mateo County Transit Authority Deputy General Manager/CEO	1,2,3,4
San Mateo County Transit Authority Chief Officer, Planning, Grants & TA	1,2,3,4
San Mateo County Transit Authority Chief Financial Officer	1,2,3,4
San Mateo County Transit Authority Chief Communication Officer	1,2,3,4
San Mateo County Transit Authority Director, Budgets and Financial Analysis	1,2,3,4
San Mateo County Transit Authority Director, Accounting	1,2,3,4
San Mateo County Transit Authority Director, Marketing and Market Research	1,2,3,4
San Mateo County Transit Authority Director, Contracts and Procurement	1,2,3,4
San Mateo County Transit Authority Director, Government and Community Affairs	1,2,3,4
San Mateo County Transit Authority Director, TA Program	1,2,3,4
San Mateo County Transit Authority Manager, Budgets	1,2,3,4
San Mateo County Transit Authority Manager, Treasury Operations	1,2,3,4
San Mateo County Transit Authority Manager,	1,2,3,4

Communications	
San Mateo County Transit Authority Manager, Digital Communications	1,2,3,4
San Mateo County Transit Authority Manager, Marketing and Creative Services	1,2,3,4
C/CAG Transportation Program Director	1,2,3,4
C/CAG Transportation System Coordinator	1,2,3,4
Other Consultants*	1,2,3,4

*The Executive Council, after consultation with the General Counsel, shall review the duties and authority of all consultants retained by Express Lanes JPA. Those consultants who, within the meaning of 2 Cal. Code of Regs. Section 18700, et seq. are required to file statements of economic interests, shall do so. During each calendar year, Express Lanes JPA shall maintain a list of such consultants for public inspection in the same manner and location as this Conflict of Interest Code. Nothing herein excuses any consultant from any other provision of the Conflict of Interest Code, specifically those dealing with disqualification.

Express Lanes JPA
Description of Disclosure Categories

Category 1

A designated person assigned to Category 1 is required to disclose investments which may foreseeably be materially affected by any decision made or participated in by the designated employee.

Category 2

A designated person assigned to Category 2 is required to disclose interests in real property which may be materially affected by a decision made or participated in by the designated employee.

Category 3

A designated person assigned to Category 3 is required to disclose income which may be materially affected by any decision made or participated in by the designated employee.

Category 4

A designated person assigned to Category 4 is required to disclose any business entity in which the designated employee is a director, officer, partner, trustee, or holds any position of management which may be materially affected by any decision made or participated in by the designated employee.

**San Mateo County Express Lanes Joint Powers Authority
AGENDA REPORT**

Date: June 6, 2019

To: San Mateo County Express Lanes Joint Powers Authority (JPA) Board of Directors

From: Sandy Wong, Executive Council

Subject: Review and adoption of Resolution SMCEL 19-02 authorizing the San Mateo County Express Lanes Joint Powers Authority Chair to execute the Agreement between the County Counsel of the County of San Mateo County and the Express Lanes Joint Powers Authority

(For further information, contact Sandy Wong at 650-599-1409)

RECOMMENDATION

That the Board of Directors for the San Mateo County Express Lanes Joint Powers Authority (JPA) review and adopt Resolution SMCEL19-02 authorizing the JPA Chair to execute the Agreement between the County Counsel and the Express Lanes Joint Powers Authority (Agreement).

FISCAL IMPACT

Fiscal Impact is in the amount not to exceed \$50,000 for services covering the period of June 1, 2019 through June 30, 2020, with charges based on the rates and expenses specified in the agreement.

SOURCE OF FUNDS

Funding will be fronted by the City/County Association of Governments of San Mateo County (C/CAG), to be repaid to C/CAG from the JPA.

BACKGROUND

The Joint Exercise of Powers Agreement for the San Mateo County Express Lanes (JEPA) was approved by the City/County Association of Governments (C/CAG) Board of Directors and the San Mateo County Transportation Authority (SMCTA) Board of Directors at their respective board meetings on April 11, 2019 and May 2, 2019. Said agreement is effective on June 1, 2019.

The new JPA will need legal support and services in the performance of its duties and functions and the executed JEPA specifies that legal counsel services would be contracted through the County Counsel of the County of San Mateo County. The County Counsel provides general legal services not only to county offices but also other local agencies such as joint powers agencies.

The Agreement (attached) retains County Counsel to provide general legal services to the JPA from

June 1, 2019 to June 30, 2020, with services to be billed monthly at specified rates for a total amount not to exceed \$50,000. Additionally, because the County Counsel's office provides general legal services to C/CAG, a member of the JPA that will be providing a variety of services to the JPA, the County Counsel's Office is requesting signature on Exhibit A to the Agreement, a notice and waiver of potential conflicts. Although County Counsel is not aware of any actual conflicts or a significant risk that representation of either client will be materially limited by counsel's responsibility to or relationship with the other client at this time, the waiver allows County Counsel to represent the JPA and C/CAG despite potential conflicts that may arise in its representation of both entities, as described further in Exhibit A. County Counsel will request a similar waiver from C/CAG to permit the concurrent representation.

ATTACHMENT

1. Resolution SMCEL 19-02
2. Agreement between the County Counsel of the County of San Mateo County and the Express Lanes Joint Powers Authority

RESOLUTION SMCEL19-02

RESOLUTION OF THE BOARD OF DIRECTORS OF THE EXPRESS LANES JOINT POWERS AUTHORITY (JPA) AUTHORIZING THE JPA CHAIR TO EXECUTE THE AGREEMENT BETWEEN COUNTY COUNSEL AND EXPRESS LANES JOINT POWERS AUTHORITY FOR THE PROVISION OF GENERAL LEGAL SERVICES FOR THE PERIOD JUNE 1, 2019 THROUGH JUNE 30, 2019 FOR AN AMOUNT NOT TO EXCEED \$50,000

BE IT RESOLVED by the Board of Directors of the Express Lanes Joint Powers Authority; that

WHEREAS, the Joint Exercise of Powers Agreement (JEPA) for the San Mateo County Express Lanes was approved by the C/CAG Board of Directors and the SMCTA Board of Directors at their respective board meetings on April 11, 2019 and May 2, 2019; and

WHEREAS, the JPA requires legal advice in the performance of its duties and functions and the JEPA specifies that legal counsel services would be contracted through the County Counsel of the County of San Mateo (“County Counsel”); and

WHEREAS, County Counsel provides general legal services, not only to county offices and entities, but also to other local agencies, and County Counsel is willing and able to provide such services to the JPA; and

WHEREAS, in order to procure services, the JPA and County Counsel must enter into an agreement outlining and explaining the rights and duties of each party to the Agreement, the scope of the relationship between the JPA and County Counsel as well as the parameters of representation including, but not limited to, the duration of the Agreement and the applicable hourly rates;

WHEREAS, the Board has been presented for its consideration an Agreement Between County Counsel and JPA for the Provision of General Legal Services for the period June 1, 2019 through June 30, 2020 for an amount not to exceed \$50,000 (“Legal Services Agreement”), and the Board desires to enter the same.

NOW THEREFORE BE IT RESOLVED, by the Board of Directors of the JPA that the JPA Chair is authorized to execute the Agreement on behalf of the JPA.

PASSED, APPROVED, AND ADOPTED, THIS 6TH DAY OF JUNE 2019.

_____, *Chair*
Express Lanes Joint Powers Authority

**AGREEMENT BETWEEN COUNTY COUNSEL AND
EXPRESS LANES JOINT POWERS AUTHORITY
FOR THE PROVISION OF GENERAL LEGAL SERVICES**

THIS AGREEMENT is entered into the _____ day of _____, 2019, by and between the **COUNTY COUNSEL OF THE COUNTY OF SAN MATEO**, hereinafter referred to as “County Counsel”, and the Express Lanes Joint Powers Authority, hereinafter referred to as “JPA”.

WITNESSETH:

WHEREAS, the County Counsel is ready and able to provide legal service and advice to JPA, and JPA wishes to retain the County Counsel to perform legal services with respect to certain matters; and

WHEREAS, it is reasonable and necessary to set forth the various obligations and responsibilities of the parties in light of JPA’s payment for the County Counsel’s legal services;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions as hereinafter set forth, the parties hereto do hereby agree as follows:

1. County Counsel shall perform legal services and legal representation, including the handling of litigation, as may be requested by JPA. Litigation services shall not include litigation for which JPA has insurance coverage.

2. The parties understand that County Counsel has been retained to represent the interests of the JPA as a whole, and County Counsel shall render such legal advice to JPA as may be requested by JPA and/or its designated representative(s). Attendance of counsel at meetings of the Express Lanes JPA Board shall be upon request of JPA. JPA is retaining the office of County Counsel, not any particular attorney, and the attorney services to be provided to JPA will not necessarily be performed by a particular attorney.

3. County Counsel shall periodically update JPA on legal issues and shall be available to provide training as is mutually agreed upon.

4. This Agreement is for a term of thirteen months commencing June 1, 2019, and extending through June 30, 2020. This Agreement may be terminated by mutual agreement of the parties at any time, provided that JPA has previously given ninety (90) days' advance written notice of its intention to terminate the Agreement. County Counsel may withdraw at any time as permitted under the Rules of Professional Conduct of the State Bar of California.

5. JPA shall pay for services rendered between June 1, 2019, and June 30, 2019, at an attorney hourly rate of \$232 and a paralegal hourly rate of \$127. Thereafter, JPA shall pay for the 2019-2020 fiscal year at an attorney hourly rate of \$237 and a paralegal hourly rate of \$130. Additionally, JPA shall pay the actual costs of any out-of-pocket and extraordinary regular costs incurred by County Counsel in connection with the provision of its legal services, e.g., filing fees, extraordinary mailing costs, deposition costs, transcript costs, etc. The total amount to be paid by the JPA pursuant to this Agreement shall not exceed \$50,000.

6. Charges for services rendered pursuant to the terms and conditions of this Agreement shall be billed one month in arrears. Time will be billed in tenth-hour increments, rounded off for each particular activity to the nearest tenth-hour. The minimum charged for any particular activity will be one tenth-hour. Payment shall be made by JPA within thirty (30) days of the invoice date.

7. JPA understands that the County of San Mateo is the County Counsel's primary client. Should there be a conflict between JPA and the County in a matter, JPA hereby consents to the County Counsel's withdrawal of representation of JPA in order for the County Counsel to represent the County in any such matters, unless such waiver is inconsistent with state law.

8. JPA understands that County Counsel serves as general counsel to the City/County Association of Governments of San Mateo County ("C/CAG"). Upon execution of this Agreement, JPA agrees to execute the Notice and Waiver of Conflict attached hereto as **Exhibit A**, incorporated herein by this reference, so that

County Counsel may continue to represent C/CAG and the JPA in the absence of actual conflict, as described more fully in Exhibit A.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

Dated: 5-30-19

COUNTY COUNSEL, SAN MATEO COUNTY

By: 

JOHN C. BEIERS, COUNTY COUNSEL

Dated: _____

EXPRESS LANES JOINT POWERS AUTHORITY

By: _____

Chair of the JPA Board

ATTEST:

Secretary of the JPA Board

EXHIBIT A

Notice and Waiver of Conflict

This waiver of conflict is requested by the Office of the County Counsel of San Mateo County (the "County Counsel") in connection with the Express Lanes JPA Board of Directors' consideration of the agreement with the County Counsel to provide legal services to the Express Lanes JPA.

The County Counsel also serves as general counsel for the City/County Association of Governments of San Mateo County ("C/CAG"), a member of the Express Lanes JPA and signatory to the Joint Exercise of Powers Agreement for the San Mateo County Express Lanes ("JPA Agreement"). It is County Counsel's understanding that the Express Lanes JPA, both under the JPA Agreement itself and pursuant to anticipated future contracts, has or shall enter into a number of arrangements with C/CAG (collectively, the "Matters"), including: (1) a loan/advancement of funds from C/CAG to the Express Lanes JPA; (2) the negotiation and execution of certain contract(s) for staffing support from C/CAG; (3) ongoing executive and staffing support from C/CAG to the Express Lanes JPA, as provided in the JPA Agreement; (4) certain indemnity/hold harmless obligations pursuant to the JPA Agreement; and (5) certain actions that may be taken by the Express Lanes JPA that require review or approval by C/CAG pursuant to the JPA Agreement.

In accordance with Rule 1.7 of the Rules of Professional Conduct, this Notice and Waiver informs you of the implications of the County Counsel representing both the Express Lanes JPA and C/CAG in connection with the Matters and to seek the Express Lanes JPA's consent to such representation. In County Counsel's opinion, the Express Lanes JPA and C/CAG are not presently directly adverse to each other. In addition, we believe the County Counsel can concurrently represent both clients without significant risk that the representation of either client will be materially limited by counsel's responsibilities to or relationships with the other client.

It is conceivable, however, that the interests of the Express Lanes JPA and C/CAG could become directly adverse to one another in the future. Potential conflicts include, for example, the following:

- Either of you could request contract or other terms in connection with the Matters that adversely impact the other;
- The Express Lanes JPA and C/CAG's interests may diverge in connection with the Matters;
- A dispute could arise over the application or interpretation of terms of an existing agreement or the JPA Agreement;
- As a result of new information, facts, law, rules, or any other circumstances, the County Counsel believes that its representation of one client will materially limit its ability to represent the other client; and/or
- Either of you could request that material information regarding the representation or Matters be kept confidential from the other.

To the last point above, because County Counsel would be representing the Express Lanes JPA and C/CAG jointly, we must inform each client of significant developments relating to the Matters and may not withhold information provided by one client from the other. Moreover, under California Evidence Code Section 962 and California case law, in cases of joint representation there is no attorney-client privilege between or among joint clients so that you may not claim your communications with County Counsel are privileged or confidential as to the other client with respect to the Matters.

At this time, we believe that our office is able to represent both the Express Lanes JPA and C/CAG and to fulfill County Counsel's ethical obligations to each client. Aside from the potential conflicts described above, we see no actual conflicts between you, nor has either informed us of any actual conflict. During the joint representation of the Express Lanes JPA and C/CAG, whenever County Counsel identifies any significant areas or issues, in addition to those described above, that have the potential to create a conflict of interest, County Counsel will point them out to both of you and, if necessary, advise you both on the need for separate counsel as to any such issues. You should consider any concern about the effect of such a limitation on County Counsel's representation of you. You should also consider whether you want to obtain the advice of an independent attorney concerning our ability to represent your interests adequately in view of these limitations.

By executing this letter where indicated below, you confirm on behalf of the Express Lanes JPA that you have been fully informed as to the nature of the potential conflicts resulting from the joint representation of both C/CAG and the Express Lanes JPA; that you have been provided a reasonable opportunity to seek the advice of independent counsel of your choice regarding these potential conflicts and waiver thereof; and that you understand that a conflict may arise in the future which may require an additional disclosure and waiver by you, or, alternatively, County Counsel's withdrawal from representation of one or both of you.

Additionally, you confirm that you will take the opportunity to retain independent counsel in the event you have any reservations regarding the joint representation, the issues arising from that representation, and/or the waiver of the potential conflict of interest. Assuming the foregoing accurately reflects your agreements, please sign and date where indicated below, and return the executed Waiver of Conflict to the Office of the County Counsel to the attention of Justin W. Mates, Deputy County Counsel.

Waiver of Conflict

I, _____, Chair of the Board, on behalf of the Express Lanes JPA, hereby acknowledge that I have carefully read the foregoing letter, informing me that the Express Lanes JPA's interests may potentially be in conflict with those of C/CAG in connection with the County Counsel's representation of the Express Lane JPA's and C/CAG's interests in connection with the Matters.

I expressly acknowledge that the concurrent representation by the County Counsel of the Express Lane JPA's and C/CAG's interests constitutes the representation of potentially conflicting interests, to the extent that Express Lane JPA's and C/CAG's interests are potentially adverse.

I nevertheless knowingly and voluntarily consent on behalf of the Express Lanes JPA to such concurrent representation by the County Counsel. I further expressly acknowledge that the Express Lanes JPA has been advised that the Express Lanes JPA has the right to seek independent legal counsel in connection with the advisability of waiving said conflict, and that the Express Lanes JPA has had a reasonable opportunity to do so.

Dated: _____ EXPRESS LANES JOINT POWERS AUTHORITY

By: _____
Chair of the JPA Board

ATTEST:

Secretary of the JPA Board

**San Mateo County Express Lanes Joint Powers Authority
AGENDA REPORT**

Date: June 6, 2019

To: San Mateo County Express Lanes Joint Powers Authority (JPA) Board of Directors

From: April Chan, Executive Council

Subject: Review and adoption of Resolution SMCEL 19-03 authorizing the San Mateo County Express Lanes Joint Powers Authority Chair to execute the Reimbursement Agreement between San Mateo County Express Lanes Joint Powers Authority and California Transportation Commission for Reimbursement of expenses related to the review of the San Mateo County Toll Facility Application

(For further information, contact April Chan at 650-508-6228)

RECOMMENDATION

That the San Mateo County Express Lanes Joint Powers Authority (JPA) Board of Directors review and adopt Resolution SMCEL 19-03 authorizing the Chair to execute the Reimbursement Agreement, in a form of the agreement that has the proper legal name of the entity at the time of execution, between San Mateo County Express Lanes Joint Powers Authority and California Transportation Commission (CTC) for reimbursement of expenses related to the review of the San Mateo County Toll Facility Application.

FISCAL IMPACT

CTC estimates the cost of its staff review of the JPA application to be between \$60,000 and \$100,000, and the cost is capped at \$100,000.

SOURCE OF FUNDS

Funding for the review of the application will be included in the upcoming Fiscal Year 2020 JPA Budget.

BACKGROUND

TA and C/CAG staff had previously reported that CTC staff agreed that TA and C/CAG, after the formation of a JPA, may apply to operate the San Mateo County Express Lanes through a contract with the Bay Area Infrastructure Financing Authority (BAIFA). CTC staff indicated that the cost of the state review, which is capped at \$100,000, and processing of the application will need to be reimbursed by the JPA.

At this time, JPA staff has submitted a preliminary application with the CTC. Staff is still targeting to have the CTC to consider and approve our application at its meeting on August 14 and 15, 2019 in San Jose. Staff is planning on submitting a final application no later than July 1, 2019.

ATTACHMENTS

1. Resolution SMCEL 19-03
2. Proposed Reimbursement Agreement between JPA and CTC

RESOLUTION SMCEL 19-03

RESOLUTION OF THE BOARD OF DIRECTORS OF THE EXPRESS LANES JOINT POWERS AUTHORITY (JPA) AUTHORIZING THE EXECUTION OF THE REIMBURSEMENT AGREEMENT BETWEEN SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY AND CALIFORNIA TRANSPORTATION COMMISSION (CTC)

BE IT RESOLVED by the Board of Directors of the Express Lanes Joint Powers Authority (JPA); that

WHEREAS, the JPA desires to submit a Toll Facility application to the CTC to operate the San Mateo County Express Lanes through a contract with the Bay Area Infrastructure Financing Authority (BAIFA); and

WHEREAS, the CTC has indicated that the JPA would need to reimburse the CTC its cost associated with the review and approval of the application, which is capped at \$100,000; and

WHEREAS, the JPA and the CTC need to execute a Reimbursement Agreement, in a form of the agreement that has the proper legal name of the JPA at the time of execution, in order for the CTC to continue its process to review and approve the Toll Facility application.

NOW THEREFORE BE IT RESOLVED, by the Board of Directors of the JPA authorize the Chair to execute a Reimbursement Agreement, in a form of the agreement that has the proper legal name of the JPA at the time of execution, with the CTC.

PASSED, APPROVED, AND ADOPTED, THIS 6TH DAY OF JUNE 2019.

_____, *Chair*
Express Lanes Joint Powers Authority

REIMBURSEMENT AGREEMENT Between
SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY
And CALIFORNIA TRANSPORTATION COMMISSION
For REIMBURSEMENT OF EXPENSES RELATED TO
REVIEW OF TOLL FACILITY APPLICATION

THIS AGREEMENT is made and entered into this {numeral} day of {Month}, {Year}, by and between the San Mateo County Express Lanes Joint Powers Authority (hereinafter called “SMC EL JPA”) and the California Transportation Commission (hereinafter called “COMMISSION”).

RECITALS

WHEREAS, the Streets and Highways Code § 149.7 calls for SMC EL JPA to reimburse the COMMISSION for all costs and expenses incurred in the process of reviewing and approving an application for a proposed toll facility; and

WHEREAS, the COMMISSION’s adopted 2016 Toll Facility Guidelines require an applicant to submit a signed reimbursement agreement in conjunction with an application for a proposed toll facility; and

WHEREAS, SMC EL JPA intends to submit an application for the proposed San Mateo County Express Lanes toll facility to the COMMISSION for review and approval.

NOW THEREFORE, the parties hereto agree as follows:

1. The Chair of SMC EL JPA and the Executive Director of the COMMISSION enter into this agreement wherein they set out the reimbursement rates and expected workload limits involved in the review and approval of the proposed toll facility application as provided in the attached addendum.

2. COMMISSION AGREES

- A. The COMMISSION shall provide to SMC EL JPA an estimated staffing plan and budget for work directly related to its activities required for the review of the proposed toll facility application by five days after receiving the application.
- B. Upon completion of the work described in this Agreement, the COMMISSION shall provide an itemized invoice to SMC EL JPA for its expenses related to its activities required for the review of the proposed toll facility application.
- C. The COMMISSION shall deliver or mail invoices to SMC EL JPA, as follows:
 - SMC EL JPA
 - Attn: Derek Hansel, CFO
 - 1250 San Carlos Avenue
 - San Carlos, CA 94070
- D. The COMMISSION shall cooperate fully with SMC EL JPA in any auditing and reporting process, as well as any other financial or internal control reports that may be undertaken by the SMC EL JPA.

3. SMC EL JPA AGREES

- A. Within thirty (30) days of receipt and verification of the itemized invoice submitted to SMC EL JPA from the COMMISSION, SMC EL JPA agrees to reimburse the COMMISSION for its expenses related to its activities required for the review of the proposed toll facility application.

4. IT IS MUTUALLY AGREED

- A. If, during the course of reviewing a toll facility application, the COMMISSION experiences unexpected workload levels and unbudgeted costs, the COMMISSION shall be entitled to submit an amended staffing plan and budget to SMC EL JPA seeking reimbursement for these unbudgeted costs within the limitation of the attached addendum.
- B. The term of this Agreement shall commence when fully executed, and unless amended earlier, shall terminate thirty (30) days after the San Mateo County Express Lanes toll facility application has been approved or rejected by the COMMISSION. Notwithstanding any other provision to the contrary, SMC EL JPA will reimburse CTC for all work done which is subject to the reimbursement provisions of Streets and Highways Code section 149.7 regardless when such work was done. The actual cost of rendering said service shall be computed in accordance with the provisions of Section 8752.1 of the State Administrative Manual.
- C. This Agreement may be terminated by either party with a thirty (30) day written notice.
- D. This Agreement may only be amended by mutual written consent of the parties hereto.
- E. Any dispute concerning a question of fact arising under this Agreement shall be decided by agreement of both Parties. If no mutual agreement is reached, the parties are free to seek judicial relief.
- F. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

- G. Either Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to; any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by the federal, state or local government; or a material act or omission by the other Party; when satisfactory evidence of such cause is presented to the other Party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the Party not performing.
- H. This agreement shall be governed by the laws of the State of California.
- I. This Agreement and any attachments or documents incorporated herein by inclusion of reference constitute the complete and entire agreement between **SMC EL JPA** and the COMMISSION related to the review of a proposed toll facility application.
- J. At the time **SMC EL JPA** submits an application, it shall state whether it has complied fully with the provisions of Streets and Highways Code section 149.7, subdivision (j)(1), concerning consultations.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.

SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY	CALIFORNIA TRANSPORTATION COMMISSION
TO BE FILLED OUT Chair, SMC EL JPA	Susan Bransen Executive Director
Date	Date

FUNDING AGREEMENT ADDENDUM

Based on the estimates contained in the figure below, the COMMISSION estimates that the Full Reimbursement cost shall be for a minimum of \$30,000 and not to exceed \$100,000.

	Hourly Rate	Est Hours (min)	Est min cost	Est Hours (max)	Est max Cost
Deputy Director	123.48	50	6,174	150	18,522
Deputy Attorney Gen	81.84	40	3,274	100	8,184
Sup TP	92.85	30	2,786	100	9,285
AGPA	64.49	8	516	80	5,159
Overhead 60.1%			7,662		24,731
Meeting expenses			1,000		3,000
Travel			1,000		3,000
Consultant			7,588		28,119
Total			30,000		100,000

San Mateo County Express Lanes Joint Powers Authority AGENDA REPORT

Date: June 6, 2019

To: San Mateo County Express Lanes Joint Powers Authority (JPA) Board of Directors

From: April Chan, Executive Council

Subject: Update on the development of the Fiscal Year 2020 JPA Budget

(For further information, contact April Chan at 650-508-6228)

RECOMMENDATION

This is an informational item; no action is required.

FISCAL IMPACT

Informational item has no fiscal impact at this time.

SOURCE OF FUNDS

N/A.

BACKGROUND

The JPA will need to develop and approve a Fiscal Year (FY) 2020 budget for the new agency as close to the start of the Fiscal Year on July 1, 2019 as possible. Staff plans to present the FY20 Budget for JPA Board review and approval at its July 12, 2019 meeting.

Focus areas of the FY20 Budget will include but not limited to the following tasks and work programs:

- Completion of the California Transportation Commission (CTC) toll authority application;
- Approval of contracts for a Policy/Program Manager and consultants to complete a US 101 Express Lanes Equity Study
- Develop recommendations for the following: a) toll policy; b) equity program; and c) enforcement policy
- Begin negotiation with Bay Area Infrastructure Financing Authority (BAIFA) on cooperative agreement(s), including the following services to be provided by BAIFA:
 1. Delivery of the toll system, which includes design, implementation, testing, and integration. The toll system provides the intelligence behind the operation of the express lanes;
 2. Daily operations of the express lane once it opens for tolling.
- Determine what other potential cooperative agreements are needed between the JPA and other

entities, and the timeline in which they need to be in place for the operation of the San Mateo County Express Lanes.

ATTACHMENTS

None

**San Mateo County Express Lanes Joint Powers Authority
AGENDA REPORT**

Date: June 6, 2019

To: San Mateo County Express Lanes Joint Powers Authority Board of Directors

From: Sandy Wong, Executive Council

Subject: Receive information on Procurement Process for the San Mateo County Express Lanes Joint Powers Authority (JPA) Policy/Program Manager (PPM) services.

(For further information, contact Jean Higaki at 650-599-1462)

RECOMMENDATION

It is recommended that the San Mateo County Express Lanes Joint Powers Authority (JPA) Board of Directors receive information on procurement process for Policy/Program Manager (P/PM) services.

BACKGROUND

The Joint Exercise of Powers Agreement for the San Mateo County Express Lanes (JEPA) was approved by the City/County Association of Governments (C/CAG) Board of Directors and the San Mateo County Transportation Authority (SMCTA) Board of Directors at their respective board meetings on April 11, 2019 and May 2, 2019. Said agreement is effective on June 1, 2019.

The executed JEPA specifies that the Express Lanes JPA will retain an independent Policy/Program Manager (P/PM) via contract, who will report directly to the JPA Board with duties as follows:

- Seek input from the Executive Council and others, develop, and make recommendations to the JPA Board on policies including but not limited to tolling principles, toll ordinance, toll discounts, equity, and net revenue expenditure priorities.
- Collaborate with Bay Area Infrastructure Financing Authority (BAIFA) and make recommendations on toll system, and toll equipment maintenance and upgrades.
- Represent San Mateo County Express Lanes interests at regional and other express lanes forums, in collaboration with Executive Council.
- Collaborate with the Executive Council and all TA and C/CAG staff, who provide service to the JPA on recommendations to the JPA Board, including but not limited to Toll Expenditure Plan and the JPA Budget.
- Implement and support the management of contracts and agreements for the JPA in collaboration with the Executive Council.
- Provide other support to the JPA Board as necessary.
- Participate in negotiations and contract preparation in collaboration with Executive Council.

Staff is in the process of developing a Request For Proposal (RFP) and scope of work for P/PM services. It is anticipated the RFP will be released to potential service providers by in mid June. The RFP will be available and posted for a three-week posting period. It is anticipated an interview panel be set up to review and make recommendations. Final recommendation to the JPA Board for approval of a contract for P/PM services is expected to be at the September board meeting.

Staff will present additional information verbally at the June 6th Board meeting and seek input from board members.

ATTACHMENT

1. None.