

C/CAG AGENDA REPORT

Date: April 11, 2019

To: City/County Association of Governments of San Mateo County Board of Directors

From: Sandy Wong, Executive Director

Subject: Review and approval of Resolution 19-22 authorizing the C/CAG Chair to execute the Joint Exercise of Powers Agreement (JEPA) for the San Mateo County Express Lanes between C/CAG and the San Mateo County Transportation Authority. (*Special voting procedures apply*).

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

RECOMMENDATION

That the C/CAG Board review and approve Resolution 19-22 authorizing the C/CAG Chair to execute the Joint Exercise of Powers Agreement (JEPA) for the San Mateo County Express Lanes between C/CAG and the San Mateo County Transportation Authority. (*Special voting procedures apply*).

FISCAL IMPACT

The JEPA includes provision for both TA and C/CAG to provide certain staff support to the San Mateo County Express Lanes Joint Powers Agency. The cost estimate for staffing support is to be determined.

SOURCE OF FUNDS

Cost of staff support has not been determined yet.

BACKGROUND

The Joint Ad Hoc Committee between C/CAG and the San Mateo County Transportation Authority (TA) for the US 101 Express Lanes has held six meetings since the beginning of this year to develop agreement for joint ownership and management of the US 101 Express Lanes.

The six-member Joint Ad Hoc Committee, consisting of C/CAG members Alicia Aguirre, Diane Papan, and Doug Kim and TA members Don Horsley, Emily Beach, and Maureen Freschet, held a total of six meetings: January 2, January 25, February 1, March 1, and March 22, and April 5, 2019.

On February 14, 2019, upon recommendation from the Ad Hoc committee members, the C/CAG Board passed Resolution 19-10 approving the direction for the owner and operator for the San Mateo County US 101 Express Lanes project, and directed the Ad Hoc committee members to develop recommendation on the details for a proposed new Joint Powers Authority (JPA) to assure equality between C/CAG and the TA relating to express lanes.

At its March 1, 2019 meeting, the Joint Ad Hoc Committee agreed upon the Joint Powers Authority (JPA) framework for the TA and C/CAG as co-owners of the San Mateo 101 Express Lanes. Staff provided synopsis and verbal update to the C/CAG at the March 14th Board meeting.

At its March 22, 2019 meeting, the Joint Ad Hoc Committee passed a motion to recommend Board approval of the Draft Joint Exercise of Powers Agreement (JEPA) for the San Mateo County Express Lanes, with the section for staffing to be filled in once agreed to and approved by the committee.

At its April 5, 2019 meeting, the Joint Ad Hoc Committee passed a motion to recommend to the Boards of TA and C/CAG the staffing model for the Express Lanes JPA, and the revised Joint Exercise of Powers Agreement (JEPA), both are attached to this staff report.

The Joint Ad Hoc Committee recommendation was unanimous with the understanding that the independent Policy/Program Manager, as proposed in the Staffing Plan of the JEPA agreement, would be a high-level manager who will develop policies, oversee their implementation, as well as collaborate with the Executive Council and other JPA staff on all necessary aspects of the JPA. And that this Policy/Program Manager will report directly to the JPA Board.

Joint Ad Hoc Committee Background:

In December 2018, C/CAG and TA staff provided two owner/operator options to their respective boards for decision. Option 1 was to for Bay Area Infrastructure Financing Authority (BAIFA) to own and operate the Project subject to BAIFA meeting certain conditions. Option 2 was for C/CAG and TA to retain ownership of the Project and enter into agreement with the Santa Clara Valley Transportation Authority (VTA) to operate the Project, subject to TA and C/CAG reaching agreement on joint governance on ownership.

At the December meetings, the TA and C/CAG Boards selected different owner/operator options and provided inconsistent direction for their respective staffs. Staff of the two agencies recommend that the Joint Ad Hoc Committee confer and recommend the appropriate actions for the TA and C/CAG Boards to consider at their respective Board meetings on February 7 and February 14, 2019. Any delay in reaching and agreeing on the same direction would likely delay the 101 Managed Lanes capital project and potentially increase project costs.

Don Horsley, Chair of the TA, and Maryann Moise Derwin, Chair of C/CAG, appointed the following members to the Joint Ad Hoc Committee to meet on Wednesday, January 2, 2019: Emily Beach, Maureen Freschet, and Don Horsley from TA, Alicia Aguirre, Diane Papan, and Doug Kim from C/CAG. The Joint Ad Hoc Committee was formed to make owner and operator recommendations, including governance and staffing, to the two boards.

During that time, BAIFA staff offered the new option for C/CAG and TA to retain ownership of the Project and enter into agreement with BAIFA to operate the Project, subject to the approval by the California Transportation Commission (CTC), per Assembly Bill AB 194 (Frazier), Chapter 687.

At the January 25, 2019 Joint Ad Hoc committee meeting, the committee approved a motion to support the new option, as long as the two boards agree on the details on how to manage the joint ownership.

At the February 1, 2019 Joint Ad Hoc committee meeting, the committee approved a motion to

recommend the C/CAG and TA boards to form a Joint Powers Authority (JPA) for ownership of the Project, and agreed that the Joint Ad Hoc committee will continue to develop details for the JPA to assure equality between C/CAG and TA.

Additional Project History:

In response to a TA Measure A Highway Program call for projects, in May 2012, C/CAG applied to sponsor and develop a Project Initiation Document (PID) to extend High-Occupancy Vehicle lanes (HOV) Study on US 101 from Whipple to the I-380 interchange. On October 4, 2012, TA programmed \$2,000,000 for this effort. TA served as the implementing agency.

On May 4, 2015, the California State Department of Transportation (Caltrans) approved a Project Initiation Document (PID) for a project that proposed to extend existing High Occupancy Vehicle (HOV) lanes on the Highway 101 Corridor in San Mateo County 14.5 miles from Whipple Road to the Interstate 380 interchange.

Further, in response to the May 2015 TA Measure A Highway Program call for projects, C/CAG applied to sponsor and develop the Project Approval/Environmental Document (PA/ED) phase of a US 101 HOV Lane project. On October 1, 2015, TA Board authorized the allocation of \$8.5 million of Measure A funding for the PA/ED phase.

Based on stakeholder input, the project has been altered from an HOV lane project to a Managed Lane project and alternatives have been added to also include express lanes. The supplemental PID for this expanded scope was approved by Caltrans on June 3, 2016.

In June 2016, work began on the environmental phase of the 101Corridor Managed Lanes Project which proposed to modify US101 resulting in 22.5 miles of managed lanes in each direction from Santa Clara County to I-380. An integrated project delivery team including staff from Caltrans, TA, C/CAG, and consultants was formed to implement the project.

Given the complexity, large size, and regional nature of the project, partnership and collaboration between C/CAG and the SMCTA is required to ensure success. It was recommended that C/CAG and the SMCTA serve as co-sponsors of the project.

On November 10, 2016 the C/CAG Board approved a resolution to co-sponsor the environmental phase of the US 101 Managed Lane Project with the TA.

C/CAG has since programmed a total of \$33.5 million in STIP funds and \$9.5 million in Federal earmark repurposed funds for the project, which is matched by various funding sources, including SB 1, regional bridge tolls, local, and private sector funding.

After extensive outreach and public review, the environmental document, which reports the benefits and impacts that are anticipated to be realized with the implementation of the project, was finalized and certified by Caltrans in November 2018.

On November 16, 2018, a joint C/CAG and TA workshop was held to provide information regarding options on ownership and operation for the US101 Managed Lanes facility once the construction of the project is completed.

In January 2019, the project's name was changed from "Managed Lanes" to "Express Lanes" to facilitate public outreach.

ATTACHMENTS

1. Resolution 19-22
2. Joint Exercise of Powers Agreement for the San Mateo County Express Lanes

RESOLUTION 19-22

RESOLUTION OF THE BOARD OF DIRECTORS OF THE CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY (C/CAG) APPROVING THE JOINT EXERCISE OF POWERS AGREEMENT (JEPA) BETWEEN C/CAG AND THE SAN MATEO COUNTY TRANSPORTATION AUTHORITY (TA) FOR THE SAN MATEO COUNTY EXPRESS LANES

BE IT RESOLVED by the Board of Directors of the City/County Association of Governments of San Mateo County (C/CAG); that

The C/CAG Board of Directors approves the Joint Exercise of Powers Agreement (JEPA) between C/CAG and the San Mateo County Transportation Authority (TA) for the San Mateo County Express Lanes.

WHEREAS, the Project will address congestion and improve mobility on Highway 101 by creating an express lane in each direction between the Santa Clara County Line and Interstate 380 in San Bruno, and will incentivize the use of public transit, carpools, and other shared-ride options, while also creating a new revenue stream from individuals willing to pay a fee to drive in the express lanes, which will be available to fund additional transportation enhancements in the corridor; and

WHEREAS, on May 2012, as the Project Sponsor, C/CAG applied to the TA for funding to develop a Project Initiation Document (PID) to extend High-Occupancy Vehicle lanes (HOV) Study on US 101 from Whipple to the I-380 interchange and was awarded \$2,000,000; and

WHEREAS, on May 2015, as the Project Sponsor, C/CAG applied to the TA for funding to develop the Project Approval/Environmental Document (PA/ED) phase of the US 101 HOV Lane project and was awarded \$8.5 million; and

WHEREAS, on June 2, 2016, the SMCTA Board through Resolution 2016-12 approved an amendment to the 2004 Transportation Authority Expenditure Plan which allows the TA to act as a co-sponsor for the US 101 Managed Lane Project; and

WHEREAS, on November 10, 2016, the C/CAG Board approved a resolution to co-sponsor the environmental phases of the US 101 Managed Lane Project with the SMCTA; and

WHEREAS, on April 12, 2018 the C/CAG Board approved Resolution 18-16 to co-sponsor the Design and Right of Way phase of the US 101 Managed Lane Project with the SMCTA; and

WHEREAS, in January 2019, the project's name was changed from "Managed Lanes" to "Express Lanes" to facilitate public outreach; and

WHEREAS, in October 2016 C/CAG was the recipient of \$9.5 million in Federal Earmark repurposed funds and made the funding available to the project for the environmental phase; and

WHEREAS, on October 12, 2017, the C/CAG Board approved the proposed 2018 STIP for San Mateo County which programmed \$16 million toward the right of way phase and \$17.5 million towards the construction phase of the Express Lane project; and

WHEREAS, In December 2018, C/CAG and TA staff provided two owner/operator options to

their respective boards for decision. Option 1 was to for Bay Area Infrastructure Financing Authority (BAIFA) to own and operate the Project subject to BAIFA meeting certain conditions. Option 2 was for C/CAG and TA to retain ownership of the Project and enter into agreement with the Santa Clara Valley Transportation Authority (VTA) to operate the Project, subject to TA and C/CAG reaching agreement on joint governance on ownership; and

WHEREAS, at the December meetings, the respective TA and C/CAG Boards selected different owner/operator options and provided inconsistent direction for their respective staffs, and on December 21, 2018, the Chairs of TA and C/CAG conferred and appointed three ad hoc members from each of their respective boards to serve as Ad Hoc committee members; and

WHEREAS, in December 2018, C/CAG and TA formed an Ad Hoc Committee, consisting of three board members each from C/CAG and TA, for the US 101 Express Lanes to make owner and operator recommendations, including governance and staffing, to the two boards; and

WHEREAS, on January 3, 2019, BAIFA staff offered the new option for C/CAG and TA to retain ownership of the Project and enter into agreement with BAIFA to operate the Project, subject to the approval by the California Transportation Commission (CTC), per Assembly Bill AB 194; and

WHEREAS, on February 14, 2019, upon recommendation from Ad Hoc members, the C/CAG Board approved Resolution 19-10 approving the direction for the owner and operator for the San Mateo County US 101 Express Lanes project and directed the Ad Hoc committee members to develop recommendations on the details for a proposed new JPA to assure equity between C/CAG and the TA relating to express lanes; and

WHEREAS, the six-member Joint Ad Hoc Committee held meetings on January 2, January 25, February 1, March 1, March 22, and April 5 of 2019 and made recommendation to approve the Joint Exercise of Powers Agreement (JEPA) between TA and C/CAG for the San Mateo County Express Lanes; and

WHEREAS, the Executive Director and Legal Counsel have assisted the Joint Ad Hoc Committee in the preparation of said JEPA; and

WHEREAS, upon recommendation of the Joint Ad Hoc Committee, C/CAG and the TA desire to create a joint powers agency to apply to the California Transportation Commission to own, administer, and manage the operations of the Project; to share in the ownership, administration, and management of any potential future express lanes within San Mateo County; to set forth the terms and conditions governing the management, operation, financing, and expenditure of revenues generated by express lanes in San Mateo County.

NOW THEREFORE BE IT RESOLVED, by the Board of Directors of the City/County Association of Governments of San Mateo County that the C/CAG Board of Directors approves the Joint Exercise of Powers Agreement (JEPA) between C/CAG and the San Mateo County Transportation Authority (TA) for the San Mateo County Express Lanes.

PASSED, APPROVED, AND ADOPTED, THIS 11TH DAY OF APRIL 2019.

Maryann Moise Derwin, Chair

**JOINT EXERCISE OF POWERS AGREEMENT
FOR THE SAN MATEO COUNTY EXPRESS LANES**

THIS JOINT EXERCISE OF POWERS AGREEMENT ("Agreement"), is made and entered as of the ___ day of _____, 2019 by and between the San Mateo County Transportation Authority ("TA") and City/County Association of Governments of San Mateo County ("C/CAG"), each of which is a public entity duly organized and existing in the County of San Mateo under the constitution and laws of the State of California and individually or collectively called "Member" or "Members."

WITNESSETH:

WHEREAS, the Joint Exercise of Powers Act (California Government Code Section 6500 et seq., the "Act") authorizes the Members to enter into an agreement for the joint exercise of any power common to them and, by that agreement, create an entity that is separate from each of the Members; and

WHEREAS, the TA was formed by the voters of San Mateo County in 1988 with the passage of the original Measure A and extended by the voters of the San Mateo County in 2004 pursuant to California Public Utilities Code Section 131000, et seq.; and

WHEREAS, C/CAG is a joint powers agency formed in 1990 pursuant to the Act by the County of San Mateo and the 20 cities and towns located in the County of San Mateo to be the responsible agency in San Mateo County to prepare and adopt the congestion management program per California Government Code Section 65089 et seq., and which develops and implements countywide plans required under additional State laws, particularly concerning transportation, air quality, storm water runoff, hazardous waste, solid waste and recycling, and serves as the Congestion Management Agency for the County of San Mateo; and

WHEREAS, the TA and C/CAG are the co-sponsors of the US-101 Express Lanes Project ("Project"), which includes (i) the conversion of the existing High Occupancy Vehicle ("HOV") lanes into express lanes from the northern terminus of the Santa Clara County express lanes to the Whipple Road Interchange and (ii) the construction of new express lanes from Whipple Road to north of I-380 in San Mateo County. When completed, the Project will provide continuous express lanes in San Mateo County, in both the northbound and southbound directions of US-101; and

WHEREAS, by this Agreement, the Members desire to create a joint powers agency to apply to the California Transportation Commission to own, administer, and manage the operations of the Project; to share in the ownership, administration, and management of any potential future express lanes within San Mateo County ; to set forth the terms and conditions governing the management, operation, financing, and expenditure of revenues generated by express lanes in San Mateo County; and to exercise the powers

described herein and as provided by law (including but not limited to California Streets and Highways Code Section 149.7, as it now exists and may hereafter be amended).

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Members hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. For the purposes of this Agreement, the following words have the following meanings:

“Act” means the Joint Exercise of Powers Act of the State of California, California Government Code Section 6500 et seq., as they now exist or may hereafter be amended.

“Agreement” means this Joint Exercise of Powers Agreement.

“Bay Area Infrastructure Financing Authority” or “BAIFA” means the joint powers authority between the Metropolitan Transportation Commission and the Bay Area Toll Authority, which oversees the planning, financing, construction and operation of freeway express lanes and related transportation projects in the San Francisco Bay Area.

“Board of Directors” or “Board” means the governing body of the Express Lanes JPA.

“Indebtedness” means bonds, notes or other obligations of the Express Lanes JPA issued pursuant to any provision of law which may be used by the Express Lanes JPA for the authorization and issuance of debt, including bonds, notes, or other obligations.

“Bond Law” means Article 2 of the Act, as now or hereafter amended, or any other law hereafter legally available for use by the Express Lanes JPA in the authorization and issuance of bonds to finance needed public facilities or services.

“Caltrans” means the California State Department of Transportation, which owns the right-of-way and roadway on which the express lanes will operate.

“C/CAG” means the City/County Association of Governments of San Mateo County, a sponsor of the Project during Project initiation and co-sponsor of the Project during environmental, and design and build phases.

“Controller” means the Controller of the Express Lanes JPA designated pursuant to Section 4.7 of this Agreement.

“County” means the County of San Mateo, State of California.

“Expenditure Plan” means a policy document establishing the plan for use of express lane revenues to facilitate travel in the corridor where tolls are collected, as required by

California Streets and Highways Code section 149.7, as it now exists and may hereafter be amended.

"Fiscal year" means the period from July 1st to and including the following June 30th, or such other period as the Board may specify by resolution.

"Gross Revenues" means all revenues received by the Express Lanes JPA for the operations of express lanes, including but not limited to tolls and interest on funds of the Express Lanes JPA.

"Joint Facilities" means all facilities, equipment, resources and property to be managed and operated by the Express Lanes JPA and, if and when acquired or constructed, any improvements and additions thereto and any additional facilities or property acquired or constructed by the Express Lanes JPA or either of the Members related to express lanes in the County.

"Express Lanes Joint Powers Authority" or "Express Lanes JPA" means the joint powers authority established by this Agreement as authorized by California Government Code Section 6503.5.

"Member" or "Members" means each party, individually or collectively, respectively, to this Agreement (e.g., the TA and C/CAG).

"Secretary" means the secretary of the Express Lanes JPA appointed pursuant to Section 4.6 of this Agreement.

"State" means the State of California.

"TA" means the San Mateo County Transportation Authority, a co-sponsor of the Project during Project environmental, and design and build phases.

"Treasurer" means the Treasurer of the Express Lanes JPA designated pursuant to Section 4.7 of this Agreement.

ARTICLE II

GENERAL PROVISIONS

Section 2.1. Express Lanes JPA.

(a) Pursuant to Section 6503.5 of the Act, the parties to this Agreement hereby recognize and confirm the continued existence of a public entity separate and independent from the Members, hereafter to be known as the “Express Lanes Joint Powers Authority” or “Express Lanes JPA,” pursuant to the terms and conditions set forth in this Agreement.

(b) 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.

(c) 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.

(d) 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.

Section 2.2. Purpose. The purpose of the Express Lanes JPA is to exercise the common powers of the Members to:

- (a) Own, manage, operate and maintain the Joint Facilities under authorities such as California Streets and Highways Code Section 149.7;
- (b) Collect toll and any other revenues generated by the Joint Facilities;
- (c) Implement the financing, acquisition, and construction of additions and improvements to the Joint Facilities;
- (d) Enter into and manage contracts, which may include but are not limited to the following:
 - i. the Express Lanes Operation Contract with BAIFA;
 - ii. a maintenance contract with Caltrans; and
 - iii. an enforcement contract with the California Highway Patrol;

- (c) Oversee BAIFA's operation of the facility;
- (d) Make policy decisions related to the express lane operations in the County, including but not limited to setting tolls to cover costs (operating and maintaining facility; administering system; covering BAIFA contract) and setting revenue generation targets;
- (e) Prepare and adopt the plan for expenditure of toll lane revenues within the corridor in which they are collected;
- (f) Implement or contract for implementation of such expenditure plan;
- (g) Create and implement an equity program associated with express lanes in the County, if desired; and
- (h) Issue and repay Indebtedness of the Express Lanes JPA

Each of the Members is authorized to exercise all such powers (except the power to issue and repay Indebtedness of the Express Lanes JPA) pursuant to its organic law, and the Express Lanes JPA is authorized to issue and provide for the repayment of Indebtedness pursuant to the provisions of the Bond Law or other applicable law.

Section 2.3. Term. The Effective Date of this Agreement is June 1, 2019. This Agreement will continue in effect until such time as all of the following have occurred: (i) all Indebtedness, if any, and the interest thereon issued by the Express Lanes JPA under the Bond Law, the Act or other applicable law have been paid in full or provision for such payment have been made, (ii) the Express Lanes JPA and the Members have paid all sums due and owing pursuant to this Agreement or pursuant to any contract executed pursuant to this Agreement, and (iii) dissolution has occurred pursuant to Section 3.3.

ARTICLE III

POWERS AND OBLIGATIONS OF EXPRESS LANES JPA

Section 3.1. General Powers. The Express Lanes JPA will have the power in its own name to exercise any and all common powers of its Members reasonably related to the purposes of the Express Lanes JPA, including, but not limited to, the powers to:

- (a) Seek, receive and administer funding from any available public or private source, including toll and any other revenues and grants or loans under any available federal, state, and local programs for assistance in achieving the purposes of the Express Lanes JPA;
- (b) Contract for the services of engineers, attorneys, planners, financial and other necessary consultants, and/or other public agencies;
- (c) Make and enter into any other contracts;

- (d) Employ agents or officers;
- (e) Acquire, lease, construct, own, manage, maintain, dispose of or operate (subject to the limitations herein) any buildings, works, or improvements, including but not limited to the Joint Facilities;
- (f) Acquire, hold, manage, maintain, or dispose of any other property by any lawful means, including without limitation gift, purchase, lease, lease-purchase, license, or sale;
- (g) Incur all authorized Indebtedness;
- (h) Receive gifts, contributions, and donations of property, funds, services, and other forms of financial or other assistance from any persons, firms, corporations, or governmental entities; and
- (i) Sue and be sued in its own name; and
- (j) Seek the adoption or defeat of any federal, state, or local legislation or regulation necessary or desirable to accomplish the stated purposes and objectives of the Express Lanes JPA; and
- (k) Adopt rules, regulations, policies, plans, programs, bylaws, and procedures governing the operation of the Express Lanes JPA and the Joint Facilities;
- (l) Invest any money in the treasury pursuant to California Government Code Section 6505.5 that is not required for the immediate necessities of the Express Lanes JPA, as the Express Lanes JPA determines is advisable, in the same manner and upon the same conditions as local agencies, pursuant to California Government Code Section 53601, as it now exists or may hereafter be amended;
- (m) Carry out and enforce all the provisions of this Agreement; and
- (n) Exercise all other powers not specifically mentioned herein, but common to the Members, and authorized by California Government Code Section 6508 as it now exists or may hereafter be amended.

Section 3.2. Specific Powers and Obligations.

- (a) Audit. The records and accounts of the Express Lanes JPA must be audited annually by an independent certified public accountant, and copies of such audit report must be filed with the State Controller and the County Auditor and will be provided to each Member no later than fifteen (15) days after receipt of such audit reports by the Express Lanes JPA. The Board of Directors may, by unanimous vote, replace the annual audit with an audit covering up to a two-year period.
- (b) Securities. The Express Lanes JPA may use any statutory power available to it under the Act and any other applicable laws of the State of California, whether

heretofore or hereinafter enacted or amended, for issuance and sale of any Bonds or other evidences of indebtedness necessary or desirable to finance the exercise of any power of the Express Lanes JPA, and may borrow from any source including, without limitation, the federal government, for these purposes.

(c) Liabilities. The debts, liabilities, and obligations, whether contractual or non-contractual, of the Express Lanes JPA will be the debts, liabilities, and obligations of the Express Lanes JPA alone, and not the debts, liabilities, or obligations of the Members or their member entities.

(d) Hold Harmless and Indemnification. To the fullest extent permitted by law, the Express Lanes JPA agrees to save, indemnify, defend, and hold harmless each Member from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, or costs of any kind, whether actual, alleged, or threatened, including attorneys' fees and costs, court costs, interest, defense costs, and expert witness fees, where the same arise out of, or are in any way attributable in whole or in part, to negligent acts or omissions of the Express Lanes JPA or its officers, or agents or the employees, officers, or agents of any Member while acting within the course and scope of an agency relationship with the Express Lanes JPA.

(e) Manner of Exercise. For purposes of California Government Code Section 6509, the powers of the Express Lanes JPA will be exercised subject to the restrictions upon the manner of exercising such powers as are imposed upon the TA.

(f) Review of Agreement. This Agreement will be reviewed every four (4) years by the Members, but its terms and conditions may be reviewed more frequently whenever the Members agree to do so. Upon the completion of every such review, the Express Lanes JPA will prepare a report regarding any recommended changes to the Agreement and transmit such report to each of the Members.

Section 3.3. Dissolution of Express Lanes JPA.

(a) Notice. Either Member can express its intent to dissolve the Express Lanes JPA with at least 12 months' written notice.

(b) Intent. Such intent may be expressed by the TA only upon a two-thirds (2/3) vote of its Board of Directors. Such intent may be expressed by C/CAG only upon a vote by a majority of its Board of Directors and only when the members voting in favor of such action represent a majority of the population of the County.

(c) Agreement with Successor Entity. The Express Lanes JPA cannot be dissolved until a successor entity, qualified by State law then in-effect, has agreed to (i) assume ownership of the Express Lanes JPA's Joint Facilities and other assets, (ii) provide for the assumption or discharge of the Express Lanes JPA's Indebtedness and other liabilities, and (iii) carry out all duties associated with operation and maintenance of the express lanes and management of the expenditure of the Gross Revenues. Such agreement must be expressed in a contract between the successor entity, the Express

Lanes JPA, the TA and C/CAG, which may be executed only upon approval of (i) a two-thirds (2/3) vote of the TA Board of Directors, (ii) a majority vote of the C/CAG Board of Directors and only when the members voting in favor of such action represent a majority of the population of the County, and (iii) a super majority (five (5) votes) of the Express Lanes JPA Board of Directors.

ARTICLE IV

ORGANIZATION, GOVERNANCE AND FUNCTIONS OF EXPRESS LANES JPA

Section 4.1. Governing Board.

(a) The Board will govern the Express Lanes JPA in accordance with this Agreement and will have three (3) Board members per Member.

(b) Each Board member will serve for a term of two years, although a Board member may be removed during his or her term or re-appointed for multiple terms at the pleasure of the appointing authority.

(c) All voting power of the Express Lanes JPA will reside in the Board.

(d) Each Board member will cease to be a member of the Board when such member ceases to hold office on the legislative body of the Member that appointed him or her. Vacancies will be filled by the respective appointing Member in the same manner as initial appointments.

(e) The composition of the Board and the Members' appointments to fill vacancies should reflect a balanced representation from the different regions of the County.

Section 4.2. Compensation and Expense Reimbursement.

(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 Express Lanes JPA's business, pursuant to an expense reimbursement policy established by the Board in full accordance with all applicable statutory requirements.

Section 4.3. Conflicts of Interest.

(a) Political Reform Act. Board members will be considered "public officials" within the meaning of the Political Reform Act of 1974, as amended, and its regulations, for purposes of financial disclosure, conflict of interest, and other requirements of such Act and regulations, subject to a contrary opinion or written advice of the California Fair Political Practices Commission. The Express Lanes JPA must adopt a conflict-of-interest code in compliance with the Political Reform Act.

(b) Levine Act. Board members are "officials" within the meaning of California Government Code Section 84308 et seq., commonly known as the "Levine Act," and therefore subject to the restrictions of such act on the acceptance, solicitation, or direction of contributions.

Section 4.4. Board Meetings

(a) Time and Place. The Board will meet quarterly, or more often as needed, at a place designated by the Board with the location included in the notice of each meeting under the Ralph M. Brown Act, California Government Code Section 54950 et seq. The date, time and place of regular meetings of the Board will be designated on a meeting calendar adopted by the Board each year.

(b) Call and Conduct. All meetings of the Board will be called and conducted in accordance with the provisions of the Ralph M. Brown Act, other applicable law, and Rosenberg's Rules of Order.

(c) Quorum. Four (4) Board members will constitute the quorum of the Board required to conduct a meeting of the Board.

(d) Rules. The Board may adopt from time to time such bylaws, rules, and regulations for the conduct of meetings of the Board and of the affairs of the Express Lanes JPA consistent with this Agreement and other applicable law.

(e) Minutes. The Secretary will cause minutes of all meetings of the Board to be drafted and mailed to each Member promptly after each meeting. Upon approval by the Board, such minutes will become a part of the official records of the Express Lanes JPA.

Section 4.5. Voting.

(a) All actions of the Board will require five (5) Board members to be present for voting.

(b) Except as set forth in paragraph (c), below, actions of the Board require the affirmative vote of at least four (4) Board members. Board members may not cast proxy or absentee votes. Each member will have an equal vote.

(c) Adoption or amendment of an Expenditure Plan, or approval of an agreement with a successor agency as a prerequisite for dissolution of the Express Lanes JPA under paragraph 3.3 (c), requires the affirmative vote of at least five (5) Board members.

Section 4.6. Officers.

(a) 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. The Chair and Vice Chair will serve one-year terms and must be appointees of different Members. 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. The officers will perform the duties normal to said offices as described below. If the Chair or Vice Chair ceases to be a member of the Board, the resulting vacancy will be filled, for the remainder of the vacant term, at the next meeting of the Board held after each vacancy occurs.

(b) Chair. 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 this Agreement.

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

(d) 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.

Section 4.7. Fiscal Agent/Auditor/Controller and Treasurer. The TA is designated as the Fiscal Agent of the Express Lanes JPA. The San Mateo County Transit District (as managing agency of the TA) will serve as the Auditor/Controller and Treasurer of the Express Lanes JPA. The Treasurer will be the depository and will have custody of all of the accounts, funds, and money of the Express Lanes JPA from whatever source. The

Auditor/Controller and the Treasurer will perform the duties and functions, assume the obligations and authority set forth in Sections 6505, 6505.5 and 6505.6 of the Act, and assure strict accountability of all funds and reporting of all receipts and disbursements of the Express Lanes JPA. The Auditor Controller and Treasurer are designated as having charge of, handling or having access to funds or property of the Express Lanes JPA for purposes of the Official's Bond required under Section 6505.5 of the Act and Section 4.10 of this Agreement.

The Express Lanes JPA may change the Fiscal Agent, Auditor/Controller and/or Treasurer, and/or appoint other persons possessing the qualifications set forth in Section 6505.5 of the Act to these offices, by resolution of the Board of Directors. The designations set forth in this Section 4.7 will be considered concurrently with consideration of amendments to Attachment A as described in Section 4.8 of the Agreement.

Section 4.8. Staffing. C/CAG and the TA recognize the benefits that their respective organizations and staff support bring to the Express Lanes JPA. Both agencies will make their best efforts to provide staff resources to the Express Lanes JPA as may be required or requested by the Express Lanes JPA. Upon execution of this Agreement, staffing for the Express Lanes JPA will be provided in accordance with the model set forth in Attachment A to this Agreement. The Express Lanes JPA may amend Attachment A from time to time by resolution of the Board of Directors.

Section 4.9. Additional Officers and Consultants. The Board may appoint any additional officers deemed necessary or desirable. Such additional officers also may be officers or employees of a Member or of the Express Lanes JPA. The Board may also retain such other consultants or independent contractors as may be deemed necessary or appropriate to carry out the purposes of this Agreement.

Section 4.10. Official's Bond. The officers or persons designated to have charge of, handle, or have access to any funds or property of the Express Lanes JPA will be so designated and empowered by the Board. Each such officer or person will be required to file an official bond with the Express Lanes JPA in an amount established by the Board. Should the existing bond or bonds of any such officer or persons be extended to cover the obligations provided herein, said bond will be the official bond required herein. The premiums on any such bonds attributable to the coverage required herein will be appropriate expenses of the Express Lanes JPA. If it is prudent to do so, the Express Lanes JPA may procure a blanket bond on behalf of all such officers and persons.

Section 4.11. Status of Officers. All of the privileges and immunities from liability, exemption from laws, ordinances, and rules, all pension, relief, disability, worker's compensation, and all other benefits that apply to the activity of officers or agents of the Express Lanes JPA when performing their respective functions within the territorial limits of a Member will apply to them to the same degree and extent while engaged in the performance of any of their functions and duties under the provisions of this Agreement and Chapter 5 of Division 7 of Title 1 of the California Government Code, commencing with Section 6500. However, none of the officers or agents appointed by the Board will

be deemed to be employed by any of the Members or to be subject to any of the requirements of such Members by reason of their appointment or employment by the Express Lanes JPA.

Section 4.12. Committees. The Board may create permanent or ad hoc committees to give advice to the Board of Directors on such matters as may be referred to such committees by the Board. Qualified persons will be appointed to such committees by the Board and each such appointee will serve at the pleasure of the Board. All regular, adjourned, and special meetings of such committees will be called and conducted in accordance with the applicable requirements of the Ralph M. Brown Act, Government Code Section 54950 et seq., as it now exists or may hereafter be amended, and all other applicable law.

ARTICLE V

OPERATIONS AND FACILITIES

Section 5.1. Assumption of Responsibilities by the Express Lanes JPA. As soon as practicable after the date of this Agreement, the Members must appoint their representatives to the Board. At its first meeting, the Board will elect a Chair and Vice-Chair, and appoint a Secretary as prescribed in Article IV.

Section 5.2. Delegation of Powers; Transfer of Records, Accounts, Funds and Property. Each of the Members hereby delegates to the Express Lanes JPA the power and duty to maintain, operate, manage, and control the Joint Facilities, as they may be expanded from time to time, and revenues generated by express lanes in the County.

Section 5.3. Joint Facilities Costs, Reserves and Capital. Upon the organization of the Board, the Express Lanes JPA will assume financial responsibility for the improvement, alteration, maintenance, and operation of the Joint Facilities and will pay all contractual and administrative expenses of the Express Lanes JPA. Once revenues are generated by express lanes in the County, the Express Lanes JPA will establish reasonable reserves and undertake appropriate capital projects to maintain the Joint Facilities. The Members acknowledge that the Express Lanes JPA likely will be required to incur Indebtedness for contractual and administrative expenses before and after express lanes are operational.

ARTICLE VI

BUDGET AND OTHER FINANCIAL PROVISIONS

Section 6.1. Fiscal Year. The Express Lanes JPA Fiscal Year will begin each July 1 and end on the following June 30.

Section 6.2 Annual Budget. The Express Lanes JPA will adopt an annual budget for each fiscal year. Once the Express Lanes JPA's first annual budget is adopted, no

expenditures may be made by or on behalf of the Express Lanes JPA unless authorized by a budget or budget amendment.

Section 6.4. Expenditures Within Approved Annual Budget. All expenditures within the limitations of the approved annual budget will be made in accordance with the rules, policies and procedures adopted by the Board.

Section 6.5. Disbursements. Warrants will be drawn upon the approval and written order of the Board, and the Board will requisition the payment of funds only upon approval of claims, disbursements, and other requisitions for payment in accordance with this Agreement and other rules, regulations, policies and procedures adopted by the Board.

Section 6.6. Accounts. All funds will be received, transferred, or disbursed by the Controller. The Treasurer will account for such funds in accordance with the generally accepted accounting principles applicable to governmental entities, with strict accountability of all funds. All revenues, expenditures, and status of bank accounts and investments will be reported to the Board quarterly or as the Board may direct and, in any event, not less than annually, pursuant to procedures established by the Board.

ARTICLE VII

MISCELLANEOUS

Section 7.1. Amendments. This Agreement may be amended by a writing or writings executed by the Members approved by resolution of each Member's governing body.

Section 7.2. Notice. Any notice required to be given or delivered by any provision of this Agreement will be personally delivered or deposited in the U.S. Mail, registered or certified, postage prepaid, addressed to the Members at their addresses as reflected in the records of the Express Lanes JPA, and will be deemed to have been received by the Member to which the same is addressed upon the earlier of receipt or seventy-two (72) hours after mailing.

Section 7.3. Good Faith Negotiations. The Members acknowledge that differences between them and among the Board members may arise from time to time and agree to make good faith efforts to resolve any such differences via good faith negotiations among the Members or Board members, as the case may be. If such negotiations do not resolve the dispute, and no Member gives a notice to dissolve the Express Lanes JPA as provided in this Agreement, then the Members may resolve disputes in any manner permitted by law or in equity.

Section 7.4. Attorney's Fees. In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding will be entitled to an award of its actual and reasonable attorney's fees, costs, and expenses incurred in the proceeding.

Section 7.5. Successors. This Agreement will be binding upon and inure to the benefit of any successor of a Member.

Section 7.6. Assignment and Delegation. No Member may assign any rights or delegate any duties under this Agreement without the written consent of the other Member, and any attempt to make such an assignment will be null and void for all purposes.

Section 7.7. Counterparts. This Agreement may be executed in one (1) or more counterparts, all of which together will constitute a single agreement, and each of which will be an original for all purposes.

Section 7.8. Severability. Should any part, term or provision of this Agreement be decided by any court of competent jurisdiction to be illegal or in conflict with any applicable law, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, or provisions of this Agreement will not be affected thereby and to that end the parts, terms, and provisions of this Agreement are severable.

Section 7.9. Integration. This Agreement represents the full and entire Agreement among the Members with respect to the matters covered herein.

Section 7.10. Execution. The legislative bodies of the Members each have authorized execution of this Agreement, as evidenced by the respective signatures attested below.

IN WITNESS WHEREOF, the Parties have hereunder subscribed their names the day and year indicated below.

CITY/COUNTY ASSOCIATION OF
GOVERNMENTS OF SAN MATEO
COUNTY (C/CAG)

By: _____

Name: _____

Its: _____

Attest:

C/CAG Clerk of the Board

Approved as to Form:

Legal Counsel for C/CAG

SAN MATEO COUNTY
TRANSPORTATION AUTHORITY (TA)

By: _____

Name: _____

Its: _____

Attest:

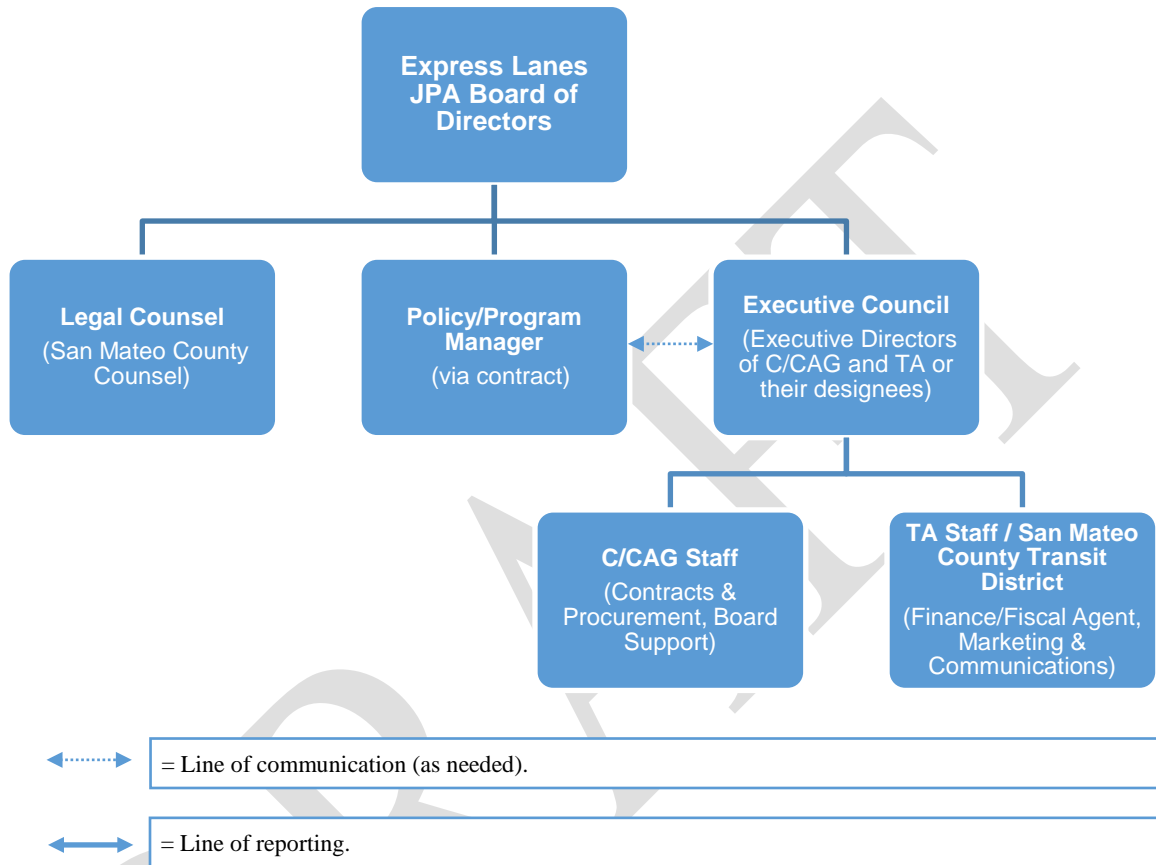
TA Secretary

Approved as to Form:

Legal Counsel for the TA

ATTACHMENT A

EXPRESS LANES JPA INITIAL STAFFING MODEL



- A. The San Mateo County Express Lanes Joint Powers Authority (JPA) will retain an independent Policy/Program Manager via contract. That Manager will report directly to the JPA Board. He/she will also coordinate with the Executive Council as necessary. On a day-to-day basis, the Policy/Program Manager is expected to coordinate with any of the staff listed below under Sections (C) and (D) as necessary. The main duties of the Policy/Program Manager will be to:
- 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.
- B. The JPA will have an Executive Council that consists of the Executive Director of the TA and the Executive Director of C/CAG. Each Executive Director may have one designee who will have full authority to act on behalf of the appointing Executive Director. The Executive Council may make recommendations to the JPA Board directly, or coordinate with the Policy/Program Manager on joint recommendations to the JPA Board. The Executive Council will also be responsible for negotiation of agreements with agencies to support the operations of the Express Lanes, including but not limited to the following: BAIFA to provide overall operation of the express lanes; Bay Area Toll Authority (BATA) to provide Fastrak® services; Caltrans for road maintenance; and California Highway Patrol (CHP) for enforcement. As soon as the Policy/Program Manager is on board, he/she will participate in such negotiations and contract preparation in collaboration with the Executive Council.
- C. The TA will be the Fiscal Agent for the JPA. The San Mateo County Transit District (District), which is the administering agency of the TA, will provide the following staffing for the JPA:
- Fiscal Agent and Finance
 - Budgeting and reporting
 - Accounting, including accounts payable and accounts receivables
 - Audits
 - Treasury
 - Marketing and Communications
 - Marketing use of the lanes
 - Promoting the broader benefits of the lanes
 - Media relations
 - Website creation and maintenance
 - Community relations (addressing community concerns about policies, operation of the lanes, etc.)

These staff will report to the TA Executive Director on day-to-day operations. Work performed by these staff on matters relating to the JPA will be approved by the Executive Council. These staff are expected to coordinate with the Policy/Program Manager.

D. C/CAG will provide the following staffing for the JPA:

- Contracts & Procurement
 - Procure, manage, and maintain all JPA contracts and agreements
 - Manage consultant work scope, cost and schedule
 - Review and approve invoices, and submit to TA for payments
 - Maintain contracts between JPA and other entities

- Board Clerk and Support
 - Board support to the JPA, including agenda, notices, and records of meetings
 - Serve as the Board Clerk
 - Manage public records requests
 - Ensure Form 700s are completed and filed

These staff will report to the C/CAG Executive Director on day-to-day operations. Work performed by these staff on matters relating to the JPA will be approved by the Executive Council. These staff are expected to coordinate with the Policy/Program Manager.

E. The JPA will contract with the San Mateo County Counsel's Office for legal support.

F. The JPA Board will revisit this staffing Plan, including all of the above provisions, the need of employees, and the effectiveness of the Executive Council, from time to time, but no later than two years from now or April 2021.