

**COOPERATIVE FUNDING AGREEMENT
BETWEEN THE SAN MATEO COUNTY TRANSPORTATION AUTHORITY AND THE
SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY**

This Agreement is entered into on the ____ day of _____, 2019 by and between the San Mateo County Express Lanes Joint Powers Authority (“JPA”) and the San Mateo County Transportation Authority (“Authority”), both California public agencies (each a “Party,”; and collectively, the “Parties”).

RECITALS

- A. The Authority and the City/County Association of Governments of San Mateo County (“C/CAG”) are co-sponsors of the San Mateo County 101 Express Lanes Project (“Project”).
- B. The Authority and C/CAG formed the JPA through a Joint Exercise of Powers Agreement (“JEPA”) to exercise their shared rights to own, administer and manage the Project.
- C. Under the JEPA, the San Mateo County Transit District (“District”), which provides staff support for the Authority, and C/CAG both will provide staff support to the JPA, with the expectation that the JPA will reimburse the Authority for District staff time, and that the JPA will reimburse C/CAG for C/CAG staff time.
- D. On September 5, 2019, the Authority's Board of Directors agreed to offer \$53 million in the form of a loan to the JPA to fund design and construction of the Project, and on November 7, 2019, the Authority's Board of Directors agreed to offer a supplemental \$39.5 million loan for the same purposes and as an advance for JPA operations (together, “Capital Loan”).
- E. On July 12, 2019, the JPA adopted a Fiscal Year (FY) 2020 Budget of \$1,744,911, which includes third-party costs, staff support, and all other costs of JPA operations during the year; however, the JPA will not generate toll or other revenues to fund its operations until approximately 2022.
- F. On October 3, 2019, the Authority agreed to offer up to a maximum of \$872,456 in the form of a loan to support one half of the JPA's FY2020 Budget (“Authority Operating Loan”), with the other half to be loaned to the JPA by C/CAG (“C/CAG Operating Loan”).

G. The Parties desire to formally memorialize the terms and conditions of the Authority Operating Loan.

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the parties hereto on the date first above written.

1. Authority Operating Loan Requests and Payments.

- A. The Authority agrees to loan to the JPA, and the JPA agrees to accept, up to Eight Hundred Seventy-Two Thousand, Four Hundred and Fifty-Six Dollars (US \$872,456) ("Loan Amount") to fund one half of the JPA's FY2020 expenses, consistent with budgeted commitments in the JPA's FY2020 Budget.
- B. Within 10 business days of execution of this Agreement, the Authority will provide the JPA with the first \$125,000 installment of the Loan Amount.
- C. Thereafter through June 30, 2020, the JPA can request, no more than once each month, additional installments ("Advance Requests") of the Loan Amount. To the extent possible, the JPA will provide advance notice by email to the individuals identified in Section 1.D of Advance Requests over \$10,000.
- D. Advance Requests must be accompanied by a form consistent with Exhibit A to this Agreement and the detail sheets referenced therein showing (i) the total amount requested, (ii) individual expenses to be paid with the requested funds, and (iii) brief descriptions thereof. Requests and associated forms must be sent:

To the Authority: April Chan, Chief Officer, Planning, Grants &
the Transportation Authority
San Mateo County Transportation Authority
1250 San Carlos Ave.
San Carlos, CA 94070
Email: chana@samtrans.com

with a copy to: Derek Hansel, Chief Financial Officer
San Mateo County Transportation Authority
1250 San Carlos Ave.
San Carlos, CA 94070
Email: hanseld@samtrans.com

To C/CAG: Sandy Wong, Executive Director
City/County Association of Governments of
San Mateo County
555 County Center, 5th Floor
Redwood City, CA 94063
Email: swong@smcgov.org

- E. Advance Requests may be submitted by email or in hard copy.
- F. Upon receipt of an Advance Request, and review by the Authority to confirm that the Advance Request conforms to the terms of this Agreement, the Authority will issue payment to the JPA within four weeks. Typically, the Authority will be responsible for loaning one half of the requested amount unless otherwise agreed by the Authority.

2. Repayment and Interest.

- A. The JPA shall repay the Authority the Loan Amount (or the portion of the Loan Amount provided by the Authority to the JPA), plus accrued interest as described in this Section 2 (together, "Loan Balance"), with toll revenues from the Project. The JPA may elect to defer repayment until the Project begins operations and receives toll revenue, currently estimated to commence in 2022. The Loan Balance and accrued interest will be repaid on a monthly basis and no later than five years after the Project begins operations and receives toll revenue unless otherwise agreed by the Parties.
- B. The Parties agree that repayment of the Loan Balance will be subordinated to (1) the operations and maintenance costs for the Project and the JPA and (2) repayment of interest on the Capital Loan (which amount may differ from that previously authorized).

Repayment of all three loans (the Capital Loan, Authority Operating Loan, and C/CAG Operating Loan) will be repaid proportionally, on a parity basis, once the Project begins operations.

- C. Interest on amounts advanced to the JPA under this Agreement will be compounded monthly on the first business day of every month based on the net earnings rate on the San Mateo County Investment Pool Fund ("Monthly Earnings Rate"), as published by the San Mateo County Treasurer's Office for the applicable month on its website

(<http://www.sanmateocountytreasurer.org/investmentReports.html>). The interest on any outstanding amount shall be calculated according to the sum of the following calculation for each respective month:

Principal x Monthly Earnings Rate x (No. of Days in Month / No. of Days in Year)

Where "Principal" is the outstanding Loan Balance plus all accrued interest as of the beginning of the applicable month; "No. of Days in Month" is the number of days in the applicable calendar month; and "No. of Days in Year" is 365, except in leap years, in which the number of days in the year is 366.

Loan Balance will be tracked on a form similar to that attached as Exhibit B.

D. Repayment of the Loan Balance may be made by wire, ACH, or sent to:
San Mateo County Transportation Authority
1250 San Carlos Avenue
San Carlos, CA 94070
Attn: Director, Treasury

3. Notices. Any notice required to be given by any Party, or which any Party may wish to give to another Party, must be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows:

To the Authority: Jim Hartnett, Executive Director
San Mateo County Transportation Authority
1250 San Carlos Ave.
San Carlos, CA 94070
Email: hartnettj@samtrans.com

with a copy to: Derek Hansel, CFO
San Mateo County Transportation Authority
1250 San Carlos Ave.
San Carlos, CA 94070
Email: hanseld@samtrans.com

To JPA: Executive Committee
San Mateo County Express Lanes JPA
c/o Sandy Wong, City/County Association of Governments of
San Mateo County
555 County Center, 5th Floor
Redwood City, CA 94063
Email: swong@smcgov.org

Formal notice may not be provided by email alone. Either Party may revise or update its addressee information provided in this Section by providing notice pursuant to this Section.

Notice will be deemed effective on the date personally delivered or, if mailed, three days after deposit in the United States mail.

4. Successors. This Agreement shall be binding upon each Party and any of its successors or assigns. No Party may assign or transfer any part of this Agreement without the written consent of the other Party.
5. Third Parties. This Agreement does not confer any benefits on any third party.
6. No Waiver. The failure of any Party to insist upon the strict performance of any of the terms, covenants and conditions of this Agreement will not be deemed a waiver of any right or remedy that any Party may have, and will not be deemed a waiver of their right to require strict performance of all of the terms, covenant, and conditions thereafter.
7. Governing Law and Venue. This Agreement will be construed and its performance enforced under California law. In the event that a suit is brought by any Party to this Agreement, the Parties agree that venue will be exclusively vested in the State courts of the County of San Mateo or, if federal jurisdiction is appropriate, exclusively in the United States District Court for the Northern District of California.
8. Attorneys' Fees. If any legal proceeding should be instituted by either or both of the Parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing Party in said proceeding is entitled to recover reasonable attorneys' fees, in addition to all court costs.
9. Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to its subject matter and supersedes all prior or contemporaneous agreements, representations and understanding of the Parties. The Recitals above are true, correct and made a part this Agreement.
10. Amendment. This Agreement may be amended or terminated by mutual consent in writing of the Parties.
11. Maintenance of Records. The Parties will retain all digital files, books, documents, papers, accounting records and other evidence pertaining to this Agreement for not less than three years after the expiration or termination of this Agreement and

repayment of the Operating Loan and interest.

12. Review of Records. If requested, the Parties' auditors, or any duly authorized representative of the Parties, will have access to the other Parties' digital files, books, records, and documents that are pertinent to performance of this Agreement for a period of three years after the expiration or termination of this Agreement. Timely notice will be provided prior to the conducting of any audit.
13. Severability. If any term, covenant, condition, or provision of this Agreement, or the application thereof to any person or circumstance, is to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions and provisions of this Agreement, or the application thereof to any person or circumstance, will remain in full force and effect and will in no way be affected, impaired or invalidated thereby.
14. Dispute Resolution. Should any dispute arise out of this Agreement, including but not limited to claims that any of the Parties has failed to meet its obligations established by this Agreement, the Parties may meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. The costs of the mediator, if any, shall be paid for by each Party on an equal basis. If a mediated settlement is reached, no Party shall be the prevailing party for the purposes of the resolution of the dispute. No Party shall be permitted to file legal action without first meeting in mediation and maintaining a good faith attempt to reach a mediation resolution. Each Party will bear its own attorneys' fees in connection with the mediation, if any.
15. Termination.
- A. The JPA may terminate this Agreement at any time by repaying the Loan Balance.
 - B. The following sections survive the termination of this Agreement: 7, 8, 11, 12, 14.
16. Counterparts. This Agreement may be executed simultaneously or in counterparts, each of which is to be deemed to be an original, but all of which shall constitute one and the same Agreement.

[REST OF PAGE INTENTIONALLY BLANK]

17. Warranty of Authority to Execute Agreement. Each Party to this Agreement represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this Agreement on behalf of the entity that is a Party to this Agreement.

**SAN MATEO COUNTY EXPRESS LANES
JOINT POWERS AUTHORITY**

**SAN MATEO COUNTY
TRANSPORTATION AUTHORITY**

By: _____

Chair, Board of Directors

By: _____
Carole Groom
Chair, Board of Directors

Date: _____

Date: _____

ATTESTED BY:

By: _____
JPA Secretary

By: _____
Authority Secretary

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Attorney for the JPA

By: _____
Attorney for the Authority

Date: _____

Date: _____