

**San Mateo County Express Lanes Joint Powers Authority  
(SMCEL-JPA)  
Board of Directors Meeting Notice**

Meeting No. 7

**DATE:** Friday, January 10, 2020  
**TIME:** 9:00 a.m.  
**PLACE:** San Mateo County Transit District Office  
1250 San Carlos Avenue, Second Floor Auditorium  
San Carlos, CA

**Board of Directors:** Alicia Aguirre (Chair), Don Horsley (Vice Chair), Emily Beach, Maryann Moise Derwin, Diane Papan, and Rico Medina

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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 APPROVAL OF 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.

4.1 Approval of the minutes of Board of Directors regular business meeting No. 6 dated December 13, 2019. ACTION p. 1

5.0 REGULAR AGENDA

5.1 Accept the Statement of Revenues and Expenditures for the period ending November 30, 2019. ACTION p. 5

5.2 Review and approval of Resolution SMCEL20-01 authorizing the SMCEL-JPA Fiscal Year 2020 Insurance Program and authorizing the binding of Public Officials' insurance. ACTION p. 7

- 5.3 Review and approval of Resolutions SMCEL20-02 and SMCEL-JPA 20-03 authorizing the SMCEL-JPA Chair to execute the agreements with Nixon Peabody, LLP for Financial Legal services in an amount of \$55,000 and with PFM Financial Advisors LLC for Municipal (Financial) Advisory services in an amount of \$30,000, respectively. ACTION p. 9

## 6.0 REPORTS

- a) Chairperson Report.
- b) Member Communication.
- c) Executive Council Report.
- d) Policy/Program Manager Report.

## 7.0 WRITTEN COMMUNICATIONS

None.

## 8.0 NEXT REGULAR MEETING

February 21, 2020

## 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 555 County Center, 5th Flr, Redwood City, CA 94063, 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, Secretary - (650) 599-1406

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

Meeting No. 6

**DATE:** Friday, December 13, 2019  
**TIME:** 9:00 A.M.  
**PLACE:** San Mateo County Transit District Office  
1250 San Carlos Avenue, Second Floor Auditorium  
San Carlos, CA

**Board of Directors:** Alicia Aguirre (Chair), Don Horsley (Vice Chair), Emily Beach, Maryann Moise Derwin, Diane Papan, and Rico Medina

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## 1.0 CALL TO ORDER/ ROLL CALL

Chair Aguirre called the meeting to order at 9:02 a.m. Roll call was taken.

**Members Present:**

C/CAG Members:

Alicia Aguirre, Maryann Moise Derwin, Diane Papan (arrived at 9:04 a.m.)

SMCTA Members:

Don Horsley, Emily Beach (arrived at 9:09 a.m.), Rico Medina

**Members Absent:**

C/CAG Member: None

SMCTA Member: None

**Staff Present:**

Sandy Wong – Executive Council

Jim Hartnett – Executive Council

Mima Guilles – Secretary

Jim Fox – Legal Counsel

Matthew Click – Program/Policy Manager

Jean Higak – C/CAG staff supporting SMCEL JPA

April Chan, Derek Hansel, Joe Hurley, Jessica Epstein, Jennifer Williams – TA staff supporting SMCEL JPA

Other members of the public were in attendance.

2.0 PLEDGE OF ALLEGIANCE

3.0 PUBLIC COMMENT

None.

4.0 APPROVAL OF 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.

- 4.1 Approval of the minutes of Board of Directors regular business meeting No. 5 dated November 8, 2019. APPROVED

Director Medina **MOVED** to approve the CONSENT AGENDA. Director Horsley **SECONDED**. **MOTION CARRIED 5-0-0** (Director Beach has not yet arrived)

5.0 REGULAR AGENDA

- 5.1 Review and approval of the 2020 SMCEL-JPA Board of Directors meeting calendar. APPROVED

Executive Council Sandy Wong presented the proposed 2020 meeting calendar as shown in the staff report, and corrected the typo on page 4 of the meeting packet to read "All meetings start at 9:00 a.m."

Board members discussed and decided to change to the February meeting date from the 14<sup>th</sup> to 21<sup>st</sup> due to Presidents weekend, and to change the October meeting date from the 9<sup>th</sup> to 16<sup>th</sup> due to the League of California Cities conference.

Director Papan **MOVED** to approve the 2020 SMCEL-JPA Board of Directors meeting calendar with changes noted above. Director Horsley **SECONDED**. **MOTION CARRIED 6-0-0**.

- 5.2 Receive an update on the choice of interest rate mode for capital funding of the US 101 Express Lanes Project. INFORMATION

Chief Financial Officer Derek Hansel provided a powerpoint presentation on the choice of interest rate mode for capital funding of the US 101 Express Lanes Project. It is anticipated that the Project will require a loan of approximately \$92.5 million.

On November 20, 2019, staff and the Municipal (financial) Advisors representing the TA met with the SMCEL-JPA's Ad Hoc Finance Committee and discussed the appropriate interest rate mode for these borrowings.

Director Papan and Director Beach, members of the Finance Ad Hoc committee, agreed with Mr. Hansel that variable interest rate would be appropriate based on the circumstances.

This is an information item. No action is required at this time. Staff will continue to work with the Ad Hoc Finance Committee, which will be advised by separate legal and financial advisors as we move to secure financing vehicles for the borrowing, with the direction that would proceed with variable rate structures.

- 5.3 Receive an update to the Communications Plan for the US 101 Express Lanes project.  
INFORMATION

TA communication staff Jessica Epstein provided an informational update on the Communication Plan for the US 101 Express Lanes project. There will be a large-scale regional push to encourage people to sign up for updates. The project team has been sending out quarterly project updates and monthly construction updates.

- 5.4 Receive an update on the upcoming and anticipated future agenda items and actions for the SMCEL-JPA.  
INFORMATION

TA staff April Chan provided a brief update on the upcoming and anticipated future agenda items and actions for the SMCEL-JPA.

## 6.0 REPORTS

- a) Chairperson Report.

None.

- b) Member Communication.

Per Director Papan's request, TA staff Joe Hurley provided a brief report on the recent community meeting on the soundwalls at the City of San Mateo.

- c) Executive Council Report.

Executive Council Sandy Wong reported that staff is working on a "mini RFP" process to solicit independence legal and financial advisory services to assist the SMCEL-JPA in negotiation with the TA for a capital loan. Independent advisory services are being sought to avoid the appearance of conflict of interest since Derek Hansel, Chief Financial Officer, serves both the TA and the SMCEL-JPA.

Executive Council Jim Hartnett acknowledged the key role and contributions made by the Ad Hoc Finance committee members relative to all finance related matters of the SMCEL-JPA.

- d) Policy/Program Manager Report.

Matthew Click of HNTB reported that he and SMCEL-JPA staff are developing a

Request for Proposal (RFP) for Express Lanes equity study. It is targeted to have the equity study consultant contract ready for Board approval at the March meeting.

Chair Aguirre announced and congratulated Jean Higaki on her upcoming retirement.

7.0 WRITTEN COMMUNICATIONS

None.

8.0 NEXT REGULAR MEETING

January 10, 2020

ADJOURNMENT – 9:46 a.m.

**San Mateo County Express Lanes Joint Powers Authority  
Agenda Report**

Date: January 10, 2020

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

From: Executive Council

Subject: Accept the Statement of Revenues and Expenditures for the Period Ending November 30, 2019

(For further information, contact Derek Hansel, CFO, at 650-508-6466)

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**RECOMMENDATION**

That the SMCEL-JPA Board accept and enter into the record the Statement of Revenues and Expenditures for the Period Ending November 30, 2019.

The statement columns have been designed to provide year to date current actuals for the current fiscal year and the actuals since inception.

**BACKGROUND**

Year to Date Revenues: As of November year-to-date, the Total Revenue is \$0, because there have not been advances under the two operating loan agreements between the SMCEL-JPA, the San Mateo County Transportation Authority and the City/County Association of Governments.

Year to Date Expenditures: As of November year-to-date, the Total Expenditures are \$129,377. Major expenses are in Staff Support \$65,741, Administrative Overhead \$22,348 and Consultant \$23,548.

Budget Amendment:

There are no budget amendments for the month of November 2019.

**ATTACHMENT**

1. Statement of Revenues and Expenditures Fiscal Year 2020 (November 2019)

**SAN MATEO COUNTY EXPRESS LANE JPA  
STATEMENT OF REVENUES AND EXPENDITURES**

**Fiscal Year 2020**

**November 2019**

|   | ACTUAL                    |                          | ANNUAL BUDGET    |
|---|---------------------------|--------------------------|------------------|
|   | 7/1/2019 To<br>11/30/2019 | TOTAL SINCE<br>INCEPTION | ADOPTED BUDGET   |
| <b>REVENUES:</b>  |                           |                          |                  |
| 1 Advance from San Mateo County Transportation<br>Authority and City/County Association of<br>Governments of San Mateo County | -                         | -                        | 1,744,911        |
| 2 <b>TOTAL REVENUE</b>  | <b>-</b>                  | <b>-</b>                 | <b>1,744,911</b> |
| <b>EXPENDITURES:</b>  |                           |                          |                  |
| 3 Staff Support   | 65,741                    | 65,741                   | 610,276          |
| 4 Administrative Overhead   | 22,348                    | 22,348                   | 53,635           |
| 5 Business Travel   | 81                        | 81                       | 3,000            |
| 6 Office Supplies   | 253                       | 253                      | 3,000            |
| 7 Printing and Information Svcs   | -                         | -                        | 5,000            |
| 8 Legal Services  | 5,166                     | 5,166                    | 50,000           |
| 9 Consultant  | 23,548                    | 23,548                   | 880,000          |
| 10 Miscellaneous  | 12,240                    | 12,240                   | 140,000          |
| 11 <b>TOTAL EXPENDITURES</b>  | <b>129,377</b>            | <b>129,377</b>           | <b>1,744,911</b> |
| 12 <b>EXCESS (DEFICIT)</b>  | <b>(129,377)</b>          | <b>(129,377)</b>         | <b>-</b>         |
| 13 <b>BEGINNING FUND BALANCE</b>  | <b>-</b>                  | <b>-</b>                 | <b>-</b>         |
| 14 <b>ENDING FUND BALANCE</b>   | <b>(129,377)</b>          | <b>(129,377)</b>         | <b>-</b>         |



## **San Mateo County Express Lanes Joint Powers Authority Agenda Report**

Date: January 10, 2020

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

From: Derek Hansel - Chief Financial Officer

Subject: Review and approval of Resolution SMCEL 20-01 authorizing the SMCEL-JPA Fiscal Year 2020 Insurance Program and authorizing the binding of Public Officials' insurance

(For further information, contact Derek Hansel at 650-508-6466)

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### **RECOMMENDATION**

That the SMCEL-JPA Board review and approve Resolution SMCEL 20-01 approving the SMCEL-JPA Fiscal Year 2020 Insurance Program, to be obtained through the San Mateo County Transportation Authority's insurance broker, USI Insurance Services (USI), for the balance of Fiscal Year (FY) 2020 and up to twelve months of FY2021, at a total estimated premium cost of \$25,000 to \$75,000 inclusive of the following:

- Obtain Public Officials Liability insurance with policy limits of \$3,000,000 for an estimated annualized premium of \$50,000 with a \$50,000 self-insured retention.

### **FISCAL IMPACT**

Estimated annualized premium is \$50,000. Funds necessary to bind the recommended public officials' liability elements of the program are included in the FY2020 Budget and will be included in the FY2021 Budget.

### **BACKGROUND**

Coverage under the SMCEL-JPA Insurance Program is specifically designed to cover SMCEL-JPA's operations and would not be shared with any other entity. Staff is currently exploring alternatives for the insurance coverage with USI, and proposes to bind a policy which covers a period of six to eighteen months, depending upon availability and pricing.

The SMCEL-JPA Insurance Program will initially include Public Officials Liability coverage. Broader coverage for other kinds of ownership and operational liability will be explored as ownership and/or operations of various assets require.

### **ATTACHMENT**

Resolution SMCEL-JPA 20-01

## **RESOLUTION SMCEL 20-01**

### **RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY AUTHORIZING THE FISCAL YEAR 2020 INSURANCE PROGRAM AND AUTHORIZING THE BINDING OF PUBLIC OFFICIALS' INSURANCE.**

**RESOLVED**, by the Board of Directors of the San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) that,

**WHEREAS**, Staff of the TA have, in their capacity of serving as finance staff of SMCEL-JPA have considered options for obtaining insurance to cover potential liability of those individuals serving as Public Officials of SMCEL-JPA; and

**WHEREAS**, after such consideration, Staff recommend the binding of an insurance policy which will address the potential liability of SMCEL-JPA Public Officials; and

**WHEREAS**, this insurance policy shall be a part of a comprehensive risk management program, which will also address, at the appropriate time, other potential liability associated with the ownership and operations of assets by SMCEL-JPA.

**NOW THEREFORE BE IT RESOLVED**, that the Chief Financial Officer is hereby authorized to bind an insurance policy for Public Officials' Liability, at a cost not-to-exceed of \$50,000 annually, for a term of not more than eighteen (18) months.

**PASSED, APPROVED, AND ADOPTED, THIS 10TH DAY JANUARY 2020.**

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*Alicia Aguirre, Chair*

## San Mateo County Express Lanes Joint Powers Authority Agenda Report

Date: January 10, 2020

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

From: Executive Council  
Legal Counsel

Subject: Review approval of Resolutions SMCEL20-02 and SMCEL-JPA 20-03 authorizing the SMCEL-JPA Chair to execute the agreements with Nixon Peabody, LLP for Financial Legal services in the amount of \$55,000 and with PFM Financial Advisors LLC for Municipal (Financial) Advisory services in the amount of \$30,000, respectively

(For further information, contact Van Ocampo at 650-599-1460)

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### **RECOMMENDATION**

That the SMCEL-JPA Board review and approval of Resolutions SMCEL20-02 and SMCEL-JPA 20-03 authorizing the SMCEL-JPA Chair to execute the agreements with Nixon Peabody, LLP for Financial Legal services in the amount of up to \$55,000 and with PFM Financial Advisors LLC for Municipal (Financial) Advisory services in the amount of up to \$30,000, respectively.

### **FISCAL IMPACT**

Total cost of independent legal and financial advisors is not to exceed \$85,000 (\$55,000 for legal advice + \$30,000 for financial advice).

### **SOURCE OF FUNDS**

Source of funds is from the SMCEL-JPA operating budget for Fiscal Year 2020. The adopted FY 2020 operating budget includes \$880,000 for consultant services. While legal and financial advisory services were not included in the original \$880,000 estimate, staff believes there may be adequate savings from other consultant services to cover these new costs. And if budget is insufficient, staff will return later in the fiscal year to request additional budget authority.

### **BACKGROUND**

At the October 23, 2019 Finance Ad Hoc committee meeting, committee members discussed the upcoming capital loan agreement SMCEL-JPA will be entering into with the San Mateo County Transportation Authority (TA). Committee members recommended to procure independent financial and legal advisors to assist the SMCEL-JPA in negotiation of the loan agreement.

On November 8, 2019, the SMCEL-JPA took an action and directed staff to procure financial legal services and municipal advisor services to represent the SMCEL-JPA during upcoming loan agreement negotiations with the TA.

Based on the input from the project team and the 101 Express Lanes capital project construction schedule, it is recommended that a capital loan agreement be in place between SMCEL JPA and the TA by the March 2020, so the the TA can secure financing to provide appropriate cash flow to the capital project.

Staff issued Requests for Proposal (RFP) on December 10, 2019 and informally solicited proposals based on the limited scope of the need and the likely cost of services that an informal procurement process would be adequate, with the deadline for proposal submittal by December 20, 2019. In addition to publishing the RFPs on the SMCEL-JPA website, staff also sent direct email to some recommended firms.

Financial Legal Advisory:

Of the two targeted law firms, Nixon Peabody, LLP submitted a proposal by the deadline. The other firm cited their “longstanding representation of the Bay Area Infrastructure Financing Authority, the Bay Area Toll Authority and the County of San Mateo” as reason for not submitting a proposal.

Municipal (Financial) Advisory:

Proposals were received from all three targeted firms by the deadline: PFM Financial Advisors LLC, Sperry Capital, as well as Urban Futures Incorporated.

Selection recommendation:

A selection team comprised of Sandy Wong, April Chan and Tim Fox met on December 23<sup>rd</sup>, 2019 and evaluated all proposals received on behalf of the SMCEL-JPA. Derek Hansel did not participate in evaluating the responses in order to avoid any appearance of a conflict of interest.

Based on the selection team’s review of all submitted materials, the team recommends the selection of Nixon Peabody for Legal advisory service and PFM Financial Advisors LLC for Municipal (Financial) advisory service. Such recommendations were based on: quality of the proposal; relevant experience; understanding of SMCEL-JPA needs; approach; key personnel’s background; and no conflict of interest.

On January 6, 2020, the team’s recommendations were presented to the Finance Ad Hoc committee members for their acceptance.

**ATTACHMENTS**

1. Resolution SMCEL-JPA 20-02.
2. Resolution SMCEL-JPA 20-03.
3. Draft Agreement between SMCEL-JPA and Nixon Peabody, LLP for financial legal services.
4. Draft Agreement between SMCEL-JPA and PFM Financial Advisor LLP for municipal advisory services.

## **RESOLUTION SMCEL 20-02**

### **RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY (SMCEL-JPA) AUTHORIZING THE CHAIR TO EXECUTE AN AGREEMENT WITH NIXON-PEABODY, LLP FOR FINANCIAL LEGAL SERVICES FOR A NOT TO EXCEED AMOUNT OF \$55,000.**

**RESOLVED**, by the Board of Directors of San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) that,

**WHEREAS**, the SMCEL-JPA and the San Mateo County Transportation Authority (TA) will contemplate negotiation of a capital loan agreement to assist in fully funding the construction of the current US101 Express Lanes project from I-380 to the San Mateo-Santa Clara county line; and

**WHEREAS**, the TA's fiscal and finance staff serve both the TA and the SMCEL-JPA, the SMCEL-JPA desires to obtain independent financial legal advisory services and municipal advisory services to assist in the negotiation with the TA for said capital loan agreement; and

**WHEREAS**, on November 8, 2019, the SMCEL-JPA Board directed staff to procure said financial legal services and municipal advisory services; and

**WHEREAS**, based on the limited scope of services needed, staff performed an informal Request for Proposal (RFP) process to solicit services; and

**WHEREAS**, Nixon-Peabody, LLP has submitted a satisfactory proposal in response to the solicitation; and

**WHEREAS**, upon review of the proposal, staff recommends retaining Nixon-Peabody, LLP for financial legal services in an amount not to exceed \$55,000. The SMCEL-JPA Finance Ad Hoc Committee has reviewed staff recommendation.

**NOW THEREFORE BE IT RESOLVED**, by the Board of Directors of the SMCEL-JPA that the Chair is authorized to execute the Agreement with Nixon-Peabody, LLP for Financial Legal Services for a total amount Not to Exceed \$55,000; and further authorize the Executive Council to negotiate the final terms of the agreement prior to execution by the Chair, subject to approval by SMCEL-JPA Legal Counsel.

**PASSED, APPROVED, AND ADOPTED, THIS 10TH DAY OF JANUARY, 2020.**

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*Alicia Aguirre, Chair*

## **RESOLUTION SMCEL 20-03**

### **RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY (SMCEL-JPA) AUTHORIZING THE CHAIR TO EXECUTE AN AGREEMENT WITH PFM FINANCIAL ADVISOR, LLC FOR MUNICIPAL (FINANCIAL) ADVISORY SERVICES FOR A NOT TO EXCEED AMOUNT OF \$30,000.**

**RESOLVED**, by the Board of Directors of San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) that,

**WHEREAS**, the SMCEL-JPA and the San Mateo County Transportation Authority (TA) will contemplate negotiation of a capital loan agreement to assist in fully funding the construction of the current US101 Express Lanes project from I-380 to the San Mateo-Santa Clara county line; and

**WHEREAS**, the TA's fiscal and finance staff serve both the TA and the SMCEL-JPA, the SMCEL-JPA desires to obtain independent financial legal advisory services and municipal (Financial) advisory services to assist in the negotiation with the TA for said capital loan agreement; and

**WHEREAS**, on November 8, 2019, the SMCEL-JPA Board directed staff to procure said financial legal services and municipal advisory services; and

**WHEREAS**, based on the limited scope of services needed, staff performed an informal Request for Proposal (RFP) process to solicit services; and

**WHEREAS**, staff receive three satisfactory proposals from PFM Financial Advisors LLC, Sperry Capital, and Urban Futures, in response to the solicitation; and

**WHEREAS**, upon review and evaluation of all three proposals, staff recommends retaining PFM Financial Advisors LLC for municipal (financial) services in an amount not to exceed \$30,000. The SMCEL-JPA Finance Ad Hoc Committee has reviewed staff recommendation.

**NOW THEREFORE BE IT RESOLVED**, by the Board of Directors of the SMCEL-JPA that the Chair is authorized to execute the Agreement with PFM Financial Advisors LLC for municipal (financial) advisory services for a total amount Not to Exceed \$30,000; and further authorize the Executive Council to negotiate the final terms of the agreement prior to execution by the Chair, subject to approval by SMCEL-JPA Legal Counsel.

**PASSED, APPROVED, AND ADOPTED, THIS 10TH DAY OF JANUARY, 2020.**

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*Alicia Aguirre, Chair*

**Rudy S. Salo**  
*Partner*  
T 213-629-6069  
rsalo@nixonpeabody.com

300 S. Grand Avenue, Suite 4100  
Los Angeles, CA 90071-3151  
213-629-6000

January 10, 2020

Ms. Sandy Wong  
Executive Council  
San Mateo County Express Lanes Joint Powers Authority

**RE: Agreement for Legal Services**

Dear Ms. Wong:

We are pleased that you have asked Nixon Peabody LLP (the “Firm”) to provide finance legal services to the San Mateo County Express Lanes Joint Powers Authority.

This letter and the accompanying Terms and Conditions of Engagement, which are incorporated herein by reference, describe the basis on which the Firm will provide those services. In addition, this letter and enclosure include specific details that are required to be set forth in writing by the ethics rules pursuant to which we practice. It is preferable to put all of these details in writing so that our role and responsibilities are completely understood and agreed to at the commencement of our engagement.

Our sole client in this matter will be San Mateo County Express Lanes Joint Powers Authority (hereinafter, the “Authority” or “you”). Our representation of the Authority does not give rise to an attorney-client relationship between us and any Authority affiliates or constituents (such as supervisors, officers, directors or employees), and you also agree that you will not give us confidential information regarding your affiliates or constituents during the course of our representation of you. Accordingly, our representation of the Authority in this matter will not give rise to any conflict of interest in the event one of our other clients is adverse to the Authority or any of the Authority’s affiliates or constituents.

We will advise the Authority solely as borrower’s counsel in connection with a toll repayment agreement with the San Mateo County Transportation Authority (the “TA”) and the bonds the TA will be issuing on behalf of the Authority (collectively, the “Transaction”). We will review and negotiate the term sheet for the toll repayment agreement, and prepare, negotiate and revise the documentation required to consummate the Transaction. You may limit or expand the scope of our representation from time to time, provided that we will not substantially expand the scope of our representation without a further written agreement.

We believe in utilizing lawyers, legal assistants and other professional staff with levels of experience and expertise appropriate to each aspect of the engagement. We currently expect that the principal attorneys involved in this engagement will be me, Travis Gibbs, Kenneth Lind and David Song. I will be the “Client Attorney” with overall responsibility for managing the relationship, and should be viewed as your contact in the event of questions or concerns, particularly as they relate to service and billing matters.

Our fees will be based on the hourly billing rate for each attorney, paralegal and other professional staff member devoting time to this matter. The billing rate for attorneys expected to work on this matter is \$595. Time devoted by paralegals and other professional staff members will be charged at \$300 per hour. Based upon all of the assumptions and considerations set forth herein, we have agreed to cap our fees at \$55,000. To the extent that any expenses (travel, document preparation, etc.) we incur exceed \$2,500, we agree to cap such expenses at \$5,000.

In order to enable us to maintain our fee cap, it is vital that there be no significant tax issues relating to the Transaction, and the Transaction generally keeps to its proposed timetable of closing within six months after the commencement of the Transaction without undue acceleration or extensive delay of the timetable. Transactions which start up and then are put on hold, or drag on past the proposed closing date, are likely to require greater than expected time to be spent by counsel and consequently would cause our fee cap to be increased. If we represent you on subsequent matters, our standard policy on professional fees will apply to all such matters except to the extent that we mutually agree to modify it. We agree to defer our legal fees for any legal services until the closing of the Transaction to be paid from costs of issuance.

The Firm represents and in the future will represent many other clients. Some may be your direct competitors or otherwise may have business interests that are contrary to your interests. It is even possible that, during the time we are working for you, an existing or future client may seek to engage us in connection with an actual or potential transaction or pending or potential litigation or other dispute resolution proceeding in which such client’s interests are or potentially may become adverse to your interests.

The Firm cannot enter into this engagement if it could interfere with our ability to represent existing or future clients who develop relationships or interests adverse to you. We therefore ask you to confirm that the Firm may continue to represent or may undertake in the future to represent any existing or future client in any matter (including but not limited to transactions, litigation or other dispute resolutions), even if the interests of that client in that other matter are directly adverse to the Firm’s representation of you, as long as that other matter is not substantially related to this or our other engagements on your behalf. In the event of our representation of another client in a matter directly adverse to you, however, the Firm’s lawyers or other service providers who have worked with you will not work for such other client, and appropriate measures will be taken to assure that proprietary or other confidential information of a non-public nature concerning you acquired by the Firm as a result of our representation of you will not be transmitted to our lawyers or others in the Firm involved in such matter.



In other words, we request that you confirm that (1) no engagement that we have undertaken or may undertake on your behalf will be asserted by you either as a conflict of interest with respect to, or as a basis to preclude, challenge or otherwise disqualify the Firm from, any current or future representation of any client in any matter, including without limitation any representations in negotiations, transactions, counseling or litigation adverse to you, as long as that other matter is not substantially related to any of our engagements on your behalf, (2) you hereby waive any conflict of interest that exists or might be asserted to exist and any other basis that might be asserted to preclude, challenge or otherwise disqualify the Firm in any representation of any other client with respect to any such matter, (3) you have been advised by the Firm, and have had the opportunity to consult with other counsel, with respect to the terms and conditions of these provisions and its prospective waiver, (4) your consent to these provisions is both voluntary and fully informed, and (5) you intend for your consent to be effective and fully enforceable, and to be relied upon by the Firm.

You have the right to repudiate this waiver should you later decide that it is no longer in your interest. However, if we have acted in reliance on the waiver, we may have the right – and possibly a duty, under the applicable rules of professional conduct – to withdraw from representing you.

Please sign, date and return to me a copy of this letter via e-mail in order to confirm that it accurately reflects the scope, terms and conditions with respect to this engagement. However, please note that your instructing us or continuing to instruct us on this matter will constitute your full acceptance of the terms set out above and attached. If you would like to discuss any of these matters, please give me a call. We appreciate your decision to retain us in this matter and very much look forward to the opportunity of working with you.

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Rudy S. Salo  
of Nixon Peabody LLP

Sandy Wong  
January 10, 2020  
Page 4

NIXON PEABODY LLP  
ATTORNEYS AT LAW

NIXONPEABODY.COM  
@NIXONPEABODYLLP

The undersigned has read and understands the above letter and enclosure, and accepts and agrees to all of their terms and conditions.

San Mateo County Express Lanes Joint  
Powers Authority

January 10, 2020

By: \_\_\_\_\_  
Name: Alicia Aguirre  
Title: SMCEL-JPA Board Chair



## **TERMS AND CONDITIONS OF ENGAGEMENT**

This document and the accompanying letter set forth the terms and conditions under which you are engaging Nixon Peabody LLP to provide legal services.

### **TERM OF ENGAGEMENT**

You may terminate our representation at any time upon reasonable notice, and we retain that right as well, subject on our part to the applicable rules of professional conduct. Your termination of our services will not affect your responsibility to pay for legal services rendered and charges incurred during the representation. In the event that we have devoted no time to this matter for any three consecutive months, then you agree we may conclude that the engagement has terminated as of the last date on which we performed services related thereto. In the event that we terminate the engagement, we will take such steps as are reasonably practicable to protect your interests in this matter. If permission for withdrawal is required by a court, we will promptly apply for such permission, and you agree to engage successor counsel to represent you. In the event that our representation is terminated, you agree to pay all invoices thereafter rendered covering the period prior to the termination and covering an orderly transition of the matter.

### **CONCLUSION OF REPRESENTATION; RETENTION AND DISPOSITION OF DOCUMENTS**

Unless previously terminated, our representation of you will terminate upon our sending you our final invoice for services rendered in this matter. Following such termination, any otherwise non-public information you have supplied to us will be kept confidential in accordance with the applicable rules of professional conduct. Upon request, your papers and property will be available for you to pick up at our office or shipped to you at your expense. Our own files pertaining to the matter, which may include copies of your papers, will be retained by the Firm. You agree that Firm administrative records; time and expense reports; personnel and staffing materials; credit and accounting records; and the documents containing our attorney work product, mental impressions, notes, drafts of documents and legal and factual research, including investigative reports, shall be and remain Firm property and shall not be considered part of your client file. In addition, electronic documents such as our internal e-mails, documents containing or reflecting our internal deliberations or self-evaluations, and our internal databases shall be and remain Firm property and shall not be considered part of your client file. All such documents retained by the Firm will be transferred to the person responsible for administering our records retention program. For various reasons, including the elimination of storage expenses, we reserve the right to destroy or otherwise dispose of any such documents or other materials retained by us within a reasonable time after the termination of the engagement. In any event, all documents and other materials in our file may be discarded or destroyed, without further notice to you, at any time after the seven (7) year anniversary of the conclusion of our engagement.

## **CLIENT RESPONSIBILITIES**

You agree to pay our invoices for services and expenses upon receipt as provided in the accompanying letter. In addition, you agree to be candid and cooperative with us and to keep us informed with complete and accurate factual information, documents and other communications relevant to the subject matter of our representation or otherwise reasonably requested by us.

## **CONSULTATION WITH FIRM COUNSEL**

The Firm represents many clients in a great number of complex matters. From time to time, questions arise as to our duties under the professional conduct rules. These might include, for example, conflicts of interest and issues arising from a dispute between us and a client over the handling of a matter. When such issues arise, we seek the advice of our general counsel or loss prevention partners who are expert in such matters. We consider such consultations to be attorney-client privileged communications between Firm personnel and counsel for the Firm. In recent years, some judicial decisions indicate that under some circumstances such communications may not be privileged. We believe that it is in our clients' interest, as well as ours, that in the event legal ethics or other issues arise during a representation, we receive expert analysis and advice as to our obligations to you. Accordingly, as part of our retention agreement, you agree that if we determine in our own discretion during the course of the representation that it is either necessary or appropriate to consult with the Firm's internal or outside counsel, we have your consent to do so and that our representation of you will not waive any attorney-client privilege that we may have to protect the confidentiality of our communications with our counsel.

## **CHARGES IN ADDITION TO FEES**

We will include on our invoices separate charges for services such as messenger and delivery, travel, word processing, computer research, and filing fees. These charges will generally be billed at actual cost. Fees and expenses of other providers (such as consultants, appraisers, and local counsel) generally will not be paid by us, but will be billed directly to you.

## **BILLING ARRANGEMENTS AND PAYMENT TERMS**

An invoice will be rendered at the closing of the transaction. If the transaction does not close, an invoice will be rendered upon termination of the transaction solely for an agreed upon fee. Payment is due promptly upon receipt of our invoice. If an invoice is not paid in full within 30 days of being issued, we reserve the right to charge interest monthly on the unpaid balance.

## **POST-ENGAGEMENT MATTERS**

You are engaging the Firm to provide legal services in connection with a specific matter. After completion of the matter, changes may occur in applicable laws or regulations that could have an impact upon your future rights and liabilities. Unless you engage us after completion of the matter to provide additional advice on issues arising from the matter, the Firm has no continuing obligation to advise you with respect to future legal developments. In addition, unless you and the Firm agree in writing to the contrary, we will have no obligation to monitor renewal or notice dates or similar deadlines which may arise from the matter for which we had been engaged.

## **AGREEMENT MODIFICATIONS**

If you have any comments or questions concerning the terms of this engagement, or if you would like to discuss possible modifications, please do not hesitate to call your Client Attorney. Any revisions made to the agreement will be effective upon written notice of the revisions, following our approval.

**AGREEMENT  
BETWEEN  
SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY AND  
PFM FINANCIAL ADVISOR, LLC FOR MUNICIPAL (FINANCIAL) ADVISOR SERVICES**

This Agreement entered this \_\_\_\_ day of \_\_\_\_\_ 2020, by and between the San Mateo County Express Lanes Joint Powers Authority hereinafter called “SMCEL-JPA” and PFM Financial Advisors, LLC, hereinafter called “Consultant”.

**WHEREAS**, the Joint Exercise of Powers Agreement for the San Mateo County Express Lanes was approved by the City/County Association of Governments (“C/CAG”) Board and the San Mateo County Transportation Authority (“SMCTA”) Board at their board meetings on April 11, 2019 and May 2, 2019, respectively; and

**WHEREAS**, the First Amended and Restated Joint Exercise of Powers Agreement for the San Mateo County Express Lanes (“JPA Agreement”) was approved by the C/CAG Board and the SMCTA Board at their respective board meetings on June 13, 2019 and July 11, 2019; and

**WHEREAS**, the JPA Agreement created the SMCEL-JPA to: apply to the California Transportation Commission in order to own, administer, and manage the operations of the San Mateo County Express Lanes (“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 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); and

**WHEREAS**, SMCTA is scheduled to secure a loan vehicle to assist in fully funding the construction of the current US101 Express Lanes project from I-380 to the San Mateo-Santa Clara county line; and

**WHEREAS**, on November 8, 2019, the SMCEL-JPA Board directed staff to procure financial legal services and municipal (financial) advisor services to represent the SMCEL-JPA during the loan agreement negotiations with SMCTA; and

**WHEREAS**, upon the recommendation of the Finance Ad Hoc Committee, the Board of Directors of the SMCEL-JPA authorized the Chair to execute the Agreement with PFM Financial Advisors, LLC, to provide Municipal (Financial) Advisor Services during the loan agreement negotiations with SMCTA; and further authorize the Executive Council to negotiate the final agreement prior to execution by the Chair, subject to approval by SMCEL-JPA Legal Counsel; and

**WHEREAS**, the parties hereto now wish to enter into this Agreement pursuant to which Consultant will render professional services in connection with the Project as hereinafter provided.

**NOW, THEREFORE, IT IS HEREBY AGREED** by the parties as follows:

- 1. Services.** Consultant shall provide the services as described in Exhibit A. Consultant will provide the SMCEL-JPA with an initial estimated hours and cost for each major task as described in Exhibit A applying the billing rates set forth in Exhibit A, attached hereto and incorporated herein by this reference. This estimate is the basis of this Agreement's Not to Exceed Amount of \$30,000. The consultant will be reimbursed for hours worked at the hourly rates in Exhibit A. The hours and cost estimated for each major task may increase or decrease as needed, during the Agreement duration, but in no case shall the cumulative cost of work exceed this Agreement's Not to Exceed Amount of \$30,000. Modifications to the task estimates shall be coordinated with the Executive Council.

If additional work is identified, that is not described in Exhibit A, the SMCEL-JPA Board, through the Executive Council, will present the Consultant with a proposed amendment and request a cost proposal. The Consultant will provide the SMCEL-JPA with a cost proposal for the additional specific task applying the billing rates set forth in Exhibit A.

The Consultant shall perform the services with the same degree of care, skill, and diligence as is ordinarily possessed and exercised by a member of the same profession currently practicing under similar circumstances. No other warranty, express or implied, is included in this Agreement or in any deliverable, in any form or media, produced in connection with the services.

Consultant shall have the right to reasonably rely on information, content, materials, or documents provided to the Consultant by the SMCEL-JPA, or any other Project participants, for the Consultant's performance of the services under this Agreement.

- 2. Compensation and Method of Payments.** Subject to duly executed amendments, the SMCEL-JPA will reimburse Consultant in performing services as described in Exhibit A on a time and materials basis, with rates and cost estimate based on Exhibit A, which include all applicable surcharges such as taxes, insurance, and fringe benefits, indirect costs, overhead, profit, sub-consultants' costs (including mark-up), travel (not eligible for separate reimbursement pursuant to the terms of this section 2), equipment, materials and supplies, expenses and any fixed fee. At no point should the total compensation for all work performance be more than the Agreement Not to Exceed Amount of \$30,000.

The rates set forth in Exhibit A may not be modified throughout the life of this contract.

Consultant shall submit monthly invoices to the SMCEL-JPA which shall be reviewed by the SMCEL-JPA contract manager and approved by a member of the Executive Council and which shall identify expenditures and describe services performed in accordance with each task listed in Exhibit A. The SMCEL-JPA shall pay to Consultant all undisputed amounts within thirty (30) days of the SMCEL-JPA's receipt of any Consultant invoice. If the SMCEL-JPA objects to any Consultant invoice, the SMCEL-JPA shall so advise Consultant in writing giving reasons therefor within seven (7) days of receipt of Consultant's invoice. The SMCEL-JPA shall have the right to receive, upon request, documentation substantiating charges billed to the SMCEL-JPA.

All invoices and/or requests for payments shall be submitted to the SMCEL-JPA contract manager:

San Mateo County Express Lanes Joint Powers Authority  
555 County Center, 5th Floor

Redwood City, CA 94063  
Attention: Van Ocampo

3. **Term.** Consultant's services hereunder shall commence on January 10, 2020 and shall be up to the time of execution of the loan agreement with SMCTA and further service of a Municipal (Financial) Advisor is no longer needed, unless extended by a duly executed amendment or earlier terminated by the SMCEL-JPA.
4. **Key Personnel.** The key personnel to be assigned to this contract by Consultant, their hourly rates, and the estimated hours to be supplied by each, are set forth in Exhibit A, attached hereto and incorporated herein by this reference. Removal or substitution of any key personnel named in Exhibit A will require the prior written notice to SMCEL-JPA. Any substitution shall be with a person of commensurate knowledge and experience, unless otherwise approved by the SMCEL-JPA. Consultant shall maintain records documenting compliance with this Article, and such records shall be subject to audit. Consultant agrees that all personnel assigned to this work will be professionally qualified for the assignment to be undertaken.
5. **Amendments.** SMCEL-JPA reserves the right to request changes in the services to be performed by Consultant. All such changes shall be incorporated in written amendments that specify the changes in work to be performed and any adjustments in compensation and schedule. All amendments shall be executed by the Parties and be specifically identified as amendments to this Agreement. The SMCEL-JPA Executive Council, nor any member thereof, is designated as representative of the SMCEL-JPA for purposes of approving an amendment to this Agreement unless expressly so designated by the SMCEL-JPA Board.
6. **Relationship of the Parties.** It is understood that Consultant is an independent contractor and this Agreement is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever with Consultant, its employees, agents, and permissible subcontractors, other than that of independent contractor. Consultant acknowledges that SMCEL-JPA has no employees, and neither Consultant nor its employees, agents, or permissible subcontractors acquire any of the rights, privileges, powers, or advantages of SMCEL-JPA employees. Consultant has no authority to contract or enter into any agreement on behalf of SMCEL-JPA without the prior approval of the SMCEL-JPA Board. Consultant has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by Consultant who are assisting in the performance of services under this Agreement. Consultant shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. Consultant shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.
7. **Non-Assignability.** Consultant shall not assign this Agreement or any portion thereof to a third party without the prior written consent of the SMCEL-JPA
8. **Termination.** This Agreement may be terminated by SMCEL-JPA at any time without a requirement of good cause upon thirty (30) days' advance written notice to Consultant. Consultant shall be entitled to receive payment for work/services provided up to the date of termination of the Agreement on a time and materials basis.



SMCEL-JPA may terminate this Agreement for cause. In order to terminate for cause, SMCEL-JPA must first give Consultant notice of the alleged breach. Consultant shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If Consultant fails to cure the breach within this period, SMCEL-JPA may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that SMCEL-JPA provides notice of an alleged breach pursuant to this section, SMCEL-JPA may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. SMCEL-JPA has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and SMCEL-JPA shall use reasonable judgment in making that determination.

- 9. Contract Materials.** At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as “contract materials”) prepared by Consultant under this Agreement shall become the property of SMCEL-JPA and shall be promptly delivered to SMCEL-JPA. Upon termination, Consultant may make and retain a copy of such contract materials if permitted by law. Any use or reuse of any contract materials by SMCEL-JPA or any third party, whether finished or unfinished, for any purpose other than as specifically intended under this Agreement shall be at the user’s sole risk and without liability or legal exposure to Consultant.
- 10. Hold Harmless/ Indemnity.** Consultant shall indemnify and hold harmless the SMCEL-JPA, its board members, agents, officers, and employees from both C/CAG and the SMCTA involved the Project, against all claims, suits or actions of every name, kind, and description to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Consultant, its agents, sub-consultants, officers or employees related to or resulting from the performance, or non-performance, under this Agreement.

The duty to indemnify and hold harmless as set forth herein shall include the duty to defend.

**11. Insurance and Financial Security Requirements**

Consultant shall, at its own expense, obtain and maintain in effect at all times for the duration of this Agreement the types of insurance stated below, against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement. All policies will be issued by insurers acceptable to the SMCEL-JPA, generally with a Best’s Rating of A- or better with a Financial Size Category of VIII or better.

Consultant or its sub-consultants performing the services on behalf of Consultant shall not commence work under this Agreement until all insurance required under this section has been obtained. Consultant shall furnish the SMCEL-JPA with certificates of insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending the Consultant’s coverage to include the contractual liability assumed by Consultant pursuant to this Agreement. These Certificates shall specify or be endorsed to provide that thirty (30) days’ notice must be given, in writing, to the SMCEL-JPA of non-renewal, cancellation, or material modification of the policy. At no point should any of the Consultant’s insurance coverage be lower or inferior to the minimum

coverage required by SMCEL-JPA

**Workers' Compensation and Employer Liability Insurance:** The Consultant shall have in effect, during the entire life of this Agreement, Workers' Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, Consultant Certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this agreement.

**Liability Insurance:** Consultant shall take out and maintain during the life of this Agreement insurance coverages to protect Consultant, its employees, officers and agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, and property damage under this Agreement, to the extent caused by Consultant or by any sub-Consultant or by anyone directly or indirectly employed by either of them. Such insurance shall be not be less than \$1,000,000 for each occurrence unless another amount is specified below and shows approval by the SMCEL-JPA.

| Required insurance shall include:    | Required Amount                                  |
|--------------------------------------|--|
| a. Commercial General Liability      | \$ 1,000,000 per occurrence and annual aggregate |
| b. Workers' Compensation             | \$ Statutory                                     |
| c. Professional Liability            | \$ 1,000,000 per claim and annual aggregate      |
| c. Motor Vehicle Liability Insurance | \$ 1,000,000 combined single limit per accident  |

The SMCEL-JPA and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the SMCEL-JPA, its officers, agents, employees and servants shall be primary insurance to the minimum limits of liability set forth in this Section of the Agreement, and that if SMCEL-JPA, or its officers and employees have other insurance against a loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, SMCEL-JPA may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

- 12. Non-discrimination.** The Consultant and any sub-consultants performing the services on behalf of the Consultant shall not discriminate or permit discrimination against any person or group of persons on the basis of race, color, religion, national origin or ancestry, age, sex, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status, or in any manner prohibited by federal, state or local laws.
- 13. Compliance with All Laws.** Consultant shall at all times comply with all applicable laws and

regulations, including without limitation those regarding services to disabled persons, including any requirements of Section 504 of the Rehabilitation Act of 1973, state law regarding conflicts of interest, and the SMCEL-JPA Conflict of Interest Code.

14. **Sole Property of the SMCEL-JPA:** Work products of Consultant which are delivered under this Agreement or which are developed, produced and paid for under this Agreement, shall be and become the sole property of the SMCEL-JPA. Consultant shall not be liable for the SMCEL-JPA's use, modification or re-use of products without Consultant's participation or for purpose other than those specifically intended pursuant to this Agreement.
15. **Access to Records.** The SMCEL-JPA, or any of their duly authorized representatives, shall have access to any books, documents (including electronic), papers, videos voice recording, and records of Consultant, which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions. The Consultant shall maintain all required records for three years after the SMCEL-JPA makes final payments and all other pending matters are closed.
16. **Merger Clause.** This Agreement, including all Attachments are hereto added and incorporated herein by reference, constitutes the sole agreement of the parties hereto with regard to the matters covered in this Agreement, and correctly states the rights, duties and obligations of each party as of the document's date. Any prior agreement, promises, negotiations or representations between the parties not expressly stated in this Agreement are not binding. All subsequent modifications shall be in writing and signed by the Parties. In the event of a conflict between the terms, conditions or specifications set forth herein and those in Attachment A attached hereto, the terms, conditions or specifications set forth herein shall prevail.
17. **Governing Law.** This Agreement shall be governed by the laws of the State of California, without regard to its choice of law rules, and any suit or action initiated by either party shall be brought in the County of San Mateo, California.
18. **Notices.** All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid and addressed as follows:

San Mateo County Express Lanes Joint Powers Authority  
555 County Center, 5th Floor  
Redwood City, CA 94063  
Attention: Sandy Wong

Notices required to be given to the Consultant shall be addressed as follows:

Peter Shellenberger  
Managing Director  
PFM Financial Advisors, LLC  
50 California Street, Suite 230  
San Francisco, CA 94111

19. **Drafting.** This Agreement was drafted with the joint participation of the parties. Any ambiguity contained in this Agreement shall not be construed against any party as the draftsman, but this

Agreement shall be construed in accordance with its fair meaning.

IN WITNESS WHEREOF, the parties hereto have affixed their hands on the day and year first above written.

**PFM Financial Advisors, LLC (Consultant)**

By: \_\_\_\_\_  
Peter Shellenberger - Managing Director  
Date

**San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA)**

By: \_\_\_\_\_  
Alicia Aguirre – Chair  
Date

