

San Mateo County Express Lanes Joint Powers Authority Agenda Report

Date: March 12, 2021

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

From: Executive Council

Subject: Review and approval of Resolution SMCEL 21-02 approving Master Agreement and Supplements for Vendor Contracting by the San Mateo County Transportation Authority in Support of the San Mateo County Express Lanes Joint Powers Authority

(For further information please contact April Chan, Chief Officer, Planning, Grants & TA, San Mateo County Transportation Authority Program at chana@samtrans.com)

RECOMMENDATION

That the SMCEL-JPA Board review and approve Resolution SMCEL 21-02 approving the following:

- Master Agreement for vendor contracting by the San Mateo County Transportation Authority (TA) in support of work for the San Mateo County Express Lanes Joint Powers Authority (SMCEL JPA); and
- TA Vendor Contract Supplement #1 with Gray-Bowen-Scott (GBS) not to exceed \$114,000 to provide services to support development and execution of various operating and maintenance agreements for the SMCEL JPA; and
- TA Vendor Contract Supplement #2 with FivePaths, LLC not to exceed \$150,000 to conduct a brand environment analysis and create logos for the SMCEL JPA.

FISCAL IMPACT

The SMCEL JPA needs to have various agreements in place prior to the opening and the operation of the US101 Express Lanes in late 2021, including the appropriate operating and maintenance (O&M) agreements with the California Department of Transportation (Caltrans). Caltrans, through its contractor, is currently constructing the roadway infrastructure. GBS, in addition to providing project management oversight on the delivery of the express lanes project, is assisting staff in negotiating the O&M agreements for SMCEL JPA. Staff estimates the cost of this work to be \$114,000.

In addition, the SMCEL JPA as a brand new authority does not currently have any branding or logos to distinguish itself from other operators in the San Francisco Bay Area express lanes landscape. The TA, in providing communication and marketing support for the SMCEL JPA, is engaging with a specialty firm FivePaths, LLC to support the SMCEL JPA in this effort. Staff estimates the cost of this work at \$70,000, which includes the following:

- Analyze brand environment and make related recommendations
- Create and present draft logos based on above recommendations
- Deliver finalized digital logo file(s) based on staff and board feedback

The vendor contract is for up to \$150,000 in anticipation of any additional work that may be required beyond the initial scope of \$70,000, and such work would be approved by the SMCEL JPA Board in the FY22 and subsequent Budgets.

SOURCE OF FUNDS

The SMCEL-JPA's approved FY2021 Budget provides sufficient budget authority in the consultant line item to fund the GBS work in the amount of \$114,000 and FivePaths LLC work in the amount of \$70,000.

BACKGROUND

As part of the Joint Exercise of Powers Agreement between the TA and the City/County Association of Governments of San Mateo County, the TA is to provide fiscal-agent, finance, marketing, and communication staffing services to the SMCEL JPA. And occasionally, these services to be provided by the TA would be more efficiently provided by a vendor contracted by the TA than a separate vendor selected by the SMCEL JPA under a procurement process.

For the two scopes of work described above, and which staff have determined it would be beneficial and efficient for the SMCEL JPA to utilize the existing TA contracts to complete the work described above, the approval of the SMCEL JPA at this meeting of these two Vendor Contract Supplements will obligate the SMCEL JPA to fund and pay what the TA is undertaking on behalf of the SMCEL JPA.

In cases where the SMCEL JPA requests and the TA will procure vendor services specifically to assist with the TA's staff support of the SMCEL JPA, or as reflected in the two Vendor Contract Supplements attached, including when the Parties wish for the SMCEL JPA to provide pre-payment for such services, the TA may propose such arrangement in a Vendor Contract Supplement to the Master Agreement contained herein. A sample Vendor Contract Supplement is attached as Exhibit A to the Master Agreement.

All future Vendor Contract Supplements are subject to review and approval by the SMCEL JPA Board of Directors absent further delegation by the SMCEL JPA Board of Directors. The Vendor Contract Supplements will set forth the agreed-upon scope of services to be provided by the subject vendors, the schedule for performance of vendor services, related fees, and the terms of payment.

Nothing in this Agreement shall inhibit or affect the TA's responsibility for procuring the services covered by this Master Agreement and all associated Supplements. The TA also will be responsible for managing such vendor contracts.

ATTACHMENTS

1. Resolution SMCEL-21-02
2. Master Agreement for Vendor Contracting by the San Mateo County Transportation Authority in Support of the San Mateo County Express Lanes Joint Powers Authority
3. Exhibit A: Sample Vendor Contract Supplement
4. TA Vendor Contract Supplement #1 with Gray-Bowen-Scott
5. TA Vendor Contract Supplement #2 with FivePaths, LLC

RESOLUTION SMCEL 21-02

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY AUTHORIZING MASTER AGREEMENT AND VENDOR SUPPLEMENTS WITH THE SAN MATEO COUNTY TRANSPORTATION AUTHORITY

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

WHEREAS, as part of the Joint Exercise of Powers Agreement between the San Mateo County Transportation Authority (TA) and the City/County Association of Governments of San Mateo County, the TA is to provide fiscal-agent, finance, marketing, and communication staffing services to the SMCEL JPA; and

WHEREAS, these services to be provided by the TA occasionally would be more efficiently provided by a vendor contracted by the TA than a separate vendor selected by the SMCEL JPA under a procurement process; and

WHEREAS, in consideration of the above, staff recommends the SMCEL JPA Board approve the following:

- Master Agreement that sets forth the approval process for vendor contracting by the San Mateo County Transportation Authority (TA) in support of work for the San Mateo County Express Lanes Joint Powers Authority (SMCEL JPA); and
- TA Vendor Contract Supplement #1 with Gray-Bowen-Scott (GBS) not to exceed \$114,000 to provide services to support development and execution of various operating and maintenance agreements for the SMCEL JPA; and
- TA Vendor Contract Supplement #2 with FivePaths, LLC not to exceed \$150,000 to conduct a brand environment analysis and create logos for the SMCEL JPA.

WHEREAS, the Master Agreement between the SMCEL JPA and the TA sets forth the process by which the SMCEL JPA requests and the TA will procure vendor services specifically to assist with the TA's staff support of the SMCEL JPA, including when the Parties wish for the SMCEL JPA to provide pre-payment for such services, the TA may propose such arrangement in a Vendor Contract Supplement (Exhibit A to the Master Agreement); and

WHEREAS, all future Vendor Contract Supplements are subject to review and approval by the SMCEL JPA Board of Directors absent further delegation by the SMCEL JPA Board of Directors, and where the Vendor Contract Supplements will set forth the agreed-upon scope of services to be provided by the subject vendors, the schedule for performance of vendor services, related fees, and the terms of payment.

NOW THEREFORE BE IT RESOLVED, that the SMCEL JPA Board of Directors approves the following:

- Master Agreement that sets forth the approval process for vendor contracting by the San Mateo County Transportation Authority (TA) in support of work for the San Mateo County Express Lanes Joint Powers Authority (SMCEL JPA); and

- TA Vendor Contract Supplement #1 with Gray-Bowen-Scott (GBS) not to exceed \$114,000 to provide services to support development and execution of various operating and maintenance agreements for the SMCEL JPA; and
- TA Vendor Contract Supplement #2 with FivePaths, LLC not to exceed \$150,000 to conduct a brand environment analysis and create logos for the SMCEL JPA.

PASSED, APPROVED, AND ADOPTED, THIS 12TH DAY MARCH 2021.

Don Horsley, Chair

**MASTER AGREEMENT FOR VENDOR CONTRACTING BY THE
SAN MATEO COUNTY TRANSPORTATION AUTHORITY IN SUPPORT OF
THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY**

THIS MASTER AGREEMENT ("Master Agreement") is entered into and effective as of this ___ day of _____, 2021 ("Effective Date") by and between the San Mateo County Express Lanes Joint Powers Authority, hereinafter referred to as "JPA," and the San Mateo County Transportation Authority, hereinafter referred to as "TA," together referred to as the "Parties."

WHEREAS, the TA and City/County Association of Governments of San Mateo County ("C/CAG") approved, on May 2, 2019 and April 11, 2019, respectively, the Joint Exercise of Powers Agreement for the San Mateo County Express Lanes, which created the JPA pursuant to the California Joint Exercise of Powers Act to oversee the operations and administration of the San Mateo 101 Express Lanes Project ("Project"), and to jointly exercise ownership rights over the Project;

WHEREAS, the TA and C/CAG executed the First Amended and Restated Joint Exercise of Powers Agreement for the San Mateo County Express Lanes effective June 13, 2019 ("JPA Agreement");

WHEREAS, pursuant to Section 4.8 of the JPA Agreement, the TA and C/CAG have pledged to use their best efforts to provide staff resources to the JPA as may be required or requested by the JPA to carry out its purposes;

WHEREAS, the JPA Agreement, including specifically in the "Initial Staffing Model," establishes that the TA shall provide fiscal-agent, finance, marketing, and communications staffing services to the JPA;

WHEREAS, by Resolution 19-08, the JPA Board of Directors authorized the JPA to reimburse the TA for staffing services, based on invoices that specify the staff time, rates and actual expenses incurred, as well as supporting documentation;

WHEREAS, the JPA and TA desire to enter into this Master Agreement to create a mechanism for the JPA to approve and fund vendor services performed by vendors under current or new contracts with the TA, but performing services for the JPA at the TA's and JPA's mutual request; and

WHEREAS, the JPA and TA desire to enter into Supplements to this Master Agreement for each vendor agreement entered into by the TA hereunder ("Supplement").

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Intent and Scope of Master Agreement

The Parties acknowledge that the JPA may occasionally require vendor or independent contractor services to assist the TA in providing fiscal-agent, finance, marketing, and communications staff services to the JPA in accordance with the model set forth in the JPA Agreement that are similar to services being provided to the TA by current or new vendors under contracts with the TA. The Parties further acknowledge that occasionally these services would be more efficiently provided by a vendor contracted by the TA than a separate vendor selected by the JPA under a procurement process.

In cases where the JPA requests and the TA procures vendor services specifically to assist with the TA's staff support of the JPA, or as reflected in the Vendor Contract Supplements specifically attached hereto, including when the Parties wish for the JPA to provide pre-payment for such services, the TA may propose such arrangement in a Supplement to this Master Agreement. All Supplements are subject to review and approval by the JPA Board of Directors absent further delegation by the JPA Board of Directors. Supplements will set forth the agreed-upon scope of services to be provided by the subject vendors, the schedule for performance of vendor services, related fees, and the terms of payment.

Nothing in this Agreement shall inhibit or affect the TA's responsibility for procuring the services covered by this Master Agreement and all associated Supplements. The TA also will be responsible for managing such vendor contracts.

A sample Supplement is attached as Exhibit A to this Master Agreement.

2. TERM AND TERMINATION

This Agreement commences on the _____ and will continue for so long as the TA provides services to the JPA under the Initial Staffing Model, unless otherwise terminated or extended by agreement of the Parties. Supplements may be retroactive to before the effective date of this Master Agreement.

3. OWNERSHIP OF WORK

Any work product created pursuant to a written request of the JPA or under a Supplement will be owned by the JPA. Drafts and copies of such work product may be retained by the TA for use in providing staffing support to the JPA.

4. INDEMNITY

The TA will indemnify and hold harmless the JPA, its officers, agents and employees from and against all claims, injury, suits, demands, liability, losses, and damages (including any and all costs and expenses in connection therewith), incurred by reason of any negligent or otherwise wrongful act or omission of the TA, its officers, employees, or agents, or any of them, under or in connection with this Master Agreement and all Supplements. The TA further agrees to defend, with counsel acceptable to the JPA, any and all such actions, suits, or claims and pay all reasonable charges of attorneys and all other costs and expenses arising therefrom or incurred in connection therewith; and if any settlements are reached, or judgments are rendered, against the JPA or any of the other individuals enumerated above in any such action, the TA will, at its expense, satisfy and discharge the same.

The TA will require each vendor hired under this Master Agreement and all Supplements to similarly indemnify the JPA with respect to claims, injuries, suits, demands, liability, losses or damages incurred by reason of any negligent or otherwise wrongful act or omission of the vendor.

The JPA will indemnify and hold harmless the TA, its officers, agents and employees from and against all claims, injury, suits, demands, liability, losses, and damages (including any and all costs and expenses in connection therewith), incurred by reason of any negligent or otherwise wrongful act or omission of the JPA, its officers,

employees, or agents, or any of them, under or in connection with this Master Agreement and all Supplements. The JPA further agrees to defend, with counsel acceptable to the TA, any and all such actions, suits, or claims and pay all reasonable charges of attorneys and all other costs and expenses arising therefrom or incurred in connection therewith; and if any settlements are reached, or judgments are rendered, against the TA or any of the other individuals enumerated above in any such action, the JPA will, at its expense, satisfy and discharge the same.

This section shall survive termination or expiration of this Master Agreement.

5. AMENDMENTS

Any changes to this Master Agreement must be incorporated in written amendments executed by or on behalf of the TA and the JPA.

6. INSURANCE

The TA shall obtain from vendors engaged under this Master Agreement and any Supplement, and provide proof of upon demand, the insurance required under the following paragraphs:

- (a) Worker's Compensation and Employer's Liability Insurance. Workers' Compensation and Employer's Liability Insurance providing full statutory coverage.
- (b) Liability Insurance. General Liability coverage of no less than \$1,000,000 per occurrence; Commercial Auto with a liability combined single limit of no less than \$1,000,000; and Director & Officers insurance with coverage of no less than \$1,000,000 per occurrence.

The JPA and its officers, directors, agents, employees and servants shall be named as additional insureds such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the JPA, its officers, directors, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the JPA or its officers, directors, and employees have other insurance against the 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, the JPA at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of the subject Supplement and suspend all further work and payments thereunder.

7. COMPLIANCE WITH LAWS; PAYMENT OF PERMITS/LICENSES

All services to be performed by and for the TA and JPA pursuant to this Master Agreement and all Supplements shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances and regulations. Such services shall be performed in accordance with appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Master Agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Master Agreement.

8. NON-DISCRIMINATION

No person shall be excluded from participation in, denied benefits of, or be subject to discrimination under this Master Agreement or any Supplement on the basis of their race, color, religion, national origin, age, sex, sexual orientation, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status. The TA shall ensure full compliance with federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and vendors under this Master Agreement and all Supplements.

9. RETENTION OF RECORDS, RIGHT TO MONITOR AND AUDIT

The TA shall maintain all records related to performance of each Supplement Agreement until at least three (3) years after the TA and/or JPA makes final payment to vendors and all other related pending matters are closed. Such records shall be subject to the examination and/or audit of JPA.

The TA shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by JPA.

Upon reasonable notice, the TA agrees to provide to the JPA, to any Federal or State department having monitoring or review authority, to JPA's authorized representatives, and/or to their appropriate audit agencies, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Master Agreement and all Supplements, and to evaluate the quality, appropriateness and timeliness of services performed.

10. MERGER CLAUSE

This Master Agreement and any Supplements constitute the sole Agreement of the Parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the Parties not expressly stated in this document are not binding. All subsequent modifications and Supplements to this Master Agreement must be in writing and signed by the Parties.

11. CONTROLLING LAW

This Master Agreement and all Supplements, and the rights and duties thereunder, shall be governed by the laws of the State of California.

12. NOTICES

All notices or other communications to either party by the other shall be made in writing and delivered or mailed to such party at their respective addresses as follows:

In the case of JPA, to:

Attention:
Chair, San Mateo County Express Lanes Joint Powers Authority

With copies to:

Executive Director
San Mateo County Transportation Authority
1250 San Carlos Ave., San Carlos, CA 94070

Executive Director,
City/County Association of Governments of San Mateo County
555 County Center, Redwood City, CA 94063

In the case of TA, to:

Attention: Executive Director
San Mateo County Transportation Authority
1250 San Carlos Ave.
San Carlos, CA 94070

The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail shall be deemed given on the day after that on which it is deposited in the United States Mail for delivery to the addresses provided above.

13. INDEPENDENT CONTRACTOR

The relationship of the Parties to this Agreement is that described in the JPA Agreement. Neither Party to this Agreement shall contend that such relationship is altered by virtue of this Agreement or its terms.

14. ASSIGNMENT

Neither party shall assign, transfer, or otherwise substitute its interest or obligations in this Master Agreement or any Supplement without the prior written consent of the other party.

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have executed this Master Agreement by the day and year first written above.

**SAN MATEO COUNTY
TRANSPORTATION AUTHORITY**

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

Emily Beach, TA Chair

Don Horsley, JPA Chair

Approved as to form:

Attorney for the TA

Attorney for the JPA

EXHIBIT A: Sample Supplement for Vendor Contract Arrangement

EXHIBIT A: SAMPLE VENDOR CONTRACT SUPPLEMENT

TA VENDOR CONTRACT SUPPLEMENT # _____

Vendor Name: *[Insert Company name]*

TA Contract Number: *[Contract Number]*

**TA Work Directive/
Purchase Order Number :** *[WD/PO Number, if applicable]*

TA Project Manager: *[Name, Title, Phone, email]*

Notice to Proceed Date: *[Date]*

Payments to be made by JPA to: *[Name of Payee]*

Description and Scope of Work:

[Describe the overall work to be completed in support of the JPA. If part of a larger project, identify the specific work to be provided by the vendor. If part of a larger TA contract, describe the overall contract scope and the scope of the work to be performed for the JPA. Attach work directive requests for proposals or similar documentation if available.]

Scope of Work Schedule:

| | <u>Begin</u> | <u>End</u> |
|-----------------|--------------|------------|
| <i>[Part 1]</i> | MM/YY | MM/YY |
| <i>[Part 2]</i> | MM/YY | MM/YY |
| <i>[Part 3]</i> | MM/YY | MM/YY |
| <i>[Part 4]</i> | MM/YY | MM/YY |
| <i>[Part 5]</i> | MM/YY | MM/YY |

Scope of Work Budget:

[Include basis of invoices (e.g., milestone payments, time and materials, fixed fee), component estimates, overall contract/work directive amount, any included contingency amount]

Payment Terms:

[Include plan for paying vendor invoices (e.g., whether the TA or JPA will pay to vendor), timing of required payments. If the TA will pay the vendor, include timing for JPA pre-payment or reimbursement payments to the TA and any associated conditions.]

Transmittal of Payments:

[Include details of how payments are to be made, e.g., wire or check to what account or address.]

JPA Approval: Resolution *[Insert Number]*

**SAN MATEO COUNTY
TRANSPORTATION AUTHORITY**

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

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

TA VENDOR CONTRACT SUPPLEMENT #1

Vendor Name: *Gray/Bowen/Scott*

TA Contract Number: *19-T-P-048*

**TA Work Directive/
Purchase Order Number:** *PO 798*

TA Project Manager: *Joe Hurley, TA Program Director*
hurleyj@samtrans.com
(650) 508-7942

Notice to Proceed Date: *April 30, 2019*

Payments to be made by JPA to: *San Mateo County Transportation Authority (TA)*

Description and Scope of Work:

Provide project management support services, as the San Mateo County Express Lane Joint Powers Authority's (JPA) representative, in preparation for the post construction (operational) activities and responsibility associated with the US-101 Managed Lanes Project (Project) in San Mateo County. Such activities include support in the development and execution of various operating and maintenance agreements for operation of the express lanes.

Scope of Work Schedule:

| | <u>Begin</u> | <u>End</u> |
|-----------------------------------|-----------------|----------------|
| <i>Project Management Support</i> | <i>7/1/2020</i> | <i>6/30/21</i> |

Scope of Work Budget:

Consultant agrees to perform all of the requested support services. The TA shall pay Consultant, based upon time and materials, in a not-to-exceed amount of **\$114,000**.

Payment Terms:

Compensation for Consultant's time shall be according to the agreed upon hourly labor rates. The Authority will pay the Consultant in accordance with terms and condition set forth in TA contract 19-T-P-048.

Transmittal of Payments:

The TA will seek reimbursement from JPA in accordance with existing processes. Reimbursements may include costs incurred for work performed prior to the date of this Vendor Contract Supplement.

JPA Approval: Resolution *[Insert Number]*

**SAN MATEO COUNTY
TRANSPORTATION AUTHORITY**

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

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

TA VENDOR CONTRACT SUPPLEMENT #2

Vendor Name: *FivePaths, LLC*

TA Contract Number: *21-T-P-048*

**TA Work Directive/
Purchase Order Number :** *N/A*

TA Project Manager: *Robert Casumbal*
Director, Marketing and Market Research
650.508.6280
casumbalr@samtrans.com

Notice to Proceed Date: *TBD (est. March 15, 2021)*

Payments to be made by JPA to: *San Mateo County Transportation Authority (TA)*

Description and Scope of Work:

The purpose of this contract is for FivePaths to conduct a brand environment analysis and create logos based on findings and staff feedback.

The steps to be completed by FivePaths will occur in the following order:

- Analyze brand environment and make related recommendations
- Create and present draft logos based on above recommendations
- Deliver finalized digital logo file(s) based on staff feedback

Scope of Work Schedule:

| | <u>Begin</u> | <u>End</u> |
|----------------------------|--------------|------------|
| Brand Environment Analysis | 03/21 | 05/21 |
| Draft Logo Creation | 05/21 | 06/21 |
| Final Logo Delivery | 07/21 | 08/21 |

Scope of Work Budget:

All services will be invoiced on an hourly basis with a flat rate of \$130 per hour regardless of task or FivePaths staff member performing the services. The total cost for the San Mateo County Express Lane Joint Powers Authority's (JPA) brand environment analysis and logo is estimated to be \$70,000 with additional as-needed services for a

total cost not to exceed \$80,000 based on the same hourly rate of \$130 per hour. The total contract not-to-exceed value is **\$150,000**.

Payment Terms:

Compensation for Consultant's time shall be according to the agreed upon hourly labor rates. The TA will pay the Consultant in accordance with terms and condition set forth in TA contract 21-T-P-048.

Transmittal of Payments:

The TA will seek reimbursement from JPA in accordance with existing processes.

JPA Approval: Resolution *[Insert Number]*

**SAN MATEO COUNTY
TRANSPORTATION AUTHORITY**

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

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____