

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

Meeting No. 35

Date: Friday, March 11, 2022 Time: 9:00 A.M.	Join by Zoom: https://us02web.zoom.us/j/89486630732?pwd=SWRZS2NrODFMTkxKalZlQXl3cWF4Zz09 Meeting ID: 894 8663 0732 Password: 031122 Join by Phone: (669) 900-6833
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Board of Directors: Diane Papan (Chair), Rico Medina (Vice Chair), Alicia Aguirre, Emily Beach, Maryann Moise Derwin, and Don Horsley

On September 16, 2021, the Governor signed AB 361, which amended certain provisions of the Ralph M. Brown Act in order to allow for local legislative bodies to conduct their meetings remotely via telephonically or by other electronic means under specified circumstances. Thus, pursuant to Government Code section 54953(e), the SMCEL-JPA Board meeting will be conducted via remote conferencing. Members of the public may observe or participate in the meeting remotely via one of the options above.

Persons who wish to address the SMCEL-JPA Board on an item to be considered at this meeting, or on items not on this agenda, are asked to submit written comments to mcrume@smcgov.org. Spoken public comments will also be accepted during the meeting through Zoom. Please see instructions for written and spoken public comments at the end of this agenda.

- 1.0 CALL TO ORDER/ ROLL CALL
- 2.0 BRIEF OVERVIEW OF TELECONFERENCE MEETING PROCEDURES
- 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 Review and approval of Resolution SCMEL 22-09 finding that, as a result of the continuing COVID-19 pandemic state of emergency declared by Governor Newsom, meeting in person would present imminent risks to the health or safety of attendees. ACTION p. 1
- 4.2 Approval of the minutes of Board of Directors regular business meeting No. 34 dated February 10, 2022. ACTION p. 6
- 4.3 Accept the Sources and Uses of Funds for the FY22 Period Ending January 31, 2022. ACTION p. 10

5.0 REGULAR AGENDA

- 5.1 Receive a presentation providing an update on the operations of the US101 Express Lanes Southern Segment. INFORMATION p. 12
- 5.2 Review and approval of Resolution SMCEL 22-10 authorizing the Chair to execute an Agreement with Conduent to provide preloaded FasTrak[®] transponders for the 101 Express Lanes Community Transportation Benefits Program for an amount not to exceed \$115,000 for an initial term of one year; and further authorize the Executive Council to make revisions to the Agreement as needed prior to execution, subject to approval by the SMCEL-JPA Legal Counsel; and further authorize the Executive Council to execute a future no-cost time extension to the Agreement for a period not to exceed 12 months, subject to approval by the SMCEL-JPA Legal Counsel. ACTION p. 13
- 5.3 Receive an update on the status of the \$100 million Project Loan for construction from the San Mateo County Transportation Authority to the San Mateo County Express Lanes Joint Powers Authority. INFORMATION p. 27

6.0 REPORTS

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

7.0 WRITTEN COMMUNICATIONS

None.

8.0 NEXT REGULAR MEETING

April 8, 2022

9.0 ADJOURNMENT

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 Court Yard, 555 County Center, Redwood City, 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 Floor, Redwood City, CA 94063, for the purpose of making public records available for inspection. Please note this location is temporarily closed to the public; please contact Mima Crume at mcrume@smcgov.org to arrange for inspection of public records.

PUBLIC PARTICIPATION: Please refer to the first page of this agenda for instructions on how to participate in the meeting. Persons with disabilities who require auxiliary aids or services in attending and participating in this meeting should contact Mima Crume at (650) 599-1406, five working days prior to the meeting date.

Written comments should be emailed in advance of the meeting. Please read the following instructions carefully:

1. Your written comment should be emailed to mcrume@smcgov.org.
2. Your email should include the specific agenda item on which you are commenting or note that your comment concerns an item that is not on the agenda.
3. Members of the public are limited to one comment per agenda item.
4. The length of the emailed comment should be commensurate with the two minutes customarily allowed for verbal comments, which is approximately 250-300 words.
5. If your emailed comment is received at least 2 hours prior to the meeting, it will be provided to the SMCELJPA Board members, made publicly available on the Express Lanes website along with the agenda. We cannot guarantee that emails received less than 2 hours before the meeting will be read during the meeting, but such emails will be included in the administrative record of the meeting.

Spoken comments will be accepted during the meeting through Zoom. Please read the following instructions carefully:

1. The SMCEL-JPA Board meeting may be accessed through Zoom at the online location indicated at the top of this agenda.
2. You may download the Zoom client or connect to the meeting using an internet browser. If using your browser, make sure you are using a current, up-to-date browser: Chrome 30+, Firefox 27+, Microsoft Edge 12+, Safari 7+. Certain functionality may be disabled in older browsers including Internet Explorer.
3. You will be asked to enter an email address and name. We request that you identify yourself by your name as this will be visible online and will be used to notify you that it is your turn to speak.
4. When the SMCEL-JPA Clerk or Chair call for the item on which you wish to speak, click on “raise hand” and if you joined the meeting by phone, dial *9 to raise your hand. The Clerk will activate and unmute speakers in turn. Speakers will be notified shortly before they are called on to speak.
5. When called, please limit your remarks to the time allotted.

If you have any questions about this agenda, please contact:
Mima Crume, Secretary - (650) 599-1406

San Mateo County Express Lanes Joint Powers Authority Agenda Report

Date: March 11, 2022

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

From: Executive Council

Subject: Review and approval of Resolution SMCEL 22-09 finding that, as a result of the continuing COVID-19 pandemic state of emergency declared by Governor Newsom, meeting in person would present imminent risks to the health or safety of attendees.

(For further information please contact Timothy Fox at tfox@smcgov.org)

RECOMMENDATION

Review and approval of Resolution 22-09 finding that, as a result of the continuing COVID-19 pandemic state of emergency declared by Governor Newsom, meeting in person would present imminent risks to the health or safety of attendees.

FISCAL IMPACT

There is no Fiscal Impact associated with this item.

SOURCE OF FUNDS

None.

BACKGROUND

On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which rescinded his prior Executive Order N-29-20 and set a date of October 1, 2021 for public agencies to transition back to public meetings held in full compliance with the Brown Act. The original Executive Order provided that all provisions of the Brown Act that required the physical presence of members or other personnel as a condition of participation or as a quorum for a public meeting were waived for public health reasons. If these waivers fully sunset on October 1, 2021, legislative bodies subject to the Brown Act would have to contend with a sudden return to full compliance with in-person meeting requirements as they existed prior to March 2020, including the requirement for full physical public access to all teleconference locations from which board members were participating.

On September 16, 2021, the Governor signed AB 361, a bill that formalizes and modifies the teleconference procedures implemented by California public agencies in response to the Governor's Executive Orders addressing Brown Act compliance during the COVID-19 emergency. AB 361 allows a

local agency legislative body to continue to use teleconferencing under the same basic rules as provided in the Executive Orders when certain circumstances occur or when certain findings have been made and adopted by the legislative body.

AB 361 provides that Brown Act legislative bodies must return to in-person meetings on October 1, 2021, unless they choose to continue with fully teleconferenced meetings because a specific declaration of a state or local health emergency is appropriately made. AB 361 allows legislative bodies to continue to conduct virtual meetings as long as there is a gubernatorially-proclaimed public emergency in combination with (1) local health official recommendations for social distancing or (2) adopted findings that meeting in person would present an imminent risk to health or safety. AB 361 is effective immediately as urgency legislation and will sunset on January 1, 2024.

AB 361 also requires that, if the state of emergency remains active for more than 30 days, the legislative body must make findings by majority vote every 30 days to continue using the bill's exemption to the Brown Act teleconferencing rules. Specifically, the legislative body must find that the need for teleconferencing persists due to risks posed by the ongoing state of emergency. Effectively, this means that local agencies must either agendaize a Brown Act meeting once every thirty days to make these findings, or, if a local agency has not made such findings within the prior 30 days, the local agency must re-adopt the initial findings if it wishes to conduct a remote meeting.

Public Agencies that want to continue with the option for remote meetings due to the COVID-19 emergency are preparing to bring findings to their elective bodies. The San Mateo County Board of Supervisors approved a similar resolution on consent at the September 28, 2021 meeting. On October 8, 2021, the SMCEL-JPA approved resolution 21-15 making the findings necessary for remote meetings; the Board has subsequently adopted similar resolutions making findings to continue remote meetings.

DISCUSSION

The County's high vaccination rate, successfully implemented local health measures (such as indoor masking), and best practices by the public (such as voluntary social distancing) have proven effective, in combination, at controlling the local spread of COVID-19.

However, reducing the circumstances under which people come into close contact remains a vital component of the County's COVID-19 response strategy. While local agency public meetings are an essential government function, the last 18 months have demonstrated that conducting such meetings virtually is feasible.

Public meetings pose high risks for COVID-19 spread for several reasons. These meetings bring together people from throughout a geographic region, increasing the opportunity for COVID-19 transmission. Further, the open nature of public meetings makes it difficult to enforce compliance with vaccination, physical distancing, masking, cough and sneeze etiquette, or other safety measures. Moreover, some of the safety measures used by private businesses to control these risks may be less effective for public agencies.

These factors combine to make in-person public meetings imminently risky to health and safety.

We recommend that the Board avail itself of the provisions of AB 361 allowing continuation of remote meetings by adopting findings to the effect that conducting in-person meetings would present an imminent risk to the health and safety of attendees. A resolution to that effect, and directing staff to take

such other necessary or appropriate actions to implement the intent and purposes of the resolution, is attached hereto.

ATTACHMENTS

1. Resolution SMCEL 22-09

RESOLUTION SMCEL 22-09

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY (SMCEL-JPA) FINDING THAT, AS A RESULT OF THE CONTINUING COVID-19 PANDEMIC STATE OF EMERGENCY, MEETING IN PERSON FOR MEETINGS OF THE SMCEL-JPA BOARD OF DIRECTORS WOULD PRESENT IMMINENT RISKS TO THE HEALTH OR SAFETY OF ATTENDEES.

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

WHEREAS, on March 4, 2020, pursuant to California Government Code section 8550, *et seq.*, Governor Newsom proclaimed a state of emergency related to the COVID-19 novel coronavirus, and subsequently, the San Mateo County Board of Supervisors declared a local emergency related to COVID-19, and the proclamation by the Governor and declaration by the Board of Supervisors remain in effect; and

WHEREAS, on March 17, 2020, Governor Newsom issued Executive Order N-29-20, which suspended certain provisions in the California Open Meeting law, Government Code section 54950 *et seq.* (the “Brown Act”), related to teleconferencing by local agency legislative bodies, provided certain requirements were met and followed; and

WHEREAS, on June 11, 2021, the Governor issued Executive Order N-08-21, which extended provisions of Executive Order N-29-20 that waive otherwise-applicable Brown Act requirements related to remote/teleconference meetings by local agency legislative bodies through September 30, 2021; and

WHEREAS, on September 16, 2021, Governor Newsom signed AB 361 into law, and AB 361 that provides that a local agency legislative body subject to the Brown Act may continue to meet without complying with the otherwise-applicable requirements in the Brown Act related to remote/teleconference meetings by local agency legislative bodies, provided that a state of emergency has been declared and the legislative body determines that meeting in person would present imminent risks to the health or safety of attendees, and provided that the legislative body makes such findings at least every thirty (30) days during the term of the declared emergency; and

WHEREAS, on January 5, 2022, the Governor issued Executive Order N-1-22, which suspended the original sunset date of AB 361 from January 31, 2022 to March 31, 2022, allowing local agencies to continue to conduct meetings via teleconference under modified rules of AB 361 as the pandemic continues; and

WHEREAS, the SMCEL-JPA Board of Directors concludes that there is a continuing threat of COVID-19 to the community, and that Board meetings have characteristics that give rise to risks to health and safety of meeting participants (such as the increased mixing associated with bringing together people from across the community, the need to enable those who are immunocompromised or unvaccinated to be able to safely continue to participate fully in public governmental meetings, and the challenges with fully ascertaining and ensuring compliance with vaccination and other safety recommendations at such meetings); and

WHEREAS, the California Department of Public Health (“CDPH”) and the federal Centers for Disease Control and Prevention (“CDC”) caution that the Omicron variant of COVID-19, currently the dominant strain of COVID-19 in the country, is much more transmissible than prior variants of the virus and that even fully vaccinated individuals can spread the virus to others resulting in rapid and alarming rates of COVID-19 cases and hospitalizations; and

WHEREAS, the SMCEL-JPA Board of Directors has an important governmental interest in protecting the health and safety of those who participate in its meetings; and

WHEREAS, on October 8, 2021, the SMCEL-JPA Board of Directors approved Resolution 21-15 making the findings necessary to continue remote meetings and invoked the provisions of AB 361; and

WHEREAS, at subsequent meetings, the SMCEL-JPA Board of Directors has adopted subsequent resolutions making the findings necessary to continue remote meetings for SMCEL-JPA Board of Directors; and

WHEREAS, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, the SMCEL-JPA Board of Directors deems it necessary to find that meeting in person would present imminent risks to the health or safety of attendees, and thus intends to continue to invoke the provisions of AB 361 related to teleconferencing;

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that

1. The recitals set forth above are true and correct.
2. The SMCEL-JPA Board of Directors has reconsidered the circumstances of the state of emergency caused by the spread of COVID-19.
3. The SMCEL-JPA Board of Directors finds that holding meetings of the SMCEL-JPA Board of Directors would present imminent risks to the health or safety of attendees.
4. Staff is directed to take such other necessary or appropriate actions to implement the intent and purposes of this resolution.

PASSED, APPROVED, AND ADOPTED, THIS 11TH DAY OF MARCH 2022.

Diane Papan, Chair

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

Meeting No. 34
February 11, 2022

In compliance with Governor’s Executive Order N-29-20, and pursuant to the Shelter-in-Place Order issued by the San Mateo County Health Officer, this meeting was conducted via remote conferencing.

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

1.0 CALL TO ORDER/ ROLL CALL

Chair Papan called the meeting to order at 9:00 a.m. Roll call was taken.

Members Present:

C/CAG Members:

Diane Papan, Alicia Aguirre

SMCTA Members:

Rico Medina, Emily Beach, Don Horsley

Members Absent:

Maryann Moise Derwin

Staff Present:

Sean Charpentier – Executive Council

Carter Mau – Executive Council

Mima Guilles – Clerk

Tim Fox – Legal Counsel

Van Ocampo – C/CAG staff supporting SMCEL-JPA

April Chan, Derek Hansel, Joe Hurley, SMCTA staff supporting SMCEL-JPA

Samantha Soules, Lacy Vong, Matt Click, Christa Cassidy – HNTB

Other members of staff and the public were in attendance.

2.0 BRIEF OVERVIEW OF TELECONFERENCE MEETING PROCEDURES

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.

Clerk of the Board Mima Crume reported there was no public comment submitted before the meeting. There was no public comment.

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 Review and approval of Resolution 22-07 finding that, as a result of the continuing COVID-19 pandemic state of emergency declared by Governor Newsom, meeting in person would present imminent risks to the health or safety of attendees. APPROVED
- 4.2 Approval of the minutes of Board of Directors regular business meeting No. 32 dated January 14, 2022. APPROVED
- 4.3 Accept the Sources and Uses of Funds for the FY22 Period Ending December 31, 2021. APPROVED
- 4.4 Review and approval of Resolution SMCEL 22-08 of the SMCEL-JPA's Fiscal Year 2022 and Fiscal Year 2023 Property and Liability Insurance Program and approving a cost of not to exceed \$151,026 for a term not more than 16 months for Property Liability and 4 months for General Liability. APPROVED

Director Aguirre MOVED to approve the consent agenda. Director Medina SECONDED. Roll call was taken. **MOTION CARRIED 5-0-0**

5.0 REGULAR AGENDA

- 5.1 Receive an update on the San Mateo 101 Express Lanes Project opening schedule for the southern segment from Whipple Avenue to the Santa Clara County line. (Verbal update provided at meeting). INFORMATION

The Board received an update on the San Mateo 101 Express Lanes Project opening schedule for the southern segment from Whipple Avenue to the Santa Clara County line.

Sean Charpentier reported out that we have received confirmation from BAIFA that the toll lane commenced at 5am and all the equipment is working as designed and planned. The devices are reported as healthy, the transponder's license plates are being captured at all locations and successful data sharing between the roadside equipment and the host is occurring.

April Chan gave an update that the ribbon cutting ceremony at the VTA facility was a very successful. She thanked the JPA Chair, Diane Papan as well as Rico

Medina, TA Vice Chair and C/CAG Chair, Marie Chuang. She gave special thanks to Casey Fromson from the communication team. And thanked staff Tasha Bartholomew, Dan Lieberman, Amy Linehan and Jessica Epstein.

Sean Charpentier added that Leo Scott noted that this was the first coterminous joint opening of Express Lanes, and it came off without a hit.

Lacey Vong and Samantha Soule reported live from the Express Lanes and said traffic was flowing and everything looked great.

Director Beach asked if lanes were moving faster than the general-purpose lanes and Samantha said they are definitely passing cars on the general-purpose lanes, and everything seems to be working properly.

Matt Click shared videos of the traffic flow on the southbound and northbound. He has added that when the sign says closed, the toll system is no longer generating revenue at that moment.

Joe Hurley asked if they have seen the toll rate change in the time that they've been out there. Samantha Soules said the rate has been consistent.

Van Ocampo noted that they are notified via email of any incidents that may have occurred. That email will show the time of the incident, that BAIFA has closed the Express Lane to all traffic in response to the traffic collision on the US-101SB.

Joe Hurley responded to Director Horsley's comment about potholes. There are stretches of the 101 corridor that have yet to receive the overlay. In the area that is currently open, there is a shop project that will come and do an overlay and is scheduled for spring of 2024.

Director Aguirre asked Joe to clarify when the overlay will be fixed.

Joe Hurley responded and said the segment north of which is still under construction, that entire stretch will receive an overlay before it is opened. There are areas where there will be interim fixes. They will grind the top 0.1 of a foot off the pavement and a complete overlay will be done. The segment South of Whipple, which is currently opened, unfortunately it was a timing as far as the availability of the shop funding, state highway operation preservation program. It wasn't available so they went ahead and did the Express Lanes work but there are plans to come through and do an overlay of the segment that is South of Whipple to the Santa Clara, San Mateo County line and that's the one that's scheduled for 2024. North of Whipple will be done this spring and that will be done before the Express Lanes from Whipple to I 380 are open. The area that has been open South of Whipple, that is scheduled for an overlay project in 2024. By 2024 the entire corridor will have a brand-new surface.

6.0 REPORTS

- a) Chairperson Report.

None.

- b) Member Communication.

None.

- c) Executive Council Report - Executive Council Verbal Report.

Sean Charpentier thanked the Board and staff and noted that it is a big day for the County and big day for us. He also thanked Joe, Van, Tim and Derek who were instrumental on the construction of the project and the operating agreements. He noted that the opening of the express lanes is quite an accomplishment and that Joe Hurley Sandy Wong have been working on this project for 15 years.

- d) Policy/Program Manager Report.

Matt Click gave an update on the equity program. He has gotten a lot of press yesterday. They have been meeting with Samaritan House weekly. They are looking through training materials with them. They have gotten the invoice over to Clipper card and will get processed. The training of the core agency staff is scheduled to take place in early March. Looking at a mid-March to go live for the equity program.

Director Beach thanked Matt and staff for getting this synchronized as much as possible with opening of the lanes and getting the transit benefits in the hands the people who need it the most.

7.0 WRITTEN COMMUNICATIONS

None.

8.0 NEXT REGULAR MEETING

March 11, 2022

9.0 ADJOURNMENT

9:26 a.m.

San Mateo County Express Lanes Joint Powers Authority Agenda Report

Date: March 11, 2022

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

From: Executive Council

Subject: Accept the Sources and Uses of Funds for the FY22 Period Ending January 31, 2022
(For further information, contact Derek Hansel, CFO, at 650-508-6466)

RECOMMENDATION

That the SMCEL-JPA Board accept and enter into the record the Sources and Uses of Funds for the FY22 Period Ending January 31, 2022.

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

BACKGROUND

Year to Date Sources of Funds: As of January year-to-date, the Total Sources of Funds are \$1,777,331 which represent the loan advances for FY22 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 Uses of Funds: As of January year-to-date, the Total Uses of Funds are \$944,459. Major expenses are in Consultant \$371,498, Staff Support \$319,745, and Insurance \$137,275.

Budget Amendment:

There are no budget amendments for the month of January 2022.

Other Information:

Loan payables represent loan advance payments received since the formation of the SMCEL-JPA from the San Mateo County Transportation Authority and the City/County Association of Governments. Loan advances will be repaid on a monthly basis and no later than five years after the San Mateo County 101 Express Lanes Project begins operations and receives toll revenues.

ATTACHMENT

1. Sources and Uses of Funds Fiscal Year 2022 (January 2022)

SAN MATEO COUNTY EXPRESS LANE JPA
SOURCES AND USES OF FUNDS
Fiscal Year 2022
January 2022

	<u>ACTUAL</u>		<u>BUDGET</u>	
		<u>As of 1/31/2022</u>		<u>Annual</u>
SOURCES OF FUNDS:				
1 Toll Revenue	\$	-	\$	5,300,000
2 Allocated Bond Funds		-		504,000
Advance from the City/County Association of				
3 Governments of San Mateo County		755,975		1,314,045
Advance from the San Mateo County Transportation				
4 Authority		1,021,356		1,407,115
5 TOTAL SOURCES OF FUNDS	\$	1,777,331	\$	8,525,160
USES OF FUNDS:				
6 Staff Support	\$	319,745	\$	689,030
7 Administrative Overhead		44,744		45,540
8 Seminar/Training & Business Travel		3,892		10,000
9 Audit and Related Service		-		16,160
10 Office Supplies		-		3,000
11 Printing and Information Svcs		-		5,000
12 Legal Services		17,085		60,000
13 Consultant		371,498		1,779,707
14 Maintenance		-		222,400
15 Toll Operations and Maintenance		-		2,161,500
16 Fastrak Customer Service		-		680,000
17 Express Lane Enhanced Enforcement		-		125,000
18 Equity Program Administration and Costs		-		504,000
19 Insurance		137,275		186,648
20 Miscellaneous		50,220		83,200
21 TOTAL USES OF FUNDS	\$	944,459	\$	6,571,185
22 EXCESS (DEFICIT)	\$	832,872	\$	1,953,975
Additional Information:				
Loan payables to the City/County Association of				
Governments of San Mateo County	\$	2,157,589		
Loan payables to the San Mateo County Transportation				
Authority	\$	2,806,838		

San Mateo County Express Lanes Joint Powers Authority Agenda Report

Date: March 11, 2022

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

From: Policy/Program Manager

Subject: Receive a presentation providing an update on the operations of the US101 Express Lanes Southern Segment.

(For further information please contact Matthew Click, Policy/Program Manager, MClick@hntb.com.)

On February 11th, 2022, the southern segment of the US 101 express lanes opened concurrently with the VTA's companion express lane project to the south. SMCEL-JPA staff have participated in daily and weekly operational meetings with BAIFA, BATA and their consultant team. The express lanes are currently in a ramp-up phase and performing well. At the Board Meeting, the P/PM will provide an update on the express lane operations to the Board. As part of the operational update the P/PPM will review:

- Average toll rates;
- Declared occupancy percentages; and,
- Travel speeds.

The P/PM will be working with SMCEL-JPA staff to develop an operational dashboard to reflect key metrics and statistics moving forward.

ATTACHMENT

1) None. Presentation will be provided at the Board meeting.

San Mateo County Express Lanes Joint Powers Authority Agenda Report

Date: March 11, 2022

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

From: Policy/Program Manager

Subject: Review and approval of Resolution SMCEL 22-10 authorizing the Chair to execute an Agreement with Conduent to provide preloaded FasTrak[®] transponders for the 101 Express Lanes Community Transportation Benefits Program for an amount not to exceed \$115,000 for an initial term of one year; and further authorize the Executive Council to make revisions to the Agreement as needed prior to execution, subject to approval by the SMCEL-JPA Legal Counsel; and further authorize the Executive Council to execute a future no-cost time extension to the Agreement for a period not to exceed 12 months, subject to approval by the SMCEL-JPA Legal Counsel.

(For further information please contact Matthew Click, Policy/Program Manager, MClick@hntb.com.)

RECOMMENDATION

That the SMCEL-JPA Board of Directors review and approve Resolution SMCEL 22-10 authorizing the execution of an Agreement (AGREEMENT) with Conduent, the Bay Area Toll Authority's (BATA) service provider for the FasTrak[®] Toll Tag Retail Program, to provide preloaded FasTrak[®] transponders for the 101 Express Lanes Community Transportation Benefits Program.

The authorization would also include, subject to approval by the SMCEL-JPA Legal Counsel, the following:

- 1) Executive Council to make revisions to the AGREEMENT as needed, prior to execution; and
- 2) Executive Council to execute a future no-cost time extension to the Agreement for a period not to exceed 12 months.

FISCAL IMPACT

The annual estimated cost of providing pre-loaded FasTrak transponders to eligible residents is not to exceed \$115,000, which includes reimbursable administrative expenses. It will cover one year, approximately four months of FY 2022 and eight months in FY 2023 with the potential for continued services after that time if desired by both parties. The \$115,000 will be funded from \$1 million set aside for SMCEL-JPA equity programs that was included in the \$100 million loan made to the SMCEL-JPA by the San Mateo County Transportation Authority in 2020.

SOURCE OF FUNDS

San Mateo County Transportation Authority bond/loan proceeds

BACKGROUND

In May 2021, the SMCEL-JPA Board approved by motion a Recommended Equity Program (Program) that was developed through the San Mateo US 101 Express Lanes Equity Study and directed the PPM to develop an implementation plan. The goal of the Program is to provide meaningful transportation benefits to eligible San

Mateo residents to help address inequities. In October 2021, the PPM presented an update on the Program implementation, including the proposal for the initial pilot phase of benefits, eligibility requirements, and contracting with Samaritan House to distribute benefits through the Core Service Agencies Network. The initial phase of the Program consists of providing eligible residents¹ with:

- 1) Clipper card with a value of \$100; or
- 2) FasTrak® toll tag/transponder with a value of up to \$100.

Eligible individuals will be given a choice between benefits that best meet their transportation needs.

On December 10, 2021, the SMCEL-JPA Board approved Resolution SMCEL 21-24 authorizing Samaritan House to administer the equity program, which was named the 101 Express Lanes Community Transportation Benefits Program (Program).

In preparation for the launch of the Program, SMCEL-JPA staff have been working with BATA on the most cost-effective way to provide the FasTrak® toll tag/transponder benefit to eligible Program participants. BATA has a contract with Conduent to provide various services associated with the Bay Area FasTrak Electronic Toll Collection System, including establishing a FasTrak Toll Tags retail program. That program allows other organizations to partner with BATA to procure and distribute preloaded FasTrak toll tags/transponders. An agreement with Conduent through BATA is required in order for the SMCEL-JPA to procure preloaded \$100 FasTrak toll tags/transponders, in order for Samaritan House to distribute them to eligible participants under the 101 Express Lanes Community Transportation Benefits Program. This benefit will help make accessing the US 101 Express Lanes in San Mateo County easier and more affordable for qualifying lower income San Mateo County residents.

Some of the key provisions of the AGREEMENT include:

- 1) The right for SMCEL-JPA to purchase and distribute FasTrak toll tags/transponders.
- 2) The AGREEMENT will commence upon execution and remain in full force for a period of one year unless earlier termination or extended upon agreement by both parties. In the event of early termination, all FasTrak toll tags/transponders procured under the AGREEMENT capable of reselling may be returned to Conduent for issuance of refunds by BATA, as provide in the provisions of the AGREEMENT.
- 3) The parties have agreed to a scope of services and terms for an estimated amount not to exceed \$115,000 for the one-year term.

Staff has negotiated the draft AGREEMENT between SMCEL-JPA and Conduent, in consultation with BATA. However, since the AGREEMENT has not been completed, it is recommended that the Executive Council be authorized to make minor revisions prior to execution, subject to SMCEL-JPA Counsel approval. To facilitate program continuity, staff also recommend providing the Executive Council the authority to make a no cost time extension, not to exceed 12 months and subject to SMCEL-JPA Counsel approval.

The other portion of the Program is to provide preloaded \$100 Clipper cards to eligible recipients which will be procured directly through the Metropolitan Transportation Commission's (MTC) Clipper Customer Service Center and will also be distributed by the Samaritan House. No contract is required for the procurement of Clipper cards for the 101 Express Lanes Community Transportation Benefits Program.

ATTACHMENT

- 1) Resolution SMCEL 22-10
- 2) Draft Retail Purchasing Agreement to Purchase, Distribute, and Resell FasTrak® Toll Tags with Conduent for the 101 Express Lanes Community Transportation Benefits Program

¹ Resident of San Mateo County; and age 18 or older; and eligible to receive at least one benefit provided through the Core Service Agencies Network; or Individual Income at or below 60% of the county AMI ~ \$76,740 for 2021.

RESOLUTION SMCEL 22-10

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY (SMCEL-JPA) AUTHORIZING THE EXECUTION OF THE CONTRACT BETWEEN CONDUENT AND THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY FOR THE RIGHTS TO PROCURE FASTRAK TOLL TAGS/TRANSPONDERS FOR THE 101 EXPRESS LANES COMMUNITY TRANSPORTATION BENEFITS PROGRAM FOR A PERIOD OF UP TO TWELVE (12) MONTHS FOR AN AMOUNT NOT TO EXCEED \$115,000

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

WHEREAS, on May 14, 2021, the Board of the SMCEL-JPA approved an Equity Program for the San Mateo County Express Lanes hereinafter called the “Program” and directed the Policy/Program Manager (PPM) and staff to finalize the implementation of the Program; and

WHEREAS, on October 8, 2021, the PPM recommended providing qualifying San Mateo County residence a choice between a Clipper card or FasTrak® toll tag/transponder as part of the Program benefits and partnering with Samaritan House to distribute benefits; and

WHEREAS, on December 10, 2021, the Board of the SMCEL-JPA approved an agreement with Samaritan House for the administration of the initial phase of the Program, which includes the distribution of benefits— Clipper cards or FasTrak® toll tags/transponders; and

WHEREAS, the SMCEL-JPA desires to participate in the retailer FasTrak Toll Tags Program established by Conduent through its agreement with the Bay Area Toll for a period of up to twelve (12) months; and

WHEREAS, Conduent represents that it is able to provide said services as described in the scope of work for an amount not to exceed \$115,000, which includes reimbursable administrative expenses; and

NOW THEREFORE BE IT RESOLVED, by the SMCEL-JPA Board of Directors that the Chair is authorized to execute an Agreement with Conduent to provide preloaded FasTrak® transponders for the 101 Express Lanes Community Transportation Benefits Program for an amount not to exceed \$115,000 for an initial term of one year; and further authorize the Executive Council to make revisions to the agreement as needed prior to execution, subject to approval by the SMCEL-JPA Legal Counsel; and further authorize the Executive Council to execute a future no cost time extension to the Agreement for a period not to exceed 12 months, subject to approval by the SMCEL-JPA Legal Counsel.

PASSED, APPROVED, AND ADOPTED, THIS 11TH DAY MARCH 2022.

Diane Papan, Chair

**RETAIL PURCHASING AGREEMENT TO
PURCHASE, DISTRIBUTE AND RESELL
FASTRAK® TOLL TAGS**

THIS RETAIL PURCHASING AGREEMENT (this “Agreement”) is made and entered into this ___ day of _____, 20___ (“Effective Date”), by and between Conduent State & Local Solutions, Inc., a New York corporation, located at 606 South Olive Street, 23rd Floor, Los Angeles, CA 90014 (hereinafter “Conduent”), and San Mateo County Express Lanes Joint Powers Authority (hereinafter “RETAILER”). Conduent and RETAILER may be referred to individually as “Party” and collectively as “Parties.”

RECITALS

WHEREAS, Conduent has entered into an agreement with the Bay Area Toll Authority (hereinafter, “BATA”) to provide various services associated with the Bay Area FasTrak Electronic Toll Collection System; and

WHEREAS, BATA has requested that Conduent establish a program to sell FasTrak Toll Tags (the “Program”) to selected authorized Bay Area retail organizations on a retail sale basis; and

WHEREAS, BATA has directed Conduent to contract with retailers as BATA’s agent to implement the retail sales program through various agreements with retailers; and

WHEREAS, Conduent desires to contract with RETAILER, as an authorized commercial sales entity, to purchase FasTrak Toll Tags from BATA and resell them to retail customers in certain retail stores in the San Francisco Bay Area; and

WHEREAS, RETAILER has the capability and desires to purchase said FasTrak Toll Tags in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, Conduent and RETAILER agree as follows:

1. RECITALS AND DEFINITIONS

The foregoing recitals and the Definitions herein are hereby incorporated by this reference and made a substantive part hereof. The following capitalized terms have the meanings set forth in this Section 1.0.

1.1 “BATA Marks” means the trademarks, service marks, trade names and logos used by BATA or Conduent on or in connection with FasTrak Toll Tags, including without limitation the following: “BATA” and the FasTrak® logo.

1.2 “Affiliate” means any person, firm, corporation, or other entity that now or in the future, directly controls, is controlled with or by, or is under common control with a Party.

1.3 “Applicable Law” means federal, state or local laws, rules, regulations, or ordinances applicable to a Party, in light of that Party’s role with respect to FasTrak Toll Tags sold under this Agreement; provided, however, that transportation laws, rules, regulations, and ordinances are excluded from such definition with respect to RETAILER only.

1.4 “End Customer” means a natural person who is a holder and licensee of a FasTrak Toll Tag.

1.5 “FasTrak Toll Tags” means every type of toll tag now in existence or which later comes to exist during the Term of this Agreement for electronic payment of tolls within California.

1.6 “Toll Tag Terms and Conditions” means those terms and conditions applicable to the license by the End Customer of the FasTrak Toll Tags as set forth within the packaging (or located as otherwise allowed or required by Applicable Law).

1.7 “Sale” or “Resale” of the FasTrak Toll Tags means the transaction between RETAILER and the End Customer by which the End Customer licenses use of the FasTrak Toll Tag according to the Toll Tag Terms and Conditions.

2. GRANT OF RIGHT

Conduent grants to RETAILER, and RETAILER accepts from Conduent, the non-exclusive right to purchase and resell FasTrak Toll Tags during the Term of this Agreement at RETAILER’s participating stores.

3. SCOPE

Pursuant to the provisions of this Agreement, RETAILER, in its sole discretion, shall purchase FasTrak Toll Tags and each Party shall perform such services (hereinafter “SCOPE”) as set forth in **Exhibit 1 (Statement of Work)**.

4. PERSONNEL

4.1 Each Party shall be solely liable and responsible for providing to, or on behalf of, all persons performing work for such Party pursuant to this Agreement, all employee compensation and benefits. Neither Party shall have any liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, and local taxes, or other compensation, benefits, or taxes, for any personnel employed on behalf of the other Party.

4.2 Both Parties understand and agree that all persons performing work under this Agreement are, for purposes of workers' compensation liability, the sole employees of their organization or its subcontractors, agents or suppliers who are not employees of their organization. Each Party shall be solely liable and responsible or require its subcontractors, agents or suppliers to be responsible for any and all workers' compensation benefits to any person as a result of injuries arising from or connected with any work performed by or on behalf of the responsible Party pursuant to this Agreement.

5. PAYMENTS

All payments by the Parties to one another under this Agreement shall be paid as set forth in **Exhibit 2 (Payment Provisions)**.

6. TERM

This Agreement shall begin on the Effective Date and shall remain in full force and effect for a period of one year unless earlier terminated or extended pursuant to the terms of this Agreement (the "Term").

7. TERMINATION

7.1 The Parties shall have the right to terminate this Agreement as follows:

- (a) either Party for a material breach or default by the other Party of the terms and conditions of this Agreement or the attachments thereto; provided, however, that the non-defaulting Party shall first have notified the other Party in writing of the proposed default, and the specific grounds therefore, and given the other Party a thirty (30) day period to cure;
- (b) a Party immediately upon notice to the other Party, in the event of insolvency, or the institution of any insolvency, assignment for the benefit of creditors, bankruptcy or similar proceedings by or against the other Party;
- (c) Conduent upon thirty (30) days notice to RETAILER in the event that Conduent is required by a change in Applicable Law (or by a new interpretation or enforcement policy with respect to existing Applicable Law, which Conduent cannot comply with in a commercially reasonable manner) to discontinue its role in the retail sale of FasTrak Toll Tags, or the termination or expiration of any agreement between Conduent and BATA necessary for the fulfillment of Conduent' obligations under this Agreement;
- (d) RETAILER or Conduent for either party's convenience upon one hundred and eighty (180) days notice; and
- (g) In the event of termination of this Agreement, all FasTrak Toll Tags capable of reselling may be returned to Conduent for issuance of refunds by BATA, as provided in Section 3 of Exhibit 2 (Payment Provisions)

7.2 Remedies provided for by this Agreement are cumulative and supplemental to any other available remedies at law or in equity.

7.3 Except as otherwise specifically provided herein, termination or expiration of this Agreement shall not relieve the Parties of any obligation accruing with respect to this Agreement prior to such termination. Termination or expiration shall not affect usage of the FasTrak Toll Tags by End Customers.

7.4 Upon the termination or expiration of this Agreement for any reason, each Party's license to utilize the other Party's marks shall terminate (except with respect to FasTrak Toll Tags that have been re-sold by RETAILER) and each Party shall desist from using the other Party's marks immediately.

8. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION

This Agreement or any interest therein, shall not be assigned by either Conduent or RETAILER, without the prior written consent of the other Party. Any such un-approved assignment shall be null and void. However, either Party's assignment to an Affiliate shall not require prior written consent; provided, however, that the proposed assignee is not a direct competitor of the other Party.

9. INDEMNIFICATION AND LIMITATION OF LIABILITY

9.1 Indemnification.

- (a) Conduent has contracted with BATA so that BATA shall indemnify RETAILER, and its Affiliates, officers, directors, agents and employees from and against any and all claims brought by an End Customer with regard to the use, license or operation of the FasTrak Toll Tag;
- (b) Conduent has contracted with BATA so that BATA shall defend, indemnify and hold harmless RETAILER and its Affiliates, officers, directors, agents, and employees from and against any and all third party claims and damages arising out of or related to the infringement of the rights of any person or entity related to the permitted use of the BATA Marks.
- (c) RETAILER shall indemnify Conduent and its Affiliates, officers, directors, agents and employees from and against any and all claims brought by a third-party arising from the actions or inactions of RETAILER or its Affiliates, officers, directors, agents, and employees.

9.2 Limitation of Liability. **IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANY PARTY TO THIS AGREEMENT OR ANY OF THE AFFILIATES OF ANY PARTY, WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE, FOR (1) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (EVEN IF SUCH DAMAGES ARE FORESEEABLE, AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) ARISING FROM OR RELATING TO THIS AGREEMENT; OR (2) ANY DIRECT DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT TO THE EXTENT THAT THE AGGREGATE AMOUNT OF SUCH DAMAGES EXCEEDS THE AGGREGATE AMOUNT ACTUALLY EARNED BY RETAILER HEREUNDER AS GROSS PROFITS ON RETAILER'S RESALE OF FASTRAK TOLL TAGS IN THE TWELVE (12) MONTHS BEFORE THE DATE SUCH CLAIM AROSE.**

10. PROPRIETARY CONSIDERATIONS AND CONFIDENTIALITY

Conduent, on behalf of BATA and with BATA's express permission, grants to RETAILER a non-exclusive, royalty-free license to use the BATA Marks for the limited purpose of promoting, selling and distributing the FasTrak Toll Tags pursuant to this Agreement for the term of this Agreement; provided, however, that such use of the BATA Marks by RETAILER may be subject to trademark usage guidelines provided to Retailer by Conduent on behalf of BATA. Title to and ownership of the BATA Marks shall remain with BATA. RETAILER, in turn, grants to Conduent or BATA permission to use RETAILER's name and logo in an advertisement for the sale and promotion of FasTrak Toll Tags provided the sole purpose is to identify RETAILER as a source for the product. Except as provided herein, neither Party shall use the names, trademarks or logos, nor any adaptation or variation thereof, of the other Party or BATA (or the other Party's Affiliate(s)) in any manner whatsoever (including, but not limited to, press releases, advertising, promotion or sales literature), without the prior written consent of the other Party in each instance. Except as expressly stated above, no right, title or interest in and to any trademarks of either Party or their respective Affiliates is conveyed or intended to be conveyed by this Agreement.

11. WARRANTIES

Each Party represents and warrants throughout the Term of this Agreement that: (a) it has the right, power, and authority to enter into this Agreement, to grant the rights granted herein, and to perform its obligations hereunder; (b) its grant of rights or performance of its obligations hereunder does not violate any other agreement to which it is a party or any Applicable Law; and (c) the FasTrak Toll Tags, upon delivery to RETAILER, shall function properly and shall be available for immediate use by End Customers, subject to the FasTrak Toll Tag registration requirements.

12. COMPLIANCE WITH APPLICABLE LAW

Both Parties shall comply with all Applicable Law, including without limitation federal, state and local laws, rules, regulations, or ordinances related to employment, non-discrimination in employment, and wages.

13. TRANSFER OF TITLE AND RISK OF LOSS

13.1 Title to the individual FasTrak Toll Tags in each shipment to RETAILER shall transfer to RETAILER upon receipt by FasTrak of full payment for each such shipment.

13.2 As between Conduent and RETAILER, the Parties acknowledge that liability for losses, including damage or destruction, with respect to FasTrak Toll Tags is as follows:

- (a) any losses occurring while the FasTrak Toll Tags are in transit from Conduent to RETAILER shall not be the responsibility of RETAILER;
- (b) any losses occurring after the FasTrak Toll Tags have been delivered to the RETAILER will be the sole responsibility of RETAILER; and
- (c) with respect to returns of FasTrak Toll Tags by RETAILER to Conduent (which may only occur in the event that this Agreement is terminated), any

losses occurring prior to confirmed receipt of the FasTrak Toll Tags by Conduent shall be the sole responsibility of RETAILER;

13.3 Provision of refunds or credits relating to, and offered in connection with, the FasTrak Toll Tags are governed by the FasTrak Toll Tag Terms and Conditions and shall be the responsibility of Conduent and/or BATA according to such Toll Tag Terms and Conditions, and in accordance with any separate agreement between Conduent and BATA. RETAILER shall not accept any returns of FasTrak Toll Tags from End Customers.

14. CAPTIONS AND PARAGRAPH HEADINGS

Captions and paragraph headings used in this Agreement are for convenience only and are not part of this Agreement and shall not be used in construing this Agreement.

15. WAIVER

No waiver of any breach of any provision of this Agreement shall constitute a waiver of any other breach or of such provision. Failure of any Party to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The specific rights and remedies set forth in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law not inconsistent therewith.

16. GOVERNING LAW

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without giving effect to the choice of law principles thereof.

17. SEVERABILITY

If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

18. AUTHORIZATION

Both Parties represent and warrant that the person executing this Agreement for that Party is an authorized agent who has actual authority to bind that Party to each and every term, condition, and obligation of this Agreement and that all corporate requirements have been fulfilled to provide such actual authority.

19. NOTICES

All notices or demands required or permitted to be given or made under this Agreement shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the Parties at the following addresses, respectively. Addresses may be changed by either Party giving ten (10) days prior written notice thereof to the other Party.

A. If to Conduent State & Local Solutions, Inc.:

Conduent State & Local Solutions, Inc.

375 Beale St

San Francisco, CA 94105

Attn: Regina Briseno, Program Director~~Kerwin Stokes, VP Western Region~~

B. If to Retailer:

San Mateo County Transportation Authority

1250 San Carlos Avenue

San Carlos, CA 94070

Attention: Carter Mau, Acting Executive Director

AND

San Mateo County Express Lanes Joint Powers Authority

555 County Center, 5th Floor Redwood City, CA 94063

Attention: Sean Charpentier, Executive Council

With a copy to:

Matthew Click, PPM

San Mateo County Express Lanes Joint Powers Authority

HNTB Corporation

111 Broadway, 9th Floor

Oakland, CA 94607

20. CHANGES AND AMENDMENTS OF TERMS

This Agreement shall not be changed, modified or amended except in writing, signed by both Parties.

21. NO JOINT VENTURE

Each of the Parties shall be independent contractors and shall have no power or authority to bind the other Party or to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of the other Party. Nothing in this Agreement shall be construed to define the Parties as agents, partners, joint venturers, co-owners or otherwise as partners in a joint or common undertaking or venture. Neither Party may make binding commitments on the part of the other, except as otherwise specifically agreed hereunder.

22. FORCE MAJEURE

If any Party is prevented from complying, either totally or in material part, with any of the terms or provisions of this Agreement by reason of fire, flood, storm, riot, war, rebellion, accident, strike, lockout or other labor trouble, or other act of God, then, upon written notice to the other Party, the

affected provisions and/or requirements of this Agreement shall be suspended during the period of such disability. The Parties shall make reasonable efforts to remove such disability within thirty (30) days of such disability. If the disability continues for more than ten (10) days after the cessation of the reason for such disability, the non-disabled Party or Parties shall have the right to terminate this Agreement (with no adjustments relating to fees which have then been paid), and no Party shall thereafter have any further rights or obligations hereunder, except as expressly set forth herein.

23. SURVIVAL

Those provisions of this Agreement which by their nature are intended to survive termination or expiration of this Agreement, shall survive, including without limitation applicable provisions in the following sections and exhibits: 5, 7.2, 7.3, 7.4, and 9 and Exhibit 2 (sections 1.5 and 3).

24. ENTIRE AGREEMENT

This Agreement, together with its exhibits, constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, between the Parties with respect to the subject matter hereof. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officers as of the day, month and year first set forth above.

CONDUENT STATE & LOCAL SOLUTIONS, INC.

Retailer

Signature

Signature

Print Name

Print Name

Title

Title

EXHIBIT 1
TO FASTRAK® TOLL TAG
RETAIL PURCHASING AGREEMENT
BY AND BETWEEN CONDUENT STATE & LOCAL SOLUTIONS
AND SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY
STATEMENT OF WORK

1. DESCRIPTION OF GOODS

Conduent, at its expense, will provide RETAILER with the FasTrak Toll Tags ordered herein (the “Product(s)”) and packaged for retail re-sale. RETAILER shall order Products by submitting a purchase order to Conduent specifying the number of Products purchased.

Conduent shall use identification codes on all packaging of the Products, from which the production date, production batch, and other relevant data can be identified, and shall maintain proper records of all Products produced and packed. Packaging in general shall also be of sufficient quality and durability to withstand normal wear and tear in connection with shipping and handling. Within the package (the “FasTrak Toll Tag Package”) will be the following:

1 FasTrak Toll Tag
Mylar bag
Registration instructions, FasTrak Terms and Conditions, FAQs, and
Customer Return Policy

2. PRODUCT PLACEMENT

RETAILER will make commercially reasonable efforts to place FasTrak Toll Tag packages at locations within its retail locations that are easily visible to customers for the Term of this Agreement.

3. ADVERTISING

RETAILER agrees to use commercially reasonable efforts to advertise FasTrak Toll Tags within its retail locations at no cost to Conduent.

4. CUSTOMER SERVICE

Once a FasTrak Toll Tag is re-sold to an End Customer, RETAILER shall have no responsibility for providing any customer services related to the FasTrak Toll Tag. Customer service issues shall be the responsibility of Conduent and/or BATA according to the FasTrak Toll Tag Terms and Conditions, and in accordance with any separate agreement between Conduent and BATA. Conduent shall provide to RETAILER the toll-free number to the FasTrak Customer Service Center so that RETAILER can provide such customer service number to any End Customers that request customer service or assistance with their FasTrak Toll Tag or FasTrak account.

**EXHIBIT 2
TO FASTRAK® TOLL TAG
RETAIL PURCHASING AGREEMENT
BY AND BETWEEN CONDUENT STATE & LOCAL SOLUTIONS
AND RETAILER
STATEMENT OF WORK
PAYMENT PROVISIONS**

GENERAL

The method of billing and payment for the purchase and delivery of FasTrak Toll Tag packages shall be made in accordance with the procedure set forth below:

1. ORDERS AND PAYMENTS

1.1 THIS AGREEMENT IS NOT A GUARANTY THAT ANY ORDER OF TOLL TAGS BY RETAILER WILL BE HONORED BY Conduent AND Conduent EXPRESSLY RESERVES THE RIGHT TO DECLINE ANY REQUEST BY RETAILER FOR PURCHASE OF FASTRAK TOLL TAGS. Conduent shall contract with BATA so that (i) BATA will forward to Conduent all FasTrak Toll Tags as its designated source for retail purchases, and (ii) BATA will engage in commercially reasonable efforts to fulfill all orders submitted by RETAILER in a timely manner. If Conduent is informed by BATA that a RETAILER order cannot be fulfilled in a commercially reasonable and timely manner, then Conduent shall notify RETAILER that such order cannot be processed in accordance with the normal course of business, and Conduent shall also provide RETAILER an estimation of when such order can be fulfilled. In the event that Conduent is not able to fulfill a RETAILER order due to BATA’s inability to deliver FasTrak Toll Tags to Conduent, such event will not be deemed to give rise to any termination right by RETAILER under the provisions of Section 7 of this Agreement.

1.2 Conduent shall deliver to RETAILER FasTrak Toll Tag Packages at the per unit cost shown (unless otherwise agreed in writing by the Parties) for resell by RETAILER and RETAILER shall make commercially reasonable efforts to facilitate sale of the same.

<u>Toll Tag Type</u>	<u>Quantity</u>	<u>RETAILER Cost/Unit</u>	<u>Suggested Retail Price</u>
FasTrak Toll Tag Package	1	\$245.00	\$25.00

1.3 RETAILER shall pay BATA the total cost for all FasTrak Toll Tag Packages ordered and received by RETAILER (based on the unit cost above multiplied by the number of units ordered), which payment shall be made within 30 days, plus a ten (10) day grace period, following RETAILER’s acceptance of the FasTrak Toll Tag Packages and receipt of an accurate invoice. Conduent shall send a summarized invoice (with full supporting detail attached) to:

San Mateo County Express Lanes Joint Powers Authority
1250 San Carlos Avenue
San Carlos, CA 94070
Attention: Michelle King

1.4 Conduent shall contract with BATA to provide that any new model of FasTrak Toll Tag introduced by BATA shall not render any current FasTrak Toll Tag model obsolete for use within the Bay Area Counties.

1.5 If RETAILER is delinquent in its undisputed payment obligations to BATA following the period for cure specified in Section 7.1(a) of this Agreement, then Conduent, at its discretion and in addition to any other right and remedies it may have under this Agreement or law, may suspend all pending shipments to RETAILER, if any, until such delinquency is corrected.

1.6 All RETAILER payments for FasTrak Toll Tags shall be made in full per FasTrak invoice, and shall be made payable to "FasTrak" and mailed to the following address:

FasTrak Regional Customer Service Center
375 Beale Street, Suite 210
San Francisco, CA 94105
Attention: Janet Rabaino

All BATA payments hereunder shall be mailed to the address set forth in Section 1.3 herein.

2. SHIPPING COSTS

All costs for shipping of FasTrak Toll Tags to RETAILER's delivery location shall be paid by BATA, pursuant to BATA-Conduent agreement.

3. RETAILER'S RETURN OF MERCHANDISE

If RETAILER, at any time, should elect in writing to discontinue sale of the FasTrak Toll Tags, or upon expiration or termination of this Agreement, RETAILER may, but shall not be obligated to, at its election and sole discretion, sell the FasTrak Toll Tags on hand for the period of three (3) months thereafter in accordance with the terms of this Agreement. At the time of such expiration or termination of this Agreement, or the end of such three (3) month "wind-up" period, as applicable, RETAILER shall return FasTrak Toll Tags which had not been previously sold, in exchange for return of the per unit cost paid by RETAILER to FasTrak.

San Mateo County Express Lanes Joint Powers Authority Agenda Report

Date: March 11, 2022

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

From: Executive Council

Subject: Receive an update on the status of the \$100 million Project Loan for construction from the San Mateo County Transportation Authority to the San Mateo County Express Lanes Joint Powers Authority.

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

RECOMMENDATION

That the SMCEL-JPA Board receive an update on the status of the \$100 million Project Loan for construction from the San Mateo County Transportation Authority to the San Mateo County Express Lanes Joint Powers Authority.

FISCAL IMPACT

This is an informational item. There is no fiscal impact related to receiving this information.

SOURCE OF FUNDS

N/A

BACKGROUND

September 1, 2020, the San Mateo County Express Lanes Joint Powers Authority (borrower) entered into a Loan Agreement with the San Mateo County Transportation Authority (lender) to borrow \$100,000,000.00 to fund project costs associated with construction of the US 101 Express Lanes project and an equity program. Interest and fees on the loan are capitalized for the first three years with repayment of the Loan beginning as toll revenue becomes available.

ATTACHMENTS

Presentation



SMCEL-JPA Loan Update



- \$100 Million Loan from TA to JPA for capital, finance and support cost associated with the express lanes
 - Loan to repay total cost of TA Bonds
 - Repayment from Express Lanes Revenue
 - Capitalized Interest for 3 years
 - Capitalized Credit Enhancement fee for 2 years

- Variable Rate Bonds
 - Extremely Low Rates – resets \$50M Daily and \$50M Weekly
 - Repayment flexibility – may be repaid on any interest payment date without penalty

- Cost of borrowing September 2020 through February 2022
 - Average interest rate on the TA's variable rate bonds less than 0.06%
 - Total borrowing costs including bond interest, letter of credit fees (0.29%) and remarketing agent fees (0.08%) has averaged 0.42%
 - Total borrowing costs = \$618,000



Uses of Funds



<u>Description</u>	<u>Amount</u>
Project Fund	\$91,455,700
Equity Program	1,000,000
Capitalized Interest	6,000,000
Capitalized Credit Enhancement Fee	800,000
Cost of Issuance	650,000
Underwriter's Fee	94,300
Total Bond Proceeds	\$100,000,000



Project Fund Update

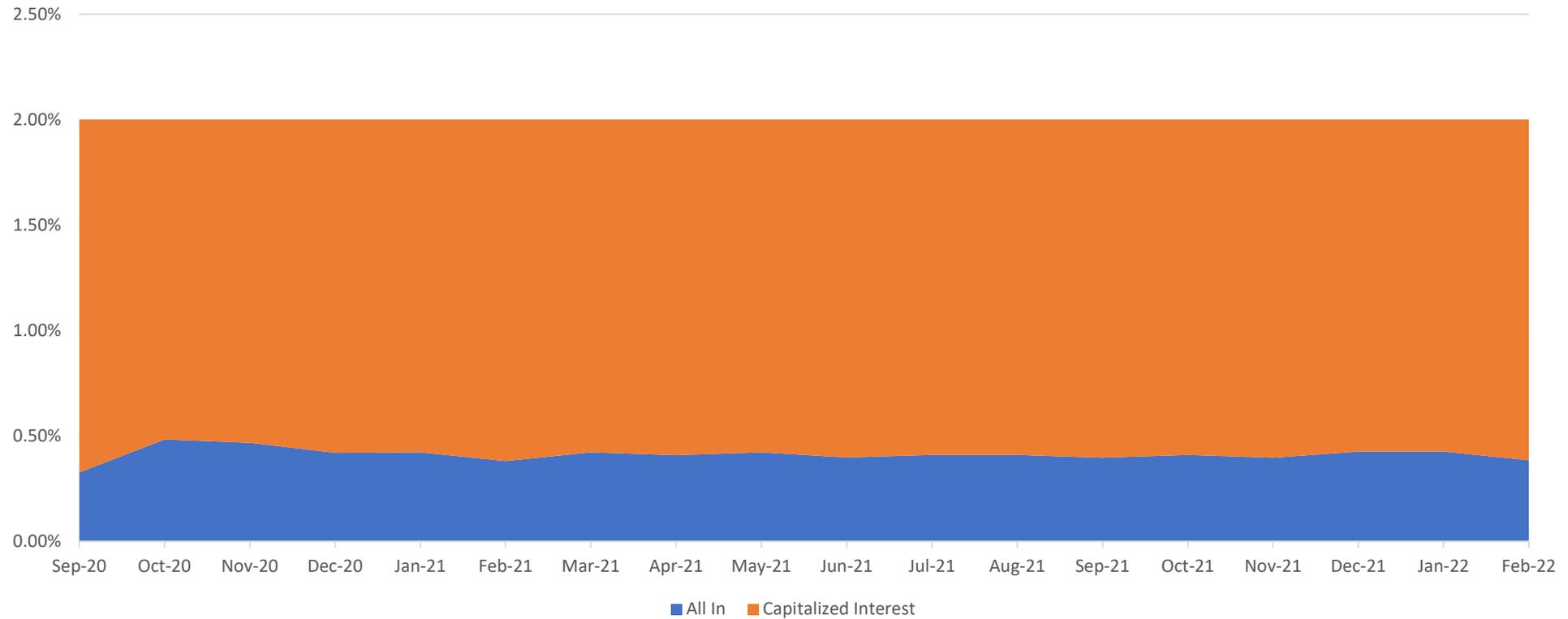


Project Fund	\$91,455,700
Construction Payments (through 12/21)	-73,000,000
Current Available Balance	\$18,455,700

The Project is currently tracking to be completed without the need for funding above the noted current balance.



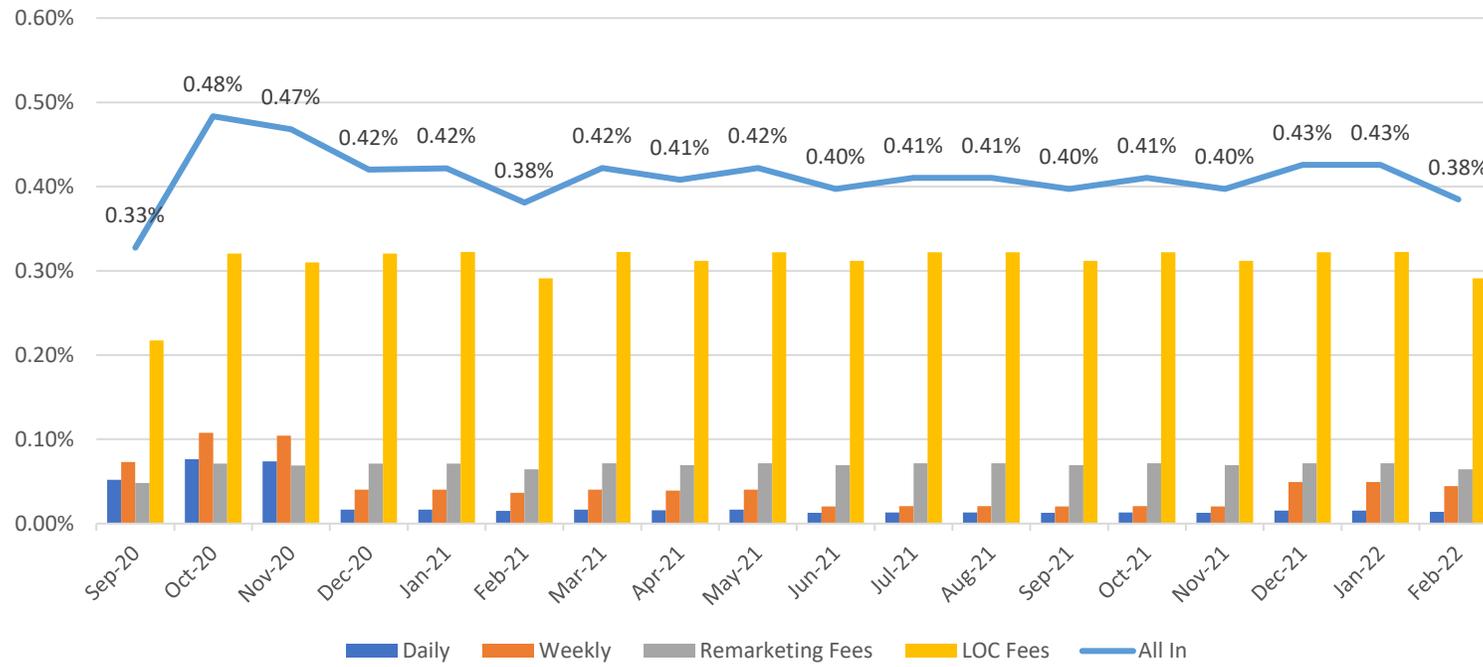
Capitalized Vs. Actual Interest Costs



Interest Cost Components



Loan Components Interest
Inception through February 28, 2022



Rates on the Rise

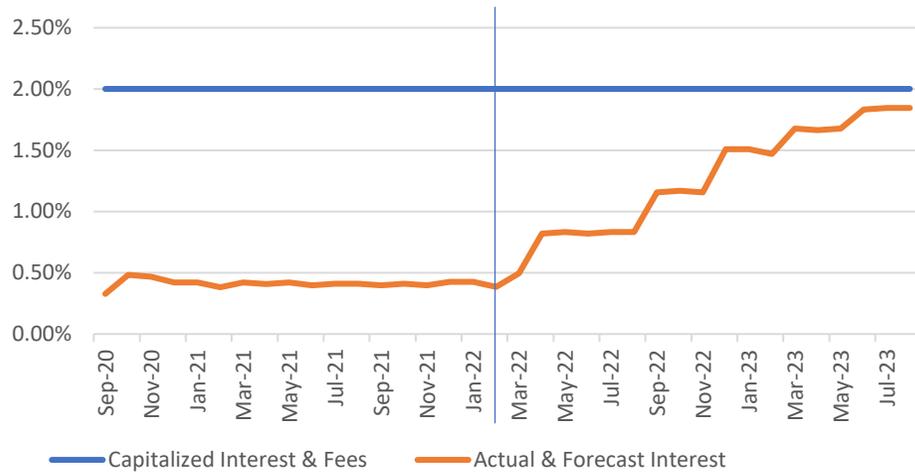


- The Federal Open Market Committee (FOMC) is expected to increase the short-term Fed Funds Rate throughout 2022 and 2023 to combat the threat of inflation
- This will lead to an increase in the variable rate bond interest rates
 - The JPA borrowing cost is forecast to increase to 2.24% by December 2023

The Street's Interest Rate Forecast (As of March 3, 2022)									
Average Forecasts	Current	Q1 22	Q2 22	Q3 22	Q4 22	Q1 23	Q2 23	Q3 23	Q4 23
30-Year UST	2.21%	2.23%	2.35%	2.43%	2.52%	2.61%	2.68%	2.69%	2.74%
10-Year UST	1.84%	1.90%	2.03%	2.12%	2.21%	2.28%	2.37%	2.41%	2.47%
2-Year UST	1.51%	1.27%	1.44%	1.57%	1.69%	1.82%	1.94%	2.04%	2.12%
3M LIBOR	0.52%	0.48%	0.79%	1.07%	1.27%	1.47%	1.65%	1.86%	1.98%
Fed Funds Target Rate	0.25%	0.50%	0.85%	1.10%	1.35%	1.60%	1.80%	2.00%	2.10%



Capitalized Vs. Actual and Forecast Interest

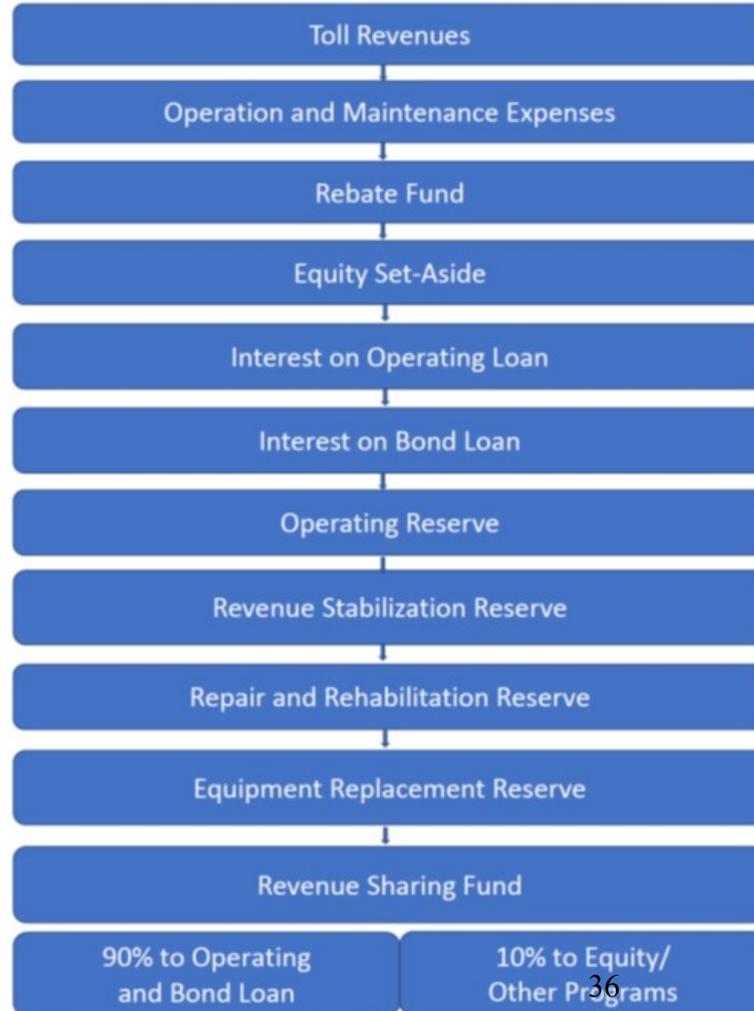


Capitalized Interest Sep 2020 through Aug 2023	
Budgeted Cap I	\$6,000,000
Actual (through Feb 22)	(618,000)
Forecast (Mar 22 - Aug 23)	(1,928,000)
Remaining Cap I	\$3,454,000

Flow of Funds



Flow of Funds



Thank you

