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AGENDA

Joint Ad Hoc Committee On 101 Managed Lanes Project

SAN MATEO COUNTY TRANSPORTATION AUTHORITY & CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY 455 County Center, Room 101 Redwood City, CA

March 1, 2019 – Friday

10:00 am

1. Call to Order/Pledge of Allegiance
2. Approval of minutes from the February 1, 2019 Joint Ad Hoc Committee Meeting
3. Update on the California Transportation Commission Application Process for the San Mateo US101 Express Lanes Toll Facility
4. Update on the Funding Obligations for the San Mateo US101 Express Lanes Capital Project, and Cost Estimates for Initial Set-up/Operating Needs for the San Mateo US101 Express Lanes Joint Powers Authority
5. Discussion and Potential Action on the Joint Powers Authority framework for San Mateo County Transportation Authority and City/County Association of Governments of San Mateo County as co-owners of the San Mateo US101 Express Lanes
6. Public Comment
7. Adjourn

San Mateo County Transportation Authority & City/County Association of Governments
Joint Ad Hoc Committee On 101 Managed Lanes Project
Agenda for March 1, 2019

Committee Members:

C/CAG: Alicia Aguirre, Diane Papan, Doug Kim,
TA: Don Horsley, Emily Beach, Maureen Freschet

INFORMATION FOR THE PUBLIC

If you have questions on the agenda, please contact:

- San Mateo County Transportation Authority Secretary at 650-508-6279
- C/CAG Clerk of the Board at 650-599-1406

Assisted listening devices are available upon request.

Communications to the TA Board of Directors can be e-mailed to board@smcta.com.

Communications to the C/CAG Board of Directors can be e-mailed to mguilles@smcgov.org.

Public Noticing:

This agenda and all notices of regular and special Authority Board meetings, and of regular and special C/CAG Board and standing committee meetings are posted at the San Mateo County Transit District Office, 1250 San Carlos Ave., San Carlos, CA, and on the Authority's website at <http://www.smcta.com> and on C/CAG's website at <http://www.ccag.ca.gov>, respectively.

Location, Date and Time of Regular Meetings

This meeting will be held at the San Mateo County Transit District Administrative Building located at 1250 San Carlos Ave., San Carlos, which is located one block west of the San Carlos Caltrain Station on El Camino Real. The building is also accessible by SamTrans bus routes ECR, FLX, 260, 295 and 398. Additional transit information can be obtained by calling 1-800-660-4287 (TTY 650-508-6448) or 511.

Public Comment

If you wish to address the Boards, please fill out a speaker's card located on the agenda table. If you have anything that you wish distributed to the Board and included for the official record, please hand it to the Authority Secretary or C/CAG Clerk of the Board, who will distribute the information to the Boards' members and staff.

Public testimony by each individual speaker shall be limited to two minute and items raised that require a response will be deferred for staff reply.

Accessibility for Individuals with Disabilities

Upon request, the TA and C/CAG will provide for written agenda materials in appropriate alternative formats, or disability-related modification or accommodation, including auxiliary aids or services, to enable individuals with disabilities to participate in public meetings. Please submit a request, including your name, mailing address, phone number and brief description of the requested materials and a preferred alternative format or auxiliary aid or service at least two days before the meeting. Requests should be made:

- by mail to the Authority Secretary at the San Mateo County Transportation Authority, 1250 San Carlos Avenue, San Carlos, CA 94070-1306; by email to board@smcta.com; or by phone at 650-508-6279 or TTY 650-508-6448; or
- by phone to the C/CAG Administrative Assistant at 650-599-1406.

Availability of Public Records

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body less than 72 hours prior to the meeting will be available for public inspection at the same time that the records are distributed or made available to the legislative bodies. Such materials will be available at:

- the Authority's office at 1250 San Carlos Avenue, San Carlos, CA 94070-1306;
- C/CAG's office at 555 County Center, 5th Floor, Redwood City, CA 94063; and
- <http://www.ccag.ca.gov>

**SAN MATEO COUNTY TRANSPORTATION AUTHORITY AND
CITY/COUNTY ASSOCIATION OF GOVERNMENTS
AD HOC COMMITTEE FOR 101 MANAGED LANES PROJECT
MINUTES OF FEBRUARY 1, 2019**

| | |
|-------------------------|--|
| MEMBERS PRESENT: | Transportation Authority Board (TA): Don Horsley, Emily Beach City/County Association of Governments (C/CAG) Board: Alicia Aguirre, Diane Papan, Doug Kim |
| STAFF PRESENT: | TA: Jim Hartnett, April Chan, Joan Cassman (Legal Counsel), Shayna van Hoften (Legal Counsel), Joe Hurley, Dora Seamans, MaryAnn Johnston C/CAG: Sandy Wong, Jean Higaki, Matthew Sanders (Legal Counsel) |
| PUBLIC MEMBERS | Maryann Moise Derwin, Jim Bourgart, Catherine Carlton, Lisa Klein, Drew |

CALL TO ORDER

The joint TA and C/CAG Ad Hoc committee meeting was called to order by C/CAG Committee member Alicia Aguirre at 10:03 am. Executive Officer/District Secretary Dora Seamans called the roll for the TA; C/CAG Executive Director Sandy Wong called the roll for C/CAG.

C/CAG Committee Member Alicia Aguirre and TA Chair Don Horsley co-chaired the meeting.

APPROVAL OF MINUTES FROM THE JANUARY 25, 2019 JOINT AD HOC COMMITTEE MEETING

TA Committee Member Emily Beach proposed a change to modify third page, second full paragraph to insert that, instead of her opinion, it was the slides prepared by BAIFA that indicated that net toll revenues are roughly the same regardless of which owner/operator option is chosen.

Motion/Second: Papan/Beach

Ayes: Beach, Horsley, Aguirre, Kim, Papan

Noes: None

Absent: Freschet

DISCUSSION AND POSSIBLE ACTION ON JOINT GOVERNANCE FOR 101 MANAGED LANES PROJECT

April Chan, Chief Officer, Planning, Grants & Transportation Authority, outlined how the TA and C/CAG Boards can potentially participate in joint governance over the management of the US101 Managed Lanes now that Option 2B (San Mateo County agencies own, BAIFA operate) has been selected. Two joint governance options were

previously presented. The first, the Joint Policy Committee (JPC), would be set up to have participation from members of the TA and C/CAG Boards. Policy recommendations to be considered by the JPC could include toll policies development, net revenues investment decisions, including the adoption of an expenditure plan, and the development of equity programs. JPC makes the recommendations, and the recommendations go back to the TA and C/CAG Boards for action and approval.

The second option, the Joint Powers Agency (JPA), would be formed as an independent agency. The JPA would make final policy decisions, including toll policies development, net revenues investment decisions, including the adoption of an expenditure plan, and the development of equity programs. The JPA would also manage the contract with BAIFA. The powers vested in the JPA would allow it to make final decisions, without having to return to the TA and C/CAG Boards for further action or approval.

April further stated that the two Boards would need a recommendation from the Joint Ad Hoc Committee on which option, JPC or JPA, and then decide on how best to work with BAIFA to apply to the California Transportation Commission (CTC) to get authority to operate the Express Lanes.

C/CAG Executive Director Sandy Wong added that the Joint Ad Hoc Committee should discuss the pros and cons of the JPC vs. the JPA. She further added that there are differences between contracting with BAIFA vs. if the agencies had opted to contract with VTA. If San Mateo County had decided to contract with VTA, existing enabling legislation would already provide certain responsibilities to San Mateo County, whereas the legislation associated with BAIFA does not spell out responsibilities for San Mateo County. One option with contracting with BAIFA is for BAIFA to go to CTC, apply for toll authority, and then transfer that authority to San Mateo County. This option needs to be further explored with CTC. Another option is to form a San Mateo County JPA, and then go to CTC and apply for toll authority directly.

TA Executive Director Jim Hartnett stated that if the Joint Ad Hoc Committee recommends the TA and C/CAG Boards adopt the JPA model, there should be sufficient time to work out how a JPA should be structured and formed.

C/CAG Committee Member Kim asked Sandy if C/CAG can apply directly as a JPA, assuming there is MTC concurrence. Sandy laid out the history of AB194 (legislation that provided for the CTC toll authority application process), which included a provision allowing a JPA to apply. That provision was included in AB 194 at the request of C/CAG back then. Sandy further responded to Committee Member Kim that while C/CAG as a JPA can apply directly to the CTC, staff recommendation is to form a new JPA between C/CAG and TA to apply to the CTC, since the two agencies are interested in equal partnership.

Returning to the formation of a JPA between TA and C/CAG, C/CAG Committee Member Alicia Aguirre asked how long it takes to form a JPA, if the Joint Ad Hoc Committee votes to select this option and recommend it to the TA and C/CAG boards. TA Legal Counsel Joan Cassman stated that a JPA is a contract, an agreement

between the two agencies coming together to exercise common powers. She estimated it would at a minimum take two months or so to form.

C/CAG Committee Member Aguirre asked if both options should be discussed or should one be taken off the table. TA Chair Don Horsley said that with the JPC, it requires going back to the respective Boards for final action; he believed that the JPA option seemed to be the better option.

C/CAG Committee Member Papan opined that a JPA contract may have a lot of boilerplate terms which can be put in place much more quickly.

C/CAG Committee Member Kim asked who would be staffing and doing the work under a JPC vs. under a JPA. For the JPC model, Ms. Chan said that the Joint Ad Hoc Committee has essentially been operating like a JPC in the months past, so staff work has been done by both TA and C/CAG staff. With the JPC model, C/CAG Committee Member Kim said he felt that going back to the two Boards for final decisions would likely not be ideal. C/CAG Committee Member Aguirre agreed that the JPC model was time-consuming.

C/CAG Committee Member Aguirre asked for a motion to go with the JPA model.

Motion/Second: Horsley/Papan

Ayes: Beach, Horsley, Aguirre, Kim, Papan

Noes: None

Absent: Freschet

TA Executive Director Hartnett stated that since the JPA model is chosen, staff would work together with BAIFA and talk with CTC staff to figure a path forward. The objective is to determine what can be done within a set period of time. The end goal with the CTC process is to ensure San Mateo County will be the owner of the toll facility, and have ultimate policy making powers.

TA Committee Member Beach expressed that she will support BAIFA, C/CAG, or TA-C/CAG applying with CTC, with the understanding the final path chosen is the one that works best for San Mateo County.

Moving on to structure of a JPA, TA Board Chair Horsley laid out three elements of the JPA that need to be decided: powers of the JPA, composition (e.g. six or seven members total, and if seven members how the seventh one will be chosen), and staffing.

With regards to composition, TA Executive Director Hartnett said whatever the composition (6 or 7), it may require a super majority or plurality for an action to prevail. For example, with six members, four in the affirmative would be required for a vote.

TA Chair Horsley said there would have to be a balance of, for example, two people from C/CAG and two from TA, not a one to three vote, and five people should be present.

C/CAG Committee Member Papan asked if the total number of the JPA Board should be even or odd. TA Chair Horsley asked how the seventh would be selected. C/CAG Committee Member Aguirre suggested perhaps someone from the County Board of Supervisors, or someone serving on both the TA and C/CAG Boards.

C/CAG Executive Director Sandy Wong mentioned that there was an idea for the seventh member to come from the Coastsides. C/CAG Committee Member Aguirre said the effects of 101 are region-wide but it may be good for the JPA Board members to come the peninsula side. She also said she is okay with a six member JPA, three each from C/CAG and TA, to maintain the equity between the two agencies. It was also opined that it is legal to have six members; nothing in the law requires an odd number of members.

C/CAG Committee Member Papan suggested, should there be a constant logjam in the voting, the JPA could decide at a later time to amend the composition of its board to seven members, so this is a matter that could be revisited.

TA Committee Member Beach suggested that certain key issues, e.g. financing, debt, and use of net revenues, should perhaps require five votes instead of four.

C/CAG Committee Member Kim said that he thinks six members work without much disagreement or split votes, because all members are on the same team with regard to rates, equity, etc.

C/CAG Committee Member Aguirre stated there is a need for stability in the JPA initially so appointment length should be considered. TA Committee Member Beach said it should be an aspirational goal to also have regional representation to the extent possible, and would like to see each Board appoint members with this in mind. C/CAG Committee Member Aguirre agrees that cross-regional representation is desirable. Ms. Cassman said that the JPA can include language indicating an attempt to have balanced regional representation and general inclusion.

C/CAG Committee Member Horsley stated that at least five members should be present to take an action.

C/CAG Committee Member Kim asked if alternates should be part of the composition. C/CAG Committee Member Aguirre said that in the JPA's infancy stage, she thinks stability needs to be established and does not support alternates. C/CAG Committee Member Papan said that she is okay with a requirement that five members need to be present for actions, but does not support alternates.

With regards to powers and authority, TA Executive Director Hartnett stated that the JPA cannot commit the C/CAG and TA Boards to taking any actions; these two Boards will retain all powers not vested in the JPA.

With regards to staffing, Mr. Hartnett shared examples of SamTrans allocating staffing to TA and Caltrain. In the Caltrain example, staffs of the owners of Caltrain - Santa Clara, San Mateo and San Francisco Counties - collaborate on agenda review and make consensus recommendations to the Caltrain Board. SamTrans has staffing to do the day-to-day work, e.g. contracts, financing, legal, etc.

C/CAG Committee Member Kim believes a JPA needs to have an independent staff for policy work and day-to-day oversight of BAIFA.

C/CAG Executive Director Wong shared the model of C/CAG which features an independent executive director. C/CAG contracts with member entities with expertise (e.g. finance, storm water) and this may be applicable to the JPA model.

TA Committee Member Beach shared the example of another JPA, Commute.org, but expressed that there is a constant change in its fiscal agent, which can be cumbersome.

TA Board Chair Horsley said that the new JPA has no money and needs money loaned to support it in the beginning. In addition, the JPA would also need to repay the loans the TA will need to make to it for the capital project, at least in the order of \$50m. He suggested that staffing to come from TA.

Regardless of where staffing comes from, C/CAG Committee Member Aguirre agreed that there is expertise within the two agencies.

C/CAG Committee Member Kim said the JPA should be independent and autonomous going forward. He stated there is no policy expertise from within the two agencies. TA Executive Director Hartnett disagrees with Mr. Kim that staff does not have policy expertise; staff from both sides have been talking with other agencies regarding the operation of the Express Lanes, and the agencies can hire subject matter experts. Staff from the two owner agencies should reflect the value of the parent agencies. Other staffing models of existing and planned express lanes were also mentioned, including the Alameda CTC operating the Sunol Grade express project as a member of a joint powers agency with VTA, and BAIFA.

PUBLIC COMMENT

Drew – Suggested that a member of the public or a subject-matter expert be a part of the Board, e.g. someone independent but working in the realm.

Next Steps: Committee members asked that staff get back to the committee regarding the JPA application process with the CTC, JPA staffing models, and whether there is bandwidth for staffing. A draft of the Joint Powers Agreement along with staff recommendations will be prepared for the next meeting.

TA and C/CAG Committee members agreed to meet on Friday, March 1 at 10:00 am.

ADJOURN

The meeting adjourned at 11:30 am.



BOARD OF DIRECTORS 2018

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JIM HARTNETT
EXECUTIVE DIRECTOR

AGENDA ITEM #3
March 1, 2019

Memorandum

Date: March 1, 2019

TO: Joint Ad Hoc Committee

THROUGH: Jim Hartnett
Executive Director

FROM: April Chan, Chief Officer,
Planning, Grants and Transportation Authority

Subject: Update on the California Transportation Commission Application for Toll Authority

Action

No action is required at this time.

Significance

San Mateo County Transportation Authority (TA) and the City/County Association of Governments of San Mateo County (C/CAG) staff met with California Transportation Commission (CTC) in early February, and obtained information on how best to move forward with an application for toll authority for the San Mateo US101 Express Lanes project.

The TA and C/CAG Boards directed staff to work with the CTC to ensure toll authority policymaking powers are to be vested in the to-be-formed Joint Powers Agency (JPA). Staff has since received information and guidance from CTC on how best to proceed with the application process, which is further discussed below.

Discussion

CTC staff agreed that TA and C/CAG, after the formation of a JPA, may apply to operate the San Mateo US101 Express Lanes through a contract with the Bay Area Infrastructure Financing Authority (BAIFA), with the process outlined below.

Timeline

- A final application must be submitted to CTC staff at least 45 days prior to a scheduled meeting to have the CTC Commission to consider and grant the JPA

SAN MATEO COUNTY TRANSPORTATION AUTHORITY

1250 San Carlos Ave. – P.O. Box 3006
San Carlos, CA 94070-1306 (650) 508-6269

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authority over the toll facility. The CTC meeting that would meet our current timeline is the one scheduled for August 14 and 15, 2019 in San Jose. Staff is looking at submitting a final application no later than July 1, 2019.

- Prior to the submittal of a final application, CTC requires draft application materials to be submitted to their offices at least 60 days before the final application is submitted. The purpose of this submittal is to allow sufficient time for CTC staff review and comments. Staff is looking at submitting draft application materials no later than May 1, 2019.
- In the time between the final application is submitted to the CTC and the CTC meeting on August 14-15, 2019, a public hearing must be held in the vicinity of the project location to receive public comments. Staff have discussed with CTC staff, and the most likely location for the public hearing is the San Mateo County Transit District offices in San Carlos. We would need to secure a date and time between July 1 and early August 2019.

Application Content

The CTC application must include, but is not limited to, the following information: demonstration of improvement in corridor performance, complete project funding plan, cooperation between the MTC and Caltrans on the project, technical feasibility, financial feasibility, community support and regional transportation plan conformity.

Cost of Application

CTC staff indicated that the cost of the state review and processing will need to be reimbursed by the project applicant, and the cost is capped at \$100,000. The State currently estimates the CTC's cost for this application is likely to be around \$60,000. Staff is working with the TA Program Management consultant team to prepare the application material. Cost of the consultant work is estimated at \$80,000.

Background

At their February 2019 meetings, the TA and C/CAG Boards voted at their respective meetings to 1) retain ownership of the Project and contract with Bay Area Infrastructure Financing Authority (BAIFA) to operate the express lanes on their behalf, subject (a) to the CTC's approval, (b) the terms of a TA and C/CAG agreement with BAIFA, and (c) delineation of roles between the San Mateo County and BAIFA; and 2) exercise their shared rights and responsibilities as joint owners of the Project, including but not limited to setting policies governing the express lanes' operation, developing and implementing an expenditure plan for express lane toll revenues, and overseeing management of the BAIFA contract.



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JIM HARTNETT
EXECUTIVE DIRECTOR

AGENDA ITEM #4
March 1, 2019

Memorandum

Date: March 1, 2019

TO: Joint Ad Hoc Committee

THROUGH: Jim Hartnett
Executive Director

FROM: April Chan, Chief Officer,
Planning, Grants and Transportation Authority

SUBJECT: Update on the Funding Obligations for the San Mateo US101 Express Lanes Capital Project, and Cost Estimates for Initial Set-up/Operating Needs for the San Mateo US101 Express Lanes Joint Powers Authority

Action

No action is required at this time.

Significance

The San Mateo US101 Express Lanes Project (Project) has a total project cost of \$513 million, and is funded by the following sources:

| <u>Funding Source</u> | <u>Total Funds</u> |
|---|---------------------------|
| Federal | \$9.5M |
| State STIP (C/CAG) | \$33.5M |
| State ITIP (Caltrans) | \$18.0M |
| State SB1 Local Partnership Program | \$21.5M |
| State SB1 Solutions for Congested Corridors (SCC) | \$200.0M |
| Private Sector | \$53.0M |
| Regional Bridge Tolls | \$95M * |
| Local San Mateo Measure A | \$32.5M |
| Future Toll Revenues and other Local Funds | \$50M* |
| TOTAL | \$513M |

* Will be discussed further below

In addition to capital costs, the Project will be incurring start-up costs during the formation of the Joint Powers Agency (JPA), which are also discussed below.

Discussion

In light of the current discussion of the JPA formation, staff believes it is important to update the TA Board regarding possible funding commitments and obligations that may need to be advanced from TA funds, with an expectation that future toll revenues will repay these advances.

Capital Costs and Funding

Of the \$513 million identified for the project, there are two funding sources that will likely need an advance from the Transportation Authority, and they include:

- \$50 million that is to be funded by future toll revenues. Since the Project is not expected to be operational until 2022, collection of toll revenues is not expected to begin until then. In order to satisfy the funding of the capital project now, there is an expectation that the TA will advance funds to the Project, with an expectation that it will be paid back by future toll revenues.
- \$37.5 million of regional bridge toll funds. MTC has committed to provide \$95 million of the \$513 million needed for the project. At this time, MTC can allocate \$57.5 million. Due to pending litigation against Regional Measure 3 (RM3), MTC has asked TA to loan \$37.5 million towards MTC's remaining commitment, with an expectation that the loan be paid back from RM3 funds once the legal action is resolved.

With regard to the capital funds needed, depending on what may be the most appropriate and cost-effective financial arrangement, the TA may need to arrange borrowing of the funds, to be guaranteed by the TA in addition to the option of advancing some and/or all of the funds.

In addition to capital costs, there are other start-up and set-up costs that are associated with the JPA, including the following:

- Application cost with the California Transportation Commission (CTC), estimated at \$60,000; and
- Consultant costs associated with the preparation of the application material for CTC approval, estimated at \$80,000; and
- Completion of an equity study for the corridor; staff is currently working on completing an initial scope of work and a cost estimate for completing the study; and
- Initial deposit required by Bay Area Infrastructure Financing Authority (BAIFA) before BAIFA begins contracted operation of the San Mateo US101 Express Lanes. Deposit amount is to be negotiated with BAIFA over the next several months; and
- Staffing costs associated with the oversight of the JPA start-up and operations; costs will need to be estimated and further refined over the next several months.

Background

The US 101 Express Lanes Project, jointly sponsored by Caltrans, City and County Association of Governments of San Mateo County (C/CAG) and the TA will be embarking on the construction phase of the project this month. The project will result in the creation of 44 miles (22 miles in each direction) of new express lanes on the 101 corridor in San Mateo County. The total cost of the capital project is \$513 million, and the costs are broken out as follows:

| | |
|---------------------------------|------------------------|
| Environmental assessment/design | - \$ 60 million |
| Right-of-way | - \$ 4 million |
| Construction | - <u>\$449 million</u> |
| Total Project Cost | \$513 million |



AGENDA ITEM #5
March 1, 2019

Memorandum

Date: March 1, 2019

TO: Joint Ad Hoc Committee

THROUGH: Jim Hartnett
Executive Director

FROM: April Chan, Chief Officer,
Planning, Grants and Transportation Authority

Subject: Discussion and Action Needed for San Mateo County Transportation Authority and City/County Association of Governments of San Mateo County Joint Powers Authority Framework for the US101 Express Lanes Project

Action

Staff recommends the Joint Ad Hoc Committee agree on recommendations to the San Mateo County Transportation Authority (TA) and the City/County Association of Governments of San Mateo County (C/CAG) Boards of Directors as follows:

- (1) Approve the Joint Exercise of Powers Agreement (JEPA) between the TA and C/CAG in a form substantially similar to the agreement presented in Attachment A, but with revisions to reflect the staffing model selected under (2), below; and
- (2) Approve one of the two staffing models discussed below to support the new Express Lanes Joint Powers Authority.

Significance

At their respective February 2019 meetings, the TA and C/CAG Boards authorized formation of a Joint Powers Authority (JPA) to exercise their shared rights and responsibilities as joint owners of the San Mateo US101 Express Lanes Project.

The two Boards will need to approve a JPA agreement to outline, among other things, the organization, governance, functions, powers, and staffing model of the JPA. In order to stay on track to submit a timely application to the California Transportation Commission (CTC) as a JPA to be the tolling authority for the San

Mateo US101 Express Lanes, it is recommended that the Joint Ad Hoc Committee recommend a proposed JPA agreement that addresses these issues, so the two Boards can take action at their respective April 2019 meetings.

TA and C/CAG Legal Counsel have prepared a draft JPA agreement for the Joint Ad Hoc Committee's consideration that incorporates those areas such as composition, powers, voting and functions that were agreed to at the February 1, 2019 Joint Ad Hoc meeting. The draft JPA is included as Attachment A. C/CAG and TA staff recommend approval of the form of the JPA agreement subject to necessary additions or changes based on the staffing model selected.

Discussion

The JPA will require staffing to support its work and to assist in the oversight of the Bay Area Infrastructure Financing Authority (BAIFA) contract. The Joint Ad Hoc Committee has not yet made a recommendation on what agency will provide staff support for the JPA. Staffing functions include but are not limited to those shown below, with the understanding that the first three bullets require immediate start-up needs:

- Develop application material to submit to the CTC for toll authority on the US101 corridor in San Mateo County
- Negotiate a contract with BAIFA to operate the express lanes and with the Bay Area Toll Authority (BATA) to collect tolls, with terms and conditions of the contracts to be subject to approval by the JPA board.
- Locate funds to satisfy the \$50 million construction budget obligation, and any additional start-up and construction funds necessary, such as the BAIFA deposit and the CTC application costs; and any other financial obligations of the JPA, subject to approval of terms and conditions by the JPA Board.
- Negotiate a contract with Caltrans for maintenance on the highway portion of the facility and with CHP for enforcement, with the terms and conditions of the contracts to be subject to approval by the JPA board.
- Develop for presentation, consideration and decision by the JPA board toll principles and objectives (i.e., maximize throughput versus maximize revenues), toll policy, toll ordinance, reserve policy, and related policies, including elements such as maximum and minimum toll rates, discount policy, etc., and manage the implementation thereof.
- Coordinate with the other express lane owners in the Bay Area regarding hours of operation, occupancy requirements, discount policies, and other issues.
- On-going review of reports from BAIFA and management of the BAIFA contract to ensure toll prices are consistent with adopted toll objectives/principles, policies, and that toll revenues are sufficient to cover required costs to the extent possible.
- Manage all contracts that support JPA operations.
- Adjudicate disputes on toll violations.
- Obtain liability insurance and all other insurance required.

- Ensure toll equipment is in a state of good repair.
- Develop a budget for presentation, consideration and adoption by the JPA board.
- Work as directed by the JPA board to establish net revenue spending priorities, including policies to balance the priorities for loan repayment, equipment upgrade set-aside, incentives for express lane users including low-income users, improvements to the corridor including transit, and adopt a Toll Revenue Expenditure Plan.
- Under the direction of the JPA board, develop an Equity Program for presentation, consideration and decision by the JPA board.
- Provide for auditing of the JPA's finances.
- Ensure that all meetings of the JPA board and any committees are noticed and conducted in accordance with applicable law and conflict of interest and disclosure requirements are met.

To assist the Joint Ad Hoc Committee in reaching consensus on staffing, the Ad Hoc Committee members asked at the last meeting for some examples of how staffing can be set up to provide the day-to-day JPA management. Staff is providing the following information for three examples, including San Mateo County Transit District, C/CAG, and the Sunol Smart Carpool Lane Joint Powers Authority (also known as I-680 Express Lanes JPA).

San Mateo County Transit District

San Mateo County Transit District (District) serves as the Managing Agency for the Peninsula Corridor Joint Powers Board (JPB) and the TA. The District has all functional areas housed in one agency, including human resources, contracts and procurement, finance, treasury and accounting, grants, board and advisory committee support, information technology, communication and marketing, community outreach, planning, operations and capital project delivery.

The District is designated in the JPB's Joint Powers Agreement to support Caltrain Board and to manage all functions of JPB. The District added expertise over time as necessary to supplement the support for Caltrain, including rail operations and engineering and construction, and engages consultants for specialized expertise. A Staff Coordinating Council, made up of staff from the three JPB member agency (City and County of San Francisco, San Mateo County Transit District, and Santa Clara Valley Transportation Authority (VTA)), makes policy, program, contract, financial and other recommendations to the Caltrain Board for action.

The TA also has no employees of its own; the District provides all staffing needed to help manage the administration of the 1988 and 2004 Measure A Sales Tax Expenditure Plans and now the portion of the Measure W funding that will be transferred to the TA. The District also provides staffing to the TA to assist with the delivery of highway projects in San Mateo County, in coordination with Caltrans and C/CAG.

C/CAG

C/CAG is formed via a Joint Powers Agreement by and between the 21 local jurisdictions in San Mateo County. It is designated as the Congestion Management Agency (CMA) for San Mateo County, with several full-time professional engineers and planners responsible for transportation planning, transportation project delivery, administration for Federal and State transportation funds, and public outreach with communities of concerns. As an independent JPA, C/CAG employs one Executive Director and one Administrative Assistant dedicated to serve C/CAG. Routine functional supports such as accounting service and legal service are provided by other agencies via contracts. The Executive Director is also supported by several full-time professional staff hired by the County of San Mateo to provide employment benefits.

Sunol Smart Carpool Lane Joint Powers Authority (Sunol JPA)

The I-680 Express Lanes corridor is on I-680, and it extends from the interchange of Alcosta Blvd. in Dublin to SR237 in Milpitas. Two member agencies form the Joint Powers Authority: Alameda County Transportation Commission (ACTC) and the Santa Clara Valley Transportation Authority (VTA). Board membership includes 4 ACTC Board members and 1 VTA Board member; membership reflects the length of the express lanes located in each county. The Sunol JPA was formed to design, construct, and operate the I-680 express lanes corridor. The ACTC serves as the Managing Agency, and along with its Executive Director, works cooperatively with the member agencies on achieving consensus on matters before advancing them to the Sunol JPA governing board.

Two potential models for the San Mateo US101 Express Lanes JPA (US101 EL JPA)

Model 1 – San Mateo County Transit District serves as Managing Agency

Similar to how the District serves as the Managing Agency for Caltrain and TA, the District can serve in the capacity as the managing agency for the US101 EL JPA. This model is similar to how the Sunol JPA is staffed.

The District already employs staff for all the relevant functions that are required to manage and oversee the operations of the US101 EL JPA, including finance, treasury and accounting to support the oversight and accounting of the toll revenues that will be received from BAIFA. In addition, the District has experience in overseeing large transportation infrastructure projects that have been undertaken over the years by Caltrain and the TA.

Similar to the Caltrain Staff Coordinating Council, an Executive Council, made up of the Executive Directors of the TA and C/CAG, or their designees, should be set up to review and achieve consensus on matters before advancing proposals to the US101 EL JPA governing board for consideration. In addition, in order to achieve greater involvement by both member agencies, C/CAG representatives can participate in selection panels and other processes for procurement and recruitment related to the US101 EL JPA.

Advantages:

- Time - District staff support is immediately available, and though some resources will need to be supplemented over time, there are resources immediately available to get the US101 EL JPA through this critical initial/interim period.
- Existing expertise - District expertise is in place and available in all areas of relevant subject matter - administration and board support, public agency transparency requirements, finance, procurement, bonds, loans, contract administration HR/recruitment, communications, project management and oversight, etc.
- Equity between the agencies - C/CAG and TA executive staff will together make recommendations on policy decisions and other action items that go to the Board through an Executive Council that will meet regularly.
- Efficiency, simplicity and accountability – the administration of the relevant functions of a JPA can be most efficiently, simply and comprehensibly provided when such functions are readily available under one organization, and accountability can be better controlled than when various entities or jurisdictions are overseeing different functions (e.g. finance provided by one agency and contracting provided by another).
- Cost savings from right-sized and efficiently-compensated staffing levels – provides the levels of support needed for various functions when needs arise, and not when the functions are not needed; assigns costs of employment to the JPA for time worked for the JPA without need for outside human resources and benefits programs and administration.
- Financial support – provides more protection and comfort to the member agency (TA) that will most likely be assuming the financial risks of the project going forward.

The discussion of Model 1 was prepared by TA staff.

Model 2 – Independent Executive Director for the US101 EL JPA

This model recommends the recruitment of an independent Executive Director who will report to the JPA Board directly. It is to ensure the Executive Director's allegiance to the JPA. Since this is a relatively small size agency, it is expected the Executive Director will be a hands-on manager who will have direct control of all aspects of the agency. It is expected that this person will need support from a professional staff, such as a Project Manager, who is proficient in managing express lanes, and an administrative staff to support the work of the JPA. The administrative staff may be full- or part-time.

For cost efficiency, the JPA would contract with TA, C/CAG, other public agencies in San Mateo County, and/or consultants to provide support services such as accounting, legal support, or other professional services. The TA (through the Transit District), C/CAG, and other providers have different strengths and expertise to bring to the table, and this model would best allow the JPA to take advantage of these

diverse skill sets. The TA's substantial staffing strengths are discussed at length above. For its part, C/CAG staff have expertise in the design and maintenance of the Smart Corridor, a technology-based strategy to manage traffic and maximize efficiency of a transportation corridor. C/CAG staff also have deep expertise in public outreach, including working with communities of concern to meet their transportation needs. C/CAG staff are also proficient in balancing the needs of C/CAG's 21-member agencies in San Mateo County. It will be the JPA's decision, upon recommendation from its Executive Director, which agency will be best to provide which types of service.

Since the express lanes will serve the general public, it's important that diverse opinions and inputs are considered prior to the JPA making or changing its policy decisions. To achieve this, the JPA could use a committee structure to provide advice and recommendations on policy and other issues. Committee members could be a combination of TA and C/CAG staff, technical staff from local cities and the County, elected officials, or public members.

The US101 EL JPA could also consider contracting with an entity such as the Regional Government Service Authority (RGS) to assist in the recruitment of its direct staff, to function as the HR department, and to provide employment benefits (if CalPERs is not a preferred option). RGS is a public agency that provides administrative and other services to local governments.

Since the express lanes will not be in operation until year 2022, it is recommended that funding for initial staffing come in equal shares from TA and C/CAG.

Initial staffing functions, as described in the first three bullets under the DISCUSSION section above, could be satisfied under this model. Specifically, TA and C/CAG staff can continue to provide staffing support as they currently do for the Joint Ad Hoc Committee, until the JPA has new staff on board.

Advantages

- Maintains principle of equality between TA and C/CAG.
- Direct staff accountability to JPA, not TA or C/CAG.
- Nimble as a small agency.
- Retains flexibility in procuring services based on expertise, costs, and other relevant factors.
- Ability to match talent from member agencies with service needs in a cost-efficient manner.

The discussion of Model 2 was prepared by C/CAG staff.

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

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

WITNESSETH:

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

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

WHEREAS, C/CAG is a joint powers agency formed in 1992 pursuant to the Act by the County of San Mateo and the 20 cities and towns located in the County of San Mateo to be the responsible agency in San Mateo County to prepare and adopt the congestion management program per California Government Code Section 65089 et seq., and which develops and implements countywide plans required under additional State laws, particularly concerning transportation, air quality, storm water runoff, hazardous waste, solid waste and recycling, and serves as the Congestion Management Agency for the County of San Mateo; and

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

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

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

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

ARTICLE I

DEFINITIONS

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

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

"Agreement" means this Joint Exercise of Powers Agreement.

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

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

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

"Interest and redemption expenses" means those sums of money required to be expended by the Express Lanes JPA from any Indebtedness for the payment of principal of and interest on Indebtedness (if any) issued pursuant to this Agreement.

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

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

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

"Controller" means the Controller of the Express Lanes JPA designated pursuant to Section 4.8 of this Agreement.

"County" means the County of San Mateo, State of California.

"Expenditure Plan" means a policy document establishing the plan for use of express lane revenues to facilitate travel in the corridor where tolls are collected, as required by California Streets and Highways Code section 149.7, as it now exists and may hereafter be amended.

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

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

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

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

"Express Lanes Operations Contract" means a contract between the Express Lanes JPA and BAIFA for operating the high-occupancy toll lanes or other toll facilities, including the administration and operation of the value pricing program.

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

"Secretary" means the secretary of the Express Lanes JPA appointed pursuant to Section 4.7 of this Agreement.

"State" means the State of California.

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

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

ARTICLE II
GENERAL PROVISIONS

Section 2.1. Express Lanes JPA.

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

(b) Within thirty (30) days after the effective date of this Agreement, and after any amendment, the Express Lanes JPA must cause a notice of such Agreement or amendment to be prepared and filed with the office of the California Secretary of State containing the information required by California Government Code Section 6503.5.

(c) Within thirty (30) days after the effective date of this Agreement, and after any amendment, the Express Lanes JPA must cause a copy of such Agreement or amendment to be filed with the State Controller pursuant to California Government Code Section 6503.6.

(d) Within ten (10) days after the effective date of this Agreement, the Express Lanes JPA must cause a statement of the information concerning the Express Lanes JPA, required by California Government Code Section 53051, to be filed with the office of the California Secretary of State and with the County Clerk, amending and clarifying the facts required to be stated pursuant to subdivision (a) of Government Code Section 53051.

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

- (a) Own, manage, operate and maintain the Joint Facilities;
- (b) Implement the financing, acquisition, and construction of additions and improvements to the Joint Facilities;
- (c) Enter into and manage contracts, which may include but are not limited to the following:
 - i. the Express Lanes Operation Contract with BAIFA;
 - ii. a maintenance contract with Caltrans; and
 - iii. an enforcement contract with the California Highway Patrol;
- (c) Oversee BAIFA's operation of the facility;

(d) Make policy decisions related to the express lane operations in the County, including but not limited to setting tolls to cover costs (operating and maintaining facility; administering system; covering BAIFA contract) and setting revenue generation targets;

(e) Prepare and adopt the plan for expenditure of toll lane revenues within the corridor in which they are collected;

(f) Implement or contract for implementation of such expenditure plan;

(g) Create and implement an equity program associated with express lanes in the County, if desired; and

(h) Issue and repay Indebtedness of the Express Lanes JPA

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

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

ARTICLE III

POWERS AND OBLIGATIONS OF EXPRESS LANES JPA

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

(a) Seek, receive and administer funding from any available public or private source, including grants or loans under any available federal, state, and local programs for assistance in achieving the purposes of the Express Lanes JPA;

(b) Contract for the services of engineers, attorneys, planners, financial and other necessary consultants, and/or other public agencies;

(c) Make and enter into any other contracts;

(d) Employ agents or officers;

(e) Acquire, lease, construct, own, manage, maintain, dispose of or operate (subject to the limitations herein) any buildings, works, or improvements;

(f) Acquire, hold, manage, maintain, or dispose of any other property by any lawful means, including without limitation gift, purchase, lease, lease-purchase, license, or sale;

(g) Incur all authorized Indebtedness;

(h) Receive gifts, contributions, and donations of property, funds, services, and other forms of financial or other assistance from any persons, firms, corporations, or governmental entities; and

(i) Sue and be sued in its own name; and

(j) Seek the adoption or defeat of any federal, state, or local legislation or regulation necessary or desirable to accomplish the stated purposes and objectives of the Express Lanes JPA; and

(k) Adopt rules, regulations, policies, bylaws, and procedures governing the operation of the Express Lanes JPA;

(l) To invest any money in the treasury pursuant to California Government Code Section 6505.5 that is not required for the immediate necessities of the Express Lanes JPA, as the Express Lanes JPA determines is advisable, in the same manner and upon the same conditions as local agencies, pursuant to California Government Code Section 53601, as it now exists or may hereafter be amended;

(m) Carry out and enforce all the provisions of this Agreement; and

(n) Exercise all other powers not specifically mentioned herein, but common to the Members, and authorized by California Government Code Section 6508 as it now exists or may hereafter be amended.

Section 3.2. Specific Powers and Obligations.

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

(b) Securities. The Express Lanes JPA may use any statutory power available to it under the Act and any other applicable laws of the State of California, whether heretofore or hereinafter enacted or amended, for issuance and sale of any Bonds or other evidences of indebtedness necessary or desirable to finance the exercise of any

power of the Express Lanes JPA, and may borrow from any source including, without limitation, the federal government, for these purposes.

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

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

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

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

Section 3.3. Dissolution of Express Lanes JPA.

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

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

(c) Agreement with Successor Entity. The Express Lanes JPA cannot be dissolved until a successor entity, qualified by State law then in-effect, has agreed to (i) assume ownership of the Express Lanes JPA's Joint Facilities and other assets, (ii) provide for the assumption or discharge of the Express Lanes JPA's Indebtedness and other liabilities, and (iii) carry out all duties associated with operation and maintenance of the express lanes and management of the expenditure of the Gross Revenues. Such agreement must be expressed in a contract between the successor entity, the Express Lanes JPA, the TA and C/CAG, which may be executed only upon approval of (i) a two-thirds (2/3) vote of the TA Board of Directors, (ii) a two-thirds (2/3) vote of the C/CAG Board of Directors and only when the members voting in favor of such action represent

two-thirds (2/3) of the population of the County, and (iii) a super majority (five (5) votes) of the Express Lanes JPA Board of Directors.

ARTICLE IV

ORGANIZATION, GOVERNANCE AND FUNCTIONS OF EXPRESS LANES JPA

Section 4.1. Governing Board.

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

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

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

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

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

Section 4.2. Compensation and Expense Reimbursement.

(a) All Board members are entitled to a stipend for attending each Board meeting upon the enactment of a resolution of the Board to authorize such stipends.

(b) A Board member may waive the compensation to which he or she would otherwise be entitled under the preceding paragraph by notifying the Secretary in writing that he or she expressly and irrevocably waives any such compensation that he or she would otherwise be entitled to be paid in the future for services as a Board member. This written waiver must: (i) be voluntary; (ii) be irrevocable; (iii) expressly waive any and all future compensation to which the Board member may be entitled under this Section 4.2; (iv) acknowledge that, by waiving compensation, the Board member understands he or she is not entitled to any compensation he or she would otherwise be eligible to receive pursuant to this Section 4.2; (v) acknowledge that the amount of the waived compensation will be retained in the Express Lane JPA's general assets; and (vi) be dated and signed by the Board Member and filed with the Secretary before the compensation is paid. The Secretary must retain the original copy of a Board member compensation waiver in accordance with a record retention policy established by the Board in full accordance with all applicable statutory requirements.

(c) Each Board member will be reimbursed for reasonable and necessary expenses actually incurred in the conduct of the Managed Lane JPA's business, pursuant to an expense reimbursement policy established by the Board in full accordance with all applicable statutory requirements.

Section 4.3. Conflicts of Interest.

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

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

Section 4.4. Board Meetings

(a) Time and Place. The Board will meet quarterly, or more often as needed, at [REDACTED], or at such other place designated by the Board if notice is provided in the manner of notice of an adjourned meeting under the Ralph M. Brown Act, California Government Code Section 54950 et seq. The date, time and place of regular meetings of the Board will be designated on a meeting calendar adopted by the Board each year.

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

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

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

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

Section 4.5. Voting.

- (a) All actions of the Board will require five (5) Board members to be present for voting.
- (b) Except as set forth in paragraph (c), below, actions of the Board require the affirmative vote of at least four (4) Board members. Board members may not cast proxy or absentee votes. Each member will have an equal vote.
- (c) Adoption or amendment of an Expenditure Plan requires the affirmative vote of at least five (5) Board members.

Section 4.6. Officers.

- (a) The Board will elect a Chair and Vice-Chair from among its members, and will appoint a Secretary who may, but need not, be a member of the Board. The Chair and Vice Chair will serve one-year terms and must be appointees of different Members. The Chair and Vice Chair positions must be held by appointees of alternating Members in alternating years (e.g., in Year 1, one of Member A's appointees will be the Chair and one of Member B's appointees will be the Vice Chair; the opposite will be true in Year 2). This rotation and the term of office may be altered as designated in rules or bylaws established by the Board. The officers will perform the duties normal to said offices as described below. If the Chair or Vice Chair ceases to be a member of the Board, the resulting vacancy will be filled at the next meeting of the Board held after each vacancy occurs.
- (b) Chair. The Chair will preside over all meetings of the board and will sign all contracts on behalf of the Express Lanes JPA, except contracts that the Board may authorize an officer or agent, or employee of the Express Lanes JPA to sign. The Chair will perform such other duties as may be imposed by the Board in accordance with law and this Agreement.
- (c) Vice-Chair. The Vice-Chair will act, sign contracts, and perform all of the Chair's duties in the absence of the Chair.
- (d) Secretary. The Secretary must countersign contracts signed on behalf of the Express Lanes JPA, and will be the official custodian of all records of the Express Lanes JPA. The Secretary will attend to such filings as required by applicable law. The Secretary will perform such other duties as may be imposed by the Board.

Section 4.7. Auditor/Controller and Treasurer. The [redacted] [is / are hereby respectively] designated as the Auditor/Controller and Treasurer of the Express Lanes JPA. The Treasurer will be the depositary and will have custody of all of the accounts, funds, and money of the Express Lanes JPA from whatever source. The Auditor/Controller and the Treasurer will perform the duties and functions, assume the obligations and authority set forth in Sections 6505, 6505.5 and 6505.6 of the Act, and assure strict accountability of all funds and reporting of all receipts and disbursements of the Express Lanes JPA. The Board may appoint other persons possessing the

qualifications set forth in Section 6505.5 of the Act to either or both of these offices with the approval of all Members.

Section 4.8. [[STAFFING – include reference to California Streets & Highways Code section 149.7 responsibilities, e.g., administrative cost 3% limitation]]

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

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

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

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

ARTICLE V

OPERATIONS AND FACILITIES

Section 5.1. Principal Office. The principal office of the Express Lanes JPA will initially be [REDACTED]. The Express Lanes JPA may establish another principal office from time to time by resolution of the Board.

Section 5.2. Assumption of Responsibilities by the Express Lanes JPA. As soon as practicable after the date of this Agreement, the Members must appoint their representatives to the Board. At its first meeting, the Board will elect a Chair and Vice-Chair, and appoint a Secretary as prescribed in Article IV.

Section 5.3. Delegation of Powers; Transfer of Records, Accounts, Funds and Property. Each of the Members hereby delegates to the Express Lanes JPA the power and duty to maintain, operate, manage, and control the Joint Facilities, as they may be expanded from time to time, and revenues generated by express lanes in the County.

Section 5.4. Joint Facilities Costs, Reserves and Capital. Upon the organization of the Board, the Express Lanes JPA will assume financial responsibility for the improvement, alteration, maintenance, and operation of the Joint Facilities and will pay all contractual and administrative expenses of the Express Lanes JPA. Once revenues are generated by express lanes in the County, the Express Lanes JPA will establish reasonable reserves and undertake appropriate capital projects to maintain the Joint Facilities. The Members acknowledge that the Express Lanes JPA likely will be required to incur Indebtedness for contractual and administrative expenses before and after express lanes are operational.

ARTICLE VI

BUDGET AND OTHER FINANCIAL PROVISIONS

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

Section 6.2 Annual Budget. The Express Lanes JPA will adopt an annual budget for each fiscal year. Once the Express Lanes JPA's first annual budget is adopted, no expenditures may be made by or on behalf of the Express Lanes JPA unless authorized by a budget or budget amendment.

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

Section 6.5. Disbursements. Warrants will be drawn upon the approval and written order of the Board, and the Board will requisition the payment of funds only upon approval of claims, disbursements, and other requisitions for payment in accordance with

this Agreement and other rules, regulations, policies and procedures adopted by the Board.

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

ARTICLE VII

MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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