

**APPENDIX B**  
**SAMPLE AGREEMENT**  
**BETWEEN**  
**SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY**  
**AND (CONSULTANT NAME)**  
**FOR CONDUCTING AN ORGANIZATIONAL ASSESSMENT**  
**OF THE SAN MATEO COUNTY EXPRESS LANE JOINTS POWERS AUTHORITY**

This Agreement entered this \_\_\_\_ day of \_\_\_\_\_ 20XX, by and between the San Mateo County Express Lanes Joint Powers Authority hereinafter called “SMCEL-JPA” and (Name of Company), hereinafter called “Consultant”.

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

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

**WHEREAS**, the JEPA created the San Mateo County Express Lanes Joint Powers Authority, a joint powers agency to: apply to the California Transportation Commission in order to own, administer, and manage the operations of the San Mateo County Express Lanes; to share in the ownership, administration, and management of any potential future express lanes within San Mateo County; to set forth the terms and conditions governing the management, operation, financing, and expenditure of revenues generated by express lanes in San Mateo County; and to exercise the powers as provided by law (including but not limited to California Streets and Highways Code Section 149.7, as it now exists and may hereafter be amended); and

**WHEREAS**, the San Mateo US 101 Express Lanes are fully operational and it is the desire of the SMCEL-JPA Board to assess the current organizational and operational practices of the SMCEL-JPA to determine the ideal organizational and staffing structure to efficiently and effectively implement the vision, mission, and goals of the Express Lanes Program.; and

**WHEREAS**, the Board of the SMCEL-JPA desires to retain a Consultant to perform said Scope of Work set forth in Attachment A; and

**WHEREAS**, the Consultant represents that it is able to provide said services as described in Attachment A; and

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

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

1. Consultant shall provide the following services set forth in Attachment A (SCOPE OF WORK). In addition, and as needs are identified, the SMCEL-JPA Board will present the Consultant with a proposed amendment for any additional work or specific task/s not listed in Attachment A and request a cost proposal. The Consultant will provide the SMCEL-JPA with a cost proposal for the additional specific task applying the billing rates set forth in Attachment B (KEY PERSONNEL HOURLY RATES), also attached hereto.

The specific work scope and payment may be negotiated between the parties and a final task order defining cost and schedule ("Task Order") will be prepared for execution. The SMCEL-JPA Board must approve the Task Order before it becomes effective and Consultant shall perform the Task Order work for the cost specified therein. Consultant shall provide services consistent with Attachment A, herein incorporated by references, and with specific Scopes of Services to be contained in the Task Order issued under this Agreement.

2. **Compensation and Method of Payments.** Subject to duly executed amendments, the SMCEL-JPA will pay Consultant for its services as described in the Attachment A and duly executed Task Order/s a total amount, including (as applicable) labor, supervision, and applicable surcharges such as taxes, insurance, and fringe benefits, indirect costs, overhead, profit, sub-Consultants' costs (including mark-up), travel, equipment, materials and supplies, expenses and any fixed fee. OR on a time and materials basis, with rates based on Attachment B including (as applicable) surcharges such as taxes, insurance, and fringe benefits, indirect costs, overhead, profit, sub-consultants' costs (including mark-up), travel, equipment, materials and supplies, expenses and any fixed fee. However, at no point should the total compensation for all Task orders be more than the Not to Exceed Amount of (in words and in \$ figures) .

It is understood, and agreed, that there is no guarantee, either expressed or implied, that the Not to Exceed Amount will be authorized under this contract through task orders. Payments shall be made to Consultant monthly, based on an invoice submitted by Consultant that has been reviewed and approved by an Executive Council member and identifies expenditures and describes services performed in accordance with the Task Order. The SMCEL-JPA shall have the right to receive, upon request, documentation substantiating charges billed to the SMCEL-JPA.

All invoices and/or requests for payments shall be submitted to:

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

3. **Key Personnel.** The key personnel to be assigned to this contract by Consultant, their hourly rates, and the estimated hours to be supplied by each, are set forth in Attachment B, attached hereto and incorporated herein by this reference. Substitution of any key personnel named in Attachment B or decrease in the hours provided to the project by such key personnel will

require the prior written approval of the SMCEL-JPA Board. Any substitution shall be with a person of commensurate knowledge and experience, unless otherwise approved by the SMCEL-JPA. Consultant shall maintain records documenting compliance with this Article, and such records shall be subject to audit. Consultant agrees that all personnel assigned to this work will be professionally qualified for the assignment to be undertaken. SMCEL-JPA reserves the right to direct removal of any individual, including key personnel, assigned to this work.

4. **Amendments.** SMCEL-JPA reserves the right to request changes in the services to be performed by Consultant. All such changes shall be incorporated in written amendments that specify the changes in work to be performed and any adjustments in compensation and schedule. All amendments shall be executed by an Executive Council of SMCEL-JPA and Consultant, and specifically identified as amendments to this Agreement. Either of the two SMCEL-JPA Executive Councils are designated as representative of the SMCEL-JPA Board, for purposes of approving an amendment.
5. **Relationship of the Parties.** It is understood that Consultant is an Independent Contractor and this Agreement is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of Independent Contractor. Consultant has no authority to contract or enter into any agreement without the prior approval of the SMCEL-JPA Board. Consultant has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by Consultant who are assisting in the performance of services under this Agreement. Consultant shall be fully responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. Consultant shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.
6. **Non-Assignability.** Consultant shall not assign this Agreement or any portion thereof to a third party without the prior written consent of the SMCEL-JPA
7. **Period of Performance.** Consultant's services hereunder shall commence on the date of execution of this agreement, and shall be in effect until all tasks have been completed in a timely manner, unless terminated by the SMCEL-JPA Board at any time for any reason by providing 30 days' notice to Consultant. Termination to be effective on the date specified in the notice. In the event of termination under this paragraph, Consultant shall be paid for all services provided to the date of termination.
8. **Hold Harmless/ Indemnity.** Consultant shall indemnify and hold harmless the SMCEL-JPA, its board members, agents, officers, and employees from both C/CAG and the TA involved the project, against all claims, suits or actions to the extent caused by the negligence, errors, acts or omissions of the Consultant, its agents, sub-consultants, officers or employees related to or resulting from the performance, or non-performance, under this Agreement.

The duty to indemnify and hold harmless as set forth herein shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

**9. Insurance and Financial Security Requirements**

Consultant shall, at its own expense, obtain and maintain in effect at all times for the duration of this Agreement the types of insurance and financial security listed in Attachment C, Insurance and Financial Security (Bond) Provisions, attached hereto and incorporated herein, against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement. All policies will be issued by insurers acceptable to the SMCEL-JPA, generally with a Best's Rating of A- or better with a Financial Size Category of VIII or better.

Consultant or its sub-consultants performing the services on behalf of Consultant shall not commence work under this Agreement until all insurance required under this section has been obtained. Consultant shall furnish the SMCEL-JPA with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending the Consultant's coverage to include the contractual liability assumed by Consultant pursuant to this Agreement. These Certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the SMCEL-JPA of any pending change in the limits of liability or of non-renewal, cancellation, or modification of the policy.

**Workers' Compensation and Employer Liability Insurance:** The Consultant shall have in effect, during the entire life of this Agreement, Workers' Compensation and Employer Liability Insurance providing full statutory coverage.

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

Required insurance shall include:	Required Amount
a. Comprehensive General Liability	\$ 1,000,000
b. Workers' Compensation	\$ Statutory

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

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

10. **Non-discrimination.** The Consultant and any subconsultants performing the services on behalf of the Consultant shall not discriminate or permit discrimination against any person or group of persons on the basis of race, color, religion, national origin or ancestry, age, sex, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status, or in any manner prohibited by federal, state or local laws.
11. **Compliance with All Laws.** Consultant shall at all times comply with all applicable laws and regulations, including without limitation those regarding services to disabled persons, including any requirements of Section 504 of the Rehabilitation Act of 1973.
12. **Sole Property of the SMCEL-JPA:** Work products of Consultant which are delivered under this Agreement or which are developed, produced and paid for under this Agreement, shall be and become the sole property of the SMCEL-JPA. Consultant shall not be liable for the SMCEL-JPA's use, modification or re-use of products without Consultant's participation or for purpose other than those specifically intended pursuant to this Agreement.
13. **Access to Records.** The SMCEL-JPA, or any of their duly authorized representatives, shall have access to any books, documents (including electronic), emails, papers, videos voice recording, and records of Consultant, which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions. The Consultant shall maintain all required records for three years after the SMCEL-JPA makes final payments and all other pending matters are closed.
14. **Merger Clause.** This Agreement, including all Attachments are hereto added and incorporated herein by reference, constitutes the sole agreement of the parties hereto with regard to the matters covered in this Agreement, and correctly states the rights, duties and obligations of each party as of the document's date. Any prior agreement, promises, negotiations or representations between the parties not expressly stated in this Agreement are not binding. All subsequent modifications shall be in writing and signed by the SMCEL-JPA Exec. Council. In the event of a conflict between the terms, conditions or specifications set forth herein and those in Attachment A attached hereto, the terms, conditions or specifications set forth herein shall prevail.
15. **Governing Law.** This Agreement shall be governed by the laws of the State of California, without regard to its choice of law rules, and any suit or action initiated by either party shall be brought in the County of San Mateo, California.
16. **Notices.** All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid and addressed as follows:

San Mateo County Express Lanes Joint Powers Authority  
555 County Center, 5th Floor  
Redwood City, CA 94063  
Attention: Sean Charpentier – Executive Council

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

Name of Person  
Title  
CONSULTANT NAME  
Address

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

**NAME of Consultant (Consultant)**

By: \_\_\_\_\_  
Authorized Person to sign – Title

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

By: \_\_\_\_\_  
Alicia Aguirre - Chair

\_\_\_\_\_ Date

Approved as to form:

By: \_\_\_\_\_  
Timothy Fox, SMCEL-JPA Legal Counsel

\_\_\_\_\_ Date

**Attachment A**  
(SCOPE of WORK)

**Attachment B**  
(KEY PERSONNEL HOURLY RATES)

Hourly billing rates for CONSULTANT Corporation (Consultant), are included on the following pages:

SAMPLE



**Attachment C**

**INSURANCE AND FINANCIAL SECURITY (BOND) PROVISION**

SAMPLE