

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

Meeting No. 13

DATE: Friday, July 17, 2020

TIME: 10:00 A.M.

Join by Zoom:

<https://us02web.zoom.us/j/84830838292?pwd=TFFYb2lGc3pxS2hwUIViZ2s2UnRIUT09>

Meeting ID: 848 3083 8292

Password: 522782

Join by Phone:

(669) 900-6833

Meeting ID: 848 3083 8292

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

On March 17, 2020, the Governor issued Executive Order N-29-20 suspending certain provisions of the Ralph M. Brown Act in order to allow for local legislative bodies to conduct their meetings telephonically or by other electronic means. Pursuant to the Shelter-in-Place Order issued by the San Mateo County Health Officer effective March 17, 2020, which was expanded and extended on March 31, 2020 and April 29, 2020, the statewide Shelter-in-Place Order issued by the Governor in Executive Order N-33-20 on March 19, 2020, and the CDC's social distancing guidelines, which discourage large public gatherings, SMCEL-JPA meetings 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 mguilles@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 Approval of the minutes of Board of Directors regular business meeting No. 12 dated June 12, 2020. ACTION p. 1

4.2 Accept the Statement of Revenues and Expenditures for the Period Ending May 31, 2020 ACTION p. 6

5.0 REGULAR AGENDA

5.1 Review and approval of Resolution SMCEL 20-10 establishing a Debt Policy. ACTION p. 8

5.2 Review and approval of Resolution SMCEL 20-11 authorizing the SMCEL-JPA Chair to execute the US-101 Express Lanes Project Loan Agreement between the San Mateo County Express Lane Joint Powers Authority (SMCEL-JPA) and the San Mateo County Transportation Authority (SMCTA) for up to \$100 million. ACTION p. 34

5.3 Review and approval of Resolution SMCEL 20-12 and Resolution SMCEL 20-13 authorizing the SMCEL-JPA Chair to execute the First Amendments of the Cooperative Funding Agreements (Operating Loan) with the City/County Association of Governments of San Mateo County (C/CAG) and the San Mateo County Transportation Authority (SMCTA), for \$917,244 and \$1,270,463, respectively. ACTION p. 81

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

August 14, 2020

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 Transit District Office, 1250 San Carlos Ave., San Carlos, CA.

PUBLIC RECORDS: Public records that relate to any item on the open session agenda for a regular Board meeting, standing committee meeting, or special meeting are available for public inspection. Those public records that are distributed less than 72 hours prior to a regular Board meeting are available for public inspection at the same time they are distributed to all members, or a majority of the members, of the Board. The Board has designated the location of 555 County Center, 5th 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 Guilles at mguilles@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 Guilles 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 mguilles@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 SMCEL-JPA Board members, and read aloud by SMCEL-JPA staff during the meeting. 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." 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 Guilles, Secretary - (650) 599-1406

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

Meeting No. 12
June 12, 2020

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

1.0 CALL TO ORDER/ ROLL CALL

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

Members Present:

C/CAG Members:

Alicia Aguirre, Maryann Moise Derwin, Diane Papan

SMCTA Members:

Rico Medina, Emily Beach

Members Absent:

Done Horsley

Staff Present:

Sandy Wong – Executive Council

Jim Hartnett – Executive Council

Mima Guilles – Secretary

Tim Fox – Legal Counsel

Matthew Click – Program/Policy Manager for SMCEL JPA, HNTB

Sean Charpentier, Van Ocampo – C/CAG staff supporting SMCEL JPA

Joe Hurley, April Chan, Derek Hansel – TA staff supporting SMCEL JPA

Other members of the public were in attendance.

2.0 BRIEF OVERVIEW OF TELECONFERENCE MEETING PROCEDURES

Sandy Wong, Executive Council member, provided overview of the teleconference 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.

In accordance with the agenda for this meeting, 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, were asked to submit comments in writing to mguilles@smcgov.org. Mima Guilles, Secretary, reported there were no written public comments received. Spoken public comments during the meeting through Zoom were also accepted. Drew made a public comment as part of this agenda item thanking the convenience for making public comments during the meeting.

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.

Director Medina MOVED approval of Items 4.1, 4.2 and 4.3. Director Beach SECONDED. Roll call was taken. **MOTION CARRIED 5-0-0**

- 4.1 Approval of the minutes of Board of Directors regular business meeting No. 11 dated May 8, 2020. APPROVED
- 4.2 Accept the Statement of Revenues and Expenditures for the Period Ending April 30, 2020. APPROVED
- 4.3 Review and approval of Resolution SMCEL 20-07 authorizing the San Mateo County Express Lanes Joint Powers Authority Chair to execute Amendment No. 1 to the Agreement with the Office of County Counsel of San Mateo County for general legal services for Fiscal Year 2020-21 for an amount not to exceed \$60,000. APPROVED

5.0 REGULAR AGENDA

- 5.1 Review and approval of Resolution SMCEL 20-08 authorizing the Chair to execute the First Amended and Restated Cooperative Agreement between the Bay Area Infrastructure Financing Authority (BAIFA), San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA), San Mateo County Transportation Authority (SMCTA) and City/ County Association of Governments of San Mateo County (C/CAG). APPROVED

Van Ocampo, C/CAG staff supporting the SMCEL JPA, provided a summary of the First Amended and Restated Cooperative Agreement between the Bay Area Infrastructure Financing Authority (BAIFA), San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA), San Mateo County Transportation Authority (SMCTA) and City/ County Association of Governments of San Mateo County (C/CAG) that includes the installation, testing and implementation of the toll system for the San Mateo County US 101 Express Lanes Project.

Director Derwin **MOVED** to approve item 5.1. Director Medina **SECONDED**. Roll call was taken. **MOTION CARRIED 5-0-0**

- 5.2 Public Hearing: Approval of Resolution SMCEL 20-09 adopting the Fiscal Year 2021 SMCEL-JPA Budget in the amount of \$2,187,707. **APPROVED**

Chair Aguirre announced the opening of the Public Hearing for the purpose of considering the adoption of the Fiscal Year 2021 budget of the San Mateo County Express Lanes Joint Powers Authority. Chair Aguirre asked the Clerk of the Board, Mima Guilles, to provide a brief background on the hearing. Mima Guilles provided an overview of the procedure and notification for the adoption of the Budget.

Derek Hansel, Chief Financial Officer, presented the proposed Fiscal Year 2021 Budget.

Mima Guilles noted that no written communication or emails were received prior to the meeting, and there were no raised hands on Zoom.

Tim Fox, Legal Counsel, provided a brief summary and description of the action required to hold a public hearing.

Director Papan **MOVED** to close the public hearing. Director Beach **SECONDED**. Roll call was taken. **MOTION CARRIED 5-0-0**

Director Papan **MOVED** to approve Resolution SMCEL 20-09 adopting the Fiscal Year 2021 JPA Budget in the amount of \$2,187,707. Director Derwin **SECONDED**. Roll call was taken. **MOTION CARRIED 5-0-0**

- 5.3 San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) Board of Directors election of a Chair and a Vice-Chair to serve one-year terms, effective July 1, 2020.

APPROVED

Chair Aguirre nominated Vice-Chair Horsley as Chair. Director Medina **SECONDED**. Roll call was taken. **MOTION CARRIED 5-0-0**

Director Derwin nominated Director Papan as Vice-Chair. Director Beach **SECONDED**. Roll call was taken. **MOTION CARRIED 5-0-0**

Director Beach thanked Chair Aguirre for her great leadership as Chair.

6.0 REPORTS

- a) Chairperson Report.

None.

- b) Member Communication.

Director Papan asked for clarification as to when will there be discussion on the \$100 million capital loan and the Ad Hoc Finance Committee's effort thus far.

Sandy Wong, Executive Council Member, noted that a brief update will be provided as part of the Executive Council Report.

c) Executive Council Report - Executive Council Verbal Report

Sandy Wong thanked Chair Aguirre for her great leadership in leading SMCEL-JPA organization in its inaugural year.

Regarding the \$100 million capital loan, the Ad Hoc Finance Committee has met several times and discussed some of the loan's key terms. Staff are close to having those key terms agreed upon and anticipate a Loan Agreement will be ready for the SMCEL-JPA July meeting.

Jim Harnett, Executive Council Member, reported that he and Sandy Wong provided a joint recommendation on key loan terms at the last Ad Hoc Finance Committee meeting.

Director Papan emphasized the high level of collaboration and that significant progress has been made.

Director Beach concurred with Director Papan, thanked staff for their work, and noted that the agreement will reflect the comments from both the SMCEL-JPA and TA Boards.

Sandy Wong thanked Ad Hoc Finance Committee Members for their efforts, leadership, and attention to detail.

Jim Hartnett thanked the Ad Hoc Finance Committee Members for their hard work and thanked Chair Aguirre for her service during a productive first year.

Drew, a Member of Public, commented that related to the Loan Agreement, language should be added that clarifies that part of the excess revenue could be used to fund other transportation projects in the corridor.

d) Policy/Program Manager Report.

Mathew Click, Program/Policy Manager for SMCEL-JPA, reported on the status of the equity study. A technical workshop was held with the JPA staff, the Policy/Program Manager, and the equity consultant team to begin of the alignment around data tools and methods for the technical analysis. The Equity Study Advisory Committee (ESAC) invitation letter will be sent out to the 22 potential members who represent municipalities along the corridor, advocacy entities, and other sister express lane agencies. The plan is to have the first of six ESAC meetings in late July.

7.0 WRITTEN COMMUNICATIONS

- 7.1 Letter from EideBailly, CPAs & Business Advisors, to the Governing Board of San Mateo County Express Lanes Joint Power Authority, dated 4/20/20, regarding the engagement to audit the financial statements of San Mateo County Express Lanes Joint Power Authority (JPA).

8.0 NEXT REGULAR MEETING

July 10, 2020

9.0 ADJOURNMENT – 9:33 a.m.

San Mateo County Express Lanes Joint Power Authority
Agenda Report

Date: July 17, 2020

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

From: Executive Council

Subject: Accept the Statement of Revenues and Expenditures for the Period Ending May 31, 2020
(For further information, contact Derek Hansel, CFO, at 650-508-6466)

RECOMMENDATION

That the SMCEL-JPA Board accept and enter into the record the Statement of Revenues and Expenditures for the Period Ending May 2020.

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

BACKGROUND

Year to Date Revenues: As of May year-to-date, the Total Revenue is \$250,000, which represents the first installment of the loan amount under the two operating loan agreements between the SMCEL-JPA, the San Mateo County Transportation Authority and the City/County Association of Governments.

Year to Date Expenditures: As of April year-to-date, the Total Expenditures are \$639,390. Major expenses are in Staff Support \$308,286, Administrative Overhead \$49,165 and Consultant \$239,199.

Budget Amendment:

There are no budget amendments for the month of May 2020.

ATTACHMENT

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

SAN MATEO COUNTY EXPRESS LANE JPA
STATEMENT OF REVENUES AND EXPENDITURES
Fiscal Year 2020
May 2020

	ACTUAL		BUDGET
	7/1/2019 To 5/30/2020	TOTAL SINCE INCEPTION	ADOPTED BUDGET
REVENUES:			
Advance from San Mateo County Transportation Authority and City/County Association of Governments of San Mateo County			
1	250,000	250,000	1,744,911
2	250,000	250,000	1,744,911
EXPENDITURES:			
3	308,286	308,286	610,276
4	49,165	49,165	53,635
5	-	-	3,000
6	377	377	3,000
7	-	-	5,000
8	23,558	23,558	50,000
9	239,199	239,199	880,000
10	5,384	5,384	-
11	13,421	13,421	140,000
12	639,390	639,390	1,744,911
13	(389,390)	(389,390)	-
14	-	-	-
15	(389,390)	(389,390)	-

San Mateo County Express Lanes Joint Powers Authority AGENDA REPORT

Date: July 17, 2020

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

From: SMCEL-JPA Executive Council

Subject: Review and approval of Resolution SMCEL 20-10 establishing a Debt Policy

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

RECOMMENDATION

That the SMCEL-JPA Board review and approve Resolution SMCEL 20-10 establishing a Debt Policy.

FISCAL IMPACT

There is no fiscal impact associated with establishing a Debt Policy.

SOURCE OF FUNDS

NA

BACKGROUND

The SMCEL-JPA was created as a Joint Powers Authority by C/CAG and SMCTA effective June 1, 2019. The Joint Exercise of Powers Agreement for the San Mateo County Express Lanes (JEPA) was approved by City/County Association of Governments of San Mateo County (C/CAG) and the San Mateo County Transportation Authority (SMCTA) in June 2019. Sections 2.2(h) and 3.1(g) of the JEPA authorize the SMCEL-JPA to incur indebtedness.

The San Mateo County 101 Express Lane Project (Project) requires a \$100 million loan (Capital Loan) from the SMCTA for construction costs. The SMCTA will issue up to \$100 million in variable-rate bonds and loan the funds to the Project, and be paid back by toll revenues after the Project is in operation. To officially document payback terms and conditions and to establish commitments on how future toll revenues will be spent, the SMCTA and the SMCEL-JPA have negotiated a loan agreement for the Capital Loan and will present the item at the July Board meetings.

California Government Code Section 8855 requires all local governments establish a Debt Policy prior to issuing debt, typically in the form of bonds. The SMCTA approved a Debt Policy in February 2020.

The Debt Policy will govern the methods by which the SMCEL-JPA issues debt obligations (“Debt”) and the internal controls over the issuance of the Debt. The SMCEL-JPA will not be able to consider issuing bonds until the Express Lanes are operational and generating revenue. However, California Government Code Section 8855 (i)(2) also specifies that when a public agency issues debt for another

governmental entity, the borrowing agency can adopt key components of a Debt Policy. Therefore, as a condition of making the Capital Loan, the SMCTA is requiring the SMCEL-JPA to adopt a Debt Policy substantially in the form attached.

ANALYSIS

Staff recommend adoption of a Debt Policy at this time because the SMCTA is issuing up to \$100 million in bonds to loan the funds to the Project for construction costs, and that the SMCEL-JPA is committing future toll revenues to payback the SMCTA. The Debt Policy is to meet the condition imposed by the SMCTA with respect to the adoption of a Debt Policy as described above.

Staff have prepared a Debt Policy. See Exhibit A of Attachment 1.

ATTACHMENTS

1. Resolution SMCEL 20-10
 - a) Exhibit A SMCEL-JPA Debt Policy

RESOLUTION SMCEL 20-10

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY (SMCEL-JPA), ESTABLISHING A DEBT POLICY FOR FUTURE OBLIGATIONS

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

WHEREAS, the Legislature of the State of California (the “State”) has adopted S.B. 1029 (“S.B. 1029”), amending Section 8855 of the Government Code of the State, and effective in part as of January 1, 2017, which, among other things, requires local agencies within the State, such as SMCEL-JPA, to establish and implement a formal policy governing the methods by which the SMCEL-JPA issues debt obligations (“Debt”) and the internal controls over the issuance of the Debt; and

WHEREAS, the Board has caused to be drafted a form of such a policy (the “Debt Policy”), a form of which is appended to this Resolution as Exhibit A and incorporated herein by this reference; and

WHEREAS, the Board hereby determines the Debt Policy proposed to be implemented for all future Debt issuances of SMCEL-JPA meets all the requirements of S.B. 1029 and ensures the greatest possible degree of transparency for the public as to any kind of Debt transaction obligating SMCEL-JPA; and

WHEREAS, the Board hereby determines that the Debt Policy shall be effective for all Debt issuances approved by the Board following the effective date of this Resolution, which shall occur upon the majority vote of the Directors of the Board.

NOW, THEREFORE, BE IT RESOLVED by the San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) as follows:

Section 1. The foregoing recitals are true and correct.

Section 2. The form of Debt Policy attached hereto as Exhibit A shall be in effect, and staff is hereby directed to comply therewith, for all future issuances of Debt approved by the Board following the effective date of this Resolution; provided, however, that staff may review the Debt Policy and report to the Board any suggested amendments to the Debt Policy, based either upon further State legislative action or upon staff experience in implementing the Debt Policy. In the event such recommendations are made to the Board, the Board reserves the right to approve or decline to approve such amendments; any amendments will be made by further Resolution of the Board.

Section 3. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED, AND ADOPTED, THIS 17TH DAY OF JULY, 2020.

Don Horsley, Chair

Exhibit A

DEBT POLICY

(See attachment)

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

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SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY

DEBT POLICY

Dated as of January __, 2020

I. Purpose

The purpose of this Debt Policy (the "Debt Policy") is to establish comprehensive guidelines for the issuance and management of debt, loan agreements, and related obligations (herein referred as "Debt") issued or entered into by the San Mateo County Express Lanes Joint Powers Authority (the "Issuer" or the "Authority"). This Debt Policy is intended to help ensure that: (i) the Issuer, the governing body of the Issuer (the "Board of Directors" or the "Board"), and Issuer management and staff adhere to sound debt issuance and management practices; (ii) the Issuer achieves the most advantageous cost of capital within prudent risk parameters; (iii) the Issuer preserves future financial flexibility; and (iii) the Issuer establishes reasonable credit ratings, when necessary and enhances the credit ratings assigned to its debt over time.

II. Scope of Debt Policy

This Debt Policy shall provide guidance for the issuance and management of bonds and other forms of indebtedness of the Issuer, together with any credit, liquidity and other ancillary instruments and agreements secured or executed in connection with such transactions. While adherence to this Debt Policy is recommended in applicable circumstances, the Issuer recognizes that changes in the capital markets, Issuer programs and other unforeseen circumstances may produce situations that are not covered by the Debt Policy or require modifications or exceptions to achieve Debt Policy goals. In these cases, management flexibility is appropriate, provided specific authorization from the Board is obtained. The Issuer may approve Debt and other related agreements the terms or provisions of which deviate from this Debt Policy, upon the recommendation and approval of the Chief Financial Officer of the Issuer (the "Chief Financial Officer") as circumstances warrant. The failure by the Issuer to comply with any provision of this Debt Policy shall not affect the validity of any Debt that is otherwise duly authorized and executed.

The Chief Financial Officer is the designated administrator of the Debt Policy. The Chief Financial Officer shall have the day-to-day responsibility and authority for structuring, implementing and managing the Issuer's debt and financing program. The Board can decide to rely upon a separate legal and financial advisory team for specific transactions at its discretion.

The Debt Policy requires that each debt issuance be specifically authorized by the Board of Directors.

III. Legal Authority; Compliance with Laws, Resolutions, Debt Documents and Contracts

A) Legal Authority

The Issuer has exclusive authority to plan and issue Debt for Issuer related purposes, subject to approval by the Board of Directors.

B) Compliance with Law

All Debt of the Issuer shall be issued in accordance with applicable Federal and State laws, rules and regulations, including without limitation the Internal Revenue Code of 1986 (the "Code") with respect to the issuance of tax-exempt Debt, the Securities Act of 1933 and the Securities Exchange Act of 1934, in each case as supplemented and amended, and regulations promulgated pursuant to such laws.

C) Compliance with Issuer Resolutions and Debt Documents

Debt of the Issuer shall be issued in accordance with applicable resolutions and debt documents of the Issuer, in each case as supplemented and amended.

D) Compliance with Other Agreements

Debt of the Issuer shall be issued in compliance with any other agreements of the Issuer with credit or liquidity providers, bond insurers or other third parties.

E) Compliance with SB 1029

This Debt Policy complies with California Senate Bill 1029 (2016). The following paragraph cross-references the debt policy requirements of SB 1029 with the relevant sections of this policy.

- 1) Cal. Gov. Code Section 8855(i)(1)(A): The purposes for which the debt may be used. See Section V: Purposes for Debt.
- 2) Cal. Gov. Code Section 8855(i)(1)(B): The types of debt that may be issued. See Section VI: Types of and Limitations on Debt.
- 3) Cal. Gov. Code Section 8855(i)(1)(C): The relationship of the debt to, and integration with, the issuer's capital improvement program or budget. See Section XV: Budgeting and Capital Planning.
- 4) Cal. Gov. Code Section 8855(i)(1)(D): Policy goals related to the issuer's planning goals and objectives. See Section I: Purpose.
- 5) Cal. Gov. Code Section 8855(i)(1)(E): The internal control procedures that the issuer has implemented, or will implement, to ensure that the proceeds of the

proposed debt issuance will be directed to the intended use. See Section IV: Administration of Debt Policy.

IV. Administration of Debt Policy

A) Issuer

The Issuer shall be responsible for:

- 1) Approval of the issuance of all Debt and the terms and provisions thereof;
- 2) Appointment of municipal advisors, bond counsel, disclosure counsel, Issuer consultants, underwriters, feasibility consultants, trustee and other professionals retained in connection with the issuance of Debt;
- 3) Approval of this Debt Policy and any supplements or amendments;
- 4) Periodic approval of the Issuer's expenditure plans;
- 5) Periodic approval of proposed Issuer annual and supplemental budgets for submission to the Board of Directors, including without limitation provisions for the timely payment of principal of and interest on all Debt; and
- 6) Maintaining internal control procedures with respect to Debt proceeds. Debt proceeds will be held either by a third-party trustee, which will disburse such proceeds to the Issuer upon the submission of one or more written requisitions, or by the Issuer to be held and accounted for in a separate fund or account, the expenditure of which will be carefully documented by the Issuer.

B) Chief Financial Officer

The Chief Financial Officer shall have responsibility and authority for the structure, issuance and management of the Issuer's Debt and financing programs.

The Board can decide to rely upon a separate legal and financial advisory team for specific transactions at its discretion.

These responsibilities shall include, but not be limited to, the following:

- 1) Determining the appropriate structure and terms for all proposed debt transactions;
- 2) Undertaking to issue Debt at the most advantageous interest and other costs consistent with prudent levels of risk;

- 3) Ensuring compliance of any proposed Debt with any applicable additional debt limitations under State law, or the Issuer's Debt Policy, resolutions and debt documents;
- 4) Seeking approval from the Board of Directors for the issuance of Debt or other debt obligations;
- 5) Coordinating with other public agencies in connection with necessary approvals associated with Debt issuance;
- 6) Recommending to the Board of Directors the manner of sale of any Debt or other debt transactions;
- 7) Monitoring opportunities to refund outstanding Debt to achieve debt service savings, and recommending such refunding to the Board, as appropriate;
- 8) Providing for and participating in the preparation and review of all legal and disclosure documents in connection with the issuance of any Debt by the Issuer;
- 9) Recommending the appointment of municipal advisors, bond counsel, disclosure counsel, Issuer consultants, underwriters, feasibility consultants and other professionals retained in connection with the Issuer's debt issuance as necessary or appropriate;
- 10) Distributing information regarding the business operations and financial condition of the Issuer to appropriate bodies on a timely basis in compliance with any applicable continuing disclosure requirements;
- 11) Communicating regularly with the rating agencies, bond insurers, investment providers, institutional investors and other market participants related to the Issuer's Debt; and
- 12) Maintaining a database with summary information regarding all of the Issuer's outstanding Debt and other debt obligations.

C) Procedures for Approval of Debt

Any proposed issuance of Debt by the Issuer shall be submitted to and subject to authorization and approval by the Board of Directors.

D) Considerations in Approving Issuance of Debt

The Issuer may take into consideration any or all of the following factors, as appropriate, prior to approving the proposed issuance of Debt:

- 1) Whether the proposed issuance complies with this Debt Policy;

- 2) Source(s) of payment and security for the Debt;
- 3) Projected revenues and other benefits from the projects proposed to be funded;
- 4) Projecting operating, other costs and potential revenues with respect to the proposed projects;
- 5) Impacts, if any, on Issuer and Debt credit ratings;
- 6) Period, if any, over which interest on the Debt should be capitalized;
- 7) Extent to which debt service on the Debt should be level or non-level;
- 8) Appropriate lien priority of the Debt;
- 9) Adequacy of the proposed disclosure document.

V. Purposes for Debt

The Issuer may issue Debt for the purposes of financing and refinancing the costs of capital projects undertaken by the Issuer. The Issuer may also issue Debt to pay extraordinary unfunded costs, including, but not limited to, termination or other similar payments due in connection with interest rate swaps (if any) and investment agreements entered into in connection with Debt. Proceeds of Debt may be applied to pay costs of issuance, to fund capitalized interest, to fund debt service reserves and to pay costs incurred in connection with securing credit enhancement, including, but not limited to, premiums payable for bond insurance and reserve fund sureties.

The Issuer shall not issue Debt for the purpose of funding operating costs.

A) New Money Debt

New money issues are those financings that generate additional funding to be available for expenditure on capital projects. New money proceeds may not be used to fund non-capital operational activities.

B) Refunding Debt

The Issuer may issue Debt to refund the principal of and interest on outstanding Debt of the Issuer in order to (i) achieve debt service savings; (ii) restructure scheduled debt service; (iii) convert from or to a variable or fixed interest rate structure; (iv) change or modify the source or sources of payment and security for the refunded Debt; or (v) modify covenants otherwise binding upon the Issuer. Refunding Debt may be issued either on a current or advance basis, as permitted by applicable Federal tax laws. The Issuer may also utilize a tender offer process to refund Debt that is not otherwise subject to optional call by the Issuer.

Refunding Debt should be issued to achieve debt service savings in most cases. Refundings which do not produce savings are permitted if justified based on the need for restructuring to remove covenants/pledges that are restrictive and/or no longer required by the market and/or to make other changes in debt documents that would benefit the current, short-term, or long term program capacity and/or capital cost of the Issuer.

VI. Types of and Limitations on Debt

A) Long-Term Debt

The Issuer may issue Debt with longer-term maturities to amortize Issuer capital or other costs over a period commensurate with the expected life, use or benefit provided by the project, program or facilities financed from such Debt. Long-term Debt will generally have a final maturity of five (5) years or more. Long-term debt is appropriate for financing essential capital projects and certain capital equipment where the project being financed will provide benefit over multiple years and the Issuer considers the project to be of vital, time-sensitive need and there are no plausible alternative financing sources after considering other alternatives, such as pay-as-you-go funding or existing funds on hand.

B) Short-Term Debt

The Issuer may issue Debt with shorter-term maturities to provide interim funding for capital projects and expenditures that will ultimately be funded from another source such as a grant, a long-term Debt issue, or the receipt of Federal or State grants, other revenues, and/or for cash flow management. Short-term Debt shall consist of Debt of an issue with a final maturity of less than five (5) years and may include, but is not limited to, Debt in the form of Tax and Revenue Anticipation Notes, Bond Anticipation Notes, Grant Anticipation Notes, and/or Commercial Paper.

C) Toll Revenue Debt

If and to the extent authorized in accordance with applicable provisions of State law, the Issuer may issue Debt payable in whole or in part from toll revenues. When considering the capacity for and structure of toll revenue debt, the Issuer will consider available information on forecasted operating costs, toll revenues, ongoing capital expenditures related to the tolled facilities, other available funding sources, and future borrowing needs, if any, in determining the affordability and appropriate debt service structure of the potential debt issuance. The objective of this borrowing capacity analysis will be to demonstrate that forecasted Net Revenues will be sufficient to satisfy the toll and revenue covenants included in the legal documents securing any toll revenue debt and related obligations.

It is expected that toll revenue debt will represent the principal form of Debt of the Issuer.

D) Other Revenue Debt

If and to the extent authorized in accordance with applicable provisions of State law, the Issuer may issue Debt payable in whole or in part from other types of revenues.

E) Other Federally Supported Programs

The Issuer may also participate in federal loans administered or provided by the United States Department of Transportation, including, but not limited to, loans provided under the Transportation Infrastructure Finance and Innovation Act (TIFIA), as well as federally subsidized taxable and tax-exempt bond programs, and may secure credit enhancement and/or credit support provided under Federal programs, provided such loans, bonds or programs provide an attractive funding cost or other desirable features such as, but not limited to, deep subordination of the repayment obligation, an unusually long repayment term, or no payment due until a certain period after substantial project completion.

F) Fixed-Rate Debt

The Issuer may issue Debt that bears a fixed-rate rate of interest.

G) Variable Rate Debt

The Issuer may also issue Debt that bears a variable rate of interest, including, but not limited to, variable rate demand obligations, commercial paper and floating rate notes.

VII. Terms and Provisions of Debt

A) Debt Service Structure

The Issuer shall design the financing schedule and repayment of debt so as to take best advantage of market conditions, provide future flexibility and accommodate debt capacity, as needed, for future capital needs.

The debt service structure will be developed based upon forecasted traffic and revenue estimates, as available, and will account for operating costs, toll revenues, ongoing capital expenditures related to the tolled facilities, other available funding sources, and future borrowing needs. With new toll projects, revenue will be dependent on project completion and eventual use of the new tolled facility. This may require capitalized interest through the construction period and an ascending debt service structure to account for traffic “ramp-up” in the early years of project opening. The debt service structure will be developed to accommodate project

delivery, traffic ramp-up and the need to fund project operations and maintenance prior to paying debt service.

B) Amortization of Principal

Long-term Debt of the Issuer shall be issued with maturities that amortize the principal of such Debt over a period commensurate with the expected life, use or benefit (measured in years) provided by the projects, programs and/or facilities financed from the proceeds of such Debt. The weighted average maturity of such Debt (if issued as tax-exempt Debt) should not exceed one hundred and twenty percent (120%) of the reasonably estimated weighted average life, use or benefit (measured in years) of the projects, programs and/or facilities financed from the proceeds of such Debt.

Amortization of principal may be achieved either through serial maturities and/or through term Debt subject to mandatory sinking fund payments and/or optional redemptions.

C) Capitalized Interest

The Issuer may fund interest on Debt from proceeds of Debt for legal, budgeting or structuring purposes.

D) Call Provisions for Debt

- 1) Optional Call Provisions. The Issuer shall seek to include the shortest practicable optional call rights, with and/or without a call premium, consistent with optimal pricing of such Debt. Call premiums, if any, should not be in excess of then prevailing market standards and to the extent consistent with the most advantageous borrowing cost for the Issuer. Non-callable maturities may be considered and used to accommodate market requirements or other advantageous benefits to the Issuer.
- 2) Extraordinary Call Provisions. The Issuer, at its option, may include extraordinary call provisions, including for example with respect to unspent proceeds, damage to or destruction of the project or facilities financed, or other matters, as the Issuer may determine is necessary or desirable.

E) Payment of Interest

- 1) Current Interest Debt may be issued. It is anticipated that the interest on most Debt issued will be paid on a current interest basis.
- 2) Deferred Interest Debt may also be issued. Debt of the Issuer may be issued with the payment of actual or effective interest deferred in whole or in part to the maturity or redemption date of each debt instrument, or the conversion of such debt instrument to a current interest-paying debt instrument (known, respectively, as capital appreciation bonds, zero coupon bonds and convertible capital appreciation bonds). Deferred Interest Debt may be issued to accommodate revenue constraints, achieve optimal sizing, debt service structuring, pricing or other purposes.

F) Determination of Variable Interest Rates on Debt

The interest rate from time to time on Debt the interest of which is not fixed to maturity may be determined in such manner that the Issuer determines, including without limitation on a daily, weekly, monthly or other periodic basis, by reference to an index, prevailing market rates or other measures, and by or through an auction or other method.

G) Tender Options on Debt

The Issuer may issue Debt subject to the right or obligation of the holder to tender the Debt back to the Issuer for purchase, including, for example, to enable the holder to liquidate their position, or upon the occurrence of specified credit events, interest rate mode changes or other circumstances. The obligation of the Issuer to make payments to the holder upon any such tender may be secured by (i) a credit or liquidity facility from a financial institution in an amount at least equal to the principal amount of the Debt subject to tender, (ii) a liquidity or similar account into which the Issuer shall

deposit and maintain an amount at least equal to the principal amount of the Debt subject to tender, or (iii) other means of self-liquidity that the Issuer deems prudent.

H) Multi-Modal Debt

The Issuer may issue Debt that may be converted between two or more interest rate modes without the necessity of a refunding. Such interest rate modes may include, without limitation: daily interest rates, weekly interest rates, other periodically variable interest rates, commercial paper rates, auction rates, fixed rates for a term and fixed rates to maturity (in each case with or without tender options).

I) Debt Service Reserve Funds

The Issuer may issue Debt that is secured by amounts on deposit in or credited to a debt service reserve fund or account in order to minimize the net cost of borrowing and/or to provide additional reserves for debt service or other purposes. Debt service reserve funds may secure one or more issues of Debt, and may be funded by proceeds of Debt, other available moneys of the Issuer, and/or by surety policies, letters or lines of credit or other similar instruments. Surety policies, letters or lines of credit or other similar instruments may be substituted for amounts on deposit in a debt service reserve fund if such amounts are needed for capital projects or other purposes.

Amounts in the debt service reserve funds shall be invested in accordance with the requirements of the applicable Debt documents in order to (i) maximize the rate of return on such amounts; (ii) minimize the risk of loss; (iii) minimize volatility in the value of such investments; and (iv) maximize liquidity so that such amounts will be available if it is necessary to draw upon them.

J) Lien Levels

The Issuer may create senior and junior lien pledges, as well as pledges at various lien priority levels in order to optimize financing capacity.

VIII. Maintenance of Liquidity; Establishing Additional Funds and Reserves

The Issuer will establish and maintain, as needed, the necessary funds and accounts required under bond indentures, loan agreements and other obligations to which the Issuer is a party. This may include an operation and maintenance fund, a revenue stabilization reserve fund, a repair and rehabilitation reserve fund, an equipment replacement reserve fund, among others. The Issuer will use their best efforts to maintain the required reserves at levels that meet the respective reserve requirements, as defined in the legal documents, in the Issuer's effort to satisfy the related legal covenants under the documents.

In addition to the legally required funds and reserves, the Issuer may maintain unencumbered reserves in amounts sufficient in the determination of the Issuer to cover

unexpected revenue losses, extraordinary payments and other contingencies, and to provide liquidity in connection with the Issuer's outstanding Debt.

IX. Investment of Debt Proceeds and Related Moneys

Proceeds of Debt and amounts in the Issuer's debt service, project fund debt service reserve funds and other established funds with respect to outstanding Debt shall be invested in accordance with the terms of the applicable Debt documents and other applicable agreements of the Issuer.

X. Third Party Credit Enhancement

The Issuer may secure credit enhancement for its Debt from third-party credit providers to the extent such credit enhancement is available upon reasonable, competitive and cost-effective terms. Such credit enhancement may include municipal bond insurance ("Bond Insurance"), letters of credit and lines of credit (collectively and individually, "Credit Facilities"), as well as other similar instruments.

A) Bond Insurance

All or any portion of an issue of Debt may be secured by Bond Insurance provided by municipal bond insurers ("Bond Insurers") if it is economically advantageous to do so, or if it is otherwise deemed necessary or desirable in connection with a particular issue of Debt. The relative cost or benefit of Bond Insurance may be determined by comparing the amount of the Bond Insurance premium to the present value of the estimated interest savings to be derived as a result of the insurance.

B) Credit Facilities

The issuance of certain types of Debt requires a letter of credit or line of credit (a "Credit Facility") from a commercial bank or other qualified financial institution to provide liquidity and/or credit support. The types of Debt where a Credit Facility may be necessary include commercial paper, variable rate Debt with a tender option and Debt that could not receive an investment grade credit rating in the absence of such a facility.

The criteria for selection of a Credit Facility provider shall include the following:

- 1) Long-term ratings from at least two nationally recognized credit rating agencies ("Rating Agencies") preferably to be equal to or better than those of the Issuer;
- 2) Short-term ratings from at least two Rating Agencies of at least P-1/A-1 or equivalent;
- 3) Experience providing such facilities to state and local government issuers;

- 4) Fees, including without limitation initial and ongoing costs of the Credit Facility; draw, transfer and related fees; counsel fees; termination fees and any trading differential; and
- 5) Willingness to agree to the terms and conditions proposed or required by the Issuer.

XI. Use of Derivatives

Derivative products include but are not limited to interest rate swaps, interest rates caps and collars and forward or other hedging agreements. Derivative products will be considered in the issuance or management of debt only in instances where it has been demonstrated that the derivative product will either provide a hedge that reduces risk of fluctuations in expense or revenue, or, alternatively, where it will reduce total debt service cost in a manner that exceed the risks. Derivative products will only be utilized following the adoption of derivative product policy and with prior Board approval. In addition, an analysis of early termination costs and other conditional terms must be completed by the Issuer's municipal advisor prior to the approval of any derivative product by the Board. Such analysis will document the risks and benefits associated with the use of the particular derivative product.

XII. Methods of Sale and Pricing of Debt

There are three principal methods for the sale of Debt: (i) competitive; (ii) negotiated and (iii) private placement. In addition, Debt may be incurred as a direct loan. The Issuer shall utilize the method of sale that (a) is reasonably expected to produce the most advantageous interest cost with respect to the Debt and (b) provides the Issuer with the flexibility most desirable in connection with the structuring, timing or terms of such Debt. The Issuer shall utilize such method that is likely to provide the most advantageous borrowing costs and execution on behalf of the Issuer.

Debt may be sold at such prices, including at par, a premium or a discount, as the Issuer, in consultation with its municipal advisor, may determine is likely to produce the most advantageous interest cost under then prevailing market conditions, subject to compliance with applicable State law and Federal securities laws.

A) Competitive Sale

The competitive method of sale is appropriate when:

- 1) Bond prices are stable and/or there is strong demand for the bonds;
- 2) Market timing and interest rate sensitivity are not critical to the pricing;
- 3) Issuer has a strong credit rating and is well known to investors;

- 4) The Issuer has straightforward political and organizational structure, and the project, funding, and credit quality are easy to understand and market to potential investors;
- 5) The Debt type and structure are conventional and the transaction size is manageable.

B) Negotiated Sale

A negotiated sale is appropriate when:

- 1) There is market volatility and/or weak demand and high supply of competing financings;
- 2) The Debt structure is complex;
- 3) Issuer has lower or weakening credit rating and is not well known to investors;
- 4) The Debt has non-standard structural features, such as a forward delivery, issuance of variable rate bonds, use of derivative products, or possesses a specific structuring feature that benefits from a negotiated sale;
- 5) Early structuring and market participation by underwriters are desired and there is strong projected retail demand for the Debt;
- 6) The Debt size is significantly larger and would limit competition.

For a negotiated bond sale, the Issuer, with the assistance of its municipal advisor, will conduct a competitive underwriter selection process for either a specific Debt issue or through the establishment of an underwriter pool from which to choose over a defined period of time.

C) Private Placement

A private placement is structured for one investor or a small group of investors, who are typically qualified institutional buyers, in a non-public offering conducted by an underwriting firm serving as placement agent. Since no public offering is involved, securities disclosure requirements are not as heavy. If a private placement is considered as the optimal sale method for the Issuer, the municipal advisor will conduct a competitive selection process to recommend the placement agent.

D) Direct Purchase; Direct Loan; Revolving Obligations

A direct purchase or direct loan is typically structured specifically for one bank (or a syndicate of banks), putting the Issuer and bank in a bilateral borrower-lender relationship. Examples include a direct purchase agreement or revolving credit

facility. Securities disclosure requirements are the least burdensome for this structure. A direct purchase or direct loan may be advisable if the Issuer is unable to access the municipal capital markets.

A direct loan may also be structured between the Issuer and a separate governmental agency who agrees to loan funds to the Issuer. In this instance, appropriate authorization from both governmental agencies must be established including the eligible use of bond proceeds or other funds to be loaned from one agency to another and applied for specific project purposes. An intergovernmental loan may be advisable when it provides the Issuer with in-direct market access or lower borrowing costs when compared to issuing on its own.

If a direct purchase or direct loan with a bank is contemplated, the municipal advisor will conduct a competitive selection process to recommend the bank. Selection criteria will include:

- 1) A term sheet to be provided along with the request for qualifications, with any requested modifications to be highlighted by the bank and taken into consideration in the evaluation process;
- 2) A representative list of clients for whom the bank has provided similar agreements; and
- 3) Evaluation of fees, specifically, cost of the agreement including index, spread, and other administrative charges. The evaluation of fees, terms and conditions will be compared to other alternative financing methods.

XIII. Debt Redemption Programs

The Issuer may establish from time-to-time a plan or program for the payment and/or redemption of outstanding Debt and/or interest thereon from revenues and/or other available funds pursuant to a recommendation from the Chief Financial Officer. Such plan or program may be for the purposes of reducing outstanding Debt, managing the amount of debt service payable in any year, or other suitable purposes, as determined by the Issuer.

XIV. Professional Services

The Issuer may retain professional services providers as necessary or desirable in connection with: (i) the structuring, issuance and sale of its Debt; (ii) monitoring of and advice regarding its outstanding Debt; and (iii) the negotiation, execution and monitoring of related agreements, including without limitation Bond Insurance, Credit Facilities, Derivatives and investment agreements; and (iv) other similar or related matters. Professional service providers may include municipal advisors, bond counsel, disclosure counsel, Issuer consultants, bond trustees and Federal arbitrage rebate services providers, and may include, as appropriate, underwriters, feasibility consultants, remarketing agents,

auction agents, broker-dealers, escrow agents, verification agents and other similar parties.

The Issuer shall require that its Municipal Advisors, bond and disclosure counsel and other Issuer consultants be free of any conflicts of interest, or that any necessary or appropriate waivers or consents are obtained.

A) Municipal Advisors

The Issuer may utilize one or more municipal advisors to provide ongoing advisory services with respect to the Issuer's outstanding and proposed Debt and related agreements, including without limitation Bond Insurance, Credit Facilities, Derivatives, investment agreements and other similar matters. Municipal advisors must be registered with the Municipal Securities Rulemaking Board and as a municipal advisor as such term is defined in the Securities Exchange Act of 1934 and shall be required to disclose any conflicts of interest.

B) Bond Counsel, Disclosure Counsel and Other Legal Counsel

- 1) Bond Counsel. The Issuer may utilize one or more bond counsel firms to provide ongoing legal advisory services with respect to the Issuer's outstanding and proposed Debt and related agreements, including without limitation Credit Facilities, Derivatives, investment agreements and other similar matters. All Debt issued by the Issuer shall require a written opinion from the Issuer's bond counsel, as appropriate, regarding (i) the validity and binding effect of the Debt, and (ii) the exemption of interest from Federal and State income taxes.
- 2) Disclosure Counsel. The Issuer may utilize a disclosure counsel firm to provide ongoing legal advisory services with respect to initial and continuing disclosure in connection with the Issuer's outstanding and proposed Debt. Such firm may be one of the Issuer's bond counsel firms.
- 3) Other Legal Counsel. The Issuer may encourage or require, as appropriate, the retention and use of legal counsel by other parties involved in the issuance of Debt and the execution of related agreements which are approved by the Issuer.

C) Issuer Consultant

The Issuer may utilize one or more outside Issuer consultants to provide ongoing advisory services with respect to the Issuer's outstanding and proposed Debt, forecasted traffic and revenue estimates, strategic business and financial decisions and such other matters as the Issuer requires.

D) Trustees and Fiscal Agents

The Issuer may engage bond trustees and/or fiscal agents, paying agents and tender agents, as necessary or appropriate, in connection with the issuance of its Debt.

E) Underwriters/Remarketing Agents/Broker-Dealers

The Issuer may engage an underwriter or a team of underwriters, including a senior managing underwriter, in connection with the negotiated sale of its Debt. The Issuer also may engage one or more underwriters, as necessary or appropriate, to serve as remarketing agents, broker-dealers or in other similar capacities with respect to variable rate, auction, tender option, commercial paper and other similar types of Debt issued by the Issuer.

F) Feasibility Consultants

The Issuer may retain feasibility consultants in connection with proposed project, programs, facilities or activities to be financed in whole or in part from proceeds of Debt. The criteria for the selection of such feasibility consultants, in addition to those set forth above, shall include their expertise and experience with projects, programs, facilities or activities similar to those proposed to be undertaken by the Issuer.

G) Arbitrage Rebate Services Providers

Because of the complexity of the Federal arbitrage rebate statutes and regulations, and the severity of potential penalties for non-compliance, the Issuer may retain an arbitrage rebate services provider in connection with its outstanding and proposed Debt, and may also solicit related legal and tax advice from its bond counsel or separate tax counsel. The responsibilities of the arbitrage rebate services provider shall include: (i) the periodic calculation of any accrued arbitrage rebate liability and of any rebate payments due under and in accordance with the Code and the related rebate regulations; (ii) advice regarding strategies for minimizing arbitrage rebate liability; (iii) the preparation and filing of periodic forms and information required to be submitted to the Internal Revenue Service; (iv) the preparation and filing of requests for reimbursement of any prior overpayments; and (v) other related matters as requested by the Issuer.

The Issuer shall maintain necessary and appropriate records regarding (i) the expenditure of proceeds of Debt, including the individual projects and facilities financed and the amounts expended thereon, and (ii) investment earnings on such Debt proceeds. The Issuer shall maintain such records for such period of time as shall be required by the Code.

H) Other Professional Services

The Issuer may retain such other professional services providers, including without limitation verification agents, escrow agents, auction agents, as may be necessary or appropriate in connection with its Debt.

XV. Budgeting and Capital Planning

The Issuer's budgeting process, including its budgeting process for capital expenditures, shall provide a framework for evaluating proposed Debt issuances.

XVI. Credit Rating Objectives

The Issuer shall seek to establish, preserve and enhance credit ratings with respect to its outstanding Debt to the extent consistent with the Issuer's current and anticipated business operations and financial condition, strategic plans and goals and other objectives, and in accordance with any developed credit strategies.

XVII. Debt Affordability

Consistent with its credit rating objectives, the Issuer shall periodically review its debt affordability levels and capacity for the undertaking of new financing obligations to fund its expenditure plans. Debt affordability measures shall be based upon the credit objectives of the Issuer, criteria identified by rating agencies, comparison of industry peers and other internal factors of the Issuer.

XVIII. Relationships with Market Participants

The Issuer shall seek to preserve and enhance its relationships with the various participants in the municipal bond market, including without limitation, the Rating Agencies, Bond Insurers, credit/liquidity providers and current and prospective investors, including through periodic communication with such participants.

The Issuer shall prepare or cause to be prepared appropriate disclosures as required by the Securities and Exchange Commission Rule 15c2-12, the federal government, the State of California, rating agencies and other persons or entities entitled to disclosure to ensure compliance with applicable laws and regulations and agreements to provide ongoing disclosure.

XIX. Periodic Review

The Chief Financial Officer shall review this Debt Policy on a periodic basis, and recommend any changes to the Board for consideration. This Debt Policy, including any proposed changes or additions hereto, shall be presented to the Board at least once every three (3) years for re-approval.

San Mateo County Express Lanes Joint Power Authority

Agenda Report

Date: July 17, 2020

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

From: SMCEL-JPA Executive Council

Subject: Review and approval of Resolution SMCEL 20-11 authorizing the SMCEL-JPA Chair to execute the US-101 Express Lanes Project Loan Agreement between the San Mateo County Express Lane Joint Powers Authority (SMCEL-JPA) and the San Mateo County Transportation Authority (SMCTA) for up to \$100 million.

(For further information, contact April Chan at 650-508-6228; Sean Charpentier at 650-599-1462; and Peter Shellenberger at 415-393-7233)

RECOMMENDATION

That the SMCEL-JPA Board review and approve Resolution SMCEL 20-11 authorizing the SMCEL-JPA Chair to execute the US-101 Express Lanes Project Loan Agreement between the San Mateo County Express Lane Joint Powers Authority (SMCEL-JPA) and the San Mateo County Transportation Authority (SMCTA) for up to \$100 million.

FISCAL IMPACT

This Loan Agreement would pledge future toll revenues to the repayment of the up to \$100 million loan plus all required interest, costs, and fees during the life of the loan. The Loan Agreement sets forth all the terms and conditions for the disposition of all express lanes related revenues until the loan's final maturity, or payback in full.

SOURCE OF FUNDS

Future toll revenues from the SMCEL-JPA US 101 Express Lanes Project (Project).

BACKGROUND

The City/County Association of Governments ("C/CAG") Board, the San Mateo County Transportation Authority ("SMCTA") Board and Caltrans approved Cooperative Agreements for the construction and funding of the Project. The total Project cost is \$581.14 million. The Project is funded by the following funding sources.

FUND SOURCE	AMOUNT (in millions)
SMCTA Local Measure A	\$30.50
Private Contributions	\$53.00
Federal	\$9.50
STIP Administered by C/CAG	\$33.50
ITIP (State)	\$18.00
SHOPP (State)	\$33.14
SB1 (LPP and SCC)	\$222.03
Regional Toll Revenues (MTC)	\$95.00
Future Local Toll Revenue	\$86.47
TOTAL	\$581.14

As noted in the table above, \$86.47 million is expected to come from future toll revenues of the US 101 express lanes in order to cover costs not otherwise funded by grants. Funding drawdown for the construction of the Project (the \$86.47 million portion) is expected to be approximately 30 monthly payments ranging from \$4.96 million per month to \$0.4 million per month between April 2020 and September 2022.

On January 10, 2020, the SMCEL-JPA engaged the services of PFM Financial Advisors LLC (PFM) as a financial advisor and Nixon Peabody LLP as legal counsel to assist the SMCEL-JPA in its negotiation of such financing terms with the SMCTA. At the April 10, 2020 SMCEL-JPA Board meeting, the Board received an updated informational presentation on the negotiation of loan terms.

Since late 2019, the SMCEL-JPA's Ad Hoc Finance Committee, consisting of Vice-Chair Diane Papan and Director Emily Beach, met multiple times with staff to discuss the Capital Loan details. At the June 26, 2020 Ad Hoc Finance Committee meeting, Jim Hartnett and Sandy Wong, the SMCEL-JPA Executive Council, presented a joint recommendation of terms that reflected the points communicated at the Board meeting and the Ad Hoc Finance Committee meetings. The joint recommendation is reflected in the Loan Agreement (Attachment 3) and described in greater detail below.

ANALYSIS

The SMCTA is proposing to issue up to \$100 million in long-term variable rate bonds. The interest rate will be variable and be reset each week or day. The final maturity date is in 2049, however, it is anticipated that the bonds will be repaid without a prepayment penalty significantly earlier than 2049. The bond proceeds will be used for Project construction costs, \$1 million for the initial set aside for the Equity Program, up to three years of capitalized interest on the bonds, up to two years of capitalized SMCTA Enhancement Rate, and costs of bond issuance. After the SCMTA issues the bonds, the bonds will be placed with a Trustee and disbursed to the eligible uses, as described above. Representatives from both the SMCTA and the SMCEL-JPA will be required to sign each disbursement of the bond funds.

Loan Repayment

The Loan Agreement stipulates the SMCEL-JPA to hire a Fiscal Agent to oversee the loan repayment

structure pursuant to the process in Section 8 in the Loan Agreement. The Fiscal Agent will receive the toll revenues and disburse the revenues in the sequence, priorities, and in the amounts specified in Section 8 of the Loan Agreement. Below is a simplified description illustrating the sequence of payments and key terms in Section 8. See Attachment #2 for the flow of funds.

1. Operating and Administrative payments for the SMCEL-JPA and the Project.
2. \$600,000 annual for an Equity Program. (This is in addition to the initial, one-time set aside of \$1 million from the bond proceeds for the Equity Program.)
3. Interest payments for the Operating Loans.
4. Interest payments for the Capital Loan, including Enhancement Rate.
5. Project reserves.
6. Revenue Sharing Fund- (excess net revenue) 85% of the remaining funds for repayment of the Operating and Capital Loans and 15% to the SMCEL JPA for any lawful purpose.

#1. Operating, Maintenance, and Administrative Expenses

These are the SMCEL-JPA administrative and Project operating and maintenance costs. Currently, the SMCEL-JPA operations are funded through Operating Loans with the SMCTA and C/CAG. When the Project is open, it is anticipated that the toll revenues will fund the SMCEL-JPA operations, including the agency's internal operation as well as the operation of the express lanes to be contracted with BAIFA.

#2. Equity Program

The recommendation is to set aside \$1 million in initial bond proceeds as seed money for the equity program and then to allocate \$600,000 per year for equity from toll revenues. The \$600,000 per year is the second distribution (in accordance to the "flow of funds") after the payment of operating and maintenance costs. The annual equity payments will begin once the Project is operational and there are toll revenues. The SMCEL-JPA Board will consider recommended strategies and projects for an Equity Program in early 2021. The SMCEL-JPA will have the right to implement an equity program that provides a means-based toll rate discount, as long as the following occurs: 1) in the most recent prior fiscal year, the SMCEL-JPA made payments to the SMCTA that reduced the outstanding bond loan balance by \$5 million or more; 2) implementation of the means-based toll rate discount does not reduce express lanes revenues by more than 10% in any fiscal year compared to express lanes revenues projected for the corresponding fiscal year absent the equity program considered; and 3) at least \$5 million per year will be available to reduce the outstanding bond loan balance after the implementation of the means-based toll rate discount. If the conditions above are not present, the SMCEL-JPA and SMCTA will meet to negotiate an amendment.

#3. Interest Payments on the Operating Loans

These are the SMCTA and C/CAG loans funding the SMCEL-JPA for annual operations in Fiscal Years 2019-20 and 2020-21. The interest is based on the County Pool rate.

#4. Interest and other Loan Fee Payments on the Capital Loans

These payments include the variable interest rate, and letter of credit, remarketing, trustee and other fees necessary to manage the bonds. This section also includes payment of the "Enhancement Rate" (previously described as the "Credit Enhancement Fee").

The Enhancement Rate is a charge from the SMCTA to compensate it for risk and efforts associated with the issuance and maintenance of the bonds. The Enhancement Rate will be charged on the outstanding balance of the loan at an annual rate of 0.4%. However, in any fiscal year in which the Capital Loan balance is reduced by a minimum of \$5 million, the SMCTA would use 0.15% of the Enhancement Rate to reduce the outstanding principal on the Capital Loan. See Loan Agreement Section 7(b).

#5. Project Reserves

These are reserves necessary for the operation of the Project, including the roadway and the electronic tolling infrastructure. The reserves are: Revenue Stabilization, Operating, Repair and Rehabilitation, and Equipment Replacement. They are described in more detail in Section 8 of the Loan Agreement.

#6. Revenue Sharing Fund

This is the net revenue that remains after the payment of the items listed above #1 through #5: operations and maintenance, the equity fund, the interest on the operating and capital loans, and the reserves. Eighty-five percent (85%) of the excess net revenue is allocated to reducing the balances of the Capital Loan and Operating Loans. Fifteen percent (15%) is allocated to the SMCEL-JPA for any lawful purpose, including but not limited to, accelerated repayment on the Operating Loans and Capital Loan, other transportation improvements in the Highway 101 corridor, and the Equity Program.

Next Steps

In addition to the Loan Agreement, the SMCEL-JPA Chair will sign supporting documents including the SMCEL-JPA Tax Certificate and the Signature and Incumbency Certificate.

ATTACHMENTS:

- 1) Resolution SMCEL 20-11
- 2) Flow of Funds
- 3) Draft US-101 Express Lanes Project Loan Agreement between SMCEL-JPA and SMCTA

RESOLUTION SMCEL 20-11

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY (SMCEL-JPA) AUTHORIZING THE EXECUTION OF THE US 101 EXPRESS LANES PROJECT LOAN AGREEMENT BETWEEN SMCEL-JPA AND THE SAN MATEO COUNTY TRANSPORTATION AUTHORITY FOR \$100 MILLION AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO

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

WHEREAS, SMCEL-JPA is duly organized and existing under the Joint Exercise of Powers Act (California Government Code, section 6500 et seq.) and a First Amended and Restated Joint Exercise of Powers Agreement dated June 13, 2019 (the “JPA Agreement”), between the San Mateo County Transportation Authority (“SMCTA”) and City/County Association of Governments of San Mateo County (“C/CAG”); and

WHEREAS, C/CAG and the SMCTA created the SMCEL-JPA to oversee the operations and administration of the “US-101 Express Lanes Project,” and to jointly exercise ownership rights over the 101 Project; and

WHEREAS, SMCEL-JPA, as an agency with no current operating budget, has requested that SMCTA make a non-revolving advance of funds in an aggregate principal amount of not to exceed \$100,000,000 to fund a portion of the 101 Project and certain other programs; and

WHEREAS, under the Bay Area County Traffic and Transportation Funding Act (California Public Utilities Code section 131000 et seq.) and under the San Mateo County Transit District Act (California Public Utilities Code section 103000 et seq.), SMCTA is authorized to issue limited tax bonds secured by and payable from the revenues of certain retail transactions and use taxes applicable in the incorporated and unincorporated territory of the County of San Mateo; and

WHEREAS, proceeds of SMCTA’s limited tax bonds designated “San Mateo County Transportation Authority Subordinate Sales Tax Revenue Variable Rate Demand Bonds (Limited Tax Bonds), 2020 Series A” (the “Series A Bonds”) and “San Mateo County Transportation Authority Subordinate Sales Tax Revenue Variable Rate Demand Bonds (Limited Tax Bonds), 2020 Series B” (the “Series B Bonds,” and, together with the Series A Bonds, the “Bonds”) will be loaned to SMCEL-JPA pursuant to a loan agreement (the “Loan Agreement”) and used to fund the 101 Project and certain other expenditures contemplated by the laws authorizing such bonds and the related measures approved by the voters of the County of San Mateo; and

NOW, THEREFORE, BE IT RESOLVED by the San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) as follows:

Section 1. The foregoing recitals are true and correct.

Section 2. The Loan Agreement is hereby approved substantially in the form on file with the Secretary of the Board of Directors of SMCEL-JPA (the “Secretary”). The Chair or Vice Chair

of SMCEL-JPA (each, an “Authorized Officer”) or the designee thereof is hereby authorized and directed to execute and deliver the Loan Agreement with such changes, insertions and omissions as may be recommended the SMCEL-JPA’s Executive Council and approved by SMCEL-JPA’s General Counsel, and approved by the Authorized Officer executing the same, said execution being conclusive evidence of such approval.

Section 3. All acts, transactions or agreements undertaken, prior to the adoption of these resolutions by any of the officers of SMCEL-JPA, or their designees, in its name and for its account in connection with the foregoing matters, are hereby ratified, confirmed and adopted by SMCEL-JPA.

Section 4. Each Authorized Officer is authorized and directed to execute and deliver any and all documents and instruments, including but not limited to a Tax Certificate and a Signature and Incumbency Certificate, and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by the Loan Agreement, the Bonds and this Resolution.

Section 5. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED, AND ADOPTED, THIS _____ DAY OF _____, 2020.

Don Horsley, Chair

Flow of Funds



Note: If in any given year, excess revenues to the TA are more than \$5 million, 0.15% of the TA's Credit Enhancement Fee will be used for additional Bond Loan principal repayment.

DRAFT

LOAN AGREEMENT

Dated as of July ____, 2020

Between

SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY

and

SAN MATEO COUNTY TRANSPORTATION AUTHORITY

US-101 Express Lanes Project

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EXHIBIT A – FORM OF NOTE

EXHIBIT B – PRO FORMA BOND LOAN PRINCIPAL SCHEDULE

LOAN AGREEMENT

This **LOAN AGREEMENT** (as amended and supplemented hereafter, this “Agreement”), dated as of July __, 2020, is between **SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY** (together with its successors and assigns, the “Borrower”), and **SAN MATEO COUNTY TRANSPORTATION AUTHORITY** (together with its successors and assigns, the “Lender”).

RECITALS

WHEREAS, the Borrower is duly organized and existing under the Joint Exercise of Powers Act (California Government Code, section 6500 et seq.) (the “JPA Act”) and a First Amended and Restated Joint Exercise of Powers Agreement dated June 13, 2019 (the “JPA Agreement”), between the Lender and City/County Association of Governments of San Mateo County;

WHEREAS, the Lender is duly organized and existing under California Public Utilities Code section 131240 and Ordinance No. 03135, titled the San Mateo County Transportation Authority Ordinance, which was later approved by majority vote of the electors of the County of San Mateo on June 7, 1988, through a ballot measure known as “Measure A;”

WHEREAS, under the Bay Area County Traffic and Transportation Funding Act (California Public Utilities Code section 131000 et seq.) the Authority is authorized to issue limited tax bonds secured by and payable from the revenues of certain retail transactions and use taxes applicable in the incorporated and unincorporated territory of the County of San Mateo;

WHEREAS, proceeds of the Authority’s limited tax bonds designated “San Mateo County Transportation Authority Subordinate Sales Tax Revenue Variable Rate Demand Bonds (Limited Tax Bonds), 2020 Series A” and “San Mateo County Transportation Authority Subordinate Sales Tax Revenue Variable Rate Demand Bonds (Limited Tax Bonds), 2020 Series B” may fund the “US-101 Express Lanes Project” (approximately 22 miles of managed lanes in both directions on U.S. Highway 101 between the San Mateo/Santa Clara County line (to the south) and U.S. Interstate 380 (to the north)) (the “101 Project”) and certain other expenditures contemplated by the laws authorizing such bonds and the related measures approved by the voters of the County of San Mateo;

WHEREAS, the Borrower requests that the Lender fund from the proceeds of such bonds a portion of the costs in connection with the 101 Project, as well as \$1,000,000 for Equity Programs (as defined herein);

WHEREAS, in consideration of the funding by the Lender contemplated hereunder, the Borrower agrees to repay any amount due pursuant to this Agreement in accordance with the terms and provisions hereof;

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the Lender as follows:

SECTION 1. Definitions. Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 or as otherwise defined in this Agreement. Any term used in this Agreement which is defined by reference to any other agreement shall continue to have the meaning specified in such agreement on the date hereof whether or not such agreement remains in effect.

“**Account**” means any or each account established hereunder, as the context requires.

“**Adjusted Outstanding Lender Bond Principal Amount**” means, from time to time, the principal amount of Lender Bonds outstanding under the terms of the Bond Indenture, less the principal amount of Lender Bonds that would have been redeemed or retired from funds deposited to the Bond Loan Retirement Account but for the Lender choosing not to redeem or retire corresponding Lender Bonds from such funds.

“**Affiliate**” means, with respect to any Person, any Person directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person. A Person shall be deemed to control another Person for the purposes of this definition if such first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise.

“**Agreement**” has the meaning provided in the preamble hereto.

“**Base Rate**” means the rate of interest borne from time to time by the Lender Bonds calculated as provided in the Lender Bonds.

“**Board**” means the Board of Directors of the Borrower.

“**Bond Indenture**” means the Indenture, dated as of July 1, 2020, as supplemented by the First Supplemental Indenture, dated as of July 1, 2020, each between the Lender and The Bank of New York Mellon Trust Company, N.A., as trustee, under which the Lender Bonds were issued, as it may be amended from time to time.

“**Bond Loan**” means the non-revolving loan made by the Lender to the Borrower hereunder through deposit of Lender Bond proceeds into the funds and accounts under the Bond Indenture as described in Sections 3 and 4.

“**Bond Loan Balance**” has the meaning set forth in Section 7.

“**Bond Loan Interest and Costs Account**” means the Account by that name created under Section 8(a)(vi).

“**Bond Loan Interest Rate**” has the meaning set forth in Section 6.

“**Bond Loan Prepayment Date**” means, for each funding of a prepayment under Section 10(a) or (b), (1) the day on which the Lender Bonds are redeemed from such amounts in accordance with the Bond Indenture, or (2) if Lender does not deliver to the trustee for the Lender Bonds under the Bond Indenture notice of redemption of corresponding Lender Bonds by the

Business Day immediately following the date the Borrower funds the prepayment, the date the Borrower funds the prepayment.

“**Bond Loan Principal Schedule**” means the Pro Forma Bond Loan Principal Schedule attached hereto as Exhibit B.

“**Bond Loan Retirement Account**” means the Account by that name created pursuant to Section 8(a)(xi).

“**Borrower**” has the meaning provided in the Preamble hereto.

“**Borrower’s Authorized Representative**” means any Person designated as such under Section 23.

“**Business Day**” means any day other than a Saturday, a Sunday or other day on which the Lender’s offices are authorized or obligated by law or executive order to be closed in the State of California but includes any “Business Day” as defined in the Bond Indenture.

“**C/CAG**” means the City/County Association of Governments of San Mateo County.

“**Caltrans Agreement**” means [to come].

“**Code**” means the Internal Revenue Code of 1986.

“**Collateral**” means all rights, title, interest and privileges of the Borrower in, to and under (i) the Net Revenue, (ii) all amounts in the Bond Loan Interest and Costs Account, the Operating Reserve Fund, the Revenue Stabilization Reserve Fund, the Repair and Rehabilitation Reserve Fund, the Equipment Replacement Reserve Fund, and the Bond Loan Retirement Account established hereunder, and (iii) all interest or other income from investment of money in the Bond Loan Interest and Costs Account, the Operating Reserve Fund, the Revenue Stabilization Reserve Fund, the Repair and Rehabilitation Reserve Fund, the Equipment Replacement Reserve Fund, and the Bond Loan Retirement Account established hereunder.

“**Default Rate**” means an interest rate equal to the Bond Loan Interest Rate plus 3.0%.

“**Defeasance Obligations**” means cash or “government securities,” as such term is used in Treasury Regulations 1.1001-3(e)(5)(ii)(B)(I).

“**Effective Date**” means July __, 2020.

“**Enhancement Adjustment**” has the meaning set forth in Section 7(b).

“**Enhancement Cost Component**” means an amount accruing on and after [_____, 202_] [THE END OF THE TWO-YEAR CAPITALIZED ENHANCEMENT FEE PERIOD] based on the Adjusted Outstanding Lender Bond Principal Amount at a rate equal to the Enhancement Rate.

“**Enhancement Rate**” means, for any period, 0.40% per annum, calculated based on a year of 365/366 days and actual days elapsed.

“Environmental Laws” means any and all federal, state and local statutes, Laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or to the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“Equipment Replacement Reserve Fund” means the Fund by that name created pursuant to Section 8(a)(x).

“Equipment Replacement Reserve Fund Requirement” means 100% of budgeted equipment replacement expenditures for the Express Lanes for the then-current Fiscal Year, as set forth in the Operating Budget for the Fiscal Year.

“Equity Programs” means programs implemented by the Borrower under section 2.2(g) of the JPA Agreement.

“Equity Programs Fund” means the Fund by that name created pursuant to Section 8(a)(iii).

“Event of Default” has the meaning set forth in Section 17.

“Express Lanes” means the tolled express lanes developed as part of the 101 Project and any extensions and improvements thereto as determined by the Borrower.

“Express Lanes Operator” means Bay Area Toll Authority, or any successor thereto, responsible for the collection of tolls with respect to the Express Lanes.

“Express Lanes Revenue Fund” means the Fund by that name created pursuant to Section 8(a)(i).

“Express Lanes Revenues” means (a) toll revenues, user fees, fines, rents or other similar charges payable for use of the Express Lanes, as well as fines and penalties and interest thereon collected as a result of a failure to pay any such amounts, (b) proceeds of insurance payable to or received by the Borrower with respect to the Express Lanes (whether by way of claims, return of premiums, ex gratia settlements or otherwise), including proceeds from business interruption insurance and loss of advance profits insurance, except for proceeds of fire and other casualty insurance that are actually applied or reserved for application to the repair, restoration or replacement of the Express Lanes, (c) proceeds of any condemnation awards with respect to the Express Lanes, except to the extent actually applied or reserved for application to the replacement of the Express Lanes, (d) [liquidated damages, if applicable, for delayed completion of the 101 Project payable to or on behalf of the Borrower under any construction contract relating to the 101 Project or a portion thereof], and (e) any other incidental or related fees or charges, but excluding therefrom cash advances representing deposits against future toll payments from users or potential users of the Express Lanes.

“Final Maturity Date” means June 1, 2049.

“Fiscal Year” means the period of twelve months terminating on June 30 of each year or any such other annual period selected and designated by the Borrower as its Fiscal Year in accordance with applicable law.

“Fund” means each fund established in accordance with the terms hereof.

“GAAP” means generally accepted accounting principles for state and local governments, which are the minimum standards of and guidelines for financial accounting and reporting.

“Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority.

“Governmental Authority” means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions, including, without limitation, the State and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

“Insurance and Condemnation Proceeds Account” means the Account by that name created pursuant to Section 8(a)(xii).

“Interest Payment Date” means the first day of each calendar month, or, if such day is not a Business Day, the immediately following Business Day, and the Final Maturity Date.

“JPA Agreement” has the meaning given such term in the Recitals.

“Lender” means the San Mateo County Transportation Authority, and its successors and assigns.

“Lender Bonds” means the San Mateo County Transportation Authority Subordinate Sales Tax Revenue Variable Rate Demand Bonds (Limited Tax Bonds), 2020 Series A and the San Mateo County Transportation Authority Subordinate Sales Tax Revenue Variable Rate Demand Bonds (Limited Tax Bonds), 2020 Series B.

“Lender Bonds Cost Component” means letter of credit facility fees, letter of credit draw fees, remarketing agent fees, trustee fees, rating surveillance costs and all other direct administrative fees and charges accrued or incurred in any period by the Lender in connection with the Loan Documents and the Lender Bonds.

“Lender’s Authorized Representative” means any Person who shall be designated as such by the Lender pursuant to Section 24.

“Lien” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, lien (statutory or other), or preference, priority or other security agreement of any kind or nature whatsoever, including, without limitation, any sale-leaseback

arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under applicable law.

“Loan Documents” means this Agreement and the Note.

“Material Adverse Effect” means a material adverse change in (a) the ability of the Borrower to perform or comply with any of its material obligations under any Loan Document, (b) the validity or priority of the Lien on the Collateral in favor of the Lender or (c) the Lender’s rights or benefits available under this Agreement.

“Monthly Funding Date” means the first day of each calendar month or, if such day is not a Business Day, the immediately following Business Day.

“Nationally Recognized Rating Agency” means S&P Global Ratings, a business unit of Standard & Poor’s Financial Services LLC, Moody’s Investors Services, Inc., Fitch Ratings or another nationally recognized statistical rating organization, identified by the U.S. Securities and Exchange Commission.

“Net Revenue” means, for any Fiscal Year, Revenue less Operation and Maintenance Expenses for that Fiscal Year (excluding, in such calculations, (i) any extraordinary or one-time revenues from Revenue for such Fiscal Year and (ii) any extraordinary or one-time expenses from Operation and Maintenance Expenses for such Fiscal Year, but only if and to the extent such extraordinary or one-time expenses are paid or payable from extraordinary or one-time revenues being excluded from Revenue for such Fiscal Year), as set forth in (a) the audited financial statements of the Borrower for Fiscal Years for which audited financial statements are available, or (b) to the extent that audited financial statements are not available, the unaudited financial statements of the Borrower for Fiscal Years for which unaudited financial statements are available.

“Note” means the Note evidencing the Bond Loan in substantially the form attached hereto as Exhibit A, and any amendments thereto.

“Obligations” means the Borrower’s obligation hereunder and under the Note to pay principal and interest on the Bond Loan and the Borrower’s obligation to pay principal and interest under the Operating Loan Agreement (Lender).

“Operating Budget” means the fiscal year operating budget for the Express Lanes, adopted by the Board.

“Operating Loans” means the Operating Loan (Lender) and the Operating Loan (C/CAG).

“Operating Loan (C/CAG)” means the loan to the Borrower from C/CAG under the Operating Loan Agreement (C/CAG).

“Operating Loan (C/CAG) Interest Account” means the Account by that name created pursuant to Section 8(a)(v).

“Operating Loan (C/CAG) Principal Schedule” means the loan principal schedule under Section 2.F. of the Operating Loan Agreement (C/CAG), as modified from time to time under its terms.

“Operating Loan (C/CAG) Retirement Account” means the Account by that name created pursuant to Section 8(a)(xi).

“Operating Loan (Lender)” means the loan to the Borrower from the Lender under the Operating Loan Agreement (Lender).

“Operating Loan (Lender) Interest Account” means the Account by that name created pursuant to Section 8(a)(v).

“Operating Loan (Lender) Principal Schedule” means the loan principal schedule under Section 2.F. of the Operating Loan Agreement (Lender), as modified from time to time under its terms.

“Operating Loan (Lender) Retirement Account” means the Account by that name created pursuant to Section 8(a)(xi).

“Operating Loan Agreement (C/CAG)” means the Cooperative Funding Agreement dated _____, 2020, as amended by the First Amendment to Cooperative Funding Agreement dated _____, 2020, each between C/CAG and the Borrower, and as further amended from time to time.

“Operating Loan Agreement (Lender)” means the Cooperative Funding Agreement dated _____, 2020, as amended by the First Amendment to Cooperative Funding Agreement dated _____, 2020, each between the Lender and the Borrower, and as further amended from time to time.

“Operating Loan Interest Fund” means the Fund by that name created pursuant to Section 8(a)(v).

“Operating Loan Prepayment Date” means, for each deposit to the Operating Loan (C/CAG) Retirement Account or the Operating Loan (Lender) Retirement Account, the Business Day immediately following the date of such deposit and written notice of such deposit to the Lender.

“Operating Reserve Fund” means the Fund by that name created pursuant to Section 8(a)(vii).

“Operating Reserve Fund Requirement” means one sixth (1/6) of the budgeted Operation and Maintenance Expenses for the then-current Operating Budget.

“Operation and Maintenance Expenses” means all reasonable current expenses incurred and paid or payable by the Borrower for the administration of the Borrower and for the operation and maintenance of the Express Lanes payable from Revenue, determined in accordance with GAAP, including, without limitation, all amounts paid or payable under an operating agreement,

a police services agreement and similar agreements, costs for operation, maintenance and repair, consumables, payments under any lease or rental payments properly considered to be operating expenses, payments pursuant to agreements for the management of the Express Lanes, taxes, premiums paid or payable on any insurance, payments for oversight services, all administrative, engineering and policing costs, costs for any security, toll collection and enforcement expenses, fees and expenses of a traffic consultant, any fiscal agent, paying agent, rating agency, credit, liquidity or remarketing fees relating to Obligations (for the avoidance of doubt, such fees, administrative costs and expenses do not include any commitment fees, termination fees, fines or other penalties or any payments to be made to swap providers), any insurance consultant, legal and accounting expenses, and any other reasonable and necessary expense paid or payable for the operation and maintenance of the Express Lanes, but excluding expenses paid or scheduled to be paid from proceeds of Obligations, capital expenditures, expenditures for rehabilitation and operational improvement projects on the Express Lanes, depreciation or obsolescence charges or reserves therefore, debt service for Obligations and any non-cash charges, such as depreciation, amortization of intangibles and other bookkeeping entries of a similar nature.

“Operation and Maintenance Fund” means the Fund by that name created pursuant to Section 8(a)(ii).

“Outstanding” means all Obligations, except such Obligations: (i) canceled or delivered for cancellation; (ii) deemed to be paid; and (iii) Obligations held by or for the account of the Borrower.

“Outstanding Bond Loan Balance” means the Bond Loan Balance as of a given time.

“Payment Date” means each Interest Payment Date and the Final Maturity Date.

“Payment Default” has the meaning set forth in Section 17(a)(i).

“Permitted Debt” means the Bond Loan and the Operating Loans.

“Permitted Investments” means with respect to the investment of amounts on deposit in Funds and Accounts and subaccounts referred to in Section 8 of this Agreement:

(a) Defeasance Obligations; or Direct obligations of any agency or instrumentality of the United States of America;

(b) certificates of deposit where the certificates are collaterally secured by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest, but this collateral is not required to the extent the certificates of deposit are insured by an agency of the Government;

(c) money market accounts held by the Lender or its Affiliates; or made with any bank (including a third party as fiscal agent or custodian);

(d) repurchase agreements when collateralized by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of

a market value not less than the amount of the repurchase agreement so collateralized, including interest;

(e) money market funds that invest solely in obligations of the United States of America, its agencies and instrumentalities, and having a rating by a Nationally Recognized Rating Agency at least equivalent to, or higher than, the rating of the Government; and

(f) collateralized investment agreements or other contractual agreements with corporations, financial institutions or national associations within the United States of America, provided that the senior long-term debt of such corporations, institutions or associations is rated "AA" or its equivalent by a Nationally Recognized Rating Agency.

(g) commercial paper (having maturities of not more than 270 days) rated A-1 or better by S& P and P-1 by Moody's.

(h) any investment approved by the Board.

"Permitted Liens" on the Project means:

(a) Liens imposed by law for taxes that are not yet due or are being contested;

(b) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance, and other social security laws or regulations;

(c) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(d) judgment liens in respect of judgments that do not constitute an Event of Default;

(e) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower;

(f) any Lien on any property or asset of the Borrower existing on the Effective Date hereof; provided that (i) such Lien shall not apply to any other property or asset of the Borrower and (ii) such Lien shall secure only those obligations that it secures on the Effective Date hereof and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(g) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition, (ii) such Lien shall not apply to any other property or assets of the Borrower and (iii) such Lien shall secure only those obligations that it secures on the date of such acquisition,

and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof; and

(h) purchase money security interests in equipment acquired on or after the Effective Date hereof by the Borrower, provided that (i) such security interests secure indebtedness for borrowed money permitted by Section 15(a), (ii) such security interests are incurred, and the indebtedness secured thereby is created, within ninety (90) days after such acquisition, (iii) the indebtedness secured thereby does not exceed the fair market value of such real property, improvements or equipment at the time of such acquisition and (iv) such security interests do not apply to any other property or assets (other than accessions to such equipment) of the Borrower.

“**Person**” means any natural person, firm, partnership, association, corporation, or public body.

“**Rating Category**” means one of the generic rating categories of a Nationally Recognized Rating Agency without regard to any refinement or gradation of such rating by a numerical modifier or otherwise.

“**Rebate Fund**” means the Fund by that name created pursuant to Section 8(a)(iv).

“**Repair and Rehabilitation Reserve Fund**” means the Fund by that name created pursuant to Section 8(a)(ix).

“**Repair and Rehabilitation Reserve Fund Requirement**” means the ending balance in the Repair and Rehabilitation Reserve Fund for the prior Fiscal Year, plus 100% of budgeted capital expenditures for the Express Lanes for the current Fiscal Year, as set forth in the Operating Budget for the current Fiscal Year.

“**Revenue**” means: (a) Express Lanes Revenues, (b) all interest or other income from investment of money in the Funds and Accounts established hereunder (excluding the Operation and Maintenance Fund, the Equity Programs Fund, and the Rebate Fund).

“**Revenue Sharing Fund**” means the Fund by that name created pursuant to Section 8(a)(xi).

“**Revenue Stabilization Reserve Fund**” means the Fund by that name created pursuant to Section 8(a)(viii).

[“**Revenue Stabilization Reserve Fund Requirement**” means, as of any date, 25% of the budgeted Express Lanes Revenues in the Operating Budget for the then-current Fiscal Year.]

“**Servicer**” means such entity or entities as the Lender shall designate under Section 25 from time-to-time to perform, or assist the Lender in performing, certain duties hereunder.

“**State**” means the State of California.

“**Tax Certificate**” means the Tax Certificate dated _____, 2020, executed by the Borrower.

“**101 Project**” has the meaning given such term in the Recitals.

SECTION 2. Interpretation. Unless the context shall otherwise require, the words “hereto,” “herein,” “hereof” and other words of similar import refer to this Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns. Unless the context shall otherwise require, references to sections, subsections, and provisions are to the applicable sections, subsections and provisions of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time-to-time in accordance with the terms thereof and hereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 19 and signed by a duly authorized representative of such party.

SECTION 3. Bond Loan; Initial Bond Loan Balance; Note.

(a) The Lender hereby loans to the Borrower, and the Borrower hereby borrows from the Lender, the Bond Loan, by causing the net proceeds (after underwriter’s discount) from the sale of the Lender Bonds to be deposited as provided under the Bond Indenture to the funds and accounts thereunder. The initial Bond Loan Balance shall be \$[_____] (calculated as the amount of Lender Bond proceeds deposited to the funds and accounts under the Bond Indenture plus the underwriters’ discount upon initial sale of the Lender Bonds to the underwriters thereof). Thereafter, the principal amount of the Bond Loan at any time shall be the Bond Loan Balance as determined in Section 7.

(b) On or before the Effective Date, the Borrower shall execute and deliver the Note. The Note shall evidence the Borrower’s obligation to repay to the Lender the Bond Loan with interest as herein provided. The Note shall not be rated by a credit rating agency, shall not have a CUSIP number and shall not be issued or sold pursuant to an offering document. The Note shall be registered in the name of the Lender, and shall be in substantially the form set forth in Exhibit A hereto.

SECTION 4. Disbursement of Bond Loan. The Lender shall cause such Lender Bond proceeds to be disbursed on the Effective Date and from time to time thereafter in accordance with the Bond Indenture and the Tax Certificate, including without limitation to pay directly, or to reimburse prior payments of, costs in connection with the 101 Project, it being understood and acknowledged that the Borrower shall also be a signatory on requisitions of Lender Bond proceeds required under the Bond Indenture and that a requisition on the date of issuance of the Lender Bonds shall include \$1,000,000 to the Borrower for Equity Programs.

SECTION 5. Term. The term of the Bond Loan and the Note shall extend from the Effective Date to the Final Maturity Date or to such earlier or later date as all amounts due or to become due to the Lender hereunder have been paid.

SECTION 6. Bond Loan Interest Rate; Enhancement Cost Component; Lender Bonds Cost Component.

(a) Interest shall accrue on the Bond Loan at a rate (the “Bond Loan Interest Rate”) equal to the Base Rate. Interest shall accrue only on the Outstanding Bond Loan Balance. Upon the occurrence and during the continuance of an Event of Default, the Bond Loan Interest Rate shall be the Default Rate and the Outstanding Bond Loan Balance shall continue to bear interest at such rate until such Event of Default is cured or the Bond Loan has been paid in full. Interest on Lender Bonds paid from Lender Bond proceeds or investment earnings on deposit in the Interest Fund under the Bond Indenture shall be deemed to pay an equivalent amount of interest accrued on the Bond Loan.

(b) On each Payment Date, the Borrower shall pay to the Lender an amount equal to the then incurred or accrued and unpaid Enhancement Cost Component, except the Enhancement Cost Component or portion thereof added to the Bond Loan Balance under Section 7.

(c) On each Payment Date, the Borrower shall pay to the Lender an amount equal to the then incurred or accrued and unpaid Lender Bonds Cost Component, except the Lender Bonds Cost Component or portion thereof added to the Bond Loan Balance under Section 7. The amount of Lender Bonds Cost Component paid from Lender Bond proceeds or investment earnings on deposit in the Interest Fund under the Bond Indenture shall be deemed to pay an equivalent amount of Lender Bonds Cost Component payable hereunder.

SECTION 7. Outstanding Bond Loan Balance and Revisions Thereof.

(a) As of any date, the “Bond Loan Balance” shall be the initial Bond Loan Balance under Section 3:

(i) plus accrued interest on the Outstanding Bond Loan Balance as of each Monthly Funding Date that is not deemed paid under Section 6(a) nor funded by a corresponding deposit to the Bond Loan Interest and Costs Account or the Bond Loan Retirement Account;

(ii) plus the Enhancement Cost Component accrued on and after [_____, 202_] [THE END OF THE TWO-YEAR CAPITALIZED ENHANCEMENT FEE PERIOD] as of each Monthly Funding Date that is not funded by a corresponding deposit to the Bond Loan Interest and Costs Account;

(iii) plus the accrued Lender Bonds Cost Component as of each Monthly Funding Date that is not deemed paid under Section 6(c) nor funded by a corresponding deposit to the Bond Loan Interest and Costs Account;

(iv) less repayments of Bond Loan principal from amounts deposited to the Bond Loan Retirement Account; and

(v) less the amount of any Enhancement Adjustment required under subsection (b) of this Section.

(b) In each Fiscal Year in which \$5,000,000 or more of Net Revenue is deposited to the Bond Loan Retirement Account under clause Tenth of Section 8(b), the Lender shall reduce (effective the next June 1) the Bond Loan Balance by an amount equal to the Adjusted Outstanding Lender Bond Principal Amount as of the first day of the then-current Fiscal Year times 0.15% (each an “Enhancement Adjustment”).

(c) The Lender shall make applicable revisions to the Bond Loan Balance upon any optional or mandatory prepayment of the Bond Loan, which shall reflect, to the extent reasonably practicable, proportionate adjustments, if necessary. Upon any such revision the Lender shall provide the Borrower with the revised Bond Loan Balance. No failure to provide or delay in providing the Borrower with such schedule shall affect any of the obligations of the Borrower under this Agreement or the other Loan Documents. The Bond Loan Balance shall be calculated without considering whether Lender Bonds are or are not redeemed from amounts paid to the Lender under this Agreement or otherwise. The Borrower shall bear no responsibility for the Lender’s choice not to redeem Lender Bonds from amounts paid to the Lender under this Agreement.

SECTION 8. Security and Priority; Funds and Accounts; Flow of Funds. As security for repayment of the Bond Loan, the Operating Loan (Lender), the Operating Loan (C/CAG) and its respective other obligations thereunder, the Borrower hereby pledges, assigns and grants a security interest in and lien on the Collateral. All Express Lanes Revenues received and receivable by the Borrower are to be deposited by the Borrower in the Funds and Accounts described herein and held for the purposes set forth herein, and except as otherwise provided herein, shall not be subject to any lien, levy, garnishment or attachment by any creditor of the Borrower nor shall they be subject to any assignment or hypothecation by the Borrower. Subject only to the provisions hereof permitting the application thereof for or to the purposes and on the terms and conditions set forth herein, the Borrower shall receive all of the Express Lanes Revenues. Moneys on deposit in the Funds and Accounts described in this Section 8 shall be held by the Borrower pending application in accordance with the provisions of this Section 8. Collateral shall be invested only in Permitted Investments. Notwithstanding the foregoing, all investment earnings on amounts on deposit in any of the funds and accounts hereunder (other than the Rebate Fund) shall be transferred to the Revenue Sharing Fund.

(a) The following Funds and Accounts are hereby established and created hereunder and shall at all times be held and maintained by the Borrower:

- (i) the Express Lanes Revenue Fund;
- (ii) the Operation and Maintenance Fund;
- (iii) the Equity Program Fund;

- (iv) the Rebate Fund;
- (v) the Operating Loan Interest Fund, and within the Operating Loan Interest Fund, the Operating Loan (Lender) Interest Account, and the Operating Loan (C/CAG) Interest Account;
- (vi) the Bond Loan Interest and Costs Account;
- (vii) the Operating Reserve Fund;
- (viii) the Revenue Stabilization Reserve Fund;
- (ix) the Repair and Rehabilitation Reserve Fund;
- (x) the Equipment Replacement Reserve Fund;
- (xi) the Revenue Sharing Fund, and within the Revenue Sharing Fund, the Operating Loan (C/CAG) Retirement Account, the Operating Loan (Lender) Retirement Account, and the Bond Loan Retirement Account; and
- (xii) the Insurance and Condemnation Proceeds Account.

The Borrower may establish and maintain additional temporary Funds or Accounts or sub-accounts for the purposes specified herein or for the convenience of the Borrower.

The funds or accounts established hereunder to be held and maintained by the Borrower shall be held and maintained on behalf of the Borrower by a bank, trust company or other financial institution selected by the Borrower serving as the Borrower's fiscal agent under a fiscal agent agreement to be negotiated between the Borrower and such fiscal agent and entered into within twelve months following the Effective Date. Such fiscal agent agreement shall obligate the fiscal agent to hold all of the funds and accounts contemplated by this Agreement and to administer amounts described in this Agreement consistent with the restrictions and requirements set forth herein. Before entering into any such fiscal agent agreement or amendment thereof, the Borrower shall submit the final form thereof to the Lender for its review and approval.

(b) So long as any obligations under the Loan Documents or under the Operating Loan Agreement (C/CAG) or under the Operating Loan Agreement (Lender) remain unpaid, the Borrower shall deposit all Revenue following receipt in the Express Lanes Revenue Fund. Amounts on deposit in the Express Lanes Revenue Fund shall be set aside and shall be applied in the following order of priority, at the times and in the amounts set forth below to the extent that Revenue is available to make such deposits.

First, on each Monthly Funding Date, to the Operation and Maintenance Fund, the amount necessary to increase the balance of the Operation and Maintenance Fund to an amount equal to the Operation and Maintenance Expenses then due and payable and not previously paid;

Second, on each Monthly Funding Date, to the Rebate Fund, the amount required to satisfy any applicable rebate requirement payable and not previously paid to the United States

Treasury in respect of the Lender Bonds, in such amount as is indicated in writing to the Borrower by the Lender, which shall be conclusive in the absence of manifest error;

Third, on each Monthly Funding Date, to the Equity Programs Fund, the amount of \$50,000[, plus the amount of any unsatisfied deficiency on any prior Monthly Funding Date during the current Fiscal Year/without regard to any deficiency in any prior Monthly Funding Date];

Fourth, on each Interest Payment Date and on the maturity date of the Operating Loan (C/CAG) and the maturity date of the Operating Loan (Lender), to the Operating Loan Interest Fund, an amount estimated to equal the sum of (1) Operating Loan (C/CAG) interest accrued or to accrue on the Operating Loan (C/CAG) to that Interest Payment Date or its maturity date, as applicable (calculated as set forth in the Operating Loan Agreement (C/CAG)), as evidenced in a written notice by C/CAG to the Borrower (which notice shall be conclusive absent manifest error and provided at least three days before the funding date)) plus (2) Operating Loan (Lender) interest accrued or to accrue on the Operating Loan (Lender) to that Interest Payment Date or its maturity date, as applicable (calculated as set forth in the Operating Loan Agreement (Lender)), as evidenced in a written notice by the Lender to the Borrower (which notice shall be conclusive absent manifest error and provided at least three days before the funding date);

Fifth, on each Interest Payment Date and on the Final Maturity Date, to the Bond Loan Interest and Costs Account, an amount estimated to equal Bond Loan unpaid interest accrued or to accrue to the Interest Payment Date or the Final Maturity Date, as applicable, plus the unpaid Enhancement Cost Component accrued or to accrue to the Interest Payment Date, plus the unpaid Lender Bonds Cost Component accrued or to accrue to the Interest Payment Date (calculated by the Lender, with any period for which the Bond Loan Interest Rate has not yet been established assumed to be at the maximum and after adjusting correspondingly for any portion of a prior Monthly Funding Date that did not reflect the actual Bond Loan Interest Rate), as evidenced in a written notice by the Lender to the Borrower (which notice shall be conclusive absent manifest error and provided at least three days before the funding date);

Sixth, on each May 1 (or if such day is not a Business Day, the next Business Day), to the Operating Reserve Fund, such amount as will result in the total amount on deposit in the Operating Reserve Fund equating to the Operating Reserve Fund Requirement;

Seventh, on each May 1 (or if such day is not a Business Day, the next Business Day), to the Revenue Stabilization Reserve Fund, such amount as will result in the total amount on deposit in the Revenue Stabilization Reserve Fund equating to the Revenue Stabilization Reserve Fund Requirement;

Eighth, on each May 1 (or if such day is not a Business Day, the next Business Day), to the Repair and Rehabilitation Reserve Fund, such amount as will result in the total amount on deposit in the Repair and Rehabilitation Reserve Fund equating to the Repair and Rehabilitation Reserve Fund Requirement;

Ninth, on each May 1 (or if such day is not a Business Day, the next Business Day), to the Equipment Replacement Reserve Fund, such amount as will result in the total amount on

deposit in the Equipment Replacement Reserve Fund equating to the Equipment Replacement Reserve Fund Requirement;

Tenth, on each May 1 (or if such day is not a Business Day, the next Business Day), (i) to the Revenue Sharing Fund 85% of amounts remaining after all other deposits required under this section (rounded to the nearest cent) and (ii) to the Borrower the remainder of amounts in the Express Lanes Revenue Fund for any lawful purpose, including without limitation for Equity Programs. But if the amount calculated in the preceding clause (i) is greater than the amount required to fully discharge payment of all principal and interest on the Bond Loan on the next Bond Loan Prepayment Date or the Final Maturity Date (whichever occurs next) plus the amount required to fully discharge all principal and interest on the Operating Loans on the next Operating Loan Prepayment Date or the maturity date of the Operating Loans, then the transfer under the preceding clause (i) shall be in such amounts instead.

(c) Reserved.

(d) Equity Programs Fund. The Borrower shall pay only costs of the Equity Program from amounts deposited to the Equity Programs Fund. The Borrower shall keep and maintain accurate records of all expenditures from such account within the Equity Programs Fund and shall provide such records to the Lender upon reasonable request in writing and shall make available the appropriate officers of the Borrower to answer questions regarding such expenditures upon reasonable notice.

The Lender and Borrower acknowledge that the deposits to the Equity Program Fund required under clause Third of subsection (b) of this Section provide for the direct funding of the Equity Programs. The Lender and Borrower agree that Equity Programs that are not directly funded, but are instead implemented through measures that reduce Express Lanes Revenue (e.g., Equity Programs that implement means-based toll rate discounts), will require amendments to this Agreement before implementation by the Borrower. The Lender and Borrower agree to meet, confer, and negotiate such amendments in good faith upon presentation by the Borrower to the Lender of such a proposed Equity Program. Notwithstanding the prior sentence, the Borrower shall have the right to implement an Equity Program that provides a means-based toll rate discount without the prior approval of the Lender, if the Borrower first certifies (including supporting calculations) in writing to the Lender that: (1) in the most recent prior Fiscal Year, the Borrower made payments from Revenue that reduced the Outstanding Bond Loan Balance by \$5 million or more, (2) implementation of the means-based toll rate discount is not projected to reduce Express Lanes Revenue by more than 10% in any Fiscal Year compared to Express Lanes Revenue projected for the corresponding Fiscal Year absent the discount, and (3) implementation of the means-based toll rate discount will not reduce below \$5 million in any year the projected reduction of the Outstanding Bond Loan Balance from Revenue as provided under clause Tenth of subsection (b) of this Section and subsection (m) of this Section.

(e) Operation and Maintenance Fund. The Borrower shall apply the funds in the Operation and Maintenance Fund to pay Operation and Maintenance Expenses due and payable and not previously paid.

(f) Rebate Fund. Money at any time deposited in the Rebate Fund shall be transferred by the Borrower to the trustee under the Bond Indenture as the Lender shall instruct. Amounts in the Rebate Fund shall be held uninvested.

(g) Operating Loan Interest Fund. Money at any time deposited in the Operating Loan Interest Fund shall be transferred by the Borrower on the date of such deposit to the Operating Loan (Lender) Interest Account and the Operating Loan (C/CAG) Interest Account in the respective amounts set forth in subclauses (1) and (2) of clause Fourth of subsection (b) of this Section, and if insufficient to make such transfers in full, then in proportion to the amounts described in subclauses (1) and (2). Money at any time deposited in the Operating Loan (C/CAG) Interest Account shall be transferred by the Borrower on the date of such deposit as C/CAG shall instruct to discharge the obligation to pay interest due on the Operating Loan (C/CAG). Money at any time deposited in the Operating Loan (Lender) Interest Account shall be transferred by the Borrower on the date of such deposit as the Lender shall instruct to discharge the obligation to pay interest due on the Operating Loan (Lender).

(h) Bond Loan Interest and Costs Account. Money at any time deposited in the Bond Loan Interest and Costs Account shall be transferred by the Borrower on the date of such deposit as the Lender shall instruct to discharge the obligation to pay interest due on the Bond Loan and to pay the Enhancement Costs Component and the Lender Bonds Cost Component.

(i) Revenue Stabilization Reserve Fund. The Revenue Stabilization Reserve Fund shall be funded from amounts transferred pursuant to clause Seventh of subsection (b) of this Section and may be funded by the Borrower from any other legally available source of funds. Amounts in the Revenue Stabilization Reserve Fund may be withdrawn by the Borrower and transferred to the Operation and Maintenance Fund to the extent the amounts in the Operation and Maintenance Fund are insufficient to pay Operation and Maintenance Expenses due and payable and not previously paid.

(j) Operating Reserve Fund. The Operating Reserve Fund shall be funded from amounts transferred pursuant to clause Sixth of subsection (b) of this Section and may be funded by the Borrower from any other legally available source of funds. Amounts in the Operating Reserve Fund may be withdrawn by the Borrower and transferred to the Operation and Maintenance Fund to the extent the amounts in the Operation and Maintenance Fund and amounts available for transfer from the Revenue Stabilization Reserve Fund under subsection (i) of this Section are, together, insufficient to pay Operation and Maintenance Expenses due and payable and not previously paid.

(k) Repair and Rehabilitation Reserve Fund. The Repair and Rehabilitation Reserve Fund shall be funded from any lawful source of funds of the Borrower and amounts transferred pursuant to clause Eighth of subsection (b) of this Section. On any date on which capital expenditures required under the Caltrans Agreement are due and payable or reasonably expected to become due and payable, monies on deposit in the Repair and Rehabilitation Reserve Fund shall be applied by the Borrower to pay such expenditures.

(l) Equipment Replacement Reserve Fund. The Equipment Replacement Reserve Fund shall be funded from any lawful source of funds of the Borrower and amounts

transferred pursuant to clause Ninth of subsection (b) of this Section. On any date on which expenditures for equipment replacement are due and payable or reasonably expected to become due and payable, monies on deposit in the Equipment Replacement Reserve Fund shall be applied by the Borrower to pay such expenditures.

(m) Revenue Sharing Fund. The Revenue Sharing Fund shall be funded from amounts transferred pursuant to clause Tenth of subsection (b) and subsection (n) of this Section and from investment earnings transferred under the first paragraph of this Section. Upon each deposit to the Revenue Sharing Fund pursuant to clause Tenth of subsection (b) and subsection (n) of this Section, the Borrower will allocate and deposit moneys so transferred to the Revenue Sharing Fund plus investment earnings transferred into the Revenue Sharing Fund to the Operating Loan (C/CAG) Retirement Account, the Operating Loan (C/CAG) Retirement Account and the Bond Loan Retirement Account in proportions reflecting the applicable assumed principal amounts of (i) the Operating Loan (C/CAG) appearing on the Operating Loan (C/CAG) Principal Schedule, (ii) the Operating Loan (Lender) appearing on the Operating Loan (Lender) Principal Schedule and (iii) the Bond Loan appearing on the Bond Loan Principal Schedule. The Borrower shall transfer to C/CAG all amounts deposited to the Operating Loan (C/CAG) Retirement Account to prepay on the applicable Operating Loan Prepayment Date principal of the Operating Loan (C/CAG) and the corresponding interest accrued or to accrue to the Operating Loan Prepayment Date so as to exhaust the deposit. The Borrower shall transfer to the Lender all amounts deposited to the Operating Loan (Lender) Retirement Account to prepay on the applicable Operating Loan Prepayment Date principal of the Operating Loan (Lender) and the corresponding interest accrued or to accrue to the Operating Loan Prepayment Date so as to exhaust the deposit. The Borrower shall transfer to, or as instructed by, the Authority all amounts deposited to the Bond Loan Retirement Account to prepay on the next Bond Loan Prepayment Date principal of the Bond Loan and the corresponding interest accrued or to accrue to the Bond Loan Prepayment Date so as to exhaust the deposit. The Operating Loan (C/CAG) Retirement Account, Operating Loan (Lender) Retirement Account and the Bond Loan Retirement Account shall be held uninvested.

(n) Insurance and Condemnation Proceeds Account. Proceeds of fire and other casualty insurance payable to or received by the Borrower with respect to the 101 Project or the Express Lanes (whether by way of claims, return of premiums, ex gratia settlements or otherwise), and proceeds of any condemnation awards payable to or received by the Borrower with respect to the Express Lanes shall be transferred by the Borrower to and deposited in the Insurance and Condemnation Proceeds Account. Amounts on deposit in the Insurance and Condemnation Proceeds Account may be used by the Borrower to pay the costs of restoration, repair or rehabilitation of the Express Lanes or portion thereof to which such insurance or condemnation proceeds relate; provided, however, that any portion of such amounts that the Borrower elects not to use for such restoration, repair or rehabilitation of the Express Lanes or that are in excess of the amount needed for such restoration, repair or rehabilitation of the Express Lanes shall be deposited in the Revenue Sharing Fund.

SECTION 9. Payment of Principal and Interest.

(a) The Borrower agrees to pay the interest on the Bond Loan by making payments for accrued interest on each Interest Payment Date and on such other dates as payment thereof is required to be made hereunder, from Net Revenue and such other amounts as provided

herein. Any interest that is deemed paid under Section 6(a) or increases the Bond Loan Balance due to lack of sufficient funding from Net Revenue as contemplated by Section 7(a)(i) shall not be deemed a required payment of interest under this Agreement or a breach of this Agreement. The Borrower agrees to pay the principal of the Bond Loan by paying the Bond Loan Balance in full on the Final Maturity Date and on such other dates as payment thereof is required to be made hereunder, from Net Revenue and such other amounts as provided herein.

(b) Payments to the Lender under this Agreement shall be made by wire transfer on or before each Interest Payment Date or Final Maturity Date, as the case may be, in immediately available funds in accordance with payment instructions provided by a Lender's Authorized Representative pursuant to Section 24, as modified in writing from time to time by a Lender's Authorized Representative.

SECTION 10. Prepayment.

(a) Optional Prepayment. The Borrower may optionally prepay the Bond Loan in whole or in part on any Bond Loan Prepayment Date on or after the Effective Date, without penalty or premium, by depositing in advance as instructed by the Lender such principal amount of the Bond Loan to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment so as to exhaust the deposit and providing written notice of such deposit to the Lender.

Each optional prepayment of the Bond Loan shall be deemed made on the related Bond Loan Prepayment Date, and the Lender shall notify the Borrower of the amount of the Bond Loan Balance that was reduced due to such prepayment.

(b) Mandatory Prepayment. The Borrower shall prepay the Bond Loan on the Bond Loan Prepayment Date next following each deposit into the Bond Loan Retirement Account, by paying a principal amount of the Bond Loan, together with the unpaid interest accrued on the amount of principal to be prepaid to the date of such prepayment so as to exhaust the deposit made to the Bond Loan Retirement Account. The Borrower shall provide the Lender written notice of each mandatory prepayment made pursuant to this Section 10(b) on the date of the corresponding deposit to the Bond Loan Retirement Account. Each mandatory prepayment of the Bond Loan shall be deemed made on the related Bond Loan Prepayment Date, and the Lender shall notify the Borrower of the amount of the Bond Loan Balance that was reduced due to such prepayment.

SECTION 11. Compliance with Laws. The Borrower covenants to require its contractors and subcontractors to abide by all applicable federal and State laws.

SECTION 12. Conditions Precedent. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective until each of the following conditions precedent shall have been satisfied:

(a) The Borrower shall have duly executed and delivered to the Lender this Agreement and the Note, in each case in form and substance satisfactory to the Lender.

(b) Counsel to the Borrower shall have rendered to the Lender a legal opinion in form and substance satisfactory to the Lender.

(c) The Borrower shall have delivered to the Lender a certificate designating the Borrower's Authorized Representative and such person's position and incumbency.

(d) The Borrower shall certify in writing that as of the Effective Date: (i) no Event of Default currently exists (or with the passage of time, will exist) of the Agreement; and (ii) the representations and warranties of the Borrower set forth in the Agreement are true and correct in all material respects on such date, as if made on such date.

(e) The Borrower shall have delivered copies of the Operating Loan Agreement (C/CAG) and Operating Loan Agreement (Lender), certified to be true and correct copies by a Borrower officer.

(f) The Borrower shall also have delivered such other agreements, documents, instruments, opinions and other items required by the Lender, all in form and substance satisfactory to the Lender.

SECTION 13. Representations and Warranties of Borrower. The Borrower hereby represents and warrants as of the Effective Date as follows:

(a) The Borrower is a joint powers authority existing under the laws of the State, duly organized, validly existing and in good standing under the laws of the State, has full legal right, power and authority to enter into the Loan Documents and to carry out and consummate all transactions contemplated by hereby and thereby and has duly authorized the execution, delivery and performance of such Loan Documents.

(b) As of the Effective Date, the officers of the Borrower executing the Loan Documents currently in existence to which the Borrower is a party, are duly and properly in office and fully authorized to execute the same.

(c) Each of the Loan Documents has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable in accordance with its terms, except as such enforceability (A) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and (B) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law), judicial discretion and limitations on remedies against transportation commissions in the State.

(d) The execution and delivery of the Loan Documents, the consummation of the transactions contemplated in the Loan Documents and the fulfillment of or compliance with the terms and conditions of the Loan Documents will not, in any material respect, conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) by the Borrower of any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower.

(e) No consent or approval of any holder of any indebtedness of the Borrower or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority required as of the date hereof is necessary in connection with the execution and delivery by the Borrower of the Loan Documents, the consummation of any transaction contemplated by the Loan Documents, or the fulfillment of or compliance with the Borrower of the terms and conditions of the Loan Documents, except as have been obtained or made and as are in full force and effect.

(f) There is no action, suit, proceeding, inquiry or investigation before or by any court or other Governmental Authority, pending, or to the knowledge of the Borrower after reasonable inquiry and investigation, threatened against or affecting the Borrower or the assets, properties or operations of the Borrower that is likely to have a Material Adverse Effect. The Borrower is not in default (and no event has occurred and is continuing that with the giving of notice or the passage of time or both could constitute a default) with respect to any order or decree of any court or any order, regulation or demand of any other Governmental Authority, which default would be reasonably likely to have a Material Adverse Effect.

(g) The Lien is in full force and effect and is not subordinate or junior to any other Liens in respect of the Collateral, and the Borrower is not in breach of any covenants set forth in Section 15(b) of this Agreement with respect thereto. This Agreement creates a valid pledge in favor of the Lender of the Net Revenue and, as of the Effective Date, all necessary actions on the part of the Borrower and the Lender have been taken as required to pledge the Net Revenue in favor of the Lender. As of the Effective Date, the Borrower has not pledged or granted a lien, security interest or other encumbrance of any kind on the Net Revenue on a parity with the Note.

(h) The representations, warranties and certifications of the Borrower set forth in this Agreement are true and accurate.

(i) Upon execution and delivery of this Agreement, the Borrower is not in default in any material respect under the terms hereof or thereof and no event has occurred or condition exists that, with due notice or lapse of time or both, would constitute an Event of Default.

(j) The Borrower has adopted local debt policies described under California Government Code section 8855, subdivision (i), paragraph (1), subparagraphs (C), (D), and (E).

(k) As of the Effective Date, the Borrower has no knowledge that it has made any material investment, or entered into any agreement for the purpose of effecting any such investment, that is not permitted to be made pursuant to applicable law or this Agreement.

(l) No representation, warranty or other statement made by the Borrower with respect to the Net Revenue in or pursuant to this Agreement or any Loan Document or any other document or financial statement with respect to the Express Lanes Revenues provided by the Borrower to the Lender in connection with this Agreement or any other Loan Document, except as disclosed to the Lender in writing, contains any untrue statement of a material fact. All information, reports and other papers and data with respect to the Net Revenue furnished to the Lender were, at the time the same were so furnished, accurate in all material respects or were replaced with accurate information. Any financial statements and cash flows furnished to the

Lender with respect to the Net Revenue were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of conditions existing at the time of the delivery of such financial statements and cash flows. No fact is known to the Borrower that in the future may (so far as it can reasonably foresee) materially and adversely affect the security for the Note, or the Borrower's ability to repay when due its obligations under this Agreement or the Note.

(m) The Borrower is not entitled to immunity from legal proceedings to enforce this Agreement or any other Loan Document (including, without limitation, immunity from service of process or immunity from jurisdiction of any court otherwise having jurisdiction) and is subject to claims and suits for damages in connection with its obligations under the Agreement pursuant to and in accordance with the laws of the State applicable to public entities such as the Borrower.

(n) To the best knowledge of the Borrower, there is no amendment, or proposed amendment certified for placement on a statewide ballot, to the Constitution of the State or any published administrative interpretation of the Constitution of the State or any State law, or any legislation that has passed either house of the State legislature, the effect of which (a) would be materially adversely affect the ability of the Borrower to perform its obligations under this Agreement or any of the other Loan Documents or (b) would invalidate, eliminate or reduce the Express Lanes Revenues.

SECTION 14. Representations, Warranties, and Covenants of Lender. The Lender represents and warrants that:

(a) The Lender has all requisite power and authority to make the Bond Loan and to perform all transactions contemplated by the Loan Documents to which it is a party.

(b) The Loan Documents to which the Lender is a party have been duly authorized, executed and delivered by Lender, and are legally valid and binding agreements of the Lender, enforceable in accordance with their terms.

(c) The officers of the Lender executing each of the Loan Documents to which the Lender is a party is duly and properly in office and fully authorized to execute the same on behalf of the Lender.

SECTION 15. Borrower Covenants. The Borrower hereby covenants and agrees that:

(a) Permitted Indebtedness. Except for Permitted Debt, the Borrower shall not issue or incur indebtedness of any kind payable from the Collateral, unless upon such issuance or incurrence the obligations of the Borrower under the Bond Loan and the Operating Loan (Lender) are discharged in full.

(b) Securing the Lien. The Borrower shall at any and all times, so far as it may be authorized by law, adopt, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning, securing and confirming the Lien on the Collateral granted for the benefit of the Lender under this Agreement. The Borrower shall at all times, to the extent permitted by law, defend, preserve and protect the Lien granted

pursuant to this Agreement to the Lender against all claims and demands of all Persons whomsoever.

(c) Copies of Documents. The Borrower shall furnish to the Lender a copy of any offering document and cash flow projections prepared in connection with the incurrence of any Permitted Debt, as well as copies of any continuing disclosure documents pertaining to obligations, prepared or filed in connection with the applicable rules of the U.S. Securities and Exchange Commission, in each case promptly following the preparation or filing thereof.

(d) Other Sources Permitted. Notwithstanding any provision to the contrary in this Agreement, the Borrower may, in accordance with applicable laws, construct, reconstruct, rehabilitate, improve, acquire, lease, operate, or maintain, or any combination of these, both tolled and non-tolled facilities, structures, onramps, connector roads, bridges, and roadways that are on, necessary for, or related to the construction or operation of the 101 Project and the Express Lanes using any funds legally available therefore, including, without limitation and as applicable, proceeds of federal, State and local grants, loans and matching funds. Notwithstanding any other provision of this Agreement, the United States of America, the State or any of their respective agencies, departments or political subdivisions may construct, reconstruct, rehabilitate, improve, acquire, lease, operate, maintain, or any combination of these, both tolled and non-tolled facilities, structures, onramps, connector roads, bridges, and roadways related to or competing with the Express Lanes or to pay for all or any part of the cost thereof. The Borrower has no power or authority to grant, permit, prohibit, prevent or interfere with any such actions.

(e) Reserved.

(f) Operations and Maintenance. Borrower shall operate and maintain the Express Lanes in a reasonable and prudent manner and shall maintain the Express Lanes in good repair, working order and condition and shall from time-to-time make or cause to be made all necessary and proper replacements, repairs, renewals and improvements so that the Express Lanes shall not be materially impaired. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, franchises and authorizations material to the conduct of its business, and comply in all material respects with all applicable laws, rules, regulations, orders, decrees, judgments or administrative decisions, whether now in effect or hereafter enacted, of any Governmental Authority having jurisdiction over the Borrower or its assets or operations and all other federal, state and local laws, rules, regulations, orders, decrees, judgments and administrative decisions relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters).

(g) Insurance. Following the commencement of toll collection on the Express Lanes, the Borrower shall at all times maintain, or cause to be maintained, insurance, which may include self-insurance, with respect to the Express Lanes, against accident to, loss of or damage to the Express Lanes, with responsible insurance and/or reinsurance companies authorized and qualified to do business in the State and to assume the risks thereof, with the Lender listed as an additional insured, as applicable.

(h) Notice. The Borrower shall, within five (5) Business Days after the Borrower learns of the occurrence of an Event of Default or any event that, given notice or the passage of time or both, would constitute an Event of Default, give the Lender written notice of such event.

(i) Remedied Action. Within thirty (30) calendar days after the Borrower learns of the occurrence of an Event of Default or any event that, given notice or the passage of time or both, would constitute an Event of Default, the Borrower's Authorized Representative shall provide a statement setting forth the actions the Borrower proposes to take with respect thereto.

(j) No Lien Extinguishment or Adverse Amendments. Borrower shall not, without the prior written consent of the Lender, extinguish the lien on the Collateral.

(k) Maintenance of Existence and Powers. To the fullest extent permitted by law, the Borrower shall maintain its legal existence. The Borrower covenants that it will at all times use its best efforts to maintain the powers, rights, functions, duties and obligations now reposed on it pursuant to all laws and will not at any time voluntarily do, suffer or permit any act or thing the effect of which would be to hinder, delay or imperil either the payment of the Obligations or the performance or observance of any of the covenants contained in this Agreement.

(l) Express Lanes Operator. The Borrower shall at all times use its best efforts to maintain an Express Lanes Operator. The Borrower shall provide timely written notice of any successor Express Lanes Operator to the Lender.

(m) Annual Operating Budget. The Borrower hereby covenants to provide to the Lender, on or prior to June 30 of each year, an annual operating budget for the Express Lanes for the coming Fiscal Year, specifying budgeted operating revenues, operation and maintenance expenses, renewals and replacements and other capital expenses and extraordinary expenses for such Fiscal Year.

(n) No Prohibited Sale or Assignment. The Borrower shall not sell or assign all or substantially all of its rights in and to the Express Lanes without the written consent of the Lender and shall not sell or assign its rights and obligations under this Agreement unless such sale or assignment is not expected to result in a Material Adverse Effect and is upon terms and conditions approved in writing by the Lender in its sole discretion.

(o) Material Obligations. The Borrower will pay its material obligations promptly and in accordance with their terms and pay and discharge promptly all material taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims that, if unpaid, might give rise to a Lien upon such properties or any part thereof, except Permitted Liens; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy or claim so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall, to the extent required GAAP on a consistent basis, set aside on its books adequate reserves with respect thereto.

(p) Fiscal Year. The Borrower will not at any time adopt any Fiscal Year other than the Fiscal Year, except upon written notice to the Lender.

(q) No Prohibited Business. The Borrower will not at any time engage in any business or activity other than as is authorized or not prohibited by the laws of the State.

(r) No Swaps. The Borrower shall not enter into any interest rate swap agreements that are to be paid from Revenue without the prior written consent of the Lender.

(s) Reserved.

(t) Compliance With Law. The Borrower shall comply with all laws, rules and regulations (including all Environmental Laws), and with all final orders, writs, judgments, injunctions, decrees or awards to which it may be subject; provided, however, that the Borrower may contest the validity or application thereof and appeal or otherwise seek relief therefrom, and exercise any and all of the rights and remedies which it may have with regard thereto, so long as such acts do not affect the Borrower's power and authority to execute and deliver this Agreement or any other Loan Documents to which it is a party, to perform its obligations and to pay all amounts payable by it hereunder, under the Note and under the other Loan Documents.

(u) Accounting Method. The Borrower shall not materially change its method of accounting relating to Revenue, or the times of commencement or termination of Fiscal Years or other accounting periods relating to Revenue without first disclosing in writing such change to the Lender.

(v) Tax Covenants. The Borrower shall comply with all of its obligations under the Tax Certificate.

(w) Reporting Requirements. The Borrower shall provide the Lender:

(1) Within nine (9) months after the Borrower's Fiscal Year (1) a copy of the Borrower's audited financial statements, (2) an update of the Revenue and Net Revenue for the immediately prior Fiscal Year, and (3) an updated forecast of Revenue and Net Revenue for next succeeding Fiscal Year.

(2) Within fifteen (15) days after each calendar quarter, the unaudited operating results for the Express Lanes for the immediately preceding calendar quarter.

(3) The Borrower shall submit (A) no later than fifteen (15) calendar days prior to the commencement of each biennial period for which an Operating Budget will be adopted, an operating plan and a proposed budget and (B) as soon as possible, the adopted Operating Budget and any amendments thereto.

(4) Such additional information as the Lender may from time to time reasonably request.

SECTION 16. Indemnification. To the extent authorized by law, the Borrower shall indemnify the Lender and any official, employee, agent or representative of the Lender (each such

Person being herein referred to as an “Indemnatee”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including, without limitation, the fees, charges and disbursements of any counsel for any Indemnatee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (i) the execution, delivery and performance of this Agreement or any of the Loan Documents, (ii) the Bond Loan or the use of the proceeds thereof, or (iii) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the 101 Project or any other project funded with Lender Bond proceeds or Express Lanes Revenues; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee. In case any action or proceeding is brought against an Indemnatee by reason of any claim with respect to which such Indemnatee is entitled to indemnification hereunder, the Borrower upon notice from such Indemnatee shall defend the same and such Indemnatee shall cooperate with the Borrower at the expense of the Borrower in connection therewith. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnatee. All amounts due to any Indemnatee under this Section shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section shall survive the payment or prepayment in full or transfer of the Bond Loan, the enforcement of any provision of the Loan Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder.

SECTION 17. Events of Default and Remedies.

(a) An Event of Default shall exist under this Agreement if:

(i) Payment Default. The Borrower shall fail to pay when due (A) upon mandatory prepayment (from available funds contemplated hereby) or at maturity, any principal of the Bond Loan; (B) any required payment of interest on the Bond Loan (subject to Section 9(a)); (C) any required payment of the Enhancement Cost Component (subject to Section 6(b)); (D) any required payment of the Lender Bonds Cost Component (subject to Section 6(c)); (E) principal of or interest on either Operating Loan when due thereunder and subject to the terms thereof (each such failure a “Payment Default”);

(ii) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement (other than a Payment Default), and such failure shall not be cured sixty (60) days after receipt by the Borrower from the Lender of written notice thereof; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such 60-day period, then no Event of Default shall be deemed to have occurred or be continuing under this clause (ii) if and so long as within such 60-day period the Borrower shall commence actions reasonably designed to cure such failure and

shall diligently pursue such actions; provided, however, that no such extension shall be for a period in excess of 90 days;

(iii) Bankruptcy. The Borrower files a petition in voluntary bankruptcy for the composition of its affairs or for its reorganization under any State or federal bankruptcy or insolvency law, or makes an assignment for the benefit of creditors, or admits in writing to its insolvency or inability to pay debts as they mature, or consents in writing to the appointment of a trustee or receiver for itself;

(iv) Insolvency. If a court of competent jurisdiction shall enter an order, judgment or decree declaring the Borrower insolvent, or adjudging it bankrupt, or appointing a trustee or receiver of the Borrower, or approving a petition filed against the Borrower seeking reorganization of the Borrower under any applicable law or statute of the United States of America or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within sixty days from the date of the entry thereof;

(v) Involuntary Control. If, under the provisions of any law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Borrower or of the Revenue, and such custody or control shall not be terminated within sixty (60) days from the date of assumption of such custody or control;

(vi) Judgments. One or more final, unappealable judgment(s) against the Borrower for the payment of money, which judgment(s) is payable from or enforceable pursuant to a lien upon, or an attachment against, any or all of the Revenue, the operation or result of which judgment(s), individually or in the aggregate, equal or exceed \$1,000,000 and which judgment(s) shall remain unpaid, undischarged, unbonded or undismissed for a period of sixty (60) days;

(vii) (A) The Borrower, pursuant to official action on the part of its governing body, contests in an administrative or judicial proceeding, repudiates or otherwise denies (including, without limitation, authorizing the filing of a claim to such effect in an administrative or judicial proceeding) that it has any further liability or obligation under or with respect to any provision of this Agreement or the Note relating to (1) the ability or the obligation of the Borrower to pay, when due, the principal of or interest on the Note or (2) the Revenue securing the Note; or (B) the Borrower, pursuant to official action on the part of its governing body, contests in an administrative or judicial proceeding, repudiates or otherwise denies (including, without limitation, authorizing the filing of a claim to such effect in an administrative or judicial proceeding) the legality, validity or enforceability of any provision of this Agreement, the Note relating to (1) the ability or the obligation of the Borrower to pay, when due, the principal of or interest on the Note or (2) the Revenue securing the Note; or (C) any provision of this Agreement, or the Note relating to (1) the ability or the obligation of the Borrower to pay, when due, the principal of or interest due hereunder or (2) the Revenue securing the Note shall, at any time, and for any reason, cease to be valid and binding on the Borrower, or shall be declared to be null and void, invalid or unenforceable, in each case, as the result of a final nonappealable judgment by any federal or state court or as a result of any legislative or administrative action by any Governmental Authority having jurisdiction over the Borrower; or (D) a debt moratorium or comparable extraordinary restriction by any Governmental Authority having jurisdiction over the

Borrower on repayment of principal or interest on any debt shall have been declared or imposed (whether or not in writing) with respect to the Note;

(b) Subject to subsection (c) of this Section, whenever any Event of Default hereunder shall have occurred and be continuing, the Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder, and may prosecute any such judgment or final decree against the Borrower including confession of judgment by the Borrower against the Borrower and collect in the manner provided by law the moneys adjudged or decreed to be payable from the Collateral, and the Lender may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by Borrower under this Agreement then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement or the other Loan Documents. No action taken pursuant to this Section shall relieve Borrower from its obligations pursuant to this Agreement or the other Loan Documents, all of which shall survive any such action.

If an Event of Default shall occur and be continuing under this Agreement, the Bond Loan Interest Rate shall be the Default Rate. Upon the occurrence of any Event of Default, the Lender may declare all amounts payable to it under the Loan Documents to be immediately due and payable, and the Lender shall have all remedies provided at law or equity, including, without limitation, specific performance, and the Collateral shall be applied as follows and in the following order:

(1) first, to the payment of all fees, costs and other expenses, (including the reasonable fees, costs and expenses of counsel and actual fees, costs and expenses due and payable by the Borrower), and then to the pro rata payment of all costs and other expenses (including the reasonable fees, costs and expenses of counsel) owed to the Lender under this Agreement, to the Lender under the Operating Loan Agreement (Lender), and to C/CAG under the Operating Loan Agreement (C/CAG) (in each case to the extent not previously satisfied);

(2) second, to the payment of Operation and Maintenance Expenses;

(3) third, to the payment pro rata of (1) all accrued and unpaid interest and principal under the Operating Loan Agreement (C/CAG), in the order of the accrual thereof, and (2) all accrued and unpaid interest and principal under the Operating Loan Agreement (Lender), in the order of the accrual thereof; and

(4) fourth, to payment of all accrued and unpaid interest and principal under the Loan Documents, in the order of the accrual thereof.

(c) Amounts in the Operating Reserve Fund, the Revenue Stabilization Reserve Fund, the Repair and Rehabilitation Reserve Fund and the Equipment Replacement Reserve Fund shall remain available to the Borrower for the respective uses permitted under Section 8 unless toll collection on the Express Lanes ceases with no reasonably foreseeable resumption of normal toll collection.

SECTION 18. Remedies Not Exclusive. No remedy conferred herein or reserved to the Lender is intended to be exclusive of any other available remedy or remedies, but each and

every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

SECTION 19. Delay or Omission Not Waiver. No delay or omission of the Lender to exercise any right or remedy provided hereunder upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or by law to the Lender may be exercised from time-to-time, and as often as may be deemed expedient by the Lender.

SECTION 20. Defeasance. The Borrower may cause the defeasance of the Bond Loan at any time; provided, there is delivered to the Lender (i) an escrow deposit agreement or instructions in connection with the deposit of sufficient Defeasance Obligations for such defeasance and (ii) an opinion of nationally recognized bond counsel to the effect that the Bond Loan will no longer be Outstanding under the terms of this Agreement.

SECTION 21. No Personal Recourse. No official, employee or agent of the Lender or the Borrower or any Person executing this Agreement or any of the other Loan Documents shall be personally liable on this Agreement or such other Loan Documents by reason of the issuance, delivery or execution hereof or thereof, provided that nothing in this Section shall be construed to relieve the Borrower from any liability it may incur under this Agreement or any of the other Loan Document.

SECTION 22. No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Lender, solely by virtue of the Bond Loan, and that no third party creditor or creditors of the Borrower shall have any right against the Lender with respect to the Bond Loan made pursuant to this Agreement.

SECTION 23. Borrower's Authorized Representative. The Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such Person or Persons from time-to-time to act on the Borrower's behalf pursuant to a written certificate furnished to the Lender.

SECTION 24. Lender's Authorized Representative. The Lender shall at all times have appointed a Lender's Authorized Representative by designating such Person or Persons from time-to-time to act on the Lender's behalf pursuant to a written certificate furnished to the Borrower, containing the specimen signature or signatures of such Person or Persons and signed by the Lender.

SECTION 25. Servicer. The Lender may from time-to-time designate an entity or entities to perform, or assist the Lender in performing, specified duties of the Lender under this Agreement. The Lender shall give the Borrower written notice of the appointment of any Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the Lender shall be deemed to be a reference to the Servicer with respect to any duties which the Lender shall have delegated to such Servicer. The Lender may at any time assume the duties of any Servicer under this Agreement.

SECTION 26. Fees and Expenses.

(a) The Lender and Borrower acknowledge that certain expenses related to this Agreement shall be paid by requisitions from the 2020 Project Fund under the Bond Indenture.

(b) The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the Lender on demand from time-to-time on and after the date hereof for any and all fees, costs, charges and expenses incurred by it (including the reasonable fees, costs and expenses of counsel and other advisors) in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the other Loan Documents and the transactions hereby and thereby contemplated, including without limitation, reasonable attorneys', engineers', and planning fees and professional costs, including all such fees, costs and expenses incurred as a result of or in connection with:

(i) the enforcement of or attempt to enforce any provision of this Agreement or any of the other Loan Documents;

(ii) any amendment or requested amendment of, or waiver or consent or requested waiver or consent under or with respect to, this Agreement or any of the other Loan Documents, or advice in connection with the administration of this Agreement or any of the other Loan Documents or the rights of the Lender thereunder; and

(iii) any work-out, restructuring or similar arrangement of the obligations of the Borrower under this Agreement or the other Loan Documents during the pendency of one or more Events of Default.

(c) The obligations of the Borrower under this Section shall survive the payment or prepayment in full or transfer of the Bond Loan, the enforcement of any provision of this Agreement or the other Loan Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring or similar arrangement.

SECTION 27. Amendments and Waivers. No amendment, modification, termination or waiver of any provision of this Agreement shall in any event be effective without the written consent of each of the parties hereto.

SECTION 28. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

SECTION 29. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

SECTION 30. Successors and Assigns; Third-Party Beneficiary. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns, except that C/CAG shall be a third party beneficiary of Section 8 and Section 17(b) hereof. Neither the

Borrower's rights or obligations hereunder nor any interest therein may be assigned or delegated by the Borrower without the prior written consent of the Lender.

SECTION 31. Lender Pledges and Assignments. The Lender may at any time pledge or grant a security interest in all or any portion of its rights or interests hereunder and under the, this Agreement and/or the Loan Documents to secure obligations of the Lender or an Affiliate of the Lender; provided that no such pledge or assignment shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto.

SECTION 32. Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

SECTION 33. Notices; Payment Instructions. Notices hereunder shall be effective upon receipt and shall be given by certified mail, return receipt requested, or by other delivery service providing evidence of receipt to:

If to the Lender: San Mateo County Transportation Authority
Attention: [____]
Telephone: [____]
E-mail: [____]

For Payment –

Currency: USD
Receiving Bank: [____]
ABA #: [____]
Acct. Name: [____]
Acct. #: [____]
Beneficiary Info: [____]

Attention: [____]

If to the Borrower: San Mateo County Express Lanes Joint Powers Authority
[____]
Attention: [____]
Telephone: [____]
E-mail: [____]

Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time-to-time by a Borrower's Authorized Representative with respect to notices to the Borrower or by a Lender's Authorized Representative with respect to notices to the Lender or the Servicer. The Borrower shall make any payments hereunder in

accordance with the payment instructions hereafter provided by a Lender's Authorized Representative, as modified from time-to-time by a Lender's Authorized Representative.

SECTION 34. Effectiveness. This Agreement shall be effective on the Effective Date.

SECTION 35. Termination. This Agreement shall terminate upon payment in full by the Borrower of the Bond Loan, except such provisions that expressly provide for survival of termination.

SECTION 36. Survival of Representations and Warranties. All representations and warranties made hereunder and in any other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Lender, regardless of any investigation made by the Lender or on its behalf and notwithstanding that the Lender may have had notice or knowledge of any Event of Default at the time of entering into this Agreement, and shall continue in full force and effect as long as any obligation hereunder shall remain unpaid or unsatisfied.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

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

By: _____
Name:
Title:

**SAN MATEO COUNTY TRANSPORTATION
AUTHORITY**

By: _____
Name:
Title:

EXHIBIT A
FORM OF NOTE

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “1933 ACT”), OR UNDER THE SECURITIES LAWS OF ANY STATE OR JURISDICTION.

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

DATED DATE: _____, 2020

For value received, the SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY (with its successors, the “*Borrower*”) hereby promises to pay to the order of San Mateo County Transportation Authority, and its successors and assigns, as their respective interests may appear (the “*Lender*”) located at [_____], the aggregate unpaid principal amount of the Bond Loan made by the Lender pursuant to the Loan Agreement, dated July __, 2020 (together with any amendments or supplements thereto, the “*Agreement*”), by and between the Borrower and the Lender, plus interest thereon, on the dates, in the amounts and in the manner provided for in the Agreement.

The unpaid principal amount of the Bond Loan from time to time outstanding shall bear interest at the rate or rates and be payable as provided in and calculated in the manner set forth in the Agreement.

Payments of both principal and interest are to be made in lawful money of the United States of America.

This Note evidences indebtedness and is subject to the terms and provisions of, the Agreement to which reference is hereby made for a statement of said terms and provisions, including those under which this Note may be paid or become due prior to its due date. This Note is the Note referred to in the Agreement and is entitled to the benefits thereof and of the Loan Documents referred to therein. This Note is subject to prepayment, in whole or in part, in accordance with the terms of the Agreement. Reference is hereby made to the Agreement for a description of the terms on which this Note is issued, all of which are hereby incorporated herein and constitute a contract between the Borrower and the holder of this Note, and by acceptance hereof the holder of this Note assents to said terms and conditions.

This Note is secured by the Collateral as set forth in the Agreement. No other revenues or property of the Borrower, except as specified in the Agreement, is pledged as security or available to pay principal of or interest on this Note.

Neither the full faith and credit nor the taxing power of the State of California or any political subdivision thereof is pledged to the payment of principal of, or the interest on, this Note.

This Note is made under the laws of the State of California, and for all purposes shall be governed by and construed in accordance with the laws of said State, without regard to principles of conflicts of law. Capitalized terms not otherwise defined herein have the meaning set forth in this Agreement.

It is hereby certified that all conditions, acts and things required to exist, happen and be performed under the Agreement precedent to and in the issuance of this Note, exist, have happened and have been performed.

The Borrower hereby waives presentment for payment, demand, protest, notice of protest, notice of dishonor and all other notices and demands whatsoever.

IN WITNESS WHEREOF, the SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY has caused this Note to be signed by its [_____] as of the Dated Date specified above.

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

By: _____
Name:
Title:

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Please insert Social Security or
Taxpayer Identification Number of Transferee

/_____/

(Please print or typewrite name and address, including zip code, of Transferee)

the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints

attorney to register the transfer of the within Note on the books kept for registration thereof, with full power of substitution in the premises.

Dated:_____

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by a member or participant of a signature guarantee program

NOTICE: The signature above must correspond with the name of the Owner as it appears upon the front of this Note in every particular, without alteration or enlargement or change

EXHIBIT B

PRO FORMA BOND LOAN PRINCIPAL SCHEDULE

<u>Period Ending [_____] 1,</u>	<u>Principal Amount</u>
--	--------------------------------

[To be filled in upon final sizing of the Bond Loan and to reflect 20 years of level scheduled principal.]

San Mateo County Express Lanes Joint Powers Authority AGENDA REPORT

Date: July 17, 2020

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

From: SMCEL-JPA Executive Council

Subject: Review and approval of Resolution SMCEL 20-12 and Resolution SMCEL 20-13 authorizing the SMCEL-JPA Chair to execute the First Amendments of the Cooperative Funding Agreements (Operating Loan) with the City/County Association of Governments of San Mateo County (C/CAG) and the San Mateo County Transportation Authority (SMCTA), for \$917,244 and \$1,270,463, respectively.

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

RECOMMENDATION

That the SMCEL-JPA Board review and approve Resolutions SMCEL 20-12 and Resolution SMCEL 20-13 authorizing the SMCEL-JPA Chair to execute the First Amendments of the Cooperative Funding (Operating Loan) Agreements with the City/County Association of Governments of San Mateo County (C/CAG) and San Mateo County Transportation Authority (SMCTA), for \$917,244 and \$1,270,463, respectively.

FISCAL IMPACT

The SMCEL-JPA will receive two operating loans totaling \$2,187,707 that will fully fund the adopted Fiscal Year 2020-21 operating budget.

SOURCE OF FUNDS

C/CAG and TA will each loan \$917,244, and \$1,270,463, respectively, to the SMCEL-JPA for the FY 2020-21 Budget. SMCEL-JPA will receive up to a total of \$2,187,707.

BACKGROUND

The SMCEL-JPA was created as a Joint Powers Authority by C/CAG and SMCTA effective June 1, 2019. As an agency with no current operating revenue, SMCEL-JPA must rely on funding from its member agencies (C/CAG and the SMCTA) to initially pay for its operating costs until toll revenue is generated from the Project. Currently, the section between Santa Clara County line and Whipple Ave is scheduled to open in the late fall of 2021, and the section between Whipple Ave. and I-380 approximately one year later. It is anticipated that the SMCEL-JPA will require two more operating loans, one for Fiscal Year 2020-21, which is the subject of this staff report, and an additional loan next year for Fiscal Year 2021-22.

On July 12, 2019 SMCEL-JPA Board adopted an operating budget of \$1,744,911 for FY 2019-20. For

Fiscal Year 2019-20 the member agencies agreed that each one would cover 50% of the SMCEL-JPA's operating budget. In the fall of 2019, C/CAG, the SMCTA, and the SMCEL-JPA approved the Cooperative Funding Agreement (Operating Loan). C/CAG and the SMCTA each approved \$872,456 operating loans for the SMCEL-JPA 2019-20 Fiscal Year.

ANALYSIS

In June 2020, the SMCEL-JPA approved a Fiscal Year 2020-21 operating budget of \$2,187,707. See Attachment 1. C/CAG and SMCTA staff are proposing that C/CAG provide an operating loan of \$917,244 (42%) and the SMCTA provide an operating loan of \$1,270,463 (58%). The percentage split is based on the assumption that each agency will advance funds to pay its own staff support and its own internal costs. Non labor costs (lines 10 through 14) are split equally between CCAG and SMCTA. The Operating Loan interest will accrue monthly at the County Investment Pool interest rate. Calculation for the monthly paydown on the principal of the Operating loan is based on a term of 5 years payback period after the initiation of the revenue collection on the Project. However, since the SMCEL-JPA is bounded by other commitments on its toll revenues, the description below provides more detail.

The Project requires a \$100 million loan (Capital Loan) from the SMCTA for construction costs. The SMCTA will issue up to \$100 million in variable-rate bonds for the Project. The SMCTA and the SMCEL-JPA will execute a Capital Loan Agreement for the SMCEL-JPA to repay the SMCTA up to \$100 million with toll revenues. The SMCTA and the SMCEL-JPA have negotiated a Capital Loan Agreement which will be presented at the July 9, 2020 SMCTA as well as the July 17, 2020 SMCEL-JPA Board meetings. The Operating Loan and the Capital Loan will both be paid back from the same revenue stream from the Project toll revenues.

Toll revenues will be used to make payments in the following order of priorities:

1. Operating and Administrative payments for the SMCEL-JPA and the Project.
2. \$600,000 annual for an Equity Program. (This is in addition to the initial, one-time set aside of \$1 million from the bond proceeds for the Equity Program.)
3. Interest payments for the Operating Loans.
4. Interest payments for the Capital Loan, including Enhancement Rate.
5. Project reserves.
6. Revenue Sharing Fund- (excess net revenue) 85% of the remaining funds for repayment of the Operating and Capital Loans and 15% to the SMCEL JPA for any lawful purpose.

For details on these categories, see July 17, 2020 SMCEL-JPA Agenda Item 5.2. Staff have prepared separate Resolutions and First Amendments to the Operating Loans for C/CAG and the SMCTA. See Attachments 2-4. The C/CAG Board of Directors and the SMCTA Board of Directors each approved the general terms of the First Amendment to the Operating Loan at their July 9, 2020 Board Meetings.

ATTACHMENTS

1. Adopted SMCEL-JPA Fiscal Year 2020-21 Budget
2. Resolution SMCEL 20-12(C/CAG)
3. Resolution SMCEL 20-13 (SMCTA)
4. Amendment #1 Cooperative Funding (Loan) Agreement between C/CAG and SMCEL-JPA;
Amendment #1 Cooperative Funding (Loan) Agreement between SMCTA and SMCEL-JPA

San Mateo County Express Lanes JPA

FY21 Proposed Budget

	FY2020 Adopted Budget	FY2021 Proposed Budget	FY21 Proposed vs. FY20 Adopted Budget	Percentage change	
1 SOURCES OF FUNDS					1
2 Advance from SMCTA and CCAG	1,744,911	2,187,707	442,796	25.4%	2
3					3
4 USES OF FUNDS					4
5 Staff Support	610,276	814,700	204,424	33.5%	5
6 Administrative Overhead	53,635	53,415	(220)	-0.4%	6
7 Business Travel	3,000	3,000	-	0.0%	7
8 Office Supplies	3,000	3,000	-	0.0%	8
9 Printing and Information Svcs	5,000	5,000	-	0.0%	9
10 Promotional Advertising	-	50,000	50,000	100.0%	10
11 Audit and Related services	-	17,160	17,160	100.0%	11
12 Legal Services	50,000	60,000	10,000	20.0%	12
13 Consultant	880,000	1,171,432	291,432	33.1%	13
14 Miscellaneous	140,000	10,000	(130,000)	-92.9%	14
15 TOTAL USES OF FUNDS	1,744,911	2,187,707	442,796	25.4%	15

RESOLUTION SMCEL 20-12

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY (SMCEL-JPA) AUTHORIZING THE SMCEL-JPA CHAIR TO EXECUTE THE FIRST AMENDMENT TO THE COOPERATIVE FUNDING (OPERATING LOAN) AGREEMENT WITH THE CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY (C/CAG) IN AN AMOUNT OF \$917,244

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

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

WHEREAS, C/CAG and SMCTA approved the First Amended and Restated Joint Exercise of Powers Agreement for the San Mateo County Express Lanes (SMCEL-JPA Agreement) to specify the title of San Mateo County Express Lanes Joint Powers Authority effective June 13, 2019; and

WHEREAS, C/CAG and SMCTA are co-sponsors of the US-101 Express Lanes Project (Project) and are member agencies of the SMCEL-JPA; and

WHEREAS, pursuant to Section 5.3 of the SMCEL-JPA Agreement, C/CAG and SMCTA acknowledged that SMCEL-JPA will incur indebtedness for contractual and administrative expenses before and after the express lanes are operational; and

WHEREAS, SMCEL-JPA, as an agency with no current operating budget, will have to rely on its member agencies to initially pay for its operating costs until such time as toll revenue is generated from the Project, which SMCEL-JPA will own; and

WHEREAS, on July 12, 2019 the SMCEL-JPA Board adopted an operating budget for FY 2019-20 in the amount of \$1,744,911; and

WHEREAS, on October 3, 2019 SMCTA Board has agreed to loan SMCEL-JPA half of the operating budget of SMCEL-JPA for FY 2019-20 in the amount of \$872,456; and

WHEREAS, on November 8, 2019, the SMCEL-JPA Board adopted Resolutions 19-06 and 19-07 approving separate operating loan agreements with C/CAG and the SMCTA for \$872,456; and

WHEREAS, on November 14, 2019, the C/CAG Board of Directors approved Resolution 19-71 to loan the SMCEL-JPA half of the SMCEL-JPA FY 2019-20 Budget in the amount of \$872,456; and

WHEREAS, on June 12, 2020, the SMCEL- JPA Board of Directors approved Resolution SMCEL 20-09, adopting the Fiscal Year 2020-21 Budget of \$2,187,707; and

WHEREAS, the SMCEL-JPA, SMCTA, and C/CAG desire to approve the First Amendment to the Cooperative Funding Agreement Amendment for funding the SMCEL-JPA 2020-21 Operating Budget;

WHEREAS, the SMCTA portion of SMCEL-JPA's Fiscal Year Budget 2020-21 is \$1,270,463, and that of C/CAG is \$917,244.

NOW THEREFORE BE IT RESOLVED, by the Board of Directors of the San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) that the SMCEL-JPA Chair is authorized to execute the First Amendment of the Cooperative Agreement (Loan) Agreement with C/CAG in an amount of \$917,244; and further authorize the Executive Council to negotiate the final Amendment prior to execution by the Chair, subject to approval by SMCEL-JPA Legal Counsel.

PASSED, APPROVED, AND ADOPTED, THIS 17TH DAY OF JULY, 2020.

Don Horsley, Chair

RESOLUTION SMCEL 20-13

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY (SMCEL-JPA) AUTHORIZING THE SMCEL-JPA CHAIR TO EXECUTE THE FIRST AMENDMENT TO THE COOPERATIVE FUNDING (OPERATING LOAN) AGREEMENT WITH THE SAN MATEO COUNTY TRANSPORTATION AUTHORITY (SMCTA) IN AN AMOUNT OF \$1,270,463

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

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

WHEREAS, C/CAG and SMCTA approved the First Amended and Restated Joint Exercise of Powers Agreement for the San Mateo County Express Lanes (SMCEL-JPA Agreement) to specify the title of San Mateo County Express Lanes Joint Powers Authority effective June 13, 2019; and

WHEREAS, C/CAG and SMCTA are co-sponsors of the US-101 Express Lanes Project (Project) and are member agencies of the SMCEL-JPA; and

WHEREAS, pursuant to Section 5.3 of the SMCEL-JPA Agreement, C/CAG and SMCTA acknowledged that SMCEL-JPA will incur indebtedness for contractual and administrative expenses before and after the express lanes are operational; and

WHEREAS, SMCEL-JPA, as an agency with no current operating budget, will have to rely on its member agencies to initially pay for its operating costs until such time as toll revenue is generated from the Project, which SMCEL-JPA will own; and

WHEREAS, on July 12, 2019 the SMCEL-JPA Board adopted an operating budget for FY 2019-20 in the amount of \$1,744,911; and

WHEREAS, on October 3, 2019 SMCTA Board has agreed to loan SMCEL-JPA half of the operating budget of SMCEL-JPA for FY 2019-20 in the amount of \$872,456; and

WHEREAS, on November 8, 2019, the SMCEL-JPA Board adopted Resolutions 19-06 and 19-07 approving separate operating loan agreements with C/CAG and the SMCTA for \$872,456; and

WHEREAS, on November 14, 2019, the C/CAG Board of Directors approved Resolution 19-71 to loan the SMCEL-JPA half of the SMCEL-JPA FY 2019-20 Budget in the amount of \$872,456; and

WHEREAS, on June 12, 2020, the SMCEL- JPA Board of Directors approved Resolution SMCEL 20-09, adopting the Fiscal Year 2020-21 Budget of \$2,187,707; and

WHEREAS, the SMCEL-JPA, SMCTA, and C/CAG desire to approve the First Amendment to the Cooperative Funding Agreement Amendment for funding the SMCEL-JPA 2020-21 Operating Budget;

WHEREAS, the SMCTA portion of SMCEL-JPA's Fiscal Year Budget 2020-21 is \$1,270,463, and that of C/CAG is \$917,244.

NOW THEREFORE BE IT RESOLVED, by the Board of Directors of the San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) that the SMCEL-JPA Chair is authorized to execute the First Amendment of the Cooperative Agreement (Loan) Agreement with SMCTA in an amount of \$1,270,463, and further authorize the Executive Council to negotiate the final Amendment prior to execution by the Chair, subject to approval by SMCEL-JPA Legal Counsel.

PASSED, APPROVED, AND ADOPTED, THIS 17TH DAY OF JULY, 2020.

Don Horsley, Chair

DRAFT

FIRST AMENDMENT TO COOPERATIVE FUNDING AGREEMENT BETWEEN
THE CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY
AND THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY

This First Amendment is entered into on the ____ day of _____, 2020, by and between the San Mateo County Express Lanes Joint Powers Authority (“JPA”) and the City/County Association of Governments of San Mateo County (“C/CAG”), both California public agencies (each a “Party,”; and collectively, the “Parties”).

RECITALS

- A. The JPA was formed to exercise joint rights of (i) the San Mateo County Transportation Authority (“Authority”) and (ii) C/CAG to own, administer and manage the San Mateo County 101 Express Lanes Project (the “Project”).
- B. The Parties, on November 14, 2019, entered into a Cooperative Funding Agreement (the “Original Agreement”) for the C/CAG to fund one half of the JPA’s Fiscal Year 2019-2020 budget, with the understanding that the C/CAG would be repaid under the terms of such Original Agreement.
- C. The Parties, on this date, are entering into a Loan Agreement (the “Loan Agreement”), in connection with funding the Project.
- D. The Parties want to amend the Original Agreement in connection with the execution and delivery of the Loan Agreement and to provide for additional loan advances by the C/CAG for up to a maximum amount of \$917,243.49, to support a portion of the JPA’s Fiscal Year 2020-21 budget, with a separate portion (\$1,270,463.02) to be loaned to the JPA by the Authority.

IN WITNESS WHEREOF, this First Amendment has been executed and delivered by the parties hereto on the date first above written.

1. Amendments.

(a) There is added to the end of Section 1.A. of the Original Agreement the new paragraph below:

The C/CAG agrees to loan to the JPA, and the JPA agrees to accept, up to Nine Hundred Seventeen Thousand Two Hundred Forty-Three Dollars and Forty-Nine Cents (US \$917,243.49) to fund a portion of the JPA’s Fiscal Year 2020-2021 expenses, consistent with budgeted commitments in the JPA’s Fiscal Year 2020-2021 Budget. The loan under this paragraph shall be in addition to the loan under the first paragraph under this Section 1.A.,

and together they shall comprise the “Loan Amount,” notwithstanding the definition of such term above.

(b) The first sentence of Section 1.B. of the Original Agreement is deleted and replaced with the following:

Thereafter through July 31, 2020, the JPA can request, no more than once each month, additional installments of the portion of the Loan Amount described in the first paragraph of Section 1.A. Through July 31, 2021, the JPA can request, no more than once each month, additional installments of the portion of the Loan Amount described in the second paragraph of Section 1.A. Each such additional installment is an “Advance Request.” The JPA shall adjust the Advance Request form in Exhibit A to reflect the loan proportions to be made by the Authority and the C/CAG for fiscal year 2020-2021.

(c) Section 2 of the Original Agreement is amended to include a revised subsection B and new subsections E and F as follows:

B. The Parties agree that repayment of the Loan Balance will be subordinated to (1) the operations and maintenance costs for the Project and the JPA and (2) repayment of interest on the Capital Loan (which amount may differ from that previously authorized), unless the repayment schedule is modified pursuant to a subsequent and separate Bond Loan Agreement between the JPA and the Authority for up to \$100 million for the US-101 Express Lanes Project.

Repayment of all three loans (the Capital Loan, Authority Operating Loan, and C/CAG Operating Loan) will be repaid proportionally, on a parity basis, once the Project begins operations.

E. The JPA may prepay the Loan Amount on any Business Day with one Business Day’s written notice, as contemplated by the Loan Agreement dated July ___, 2020 (the “Loan Agreement”), between the Parties, and otherwise as the Parties may agree. For each prepayment under Section 10 of the Loan Agreement, the C/CAG will notify the Borrower of the allocation of such prepayment as between principal and interest.

F. The C/CAG shall prepare, revise and maintain a schedule indicating the outstanding Loan Amount through final maturity as calculated from time to time under subsection A of this Section. Upon each revision to the schedule and upon request of the Borrower or its fiscal agent, if any, the C/CAG shall provide a copy of the then-current

schedule to the JPA and its fiscal agent as contemplated by the Loan Agreement.

2. No Other Amendments. Except as expressly amended hereby, the Original Agreement remains in full force and effect.

3. Counterparts. This First Amendment may be executed simultaneously or in counterparts, each of which is to be deemed to be an original, but all of which shall constitute one and the same First Amendment.

4. Warranty of Authority to Execute Agreement. Each Party to this First Amendment represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this First Amendment on behalf of the entity that is a Party to this First Amendment.

SAN MATEO COUNTY EXPRESS
LANES JOINT POWERS AUTHORITY

CITY/COUNTY ASSOCIATION OF
GOVERNMENTS OF SAN MATEO
COUNTY

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

ATTESTED BY:

ATTESTED BY:

By: _____
JPA Secretary
Date: _____

By: _____
C/CAG Secretary
Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Attorney for the JPA
Date: _____

By: _____
Attorney for the C/CAG
Date: _____

DRAFT

FIRST AMENDMENT TO COOPERATIVE FUNDING AGREEMENT BETWEEN
THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY AND
THE SAN MATEO COUNTY TRANSPORTATION AUTHORITY

This First Amendment is entered into on the ____ day of _____, 2020, by and between the San Mateo County Express Lanes Joint Powers Authority (“JPA”) and the San Mateo County Transportation Authority (“Authority”), both California public agencies (each a “Party,”; and collectively, the “Parties”).

RECITALS

A. The JPA was formed to exercise joint rights of (i) the Authority and (ii) the City/County Association of Governments of San Mateo County (C/CAG) to own, administer and manage the San Mateo County 101 Express Lanes Project (the “Project”).

B. The Parties, on December 18, 2019, entered into a Cooperative Funding Agreement (the “Original Agreement”) for the Authority to fund one half of the JPA’s Fiscal Year 2019-2020 budget, with the understanding that the Authority would be repaid under the terms of such Original Agreement.

C. The Parties, on this date, are entering into a Loan Agreement (the “Loan Agreement”), in connection with funding the Project.

D. The Parties want to amend the Original Agreement in connection with the execution and delivery of the Loan Agreement and to provide for additional loan advances by the Authority for up to a maximum amount of \$1,270,463.02, to support a portion of the JPA’s Fiscal Year 2020-21 budget, with a separate portion (\$917,243.49) to be loaned to the JPA by C/CAG.

IN WITNESS WHEREOF, this First Amendment has been executed and delivered by the parties hereto on the date first above written.

1. Amendments.

(a) There is added to the end of Section 1.A. of the Original Agreement the new paragraph below:

The Authority agrees to loan to the JPA, and the JPA agrees to accept, up to One Million Two Hundred Seventy Thousand Four Hundred Sixty-Three Dollars and Two Cents (US \$1,270,463.02) to fund a portion of the JPA’s Fiscal Year 2020-2021 expenses, consistent with budgeted commitments in the JPA’s Fiscal Year 2020-2021 Budget. The loan under this paragraph shall be in addition to the loan under the first paragraph under this Section 1.A., and together they shall comprise the “Loan Amount,” notwithstanding the definition of such term above.

(b) The first sentence of Section 1.B. of the Original Agreement is deleted and replaced with the following:

Thereafter through July 31, 2020, the JPA can request, no more than once each month, additional installments of the portion of the Loan Amount described in the first paragraph of Section 1.A. Through July 31, 2021, the JPA can request, no more than once each month, additional installments of the portion of the Loan Amount described in the second paragraph of Section 1.A. Each such additional installment is an “Advance Request.” The JPA shall adjust the Advance Request form in Exhibit A to reflect the loan proportions to be made by the Authority and the C/CAG for fiscal year 2020-2021.

(c) Section 2 of the Original Agreement is amended to include a revised subsection B and new subsections E and F as follows:

B. The Parties agree that repayment of the Loan Balance will be subordinated to (1) the operations and maintenance costs for the Project and the JPA and (2) repayment of interest on the Capital Loan (which amount may differ from that previously authorized), unless the repayment schedule is modified pursuant to a subsequent and separate Bond Loan Agreement between the JPA and the Authority for up to \$100 million for the US-101 Express Lanes Project.

Repayment of all three loans (the Capital Loan, Authority Operating Loan, and C/CAG Operating Loan) will be repaid proportionally, on a parity basis, once the Project begins operations.

E. The JPA may prepay the Loan Amount on any Business Day with one Business Day’s written notice, as contemplated by the Loan Agreement dated July ____, 2020 (the “Loan Agreement”), between the Parties, and otherwise as the Parties may agree. For each prepayment under Section 10 of the Loan Agreement, the Authority will notify the Borrower of the allocation of such prepayment as between principal and interest.

F. The Authority shall prepare, revise and maintain a schedule indicating the outstanding Loan Amount through final maturity as calculated from time to time under subsection A of this Section. Upon each revision to the schedule and upon request of the Borrower or its fiscal agent, if any, the Authority shall provide a copy of the then-current schedule to the JPA and its fiscal agent as contemplated by the Loan Agreement.

2. No Other Amendments. Except as expressly amended hereby, the Original Agreement remains in full force and effect.

3. Counterparts. This First Amendment may be executed simultaneously or in counterparts, each of which is to be deemed to be an original, but all of which shall constitute one and the same First Amendment.

4. Warranty of Authority to Execute Agreement. Each Party to this First Amendment represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this First Amendment on behalf of the entity that is a Party to this First Amendment.

SAN MATEO COUNTY EXPRESS
LANES JOINT POWERS AUTHORITY

SAN MATEO COUNTY
TRANSPORTATION AUTHORITY

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Date: _____

Date: _____

ATTESTED BY:

ATTESTED BY:

By: _____
JPA Secretary

By: _____
Authority Secretary

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Attorney for the JPA

By: _____
Attorney for the Authority

Date: _____

Date: _____