

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

Meeting No. 24

**DATE:** Friday, June 11, 2021

**TIME:** 9:00 A.M.

Join by Zoom:

<https://us02web.zoom.us/j/83699587915?pwd=dHMzSFVBUEUJEaHROZk9XcUxqSTV5UT09>

Meeting ID: 836 9958 7915

Password: 888757

Join by Phone:

(669) 900-6833

Meeting ID: 836 9958 7915

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

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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. Thus, pursuant to Executive Order N-29-20, local and statewide health orders, and the CDC's social distancing guidelines, which discourage large public gatherings, SMCEL-JPA meetings will be conducted via remote conferencing only (no physical location). 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](mailto: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. 23 dated May 14, 2021. ACTION p. 1
- 4.2 Accept the Sources and Uses of Funds for the FY21 Period Ending April 30, 2021. ACTION p. 6
- 4.3 Review and approval of Resolution SMCEL 21-06 authorizing the SMCEL-JPA Chair to execute Amendment No. 2 to the Agreement with the Office of County Counsel of San Mateo County for general legal services for Fiscal Year 2021/2022 for an amount not to exceed \$60,000. ACTION p. 8

#### 5.0 REGULAR AGENDA

- 5.1 Public Hearing: Approval of Resolution SMCEL 21-07 adopting the Fiscal Year (FY) 2022 SMCEL-JPA Operating Budget of \$2,721,160. ACTION p. 16
- 5.2 Review and approval of Resolution SMCEL 21-08 and Resolution SMCEL 21-09 authorizing the SMCEL-JPA Chair to execute the Second 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 \$1,314,045 and \$1,407,116, respectively. ACTION p. 21
- 5.3 Review and approval of Resolution SMCEL 21-10 adopting SMCEL Ordinance 2021-01 for the Administration of Tolls and Enforcement of Toll Violations for the San Mateo County US 101 Express Lanes. ACTION p. 35
- 5.4 Election of a Chairperson and a Vice Chairperson to serve one-year terms, effective July 1, 2021. ACTION p. 48

#### 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

- 7.1 Letter from Don Horsley, Chair of SMCEL-JPA, to Emily Beach, Chair of San Mateo County Transportation Authority Board, dated 05/14/21. RE: Requesting discussion of applying Credit Enhancement Fee to SMCEL-JPA Equity Program.

## 8.0 NEXT REGULAR MEETING

July 9, 2021

## 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, 5<sup>th</sup> 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](mailto: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](mailto: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" and if you joined the meeting by phone, dial \*9 to raise your hand. The Clerk will activate and

- unmute speakers in turn. Speakers will be notified shortly before they are called on to speak.
5. When called, please limit your remarks to the time allotted.

If you have any questions about this agenda, please contact:

Mima Guilles, Secretary - (650) 599-1406

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

Meeting No. 23  
May 14, 2021

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

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## 1.0 CALL TO ORDER/ ROLL CALL

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

**Members Present:**

C/CAG Members:

Diane Papan, Maryann Moise Derwin, Alicia Aguirre

SMCTA Members:

Don Horsley, Rico Medina, Emily Beach

**Members Absent:**

**Staff Present:**

Sandy Wong – Executive Council

Mima Guilles – Secretary

Tim Fox – Legal Counsel

Matthew Click – Program/Policy Manager (PPM) for SMCEL-JPA, HNTB

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

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

Autumn Bernstein – Arup

Other members of staff and the public were in attendance.

## 2.0 BRIEF OVERVIEW OF TELECONFERENCE MEETING PROCEDURES

Mima Guilles, Clerk of the Board, provided an overview of the 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 regular business meeting No. 22 dated April 9, 2021.  
APPROVED

4.2 Accept the Sources and Uses of Funds for the FY21 Period Ending March 31, 2021.  
APPROVED

Director Aguirre MOVED to approve the consent agenda. Director Medina SECONDED. Roll call was taken. **MOTION CARRIED 6-0-0**

#### 5.0 REGULAR AGENDA

5.1 Receive a presentation on the San Mateo County US 101 Express Lane Equity Study and approve by motion the Recommended Equity Program. APPROVED

Matt Click gave a brief introduction on the presentation on the San Mateo County US 101 Express Lane Equity Study and approve by motion the Recommended Equity Program and give the PPM directions to work with JPA staff over the summer on the implementation plan.

The Board received a presentation from Autumn Bernstein on the San Mateo 101 Express Lanes Equity Study. She has provided a project timeline, a recap on the Equity Program Alternatives, stakeholder and community feedback, and the recommended Equity Program.

Director Beach asked if the equity program might be delayed while MTC worked on its discounted Fastrak.

Autumn Bernstein noted that rather than duplicate the MTC's efforts, staff will be working with the MTC to leverage their efforts.

Director Derwin asked if the cash on clipper allowed for \$50 per year for potentially multiple years, and that there was no limit to the number of people per household; but the discounted FasTrak was a one-time benefit with one per household.

Autumn Bernstein confirmed that was accurate.

Vice Chair Papan asked how enrollment would work with MTC, and would the MTC charge a fee?

Director Medina asked if staff had an initial information on potential MTC implementation fees?

Autumn Bernstein said that we would leverage the MTC's enrollment process and that the MTC would probably charge a fee.

Matt Click noted that PPM and JPA staff are engaged with MTC on these implementation questions. Initial staff impression is that Clipper Start might be implemented earlier with the FasTrak discount to follow.

Director Aguirre wanted to ensure that we used best practices for outreach and utilize County outreach successes regarding the CENSUS outreach.

Matt Click noted that we were working with MTC on the implementation.

Director Beach asked how much of the eligible population that could be served?

Autumn Bernstein mentioned that the program could potentially reach 20%-40% of people who are eligible, however, not everybody who is eligible will sign up. There are many unknown variables about who will enroll.

Director Papan MOVED approval of item 5.1. Director Medina SECONDED. Roll call was taken. **MOTION CARRIED 6-0-0**

- 5.2 Public Hearing: Introduce an Ordinance for the Administration of Tolls and Enforcement of Toll Violations for the San Mateo County US 101 Express Lanes, and waive the reading of the Ordinance. **APPROVED**

The Board received a presentation on Introduce an Ordinance for the Administration of Tolls and Enforcement of Toll Violations for the San Mateo County US 101 Express Lanes, and waive the reading of the Ordinance.

Chair Horsely opened the Public Hearing.

Vice Chair Papan asked why motorcycles have to have a FastTrak tag to be exempt.

Tim Fox noted that our regional partners required that all non-revenue vehicles have FasTrak tags.

Vice Chair Papan asked what 2-person vehicle had to do to ride for free?

Matt Click confirmed this.

Vice Chair asked what the surcharge to use the license plate would be?

Matt Click noted that he did not know.

Vice Chair Papan asked how the CAV would get its discount?

Matt Click noted that CAVs must get a separate CAV transponder.

Vice Chair Papan asked where the 2025 deadline for CAV discount come from?

Tim Fox noted that the 2025 deadline was based on State Statute, but the Ordinance has been structured for maximum flexibility to amend the CAV discount.

Chair Horsley asked where the fines go?

Matt Click indicated that the JPA would not receive the fines.

Director Beach noted that the omission of a discussion of a cap meant that prices would be set by market?

Matt Click confirmed this.

Director Beach asked if the ordinance should preview the JPA Board's intent to reduce the CAV Discount by fall of 2022? And why the early goal of CAV Discount of fall of 2022 was not included in the Ordinance?

Matt Click noted that the CAV discount timeline of fall of 2022 would be included in the adopting resolution.

Tim Fox noted that the most flexibility would come from changing the CAV discount via resolution rather than by ordinance.

April Chan noted that regional express lane operators were supportive of this approach.

Chair Horsley closed the Public Hearing.

Director Beach **MOVED** to introduce the ordinance and waive the requirement that it be read in its entirety. Vice Chair Papan **SECONDED**. Roll call was taken.  
**MOTION CARRIED 6-0-0**

## 6.0 REPORTS

a) Chairperson Report.

None.



b) Member Communication.

None.

c) Executive Council Report - Executive Council Verbal Report.

Sandy Wong announced that the C/CAG Board has re-appointed the three members that represents C/CAG to serve another two (2) year term. Election of Chair and Vice Chair staff will bring an item to the June Board meeting.

April Chan mentioned that, Carter Mau, acting Executive Director for the TA is absent but would like to inform the Board that they will bring the Fiscal year 2022 preliminary budget for approval to the next Board meeting.

d) Policy/Program Manager Report.

None.

Tim Fox, Legal Counsel, reported out that staff has clarified that there were no written or oral comments that were submitted in connection to the Toll Ordinance item.

7.0 WRITTEN COMMUNICATIONS

None.

8.0 NEXT REGULAR MEETING

June 11, 2021

ADJOURNMENT – 10:17 a.m.

## San Mateo County Express Lanes Joint Powers Authority Agenda Report

Date: June 11, 2021

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

From: Executive Council

Subject: Accept the Sources and Uses of Funds for the FY21 Period Ending April 30, 2021  
(For further information, contact Derek Hansel, CFO, at 650-508-6466)

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### RECOMMENDATION

That the SMCEL-JPA Board accept and enter into the record the Sources and Uses of Funds for the FY21 Period Ending April 30, 2021.

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

### BACKGROUND

Year to Date Sources of Funds: As of April year-to-date, the Total Sources of Funds are \$1,929,640, which represent the loan advances for FY21 under the two operating loan agreements between the SMCEL-JPA, the San Mateo County Transportation Authority, and the City/County Association of Governments.

Year to Date Uses of Funds: As of April year-to-date, the Total Uses of Funds are \$1,194,273. Major expenses are in Staff Support \$440,413 and Consultant \$590,400.

Budget Amendment:

There are no budget amendments for the month of April 2021.

Other Information:

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

### ATTACHMENT

1. Sources and Uses of Funds Fiscal Year 2021 (April 2021)

**SAN MATEO COUNTY EXPRESS LANE JPA**  
**SOURCES AND USES OF FUNDS**  
**Fiscal Year 2021**  
**April 2021**

	ACTUAL		BUDGET	
	As of 4/30/2021		Annual	
<b>SOURCES OF FUNDS:</b>				
1	Advance from the City/County Association of Governments of San Mateo County	\$ 809,983	\$	917,244
2	Advance from the San Mateo County Transportation Authority	1,119,657		1,270,463
3	<b>TOTAL SOURCES OF FUNDS</b>	<b>1,929,640</b>		<b>2,187,707</b>
<b>USES OF FUNDS:</b>				
4	Staff Support	440,413		814,700
5	Administrative Overhead	44,512		53,415
6	Business Travel	-		3,000
7	Office Supplies	-		3,000
8	Printing and Information Svcs	-		5,000
9	Legal Services	25,483		60,000
10	Consultant	590,400		1,171,432
11	Insurance	72,983		-
12	Miscellaneous	20,482		77,160
13	<b>TOTAL USES OF FUNDS</b>	<b>1,194,273</b>		<b>2,187,707</b>
14	<b>EXCESS (DEFICIT)</b>	<b>\$ 735,367</b>	<b>\$</b>	<b>-</b>
<b>Additional Information:</b>				
	Loan payables to the City/County Association of Governments of San Mateo County	\$ 1,310,815		
	Loan payables to the San Mateo County Transportation Authority	\$ 1,619,848		

## San Mateo County Express Lanes Joint Powers Authority Agenda Report

Date: June 11, 2021

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

From: Executive Council

Subject: Review and approval of Resolution SMCEL 21-06 authorizing the SMCEL-JPA Chair to execute Amendment No. 2 to the Agreement with the Office of County Counsel of San Mateo County for general legal services for Fiscal Year 2021/2022 for an amount not to exceed \$60,000.

(For further information or questions, contact Van Dominic Ocampo at [vocampo@smcgov.org](mailto:vocampo@smcgov.org))

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### **RECOMMENDATION**

That the SMCEL-JPA Board of Directors review and approve Resolution SMCEL 21-06 authorizing the SMCEL-JPA Chair to execute Amendment No. 2 to the Agreement with the Office of County Counsel of San Mateo County for general legal services for Fiscal Year 2021/2022 for an amount not to exceed \$60,000.

### **FISCAL IMPACT**

Fiscal Impact is in an amount Not to Exceed \$60,000 for the Provision of General Legal Services for Fiscal Year 2021/2022, for an amount not to exceed \$60,000.

### **SOURCE OF FUNDS**

The funds are included in the proposed Fiscal Year 2021-2022 budget.

### **BACKGROUND**

The Joint Exercise of Powers Agreement for the San Mateo County Express Lanes (JEPA) was approved by the City/County Association of Governments (C/CAG) Board of Directors and the San Mateo County Transportation Authority (SMCTA) Board of Directors at their board meetings of April 11, 2019 and May 2, 2019, respectively. The agreement became effective on June 1, 2019.

The JEPA specifies that legal counsel services for the SMCEL-JPA would be contracted through the Office of the County Counsel of the County of San Mateo. The County Counsel provides general legal services not only to County offices but also other local agencies such as Joint Powers Agencies.

On June 6, 2019 SMCEL-JPA Board approved Resolution 19-02, authorizing the Chair to execute the

agreement with the Office of the County Counsel for the provision of general legal services to SMCEL-JPA for Fiscal Year 2019/2020. On June 12, 2020, the Board, through the adoption of Resolution 20-07 approved Amendment No. 1 to the said agreement, which renewed the contract to cover Fiscal Year 2020/2021. The attached Amendment No. 2 will retain the Office of the County Counsel for the provision of general legal services to the SMCEL-JPA for the period of July 1, 2021 through 30, 2022 (Fiscal Year 2021/2022). Legal services will be billed monthly at specified rates in Amendment No. 2 to the Agreement and for a total amount not to exceed \$60,000.

Additionally, because the County Counsel's Office provides general legal services to C/CAG, a member of the SCMEL-JPA that will be providing a variety of services to the SMCEL-JPA, the County Counsel's Office is requesting signature on a notice and waiver of potential conflicts, attached as Exhibit A to Amendment No. 2 to the Agreement. Although County Counsel is not aware of any actual conflicts or a significant risk that representation of either client will be materially limited by counsel's responsibility to or relationship with the other client at this time, the waiver allows County Counsel to represent the SMCEL-JPA and C/CAG despite potential conflicts that may arise in its representation of both entities, as described further in Exhibit A. County Counsel will request a similar waiver from C/CAG to permit the concurrent representation.

#### **ATTACHMENT**

1. Resolution SMCEL 21-06
2. Amendment No. 2 to the Agreement between the Office of County Counsel of San Mateo County and San Mateo County Express Lanes Joint Powers Authority for the Provision of General Legal Services for Fiscal Year 2021/2022.

**RESOLUTION SMCEL 21-06**

**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 AMENDMENT NO. 2 TO THE AGREEMENT BETWEEN THE OFFICE OF THE COUNTY COUNSEL OF SAN MATEO COUNTY AND THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY FOR THE PROVISION OF GENERAL LEGAL SERVICES FOR THE PERIOD JULY 1, 2021 THROUGH JUNE 30, 2022 FOR AN AMOUNT NOT TO EXCEED \$60,000**

**BE IT RESOLVED** by the Board of Directors of the San Mateo County Express Lanes Joint Powers Authority; that

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

**WHEREAS**, the SMCEL- JPA requires legal advice in the performance of its duties and functions and the JEPA specifies that legal counsel services would be contracted through the County Counsel of the County of San Mateo (“County Counsel”); and

**WHEREAS**, County Counsel provides general legal services, not only to county offices and entities, but also to other local agencies, and County Counsel is willing and able to provide such services to the SMCEL-JPA; and

**WHEREAS**, in order to procure services, the SMCEL-JPA and County Counsel must enter into an agreement outlining and explaining the rights and duties of each party to the Agreement, the scope of the relationship between the SMCEL-JPA and County Counsel as well as the parameters of representation including, but not limited to, the duration of the Agreement and the applicable hourly rates;

**WHEREAS**, on June 6, 2019, the SMCEL-JPA Board adopted Resolution SMCEL 19-02 authorizing the Express Lanes Joint Powers Authority Chair to execute the Agreement between the County Counsel of the County of San Mateo and the Express Lanes Joint Powers Authority for the Provision of General Legal Services for the period June 1, 2019 through June 30, 2020; and

**WHEREAS**, on June 12, 2020, the SMCEL-JPA Board adopted Resolution SMCEL 20-07 authorizing the Express Lanes Joint Powers Authority Chair to execute Amendment No. 1 to the Agreement between the Office of the County Counsel of San Mateo County and San Mateo County Express Lanes Joint Powers Authority, renewing the said agreement for the Provision of General Legal Services covering the period beginning July 1, 2020 through June 30, 2021 for an amount not to exceed \$60,000; and

**WHEREAS**, Amendment No. 2 to the Agreement between the Office of the County Counsel of San Mateo County and San Mateo County Express Lanes Joint Powers Authority will renew the said agreement for the Provision of General Legal Services covering the period beginning July 1, 2021 through June 30, 2022 for an amount not to exceed \$60,000; and

**WHEREAS**, it is the desire of the SMCEL-JPA to renew the agreement for the Provision of General Legal Services with County Counsel covering the period of July 1, 2021 through June 30, 2022 for an amount not to exceed \$60,000.

**NOW THEREFORE BE IT RESOLVED**, by the Board of Directors of the SMCEL-JPA that the Chair is authorized to execute Amendment No. 2 to the Agreement on behalf of the SMCEL-JPA.

**PASSED, APPROVED, AND ADOPTED, THIS 11TH DAY OF JUNE, 2021.**

**AMENDMENT No. 2 to the AGREEMENT  
BETWEEN  
THE OFFICE OF THE COUNTY COUNSEL OF SAN MATEO COUNTY  
AND  
THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY  
FOR THE PROVISION OF GENERAL LEGAL SERVICES  
FOR FISCAL YEAR 2021/2022**

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THIS AMENDMENT No. 2 to the AGREEMENT is entered into this 11<sup>th</sup> day of June 2021, by and between the OFFICE of the COUNTY COUNSEL OF THE COUNTY OF SAN MATEO, hereinafter referred to as "County Counsel", and the San Mateo County Express Lanes Joint Powers Authority, hereinafter referred to as "SMCEL-JPA".

WITNESSETH:

WHEREAS, the County Counsel is ready and able to provide legal service and advice to SAMCEL-JPA, and SMCEL-JPA wishes to retain the County Counsel to perform legal services with respect to certain matters beginning July 1, 2021 through June 30, 2022 (FY 2021/22); and

WHEREAS, it is reasonable and necessary to set forth the various obligations and responsibilities of the parties in light of SMCEL-JPA's payment for the County Counsel's legal services;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions as hereinafter set forth, the parties hereto do hereby agree as follows:

County Counsel shall perform legal services and legal representation, including the handling of litigation, as may be requested by SMCEL-JPA. Litigation services shall not include litigation for which SMCEL-JPA has insurance coverage.

1. The parties understand that County Counsel has been retained to represent the interests of the SMCEL-JPA as a whole, and County Counsel shall render such legal advice to SMCEL-JPA as may be requested by SMCEL-JPA and/or its designated representative(s). Attendance of counsel at meetings of the SMCEL-JPA Board shall be upon request of SMCEL-JPA. SMCEL-JPA is retaining the office of County Counsel, not any particular attorney, and the attorney services to be provided to SMCEL-JPA will not necessarily be performed by a particular attorney.
2. County Counsel shall periodically update SMCEL-JPA on legal issues and shall be available to provide training as is mutually agreed upon.
3. This Amendment No. 2 to the Agreement is for a term of twelve months commencing July 1, 2021 and extending through June 30, 2022. This Agreement may be terminated by mutual agreement of the parties at any time, provided that SMCEL-JPA has previously given ninety (90) days' advance written notice of its intention to terminate the Agreement. County Counsel may withdraw at any time as permitted under the Rules of Professional Conduct of the State Bar of California.





## **EXHIBIT A**

### **Notice and Waiver of Conflict**

This waiver of conflict is requested by the Office of the County Counsel of San Mateo County (the "County Counsel") in connection with the San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) Board of Directors' consideration of the agreement with the County Counsel to provide legal services to the SMCEL-JPA.

The County Counsel also serves as general counsel for the City/County Association of Governments of San Mateo County ("C/CAG"), a member of the SMCEL-JPA and signatory to the Joint Exercise of Powers Agreement for the San Mateo County Express Lanes (SMCEL-JPA Agreement). It is County Counsel's understanding that the SMCEL-JPA, both under the SMCEL-JPA Agreement itself and pursuant to anticipated future contracts, has or shall enter into a number of arrangements with C/CAG (collectively, the "Matters"), including: (1) a loan/advancement of funds from C/CAG to the SMCEL-JPA; (2) the negotiation and execution of certain contract(s) for staffing support from C/CAG; (3) ongoing executive and staffing support from C/CAG to the SMCEL-JPA, as provided in the SMCEL-JPA Agreement; (4) certain indemnity/hold harmless obligations pursuant to the SMCEL-JPA Agreement; and (5) certain actions that may be taken by the SMCEL-JPA that require review or approval by C/CAG pursuant to the SMCEL-JPA Agreement.

In accordance with Rule 1.7 of the Rules of Professional Conduct, this Notice and Waiver informs you of the implications of the County Counsel representing both the SMCEL-JPA and C/CAG in connection with the Matters and to seek the SMCEL-JPA's consent to such representation. In County Counsel's opinion, the SMCEL-JPA and C/CAG are not presently directly adverse to each other. In addition, we believe the County Counsel can concurrently represent both clients without significant risk that the representation of either client will be materially limited by counsel's responsibilities to or relationships with the other client.

It is conceivable, however, that the interests of the SMCEL-JPA and C/CAG could become directly adverse to one another in the future. Potential conflicts include, for example, the following:

- Either of you could request contract or other terms in connection with the Matters that adversely impact the other;
- The SMCEL-JPA and C/CAG's interests may diverge in connection with the Matters;
- A dispute could arise over the application or interpretation of terms of an existing agreement or the SMCEL-JPA Agreement;
- As a result of new information, facts, law, rules, or any other circumstances, the County Counsel believes that its representation of one client will materially limit its ability to represent the other client; and/or
- Either of you could request that material information regarding the representation or Matters be kept confidential from the other.

To the last point above, because County Counsel would be representing the SMCEL-JPA and C/CAG jointly, we must inform each client of significant developments relating to the Matters and may not withhold information provided by one client from the other. Moreover, under California Evidence Code Section 962 and California case law, in cases of joint representation there is no attorney-client privilege between or among joint clients so that you may not claim your communications with County Counsel are privileged or confidential as to the other client with respect to the Matters.

At this time, we believe that our office is able to represent both the SMCEL-JPA and C/CAG and to fulfill County Counsel's ethical obligations to each client. Aside from the potential conflicts described above, we see no actual conflicts between you, nor has either informed us of any actual conflict. During the joint representation of the SMCEL-JPA and C/CAG, whenever County Counsel identifies any significant areas or issues, in addition to those described above, that have the potential to create a conflict of interest, County Counsel will point them out to both of you and, if necessary, advise you both on the need for separate counsel as to any such issues. You should consider any concern about the effect of such a limitation on County Counsel's representation of you. You should also consider whether you want to obtain the advice of an independent attorney concerning our ability to represent your interests adequately in view of these limitations.

By executing this letter where indicated below, you confirm on behalf of the SMCEL-JPA that you have been fully informed as to the nature of the potential conflicts resulting from the joint representation of both C/CAG and the SMCEL-JPA; that you have been provided a reasonable opportunity to seek the advice of independent counsel of your choice regarding these potential conflicts and waiver thereof; and that you understand that a conflict may arise in the future which may require an additional disclosure and waiver by you, or, alternatively, County Counsel's withdrawal from representation of one or both of you.

Additionally, you confirm that you will take the opportunity to retain independent counsel in the event you have any reservations regarding the joint representation, the issues arising from that representation, and/or the waiver of the potential conflict of interest. Assuming the foregoing accurately reflects your agreements, please sign and date where indicated below, and return the executed Waiver of Conflict to the Office of the County Counsel to the attention of Timothy Fox, Deputy County Counsel.

#### Waiver of Conflict

I, *Marie Chuang*, Chair of the Board, on behalf of the SMCEL-JPA, hereby acknowledge that I have carefully read the foregoing letter, informing me that the SMCEL-JPA's interests may potentially be in conflict with those of C/CAG in connection with the County Counsel's representation of the SMCEL-JPA's and C/CAG's interests in connection with the Matters.

I expressly acknowledge that the concurrent representation by the County Counsel of the SMCEL-JPA's and C/CAG's interests constitutes the representation of potentially conflicting interests, to the extent that SMCEL-JPA's and C/CAG's interests are potentially adverse.

I nevertheless knowingly and voluntarily consent on behalf of the SMCEL-JPA to such concurrent representation by the County Counsel. I further expressly acknowledge that the

SMCEL-JPA has been advised that the SMCEL-JPA has the right to seek independent legal counsel in connection with the advisability of waiving said conflict, and that the SMCEL-JPA has had a reasonable opportunity to do so.

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

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By: Don Horsley, Chair

Date

**ATTEST:**

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By: Mima Guilles, Clerk of the Board

Date:

## **San Mateo County Express Lanes Joint Powers Authority AGENDA REPORT**

DATE: June 11, 2021

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

FROM: Derek Hansel, Chief Financial Officer

SUBJECT: Public Hearing: Approval of Resolution SMCEL 21-07 adopting the Fiscal Year (FY) 2022 SMCEL-JPA Operating Budget of \$2,721,160.

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

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### **Recommendation**

Staff recommends the Board conduct a Public Hearing and approve Resolution SMCEL 21-07 adopting the proposed Fiscal Year (FY) 2022 Operating Budget of \$2,721,160.

### **Fiscal Impact**

Adoption of the FY2022 Budget would provide the SMCEL-JPA budget authority for \$2,721,160 in anticipated expenditures in the upcoming fiscal year.

### **SMCTA and C/CAG Joint Partnership**

The San Mateo County Transportation Authority (SMCTA) and the City/County Association of Governments of San Mateo County (C/CAG) local funds will be advanced to the SMCEL-JPA and will be repaid after the San Mateo express lanes generate revenues. Each agency will advance its corresponding staff support (line 5) and administrative overhead (line 6). Non-labor costs (lines 7 through 14) are shared equally between C/CAG and SMCTA.

### **Public Hearing Requirements & Process**

Section 131266 of the California Public Utilities Code requires the SMCEL-JPA to hold a public hearing before adoption of an annual budget. Notice of the time and place of the public hearing must be published at least once, 15 days prior to the hearing.

Notice of this public hearing appeared in the in the San Mateo Daily Journal on May 27, 2021. The notice is currently posted at the lobby of 1250 San Carlos Ave, San Carlos, where the SMCEL-

JPA's agendas also are posted for public viewing. As of the date of publication of this staff report, no written comments have been received.

Staff recommends the Board:

1. Open the public hearing;
2. Receive an oral staff report and presentation on the proposed budget;
3. Ask staff to answer any Board member questions;
4. Accept public comment;
5. Close the public hearing;
6. Conduct Board discussion; and
7. Adopt the proposed budget.

### **Background**

The FY2022 Budget provides for continued staff work to prepare for the opening of the southern segment of US101 in San Mateo County, slated for later this Fiscal Year. As better operations and maintenance (O&M) estimates for the opening of the Southern segment become available, staff will return to the Board with a budget amendment for FY2022.

### **FY2022 Proposed Operating Budget**

Please refer to Attachment A showing a comparative schedule of the FY2022 Proposed Operating Budget and the FY2021 Adopted Operating Budget. The line numbers for each revenue and expense item detailed below refer to the corresponding line numbers on Attachment A.

### **Sources of Funds (Line 2)**

Total revenues for FY2022 are projected at \$2,721,160, an increase of \$533,453 over the FY2021 adopted budget.

- For FY2022, the total advance from both agencies is \$2,721,160. C/CAG's share of the advance is \$1,314,045 and SMCTA's share of the advance will be \$1,407,116.

### **Uses of Funds**

Staff Support: (Line 5) \$689,030, a decrease of \$125,670 from the FY2021 adopted budget

- This includes staff wages and benefits needed to administer the SMCEL-JPA. A total of 3.06 full time equivalents is made up of time from the C/CAG and the San Mateo County Transit District (District) staff.

Administrative Overhead: (Line 6) \$53,415, no change from the FY2021 adopted budget

- This budget reflects the cost of financial system support and other agency overhead. The District currently uses a simplified methodology as recommended by the District's Internal Cost Allocation Plan (ICAP). Staff is currently working with the ICAP consultant to

finalize the Overhead estimate. The updated estimate will be presented as an amendment for Board approval.

Seminar/Training & Business Travel: (Line 7) \$10,000, an increase of \$6,000 over FY2021 adopted budget

- Includes cost of seminars, training and conferences related to express lanes administration and technology, business travel for meeting attendance in and around the region regarding express lanes business, as well as meetings with the State, such as California Department of Transportation (Caltrans) and the California Transportation Commission (CTC).

Audit and Related Service: (Line 8) \$16,160, no increase from the FY2021 adopted budget

- Includes annual audit service and audit related GFOA subscription and applications.

Office Supplies: (Line 9) - \$3,000, no increase from the FY2021 adopted budget

- Includes supplies for communication, marketing and meeting supplies and expenses.

Printing and Information Services: (Line 10) \$5,000, no increase over FY2021 adopted budget

- Includes cost of printing packets for communication, marketing and board meetings.

Legal Services: (Line 11) - \$60,000, no increase over the FY2021 adopted budget

- Includes cost for contracted legal services provided by the San Mateo County Counsel Office.

Consultant: (Line 12) - \$1,614,7074, an increase of \$443,275 over the FY21 adopted budget

- Includes consulting services, such as those provided by the HNTB PPM, as well as technical studies, advocacy and lobbying, and fiscal agent services.

Insurance: (Line 13) \$186,648, an increase of 100% over the FY2021 budget.

- The FY2022 budget is the estimated annual premium for property and liability coverage. While there was not an amount that was budgeted for insurance at the start of FY2021, the Board approved insurance coverage in March 2021, as it was determined that there was sufficient overall budget authority within the FY2021 budget to cover this cost.

Miscellaneous: (Line 14) \$83,200, an increase of \$23.2 thousand over the FY21 adopted budget

- Includes provision for promotional advertising, dues and subscriptions, board meeting technical/video streaming software and board compensation.

### **ATTACHMENTS:**

Attachment 1: Resolution SMCEL-JPA 21-07 Budget

Attachment 2: Proposed FY2022 SMCEL-JPA Budget (Attachment A)

**RESOLUTION SMCEL 21-07**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY (SMCEL-JPA) ADOPTING THE SMCEL-JPA BUDGET FOR FISCAL YEAR 2022 IN THE AMOUNT OF \$2,721,160**

BE IT RESOLVED by the Board of Directors of the Express Lanes Joint Powers Authority (SMCEL-JPA); that

**WHEREAS**, Section 131265(a) of the California Public Utilities Code requires the SMCEL-JPA Board of Directors to adopt an annual budget; and

**WHEREAS**, in accordance with Section 131266 of the California Public Utilities Code, the Authority conducted a public hearing concerning the annual budget at its meeting on June 11, 2021; and

**WHEREAS**, the Board of Directors has been presented for its consideration and approval a proposed budget of \$2,721,160 for fiscal year 2022.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Directors of the SMCEL-JPA adopts the budget for Fiscal Year 2022, a copy of which is attached and incorporated herein as Attachment A.

**PASSED, APPROVED, AND ADOPTED, THIS 11TH DAY OF JUNE, 2021.**

---

*Don Horsley, Chair*

**San Mateo County Express Lanes JPA  
FY2022 Proposed Budget**

	FY2021 Adopted Budget	FY2022 Proposed Budget	FY22 Proposed vs. FY2021 Adopted Budget	Percentage Change	
1 SOURCES OF FUNDS					1
2     Advance from SMCTA and CCAG	2,187,707	2,721,160	533,453	24.4%	2
3					3
4 USES OF FUNDS					4
5     Staff Support	814,700	689,030	(125,670)	-15.4%	5
6     Administrative Overhead	53,415	53,415	-	0.0%	6
7     Seminar/Training & Business Travel	4,000	10,000	6,000	150.0%	7
8     Audit and Related Service	16,160	16,160	-	0.0%	8
9     Office Supplies	3,000	3,000	-	0.0%	9
10    Printing and Information Svcs	5,000	5,000	-	0.0%	10
11    Legal Services	60,000	60,000	-	0.0%	11
12    Consultant	1,171,432	1,614,707	443,275	37.8%	12
13    Insurance	-	186,648	186,648	100.0%	13
14    Miscellaneous	60,000	83,200	23,200	38.7%	14
15 TOTAL USES OF FUNDS	2,187,707	2,721,160	533,453	24.4%	15



## **San Mateo County Express Lanes Joint Powers Authority AGENDA REPORT**

Date: June 11, 2021

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

From: Executive Council

Subject: Review and approval of Resolution SMCEL 21-08 and Resolution SMCEL 21-09 authorizing the SMCEL-JPA Chair to execute the Second 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 \$1,314,045 and \$1,407,116, respectively.

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

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### **RECOMMENDATION**

That the SMCEL-JPA Board review and approve Resolutions SMCEL 21-08 and Resolution SMCEL 21-09 authorizing the SMCEL-JPA Chair to execute the Second Amendments of the Cooperative Funding Agreements (Operating Loan) with the City/County Association of Governments of San Mateo County (C/CAG) and San Mateo County Transportation Authority (SMCTA), for \$1,314,045 and \$1,407,116, respectively.

### **FISCAL IMPACT**

The SMCEL-JPA will receive two operating loans totaling \$2,721,160 that will fund the adopted Fiscal Year 2021-22 operating budget.

### **SOURCE OF FUNDS**

C/CAG and SMCTA will loan \$1,314,045, and \$1,407,116, respectively, to the SMCEL-JPA for the FY 2021-22 Budget. SMCEL-JPA will receive up to a total of \$2,721,160.

### **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 late 2021, and the section between Whipple Ave. and I-380 approximately one year later.

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. In June 2020, the SMCEL-JPA approved a Fiscal Year 2020-21 operating budget of \$2,187,707. On July 17, 2020, the SMCTA approved the first amendment to the Operating Loans for \$917,244 for C/CAG and \$1,270,463 for the 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 toll revenue collection on the Project. The description below provides more detail of the other commitments.

The Project required a \$100 million loan (Capital Loan) from the SMCTA for construction costs. In August 2020, the SMCTA and the SMCEL-JPA executed a \$100 million Capital Loan Agreement for the SMCEL-JPA to repay the SMCTA up to \$100 million with toll revenues. 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.
3. Interest payments for the Operating Loans.
4. Interest payments for the Capital Loan.
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.

## **ANALYSIS**

The proposed SMCEL-JPA Fiscal Year 2021-22 operating budget equals \$2,721,160. In recognition that toll revenue will not be available until the express lanes are open, C/CAG and SMCTA staff are proposing that C/CAG provide an operating loan of \$1,314,045 (48%) and the SMCTA provide an operating loan of \$1,407,116 (52%). 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 7 through 14) are split equally between C/CAG and SMCTA. See Attachment 3.

As noted in the budget discussion, the Fiscal Year 2021/22 Budget will utilize a two-step process. The first step will be the approval of an operating budget in June that generally includes the executive, administrative, and legal costs to operate the SMCEL-JPA and continue to advance the project initiation activities. These include the staffing provided by C/CAG and the SMCTA, the County Counsel Legal resources, and consultants such as the HNTB PPM contract. The C/CAG and SMCTA Operating loans are intended to fund these activities until the toll lanes generate revenue.

The second step will consist of a SMCEL-JPA budget amendment after the adoption of the multi-year operating and maintenance contracts with BAIFA, BATA, Caltrans, and the CHP to operate and maintain the express lanes and tolling infrastructure. Staff anticipate requesting approval of these contracts between July and September. These contracts will assist in identifying estimated expenses for these costs. In addition, it is anticipated that toll revenues will be the source of revenue for these expenses. Staff anticipate returning to the SMCEL-JPA Board of Directors with a Budget amendment in the later summer or early fall to include the BAIFA, BATA, Caltrans, and CHP expenses and the anticipated toll revenue.

Staff have prepared separate Resolutions (Attachments 1-2) and Second Amendments to the Operating Loans for C/CAG and the SMCTA (Attachments 4-5).

## **ATTACHMENTS**

1. Resolution SMCEL 21-08(C/CAG)

2. Resolution SMCEL 21-09 (SMCTA)
3. SMCEL-JPA FY 2021/22 Operating Budget
4. Amendment #2 Cooperative Funding (Loan) Agreement between C/CAG and SMCEL-JPA
5. Amendment #2 Cooperative Funding (Loan) Agreement between SMCTA and SMCEL-JPA

**RESOLUTION SMCEL 21-08**

**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 SECOND 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 \$1,314,045**

**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 each; 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**, on July 17, 2020 the SMCEL-JPA Board adopted Resolutions 20-12 and 20-13 approving separate First Amendments to the operating loan agreements with C/CAG and the SMCTA for \$917,244 and \$1,270,463, respectively; and

**WHEREAS**, on June 11, 2021, the SMCEL-JPA Board of Directors will review and consider approving Resolution SMCEL 21-07, adopting the Fiscal Year 2021-22 Budget of \$2,721,160; and

**WHEREAS**, the SMCEL-JPA, SMCTA, and C/CAG desire to approve the Second Amendment to the Cooperative Funding Agreement Amendment for funding the \$2,721,160 SMCEL-JPA 2021-22 Operating Budget; and

**WHEREAS**, the SMCTA portion of SMCEL-JPA's Fiscal Year Budget 2021-22 is \$1,407,116, and that of C/CAG is \$1,314,045.

**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 Second Amendment of the Cooperative Agreement (Loan) Agreement with C/CAG in an amount of \$1,314,045 subject to approval of SMCEL-JPA FY 2021-22 Annual Budget; and further authorizes the Executive Council to negotiate the final terms prior to its execution by the SMCEL-JPA Chair, subject to approval by the SMCEL-JPA Legal Counsel.

**PASSED, APPROVED, AND ADOPTED, THIS 11TH DAY OF JUNE, 2021.**

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*Don Horsley, Chair*

**RESOLUTION SMCEL 21-09**

**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 SECOND AMENDMENT TO THE COOPERATIVE FUNDING (OPERATING LOAN) AGREEMENT WITH THE SAN MATEO COUNTY TRANSPORTATION AUTHORITY (SMCTA) IN AN AMOUNT OF \$1,407,116**

**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 each; 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**, on July 17, 2020 the SMCEL-JPA Board adopted Resolutions 20-12 and 20-13 approving separate First Amendments to the operating loan agreements with C/CAG and the SMCTA for \$917,244 and \$1,270,463, respectively; and

**WHEREAS**, on June 11, 2021, the SMCEL-JPA Board of Directors will review and consider approving Resolution SMCEL 21-07, adopting the Fiscal Year 2021-22 Budget of \$2,721,160; and

**WHEREAS**, the SMCEL-JPA, SMCTA, and C/CAG desire to approve the Second Amendment to the Cooperative Funding Agreement Amendment for funding the \$2,721,160 SMCEL-JPA 2021-22 Operating Budget; and

**WHEREAS**, the SMCTA portion of SMCEL-JPA's Fiscal Year Budget 2021-22 is \$1,407,116, and that of C/CAG is \$1,314,045.

**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 Second Amendment of the Cooperative Agreement (Loan) Agreement with the SMCTA in an amount of \$1,407,116 subject to approval of SMCEL-JPA FY 2021-22 Annual Budget; and further authorizes the Executive Council to negotiate the final terms prior to its execution by the SMCEL-JPA Chair, subject to approval by the SMCEL-JPA Legal Counsel.

**PASSED, APPROVED, AND ADOPTED, THIS 11TH DAY OF JUNE, 2021.**

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*Don Horsley, Chair*

**San Mateo County Express Lanes JPA  
FY2022 Proposed Budget**

	FY2021 Adopted Budget	FY2022 Proposed Budget	FY22 Proposed vs. FY2021 Adopted Budget	Percentage Change	
1	SOURCES OF FUNDS				1
2	2,187,707	2,721,160	533,453	24.4%	2
3					3
4	USES OF FUNDS				4
5	814,700	689,030	(125,670)	-15.4%	5
6	53,415	53,415	-	0.0%	6
7	4,000	10,000	6,000	150.0%	7
8	16,160	16,160	-	0.0%	8
9	3,000	3,000	-	0.0%	9
10	5,000	5,000	-	0.0%	10
11	60,000	60,000	-	0.0%	11
12	1,171,432	1,614,707	443,275	37.8%	12
13	-	186,648	186,648	100.0%	13
14	60,000	83,200	23,200	38.7%	14
15	2,187,707	2,721,160	533,453	24.4%	15



DRAFT

SECOND 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 Second Amendment is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2021, 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 C/CAG to fund one half of the JPA’s Fiscal Year 2019-2020 budget, with the understanding that C/CAG would be repaid under the terms of such Original Agreement.
- C. The Parties, on July 17, 2020, entered into the First Amendment to the Original Agreement for C/CAG to fund a portion of the JPA’s Fiscal Year 2020-2021 budget, with the understanding that the C/CAG would be repaid under the terms of the Original Agreement.
- D. The Parties now wish to further amend the Original Agreement to provide for additional loan advances by C/CAG for up to a maximum amount of \$1,314,045, to support a portion of the JPA’s Fiscal Year 2021-22 budget, with a separate portion (\$1,407,116) to be loaned to the JPA by the Authority.

IN WITNESS WHEREOF, this Second 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 First Amendment to the Original Agreement the new paragraph below:

The C/CAG agrees to loan to the JPA, and the JPA agrees to accept, up to One million three hundred fourteen thousand forty ~~five~~ dollars (US \$1,314,045) to fund a portion of the JPA’s Fiscal Year 2021-2022 expenses, consistent with budgeted commitments in the JPA’s Fiscal Year 2021-2022 Budget. The loan under this paragraph shall be in addition to the other loans under the first paragraph under this Section 1.A., and the loan under

Section 1(a) of the First Amendment to the Original Agreement, and together they shall comprise the "Loan Amount," notwithstanding the definition of such term above.

(b) The following paragraph is added to Section 1(b) of the First Amendment to the Original Agreement:

Thereafter through July 31, 2022, the JPA can request, no more than once each month, additional installments of the portion of the Loan Amount described in the **third** 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 C/CAG for fiscal year 2021-2022.

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

3. Counterparts. This Second 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 Second Amendment.

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

SAN MATEO COUNTY EXPRESS  
LANES JOINT POWERS AUTHORITY

CITY/COUNTY ASSOCIATION OF  
GOVERNMENTS OF SAN MATEO  
COUNTY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTESTED BY:

By: \_\_\_\_\_

JPA Secretary

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTESTED BY:

By: \_\_\_\_\_

C/CAG Secretary

Date: \_\_\_\_\_

APPROVED AS TO FORM:

|

By: \_\_\_\_\_  
Attorney for the JPA

By: \_\_\_\_\_  
Attorney for C/CAG

Date: \_\_\_\_\_

Date: \_\_\_\_\_

DRAFT

DRAFT

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

This Second Amendment is entered into on the \_\_\_\_ day of \_\_\_\_\_, 2021, 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 July 17, 2020, entered into the First Amendment to the Original Agreement for C/CAG to fund a portion of the JPA’s Fiscal Year 2020-2021 budget, with the understanding that the C/CAG would be repaid under the terms of the Original Agreement.

D. The Parties now wish to further amend the Original Agreement to provide for additional loan advances by C/CAG for up to a maximum amount of \$1,314,045, to support a portion of the JPA’s Fiscal Year 2021-22 budget, with a separate portion (\$1,407,116) to be loaned to the JPA by the Authority.

IN WITNESS WHEREOF, this Second 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 First Amendment to the Original Agreement the new paragraph below:

The Authority agrees to loan to the JPA, and the JPA agrees to accept, up to ~~xxxxxxxxxxxx~~ (US \$(1,407,116) to fund a portion of the JPA's Fiscal Year 2021-2022 expenses, consistent with budgeted commitments in the JPA's Fiscal Year 2021-2022 Budget. The loan under this paragraph shall be in addition to the other loans under the first paragraph under this Section 1.A., and the loan under Section 1(a) of the First Amendment to the Original Agreement, and together they shall comprise the “Loan Amount,” notwithstanding the definition of such term above.

(b) The following paragraph is added to Section 1(b) of the First Amendment to the Original Agreement:

Thereafter through July 31, 2022, the JPA can request, no more than once each month, additional installments of the portion of the Loan Amount described in the **third** 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 C/CAG for fiscal year 2021-2022.

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

3. Counterparts. This Second 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 Second Amendment.

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

By: \_\_\_\_\_

Attorney for the JPA

Attorney for the Authority

Date: \_\_\_\_\_

Date: \_\_\_\_\_

DRAFT

## **San Mateo County Express Lanes Joint Powers Authority AGENDA REPORT**

Date: June 11, 2021

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

From: Executive Council

Subject: Review and approval of Resolution SMCEL 21-10 adopting SMCEL Ordinance 2021-01 for the Administration of Tolls and Enforcement of Toll Violations for the San Mateo County US 101 Express Lanes.

(For further information please contact Matthew Click at [mclick@hntb.com](mailto:mclick@hntb.com))

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### **RECOMMENDATION**

Review and approval of Resolution SMCEL 21-10 adopting SMCEL Ordinance 2021-01 for the Administration of Tolls and Enforcement of Toll Violations for the San Mateo County US 101 Express Lanes.

### **FISCAL IMPACT**

The recommended Toll Ordinance will provide the authority to collect tolls.

### **SOURCE OF FUNDS**

NA

### **BACKGROUND**

Over the course of 2020 and 2021, the PPM has conducted several workshops with SMCEL-JPA staff and provided a series of board presentations to work through various tolling policies to be implemented on the US 101 express lanes project. These workshops and presentations began with informational content to orient staff and the board to the various areas of toll policy and options for consideration under each area of toll policy.

At the regularly scheduled meeting of the Board on March 9<sup>th</sup>, 2021 a final toll policy presentation was given by the PPM on various toll policies for consideration and eventual adoption.

The PPM made recommendations in that presentation on numerous policies to be incorporated into the Toll Ordinance scheduled for adoption by the Board in the Summer of 2021. The Board generally

accepted those recommendations and directed the preparation of a draft ordinance reflecting the policies as proposed.

One area which generated substantial Board discussion was the issue of what the pricing policy would be for clean air vehicles (CAVs). Currently, express lane operators in the Bay Area provide CAVs with a 50% toll discount off the full toll paid by single occupant vehicles. The PPM recommended a 50% discount for CAVs as part of their overall toll policy recommendations. The Board's discussion made clear that a 50% CAV toll discount was not a desirable policy due to concerns about the equities of providing a discount to generally wealthier motorists.

Upon Board direction the PPM performed further fact-finding activities by meeting with other regional express lane operators, as well as Peninsula Clean Energy (PCE). The PPM provided an update to the Board at their April 9<sup>th</sup>, 2021 Board Meeting. The PPM recommended an initial lane operation period in which the SMCEL-JPA would adopt a toll policy that is consistent with the region and providing a CAV discount of 50% in line with other express lane operators.

The Board agreed to use the 50% CAV discount in alignment with regional peers with the direction that the PPM and SMCEL-JPA staff should work with our regional express lane operators to provide a plan back to the Board prior to the opening of the Northern Section of the US 101 Express Lanes on how the amount of the CAV discount will be reduced below 50% and a timeline for doing so before the CAV discount expires under California and federal law in 2025. This plan is known as the "CAV Discount Step-Down Plan." Section 10 of the Ordinance provides the authority for the SMCEL-JPA Board of Directors to amend the CAV Discount by resolution. The last "whereas" of the resolution identifies a target of November 2022 for a reduction in the CAV Discount.

The toll policy presentations and the toll policy recommendations by the PPM and SMCEL-JPA staff culminate in the eventual adoption of a Toll Ordinance by the SMCEL-JPA Board. The adoption of a Toll Ordinance allows the SMCEL-JPA to collect tolls and enact toll evasion violation penalties on the US 101 Express Lanes.

The Toll Ordinance was introduced at a public hearing (the May 14, 2021 SMCEL-JPA Board Meeting). During the meeting, a motion to introduce the Toll Ordinance and waive the reading was passed. There were no public comments. Minor clarifying edits were made in the Toll Ordinance between the first and second reading. Staff seek Board adoption of the Toll Ordinance by resolution at this June 11, 2021 SMCEL-JPA Meeting. Subsequent to Board adoption, Staff intend to file a CEQA Notice of Exemption. The Ordinance then becomes effective 30 days later.

## **ATTACHMENTS**

1. Resolution SMCEL 21-10
2. Toll Ordinance SMCEL Ordinance 2021-01



**RESOLUTION SMCEL 21-10**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY ADOPTING TOLL ORDINANCE SMCEL 2021-01**

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

**WHEREAS**, the SMCEL-JPA was granted approval by the California Transportation Commission (CTC) pursuant to California Streets and Highways Code section 149.7 to build, own, administer and operate high-occupancy toll lanes or other toll facilities, including the administration and operation of a value pricing program and exclusive or preferential lane facilities for public transit, on US 101 between Interstate 380 and the Santa Clara/San Mateo County line; and

**WHEREAS**, the SMCEL-JPA wishes to establish tolls and a toll collection process for the SMCEL-JPA toll facilities on US 101 between Interstate 380 and the San Mateo/Santa Clara county line, to establish civil penalties for the evasion of those tolls or noncompliance with other policies set forth in this ordinance, and to establish a program that addresses how motorists can enroll and participate in SMCEL-JPA’s toll facility program, and California Vehicle Code section 40250 authorizes adoption of such an ordinance by the SMCEL-JPA; and

**WHEREAS**, on May 14, 2021 the SMCEL-JPA introduced a toll ordinance at a duly noticed regular public meeting of the SMCEL-JPA board (“the Board”); and

**WHEREAS**, the Board gave direction to SMCEL-JPA staff to begin operation of the lanes in a manner generally consistent with its regional and statewide partners as provided in the ordinance, and to work diligently to ensure that the lanes are administered in a manner that best accomplishes the purposes of the toll facility, with an emphasis on equity toward motorists and passengers of every socioeconomic status, including to provide that Single Occupant Clean Air Vehicles (CAVs) would be treated equivalently with other vehicles based on occupancy through a reduction in or elimination of discounts for CAVs except based on vehicle occupancy by no later than November 2022, and to lead regional efforts to transition state law and regional operations toward provision of CAV discounts as based on vehicle occupancy rather than type of vehicle by that date;

**NOW THEREFORE BE IT RESOLVED**, that the SMCEL-JPA Board of Directors adopts and ordains the Toll Ordinance SMCEL 2021-01 attached hereto.

**PASSED, APPROVED, AND ADOPTED, THIS 11TH DAY OF JUNE 2021.**

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*Don Horsley, Chair*

**SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY  
TOLL FACILITY ORDINANCE (SMCEL ORDINANCE 2021-01)**

**PREAMBLE**

The San Mateo County Express Lanes Joint Powers Authority, referred to herein as SMCELJPA, was granted approval by the California Transportation Commission (CTC) pursuant to California Streets and Highways Code Section 149.7, as amended by Assembly Bill (AB) 194 to build, own, administer, and operate high-occupancy toll lanes or other toll facilities, including the administration and operation of a value pricing program and exclusive or preferential lane facilities for public transit, on US 101 between Interstate 380 and the Santa Clara/San Mateo County line.

While traveling on San Mateo County US 101 Express Lanes, motorists are required to have a valid FasTrak® account with a balance sufficient to pay the applicable toll to facilitate vehicle occupancy validation and the Toll collection process pursuant to California Vehicle Code (“Vehicle Code”) Section 23302 et seq., and California Streets and Highways Code Section 149.6(b). Vehicle Code Section 23302.5 provides that it is unlawful for a person to evade or attempt to evade the payment of tolls or other charges on any vehicular crossing or toll highway, and it further provides that such acts are subject to civil penalties. Vehicle Code Division 17, Chapter 1, Article 4, commencing with section 40250 (Article 4), provides for enforcement of civil penalties for violation of Vehicle Code Section 23302.5 and any ordinance enacted by local authorities pursuant to civil administrative procedures set forth in Article 4. This ordinance establishes the administrative procedures and penalties, enacted pursuant to Article 4, to ensure that motorists who evade the payment of Tolls while travelling on San Mateo County US 101 Express Lanes shall be subject to civil penalties, while ensuring fairness in the treatment of violators.

Now, therefore, the SMCELJPA, ordains as follows:

**Section 1. Purpose.**

The purpose of this ordinance is to establish tolls and a toll collection process for the SMCELJPA toll facilities on US 101 between Interstate 380 and the San Mateo/Santa Clara county line, to establish civil penalties for the evasion of those tolls or noncompliance with other policies set forth in this ordinance, and to establish a program that addresses how motorists can enroll and participate in SMCELJPA’s toll facility program.

**Section 2. Scope.**

Every motorist entering a SMCELJPA toll facility shall be subject to and must abide by this ordinance.

**Section 3. Definitions.**

These definitions apply to this ordinance. Unless specifically defined below, the words and phrases used in this ordinance shall have the same meaning as they have in common usage. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “must” are always mandatory and

not merely directive.

“Applicable toll” means the toll for a vehicle entering a SMCELJPA toll facility established by this ordinance as determined from information collected by the FasTrak<sup>®</sup> system at the time the vehicle enters the SMCELJPA toll facility, including discounts for which the motorist is then eligible.

“Authorized emergency vehicle” means a vehicle satisfying the conditions specified in Vehicle Code Section 21655.5 or Section 23301.5 for an exemption from paying a toll on a SMCELJPA toll facility.

“BATA” means the Bay Area Toll Authority.

“Caltrans” means the State of California Department of Transportation.

“Clean air vehicle” or “CAV” means a motor vehicle described in Section (b)(5) of Section 166 of Title 23 of the United States Code that displays a valid decal, label or other identifier issued pursuant to Vehicle Code Section 5205.5(a).

“CTOC” means the California Toll Operators Committee.

“Discount” means a reduced-rate toll expressed as a percent of the full toll as determined from information collected by the FasTrak<sup>®</sup> system at the time the vehicle enters the SMCELJPA toll facility.

“FasTrak<sup>®</sup>” or “FasTrak<sup>®</sup> system” means the electronic toll collection system administered by BATA for the SMCELJPA toll facilities, as well as the electronic toll collection systems administered by other members of CTOC.

“FasTrak<sup>®</sup> account” means an account by that name established with BATA or any other CTOC member.

“FasTrak Flex<sup>®</sup> toll tag” means a FasTrak<sup>®</sup> toll tag featuring a switch for indicating the number of occupants in the vehicle.

“FasTrak<sup>®</sup> toll tag” means a FasTrak<sup>®</sup> electronic toll payment device issued by BATA (or any other member of CTOC) that meets the specifications of California Code of Regulations Title 21. “FasTrak<sup>®</sup> toll tag” includes non-revenue FasTrak<sup>®</sup> toll tags and FasTrak Flex<sup>®</sup> toll tags.

“High occupancy vehicle” or “HOV” means a vehicle with the minimum number of occupants specified by SMCELJPA for entering a SMCELJPA toll facility zone as a high occupancy vehicle as set forth in Attachment A to this ordinance and as displayed on SMCELJPA signs and other official signs or traffic control devices.

“HOV 3+” means a high occupancy vehicle requirement of three or more occupants.

“Hours of operation” of a SMCELJPA toll facility zone means the hours when SMCELJPA is operating the SMCELJPA toll facility on any day within the maximum hours of operation as

displayed on SMCELJPA signs and other official signs or traffic control devices. The hours of operation of a SMCELJPA toll facility zone shall not extend beyond the hours when the zone is otherwise restricted to use by high occupancy vehicles.

“Motorist” means the registered owner, rentee, lessee, or driver of a vehicle.

“Non-revenue FasTrak<sup>®</sup> toll tag” means a FasTrak<sup>®</sup> toll tag that does not result in a toll being charged.

“Over-the-road bus serving the public” means a bus that is characterized by an elevated passenger deck located over a baggage compartment and that serves the public.

“Pay-by-plate” means use of on-road vehicle license plate identification recognition technology to accept payment of tolls in accordance with BATA or CTOC policies.

“Penalty” means the monetary amounts assessed as civil penalties for each violation, including the unpaid tolls and the toll evasion penalty, and shall constitute a toll evasion penalty under Vehicle Code Section 40252.

“Public transportation vehicle” means a public transportation vehicle as defined in Section 166 of Title 23 of the United States Code that meets SMCELJPA’s requirements for identifying public transportation vehicles specified at the SMCELJPA toll facility website.

“San Mateo County US 101 Express Lanes” means any express lane under the jurisdiction of the SMCELJPA on US 101, namely Southbound from Interstate 380 in San Mateo County to the Santa Clara County line, and Northbound from the Santa Clara County line to Interstate 380 in San Mateo County.

“SMCELJPA” means the San Mateo County Express Lanes Joint Powers Authority, a joint exercise of powers agency formed under the California Joint Exercise of Powers Act with jurisdiction over the operation of the SMCELJPA toll facilities.

“SMCELJPA toll facility” means each high occupancy vehicle lane within the geographic jurisdiction of San Mateo County that is operated by SMCELJPA as a toll lane.

“SMCELJPA toll facility website” means the website at [www.smcexpresslanes.org](http://www.smcexpresslanes.org) or any new or updated website hosted by SMCELJPA exclusively containing information about the San Mateo County US 101 Express Lanes.

“Vehicle” means any device as defined in California Vehicle Code Section 670.

“Vehicle Code” means the California Vehicle Code.

“Violation” has the meaning assigned in Section 8.2.

#### **Section 4. Timing.**

The tolls and penalties for violations imposed by this ordinance shall apply to motorists entering a SMCELJPA toll facility zone from and after the date and time when SMCELJPA opens the SMCELJPA toll facility zone for use by the public as a toll facility.

#### **Section 5. Usage Requirements.**

5.1 Every motorist traveling in a SMCELJPA toll facility during its hours of operation is required to be in a vehicle with either (1) a properly-mounted and properly-functioning FasTrak<sup>®</sup> toll tag on board, or (2) valid vehicle license plates properly attached pursuant to Vehicle Code Section 4850.5 or 5200, and, in either case, being associated with a valid FasTrak<sup>®</sup> account having a balance sufficient to pay the applicable toll. Every motorist traveling in a SMCELJPA toll facility during its hours of operation is required to pay the applicable toll using that FasTrak<sup>®</sup> account unless exempt by this ordinance.

5.2 To be “properly-mounted” means that, except as specified in Section 5.3, the FasTrak<sup>®</sup> toll tag shall be located in or on the vehicle in a location so as to be accurately read by the FasTrak<sup>®</sup> system and be visible for the purposes of enforcement at all times while the vehicle is located in the SMCELJPA toll facility.

5.3 A motorcyclist shall use any one of the methods specified in Vehicle Code Section 23302(a)(3) to comply with the requirement to have a properly-mounted FasTrak Flex<sup>®</sup> toll tag, as long as the FasTrak Flex<sup>®</sup> toll tag is able to be read by SMCELJPA’s detection equipment.

5.4 Every motorist entering a SMCELJPA toll facility during its hours of operation and having a FasTrak Flex<sup>®</sup> toll tag must use the toll tag to accurately declare the number of occupants in the vehicle or, if permitted under Section 7, accurately indicate toll-exempt or discount status.

5.5 A license plate account surcharge as specified in Attachments A and B to this ordinance shall apply to pay-by-plate toll payments.

#### **Section 6. Tolls.**

Each motorist entering a SMCELJPA toll facility during its hours of operation who is not entitled to an exemption from tolls under Sections 7.1(B) through (F), inclusive, or Sections 7.4 or 7.5, shall be charged the then-applicable toll. The current tolls upon entering a SMCELJPA toll facility zone or segment shall be displayed on SMCELJPA signs. The tolls adjust dynamically and in real-time to manage congestion to an acceptable level of service. As such, the toll applicable to a motorist entering a SMCELJPA toll facility zone or segment is the toll displayed on the last SMCELJPA pricing sign before such motorist enters the zone or segment. Further, the total toll charged is determined based on the zones or segments of the SMCELJPA toll facility in which such motorist is detected. General information about tolls for SMCELJPA toll facilities is available online at the SMCELJPA toll facility website.

## **Section 7. Exemptions from Tolls; Discount Tolls.**

7.1 The following vehicles are exempt from paying tolls imposed by this ordinance.

- (A) vehicles entering a SMCELJPA toll facility outside the hours of operation of that facility.
- (B) high occupancy vehicles.
- (C) motorcycles.
- (D) public transportation vehicles and over-the-road buses that serve the public.
- (E) California Highway Patrol vehicles policing a SMCELJPA toll facility.
- (F) authorized emergency vehicles.

7.2 To enjoy the exemption from tolls afforded under Section 7.1(B), (C), (D), (E) or (F), every motorist entering a SMCELJPA toll facility during its hours of operation who is entitled to that exemption must use a properly-mounted FasTrak Flex<sup>®</sup> toll tag to accurately indicate a toll- exempt status or follow such other methods for indicating eligibility for exemption as shall be specified by SMCELJPA at the SMCELJPA toll facility website. Otherwise, such motorist entering a SMCELJPA toll facility during its hours of operation shall be charged the applicable toll.

7.3 Motorists having a properly-mounted, non-revenue FasTrak<sup>®</sup> toll tag are exempt from paying tolls and penalties for violations imposed by this ordinance.

7.4 Two-occupant vehicles traveling in a HOV 3+ SMCELJPA toll facility shall pay the discounted toll, if any, specified for vehicles with two persons in Attachment A to this ordinance. To be eligible for the discounted toll, two-occupant vehicles must use a properly-mounted FasTrak Flex<sup>®</sup> toll tag to accurately indicate their occupancy status (by switching the tag to the '2' setting) or follow such other methods for indicating eligibility for the discount as shall be specified by SMCELJPA online at the SMCELJPA toll facility website. An exception is for Class I vehicles designed by the manufacturer to be occupied by not more than two persons, including the driver; in this case, if the vehicle is occupied by two persons, the vehicle qualifies as toll- exempt, but must use a properly-mounted FasTrak Flex<sup>®</sup> toll tag switched to the '3+' setting or follow such other methods for indicating eligibility for exemption as shall be specified by SMCELJPA at the SMCELJPA toll facility website.

7.5 Motorists driving clean air vehicles shall be eligible to pay a discounted toll, if any, specified for clean air vehicles in Attachment B to this ordinance. Clean air vehicles on all SMCELJPA toll facilities must (i) use a properly mounted FasTrak<sup>®</sup> CAV toll tag accurately declaring the number of occupants in the vehicle (by switching the tag to the '1', '2' or '3+' setting), or (ii) follow such other methods for indicating eligibility for the discount as shall be specified by SMCELJPA online at the SMCELJPA toll facility website.

## **Section 8. Enforcement and Penalties.**

8.1 This ordinance adopts and incorporates by this reference, as though fully set forth herein, the administrative procedures and penalties in Article 4, Chapter 1 of Division 17 of the Vehicle Code as amended from time to time hereafter. The processing of notices of toll evasion violations and notices of delinquent toll evasion violations shall be conducted in accordance with those procedures and penalties by BATA, as the processing agency for SMCELJPA within the meaning of Section 40253 of the Vehicle Code. The FasTrak<sup>®</sup> Regional Customer Service Center Policies set forth in Attachment C to BATA Resolution No. 52, Revised, as amended from time to time, shall be applicable to the SMCELJPA toll

facilities and this ordinance (except to the extent they conflict with the provisions of this ordinance) and are hereby adopted and incorporated by reference into this ordinance as though fully set forth herein.

8.2 It shall be a violation to fail to comply with the usage requirements described in Sections 5.1, 5.2, 5.3, or 5.4.

8.3 The penalties for violations under this ordinance shall be the penalties set forth in Attachment C to this ordinance.

8.4 Vehicle occupancy violations while in the SMCELJPA toll facilities, including using a FasTrak Flex<sup>®</sup> toll tag to declare an occupancy status for toll exempt or discounted tolls when such declaration is not permitted hereunder, and other moving violations while in the SMCELJPA toll facilities, including entry into a SMCELJPA toll facility by a vehicle that is not authorized by the laws of the State of California to travel in such facility, are subject to citation by the California Highway Patrol.

8.5 SMCELJPA may use any lawful method to verify compliance with requirements for discount and toll-exempt trips in the SMCELJPA toll facilities. Toll violations, including using a FasTrak Flex<sup>®</sup> toll tag to declare an occupancy status for toll exempt or discounted tolls when such declaration is not permitted hereunder, are subject to enforcement by SMCELJPA, as detailed in Sections 8.1 and 8.2 or as specified by SMCELJPA online at the SMCELJPA toll facility website, with penalties as provided in Section 8.3.

8.6 SMCELJPA or BATA may access data saved electronically by the toll system in order to investigate violations under this ordinance. Such data may include, but is not limited to, the vehicle license plate number, FasTrak Flex<sup>®</sup> toll tag setting, and FasTrak<sup>®</sup> toll tag account number, as permitted by law.

### **Section 9. Severability.**

The provisions of this ordinance are severable, and if any provisions of this ordinance, or application of any provision of this ordinance to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this ordinance, shall not be affected thereby.

### **Section 10. Amendment.**

The provisions of this ordinance may be amended from time to time in accordance with the procedures set forth in Section 50020 and following of the California Government Code. The concurrence in or consent to any such amendment by any federal or State of California entity with jurisdiction over highways shall be obtained before that amendment is adopted, but only to the extent expressly required by federal or California statutory law. Attachments A, B, and C to this ordinance may be updated from time to time by a resolution of the governing board of SMCELJPA.

**Section 11. Delegated Authority.**

The SMCELJPA's executive council is hereby authorized and directed to develop procedures, forms, documents, and directives which may be necessary to implement the terms of this ordinance, and the executive council may delegate such duties and obligations under this ordinance to staff, or consultants under contract.

**Section 12. Effective Date.**

This ordinance will take effect and be in force 30 days after its adoption. Upon adoption, this ordinance shall be signed by the Chair of the governing board of SMCELJPA and shall be published by the Secretary of SMCELJPA once, within 15 days of its adoption, in a newspaper of general circulation printed and published in the County of San Mateo, California.

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

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Don Horsley  
Chair

Date: \_\_\_\_\_

The above ordinance was first adopted by the San Mateo County Express Lanes Joint Powers Authority at a regularly-scheduled meeting of SMCELJPA held in San Mateo, California, on [Date].



## ATTACHMENT A

### Facilities and Tolls

Under the San Mateo County Express Lanes Joint Powers Authority Toll Facility Ordinance, discounts applicable to two- and three-occupants shall be as set forth in Table A-1:

**Table A-1**  
(as adopted by the SMCELJPA Board on \_\_\_\_\_)

<b>Vehicles Eligible for Discounts</b>	<b>Discounts based on HOV-3 Requirement*</b>
Vehicles with three (3) or more occupants	Meet minimum occupancy requirement. No Toll.
Vehicles with two (2) occupants	50% Discount

For all SMCELJPA toll facilities, the surcharge for FasTrak® license plate account transactions shall be consistent with the maximum amount established by FasTrak® Regional Customer Service Center Policies (BATA Resolution No. 52).

## ATTACHMENT B

### Facilities and Tolls

Under the San Mateo County Express Lanes Joint Powers Authority Toll Facility Ordinance, discounts applicable to single-occupants Clean Air Vehicles shall be as set forth in Table B-1:

**Table B-1**  
(as adopted by the SMCELJPA Board on \_\_\_\_\_)

<b>Vehicles Eligible for Discounts</b>	<b>Discounts based on HOV-3 Requirement*</b>
Single Occupant Clean Air Vehicle	50% Discount

For all SMCELJPA toll facilities, the surcharge for FasTrak® license plate account transactions shall be consistent with the maximum amount established by FasTrak® Regional Customer Service Center Policies (BATA Resolution No. 52).

The discount provided by this Attachment shall expire as of September 30, 2025 unless extended, amended, or repealed prior to that date.

## ATTACHMENT C

### Schedule of Penalties for Toll Evasion Violations

#### All Violations

1<sup>st</sup> Notice Toll + \$25 penalty

2<sup>nd</sup> Notice Toll + \$70 penalty

#### Exceptions:

1. If the violation is determined to be the fault of the toll agency.
2. For 1<sup>st</sup> time offense, a non-customer can open a FasTrak<sup>®</sup> account and the \$25 penalty will be waived.
3. For FasTrak<sup>®</sup> account holders in good standing, toll-only will be posted to the account balance. If the account balance is less than the amount of the toll, the account balance must be brought to the opening balance amount prior to posting the violation toll amount.

A processing fee will be applied to violations sent to the Department of Motor Vehicles (DMV) for a registration hold in the amount of the DMV recording fee authorized pursuant to Vehicle Code Section 4773, as said amount may subsequently be amended from time to time.

**San Mateo County Express Lanes Joint Powers Authority  
AGENDA REPORT**

Date: June 11, 2021  
To: San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) Board of Directors  
From: Executive Council  
Subject: Election of a Chairperson and a Vice Chairperson to serve one-year terms, effective July 1, 2021.

(For further information or questions, contact Sean Charpentier at [scharpentier@smcgov.org](mailto:scharpentier@smcgov.org))

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**RECOMMENDATION**

That the San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) Board of Directors take the following actions:

- a) Elect a Chair and Vice-Chair to serve one-year terms, effective July 1, 2021.

**FISCAL IMPACT**

None

**SOURCE OF FUNDS**

N/A

**BACKGROUND**

The Joint Exercise of Powers Agreement (JEPA) for the San Mateo County Express Lanes, Article IV Section 4.6 states the Board will elect a Chair and Vice-Chair from among its members.

Chairperson and Vice Chairperson

The Chair and Vice-Chair will serve one-year terms and must be appointees of different Members (Members are the City/County Association of Governments of San Mateo County (C/CAG) and the San Mateo County Transportation Authority (SMCTA)). Further, the Chair and Vice-Chair positions must be held by appointees of alternating Members in alternating years (e.g., in Year 1, one of Member A's appointees will be the Chair and one of Member B's appointees will be the Vice-Chair; the opposite will be true in Year 2). This rotation and the term of office may be altered as designated in rules or bylaws established by the Board.

On June 12, 2020, the SMCEL-JPA appointed San Mateo County Supervisor Don Horsley (SMCTA) as the Chair, and San Mateo City Councilmember Diane Papan (C/CAG) as the Vice-Chair.

Staff recommends that the election of the Chairperson precedes the election of the Vice Chairperson.

The Chair will preside over all meetings of the board and will sign all contracts on behalf of the SMCEL-JPA, except contracts that the Board may authorize an officer or agent, or employee of the SMCEL-JPA to sign. The Chair will perform such other duties as may be imposed by the Board in accordance with law and the JEPA.

The Vice-Chair will act, sign contracts, and perform all of the Chair's duties in the absence of the Chair.

### Voting

In accordance with the JEPA, voting on the Chair and Vice-Chair will require five (5) Board members to be present, and requires the affirmative vote of at least four (4) Board members.

### **ATTACHMENTS**

None

# San Mateo County Express Lanes Joint Powers Authority (JPA)

City/County Association of Governments of San Mateo County ❖ San Mateo County Transportation Authority

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## Board of Directors

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

May 14, 2021

Emily Beach, Board Chair  
San Mateo County Transportation Authority  
**Transmitted via Email:** ebeach@burlingame.org

Dear Emily,

As express lanes were being developed in San Mateo County, it has been evident that ensuring express lane related equity is a high priority for everyone in San Mateo County, particularly across members on the Board of Directors of the San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA), the San Mateo County Transportation Authority (TA), and the City/County Association of Governments of San Mateo County (C/CAG). The SMCEL-JPA commissioned an Equity Study involving extensive community engagement and resulting in four (4) proposed recommended equity program alternatives. While there is strong community support for the high priority equity alternatives, there are insufficient funds available for implementation.

To help reduce the shortfall for this important initiative, at its April 9, 2021 meeting, the SMCEL-JPA Board voted to request that the TA agendaize a discussion and consider applying, by any appropriate means, the credit enhancement fee paid by toll revenue from SMCEL-JPA to the TA per the US-101 Express Lanes Project Loan Agreement (Loan Agreement) to the Express Lanes Equity Program. By this letter, we request that the TA Board hold such a discussion to consider applying the enhancement fee to the San Mateo County Express Lanes Equity Program. We welcome the opportunity to discuss the many public benefits that will accrue to motorists and transit users of lower socioeconomic status if the credit enhancement fee received by the TA, or any other sources of additional revenue, are designated to support the implementation of Express Lanes Equity Program.

Sincerely,



Don Horsley  
Chair, SMCEL-JPA Board of Directors