

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

Meeting No. 37

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| Date: Friday, June 10, 2022 Time: 9:00 A.M. | Join by Zoom: https://us02web.zoom.us/j/82712837490?pwd=6pNjLhp7nxV10rpdObQeFL4D7erOPU.1 Meeting ID: 827 1283 7490 Password: 061022 Join by Phone: (669) 900-6833 |
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Board of Directors: Diane Papan (Chair), Rico Medina (Vice Chair), Alicia Aguirre, Emily Beach, Maryann Moise Derwin, and Don Horsley

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

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

1.0 CALL TO ORDER/ ROLL CALL

2.0 BRIEF OVERVIEW OF TELECONFERENCE MEETING PROCEDURES

3.0 PUBLIC COMMENT

Note: Public comment is limited to two minutes per speaker. Public comment permitted on both items on the agenda and items not on the agenda.

4.0 APPROVAL OF CONSENT AGENDA

This item is to set the final consent and regular agenda, and to approve the items listed on the consent agenda. All items on the consent agenda are approved by one action. There will be no separate discussion on these items unless members of the Board, staff or public

request specific items to be removed for separate action.

- 4.1 Review and approval of Resolution SCMEL 22-13 finding that, as a result of the continuing COVID-19 pandemic state of emergency declared by Governor Newsom, meeting in person would present imminent risks to the health or safety of attendees. ACTION p. 1
- 4.2 Approval of the minutes of Board of Directors regular business meeting No. 36 dated May 13, 2022. ACTION p. 6
- 4.3 Accept the Sources and Uses of Funds for the FY22 Period Ending April 30, 2022. ACTION p. 10
- 4.4 Review and approval of Resolution SMCEL 22-19 authorizing the SMCEL-JPA Chair to execute Amendment No. 3 to the Agreement with the Office of County Counsel of San Mateo County for general legal services for Fiscal Year 2022/2023 in an amount not to exceed \$60,000. ACTION p. 12
- 4.5 Review and Approval of Resolution SMCEL 22-14 Approving the Fiber Optic Infrastructure Operations & Maintenance Agreement between the State of California Department of Transportation (CALTRANS) and the San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) for the US 101 Express Lanes. ACTION p. 21
- 4.6 Review and approval of Resolution SMCEL 22-15 approving the License Agreement between the City of San Carlos and SMCEL-JPA for Express Lanes Toll facilities within the City Rights of Way. ACTION p. 25

5.0 REGULAR AGENDA

- 5.1 Public Hearing: Approval of Resolution SMCEL 22-16 adopting the Fiscal Year (FY) 2023 SMCEL-JPA Operating Budget of \$9,574,961. ACTION p. 43
- 5.2 Receive update on the US 101 Express Lanes operations. INFORMATION p. 53
- 5.3 Election of a Chairperson and a Vice Chairperson to serve a one-year term, effective July 1, 2022. ACTION p. 56

6.0 REPORTS

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

7.0 WRITTEN COMMUNICATIONS

None.

8.0 NEXT REGULAR MEETING

July 8, 2022

9.0 ADJOURNMENT

PUBLIC NOTICING: All notices of San Mateo County Express Lanes Joint Powers Authority Regular Board meetings, standing committee meetings, and special meetings will be posted at the San Mateo County Court yard, 555 County Center, Redwood City, CA.

PUBLIC RECORDS: Public records that relate to any item on the open session agenda for a regular Board meeting, standing committee meeting, or special meeting are available for public inspection. Those public records that are distributed less than 72 hours prior to a regular Board meeting are available for public inspection at the same time they are distributed to all members, or a majority of the members, of the Board. The Board has designated the location of 555 County Center, 5th Floor, Redwood City, CA 94063, for the purpose of making public records available for inspection. Please note this location is temporarily closed to the public; please contact Mima Crume at mcrume@smcgov.org to arrange for inspection of public records.

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

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

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

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

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

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

San Mateo County Express Lanes Joint Powers Authority Agenda Report

Date: June 10, 2022

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

From: Executive Council

Subject: Review and approval of Resolution SMCEL 22-13 finding that, as a result of the continuing COVID-19 pandemic state of emergency declared by Governor Newsom, meeting in person would present imminent risks to the health or safety of attendees.

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

RECOMMENDATION

Review and approval of Resolution 22-13 finding that, as a result of the continuing COVID-19 pandemic state of emergency declared by Governor Newsom, meeting in person would present imminent risks to the health or safety of attendees.

FISCAL IMPACT

There is no fiscal impact associated with this item.

SOURCE OF FUNDS

None.

BACKGROUND

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

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

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

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

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

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

DISCUSSION

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

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

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

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

We recommend that the Board avail itself of the provisions of AB 361 allowing continuation of remote meetings by adopting findings to the effect that conducting in-person meetings would present an

imminent risk to the health and safety of attendees. A resolution to that effect, and directing staff to take such other necessary or appropriate actions to implement the intent and purposes of the resolution, is attached hereto.

ATTACHMENTS

1. Resolution SMCEL 22-13

RESOLUTION SMCEL 22-13

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

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

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

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

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

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

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

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

compliance with vaccination and other safety recommendations at such meetings); and

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

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

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

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

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

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that

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

PASSED, APPROVED, AND ADOPTED, THIS 10TH DAY OF JUNE, 2022.

Diane Papan, Chair

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

Meeting No. 36
May 13, 2022

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

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

1.0 CALL TO ORDER/ ROLL CALL

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

Members Present:

C/CAG Members:

Maryann Moise Derwin

SMCTA Members:

Rico Medina, Emily Beach, Don Horsley

Members Absent:

Alicia Aguirre

Staff Present:

Sean Charpentier – Executive Council

Carter Mau – Executive Council

Mima Crume – Clerk

Brian Kulich Legal Counsel

John Nibbelin Legal Counsel

Van Ocampo, Kaki Cheung – C/CAG staff supporting SMCEL-JPA

Carter Mau, April Chan, Joe Hurley, Connie Mobley-Ritter, Grace Martinez, SMCTA staff supporting SMCEL-JPA

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

Other members of staff and the public were in attendance.

2.0 BRIEF OVERVIEW OF TELECONFERENCE MEETING PROCEDURES

Clerk Crume provided an overview of the teleconference meeting procedures.

Director Beach MOVED to approve the pandemic procedures. Director Medina SECONDED. Roll call was taken. **MOTION CARRIED 5-0-0**

- 3.0 Review and approval of Resolution SCMEL 22-12 finding that, as a result of the continuing COVID-19 pandemic state of emergency declared by Governor Newsom, meeting in person would present imminent risks to the health or safety of attendees. APPROVED

4.0 PUBLIC COMMENT

Note: Public comment is limited to two minutes per speaker. Public comment permitted on both items on the agenda and items not on the agenda.

Clerk Crume reported that there were no public comments submitted before the meeting. No public comment was made at the meeting.

5.0 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.

- 5.1 Approval of the minutes of Board of Directors regular business meeting No. 35 dated April 8, 2022. APPROVED
- 5.2 Accept the Sources and Uses of Funds for the FY22 Period Ending March 31, 2022. APPROVED

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

6.0 REGULAR AGENDA

- 6.1 Receive update on the US 101 Express Lanes operations. INFORMATION

The Board received an update from Matt Click on the US 101 Express Lanes operations and had an opportunity to obtain feedback.

Chair Papan asked for clarifications on the toll revenues presented in the slide deck.

Matt Click answered that the toll revenues presented represents the total charged. Some of the tolls may have been collected, while some may have not. This is attributed to the transactions being image based.

Chair Papan asked if the number of image based transactions would go down as additional customers sign up to get FasTrak accounts. Matt responded and said yes.

Chair Papan asked about enhanced enforcement. Matt responded that the JPA is paying CHP to conduct enforcement of the lane.

Director Derwin asked what the original forecasted annual revenue was for FY2022. Matt responded that an amount of \$5.3M was projected for 8 months of operation. Grace Martinez confirmed.

Chair Papan asked if there is an ability to sign up for the Community Transportation Benefits at the various facilities and if that has taken place. Matt said that interested participants can sign up at the Samaritan House and other 8 core agencies.

Matt has added that he has received phone calls and emails from other agencies in Georgia, Michigan, Kansas, Washington and other regions in California, who are interested in learning about the Community Transportation Benefits Program.

Director Horsley commented that the Board was hoping the participants would choose the public transit option. The initial result is a positive sign.

Carter Mau asked if transit usage data can be gathered from these preloaded clipper cards.

Christa responded that the data is not available, but that's something that the PPM team will investigate and report back.

Director Beach commented that the Community Transportation Benefit Program participants are eligible for Clipper Start, which means the users will get additional value from the reduced fare.

Matt responded that the participants have the ability to enroll for Clippers Start, but they don't have to sign up to get the preloaded Clipper card. The reason is the Clipper Start program has some additional eligibility requirements.

Clerk Crume stated there were no public comments.

County Counsel Brian Kulich asked for clarification on items 2.0 and 3.0. The two items may have been combined. For the record, the Board was asked to formally vote on item 3.0, "Review and approval of Resolution SCMEL 22-12 finding that, as a result of the continuing COVID-19 pandemic state of emergency declared by Governor Newsom, meeting in person would present imminent risks to the health or safety of attendees."

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

6.0 REPORTS

a) Chairperson Report.

None.

- b) Member Communication.

None.

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

Sean Charpentier reported that at the June 10th Board meeting, the Board will select a new Chair and Vice Chair for the JPA.

Carter Mau wanted to let the Board know that the SamTrans Bus operations is also benefiting from the Express Lanes program. Some of the buses are using the lanes to get to some destinations in the southern part of the County. He thanked the Board for the facility and looked forward to the opening of the northbound segment.

- d) Policy/Program Manager Report.

None.

7.0 WRITTEN COMMUNICATIONS

None.

8.0 NEXT REGULAR MEETING

June 10, 2022

9.0 ADJOURNMENT – 9:30 a.m.

San Mateo County Express Lanes Joint Powers Authority Agenda Report

Date: June 10, 2022

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

From: Executive Council

Subject: Accept the Sources and Uses of Funds for the FY22 Period Ending April 30, 2022

(For further information, contact Grace Martinez, Acting CFO, at 650-508-6274)

RECOMMENDATION

That the SMCEL-JPA Board accepts and enters into the record the Sources and Uses of Funds for the FY22 Period Ending April 30, 2022.

The statement columns have been designed to provide the year to date current actuals 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 \$2,787,557, which primarily represent the loan advances for FY22 under the two operating loan agreements between the SMCEL-JPA, the San Mateo County Transportation Authority, and the City/County Association of Governments of San Mateo County. The Sources of Funds also include the Toll Revenue from the Express Lanes on US 101 between the Santa Clara County line and Whipple Avenue in Redwood City, which officially opened on February 11, 2022. Actual toll revenues collected as of April 30, 2022 were \$677,302. Toll revenues budgeted for FY2022 were \$5.3 million.

Year to Date Uses of Funds: As of April year-to-date, the Total Uses of Funds are \$1,621,967. Major expenses are in the categories of consultant costs (\$622,884), staff support costs (\$493,823), insurance cost (\$201,083), and Equity Program administration and costs (\$154,500).

Budget Amendment: There are no budget amendments for the month of April 2022.

Other Information:

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

ATTACHMENT

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

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

| | | ACTUAL | BUDGET |
|--------------------------------|---|---------------------|---------------------|
| | | As of 4/30/22 | Annual |
| SOURCES OF FUNDS: | | | |
| 1 | Toll Revenue | \$ 677,302 | \$ 5,300,000 |
| 2 | Allocated Bond Funds | - | 504,000 |
| 3 | Advance from the City/County Association of Governments of San Mateo County | 838,417 | 1,314,045 |
| 4 | Advance from the San Mateo County Transportation Authority | 1,271,838 | 1,407,115 |
| 5 | TOTAL SOURCES OF FUNDS | \$ 2,787,557 | \$ 8,525,160 |
| USES OF FUNDS: | | | |
| 6 | Staff Support | \$ 493,823 | \$ 689,030 |
| 7 | Administrative Overhead | 48,709 | 45,540 |
| 8 | Seminar/Training & Business Travel | 3,892 | 10,000 |
| 9 | Audit and Related Service | - | 16,160 |
| 10 | Office Supplies | - | 3,000 |
| 11 | Printing and Information Svcs | - | 5,000 |
| 12 | Legal Services | 25,071 | 60,000 |
| 13 | Consultant | 622,884 | 1,779,707 |
| 14 | Maintenance | - | 222,400 |
| 15 | Toll Operations and Maintenance | 6,909 | 2,161,500 |
| 16 | Fastrak Customer Service | - | 680,000 |
| 17 | Express Lane Enhanced Enforcement | - | 125,000 |
| 18 | Equity Program Administration and Costs | 154,500 | 504,000 |
| 19 | Insurance | 201,083 | 186,648 |
| 20 | Miscellaneous | 65,096 | 83,200 |
| 21 | TOTAL USES OF FUNDS | \$ 1,621,967 | \$ 6,571,185 |
| 22 | PROJECT SOURCES OVER USES | \$ 1,165,590 | \$ 1,953,975 |
| Additional Information: | | | |
| | Loan payables to the City/County Association of Governments of San Mateo County | \$ 2,245,145 | |
| | Loan payables to the San Mateo County Transportation Authority | \$ 3,064,135 | |

San Mateo County Express Lanes Joint Powers Authority Agenda Report

Date: June 10, 2022

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

From: Executive Council

Subject: Review and approval of Resolution SMCEL 22-19 authorizing the SMCEL-JPA Chair to execute Amendment No. 3 to the Agreement with the Office of County Counsel of San Mateo County for general legal services for Fiscal Year 2022/2023 for an amount not to exceed \$60,000.

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

RECOMMENDATION

That the SMCEL-JPA Board of Directors review and approve Resolution SMCEL 22-19 authorizing the SMCEL-JPA Chair to execute Amendment No. 3 to the Agreement with the Office of County Counsel of San Mateo County for general legal services for Fiscal Year 2022/2023 in 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 2022/2023.

SOURCE OF FUNDS

The funds are included in the proposed Fiscal Year 2022-2023 budget.

BACKGROUND

The Joint Exercise of Powers Agreement for the San Mateo County Express Lanes (JEPA) was approved by the Board of Directors from the City/County Association of Governments of San Mateo County (C/CAG) and the San Mateo County Transportation Authority (SMCTA) 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 County of San Mateo Office of the County Counsel. 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, the 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. Amendment No. 1 to the said Agreement was approved on June 12, 2020 through the adoption of Resolution 20-07 to cover Fiscal Year 2020/2021. On June 11, 2021, the Board, through the adoption of Resolution 21-06, approved Amendment No. 2 to the agreement, which renewed the contract to cover Fiscal Year 2021/2022. The attached Amendment No. 3 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, 2022 through June 30, 2023. Legal services will be billed monthly at specified rates in Amendment No. 3 to the Agreement with the total invoice amount not to exceed \$60,000.

Additionally, the County Counsel's Office provides general legal services to C/CAG, a member of the SCMEL-JPA. Because C/CAG 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. 3 of 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 22-19
2. Amendment No. 3 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 2022/2021.

RESOLUTION SMCEL 22-19

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. 3 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 OF JULY 1, 2022 THROUGH JUNE 30, 2023 AT 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 Office of County Counsel at 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 of 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, renewing the Agreement with the Office of the County Counsel of San Mateo County to cover the period beginning July 1, 2020 through June 30, 2021; and

WHEREAS, on June 11, 2021, the SMCEL-JPA Board adopted Resolution SMCEL 21-06 authorizing the Express Lanes Joint Powers Authority Chair to execute Amendment No. 2 renewing the Agreement with the Office of the County Counsel of San Mateo County to cover the period beginning July 1, 2021 through June 30, 2022; and

WHEREAS, it is the desire of the SMCEL-JPA to renew the Agreement for the provision of general legal services with County Counsel of San Mateo County to cover the period of July 1, 2022 through June 30, 2023; and

WHEREAS, Amendment No. 3 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, covering the period beginning July 1, 2022 through June 30, 2023 for an amount not to exceed \$60,000; and

NOW THEREFORE BE IT RESOLVED, by the Board of Directors of the SMCEL-JPA that the Chair is authorized to execute Amendment No. 3 to the Agreement on behalf of the SMCEL-JPA.

PASSED, APPROVED, AND ADOPTED, THIS 10TH DAY OF JUNE, 2022.

Diane Papan, Chair

**AMENDMENT No. 3 to the AGREEMENT
BETWEEN
THE OFFICE OF THE COUNTY ATTORNEY OF SAN MATEO COUNTY
AND
THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY
FOR THE PROVISION OF GENERAL LEGAL SERVICES
FOR FISCAL YEAR 2022/2023**

THIS AMENDMENT No. 3 to the AGREEMENT is entered into this 10th day of June 2022, by and between the OFFICE of the COUNTY ATTORNEY OF THE COUNTY OF SAN MATEO, hereinafter referred to as "County Attorney", and the San Mateo County Express Lanes Joint Powers Authority, hereinafter referred to as "SMCEL-JPA".

WITNESSETH:

WHEREAS, the County Attorney is ready and able to provide legal service and advice to the SAMCEL-JPA, and SMCEL-JPA wishes to retain the County Attorney to perform legal services with respect to certain matters beginning July 1, 2022 through June 30, 2023 (FY 2022/23); 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 Attorney'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 Attorney 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 Attorney has been retained to represent the interests of the SMCEL-JPA as a whole, and County Attorney 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 Attorney, 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 Attorney shall periodically update SMCEL-JPA on legal issues and shall be available to provide training as is mutually agreed upon.
3. This Amendment No. 3 to the Agreement is for a term of twelve months commencing July 1, 2022 and extending through June 30, 2023. 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 Attorney may withdraw at any time as permitted under the Rules of Professional Conduct of the State Bar of California.

4. SMCEL-JPA shall pay for services rendered between July 1, 2022 through June 30, 2023, at an attorney hourly rate of \$242 and a paralegal hourly rate of \$133. Additionally, SMCEL-JPA shall pay the actual costs of any out-of-pocket and extraordinary regular costs incurred by County Attorney in connection with the provision of its legal services, e.g., filing fees, extraordinary mailing costs, deposition costs, transcript costs, etc. The total amount to be paid by the SMCEL-JPA pursuant to this Amendment No. 3 to the Agreement shall not exceed \$60,000.
5. Charges for services rendered pursuant to the terms and conditions of this Amendment No. 3 shall be billed one month in arrears. Time will be billed in tenth-hour increments, rounded off for each particular activity to the nearest tenth-hour. The minimum charged for any particular activity will be one tenth-hour. Payment shall be made by SMCEL-JPA within thirty (30) days of the invoice date.
6. SMCEL-JPA understands that the County of San Mateo is the County Attorney's primary client. Should there be a conflict between SMCEL-JPA and the County in a matter, SMCEL-JPA hereby consents to the County Attorney's withdrawal of representation of SMCEL-JPA in order for the County Attorney to represent the County in any such matters, unless such waiver is inconsistent with state law.

SMCEL-JPA understands that County Attorney serves as general counsel to the City/County Association of Governments of San Mateo County ("C/CAG") and had executed the Notice and Waiver of Conflict attached hereto as Exhibit A, incorporated herein by this reference, so that County Attorney may continue to represent C/CAG and the SMCEL-JPA in the absence of actual conflict, as described more fully in Exhibit A.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

COUNTY ATTORNEY OF SAN MATEO COUNTY:

By: John D. Nibbelin, County Attorney

Date:

SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY:

By: Diane Papan, Chair

Date:

EXHIBIT A

Notice and Waiver of Conflict

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

The County Attorney 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 Attorney'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 Attorney 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 Attorney's opinion, the SMCEL-JPA and C/CAG are not presently directly adverse to each other. In addition, we believe the County Attorney 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 Attorney 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 Attorney 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 Attorney 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 Attorney'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 Attorney identifies any significant areas or issues, in addition to those described above, that have the potential to create a conflict of interest, County Attorney 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 Attorney'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 Attorney'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 Attorney to the attention of Timothy Fox, Deputy County Attorney.

Waiver of Conflict

I, *Diane Papan*, 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 Attorney'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 Attorney 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 Attorney. 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:

By: Diane Papan, Chair

Date

ATTEST:

By: Mima Guilles, Secretary of the Board

Date:

San Mateo County Express Lanes Joint Powers Authority Agenda Report

Date: June 10, 2022

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

From: Executive Council

Subject: Review and Approval of Resolution SMCEL 22-14 Approving the Fiber Optic Infrastructure Operations & Maintenance Agreement between the State of California Department of Transportation (CALTRANS) and the San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) for the US 101 Express Lanes

(For further information please contact Van Dominic Ocampo at vocampo@smcgov.org and/or Joseph M Hurley at hurleyj@samtrans.com)

RECOMMENDATION

Review and Approve Resolution SMCEL 22-14 approving the Fiber Optic Infrastructure Operations & Maintenance Agreement (AGREEMENT) between the State of California Department of Transportation (CALTRANS) and the San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) for the US 101 Express Lanes.

FISCAL IMPACT

There is no fiscal impact related to approving the AGREEMENT. Costs associated with the operations and maintenance of the Express Lanes Fiber Optic Network are and will be included in the annual SMCEL-JPA Budgets.

SOURCE OF FUNDS

Express Lanes Toll Revenue

BACKGROUND

The San Mateo 101 Express Lanes Project (Project) will create approximately 44 miles (22 miles in each direction) of new express lanes along the US 101 between the San Mateo/Santa Clara County Line and Interstate 380 (I-380) in South San Francisco. The goal of the Project is to reduce congestion, increase person throughput and improve travel time reliability for motorists on US 101 by incentivizing the use of public transit, carpools, and other shared-ride options. It will however, still allow access to solo motorists with the full toll price paid, while carpools of two persons and clean air vehicles will be charged a reduced toll.

The Project is being constructed in two segments; the recently opened southern segment from the San Mateo/Santa Clara County Line to Whipple Avenue in Redwood City, and the northern

segment from Whipple to Interstate-380, which is scheduled to open in late 2022.

The project includes the installation of fiber optic infrastructure, a component of the toll system. The SMCEL-JPA operates the Express Lanes while CALTRANS is the owner of the State Highway System (SHS) including the right of way in which the infrastructure is located. The California Streets and Highways Code Sections 114 and 130 authorize the SMCEL-JPA and Caltrans to enter into a Fiber Optic Infrastructure Operations & Maintenance Agreement to define the terms and conditions under which specified fiber optic infrastructure is to be owned, operated, and maintained.

The fiber optic infrastructure for the Express Lanes primarily consists of a set of four conduits, splice vaults, pull boxes, etc. These facilities are mostly located within the SHS right-of-way in San Mateo County and a portion of Santa Clara County. However, there are some facilities that were installed along Millbrae Avenue to the northwest corner of Rollins Road and Millbrae Avenue. Three of the four conduits belong to Caltrans while only one is owned by the SMCEL-JPA. All other facilities in the field like pull boxes and splice vaults, are properly marked to indicate ownership. The attached AGREEMENT defines the ownership and responsibilities of each party regarding operations and maintenance.

The Fiber Facility Operations and Maintenance Plan (OMP), included as Exhibit B to the AGREEMENT, will guide the operational activities involving the San Mateo (SM) 101 FIBER FACILITY (FIBER FACILITY) operated by SMCEL-JPA, including the SHARED SUB-FACILITY with CALTRANS.

The OMP defines the roles and responsibilities, sets forth guidelines for fiber optic infrastructure operations, and outlines communication channels involved in managing operational activities. This OMP does not supersede the requirements of the AGREEMENT. Changes to the OMP may be implemented by the authorized representatives of the PARTIES through the execution of an amendment or replacement of the entire OMP formally. Changes to the OMP should not conflict with any provisions of the AGREEMENT and no amendment to the AGREEMENT is required when changes to the OMP are implemented. The OMP is intended to define how the fiber optic infrastructure of the FIBER FACILITY can be operated given the varying situations presented by incidents on the freeway. The AGREEMENT defines the various sub-facilities within the FIBER FACILITY and describes the responsibilities of CALTRANS and SMCEL-JPA for these sub-facilities.

ATTACHMENTS

1. Resolution SMCEL 22-14
2. Fiber Optic Infrastructure Operations & Maintenance Agreement between the State of California Department of Transportation (CALTRANS) and the San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) for the US 101 Express Lanes in San Mateo County (provided on-line at: <https://ccag.ca.gov/express-lane-jpa/>)

RESOLUTION SMCEL 22-14

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN MATEO COUNTY EXPRESS LANES
JOINT POWERS AUTHORITY (SMCEL-JPA) AUTHORIZING THE EXECUTIVE COUNCIL TO
EXECUTE THE FIBER OPTIC INFRASTRUCTURE OPERATIONS & MAINTENANCE AGREEMENT
(AGREEMENT) BETWEEN THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION
(CALTRANS) AND THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY
(SMCEL-JPA) FOR THE US 101 EXPRESS LANES**

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

WHEREAS, on June 11, 2021, the SMCEL-JPA adopted Resolution SMCEL 21-10 approving the Toll Ordinance for the Administration of Tolls and Enforcement of Toll Violations for the San Mateo County US 101 Express Lanes, and

WHEREAS, the San Mateo 101 Express Lanes Project includes the installation of fiber optic infrastructure, a component of the toll system; and

WHEREAS, California Streets and Highways Code Sections 114 and 130 authorizes the SMCEL-JPA and Caltrans to enter into a Fiber Optic Infrastructure Operations & Maintenance Agreement to define the terms and conditions under which specified fiber optic infrastructure is to be owned, operated, and maintained.

WHEREAS, Exhibit B to the Fiber Optic Infrastructure Operations & Maintenance Agreement is the Fiber Facility Operations and Maintenance Plan (OMP), which will guide the operational activities involving the San Mateo 101 Fiber Facility, including the Shared Sub-Facility with CALTRANS; and

WHEREAS, the OMP defines the roles and responsibilities, sets forth guidelines for fiber optic infrastructure operations, and outlines communication channels involved with managing operational activities; and

NOW THEREFORE BE IT RESOLVED, by the SMCEL-JPA Board of Directors that the Executive Council is authorized to execute the Fiber Optic Infrastructure Operations & Maintenance Agreement between the State of California Department of Transportation and the San

Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) for the US 101 Express Lanes in San Mateo County. Be it further authorized that the Executive Council can make revisions prior to execution, subject to approval by the SMCEL-JPA Legal Counsel.

PASSED, APPROVED, AND ADOPTED, THIS 10TH DAY OF JUNE 2022.

Diane Papan, Chair

San Mateo County Express Lanes Joint Powers Authority Agenda Report

Date: June 10, 2022

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

From: Executive Council

Subject: Review and approval of Resolution SMCEL 22-15 approving the License Agreement between the City of San Carlos and SMCEL-JPA for Express Lanes Toll facilities within the City Rights of Way.

(For further information please contact Van Dominic Ocampo at vocampo@smcgov.org)

RECOMMENDATION

Review and approve Resolution SMCEL 22-15 approving the License Agreement between the City of San Carlos and SMCEL-JPA for Express Lanes Toll facilities within the City Rights of Way.

FISCAL IMPACT

There is no fiscal impact associated with the approval of the License Agreement. Insurance liability costs for the Express Lanes facilities within the City's Rights of Way are included in the annually adopted SMCEL-JPA Operating Budget, and maintenance expenses will be added to future budgets.

SOURCE OF FUNDS

None.

BACKGROUND

This San Mateo 101 Express Lanes Project (Project) will create 44 miles (22 miles in each direction) of new express lanes along the US 101 between the San Mateo - Santa Clara County Line and Interstate 380 (I-380) in South San Francisco.

The Project is being constructed in two segments; the southern segment, from the San Mateo/Santa Clara County Line to Whipple Avenue in Redwood City, has been completed and toll operations is on-going, while construction of the northern segment from Whipple to Interstate-380 is well underway.

Some of the facilities necessary for the operations of the Express Lanes were installed outside of Caltrans' Right-of-Way and on the adjacent cities' rights of way. Examples of these facilities include, pull boxes, conduits, cables, electrical meters and pedestals, transformers, close circuit televisions (CCTV), etc. An encroachment was previously issued by the City of San Carlos for the work to occur within its rights of way, but now that installation is now complete, it is necessary for the SMCEL-JPA to enter into a License Agreement with the City of San Carlos to document the presence of these facilities.

Both SMCEL-JPA and City of San Carlos staff negotiated the attached License Agreement, which San Carlos City Council approved on May 25, 2022.

ATTACHMENTS

1. Resolution SMCEL 22-15
2. Attachment A - License Agreement between the City of San Carlos and SMCEL-JPA

RESOLUTION SMCEL 22-15

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY (SMCEL-JPA) AUTHORIZING THE CHAIR TO EXECUTE THE LICENSE AGREEMENT BETWEEN SMCEL-JPA AND THE CITY OF SAN CARLOS

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

WHEREAS, the San Mateo 101 Express Lanes Project (Project) will create 44 miles (22 miles in each direction) of new express lanes along the US 101 between the San Mateo - Santa Clara County Line and Interstate 380 (I-380) in South San Francisco; and

WHEREAS, some of the facilities necessary for the long-term operations of the Express Lanes were installed within the rights of way of the City of San Carlos including, but not limited to, pull boxes, conduits, cables, electrical meters and pedestals, transformers, close circuit televisions (CCTV), etc.; and

WHEREAS, the City of San Carlos owns and controls the public rights of way where these facilities were installed and will remain for the long-term operation of the Express Lanes; and

WHEREAS, the City of San Carlos agrees to allow the installation of these facilities within the public rights of way so long as the Express Lanes is in operation; and

WHEREAS, SMCEL-JPA is responsible for maintaining the facilities at no cost to the City of San Carlos.

NOW THEREFORE BE IT RESOLVED, that the SMCEL-JPA Board of Directors authorizes the Chair to execute the License Agreement between SMCEL-JPA and the City of San Carlos.

PASSED, APPROVED, AND ADOPTED, THIS 10TH DAY OF JUNE 2022.

Diane Papan, Chair

LICENSE

This LICENSE AGREEMENT (“License”), made and entered into this ___ day of ___, 20___, by and between the City of San Carlos, California, a municipal corporation (“Licensor”) and the San Mateo County Express Lanes Joint Powers Authority (“Licensee”). Together the Licensor and Licensee are referred to herein as “the Parties.”

RECITALS

- A. The Licensor owns or controls a certain parcel, easement or public right-of-way (the “Property”) more particularly described in Exhibit A.
- B. The Licensee wishes to install facilities for long-term operation of the San Mateo County Express Lanes Project on the portions of the Licensor’s Property as shown in Exhibit A (the “Premises”).
- C. The Licensor agrees that Licensee may install the Facilities on the Premises so long as Licensee maintains the Facilities under terms established by this License.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- 1. License. Subject to the terms and conditions of this License, the Licensor licenses Licensee to construct, install, operate, maintain, repair, replace, and remove equipment as necessary for the operation of the San Mateo County Express Lanes Project (the “Facilities”) on the Premises as more particularly shown on the drawing which is attached hereto as Exhibit A to this License.
- 2. Use. Licensee shall use the Premises solely for purposes of the operation of the San Mateo County Express Lanes Project. This License is limited to the usage expressly allowed and described in this agreement. Unless specifically provided otherwise herein, the Licensee shall have no right to locate any surface installation or to install fencing on any portion of the Premises. Licensee shall not during construction or otherwise, in City’s sole and reasonable judgment, impede access to or in any way obstruct, interfere with or hinder the use of any City property.
- 3. Term and Termination. The term of this License shall commence upon issuance of all City approvals and/or entitlements required for installation of the Facilities, including but not limited to an encroachment permit. The term shall of this License shall cease when this License is terminated pursuant to this section of this License. Licensor may terminate this License in the event of Licensee’s default of any License provisions and failure to cure within 60 days of written notice provided pursuant to Paragraph 23 of this License, or at any time with 120 days of written notice provided pursuant to Paragraph 23 of this License.
- 4. Installation and Conformity with Approved Plans and Specifications. At its own expense, Licensee shall design, install and construct the Facilities of such material, and in a manner that will not at any time be a source of danger to, or interfere with the Licensor’s present or future use of the Premises, including but not limited to, use of the Premises as public right-of-way, or the use of the Premises by any utility presently franchised by the Licensor with installations in place at the time this License is entered into. If prior to installation, Licensor determines that the Licensee’s proposed installation will interfere with existing or proposed Licensor installations

or any underground installations that predate this License, then Licensee shall at its sole expense redesign the Facilities to eliminate the interference as described by Licensor.

The Facilities shall be constructed, installed, and maintained in conformity with the Licensor-approved plans and specifications, which are incorporated and hereby approved by reference. The Parties agree that the presentation of plans and specifications of the Facilities shall be a discretionary approval of the plan or design by the Licensee and a determination by Licensee that such plans or design are reasonable, and that the approval of the plans and specifications shall be a discretionary approval of the plan or design by the Licensor and a determination by Licensor that the plans and designs are reasonable. Before performing any construction, Licensee's contractors shall obtain all permits and insurance required by Licensor for work within the right-of-way and will pay all fees and reimburse Licensor for all reasonable and necessary costs incurred in inspecting and supervising the work performed.

After installation of the Facilities, Licensee shall back-fill, compact, repair and repave all resulting trenches, curbs, gutters and pavement to the satisfaction of the Licensor, in accordance with Licensor's standard designs and specifications.

If, in the sole judgment of Licensor, Licensee at any time fails to perform its obligations under this section, Licensor, at its option, may perform whatever work it deems necessary for the public safety, health and welfare, and Licensee shall reimburse Licensor within thirty (30) days after Licensor invoices Licensee for the actual cost to Licensor of performing such work. However, Licensor is not required to perform such work, and any failure by Licensor to perform Licensee's obligations shall not release Licensee from liability for any loss or damage caused by Licensee's failure to perform its obligations.

Installation and maintenance of the Facilities shall be accomplished in a manner which will not unreasonably impede Licensor's access to the Premises or impede its use for operation and maintenance of infrastructure, as determined by Licensor. The timing and manner of such construction, maintenance, and removal shall be done in compliance with the Licensor's requirements.

If the Facilities or any part thereof creates an emergency condition, and Licensor determines that the situation makes it unreasonable to notify Licensee or await action by Licensee, Licensor may take whatever actions it deems necessary to remedy the emergency situation at the sole expense of Licensee and Licensee will reimburse the Licensor within thirty (30) days after the Licensor invoices Licensee for its actual cost of performing such work.

5. Removal. If operation of the San Mateo County Express Lanes permanently ends or ceases for a period of time greater than 12 months, or should the Facilities be rendered unusable, infeasible or no longer necessary, Licensee agrees, at its sole cost and expense to remove the Facilities within one year of the Facilities use ceasing.
6. Licensee shall repair any damage to the Premises where such damage is caused by Licensee, any of its agents, representatives, employees, contractors, or subcontractors, as a result of the installation, construction, operation, maintenance, and repair of the Facilities, at its sole cost, as soon as possible, but in no event more than ten (10) days from the date Licensee first receives notice of such damage, except those repairs which require more than ten (10) working days to repair as long as Licensee has commenced the repairs within such period and thereafter

diligently pursues the repair to completion. All repairs shall be performed to the reasonable satisfaction of the City. If Licensee fails to repair or refinish any such damage, City may, in its sole discretion, repair, or refinish such damage and Licensee shall reimburse City for all costs and expenses incurred in such repair or refinishing.

7. As-Built. Upon completion of the construction and installation of the Facilities, the Licensee shall promptly provide Licensor with one set of reproducible as-built, record drawings, reflecting construction and installation as actually accomplished.
8. Location Markers and Marking. As deemed necessary by Licensor, Licensee shall furnish, install, and place signs to give notice and location of the Facilities. Licensee shall install permanent markers situated so as not to impede use of the Premises by the Licensor, members of the public or currently franchised utilities on each side of the public right-of-way where the Facilities cross the right-of-way. The permanent markers placed inside the Facilities shall indicate the location of the Facilities, the name and address of Licensee, and a telephone contact number for information regarding the Facilities. Licensee shall conduct periodic inspections of the markers to ensure that such markers are legible and in place as required herein. Licensee shall provide access to the Facilities whenever requested to do so by Licensor, any franchised utility, and any licensed contractor excavating near the Facilities.
9. Indemnity. Licensee agrees to indemnify, defend (with counsel approved by City) and hold harmless the Licensor and its elected and appointed officials, agents and employees from any claims, actions, losses, liabilities, damages, costs, expenses, suits or other proceedings arising from or out of the acts or omissions of the Licensee, its agents, representatives, contractors or subcontractors or arising from Licensee's rights and obligations under this License, including the failure of the Licensee, its agents, representatives, contractors or subcontractors to perform any act or duty required of the Licensee herein, except to the extent any claims, actions, losses, liabilities, damages, costs, expenses, suits or other proceedings are caused by the active negligence or willful misconduct of the City or design specifications imposed by City staff as conditions.
10. Insurance. During the Term of this License, Licensee shall obtain and maintain the insurance set forth in Exhibit B to this Agreement.
11. Damages. Licensee shall repair or pay for all actual damages to the Premises, caused by Licensee's activities.
12. Interference. Whenever, after Licensee installs the Facilities, Licensor determines that the Facilities are not located as indicated on as-built plans provided to Licensor by the Licensee, and the Facilities interfere with Licensor's use of the Premises, Licensee shall immediately relocate the Facilities to another location approved in advance by Licensor, at Licensee's sole expense, restoring the surface to its prior condition.

If the Facilities are at the location indicated on the as-built plans provided to Licensor by Licensee and the Facilities interfere with Licensor's use of the Premises, Licensor will provide written notice to Licensee that relocation of the Facilities is required and the Licensee shall relocate the Facilities within ninety (90) days of notice to the new location as approved in advance by Licensor, at Licensee's sole expense, restoring the surface to its prior condition.

13. Interference with Utility. Whenever, after Licensee installs the Facilities, Licensor determines that the Facilities are not located as indicated on as-built plans provided to Licensor by Licensee, the Facilities interfere with the reasonable use of the Premises by a utility holding a franchise issued prior to execution of this License, Licensee shall immediately relocate the facility to a location approved in advance by Licensor. None of the related costs shall be paid by Licensor. If the Facility is at the location indicated on the as-built plans provided to the Licensor by the Licensee and it is alleged by a utility franchised by the Licensor prior to the execution of this License that the Facility interferes with the previously-franchised utility's use of the Licensor's Property, the Licensee shall make a good faith effort to negotiate with the previously-franchised utility to resolve any conflict. None of the related costs shall be paid by the Licensor. The Licensee and the previously franchised utility shall determine between themselves who will pay the cost of relocation and restoration of the surface. [first in time, first in right]
14. Installation by Third Party. Unless required by a pre-existing agreement, state or federal law, applicable government regulation, or order from a court of competent jurisdiction, Licensor shall not voluntarily permit, authorize or approve any installation or construction by a third party that would deprive Licensee of, or unreasonably interfere with Licensee's use and enjoyment of, the Premises during the term of the License. If any road, street, sidewalk, passageway, fire alarm, electric light or power line, waterline, storm drain, sanitary sewer line, gas line, telephone pole, telephone line or other utility, appurtenances or facility is placed along or across the Facilities by any entity other than Licensor, and the construction requires the Licensee to relocate the Facilities, then that entity and the Licensee shall determine between themselves who will pay the cost of relocation and the restoration of the surface. None of the related costs shall be paid by Licensor.
15. Waiver. The waiver by either party of any breach or violation of any term, covenant, or condition of this License shall not be deemed a waiver of such term, covenant, condition, ordinance, or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law.
16. Entire Agreement. This License contains the entire agreement of the parties regarding the Facilities and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.
17. Changes. Changes to this License are not binding unless made in a written amendment to this License duly authorized by each of the Parties.
18. Binding Effect and Authority. This License is binding upon and inures to the benefit of the successors and/or assigns of the parties. Each individual executing this License on behalf of a party entity represents and warrants that he or she is duly authorized to execute this License on behalf of that party.
19. Compliance with Laws. The Licensee and its contractors shall comply with all federal, state, and local laws, ordinances, regulations, and rules and will not discriminate illegally against any person.

20. Venue and Governing Law. This License is governed by and construed and enforced in accordance with the laws of the State of California. In the event of litigation, venue will be in the County of San Mateo.
21. Construction and Severability. If any part of this License is held to be invalid or unenforceable, the remainder of this License will remain valid and enforceable if the remainder of the License is reasonably capable of completion.
22. Assignment. The Licensee may only assign its obligations under this Agreement with the prior written consent of City, which will not be unreasonably withheld. In connection with any such assignment, Association and its assignee will execute and deliver to City a written assignment and assumption agreement in a form acceptable to the City Manager and City Attorney
23. Notice. For purposes of giving formal written notice to the Licensee, the Licensee's address is:

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

For purposes of giving formal, written notice to Licensor, Licensor's address is:

San Carlos City Hall
Public Works Department
600 Elm Street
San Carlos CA 94070

Written notice must be made either personally or by regular United States Mail. If the notice is mailed, the notice will be complete when deposited in the United States Mail, postage paid, and addressed as required in this section. Notice of change of address will be given in the same manner as required by this Section.

EXHIBITS

Exhibit A – Description of Property, Premises, and Facilities
Exhibit B – Insurance Requirements

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

CITY OF SAN CARLOS

SAN MATEO COUNTY EXPRESS LANES
JOINT POWERS AUTHORITY

By:

By:

DIANE PAPAN
CHAIR

Approved as to form:

Approved as to form:

By:

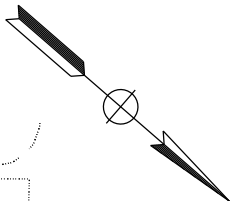
By:

Timothy Fox
Legal Counsel

EXHIBIT A

Description of Property, Premises, and Facilities

**Tolling Equipment within
City of San Carlos
From Station 569+00 to 571+00**



TOLLING ITEM #4:
PHOTOELECTRIC UNIT
ON TYPE 1-B STANDARD

TOLLING ITEM #3:
TYPE III-AF SERVICE EQUIPMENT
ENCLOSURE NO. T07600

TOLLING ITEM #2:
FOUNDATION PAD FOR MODEL 332L CABINET
FOR VARIABLE TOLL MESSAGE SIGN

TOLLING ITEM #1:
VARIABLE TOLL MESSAGE SIGN
ON WOOD POST

BRITTAN AVE

PG&E

SB ROUTE 101

NB ROUTE 101

"NE1" LINE

9

570

1

2

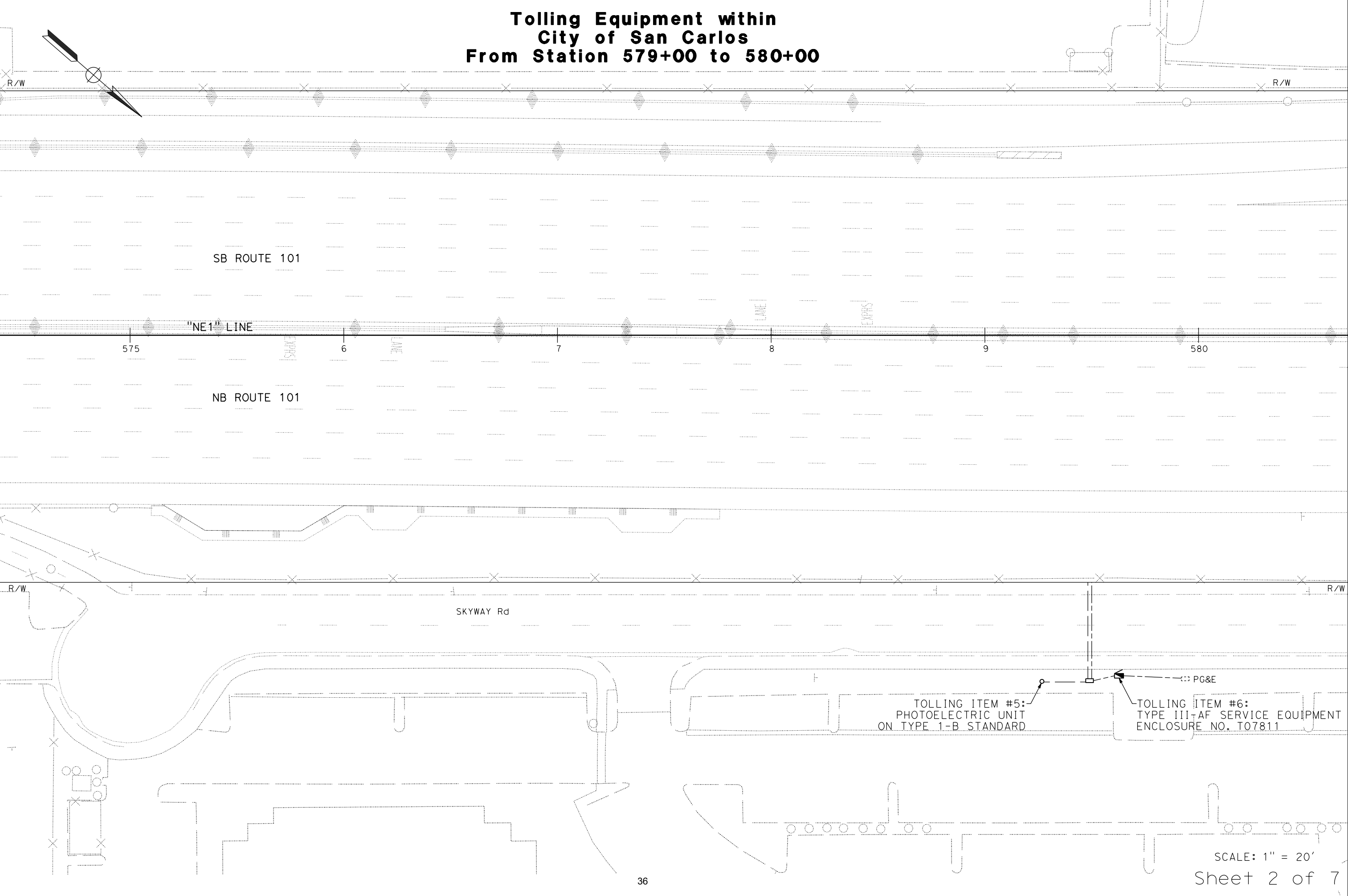
3

4

35

SCALE: 1" = 20'
Sheet 1 of 7

**Tolling Equipment within
City of San Carlos
From Station 579+00 to 580+00**



600

1

2

3

4

605

"NE1" LINE

NB ROUTE 101

**Tolling Equipment within
City of San Carlos
From Station 600+00 to 605+00**

R/W

R/W

SKYWAY Rd

TOLLING ITEM #7:
FOUNDATION PAD FOR MODEL 332L CABINET
FOR ELECTRONIC TOLL SYSTEM

TOLLING ITEM #8:
FOUNDATION PAD FOR MODEL 332L CABINET
FOR UNINTERRUPTIBLE POWER SUPPLY

TOLLING ITEM #9:
TYPE III-AF SERVICE EQUIPMENT
ENCLOSURE NO. T08311

MONTE VISTA Dr

PG&E

SCALE: 1" = 20'
Sheet 3 of 7

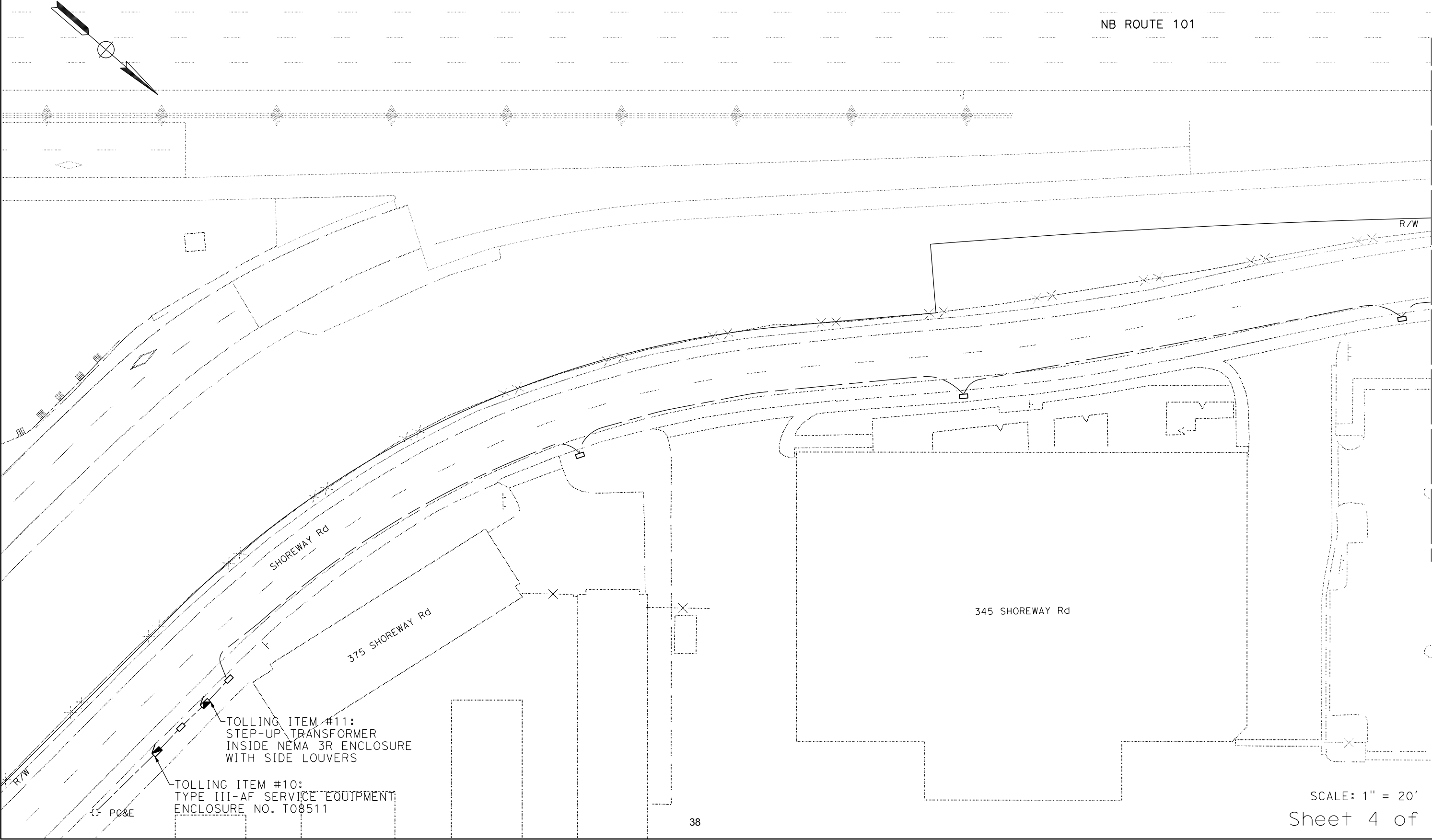
**Tolling Equipment within
City of San Carlos
From Station 617+50 to 623+50**

SB ROUTE 101

"NE1" LINE

NB ROUTE 101

MATCH LINE (Sheet 5 of 5)



**Tolling Equipment within
City of San Carlos
From Station 623+50 to 628+00**

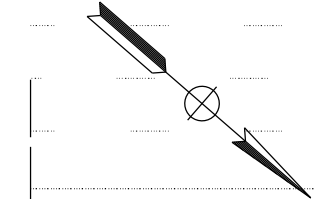
SB ROUTE 101

"NE1" LINE

NB ROUTE 101

SHOREWAY Rd

333 SHOREWAY Rd



MATCH LINE (Sheet 4 of 5)

SCALE: 1" = 20'

Tolling Equipment within
City of San Carlos

TOLLING ITEM #1:
VARIABLE TOLL
MESSAGE SIGN ON
WOOD POST

TOLLING ITEM #2:
FOUNDATION PAD FOR MODEL 332L CABINET
FOR VARIABLE TOLL MESSAGE SIGN



TOLLING ITEM #4:
PHOTOELECTRIC UNIT
ON TYPE 1-B STANDARD

TOLLING ITEM #3:
TYPE III-AF SERVICE EQUIPMENT
ENCLOSURE NO. T07600



Tolling Equipment within City of San Carlos

TOLLING ITEM #9:
TYPE III-AF SERVICE EQUIPMENT
ENCLOSURE NO. T08311

TOLLING ITEM #8:
FOUNDATION PAD FOR MODEL 332L CABINET
FOR UNINTERRUPTIBLE POWER SUPPLY

TOLLING ITEM #7:
FOUNDATION PAD FOR MODEL 332L CABINET
FOR ELECTRONIC TOLL SYSTEM



TOLLING ITEM #5:
PHOTOELECTRIC UNIT
ON TYPE 1-B STANDARD

TOLLING ITEM #6:
TYPE III-AF SERVICE EQUIPMENT
ENCLOSURE NO. T07811



TOLLING ITEM #10:
TYPE III-AF SERVICE EQUIPMENT
ENCLOSURE NO. T08511

TOLLING ITEM #11:
STEP-UP TRANSFORMER
INSIDE NEMA 3R ENCLOSURE
WITH SIDE LOUVERS



EXHIBIT B

Insurance Requirements

Licensee, at its own cost and expense, will maintain the following insurance coverages once toll equipment is installed and owned by the Licensee:

Property Insurance.

Property insurance with Special Form coverage including theft, but excluding earthquake, with limits at least equal to the replacement cost of the toll equipment property.

Liability Insurance.

General Liability insurance at a \$1M limit per occurrence and a general aggregate limit of \$2M for bodily injury and property damage arising from the ownership of the installed toll equipment. A separate Contractor will maintain the toll equipment and will assume direct liability for such maintenance, but Licensee will have vicarious liability protection for the ownership of the toll equipment. Licensee will require that such maintenance contractor will have at least \$1M in liability insurance limits.

San Mateo County Express Lanes Joint Powers Authority Agenda Report

DATE: June 10, 2022

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

FROM: Grace Martinez, Deputy Chief Financial Officer

SUBJECT: PUBLIC HEARING: Approval of Resolution SMCEL 22-16 on the Adoption of the Fiscal Year (FY) 2023 SMCEL-JPA Operating Budget

(For further information or questions, contact Grace Martinez at 650-508-6274)

Recommendation

Staff recommends the SMCEL-JPA Board:

1. Conducts a public hearing on the approval of the FY2023 Budget, in accordance with Section 131266 of the California Public Utilities Code; and
2. Approve Resolution 22-16 adopting the FY2023 SMCEL-JPA Operating Budget in the amount of \$9,574,961, as presented in Attachment A.

Fiscal Impact

Adoption of the FY2023 Budget would provide the SMCEL-JPA budget authority for \$9,574,961 in anticipated expenditures in the upcoming fiscal year. This budget only includes toll revenues and express lane operational and maintenance (O&M) expenses for the southern segment. Once staff has additional months of actual data for the southern segment, and when there is more information as to the opening date of the northern segment, staff will return to the Board with a mid-year budget amendment for FY2023.

Public Hearing Requirements & Process

Section 131266 of the California Public Utilities Code requires the SMCEL-JPA to give notice of and hold a public hearing for the 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 26, 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 that the Board:

1. Opens the public hearing;
2. Receives an oral staff report and presentation on the proposed budget;
3. Asks staff to answer any Board member questions;
4. Accepts public comment;
5. Closes the public hearing;
6. Conducts Board discussion; and
7. Adopts the proposed budget.

Background

The FY2023 Budget provides funding to continue supporting the operation of US 101 Express Lanes at the southern segment, and to prepare for the opening of the northern segment . The norther segment is currently slated to open later this Fiscal Year.

While the adopted FY2022 Budget reflects only a few months of operations for the southern segment, the FY2023 Budget projects a full twelve (12) months of operation of the lanes for the same segment. Currently, the projected toll revenues for the southern segment in FY2023 do not fully cover this segment's anticipated O&M costs. Staff anticipates that this will likely improve with the opening of the northern segment later in the fiscal year. While the FY2023 budget does not yet include revenues and expenses for opening of the northern segment, staff will return to the Board for a budget amendment related to the revenues and expenses for this segment later in the fiscal year.

FY2023 Proposed Operating Budget

Please refer to Attachment A showing a comparative schedule of the FY2023 Proposed Budget and the FY2022 Forecast. The line numbers for each revenue and expense item are detailed below referring to the corresponding line numbers on Attachment A.

Total Sources of Funds (Line 8)

Total revenues for FY2023 are projected at \$9,574,961, an increase of \$5,429,354 over the FY2022 Forecast.

Toll Revenues (Line 2) \$4,460,000 – increase of \$3,160,000

The FY2022 Forecast reflects approximately 4 1/2 months of toll collection, from mid-February through end of June 2022. Toll revenue projections for FY2023 are based on a full year's operations for the southern segment. The projections are based on actual toll revenue collection from February 2022 through April 2022. No toll revenues for the northern segment are currently included. Once the opening date is better ascertained for the northern segment, and with more months of actual data collected for the southern segment, staff will return to the Board for a budget amendment.

Allocated Bond Funds (Line 3) \$635,000

Included in the \$100 million loan the San Mateo County Transportation Authority (TA) made to the SMCEL-JPA in 2020, there was \$1.0 million set aside for equity program expenses. Of the \$1.0 million, the projected ending balance as of June 30, 2022 for these specific funds is

\$635,000. This balance will be budgeted in FY2023 to support Equity Program Administration and Costs in the upcoming year (Line 26).

SMCTA Measure A (Line 4) \$400,000

On January 6, 2022, the SMCTA programmed and allocated \$400,000 of Measure A Alternative Congestion Relief/Transportation Demand Management (ACR/TDM) program funds to the US 101 Express Lanes Equity Program. This line item is also funding Line 26, Equity Program Administration and Costs.

Carryforward Balance from SMCTA and C/CAG (Line 5) \$192,109

This carryforward from prior years is a true-up between the advances provided by each agency against expenses (split determined per the Operating Funding agreement). The reconciliation is based on the audited actuals from FY2020 and FY2021. This amount will help to offset needed advances from SMCTA and C/CAG in FY2023. Any potential carryforward balance in the current Fiscal Year 2022 will be determined upon completion of the yearend audit and will be included in the FY2023 Budget Amendment.

| | SMCTA | CCAG | Total |
|----------------------------|----------------|-----------------|----------------|
| FY20 Advance | 444,695 | 444,695 | 889,390 |
| FY21 Advance | 1,270,463 | 889,545 | 2,160,008 |
| Total advanced | 1,715,158 | 1,334,240 | 3,049,398 |
| | | | |
| FY 20 Expenses | 502,598 | 475,997 | 978,595 |
| FY 21 Expenses | 989,973 | 888,721 | 1,878,694 |
| Total Expenses | 1,492,571 | 1,364,718 | 2,857,289 |
| | | | |
| Carryover to FY2023 | 222,587 | (30,478) | 192,109 |

Projected Advance from SMCTA and C/CAG (Line 6) \$3,265,185.

The San Mateo County Transportation Authority (SMCTA) and the City/County Association of Governments of San Mateo County (C/CAG) have been advancing funds to cover the operations of the SMCEL-JPA since there is insufficient toll revenues to cover anticipated expenses. In the past, each Agency has advanced its corresponding staffing costs and then shared the remaining administrative costs equally.

Using this methodology, for FY2023, SMCTA's share of the projected advance would be \$1,915,185 and C/CAG's share of the projected advance would be \$1,972,667. Due to the fiscal constraint and the size of the loan relative to the overall organizational budget, C/CAG has indicated it will only be able to advance \$1,350,000 of the \$1,972,667, leaving a balance of \$622,667. As the joint partner of the Express Lanes project, SMCTA has been asked to cover the CCAG's share this fiscal year.

Additional advance from SMCTA (Line 7) \$622,667

This is the remaining balance of C/CAG's share of the advance for FY2023. As a joint partner of Express Lanes Joint Powers Authority, SMCTA is advancing this additional amount to fully fund the FY2023 Budget.

| | SMCTA | CCAG | TOTAL |
|-------------------------------|--------------|--------------|--------------|
| Toll Revenue | \$ 2,230,000 | \$ 2,230,000 | \$ 4,460,000 |
| Carryforward Balance | 222,587 | (30,478) | 192,109 |
| | 2,452,587 | 2,199,522 | 4,652,109 |
| Expenses | | | |
| Staff Support | 570,633 | 375,050 | 945,683 |
| Non-labor Expenses 50/50 | 3,797,139 | 3,797,139 | 7,594,278 |
| | 4,367,772 | 4,172,189 | 8,539,961 |
| | | | |
| FY2023 Projected Advance | \$ 1,915,185 | \$ 1,972,667 | \$ 3,887,852 |
| | | | |
| Additional advance from SMCTA | 622,667 | (622,667) | - |
| | | | |
| FY2023 Advance | \$ 2,537,852 | \$ 1,350,000 | \$ 3,887,852 |
| | | | |

Uses of Funds**Staff Support: (Line 12) \$839,628, an increase of \$227,184 from FY2022 Forecast**

- This includes staff wages and benefits needed to support the operation of the SMCEL-JPA. A total of 4.43 full time equivalents (FTEs) in CCAG and San Mateo County Transit District (District) staff time is budgeted. This is an increase of 1.37 FTEs from FY2022 Forecast.

Administrative Overhead: (Line 13) \$106,055, an increase of \$57,346 from FY2022 Forecast

- The Indirect Cost Allocation Plan (ICAP) calculates the indirect cost rate used to recover overhead costs related to agency indirect administrative overhead and capital projects. The District procured the assistance of an outside consulting firm to develop a methodology that equitably allocates the costs incurred by the District for services and functions shared by the different agencies administered by District staff. The consultant team is selected for its experience and knowledge in developing allocation methodologies for governmental and public entities.
- The ICAP is prepared in accordance with the principles and guidelines set forth in the Office of Management and Budget (OMB) Circular A-87 "Cost Principles for State, Local and Indian Tribal Governments" and ASMB C-10 "Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government."
- The FY2023 Administrative Overhead is based on the FY2023 ICAP calculation that applies the ICAP rate to all labor and non-labor cost.

Seminar/Training & Business Travel: (Line 14) \$20,000, an increase of \$16,108 over FY2022 Forecast

- 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), California Transportation Commission (CTC) and the International Bridge, Tunnel and Turnpike Association (IBTTA) meetings & Events.

Audit and Related Service: (Line 15) \$15,160, an increase of \$2,996 from the FY2022 Forecast

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

Office Supplies: (Line 16) - \$3,000, an increase of \$2,000 from the FY2022 Forecast

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

Printing and Information Services: (Line 17) \$5,000, an increase of \$4,000 from FY2022 Forecast

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

Promotional Advertising: (Line 18) \$50,000, an increase of \$26,600 from the FY2022 Forecast

Utilities: (Line 19) \$50,000, an increase of \$33,000 from FY2022 Forecast

- Includes utilities costs from PG&E.

Software Maintenance & License: (Line 20) \$32,000, an increase of \$14,000 from FY2022 Forecast.

Legal Services: (Line 21) - \$60,000, an increase of \$24,429 from the FY2022 Forecast

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

Consultant: (Line 22) \$1,811,000, an increase of \$888,116 from the FY2022 Forecast

- This line item includes consulting services, such as those provided by the HNTB Policy Program Management, as well as technical studies, advocacy and lobbying, and fiscal agent services.
- The FY2023 Proposed Budget is \$888,116 higher than the FY2022 Forecast. The FY2022 Forecast reflects the projected actuals which are significantly less than the FY2022 revised budget due to HNTB expenses coming in lower than budgeted, and certain studies that were planned but not needed in FY2022. Comparing to the FY2022 Budget, the FY2023 budget is relatively flat.

Express Lane Maintenance: (Line 23) \$444,000, an increase of \$314,000 from FY2022 Forecast.

- The FY2023 Budget is for 12 months of projected maintenance costs for the southern segment of Express Lanes and the FY2022 Forecast only represented 4 ½ months of projected maintenance cost.

Toll Operations and Maintenance (Line 24) \$2,751,000, an increase of \$1,750,350 from FY2022 Forecast.

- The line reflects the Bay Area Infrastructure Financial Authority's operation of the Express Lanes toll system, including the collection of toll transactions and traffic data; sending information to the Bay Area Toll Authority customer service center, monitoring system performance, providing roadway operations, and the maintenance of toll system equipment and software.
- The Proposed FY2023 Budget is \$2.75 million, which covers a full 12 months of the southern segment. This amount is \$1.75 million or 174.9% higher than FY2022 Forecast, this increase is mainly due to FY2023 budget covers a full year of operations whereas the FY2022 Forecast reflects only 5 months through June 30, 2022, since the opening of the southern segment of the Express Lane on February 11, 2022.

| Southern Segment | | | | | |
|---|---------------------|---------------------|---------------------|----------------------------------|-------------------|
| Scope Area | FY22 Budget | FY22 Forecast | FY23 Proposed | Variance btw Forecast v Proposed | Percentage Change |
| Program Management | \$ 500,000 | \$ 150,000 | \$ 500,000 | \$ 350,000 | 233.3% |
| Toll Systems | 920,000 | 550,000 | 1,400,000 | 850,000 | 154.5% |
| Regional Operations Center (ROC) 511 Monitoring | 100,000 | 80,000 | 180,000 | 100,000 | 125.0% |
| Other Civil Costs not covered by Caltrans | 375,000 | 108,000 | 400,000 | 292,000 | 270.4% |
| AT&T Host Costs & Fiber Costs | 70,000 | 65,000 | 140,000 | 75,000 | 115.4% |
| Contingency (5%) | 196,500 | 47,650 | 131,000 | 83,350 | 174.9% |
| Total | \$ 2,161,500 | \$ 1,000,650 | \$ 2,751,000 | \$ 1,750,350 | 174.9% |

FasTrak Customer Service (Line 25) \$1,885,500, an increase of \$1,205,500 over the FY2022 Forecast

- To provide customer service for FasTrak® accounts and trips taken on the US 101 Express Lanes in San Mateo County, and to process customer payments, and issue toll evasion violation notices. The estimate for FY2023 assumes high levels of traffic to provide sufficient budgetary authority.
- The FY2023 proposed Budget is \$1,205,500 or 177.3% higher than FY2022 Forecast. This increase is because the FY2023 budget covers 12 months of operations and the FY22 Forecast reflects only 5 months through June 30, 2022, since the opening of the southern segment of the Express Lane on February 11, 2022.

| Southern Segment | | | | | |
|----------------------------------|-------------------|-------------------|---------------------|----------------------------------|-------------------|
| Scope Area | FY22 Budget | FY22 Forecast | FY23 Proposed | Variance btw Forecast v Proposed | Percentage Change |
| FasTrak Maintenance & Accounting | \$ 20,000 | \$ 20,000 | \$ 60,000 | \$ 40,000 | 200.0% |
| Customer Service Center | 500,000 | 550,000 | 1,500,000 | 950,000 | 172.7% |
| Credit Card and Banking Fees | 120,000 | 85,000 | 250,000 | 165,000 | 194.1% |
| Direct Costs | 40,000 | 25,000 | 75,500 | 50,500 | 202.0% |
| Total | \$ 680,000 | \$ 680,000 | \$ 1,885,500 | \$ 1,205,500 | 177.3% |

Express Lane Enhanced Enforcement (Line 26) \$215,000.

- The line item is for the California Highway Patrol to provide enforcement services.

| Southern Segment | | | | | |
|---------------------------------|-------------------|------------------|-------------------|----------------------------------|-------------------|
| Scope Area | FY22 Budget | FY22 Forecast | FY23 Estimate | Variance btw Forecast v Proposed | Percentage Change |
| California Highway Patrol (CHP) | \$ 125,000 | \$ 65,000 | \$ 215,000 | \$ 150,000 | 230.8% |
| Total | \$ 125,000 | \$ 65,000 | \$ 215,000 | \$ 150,000 | 230.8% |

Equity Program Administration and Costs (Line 27) \$1,035,000, an increase of \$670,000 from the FY2022 Forecast

- This line items reflects the agreement with Samaritan House for San Mateo 101 Express Lanes Equity Program administration services. The project scope includes eligibility screening, marketing and outreach, oversight, and reporting, and the direct costs of procuring Clipper Cards and FasTrak® toll tag/transponders. Samaritan House will provide eligible residents with Clipper Cards or FasTrak® toll tag/transponders, which are projected to cost \$915,179. The annual administration cost is \$109,821 and communication services including translation of materials and marketing is \$10,000.
- This line is funded by Line 3 - Allocated Bond Funds and Line 4 – SMCTA Measure A.

| Southern Segment | | | | | |
|--|-------------------|-------------------|---------------------|----------------------------------|-------------------|
| Scope Area | FY22 Budget | FY22 Forecast | FY23 Proposed | Variance btw Forecast v Proposed | Percentage Change |
| Clipper Cards and FasTrak toll tag/transponders | \$ 450,000 | \$ 311,000 | \$ 915,179 | \$ 604,179 | 194.3% |
| Annual administration cost (Samaritan House) | 54,000 | 54,000 | 109,821 | 55,821 | 103.4% |
| Communication services, including translation of materials and marketing | | | 10,000 | 10,000 | |
| Total | \$ 504,000 | \$ 365,000 | \$ 1,035,000 | \$ 670,000 | 183.6% |

Insurance: (Line 28) \$228,218, an increase of \$27,135 from the FY2022 Forecast.

- Annual premium for property and liability coverage.

Miscellaneous: (Line 29) \$24,400, an increase of \$16,590 from the FY2022 Forecast

- Includes provision for dues and subscriptions, board meeting technical/video streaming

software, board compensation as well as funds for the full corridor opening ceremony.

ATTACHMENTS:

1. Proposed FY2023 SMCEL-JPA Budget
2. Resolution SMCEL 22-16

**SAN MATEO COUNTY Express Lanes JPA
FY2023 Proposed Budget**

| | FY2022 REVISED | ^A FY2022 FORECAST | FY2023 PROPOSED | ^A FY22 FORECAST vs FY23 PROPOSED VARIANCE | PERCENTAGE CHANGE |
|---|-------------------|------------------------------------|--------------------|--|----------------------|
| SOURCES OF FUNDS | | | | | |
| Toll Revenues | 5,300,000 | 1,300,000 | 4,460,000 | 3,160,000 | 243.1% |
| Allocated Bond Funds | 504,000 | 365,000 | 635,000 | 270,000 | 74.0% |
| SMCTA Measure A (ACR TDM) | | | 400,000 | 400,000 | |
| Carryforward Balance from SMCTA & CCAG | | | 192,109 | 192,109 | ^B |
| Projected advance from SMCTA and CCAG | 2,721,160 | 2,480,607 | 3,265,185 | 784,578 | 31.6% |
| Additional advance from SMCTA | | | 622,667 | 622,667 | ^C |
| TOTAL SOURCES OF FUNDS | 8,525,160 | 4,145,607 | 9,574,961 | 5,429,354 | 131.0% |
| USES OF FUNDS | | | | | |
| Staff Support | 689,030 | 612,444 | 839,628 | 227,184 | 37.1% |
| Administrative Overhead | 45,540 | 48,709 | 106,055 | 57,346 | 117.7% |
| Seminar/Training & Business Travel | 10,000 | 3,892 | 20,000 | 16,108 | 413.9% |
| Audit & Bank Fees | 16,160 | 12,164 | 15,160 | 2,996 | 24.6% |
| Office Supplies | 3,000 | 1,000 | 3,000 | 2,000 | 200.0% |
| Printing and Information Svcs | 5,000 | 1,000 | 5,000 | 4,000 | 400.0% |
| Promotional Advertising | 50,000 | 23,400 | 50,000 | 26,600 | 113.7% |
| Utilities | - | 17,000 | 50,000 | 33,000 | 194.1% |
| Software Maintenance & License | 23,000 | 18,000 | 32,000 | 14,000 | 77.8% |
| Legal Services | 60,000 | 35,571 | 60,000 | 24,429 | 68.7% |
| Consultant | 1,779,707 | 922,884 | 1,811,000 | 888,116 | 96.2% |
| Express Lane Maintenance | 222,400 | 130,000 | 444,000 | 314,000 | 241.5% |
| Toll Operations and Maintenance | 2,161,500 | 1,000,650 | 2,751,000 | 1,750,350 | 174.9% |
| Fastrak Customer Service | 680,000 | 680,000 | 1,885,500 | 1,205,500 | 177.3% |
| Express Lane Enhanced Enforcement | 125,000 | 65,000 | 215,000 | 150,000 | 230.8% |
| Equity Program Administration and Costs | 504,000 | 365,000 | 1,035,000 | 670,000 | 183.6% |
| Insurance | 186,648 | 201,083 | 228,218 | 27,135 | 13.5% |
| Miscellaneous | 10,200 | 7,810 | 24,400 | 16,590 | 212.4% |
| TOTAL USES OF FUNDS | 6,571,185 | 4,145,607 | 9,574,961 | 5,429,354 | 131.0% |
| PROJECTED SOURCES OVER USES | 1,953,975 | - | - | - | |

A - FY2022 Revised Budget assumes 5 months of toll revenue and O&M expenses whereas FY2023 Proposed Budget reflects a 12 month projection.

B - Carryforward balance from FY20 and FY21

C - Additional advance provided that SMCTA is advancing in addition to it's own share.

RESOLUTION SMCEL 22-16

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 2023 IN THE AMOUNT OF \$9,574,961

RESOLVED, by the Board of Directors of the San Mateo County 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 conducts a public hearing concerning the annual budget at its meeting on June 10, 2022; and

WHEREAS, the Board of Directors has been presented for its consideration and approval a proposed budget of \$9,574,961 for fiscal year 2023.

NOW, THEREFORE, BE IT RESOLVED, that the SMCEL-JPA Board of Directors adopts the budget for Fiscal Year 2023, a copy of which is attached and incorporated herein as Attachment 1 of the agenda item.

PASSED, APPROVED, AND ADOPTED, THIS 10TH DAY OF JUNE 2022.

Diane Papan, Chair

San Mateo County Express Lanes Joint Powers Authority Agenda Report

Date: June 10, 2022

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

From: Policy/Program Manager (PPM)

Subject: Receive Update on the US 101 Express Lanes Operations

(For further information please contact, Lacy Vong, Deputy Policy/Program Manager, LVong@hntb.com.)

RECOMMENDATION

That the SMCEL-JPA Board receives update on the US 101 express lanes operations.

BACKGROUND

On February 11th, 2022, the southern segment of the US 101 express lanes (between Whipple Avenue and Embarcadero Road) opened concurrently with the Santa Clara Valley Transportation Authority (VTA)'s companion express lane project to the south. SMCEL-JPA staff continue to participate in operational meetings with Bay Area Infrastructure Financing Authority (BAIFA), Bay Area Toll Authority (BATA) and their consultants. The express lanes are still in a ramp-up phase and performing well.

The PPM will provide an operational update to the Board to obtain their feedback. The report covers the period from February 11 to April 30, 2022. Below are highlights for consideration:

- The average potential daily revenue for the southern segment during this period was \$18,203. A month to month breakdown appears in the following table:

| Period | Number of Tolling Days | Total Potential Revenue for the Period | Average Potential Daily Revenue per Day |
|----------------------|------------------------|--|---|
| February 11-28 | 12 | \$187,233 | \$15,603 |
| March 1-31 | 23 | \$463,046 | \$20,132 |
| April 1-30 | 21 | \$369,080 | \$17,575 |
| Total to Date | 56 | \$1,019,359 | \$18,203 |

- During this reporting period, the average daily toll rates have been:

| Period | Southbound | Northbound |
|-----------------------|-------------------|-------------------|
| February 11-28 | \$1.17 | \$0.74 |
| March 1-31 | \$1.56 | \$0.83 |
| April 1-30 | \$1.23 | \$0.80 |

- Daily average express lanes volumes continue to increase month to month. The following is a summary of volumes over the reporting period:

| Period | Number of Tolling Days | Average Daily EL Volume | |
|-----------------------|-------------------------------|--------------------------------|-------------------|
| | | Northbound | Southbound |
| February 11-28 | 12 | 11,239 | 9,589 |
| March 1-31 | 23 | 12,281 | 10,423 |
| April 1-30 | 21 | 13,172 | 10,755 |

- Express Lanes continue to operate at about 10 to 12 mph faster than the general purpose lanes in both directions during peak periods.
- Out of these trips, most continue to be image-based trips followed by drivers who declared as single occupant vehicle (SOV). Clean Air Vehicle (CAV) declarations represented the smallest portion of trips at about 1.5% in April. However, since February, we have observed an 8% reduction in image-based trips, which indicates that transponder adoption has increased.

The general observation is the express lanes continue to be in a period of ramp-up. As congestion continues to climb back to pre-pandemic levels in the corridor, the express lane volumes and associated toll rates are expected to increase.

The Policy/Program Manager will also provide an update on the status of the 101 Express Lanes Community Transportation Benefits Program.

ATTACHMENT

1. 101 Express Lanes Operations Executive Dashboard



San Mateo County Express Lanes Joint Powers Authority Agenda Report

Date: June 10, 2022

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 a one-year term, effective July 1, 2022

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

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 a one-year term, effective July 1, 2022.

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 its members. See Attachment 1 for the JEPA.

Chairperson and Vice Chairperson

The Chair and Vice-Chair will serve a one-year term 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 11, 2021, the SMCEL-JPA appointed San Mateo City Councilmember Diane Papan (C/CAG) as the Chair, and San Bruno Mayor Rico Medina (SMCTA) 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

1. The JEPA is available online at: <https://ccag.ca.gov/wp-content/uploads/2018/07/First-Amended-and-Restated-JEPA-executed-agreement-CCAG.pdf>