

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

Meeting No. 33

Date: Friday, February 4, 2022 Time: 8:00 A.M.	Join by Zoom: https://us02web.zoom.us/j/85726200756?pwd=TjBjYjhkNGdXdDl1Y29pUVdxMINrdz09 Meeting ID: 857 2620 0756 Password: 020422 Join by Phone: (669) 900-6833
---	--

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 C/CAG 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.

None.

5.0 REGULAR AGENDA

- 5.1 Receive an update on the San Mateo 101 Express Lanes Project opening schedule for the southern segment from Whipple Avenue to the Santa Clara County line. (Verbal update provided at meeting). INFORMATION
- 5.2 Review and approval of Resolution SMCEL 22-04 authorizing the Chair to execute the Cooperative Agreement Between the Bay Area Infrastructure Financing Authority and the San Mateo County Express Lanes Joint Powers Authority for the Operations and Maintenance for the San Mateo County US 101 Express Lane Project; for a term of 8 years and an amount not to exceed \$64,163,074. ACTION p. 1
- 5.3 Review and approval of Resolution SMCEL 22-05 authorizing Chair to execute the Cooperative Agreement Between the Bay Area Toll Authority and San Mateo County Express Lanes Joint Powers Authority for Operation of the US 101 Express Lanes for an amount not to exceed \$13,000,000. ACTION p. 73
- 5.4 Review and Approval of Resolution SMCEL 22-06 authorizing the Chair to execute the Toll Facility Operations and Maintenance Agreement (Including Real Property Lease) Between the State of California Department of Transportation and the San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) US 101 Express Lanes in San Mateo County for a term of 40 years. ACTION p. 96

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

February 11, 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 Transit District Office, 1250 San Carlos Ave., San Carlos, CA.

PUBLIC RECORDS: Public records that relate to any item on the open session agenda for a regular

Board meeting, standing committee meeting, or special meeting are available for public inspection. Those public records that are distributed less than 72 hours prior to a regular Board meeting are available for public inspection at the same time they are distributed to all members, or a majority of the members, of the Board. The Board has designated the location of 555 County Center, 5th Floor, Redwood City, CA 94063, for the purpose of making public records available for inspection. Please note this location is temporarily closed to the public; please contact Mima 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: February 4, 2022

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

From: Policy/Program Manager

Subject: Review and approval of Resolution SMCEL 22-04 authorizing the Chair to execute the Cooperative Agreement Between the Bay Area Infrastructure Financing Authority and the San Mateo County Express Lanes Joint Powers Authority for the Operations and Maintenance for the San Mateo County US 101 Express Lane Project; for a term of 8 years and an amount not to exceed \$64,163,074.

(For further information please contact Matthew Click, Policy/Program Manager, MClick@hntb.com.)

RECOMMENDATION

That the SMCEL-JPA Board of Directors review and approve Resolution SMCEL 22-04 authorizing the Chair to execute the Cooperative Agreement Between the Bay Area Infrastructure Financing Authority and the San Mateo County Express Lanes Joint Powers Authority for the Operations and Maintenance for the San Mateo County US 101 Express Lane Project (BAIFA O & M Agreement); for a term of 8 years and an amount not to exceed \$64,163,074.

FISCAL IMPACT

The costs associated with approximately 5 months of the operations and maintenance (O & M) of the Express Lanes were included in the amended Fiscal Year 2022 Budget of the SMCEL-JPA, along with estimated toll revenues in the time period to cover these costs. Future annual budgets will include the annual O & M costs associated with the BAIFA Agreement, as well as estimated annual toll revenues.

SOURCE OF FUNDS

N/A

BACKGROUND

In February 2019, upon recommendation from San Mateo Express County Lane Ad Hoc committee members, both the TA and C/CAG Boards adopted resolutions to retain ownership of the Express Lane project and contract with BAIFA to operate and maintain the express lanes on behalf of the SMCEL-JPA.

BAIFA, as the contracted express lanes operator, is responsible for:

- Collect toll transactions and traffic data
- Build Express Lanes trips and sends them to the Regional Customer Service Center (RCSC)
- Monitor system performance
- Provide roadway operations
- Maintain system equipment and software

The San Mateo US101 Express Lanes project is constructed in two segments: the southern segment from the

San Mateo/Santa Clara County Line to Whipple Avenue in San Mateo County, and the northern segment from Whipple to Interstate-380. The Southern Segment is now scheduled to open on February 11, 2022. With the first segment opening, BAIFA will commence operations and maintenance of the toll system, backhaul network, and civil assets.

Staff from both SMCEL-JPA and BAIFA have been in negotiation since the beginning of 2021. The BAIFA O & M Agreement is comprised of 1) program management services to oversee the toll system and toll system integrator; 2) express lanes operations, including responses to incidents, system audits, and performance monitoring; 3) toll system maintenance; and 4) other express lanes maintenance, such as preventative roadway and backhaul maintenance.

Some of the key provisions of the BAIFA O & M Agreement include:

- 1) The overall roles and responsibilities of each party related to maintenance and operation of the Express Lanes including, risk management, data ownership and protection, performance monitoring; financial management, and annual audits and reports in connection with the toll collection system.
- 2) The establishment of an Operations Management Team to monitor operations, track performance and costs, address issues, and manage changes; and a process for Change Management.
- 3) The BAIFA O & M Agreement will commence on the date of the toll commencement of the Southern Segment and shall remain in effect for eight (8) years after toll commencement of the Southern Segment.
- 4) The parties have agreed to a scope of services and terms for an estimated amount of \$64.1 million over the full term of the AGREEMENT. It is an estimate which includes both fixed and variable costs; variable costs will be based on the number of trips and potential maintenance costs. Approximately one-third of the costs are fixed costs, and the remaining two-thirds are variable costs.

ATTACHMENT

- 1) Resolution SMCEL 22-04
- 2) Cooperative Agreement with BAIFA for Operations and Maintenance for the San Mateo County US 101 Express Lanes Project

RESOLUTION SMCEL 22-04

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY (SMCEL-JPA) AUTHORIZING THE EXECUTION OF THE COOPERATIVE AGREEMENT BETWEEN THE BAY AREA INFRASTRUCTURE FINANCING AUTHORITY AND THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY FOR OPERATIONS AND MAINTENANCE FOR THE SAN MATEO COUNTY US 101 EXPRESS LANE PROJECT FOR A TERM OF 8 YEARS AND AN ESTIMATED COST NOT TO EXCEED \$64,163,074

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

WHEREAS, the San Mateo County Transportation Authority (SMCTA) and the City/County Association of Governments (C/CAG) created the SMCEL-JPA (1) to apply to 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 (the US-101 Express Lanes Project); (2) to jointly oversee the operations and administration of the US-101 Express Lanes Project, and (3) to jointly exercise ownership rights over the 101 Project; and

WHEREAS, the SMCEL-JPA was granted approval by the California Transportation Commission (CTC); and

WHEREAS, in February 2019, the SMCTA and C/CAG approved resolutions 2019-3 and 19-10, respectively, to contract with the Bay Area Infrastructure Financing Authority (BAIFA) to operate the express lanes behalf of the SMCEL-JPA; and

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

WHEREAS, SMCEL-JPA staff and BAIFA have negotiated a Cooperative Agreement Between the Bay Area Infrastructure Financing Authority and the San Mateo County Express Lanes Joint Powers Authority for the Operations and Maintenance for the San Mateo County US 101 Express Lane Project (the Cooperative Agreement); and

WHEREAS, the Cooperative Agreement has a term of 8 years and includes variable and fixed costs estimated at \$64,163,074 that will be paid for with toll revenues; and

NOW THEREFORE BE IT RESOLVED, by the SMCEL-JPA Board of Directors that the Chair is authorized to execute the Cooperative Agreement Between the Bay Area Infrastructure Financing Authority and the San Mateo County Express Lanes Joint Powers Authority for the Operations and Maintenance for the San Mateo County US 101 Express Lane Project; for a term of 8 years and an amount not to exceed \$64,163,074; and further authorize the Executive Council to make revisions prior to execution, subject to approval by the SMCEL-JPA Legal Counsel.

PASSED, APPROVED, AND ADOPTED, THIS 4TH DAY FEBRUARY 2022.

COOPERATIVE AGREEMENT

Between

BAY AREA INFRASTRUCTURE FINANCING AUTHORITY

and

SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY,

for

OPERATIONS AND MAINTENANCE FOR THE SAN MATEO COUNTY

US 101 EXPRESS LANE PROJECT

This COOPERATIVE AGREEMENT (“Agreement”) entered into and effective as of _____, 2022 is between the BAY AREA INFRASTRUCTURE FINANCING AUTHORITY (referred to herein as “BAIFA”) and the SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY (referred to herein as “SMCELJPA”), together herein referred to as “PARTIES.”

RECITALS

WHEREAS, the San Mateo County US 101 Express Lanes Project (“PROJECT”), a jointly sponsored project by the San Mateo County Transportation Authority (SMCTA), the City/County Association of Governments of San Mateo County (C/CAG), and the California Department of Transportation (Caltrans), as defined in the three-party Cooperative Agreements, 04-2687 and 04-2733, dated July 11, 2018 and June 6, 2019, respectively, is designed to alleviate congestion and increase person throughput on US 101 in San Mateo County by (1) converting an existing HOV lane to an Express Lane from the Santa Clara County line to Whipple Avenue in San Mateo County, and (2) constructing a new Express Lane from Whipple Avenue in San Mateo County to Interstate 380 in San Mateo County; and

WHEREAS, the SMCELJPA was created, pursuant to the California Joint Exercise of Powers Act, consisting of Sections 6500 through 6599.2 of the California Government Code, to oversee the operations and administration of the PROJECT, and exercise the PROJECT ownership rights; and

WHEREAS, BAIFA is a Joint Powers Authority between the Metropolitan Transportation Commission (MTC) and the Bay Area Toll Authority (BATA) created in 2006, created pursuant to the California Joint Exercise of Powers Act; and

WHEREAS, the California Transportation Commission (CTC) authorized MTC to develop and operate toll lanes as described in the “Bay Area Express Lanes Public Partnership Application for High Occupancy Toll Lanes” on September 28, 2011; and

WHEREAS, pursuant to California Streets and Highways Code Sections 143 and 149.7, MTC Resolution No. 4807, approved on March 27, 2013, and BAIFA Resolution No. 4, approved on

April 24, 2013, MTC was authorized to delegate and BAIFA authorized to accept MTC's CTC-granted authority to develop and operate toll lanes; and

WHEREAS, on August 14, 2019, CTC granted SMCELJPA approval under Streets and Highways Code Section 149.7, as amended by Assembly Bill (AB) 194, to build and own the San Mateo County US 101 express lanes; and

WHEREAS, the PARTIES desire that BAIFA and (i) its TOLL SYSTEM INTEGRATOR (TSI) for operations and maintenance of the TOLL SYSTEM and (ii) its TOLL SYSTEM MANAGER for management of the TOLL SYSTEM INTEGRATOR, and (iii) its REGIONAL OPERATIONS CENTER (ROC) OPERATOR for operations of the express lane, and (iv) its BACKHAUL MAINTENANCE and ROADWAY CONTRACTOR for maintenance of the backhaul infrastructure be responsible for operations and maintenance of the BACKHAUL NETWORK COMMUNICATIONS and the administrative tasks, and oversight required for operations and maintenance (as defined in Article 1 and further in Appendix A, *Scope of Work*) for the PROJECT; and

WHEREAS, the Southern Segment of the PROJECT (converting an existing HOV lane to an Express Lane from the Santa Clara County line to Whipple Avenue in San Mateo County) is scheduled for toll commencement prior to the toll commencement on the Northern Segment of the PROJECT (constructing a new Express Lane from Whipple Avenue in San Mateo County to Interstate 380 in San Mateo County); and

WHEREAS, the PARTIES intend for this Agreement to be effective for eight years from toll commencement of the PROJECT's Southern Segment; and

WHEREAS the PARTIES have an Agreement for the Implementation of the PROJECT dated June 26, 2019 and amended on May 27, 2020; and

WHEREAS, the PARTIES desire that SMCELJPA will approve and maintain tolling and violation policies that provide for seamless experience by travelers and consistency with the operations of the other Express Lanes in the region, including the Santa Clara Valley Transportation Authority (VTA), Alameda County Transportation Commission (ACTC), and BAIFA facilities, as stated in SMCELJPA's CTC Application.

NOW, THEREFORE, the PARTIES agree as follows:

ARTICLE 1 – DEFINITIONS

Unless the context otherwise specifies or requires an alternate meaning, for the purposes of this Article and the associated Agreement, the following terms shall have the meaning as set forth below:

BACKHAUL NETWORK COMMUNICATIONS is the fiber optic-based communications network utilized by the express lanes to transport data within express lane corridors, between express lanes corridor and HOST data centers. The network is made up of two parts: i) the corridor fiber optic network that runs along US 101 connecting to communication hubs; and ii) BAIFA’s long-haul leased communication services (e.g. BART fiber and AT&T lease lines) connecting the corridor fiber optic network to the HOST.

BACKHAUL MAINTENANCE and ROADWAY CONTRACTOR is the contractor(s) responsible for the maintenance of the backhaul components, associated backhaul civil infrastructure, and other civil infrastructure on the roadway as described in Appendix A, *Scope of Work*.

BACKHAUL LOGICAL NETWORK MAINTENANCE is the monitoring and maintenance of the backhaul networking devices and software for availability, security incidents, access, and system outages.

DESIGN CHANGES are changes made to the TOLL SYSTEM and/or BACKHAUL NETWORK COMMUNICATIONS during the operations and maintenance phase that require deliberate planning and work on the part of BAIFA and TSI to manage the potential impacts to core services, risk, cost, and schedule.

HOST includes all computer systems, software, and servers that process traffic data from the ROADSIDE SYSTEM to determine the toll, build trip transactions, apply the toll to the trip transactions, send trip transactions to the FasTrak® REGIONAL CUSTOMER SERVICE CENTER for posting to FasTrak® customer accounts, and run all system reports.

ROADSIDE SYSTEM are all systems located along the roadside in the express lane corridor that are required to support tolling, namely the system or systems specifically installed to collect tolls electronically and monitor the flow of traffic and/or communicate with motorists. ROADSIDE SYSTEM includes Automatic Vehicle Identification system, Automatic Vehicle Detection, Violation Enforcement System (VES), Variable Toll Message Sign (VTMS) system; and is comprised of inventory such as readers, lane controllers, software, lateral fiber, conduits, cameras, toll-related sign panels/structures, Variable Toll Message Signs (VTMS), gantries, and UPS cabinets and service enclosures added specifically for toll-related operations. ROADSIDE SYSTEM does not include the fixed non-toll related signage, such as, traffic signs, delineators, and road markings.

REGIONAL CUSTOMER SERVICE CENTER means the facility operated by the Bay Area Toll Authority (BATA) directly or through BATA’s contractor or vendor for the FasTrak® System. BATA is not a party to this Agreement.

REGIONAL OPERATIONS CENTER (ROC) OPERATOR is the contractor responsible for the operations of the express lane and monitoring of the TOLL SYSTEM as described in Appendix A, *Scope of Work*.

TOLL SYSTEM includes all systems (including HOST and ROADSIDE SYSTEM) specifically installed to collect tolls electronically and monitor the flow of traffic and/or communicate with motorists. TOLL SYSTEM includes Automatic Vehicle Identification system, Automatic Vehicle Detection, Violation Enforcement System (VES), Variable Toll Message Sign (VTMS) system; and is comprised of inventory such as readers, computer systems, software, and servers that process and send transactions to the FasTrak[®] Customer Service Center for posting to FasTrak[®] customer accounts, cameras, toll-related sign panels/structures, controller and universal power supply cabinets and service enclosures added specifically for toll-related operations. TOLL SYSTEM does not include the fixed non-toll related signage, such as, traffic signs, delineators, and road markings.

TOLL SYSTEM INTEGRATOR (TSI) is BAIFA's contractor responsible for designing, developing, installing, testing, and maintaining the TOLL SYSTEM.

TOLL SYSTEM MANAGER is the consultant responsible for operational planning and TOLL SYSTEM management as specified in Sections 1 of Appendix A, *Scope of Work*.

ARTICLE 2 – GENERAL PROVISIONS

2.1 Governance

PARTIES agree to cooperate with one another to accomplish the purposes of this Agreement, and to confer in advance on policy matters and proposed changes to operations and maintenance as it relates to this Agreement.

Each PARTY shall require the coordination between their respective contractors to facilitate successful operations and maintenance of the PROJECT. Each PARTY agrees to respond timely to all reasonable requests from another PARTY for any rights, material, and information as may be required by the requesting PARTY to successfully perform its obligations under this Agreement. Each PARTY further agrees to promptly provide documentation, reports, and information pursuant to such reasonable requests. Notwithstanding this commitment, the PARTIES may withhold material and information subject to any claims of privilege or limitations any PARTY may have as a result of agreements with other persons or entities.

2.1.1 Operations Management Team

PARTIES agree to establish an Operations Management Team (OMT) to monitor operations, track performance and costs, address issues, and manage changes. The OMT will include at least one staff member from the SMCELJPA and BAIFA; additional attendees may be identified to provide technical or operational support.

In the event any issues require escalation, the OMT members will be responsible for escalating within their respective agencies for resolution.

Upon execution of the Agreement, the OMT will meet monthly to coordinate technical, operational, and funding aspects of the project, and management change and issue resolution. Responsibilities of the OMT include:

- Review monthly reports on the operational aspects and performance of the PROJECT and address issues, trends, and changes
- Review maintenance trends and costs, and performance by BAIFA and BAIFA contractor(s)
- Discuss ROC contractor performance and any changes to the ROC, such as pricing, operating procedures, incident management, etc. that impact the PROJECT
- Manage TOLL SYSTEM and BACKHAUL NETWORK COMMUNICATIONS design updates, enhancement, and changes that impact the PROJECT
- Review revenue, loss, leakage, and effectiveness of the pricing approach (dynamic algorithm)
- Review changes to business requirements and configuration for the TOLL SYSTEM
- Review PROJECT costs, including variations to expected monthly expenses
- Ensure the PROJECT is appropriately resourced and that resources are properly utilized

- Manage the approval process of PROJECT changes to scope, schedule, and budget via Amendment and pursuant to Article 2.1.2
- Discuss potential and actual policy changes that impact the PROJECT
- Identify and initiate the escalation of unresolved issues to SMCELJPA and BAIFA executives for negotiation and decision

BAIFA shall administer all express lanes operations as described in this Agreement but will consult and take under advisement input from SMCELJPA regarding administrative matters that impact the PROJECT. The SMCELJPA shall retain final decision-making rights for toll policies but shall consult and take under advisement input from BAIFA regarding policies that may potentially disrupt or negatively impact ongoing daily operations of the express lanes. Prior to enactment of any such change in toll policy, SMCELJPA and BAIFA shall mutually agree in writing on a cost and schedule for implementation.

2.1.2 Change Management

Any substantive material changes in the activities to be performed under this Agreement, or in the terms thereof, shall be incorporated in duly-executed written amendments, which shall specify the changes in work performed and any adjustments in compensation and schedule.

BAIFA shall be responsible for the cost of any TOLL SYSTEM or BACKHAUL NETWORK COMMUNICATIONS DESIGN CHANGES that are at the request of BAIFA and serve no material benefit to SMCELJPA or the PROJECT. BAIFA shall notify SMCELJPA of any TOLL SYSTEM or BACKHAUL NETWORK COMMUNICATIONS DESIGN CHANGES that may impact the PROJECT.

SMCELJPA shall be responsible for the cost of any TOLL SYSTEM or BACKHAUL NETWORK COMMUNICATIONS DESIGN CHANGES that are solely for the benefit of SMCELJPA (including but not limited to equity programs and custom reports) or the PROJECT. SMCELJPA shall be responsible for the cost of any testing specific to the PROJECT for TOLL SYSTEM or BACKHAUL NETWORK COMMUNICATIONS DESIGN CHANGES that are not caused by SMCELJPA or BAIFA but are caused by an external party to this Agreement and deemed necessary by the PARTIES.

PARTIES shall discuss whether the requested DESIGN CHANGE benefits one PARTY or both PARTIES and if the DESIGN CHANGE benefits both PARTIES, amount of the DESIGN CHANGE to be borne by each PARTY.

For changes recommended or required by a contractor of BAIFA and demonstrated to be mutually beneficial to both PARTIES, PARTIES may share costs based upon a fair, agreed upon allocation to be determined for each change.

Amendment of this Agreement shall occur solely pursuant to Article 2.1.3, and nothing in Article 2.1.2 shall be interpreted to effectuate an amendment or require any PARTY to consent to amendment or modification to the express terms of this Agreement.

2.1.3 Amendments

All such changes shall be incorporated in written amendments, which shall specify the changes in work performed and any adjustments in compensation and schedule. The PARTIES may amend this Agreement for future phases of PROJECT, or other change conditions during operations and maintenance.

2.2 Term of Agreement

This Agreement shall commence on the date of the toll commencement of the Southern Segment and shall remain in effect for eight (8) years after toll commencement of the Southern Segment. Within one (1) month after the five-year anniversary of toll commencement of the PROJECT's Southern Segment, the PARTIES agree to begin discussions regarding whether the PARTIES intend to extend this Agreement beyond the eight-year term.

2.2.1 Termination for cause

If a PARTY fails to perform as specified in this Agreement, the other PARTY may terminate this Agreement for default. No such termination shall become effective if the PARTY receiving the notice cures the default within thirty (30) days after receipt of a notice of termination or cures the default within a mutually agreed upon extension deadline. The PARTIES shall agree, in writing, to any cure extension date. All outstanding items of performance relating to this Agreement shall be settled and transitioned within a mutually agreed upon period of time, not to exceed two (2) years of the effective date of termination, to allow SMCELJPA time to procure the contractors and services provided by BAIFA under this agreement.

2.2.2 Termination for convenience

Either PARTY shall have the right to terminate this Agreement for convenience, at any time, upon sixty (60) days advance written notice to the other PARTY. All outstanding items of performance relating to this Agreement shall be settled and transitioned within a mutually agreed upon period of time, not to exceed two (2) years of the effective date of termination, to allow SMCELJPA time to procure the contractors and services provided by BAIFA under this Agreement.

2.2.3 End of Agreement (Transition Requirements)

BAIFA shall perform the end of Agreement responsibilities and accomplish a complete transition of the PROJECT from BAIFA to SMCELJPA, or to any replacement provider designated by SMCELJPA.

Upon such transition and within a reasonable time-period, BAIFA shall provide all PROJECT data in accordance with the data ownership requirements as stated in Article 2.3, from project conception (excluding data that is unavailable due to state or federal regulatory requirements or BAIFA's retention policies), to the SMCELJPA in the format provided by the contractor that is free of additional costs or licensing requirements, to the extent there is no unreimbursed cost to BAIFA.

BAIFA shall cooperate in developing and implementing a transition plan with SMCELJPA or such SMCELJPA-designated replacement provider and promptly take all steps reasonably required to assist in effecting a complete and seamless transition. The transition plan shall

include all, but not be limited to, the following: a listing of all systems, hardware and software, on which training will be required; and a training schedule. Such training shall include training of SMCELJPA personnel or of a third-party contractor in the operation of the PROJECT systems. BAIFA shall also provide the most current PROJECT documentation in its native file format.

BAIFA shall provide all instructors, literature, training aids, and equipment reasonably necessary to train personnel to operate and maintain the PROJECT, which shall be turned over to SMCELJPA at the termination of the Agreement.

BAIFA shall provide all PROJECT assets maintained by BAIFA in a state of good repair, subject to BAIFA's sole discretion in the determination of normal wear and tear and the remaining useful life of the project assets. Upon receipt, SMCELJPA shall acknowledge that all PROJECT assets are received in the state as identified by BAIFA.

BAIFA will use a reasonable effort to prevent an interruption in the operations and maintenance of the PROJECT. In the event BAIFA's contractors cause monetary loss or damage to SMCELJPA, BAIFA shall support efforts to recover loss due to contractor negligence or non-performance. Nothing in this Agreement shall be interpreted to be an undertaking by BAIFA to accept monetary liability to SMCELJPA for loss of revenue.

In the event of the need for an end to the agreement, both PARTIES shall convene to establish a scope, budget, and timeline for End of Agreement services.

2.2.4 End of BAIFA's Agreement with Contractors

BAIFA shall notify SMCELJPA in advance of any changes in the terms of its agreements with contractors BAIFA utilizes in this Agreement and/or of any new procurements to replace a current contractor under this Agreement. BAIFA agrees to consult SMCELJPA on new procurements and provide all information and documentation related to terms and requirements that would have a positive or negative impact on the PROJECT. BAIFA may at any point choose to self-perform work that is currently contracted through third parties.

At least one (1) year prior to expiration of the term of a BAIFA agreement with its TSI, the PARTIES shall meet to discuss options related to renewal or selection of a new TSI, should the TSI contract with BAIFA expire prior to system transition to SMCELJPA.

2.3 Data Ownership

SMCELJPA is the sole owner of toll transaction and traffic data (such as transactions, events, and reports) collected or generated on the PROJECT ("PROJECT Data"). BAIFA shall provide PROJECT Data, in the existing format provided by its contractor, free of additional costs or licensing requirements, to the extent there is no unreimbursed cost to BAIFA. Nothing in this paragraph shall restrict BAIFA's ability to remove or redact data to which the SMCELJPA has no right of access. When SMCELJPA staff submits a request to BAIFA for data, BAIFA will provide the requested data in the available formats. BAIFA will acknowledge SMCELJPA's PROJECT Data requests within three (3) business days during business hours. SMCELJPA will

be responsible for any costs associated with providing access to data in formats other than what is currently provided by TSI to BAIFA staff and its contractors, or that may be incurred to provide SMCELJPA with mutually agreed upon direct access to PROJECT Data, which costs shall be determined in the future when costs are known, or a mutually agreeable basis between SMCELJPA and BAIFA, and in accordance with Article 2.1.2, *Change Management*.

With the exclusion of PROJECT data, all other data, reports, surveys, drawings, software (object or source code), electronic databases, and any other information, documents or materials (“BAIFA Data”) made available to SMCELJPA by BAIFA for use by SMCELJPA in the performance of this Agreement shall remain the property of BAIFA and shall be returned to BAIFA at the completion or termination of this Agreement. No license to such BAIFA Data, outside of the services to be provided by SMCELJPA under this Agreement, is conferred or implied by SMCELJPA’s use or possession of such BAIFA Data.

With the exclusion of PROJECT data, all other data, reports, surveys, drawings, software (object or source code), electronic databases, and any other information, documents or materials (“SMCELJPA Data”) made available to BAIFA by SMCELJPA for use by BAIFA in the performance of this Agreement shall remain the property of SMCELJPA and shall be returned to SMCELJPA at the completion or termination of this Agreement. No license to such SMCELJPA Data, outside of the services to be provided by BAIFA under this Agreement, is conferred or implied by BAIFA’s use or possession of such SMCELJPA Data.

SMCELJPA will provide uninhibited access to the PROJECT Data. BAIFA shall use PROJECT Data for the sole purpose of operating and maintaining the PROJECT. BAIFA shall notify SMCELJPA prior to using PROJECT Data for the purpose of improving the Bay Area Express Lane Network.

2.4 Confidentiality

“Confidential Information” includes:

- a) All information regarding BAIFA toll operations, software, data, encryption methods, processing techniques, network architecture, security and procedures, including but not limited to, source code, source code documentation, writings, documents (electronic or hard copy), databases, drawings, passwords, Ethernet or IP addresses, and any record-bearing media containing or disclosing such information, which is disclosed by BAIFA to SMCELJPA; and
- b) All information (i) marked as “Confidential” or for which a similar notice has been provided to the receiving party by the disclosing party before, during, or promptly after disclosure of the information; or (ii) if disclosed in a manner in which the disclosing party reasonably communicated that the disclosure should be treated as confidential, whether or not the specific designation “Confidential” or any similar designation is used.

Confidential Information may be proprietary to BAIFA, SMCELJPA or a third-party contractor not party to the Agreement.

Confidential Information does not include information that:

a) Is publicly known at the time of disclosure or later becomes publicly known through no breach of this Agreement by the receiving party, provided that Confidential Information shall not be deemed to be publicly known merely because any part of said information is embodied in general disclosures or because individual features, components or combinations thereof are now known or may become known to the public; or

b) Was, as between the receiving party and the disclosing party, lawfully in the receiving party's possession prior to receipt from the disclosing party without obligation of confidentiality or is lawfully obtained by the receiving party from third parties whom the receiving party reasonably believes obtained it lawfully; or

c) Is independently developed by the receiving party without use of or access to the disclosing party's Confidential Information.

During the term of the Agreement, it may be necessary for one PARTY to disclose or make Confidential Information available to the other PARTY. The receiving party agrees to use all such Confidential Information solely in connection with the Agreement and to hold all such information in confidence and not to disclose, publish, or disseminate the same to any third party, other than those of its directors, commissioners, officers, employees, or agents with a need to know, without the prior written consent of the disclosing party, except as required by a court of competent jurisdiction, or as otherwise required by law. The PARTIES agree to take reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of such Confidential Information.

A PARTY may disclose the Confidential Information of the other PARTY to the extent it is required to be disclosed by law in accordance with a judicial or other governmental order, including a search warrant or subpoena compliance with which is mandated by applicable law ("Process"), to the extent of and for the purposes of such Process; provided that (i) the receiving party immediately notifies the disclosing party of such Process; and (ii) the receiving party shall not produce or disclose Confidential Information in response to the Process unless the disclosing party has: (a) requested protection from the legal or governmental authority requiring the Process and such request has been denied, (b) consented in writing to the production or disclosure of the Confidential Information in response to the Process, or (c) taken no action to protect its interest in the Confidential Information within 14 business days after receipt of notice from the receiving party of its obligation to produce or disclose Confidential Information in response to the Process, or earlier if required by the Process.

The PARTIES agree to require any agents or third parties to whom Confidential Information must be disclosed to execute a nondisclosure agreement that incorporates the substantive requirements of this article, the terms of which will be provided in advance to the other party for review and comment.

BAIFA, SMCELJPA, and their respective contractors and consultants may have access to Personally Identifiable Information ("PII") in connection with this AGREEMENT, including toll tag numbers, license plate information, trip records, and travel pattern data associated with the PROJECT. Both PARTIES agree to comply, and shall require their contractors to comply, with

all laws, statutes, and regulations related to the handling and retention of PII, including but not limited to Streets & Highways Code Section 31490.

2.5 General Indemnification

It is understood and agreed that each PARTY will fully defend, indemnify, and save harmless the other PARTY and all of its board members, commissioners, officers, agents, and employees from all claims, suits, or actions which arise out of the (a) negligent or otherwise wrongful acts or omissions of the indemnifying PARTY and/or its board members, commissioners, officers, agents or employees, or (b) the indemnifying PARTY's breach of this Agreement. This duty of indemnification shall not extend to the PARTIES' respective contractors, or such contractors' agents, officers or employees.

However, with respect to personal injury and property damage, SMCELJPA shall indemnify, defend and hold harmless BAIFA and its board members, commissioners, officers, agents, and employees from any and all claims for or from loss of life or damage or injury to any person or property of any person or entity, including users of the SMCELJPA toll facilities and their passengers, arising out of, connected with or incidental to, directly or indirectly, the use, maintenance, or operation of the Express Lanes including the in-lane equipment and toll collection hardware and software systems, other than claims or damage or injury proximately caused by BAIFA's gross negligence or willful misconduct in performing physical work in the lane, which such exception shall not apply if work is in connection with a project constructed based on designs prepared or approved by entities other than BAIFA, the Bay Area Toll Authority, or the Metropolitan Transportation Commission.

Obligations to indemnify, defend and hold harmless shall survive the termination or expiration of this Agreement.

2.5.1 Contractors

Each PARTY shall contractually require its contractors and consultants to include the other PARTY as an indemnitee and additional insured with respect to services provided pursuant to this Agreement. BAIFA contractors subject to this requirement include: (i) TOLL SYSTEM INTEGRATOR and (ii) TOLL SYSTEM MANAGER and (iii) REGIONAL OPERATIONS CENTER OPERATOR (iv) and BACKHAUL MAINTENANCE AND ROADWAY CONTRACTOR.

2.6 Insurance

Neither BAIFA nor its contractors shall have responsibility to insure the equipment owned by SMCELJPA.

2.7 Authority and Observance of Laws

Each individual executing this Agreement on behalf of a PARTY represents and warrants that he or she is duly authorized to execute this Agreement on behalf of said PARTY and that this Agreement is binding upon the PARTY in accordance with its terms.

SMCELJPA certifies that there is no legal impediment to its engagement with BAIFA in this Agreement, and that there is no pending or threatened litigation which might in any way

adversely affect the PROJECT or the ability of SMCELJPA to operate and maintain the PROJECT or its respective portion thereof.

SMCELJPA shall comply with any and all applicable laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state, or local government, and of any agency of such government, including but not limited to BAIFA, that relate to or in any manner affect SMCELJPA's performance of its obligations under this Agreement. SMCELJPA agrees to procure all necessary licenses and permits to operate as contemplated in this Agreement. BAIFA may request, and SMCELJPA shall provide to BAIFA, evidence of the licenses and permits at any time.

BAIFA agrees to procure all necessary licenses and permits to operate as contemplated in this Agreement. BAIFA shall secure and maintain the necessary Federal Communications Commission site licenses on behalf of SMCELJPA in order to operate automatic vehicle identification equipment to read FasTrak® transponders. SMCELJPA shall be named as the licensee and may request evidence of the licenses and permits at any time.

2.8 Cooperation

The PARTIES shall consult with one another promptly and regularly regarding any known technical questions and problems that may arise with the PROJECT, including but not limited to the transmission of data, reporting requirements, and payments. The PARTIES shall provide one another promptly with all documentation, reports, and information which the other PARTY may reasonably request in order to fulfill its obligations under this Agreement, subject to any claims of privilege or limitations either PARTY may have as a result of agreements with other persons or entities.

2.9 Records

Excepting PII, which shall be retained for no longer than the timeframe specified in Appendix D, *Privacy and Security of Data*, the PARTIES shall maintain complete and adequate books, records, documents, and accounts directly pertinent to performance under this Agreement for a period of three (3) years following the final transaction processed under this Agreement, to the extent that BAIFA has retained data for its own audit purposes. The PARTIES shall have access to such books, records, documents, and accounts during the term of this Agreement and for said following three (3) year period for purposes of inspection, auditing and copying. PARTIES shall have the right to request an independent third-party review and audit at expense of the requesting PARTY.

2.10 Notices

Except for invoices submitted by BAIFA pursuant to Article 3.7.2, any notices permitted or required to be given hereunder to either PARTY by the other shall be deemed given when made in writing and delivered, mailed, emailed or faxed to such PARTY at their respective addresses as follows:

To BAIFA:
Stephen Wolf
Bay Area Infrastructure Finance Authority
375 Beale Street, Suite 800
San Francisco, CA 94105
Phone: 415-778-5368
Email: swolf@bayareametro.gov

To SMCELJPA:
Sean Charpentier
Executive Director
City/County Association of Governments of San Mateo County
555 County Center, 5th Floor
Redwood City, CA 94063
Phone: (415) 370-2174
Email: scharpentier@smcgov.org

2.11 Third-Party Beneficiaries

Except as specifically provided herein, nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not party to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the electronic toll collection operations different from the standard of care imposed by law.

2.12 Assignment

No PARTY shall assign this Agreement, or any part thereof without the other PARTIES' prior written consent; any attempts to assign this Agreement without the other PARTIES' prior written consent shall be void and unenforceable, except as may be provided by statute.

2.13 No Waiver of Provisions

Either Party's failure to exercise or delay in exercising any right or remedy under this Agreement shall not constitute a waiver of such right or remedy or any other right or remedy set forth herein. Either Party's waiver of any right or remedy under this Agreement shall not be effective unless made in a writing duly executed by an authorized officer of the Party, and such waiver shall be limited to the specific instance so written and shall not constitute a waiver of such right or remedy in the future or of any other right or remedy under this Agreement.

2.14 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, but shall remain binding and effective as against SMCELJPA and BAIFA.

2.15 Governing Law

This Agreement shall be governed by the laws of the State of California.

2.16 Dispute Resolution

Appendix B, *Dispute Resolution*, is incorporated by this reference as though set forth in full.

2.17 Entire Agreement

This Agreement constitutes the entire agreement of the PARTIES and there are no other oral or extrinsic understandings of any kind. This Agreement may not be altered, amended or modified in any manner except by a subsequent written instrument duly executed by BAIFA and SMCELJPA.

ARTICLE 3 – TOLL OPERATIONS and MAINTENANCE

3.1 Scope of Services

BAIFA shall perform the scope of work in Appendix A, *Scope of Work*. Work may be performed by BAIFA, or BAIFA may hold, administer and manage the contracts for services, including but not limited to (i) TOLL SYSTEM INTEGRATOR, (ii) TOLL SYSTEM MANAGER, (iii) REGIONAL OPERATIONS CENTER OPERATOR, and (iv) BACKHAUL MAINTENANCE and ROADWAY CONTRACTOR.

In pursuit of the service detailed in Appendix A, *Scope of Work*, BAIFA shall comply with any and all applicable laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state, or local government, and of any agency of such government including but not limited to SMCELJPA that relate to or in any manner affect BAIFA's performance of its obligations under this Agreement.

SMCELJPA shall assist in resolving any potential issues between BAIFA's contractor(s) and other parties, including Caltrans, during operations and maintenance of the PROJECT.

3.2 Program and Systems Management

Program and system management support of the PROJECT may be provided by BAIFA directly or through support of a TOLL SYSTEM MANAGER, as detailed in Appendix A, *Scope of Work*.

3.3 Toll System Operations and Maintenance

BAIFA shall provide services and manage any associated agreements for operations, maintenance, and potential changes to the TOLL SYSTEM for the PROJECT as detailed in Appendix A, *Scope of Work*.

3.3.1 Ownership

Title to all ROADSIDE SYSTEM hardware and supplies purchased for the PROJECT and still useful in the operation of the PROJECT shall pass to SMCELJPA at the end of the Corridor warranty period as defined in Contract Change Order 14 of BAIFA's TSI Contract. The warranty period shall commence with BAIFA's approval of the TSI's successful operations test, and BAIFA shall notify SMCELJPA as each segment of the Corridor comes online and before warranty period commencement. Following the warranty period, BAIFA shall facilitate the transfer of ownership of hardware and supplies to SMCELJPA.

BAIFA shall own the HOST, and subject to the terms of its existing contract with its TSI, pass through to SMCELJPA the terms and rights afforded in third-party contract(s) for the TOLL SYSTEM software, hardware, and interfaces licenses, including a nonexclusive, royalty-free, irrevocable, perpetual, assignable license to use, copy, modify, create derivative works based on, publish, or disclose TSI software (including without limitation Source Code and Source Code documentation for such Software) for the benefit and operation of the PROJECT. The administration of these pass-through provisions shall be defined in a separate agreement.

3.3.2 Access to Systems and Data

Currently, access to the TOLL SYSTEM cannot be segregated by corridor. BAIFA will run data queries on behalf of SMCELJPA, or establish automated query scripts for regular reports needed with mutually agreeable frequency, until such time that a mutually agreeable methodology for direct access can be granted to SMCELJPA for project specific data. Any costs associated with the establishment of any direct access system shall be determined in the future on a mutually agreeable basis at the time a methodology is decided upon, and in accordance with Article 2.1.2, *Change Management*.

In the event the TSI is able to provide such separation by corridor that is mutually agreeable to both BAIFA and SMCELJPA, the TOLL SYSTEM portals may be modified to allow SMCELJPA direct access. Any costs for such system modification shall be determined at the time cost is known and shall be paid for on a mutually agreeable basis between SMCELJPA and BAIFA, and in accordance with Article 2.1.2, *Change Management*. At such time, BAIFA would provide secure access to the TOLL SYSTEM for PROJECT-specific data and information, using then-existing and available portals and protocols to allow SMCELJPA to remotely access, collect, and save PROJECT Data, subject to the ability to restrict access to BAIFA PII. BAIFA will provide training materials or guidance based on the assigned roles for SMCELJPA and any designated representatives. BAIFA would respond to system access requests from SMCELJPA in a timely manner.

3.3.3 System Changes

When possible, BAIFA shall provide SMCELJPA with 60 days advance notification of expected and planned system changes that may potentially impact revenue collection or operational functionality on the PROJECT. Upon request, BAIFA shall provide documentation for requirements, system design, or test plans and results related to the change.

In the event SMCELJPA requests a system change for the PROJECT, SMCELJPA and BAIFA shall collaborate on specific business requirements that are expected to be operationalized through the system change, and identify requirements, design elements, performance metrics, and terms related to data access, management, or reporting. BAIFA shall provide a scope, schedule, and budget for requested changes for SMCELJPA's concurrence via the OMT (see Article 2.1.1, *Operations Management Team*).

SMCELJPA and BAIFA shall cooperate and coordinate on system-wide changes at the time potential changes are identified through the OMT meetings and communications, and in accordance with Article 2.1.2, *Change Management*.

3.4 Backhaul Network Monitoring and Maintenance

BAIFA shall provide BACKHAUL NETWORK COMMUNICATIONS monitoring and maintenance services as detailed in Appendix A, *Scope of Work*. Through the OMT (Section 2.1.1, *Operations Management Team*), BAIFA and SMCELJPA shall mutually agree on notifications for planned and unexpected outages.

When possible, BAIFA shall provide SMCELJPA with 60 days advance notification on changes that may potentially impact the PROJECT via the OMT (Section 2.1.1, *Operations Management Team*).

3.5 Roadway Operations

BAIFA shall provide services through the ROADWAY OPERATIONS CENTER OPERATOR to monitor, manage, and report on roadway operations as detailed in Appendix A, *Scope of Work*.

When possible, BAIFA shall provide SMCELJPA with 60 days advance notification on changes that may potentially impact the PROJECT via the OMT (Section 2.1.1, *Operations Management Team*).

3.6 Toll Revenue

BAIFA will provide toll system services that operate within the parameters indicated in Appendix E, *Toll System Performance Requirements and Penalty Structure*. Standard reports shall be generated and provided to SMCELJPA on a monthly basis in a mutually agreed upon format. Where performance measures are not met, accompanying supporting raw data and a correction plan submitted by the TSI shall be attached to the monthly report. All PROJECT data necessary to assess damage or loss to SMCELJPA shall be provided by BAIFA to the SMCELJPA.

BAIFA shall consult SMCELJPA to determine whether to pursue performance penalties, or loss of revenue, that could be or are attributable to acts or omissions of BAIFA's contractors. BAIFA shall make an initial determination as to whether to pursue performance penalties, damages, or loss of revenue on behalf of SMCELJPA. If SMCELJPA does not agree with BAIFA's determination, the issue shall be escalated expeditiously to BAIFA and SMCELJPA executives to negotiate and arrive at an ultimate determination. If the executives cannot reach agreement on the determination, either Party may submit the question to the process defined in Appendix B ("Dispute Resolution") beginning with Paragraph 2. Nothing in this Agreement shall be interpreted to be an undertaking by BAIFA to accept monetary liability to SMCELJPA for loss of revenue or as giving rise to a cause of action for injunction to compel BAIFA to pursue performance penalties against its contractors or to pursue litigation against third parties.

The PARTIES shall coordinate the impacts and damages on operations and maintenance activities due to the above-indicated causes.

3.7 COST, SETTLEMENT, and PAYMENT

SMCELJPA agrees to reimburse BAIFA for operational expenses identified in Appendix A, *Scope of Work*, in accordance with the chart in Article 3.7.1 and within the anticipated budgets shown in Appendix C, *Summary of Estimated Costs*.

3.7.1 Costs

Service	Fixed Costs	Variable Costs
Program and System Management		Based on mutually agreed upon budget for MTC staff, and time and materials for consultants' staff, for services under Appendix A, <i>Scope of Work, Section 1 Program Management</i>
Toll System Maintenance	<p>Calculated share of TSI monthly HOST system maintenance fee based on the percentage of read points</p> <p>(SMCELJPA read points/ Total number of read points maintained by HOST system)*TSI monthly HOST system maintenance fee</p>	<p>1) Manual Image Review (MIR) - \$0.065 per reviewed transaction with Electronic Toll Collection (ETC) and Imaged Based Tolling (IBT) monthly percentage caps, as negotiated by BAIFA</p> <p>2) Spare Parts – Actual costs of spare parts inventory required by the TSI to perform work under Appendix A, <i>Scope of Work, Section 2 Toll System Maintenance Requirements, starting one (1) year after tolling commencement.</i></p>
ROC	<p>Calculated share of ROC costs apportioned based on directional lanes miles</p> <p>(SMCELJPA monthly directional lane miles/ Total number of directional lane miles for all corridors by agency)*(ROC annual costs/twelve (12) months)</p>	N/A
Civil Roadway Maintenance	Express lanes roadway maintenance under Appendix A, <i>Scope of Work</i> performed six (6) times per year for a total annual amount of \$250,000 to be billed when service is performed	1) Major Tasks/Repairs: As-needed maintenance including USA markings, fiber investigations, fiber repairs, and other major infrastructure repairs

Service	Fixed Costs	Variable Costs
		2) Minor Tasks/Repairs: As-needed maintenance including barrier sign knockdown, light pole knockdown, pull box damage/vandalism, cabinet damage, electrical damage, luminaire replacements, and other minor civil roadway repairs 3) California Highway Patrol (CHP) Maintenance Zone Enhanced Enforcement Program (MAZEEP) services for a total annual amount of \$50,000
Backhaul Maintenance	Calculated share for BAIFA Backhaul monthly reoccurring costs based on the percentage of read points	N/A

Note: Rates in the table above may be appropriately escalated annually. BAIFA shall notify the SMCELJPA in writing, with 60 calendar days' notice from when rates noted in the table above change.

3.7.2 Invoices and Reports

BAIFA shall submit invoices to the SMCELJPA for eligible expenses per the budget described in Appendix C, *Summary of Estimated Costs*, on a monthly basis.

BAIFA shall provide a Monthly Report (in a format and with content mutually agreed upon by the PARTIES) and supporting documentation to substantiate activities by BAIFA for the work described in Appendix A, *Scope of Work*. The Monthly Report shall be organized using the work breakdown structure of the budget and reflect the activities associated with the cost charged to each specific line item. The report shall include third-party invoices for both fixed and variable costs. For variable charges that use actual time and materials as the basis for the invoice, hourly charges for staff and consultant labor and other direct charges shall be itemized in the supporting documentation.

Each invoice shall be supported at a minimum by the following information: a) Monthly Report summarizing the activities performed by BAIFA; b) itemized costs per the categories in Appendix C, *Summary of Estimated Costs*; c) supporting information for the itemized costs, including contractor invoices and activity reports; and d) any other information as

mutually agreed by the PARTIES. Special reporting needs shall be accommodated by BAIFA upon request by the SMCELJPA for use in the performance of this Agreement at a mutually agreeable cost as may be applicable.

Invoices, reports, and all supporting information shall be submitted through automation, to the extent possible, or by e-mail to Revenue@samtrans.com and AccountsPayable@samtrans.com, as an alternative. SMCELJPA will provide financial system integration specifications for automation and work with BAIFA to test and implement the automated monthly invoicing and reporting process.

SMCELJPA will pay BAIFA within 30 calendar days of receipt of an acceptable invoice, approved by the SMCELJPA Project Manager or a designated representative. SMCELJPA will not unreasonably withhold approval or payment of any invoice, and if there are any questions or request for additional information, shall submit to BAIFA a request for clarification within 14 calendar days of the receipt of the invoice in question.

BAIFA shall provide documentation on the internal controls over data and systems used for financial reporting, such as the Security Plan for the TOLL SYSTEM, to the SMCELJPA by the end of August of each fiscal year. For subsequent years through the term of the Agreement, BAIFA may provide an annual certification that no changes have been made to internal controls procedures or protocols.

SAN MATEO COUNTY EXPRESS LANES
JOINT POWERS AUTHORITY

BAY AREA INFRASTRUCTURE
FINANCE AUTHORITY

Diane Papan
Chair

Therese W. McMillan
Executive Director

Appendix A – Scope of Work

BAIFA agrees to provide the scope of work, based on, and subject to the limitations of, the agreements in place with BAIFA’s contractors as of the date of this Agreement, and through work performed directly by BAIFA staff:

1. Program Management

The program management scope of work will be performed by BAIFA and its consultants.

1.1 BAIFA Staff

This work specifically addresses support of the express lanes TOLL SYSTEM and is billed on a time and materials basis for all BAIFA staff time. It includes: TOLL SYSTEM oversight, TSI management, ROC management, backhaul and civil roadway maintenance management and stakeholder management.

1.1.1 General Oversight

This task covers, as-needed, executive and project level management, contract oversight, coordination with regional partners and contract administration.

1.1.2 TSI and Toll System Oversight

Attend meetings with TSI, coordinate with regional partners and Caltrans/CHP, address system issues, audit system performance monitoring reports, analyze reports for system performance; research and recommend system changes to improve performance; track and work with toll system integrator on fixes to field equipment; run data query reports for SMCELJPA based on current data access and query tools; and review invoices.

1.1.3 ROC Oversight

Manage ROC staff to ensure operator coverage during tolling hours.

1.1.4 Backhaul Oversight

Attend meetings with backhaul maintenance contractor, coordinate with regional partners and Caltrans/CHP, monitor backhaul network, analyze reports for backhaul performance, track and work with backhaul maintenance contractor on maintenance activities.

1.1.5 Civil Roadway Maintenance Oversight

Attend meetings with civil roadway maintenance contractor, coordinate with regional partners and Caltrans/CHP, track and work with civil roadway maintenance contractor on maintenance activities.

1.2 Consultant Staff

This work specifically addresses support of the express lanes TOLL SYSTEM. It includes: TOLL SYSTEM oversight, TSI management, ROC management and stakeholder management.

1.2.1 TSI Controls

This work includes controls support specific to the TOLL SYSTEM as it relates the PROJECT, such as:

1. Change Management – Manage TSI or SMCELJPA requested changes including technical review of proposed change orders, cost estimates and schedule;
2. Risk – Identify, assess and manage/mitigate risks related to the PROJECT’s schedule and costs;
3. Quality – Provide quality assurance review for TSI-prepared deliverables;
4. Documents/deliverables – Maintain and coordinate a review/approval process; maintain task log and assign/track assignments, maintain logs to manage TSI deliverables and team activities, review and provide feedback on all draft and final documents/deliverables, provide detailed comments as requested; lead issue resolution; track completion according to contract, schedule and other requirements; manage version control and official records-keeping, and maintain a document repository account.

1.2.2 Express Lanes On-Going Operations.

This task covers activities to support the steady state operations of the PROJECT, which include:

1. Attend meetings with toll system integrator and other stakeholders
2. Support performance monitoring and reporting for corridors operational. Includes data retrieval; formatting and analysis of data, and routine reporting functions;
3. Perform toll rate (including dynamic pricing) and other specialized technical analyses to inform operations
4. Assist in identifying operations issues and refining practices and procedures, including updating operational documents and tools such as Standard Operating Procedures (SOP);
5. Perform other related tasks.

Deliverables:

- Meeting agendas, participation and notes
- Data analysis
- Reports
- Graphics and informational materials
- SOP updates

1.2.3 Regional Operations Center (ROC) Operations.

This task covers program management activities to oversee the ROC OPERATIONS CONTRACTOR and coordinate any activities regarding ROC operations as they related to the PROJECT, such as:

1. Review and provide feedback on ROC changes and deliverables related to express lane operations like SOP, schedules, training materials, design documents, communication protocols and other work products and processes. Track and resolve open items.
2. Augment ROC OPERATIONS CONTRACTOR staff resources to support initial operations including: observing operations; and assembling and analyzing data on issues related to system performance, traffic, toll rates, and customer behavior.
3. Provide staff to operate express lanes on short notice for limited durations.

Deliverables:

- Meeting agendas, participation and notes
- Staffing and scheduling analyses
- Materials and tools to implement SOP effectively
- Reports
- Graphics

2. Toll System Maintenance Requirements

2.1 General Requirements

The scope of work is performed by BAIFA’s Toll System Integrator (TSI) on behalf of BAIFA for the SMCELJPA. “TSI Agreement” used herein refers to the toll system operations and maintenance services agreement between BAIFA and the TSI contracted for the PROJECT. Work will focus on the SM-101 Express Lanes corridor, initially its South Segment from the Santa Clara County line to Whipple Avenue in San Mateo County and subsequently the full extent of the corridor between the Santa Clara County line and I-380 in San Mateo County, to provide operations and maintenance services for the TOLL SYSTEM.

To ensure that the Toll Collection System (TCS) is fully functional during the stated operational hours per Express Lanes corridor, the Toll System Integrator (TSI) shall provide all maintenance services twenty-four (24) hours a day, seven (7) days a week in a proper, safe and efficient operating condition capable of accurate toll revenue collection and reporting, and meets all specified performance and functional requirements. The TSI shall provide these services during the Warranty period (as defined in Section 2.2 below) and the Maintenance period (as defined in Section 2.3 below).

The TSI shall maintain all lease and Warranty agreements including but not limited to leased lines, software agreements and Hardware licensing during the Warranty and maintenance period as defined in the TSI Agreement.

The TSI shall provide all necessary staffing, material and supplies to perform preventive, predictive and remedial maintenance, install software updates to maintain the TCS, including but not limited to: Lane Controllers, Automatic Vehicle Identification (AVI) subsystems, Automatic Vehicle Classification (AVC) subsystem, Violation Enforcement System (VES) subsystem, Closed-Circuit Television (CCTV), Variable Toll Message Sign (VTMS), Traffic Monitoring System (TMS), enforcement beacons, all electronics in the roadside equipment

cabinets, roadside network equipment and cables, roadside equipment cabinets and associated electronics, equipment mounting and brackets, lane equipment needed for ongoing development and test support, Host servers and central processing systems inclusive of operating systems, databases, backup systems, storage devices, Toll Rate Test Environment, Digital Video Auditing System (DVAS), roadside communications and interfaces with the Host and the Regional Customer Service Center (RCSC), etc.

The TSI shall monitor and report all maintenance and Warranty activities BAIFA, manage spare parts inventory, and coordinate work with BAIFA, SMCELJPA, Caltrans and other contractors.

The TSI shall maintain equipment for the video wall, servers, associated video equipment, and network connectivity. Workstations and peripherals provided by the TSI for the purposes of the PROJECT shall be maintained by BAIFA.

TSI shall conduct maintenance in accordance with the Approved Toll System Maintenance Plan for the SM-101 Express Lanes Corridor, approved by BAIFA and provided to SMCELJPA.

All service, maintenance, errors, resolutions, remediation, parts, inventories and the like shall be documented in the Maintenance Online Management System (MOMS) and shall be available to BAIFA and SMCELJPA.

During maintenance, system improvements shall be performed in accordance with BAIFA's TSI Agreement and with this Agreement.

TSI shall be required to track changes to requirements made through system improvements using the Requirements Traceability Matrix (RTM). Changes to requirements are subject to BAIFA's approval.

TSI shall be required to associate each change with the software version in which it was put into production. TSI shall be required to perform full testing and update system documentation for all system improvements and changes. TSI shall maintain processes and procedures required under the Implementation Requirements. The TSI's Project Management Plan shall be updated to reflect any changes or refinements to processes and procedures during the Maintenance and Warranty periods, and no less than annually.

2.2 Toll Collection System Warranty Period

Maintenance during Hardware, Software, and TCS warranty periods (referred to as "Warranty" herein) shall only cover the cost of labor not included in the manufacturer's Warranty of Hardware and systems.

Maintenance during the Warranty period for the Toll Collection System (TCS) Software and Hardware shall be in effect as defined in Contract Change Order 14 of BAIFA's TSI Contract, commencing upon approval of the Operations Test milestone for each Corridor. The one (1) year Warranty on the TCS covers Hardware and Software and therefore in the case of

Warranty failure or malfunction the Contractor must replace or repair the failed component at no material cost to BAIFA.

During the Warranty period, the TSI shall perform all maintenance services described in this Scope of Work and according to the BAIFA approved SMP and have full responsibility of the TCS including preventive and corrective maintenance and code changes, system administration, the repair or replacement of parts and expendables as well as any other time and material necessary to meet the specified performance requirements at no additional cost to BAIFA or SMCELJPA.

2.3 Toll Collection System Maintenance Period

The TSI shall perform all maintenance services described in this Scope of Work and according to the BAIFA approved SMP. The TSI will be compensated for maintenance services according to the monthly unit price. The TSI will be reimbursed, at cost, for all replacement spare parts, including delivery costs, which have been received and successfully tested by the TSI. No markup on the components is permitted under the TSI Agreement.

The TSI must identify the lead time required for orders of additional and replacement components and spare parts. TSI also needs to identify time frames for repair and replacement of component parts, and specify Warranty period. The lead times and Warranty periods identified must be guaranteed throughout the life of the TSI Agreement.

The TSI shall assume full responsibility for a toll equipment location as soon as the first piece of equipment at the toll equipment location has been installed.

The maintenance period after Hardware, Software, and TCS warranty periods (referred to as "Maintenance" herein) shall commence for each Corridor at the completion of the respective Warranty period.

2.4 Maintenance Equipment

The TSI shall provide all materials, supplies and equipment required to maintain the SM-101 Express Lanes system including, but not limited to:

- Maintenance facility
- Maintenance vehicles, lifts, vehicle maintenance, gasoline and other associated vehicle costs
- Cones, warning signs, gates, lighting, generators, tools and expendables such as tape, solder, etc.
- Diagnostic, calibration and bench test setup equipment and the TCS components used for the bench test system and the maintenance computer system.

The TSI shall maintain a BAIFA-owned dedicated Read Point/Corridor/Host test computer system at the TSI's development facility for the life of the maintenance project. The TSI shall maintain an up-to-date list of all maintenance equipment and shall provide it to BAIFA as part of the monthly documents. All equipment shall be surrendered to SMCELJPA at the end of the maintenance periods unless the TSI Agreement is renewed.

2.5 Third Party Service Agreements

Should the TSI establish third party on-site service agreements from the original manufacturers or suppliers of equipment for Corridor and HOST computers and other critical functions, the TSI or BAIFA shall notify SMCELJPA prior to entering into such agreements. The TSI shall be responsible for all services rendered by the third party. Third party agreements do not relieve the TSI of responsibility for Warranty and maintenance in accordance with the terms of the TSI Agreement.

2.6 Coordination of Work

The TSI shall be responsible for the initial response, issue documentation and identification and isolation of all issues. The TSI shall coordinate work with other parties such as BAIFA, SMCELJPA, Caltrans, and the Regional Customer Service Center, to fully resolve any issues with the TCS.

2.7 Local Office and Maintenance Facility

The TSI shall provide maintenance facility sufficient to store and repair the entire inventory of parts, components and equipment required to maintain the SM-101 Express Lanes system. The maintenance facility shall have bench test facilities and simulators. The maintenance facility shall provide working space for maintenance management and personnel. The TSI shall ensure that SMCELJPA assets are not removed from Caltrans facilities unless directed by the BAIFA Project Manager.

2.8 Staffing and Organization

The TSI shall establish and maintain organizational resources appropriate to the Work to be performed to maintain the SM-101 Express Lanes system, including, but not limited to:

- Assigning the appropriate number of knowledgeable trained staff, acceptable to BAIFA, with skills appropriate to the tasks to be performed;
- Supplying direct local supervision for proper management of staff;
- Ensuring that at least two persons will have the ability to maintain any site or function;
- Providing qualified persons, acceptable to BAIFA, for relief of the assigned staff in the event of vacation, illness, personal business or any other absence;
- Providing staff with procedures for resolving technical issues which cannot be solved on-site and providing staff support where required; and
- Providing maintenance staff with cell phones, laptop computers and wireless Internet access to respond to requests for services in a timely manner.

The TSI shall provide an organization chart indicating the number, location and position of full-time staff assigned to SM-101 Express Lanes maintenance. The chart shall also indicate any part-time, support or other staff assigned to the maintenance work. The TSI shall update this chart whenever the maintenance staff changes and submit it with the monthly reports.

The TSI shall develop and provide a regular ongoing training program appropriate to the needs of the SM-101 Express Lanes system and the staff assigned to maintain the appropriate level of staff knowledge, skills and abilities. Training shall be open to BAIFA and any other parties deemed necessary by BAIFA.

The TSI shall maintain secure facilities and provide personnel who satisfy BAIFA and/or regulatory security requirements. The TSI and others under the management of the TSI shall adhere to Caltrans rules and regulations regarding physical access to all Caltrans properties. The TSI shall adhere to SMCELJPA rules and regulations regarding physical access to all SMCELJPA properties.

2.9 Maintenance of Traffic

The TSI shall provide all maintenance of traffic as stipulated in the TSI Agreement's Implementation Requirements. The TSI shall follow SMCELJPA, BAIFA, California Highway Patrol (CHP), and Caltrans procedures for lane access, lane closure notification requirements, lane closure procedures, traffic protection rules and procedures and all other appropriate safety requirements. Maintenance of traffic for closures of open-road lanes or multiple traffic lanes shall be performed by licensed personnel or subcontractors. The TSI shall obtain SMCELJPA approval for all closures of the SM-101 Express Lanes facility.

2.10 Maintenance Services

2.10.1 Preventive Maintenance

The TSI shall develop a comprehensive preventive maintenance plan as part of the SMP that includes daily, weekly, monthly, quarterly and annual preventive maintenance activities and a plan for actively monitoring and reporting on system performance.

Scheduled preventive maintenance shall consist of, but not be limited to, inspecting, testing, calibrating, cleaning, lubricating, adjusting, repairing, and replacing field-installable parts that are approaching unserviceable status, to prevent SM-101 Express Lanes and BAIFA ELN host system failures and extend the useful life of the TCS. Such maintenance shall be performed in accordance with the SMP and at a minimum in accordance with the equipment manufacturers' recommendations or as directed by BAIFA.

Preventive maintenance schedules are subject to the approval of the Project Manager and/or BAIFA ELN Facility Manager. The TSI shall not remove any piece of equipment from service for preventive maintenance during peak operational periods without prior approval of the BAIFA Project Manager or designated facility manager.

The TSI shall provide at a minimum bi-annual preventive maintenance for each of the gantry mounted Variable Toll Message Signs (VTMS), Closed-Circuit Television (CCTV) cameras and all other associated equipment requiring the maintenance.

Preventive maintenance consists at a minimum of cleaning front face of the sign, replacing any filters, cleaning the screen in front of the inlet fan and a visual check for worn, damaged or disconnected harnesses.

2.11 Remedial Maintenance

The TSI shall perform all on-call remedial or corrective maintenance that consists of actions necessary to diagnose and correct malfunctions and failures in the TCS. Remedial

maintenance does not include services that are entirely due to force majeure, beyond the TSI's control (e.g., damage due to traffic accidents).

The TSI shall repair, replace, document and maintain any part or parts of the TCS that become unsuitable and are deemed to not be in accordance with their original specified performance requirements. Such repair or replacement shall be performed so that any Read Point shall not be out of service for more than the allowable down time for repair per the Performance Requirements & Penalties.

The TSI shall provide methods and procedures for BAIFA and Caltrans to report problems by phone and email, which will generate TSI work orders.

The TSI shall establish a help-line number telephone service that is available 24 hours a day, 7 days a week for reporting problems and placing service requests to technicians. The TSI shall establish a protocol and provide a contact list for escalation of issues by BAIFA in the event of an unforeseen emergency and/or failure to respond by TSI.

2.12 Unanticipated Maintenance

Unanticipated maintenance services that are entirely due to occurrences beyond the TSI's control (e.g., damage due to traffic accidents,) shall not be included in the fixed price for maintenance and shall be compensated on a time and materials basis. The TSI shall immediately notify BAIFA of the need for such work and request prior written approval to respond to such an occurrence. The TSI or BAIFA shall notify SMCELJPA prior to the maintenance being performed. BAIFA and SMCELJPA shall discuss costs, scope, schedule, and progress of any unanticipated maintenance work at the OMT. SMCELJPA shall reimburse BAIFA for costs incurred for such work for damage that occurs in the SMCELJPA corridor, as agreed to between parties as discussed in the OMT.

2.13 System Monitoring

The TSI shall perform scheduled reviews of the TCS and regular TCS upkeep. On a scheduled basis, the TSI shall check the Hardware and software components of the system to ensure that all components are present and operating within specified parameters. Based on these reviews, the TSI shall perform needed system upkeep (e.g., de-fragmenting disk files, purging obsolete files from directories, etc.) to ensure uninterrupted operation of the system.

The TSI shall monitor the TCS. During operation, the TSI shall check system monitoring devices and programs, run-time system utilization parameters and other diagnostic tools (e.g., file size and allocations, processor loading, response times, etc.) to ensure that all aspects of the system are operating properly and the system is meeting all specified performance criteria. The monitoring schedule shall be included in the SMP.

The TSI shall monitor the integrity of databases. On a scheduled and real-time basis as appropriate, the TSI shall review system databases (tables, indexes, views/queries, etc.) to ensure that all are properly updated and that appropriate integrity of all system databases is maintained. Alerts shall be generated for anomalies immediately upon recognition.

The TSI shall maintain logs of all scheduled monitoring and system upkeep activities. The TSI shall maintain logs or other appropriate records of all monitoring activities, anomalies found and measures taken to correct these anomalies.

TSI shall respond to routine operational requests (e.g. network mask, IP addresses, reconfigure VLAN).

The TCS shall perform periodic deletion of data as stipulated in System Requirements design documents and BAIFA and SMCELJPA data retention rules and policies.

2.14 Backup and Archiving

The TSI shall perform scheduled data, application and system backups as specified in the Toll System Maintenance Plan and ensure that backup media are properly stored and secured, rotated on schedule and replaced appropriately. The TSI shall maintain records of backups including logs of all backup activity, rotation of backups and usage/rotation of backup media and records of all off-site data storage.

The TSI shall follow system archiving procedures to capture data to be archived to permanent storage media as required to maintain proper system functioning or as scheduled in the system operating procedures (whichever occurs first). The TSI shall ensure that archived media are properly logged and maintained, and that archived data is viable and accessible throughout the required archive retention period for the data.

The TSI shall ensure that an adequate inventory of storage media for primary and backup purposes is available and procure additional storage media for backups and archiving data when needed. The TSI shall perform periodic tests on the full Host and lane recovery to ensure entire TCS is recoverable from backups. Results of tests shall be documented and provided to BAIFA and SMCELJPA. The TSI shall perform regular deletion of TCS data as stipulated in System Requirements, design documents, and SMCELJPA data retention policy.

2.15 Spare Parts Inventory

The TSI shall be responsible for the purchase, delivery, testing and maintenance of all spare parts which shall be as approved in the System Design Document. If alternative components are proposed after approval of the System Design Document, the component is subject to approval by BAIFA prior to use of a proposed product.

The TSI shall maintain a comprehensive system for managing spare parts and equipment in a secure manner that includes:

- Record keeping of inventories including storage locations;
- Determination of reorder points;
- Maintaining supplier information;
- The number of times a single component has been repaired shall be tracked and an alert shall be triggered if a component has been repaired three times or more.
- Conducting parts acquisition and distribution; and

- Testing the initial functionality of all spare parts and equipment, and returning all defective spare parts and equipment to their respective manufacturers for replacement.

The TSI shall keep a sufficient inventory of spare parts to allow for the prompt replacement of failed components and components which in its judgment need replacement. The TSI shall replace a component that is subject to chronic failure and has been repaired three times or more, at SMCELJPA's option. The TSI shall obtain the best competitive price for all spare parts and provide verification of this effort upon BAIFA's request. The TSI shall present to BAIFA and SMCELJPA a listing of the current inventory on a quarterly basis. The format of this report is subject to approval by BAIFA.

2.16 Communication and Reporting

The TSI shall schedule and conduct monthly status meetings with BAIFA and SMCELJPA to inform BAIFA and the SMCELJPA of the performance of the system, any problems noted and solutions.

The TSI shall submit all written communication to BAIFA or other interested parties via email (verbal communications shall be duplicated in email). TCS failures list including all components, communication losses, security breaches, equipment theft, and issues as identified regardless.

2.17 Annual Performance Audit

On each anniversary of System Acceptance, the TSI shall deliver a Performance Audit Report documenting the results of the prior year's performance. The TSI shall conduct Annual Performance Audits to verify that system performance has not degraded over time and that the TCS continues to meet all functional requirements in the approved RTM. BAIFA will approve a Performance Audit Report that demonstrates that the TCS meets the performance and functional requirements.

The TSI shall conduct the Performance Audit on the installed production TCS under live operational conditions. The Performance Audit shall use TCS transaction data, reports and MOMs data for at least the 30 days preceding the performance audit. In addition, test vehicles mixed with live traffic shall be used for controlled testing.

The TSI shall provide detailed Performance Audit plans and procedures for BAIFA approval prior to each performance test period. The TSI shall produce a Performance Audit Report within 15 days of the completion of the Performance Audit procedures that documents the results of the test, identification of problems, and corrective action plans and schedules.

2.18 End of TSI Agreement

Prior to the end of the TSI Agreement, the TSI shall accomplish a complete and seamless transition of the PROJECT from the TSI to BAIFA and/or SMCELJPA, or to any replacement provider designated by BAIFA and SMCELJPA.

At the end of the TSI Agreement, items such as spares inventory, manuals, licenses and any other requirements necessary for BAIFA or any replacement provider designated by BAIFA to assume maintenance shall be turned over by the TSI to BAIFA.

TSI shall not, through any act or omission, cause any unauthorized interruption of or adverse impact to any component of the PROJECT, any other work provided by BAIFA or BAIFA-designated third parties, or BAIFA's customers.

TSI shall include eighty (80) hours to develop a TSI Agreement Transition Plan and some or all of the transition items. The plan will include, but not be limited to, the following: a listing of all systems, hardware and software, on which training will be required, and training schedule. The TSI shall include training of BAIFA and SMCELJPA personnel or of a third-party contractor in the operation of the TSI software systems

TSI shall transfer the administration of the TSI Software escrow account to BAIFA.

TSI shall also provide the most current PROJECT documentation in its native file format. If so requested, TSI shall provide all instructors, literature, training aids, and equipment reasonably necessary to train personnel to operate and maintain the Project, which shall be turned over to BAIFA at the termination of the TSI Agreement.

2.19 Manual Image Review Services

The TSI shall provide manual image review services to improve license plate recognition and trip building. Image reviewers shall at a minimum have the following options: accept, reject, skip request review, skip, or identify images that come into the queue.

For human readable images, reviewers will identify the correct license plate jurisdiction and alpha-numeric character set. For non-human readable images, reviewers will reject the images with an associated rejection code.

The TSI shall implement a QA/QC program for manual image review. The manual image review QA/QC program will include random audits by specialized QA/QC staff. TSI image review team performance shall be monitored, and corrective action or additional training shall be provided in the event of failing performance standards.

3. Regional Operations Center

The ROC Operator operates all BAIFA-operated Express Lanes facilities, including the SM-101 South and North Segments. This task is paid for on a fixed, monthly lump sum basis

The ROC Operator shall provide staff to operate the Express Lanes regional operations center Monday through Friday, from 4:30 AM to 8:30 PM.

Staff shall be required to coordinate and interface with several other agencies, including but not limited to MTC staff and contractors, Caltrans District 4 TMC operators and maintenance, CHP, Bay Area Tolling Authority (BATA), SMCELJPA, and the FasTrak® RCSC. The ROC Operator also shall coordinate with the Toll System Integrator (TSI).

The ROC Operator staff shall follow procedures and processes in the Express Lanes Operations Center Standard Operating Procedures (SOPs). The ROC Operator shall also work with MTC and other contractors to suggest modifications or to update the SOPs as the need arises. The ROC Operator shall be responsible for ensuring its staff follow the SOPs.

3.1 Express Lanes Operations

- Respond to, communicate, and document roadway incidents occurring within BAIFA's Express Lanes Roadway Network (Continually throughout the shift.) and other entities that operate Express Lanes contracting for ROC services including the SMCELJPA.
- Identify, communicate, and document Toll Collection System (TCS) roadway hardware issues and failures (Continually throughout the shift.)
- Identify, communicate, and document Toll Collection System (TCS) system and application issues and failures (Continually throughout the shift.)
- Monitor toll rates, roadway and traffic conditions, and MTC's Dynamic Pricing Algorithm using online and system-based tools such as CCTV feeds, Express Lanes.
- Network Host Application tools and reports, CHP's Computer Aided Dispatch, and 511 (Continually throughout the shift).
- Monitor for, investigate, and report issues related to the TCS trip building, image processing, and toll rate assignment (Continually throughout the shift).
- Perform manual toll rate overrides based on current traffic conditions and per SOPs
- Coordinate with MTC, Caltrans, SMCELJPA and CHP on incident response, including opening or closing the express lane to traffic.
- Coordinate with MTC and the Toll System Integrator (TSI) to resolve equipment and system issues.
- Coordinate with MTC, SMCELJPA, the TSI, and consultants to respond to inquiries from other agencies or the public.
- Prepare end of shift reports (Daily).
- Prepare daily, weekly, and monthly reports as requested by MTC.

3.2 System Checks & Maintenance

- Perform system functions testing and evidence package review following TCS build deployments and other modifications to the system
- Perform ad-hoc and scheduled system audits and report findings to MTC per SOPs.
- Prepare post deployment build test plan
- Prepare weekly system audit summary reports

3.3 Data Analysis and Performance Monitoring

- Review TSI performance monitoring reports, including penalty calculation, and ensure compliance with TSI contract performance measures, including field maintenance activities such as response and repair times.

- Recommend TSI performance monitoring report approval.
- Review and recommend approval of TSI's annual performance audit of the TCS.
- Prepare trend analyses on traffic conditions, toll revenue, and system performance.

Deliverables

- Daily end of shift reports.
- Weekly system audit summary reports
- Daily, weekly, and monthly dashboard reports
- Trend analysis reports
- Approval Recommendation on TSI performance monitoring reports
- TSI annual performance audit report

4. Backhaul and Roadway Maintenance

This section describes the management and maintenance services, including some potential construction services, to be provided under this scope of services. The scope of work will be provided by BAIFA's contractors on behalf of BACKHAUL MAINTENANCE and ROADWAY CONTRACTOR ('BMR Contractor'). BMR Contractor shall provide day-to-day and as-needed comprehensive management and maintenance services, including some construction services, of express lanes highway infrastructure on the SM-101 Express Lanes Project ('PROJECT'), overseen by BAIFA's BMR Contractor Project Manager. All work shall be performed in compliance with proper state licensing requirements. Required tasks include:

- Update Project Management Plan (PMP)
- Perform System Assessment
- Update BAIFA's existing Maintenance Plan
- Update BAIFA's existing Maintenance On-line Management System
- Perform preventive and corrective maintenance
- Perform task orders or additional work for major/non-routine repairs, including improvements on any of the express lane segments as part of the PROJECT

4.1 General Requirements

Within thirty (30) days of the contract execution, BMR Contractor shall update the PMP. All comments must be addressed to the satisfaction of the BAIFA Project Manager prior to completion of the document and the payment of the relevant invoice item. BMR Contractor will make updates to the PMP, as deemed necessary by the BAIFA Project Manager.

BMR Contractor shall designate appropriate staff throughout the life of the contract. The Plan must include staffing levels and an organizational chart depicting responsibilities. BMR Contractor shall ensure that any employee replacement meets or exceeds the qualifications set forth in the plan.

BMR Contractor shall develop a comprehensive, well-defined, written set of Quality Control (QC) review procedures and activities aimed at delivering products and services that meet or exceed BAIFA's expectations. The plan will identify the organization or individuals responsible for quality control and the specific procedures used to ensure delivery of a quality product and workmanship, at a level that is higher of Caltrans or industry standards.

BMR Contractor shall develop a process for foreseeing potential project risks, estimating impacts, and defining steps to respond to issues. BMR Contractor shall prepare a project issues tracking matrix using a web-based issue tracking tool that documents key project developments, current issues and action items, and their status. The tracking matrix shall be maintained so that BAIFA has electronic access and read-write capabilities to the most current version at all times.

4.2 Maintenance Planning

A System Assessment for each segment shall be performed at the beginning and end of the project to determine the inventory condition of the items listed in

Table 1 – Roadway Maintenance Services.

- BMR Contractor shall conduct and submit an initial System Assessment within 60 days after the any new Express Lane segment to identify and describe the current condition of the express lanes facilities.
- Any areas within the project boundaries that may need improvement shall be identified within a “Maintenance Upgrade Plan.”
- The format of the reports, and how the measurements will be calculated or rated, shall be proposed by BMR Contractor and ultimately approved by the BAIFA Project Manager.
- A second system assessment shall occur at the end of a three (3) year period or at the end of the contract, whichever occurs first, to evaluate whether the condition of the facilities has improved or declined since BMR Contractor began this project.

Within thirty (30) days of the contract execution, BMR Contractor shall update the maintenance plan, and deliver to BAIFA, detailing the scope of services and how they will be met by BMR Contractor. A draft plan containing preventive maintenance activities shall be included along with a description of the procedures for each maintenance activity listed in

Table 1 – Roadway Maintenance Services. All comments must be addressed to the satisfaction of the Project Manager prior to completion of the document and the payment of relevant invoice item. The Maintenance Plan shall also address, but shall not be limited to, the following topics:

- Maintenance (Preventive, Predictive, Corrective and Emergency), including for fiber optic cables, conduits, pull boxes, vaults and backhaul field cabinets
- Lane Closure Procedures
- Traffic Safety
- Communication (Reports, Status Meetings, Coordination with other contractors and agencies)
- Continuity Plan in event of natural disaster/pandemic
- Any changes to
- Table 1 – Roadway Maintenance Services shall be added, along with its appropriate maintenance activities.
- Method and frequency of QC

- Risk Management Tracking Matrix
- Covid-19 Safety Plan

BMR Contractor shall also produce every three months (quarterly), the list of completed maintenance tasks and a three-month look ahead of the scheduled maintenance inspections or repairs they plan to perform in the next three months.

4.3 Maintenance and Inventory Management

BMR Contractor shall work with the BAIFA project manager and the SMCELJPA to provide PROJECT information to allow SMCELJPA to integrate the PROJECT into SMCELJPA's Maintenance On-Line Management System (MOMS) that will track work performed by BMR Contractor.

The Normal system administration tasks such as database maintenance, backup and restore shall apply to MOMS to ensure efficient operation and prevent loss of data. The MOMS software shall include notes on length of asset viability and recommendations on asset upgrades and preservation and shall track at a minimum the following information:

Supplier Information - Information about each supplier including contact information including company name, name of contact person, company address, telephone number(s), fax number, and email address.

Equipment Inventory - Information on all parts and components within the system. Track each part and component by supplier, by location, serial number, and part/component ID using RFID technology.

Parts and Component Usage - Track the disbursement of parts and components to technicians for use in making repairs. Stock shall be identified by location, such as warehouse, service van, repair shop, or any other location where equipment is stored. Location also extends to the lane (shoulder, roadside) where the equipment is installed. Each item shall have a status, such as "available", "damaged", "on-hold" or others as needed by the operation. All parts and components shall be tracked by serial numbers. Information shall be maintained so parts associated with a work order can be tracked.

System Statistics - The system shall track and calculate performance statistics such as Average Response Time (ARS), Mean Time Between Failures (MTBF) and Mean Time to Repair (MTTR) of various system functions for each of the priority levels.

Consumable Inventory - Maintain information on consumables such as pavement markers or any other items that are ordered in bulk and do not have an individual serial number.

Reports - All information within the system must be provided to designated BAIFA personnel using a standard report generator package. The reports shall be in a format approved by BAIFA.

Work Order Management - Track each work order from the time a Service Request is made until the Work Order is closed out. It shall also provide for the management of Preventative Maintenance tasks and schedules. The system shall at a minimum include the following information from a Service Request – caller's name, telephone number and e-mail address; date and time of call; description of problem by caller; location of problem; technician assigned; time of technician arrival at site; description of technician action; time

of completion of work; parts used with serial numbers; and any other relevant information about the work order.

Asset Registry Spreadsheet – Include information from the Asset Registry Spreadsheet provided by the SMCELJPA in MOMS, and have the ability to export data, including spare parts inventory, from MOMS into the Asset Registry Spreadsheet. Complete and update all information included in the Asset Registry Spreadsheet provided by the SMCELJPA and submit with monthly invoices. BMR Contractor shall coordinate with the SMCELJPA Project Manager and the BAIFA Project Manager to provide and update information.

The BMR Contractor shall stock, keep and maintain in the Bay Area, a sufficient supply of parts and materials, including a 26,000 foot reel of fiber and other materials requiring long lead times, tools or other equipment as may be necessary to make immediate replacements and repairs, including emergency repairs, to items listed in Table 1 – Roadway Maintenance Services. BMR Contractor shall be required to perform a comprehensive inventory and coordinate the relocation of the spare parts inventory wherever the parts are located to the BMR Contractor’s work site. This work shall be performed at no additional cost to BAIFA or SMCELJPA.

BMR Contractor shall update the procedure for managing inventory of spare parts and equipment in a secure manner that utilizes RFID technology, or other approved equivalent secure identification method. BMR Contractor shall also develop a database to capture information on spare parts and provided access to BAIFA. BMR Contractor may use an existing inventory management database or system as long as it includes, but is not limited to, the information described below:

- A complete inventory of all equipment and components;
- Equipment/component description;
- Manufacturer’s serial/model/identification number;
- Purchase price;
- Date of purchase;
- Expected Mean Time Between Failures;
- Date of retirement if applicable;
- Location of equipment/component;
- Warranty information;
- Warranty start and expiration date;
- Vendor contact information, and
- Reporting capabilities.

BMR Contractor shall manage spare parts and equipment on a “first in, first out” basis so as to maximize the availability of manufacturer’s warranties that commence on delivery. BMR Contractor shall test the initial functionality of all spare parts and equipment and shall return all defective spare parts and equipment to their respective manufacturers for replacement. SMCELJPA shall own the spare parts and BMR Contractor shall keep a sufficient inventory of spare parts to allow for the replacement of failed components, and components which in its judgment need replacement. Components that have been repaired, as opposed to replaced, more than three times shall be replaced at SMCELJPA’s option.

Spare parts shall be interchangeable with their corresponding part, equal in quality to original equipment parts. BMR Contractor shall be responsible for the purchase, delivery, comprehensive testing and maintenance of all spare parts. BMR Contractor shall be reimbursed, at cost, for all spare parts including delivery costs and shall submit these costs to BAIFA as part of the monthly invoice after the spare parts have been received and successfully tested by BMR Contractor. BMR Contractor shall obtain the best competitive price for all spare parts and provide verification of this effort upon request of BAIFA.

BMR Contractor shall present to BAIFA a listing of the actual inventory. The list shall be supplied on a monthly basis or more frequently upon request by BAIFA. BMR Contractor shall be responsible for maintaining warranty information on all spare parts and conform with manufacturer's warranty requirements.

A detailed list of all spare parts with manufacturer name, model number, quantities required, purchase date and warranty information must be provided by BMR Contractor, extracted from MOMS, and submitted to BAIFA at the end or termination of the TSI Agreement.

4.4 Routine/Preventive Maintenance

The BMR Contractor shall develop a comprehensive preventive maintenance plan that includes scheduling and performing tasks on a routine basis to maintain Express Lanes infrastructure to ensure optimal performance of the Express Lanes.

Scheduled preventive maintenance shall consist of, but is not limited to, inspection, testing, cleaning, lubricating, painting, checking for vibration, adjustment, repairs, tightening connections and the replacement of field installable parts, and all actions necessary to prevent (equipment) failures and extend its useful life. Such maintenance shall be performed in accordance with the component manufacturer's recommendations.

Preventive maintenance shall also include the survey and visual inspection of equipment without actually physically opening the equipment. For instance, inspection of roadway signs, cabinets, markings or pavement would consist of verifying the infrastructure is in satisfactory condition.

Preventive maintenance schedules, and the types of preventive maintenance performed on each of the services listed are subject to the approval of the BAIFA Project Manager. No piece of equipment shall be removed from service for preventive maintenance during operational periods without prior approval of the BAIFA Project Manager.

Beginning with the calendar month that follows the 60th day after opening of an express lane segment, BMR Contractor shall also produce a Three-Month Maintenance Report.

Table 1 – Roadway Maintenance Services, specifies the list of items on the on the SM-101 corridor to be maintained, the description of each item, estimated quantity, inspection frequency, maintenance and inspection and/or list of repairs, and the priority which shall be given to each item listed.

Table 1 – Roadway Maintenance Services can be amended before additional segments become operational or as requested by the BAIFA project manager.

At BAIFA’s discretion, BAIFA reserves the right to perform any preventive maintenance with its own forces.

Table 1 – Roadway Maintenance Services

#	Item	Description	Maintenance and Inspection Description and/or List of Repairs Included
1	CHP Observation Area	Pavement and median barrier for CHP observation pads along Express Lanes segments for CHP enforcement.	Inspect for any damage or vandalism to CHP Observation Area. Repairs to be performed on time and materials.
2	Conduit	Conduit for providing connections to power and communications and sources for Express Lanes. Lateral conduit for TSI maintained by TSI	Inspect visually for any damage or vandalism to conduit. Repairs to be performed on time and materials.
3	Fixed Barrier-Mounted or Roadside Signs	Static sign panels located in median or shoulders that convey information related to Express Lanes toll collection. BMR Contractor shall be able to replace and fabricate signs for emergencies or special requests.	Inspect visually for any damage or vandalism to signs. Restore any signs that were knocked down or damaged (estimated 10 incidents requiring repair per year).
4	Fixed Signs Mounted on Overhead Sign Structures	Static overhead sign panels, on overhead sign structures, that convey information related to Express Lanes toll collection. BMR Contractor shall be able to replace and fabricate signs for emergencies or special requests.	Inspect visually for any damage or vandalism to signs. Restore any signs that were knocked down or damaged (estimated 5 incidents requiring repair per year).

#	Item	Description	Maintenance and Inspection Description and/or List of Repairs Included
5	Luminaire	Luminaire shall include all LED lights and assembly that houses LED lights and controls light being emitted, including all appurtenances such as photoelectric units and glare shields, mounted on express lanes infrastructure lighting standards and on overhead sign structures, or other structures, installed for the Express Lanes.	Check for proper operation and timer/schedule and if lights are burned out or assembly parts are broken/need replacement. Replace broken lights and assemblies as necessary. Other repairs to be performed on time and materials.
6	Maintenance Vehicle PullOut	Roadside pull-out area for Express Lanes for maintenance vehicles shall be kept clean and accessible for maintenance vehicles.	Inspect for any damage, or for abandoned vehicles/debris. Remove any debris and report abandoned vehicles to CHP.
7	Object Markers	Roadside object markers to demarcate underground fiber optic lines.	Inspect visually for any damage or vandalism or missing markers. Replace in kind as needed.
8	Painting	Some sign structures are painted.	Inspect for large amounts of paint scraped off painted tubular sign structures. Apply touch up paint as required.
9	Pull Boxes	Pull boxes require shared maintenance between various contractors on the Express Lanes (backhaul, TSI, Caltrans) and are located in median, roadside, and/or buried. Pull boxes in paved areas are spot welded and pull boxes located outside shoulder in landscaping areas are buried in dirt.	Inspect for any damage or vandalism to pull box or detector handholes. Check for missing lids, damaged frames, markers or signs of wire theft or other signs of vandalism or damage due to rodents. Replace any missing or damaged pull box lids with appropriately label lid. Resecure pull box lids in paved areas. Other repairs to

#	Item	Description	Maintenance and Inspection Description and/or List of Repairs Included
		Buried utilities will be identified using an electronic underground utility marker. Includes detector handholes. BMR Contractor shall coordinate all inspection and maintenance activities with other contractors sharing the pull boxes.	be performed on time and materials.
10	Retaining Wall	Retaining wall	Inspect for any damage or vandalism to retaining wall. Repairs to be performed on time and materials.
11	Roadside Cabinets: a) PG&E Service Enclosures; b) Backhaul Network Hubs	a) Service enclosure cabinets for PG&E power. b) Roadside cabinets housing backhaul network hubs, including HVAC and UPS systems	Maintain and preserve all cabinets and foundation pads in sound condition, clean and uniform in appearance. Inspect for any damage or vandalism to cabinets (including HVAC and UPS systems). Check cabinets are locked and secured without gaps in door. Repairs to be performed on time and materials.
12	Sign structures	Sign structures mounted on median or installed on roadside that support all overhead signs and lights, such as overhead toll gantries, truss sign structures, tubular sign structures, double overhead (butterfly) sign structures, sign bridge trusses.	Maintain and preserve all sign structures and substructures in sound condition, clean and uniform in appearance and free from water leaks and corrosions. Substructures are structural elements such as structural foundations and footings. Inspect for any damage or vandalism to sign structures. Repairs to be performed on time and materials.

#	Item	Description	Maintenance and Inspection Description and/or List of Repairs Included
13	Transformers	Transformers mounted on Variable Toll Message Signs, Overhead Signs inside pull boxes. Transformers mounted on H frames in the roadside.	Inspect for any damage or vandalism to transformer panel, connections, conduit or H-frame. Check transformer is properly secured on H frame. Repairs to be performed on time and materials.
14	Vandalism	Inspect for stickers or graffiti on Express Lanes infrastructure in addition to vandalism detailed under other items.	Check for stickers and graffiti. Remove stickers and graffiti on Express Lanes infrastructure.
15	Vaults	Subsurface Vaults for fiber optic cable.	Inspect for any damage or vandalism to vault lids. Check for missing lids or signs of wire theft or other signs. Repairs to be performed on time and materials.
16	Backhaul Fiber Optic Cables and Splice Capsules	144-strand fiber optic Backhaul cable Fiber laterals connected to Backhaul hub sites	Inspect for any obvious damage or vandalism to fiber optic cables, splice capsules, conduit plugs, and tracer wire. Repairs to be performed on time and materials.

4.5 Corrective (as-needed) Maintenance

Corrective maintenance activities shall be as requested by the BAIFA PM. Corrective maintenance shall consist of all unscheduled actions necessary to diagnose and correct malfunctions and failures, due to wire theft/vandalism, knockdowns, etc., within the scope of services listed in

Table 1 – Roadway Maintenance Services.

Corrective maintenance on express lanes segments shall also include additional as-needed repairs or improvements to the field elements of backhaul and the toll collection system field infrastructure and other work to improve operations on the SM-101 Express Lanes, including some construction work, not included within the highway maintenance scope of services listed in

Table 1 – Roadway Maintenance Services. This additional work shall be negotiated separately pursuant to BAIFA-initiated task orders

Contractor shall provide BAIFA an estimated cost based on the approved rates in the contract, and work shall proceed after SMCELJPA gives approval. At BAIFA’s discretion, BAIFA reserves the right to perform any major repairs outside of this procurement, either with their own forces or under separate contract.

Contractor shall immediately notify the BAIFA Project Manager, CHP, SMCELJPA and local authorities regarding wire theft and fiber optic lines and shall be readily available to assist in recovery efforts. Contractor shall also immediately notify BAIFA Project Manager, SMCELJPA and Toll System Integrator if there are any potential risks to performance of the toll collection system.

The Contractor shall repair or replace any part(s) that become unsuitable for continued use while maintaining all original specified performance requirements. Such repair or replacement shall be performed so that any equipment shall not be out of service for more than the allowed down time for repair.

Contractor must notify BAIFA or its agents whenever a corrective maintenance work order has been completed so that the work may be inspected by BAIFA or its agents, if elected to do so. If BAIFA or its agents determine any repair was not satisfactorily completed, Contractor must redo the repair work to the satisfaction of the BAIFA Project Manager.

4.6 Ad Hoc/Additional Services

During the entire contract period, the Contractor may be required to perform tasks related to optimize and improve the SM-101 Express Lane segments, that are outside the scope of normal maintenance services provided under the contract. These projects cover corrective maintenance repairs (see section 4.5) along with any other projects not included in any of the scope of services and are not recurring in nature. Work within this category shall be negotiated separately between the Contractor and BAIFA using the resource rates agreed upon in the contract.

When requested by BAIFA, the Contractor shall prepare a proposal to perform the requested task. This proposal shall include scope, approach, schedule and cost. BAIFA, with SMCELJPA’s approval, may negotiate the task order with the Contractor. In that event, the agreed upon scope, payment and schedule shall be included in a task order signed by both parties. Alternatively, BAIFA may with SMCELJPA’s approval choose to procure the task through a separate procurement.

Listed below are examples of potential services to be performed under BAIFA requested task orders to improve the operations of SM-101 Express Lanes include:

- Installation of overhead sign structure sign panel
- Installation of roadside signs
- Installation of pavement markers, delineators, traffic stripes and pavement markings

- Repair/replace damaged lighting standards/overhead sign structures
- Repair/replace damaged cabinets
- Repair/replace missing pull box lids and secure to prevent wire theft
- Repair/replace, splicing, terminating and testing fiber optic cables and other fiber optic infrastructure
- Prepare as-builts/redlines as requested
- Respond, track, mark, report underground utilities as part of the Underground Service Alert (USA) requests or as requested by BAIFA staff

5. Backhaul Logical Network Maintenance

This work consists of maintenance of the Express Lane Network Host systems as well as all elements of the Backhaul logical network, including the hubs – to serve the PROJECT. The scope also includes leased line service provision at backhaul network hubs.

- Host maintenance (Beale, Benicia and Caltrans D4) – allocated to the SM-101 segments
- Logical network programming of field devices
- AT&T 1 GB leased line service at South Hub (Embarcadero Rd) plus North hub (SR-92/Millbrae)
- BART 101 lease

Maintenance services will be provided by a consultant or contractor on behalf of BAIFA and invoiced on a monthly lump sum basis.

The consultant shall provide direct management of the Backhaul Host systems to include maintenance of the Host systems at Beale, Benicia and Caltrans D4.

The consultant shall provide direct management of the Backhaul logical network to include Backhaul network programming of field devices alongside the SM-101 Corridor.

5.1 Other Pass-Through Backhaul Services

BAIFA will also contract for and invoice SMCELJPA for the following services on a monthly fixed fee basis:

- AT&T
- Digital Realty
- BART SM-101 Lease
- CHP MAZEPP

Appendix B - Dispute Resolution

BAIFA and SMCELJPA agree to resolve disputes concerning this Agreement based on the following dispute resolution principles.

1. Informal Dispute Resolution

BAIFA and SMCELJPA agree to attempt to resolve informally all disputes. In the event of a dispute, BAIFA and/or SMCELJPA shall provide notice in writing about the substance of the dispute. BAIFA and SMCELJPA representatives shall meet and confer by exchanging written positions on the dispute, and by meeting in person thereafter to discuss and resolve the dispute. If those representatives are unable to resolve the dispute, the chief executives of BAIFA and SMCELJPA shall be informed of the substance of the dispute and provided all writings that have been exchanged regarding the dispute. The chief executives shall meet and confer in person or by telephone concerning the dispute and may choose to exchange letters in preparation for the meet and confer.

2. Mediation

If the dispute is not resolved in paragraph 1, Informal Dispute Resolution, prior to the initiation of any legal proceedings, BAIFA and SMCELJPA shall avail themselves of mediation, arbitration (binding or non-binding), or any other dispute resolution resource (collectively "Alternate Dispute Resolution (ADR) processes") as agreed by the parties in relation to the particular dispute. All procedures and methodologies in ADR processes shall be by mutual consent of BAIFA and SMCELJPA, including but not limited to the choice of the mediator or arbitrator ("neutral"), dates and times and timelines, whether documents are exchanged in preparation for the ADR session, etc. Fees and expenses of the neutral will be borne equally, unless otherwise agreed. BAIFA and SMCELJPA may choose their respective representation, except that BAIFA and SMCELJPA must agree on the question of whether lawyers are present or not. The entire process shall be confidential and treated as a compromise negotiation for purposes of federal and state rules of evidence. Once ADR processes are agreed on, the BAIFA and SMCELJPA shall agree on the identity of the neutral within 30 calendar days of agreeing on the ADR process. BAIFA and SMCELJPA shall not unreasonably withhold consent as to the choice of the neutral. Unless the schedule of the neutral does not permit, or unless otherwise agreed to by the Parties, the Parties shall have their ADR process completed within 60 calendar days after agreement on the choice of the neutral.

3. Legal Action

No formal legal action may be commenced by either PARTY until either there has been a failure by the other PARTY to participate meaningfully in the process described in paragraph 2 above, or more than thirty (30) calendar days have elapsed from the ADR session.

Appendix C – Summary of Estimated Costs

Agreement Total (FY21-FY29) - Southern & Northern Segment	
Scope Area	Estimate
Program Management - Variable	\$ 7,065,656
Toll Systems - Fixed	\$ 13,087,439
Toll Systems - Variable	\$ 21,841,440
Regional Operations Center (ROC) - Fixed	\$ 3,098,951
Civil - Fixed	\$ 1,745,081
Civil - Variable	\$ 12,343,731
Backhaul - Fixed	\$ 1,925,392
Contingency	\$ 3,055,384
Agreement Total	\$ 64,163,074

Note that the costs provided above are estimated costs. SMCELJPA will be responsible for actual costs related to the operation of the PROJECT. If costs are projected to exceed the estimates above, BAIFA and SMCELJPA shall discuss the costs at the OMT to mitigate overruns, determine a new budget amount, or reduce service as appropriate to keep within the existing budget.

Appendix D – Privacy and Security of Data

The PARTIES will have access to personally identifiable information in connection with the performance of the Agreement (“PII”). PII is any information that is collected or maintained by BAIFA or SMCELJPA that identifies or describes a person or can be directly linked to a specific individual, including but not limited to FasTrak[®] account number, toll tag number, license plate number, and travel pattern data. The following special conditions related to the confidentiality and use of PII apply to this Agreement:

1. Right to Audit

SMCELJPA shall permit BAIFA and its authorized representatives to audit and inspect: (i) SMCELJPA’s facilities where PII is stored or maintained, including third party hosting or service provider systems; (ii) any computerized systems used to share, disseminate or otherwise exchange PII; and (iii) SMCELJPA’s security practices and procedures, data protection, business continuity and recovery facilities, resources, plans and procedures. The audit and inspection rights hereunder shall be for the purpose of verifying SMCELJPA’s compliance with this Agreement, and all applicable laws.

BAIFA shall permit SMCELJPA and its authorized representatives to audit and inspect: (i) BAIFA’s facilities where PII is stored or maintained, including third party hosting or service provider systems; (ii) any computerized systems used to share, disseminate or otherwise exchange PII; and (iii) BAIFA’s security practices and procedures, data protection, business continuity and recovery facilities, resources, plans and procedures. The audit and inspection rights hereunder shall be for the purpose of verifying BAIFA’s compliance with this Agreement, and all applicable laws.

For a third-party multi-tenant cloud service (e.g. Microsoft Azure or Amazon Web Services), the PARTIES’ respective obligations to permit an audit shall be satisfied by the provision of the cloud service’s most recent third party audit compliance, certifications and assurance results for the PaaS and SaaS offerings, including ISO 27001, SSAE 16 or 18 SOC 1, SOC 2, SOC 3, PCI-DSS, and FedRAMP as applicable.

2. Protecting PII

All PII made available to or independently obtained by the PARTIES in connection with this Agreement shall be protected by the PARTIES from unauthorized use and disclosure through the observance of adequate security measures consistent with industry standards and technology best practices. This includes, but is not limited to, the secure transport, transmission and storage of PII used or acquired in the performance of this Agreement. All PII shall be encrypted during transport, transmission and in storage.

3. Compliance with Statutes and Regulations

The PARTIES agree to comply with all applicable statutes, rules, regulations and orders of the United States, and the State of California relating to information handling and confidentiality of PII, including but not limited to Streets and Highways Code Section 31490.

4. Contractors

Prior to any disclosure by SMCELJPA of PII to a SMCELJPA contractor or prior to any work being done by such contractor that entails receipt of PII, SMCELJPA agrees to require such contractor to sign an agreement in substantially equivalent terms, offering the same or better protections, as this Appendix, binding the contractor to comply with its provisions.

Such agreement shall also include (a) a requirement for the contractor to obtain Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to either PARTY and having minimum limits of \$2,000,000 per claim and shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage, first party privacy coverage and media coverage; Such cyber risk coverages shall include liability arising from the loss, theft or failure to protect, or unauthorized acquisition of personally identifiable information or confidential information; and (b) a requirement for the contractor to guarantee the following in substantially equivalent terms, offering the same or better protections:

Contractor shall not, except as authorized by SMCELJPA or required by its duties by law, reveal or divulge to any person or entity any PII which becomes known to it during the term of this Agreement.

Contractor shall not use or attempt to use PII in any manner which may injure or cause loss, either directly or indirectly, to BAIFA or SMCELJPA.

Contractor shall not use or process PII for any purpose other than performance of the scope of work set forth in this Agreement.

Contractor shall ensure that all PII that is stored, processed, or transmitted is encrypted, using at least then-current best industry practices (or encryption methods mandated by law, whichever provides higher levels of protection).

Contractor shall comply, and shall cause its employees, representatives, agents and contractors to comply, with such directions as SMCELJPA may make to ensure the safeguarding or confidentiality of PII.

Contractor shall, if requested by BAIFA or SMCELJPA, sign an information security and confidentiality agreement provided by BAIFA or SMCELJPA and attest that its employees, representatives, agents, and contractors involved in the performance of this Agreement shall be bound by terms of a confidentiality agreement with BAIFA or SMCELJPA substantially similar in nature.

Should it become unfeasible for SMCELJPA to negotiate any of the terms required by this Section 4, it shall request a waiver from BAIFA, which shall be granted at BAIFA's sole discretion, which shall not be unreasonably withheld. Such waiver request shall include efforts made to include the language as well as proposed alternative language.

5. Notice of Security Breach

The PARTIES shall immediately notify each other when either PARTY becomes aware that there may have been a potential breach in security which has or could have resulted in

unauthorized access to PII relating to PROJECT. For purposes of this section, immediately is defined as within two hours of discovery. BAIFA's contacts for such notification are as follows:

Privacy Officer

privacyofficer@bayareametro.gov

Chief Information Security Officer

pkant@bayareametro.gov

SMCELJPA's contact for such notification is as follows:

Mike Torres, Privacy Officer

mtorres@samtrans.com

Appendix E – Toll System Performance Requirements and Penalty Structure

The following Attachment 2 of Change Order 15 to the BAIFA/TransCore, LP agreement are the toll system performance requirements and associated penalties BAIFA assesses to its TSI.

Attachment F



BAIFA Express Lane Network Toll Collection System

Performance Requirements and Penalties

Version 4

October 2020

Document Revision History

Project: MTC Express Lane Network, Toll System Management		
Title: BAIFA Express Lane Network Toll Collection System Integration & Maintenance Agreement - Attachment F – Performance Requirements and Penalties		
Version	Purpose/Change Description	Date
V1	Performance Requirements and Penalties for TSI Agreement (Scope Attachment F)	2014-08
V2	Performance Requirements and Milestone Payments Refinement (Change Order #3)	2017- 04
V3	Performance Requirements and Penalties Refinement (Change Order #09)	2019 - 07
V4	Complete revision of Performance Requirements and Penalties (Change Order #15)	2020 - 10

Table of Contents

Introduction & Purpose	1
TOLL COLLECTION SYSTEM CAPACITY REQUIREMENTS	1
1. MEASUREMENT & APPLICABILITY	2
2. TOLL COLLECTION SYSTEM PERFORMANCE REQUIREMENTS	5
3. OPERATION EQUIPMENT AVAILABILITY AND MAINTENANCE RESPONSE	13

Table of Figures

Table 1: Toll System Capacity and other Minimum Requirements	1
Table 2: Read Point Accuracy and Performance	5
Table 3: Host Accuracy and Performance Transaction Processing	11
Table 4: Operational Equipment Availability.....	13
Table 5: Maintenance Response Requirements.....	15

Introduction & Purpose

This document sets forth the Performance Requirements for the Toll Collection System (TCS). The Performance Requirements are set as the minimum level of performance against which the TCS will be measured during the warranty and maintenance periods of the Agreement.

Regardless of whether or not a Corridor maintenance period has begun, BAIFA will assess penalties for failure by the Toll System Integrator (TSI) to comply with the Performance Requirements beginning 90 days after Tolling Commencement on the first Corridor, and 60 days after Tolling Commencement on each subsequent Corridor.

Toll Collection System Capacity Requirements

Per Attachment A-1, System Requirements, the TCS must have the ability to read, transmit, process and store data at the volumes and rates to meet these performance requirements. This information is duplicated in Table 1 for reference:

Table 1: Toll System Capacity and other Minimum Requirements

ID	Description	Capacity/Measure
Per Read Point / Per Lane		
	Vehicles (Lane Transactions) per Hour	2,200 minimum
	Vehicles (Lane Transactions) per Day	50,000 minimum
	Vehicle Speed	
	AVD/AVC	0 mph to 100 mph
	AVI	0 mph to 100 mph
	VES	0 mph to 100 mph
	TMS	5 mph to 100 mph
	Vehicle Separation	
	AVD/AVC	2 ft. minimum
	VES	4 ft. minimum
Express Lane Host (Tier 1 Projects)		
	Lane Transactions per Day	1,520,000 minimum
	Trip Transactions per Day	380,000 minimum
	Trip Processing Time (hours within the same calendar day as first Read Point Lane Transaction)	6 hours maximum

1. Measurement & Applicability

- 1.1 Performance Requirements are defined as a Minimum Performance Measure.
- 1.2 The Read Point Performance Requirements shown in Table 2 shall apply:
 - 1.2.1 During any active period during tolling hours.
 - 1.2.2 To all vehicles, including motorcycles, multiple axle vehicles, and vehicles pulling trailers.
 - 1.2.3 To vehicles traveling through a single or a multiple lane Read Point(s).
- 1.3 The TCS shall successfully display the correct toll rate information to all Variable Toll Message Signs (VTMS) as described in Attachment A-1, System Requirements.
- 1.4 The TCS shall include the tracking of all vehicles as described above in Section 1.2.2 and shall be capable of reporting any vehicle traveling on the Express Lane Network (ELN) for all Read Points.
 - 1.4.1 Record and report errors to the Host.
 - 1.4.2 Report all performance measures and deficiencies.
- 1.5 System Reporting

Performance Requirements shall be calculated by corridor and by Host and reported by corridor and by Host for any specified configurable period, which will initially be set to one day. The calculation shall be based on information automatically or manually entered into the Host computer comparing the actual parameter to the recorded parameter. Errors may be determined directly from Regional Customer Service Center (RCSC) reconciliation records, by observation, *SQL queries*, *Host alarms and reports including MOMS reports*, or inference based on historical information.

1.6 Table Definitions

The Requirements tables include the following column definitions:

- **Area:** The category to which this Performance Requirement and penalty applies.
- **Performance Requirement:** The requirement to be met by the TSI or TCS.
- **Minimum Performance Measure:** The quantification of the measurement for the Performance Requirement. This will translate into the time, frequency or accuracy of the area.
- **Measurement:** The time, frequency, and method of measurement. This also denotes the reporting and reporting date requirements.
- **Measurement Period/Increment:** This definition indicates the frequency or the increment of the measurement. If the measurement process is daily and the report is monthly, the TSI shall provide a cumulative method to quantify the area and requirement in a report.
- **Penalties:** The amount assessed for failure to meet or comply with the Performance Requirement and the limitations to the penalties.
- **Functions:** The following definitions are for the numbers used in the Functions column in Tables 4 and 5.

- Essential Roadside System (1) – Essential Roadside System are those functionalities and lane equipment or communications whose failure will result in the inability to collect revenue, accurately create Lane Transactions, or properly audit.
- Support Roadside System (2) – Support Roadside System are those functionalities and lane equipment or communications not included under essential Roadside System, which suffer failure.
- Essential Host Functions (3) – Essential Host functions are those functionalities and Host equipment or communications whose failure will result in the inability to collect revenue, accurately create Trip Transactions, or properly audit.
- Support Host Functions (4) – Support Host functions are those functionalities and Host equipment or communications not included under essential Host functions, which suffer failure.
- For Table 5, the following definitions apply:
 - Response Time – The elapsed time between notification or identification to the TSI (including but not limited to communications from the System or via telephone, email, text, or other electronic and mobile means) of issues and the time the maintenance technician provides a written response to BAIFA’s prescribed email list. The response shall use a form of written communication that includes a timestamp and shall be specific to the identified issue or item in need of repair. If the repair requires a lane closure subject to Caltrans approval, a lane closure request must be made within the Response Time, and the request must be for the earliest possible time. Details for the lane close request (including the date, time, location and type of the requested closure, the level of urgency, and the date and time of when the request was sent to Caltrans) shall be included in the Work Order.
 - Repair Time - The elapsed time between the end of the Response Time and the time necessary to repair the System in order to meet operational and performance requirements. If the repair requires a lane closure subject to Caltrans approval, the Repair Time shall expire at the end of the closure associated with the repair closure granted by Caltrans.

1.7 Stop Clock Conditions

- 1.7.1 At BAIFA's discretion, the TSI may be excused from its obligation to meet the Performance Requirements under certain conditions that shall be referred to as “Stop Clock Conditions.” Only the time during which such conditions are present shall be excluded from the timeframes used to measure the TSI’s performance as set forth below:
- 1.7.1.1 PG&E electrical power disruption lasting more than three hours.
 - 1.7.1.2 Loss of Backhaul Network availability, limited to the affected Toll Collection System functionalities dependent on the Backhaul Network.
- 1.7.2 In the event that a repair requires a lane closure, BAIFA shall excuse the TSI from penalty assessment related to that repair between the time that the TSI requests the lane closure and the end of the closure associated with the repair closure granted by

Caltrans. The stop clock condition only applies to the one lane closure request associated with a particular performance failure incident. BAIFA may, at its discretion, start a second stop clock condition if the TSI's first repair is unsuccessful.

1.7.3 In the event where Caltrans rejects a lane closure request, BAIFA has the right to demand TransCore put in an emergency lane closure request with Caltrans. The penalty clock will resume 24 hours from the time BAIFA requests an emergency lane closure and will stop upon TSI's request for an emergency lane closure.

1.8 Maximum penalties

1.8.1 BAIFA shall cap monthly penalties such that the total penalty payable by TransCore for each corridor shall not exceed 60% of the sum of the corridor's monthly maintenance billing plus an allocated portion of the Host's monthly maintenance billing, both found in Agreement, Attachment C-2, Maintenance. The Host billing amount allocated to each corridor maximum penalty cap shall be based on the percent of read points in each corridor to the total number of read points in all of BAIFA's operating corridors.

1.8.2 For designated performance requirements BAIFA shall cap each individual metric's monthly maximum at \$10,000 for the I-680 South, I-680 North, and I-880 corridors combined. With the introduction of San Mateo's 101 corridors, and all subsequent corridors, BAIFA shall increase each individual metric's monthly maximum by the same rate of increase in total monthly Maintenance fees by the addition of the new corridor. For example, the total monthly Maintenance fees for I-680 South, I-680 North, and I-880, including midday costs, is currently \$208,430.10. San Mateo 101's monthly Maintenance fees when the full corridor opens, will be \$104,423.52, which represents approximately 50.10% of the total O&M for I-680 South, I-680 North, and 880. We will use this ratio to increase the monthly maximum penalty for each designated performance requirement. For example, the maximum penalty of \$10,000 multiplied by 1.5010 equals \$15,010. The same process shall be used for each new corridor to calculate a new monthly maximum penalty.

For current contractual corridors, the maximum penalties for designated performance requirements shall be the following:

- Combined I-680 South, I-680 North, and I-880: \$10,000 per month*
- Combined I-680 South, I-680 North, I-880 & SM 101 southern segment: \$11,670 per month*
- Combined I-680 South, I-680 North, I-880, SM 101 both segments: \$15,010 per month*
- For future corridors the combined maximum penalty for all corridors shall be calculated as stipulated above.*

2. Toll Collection System Performance Requirements

Performance Requirements and associated penalties for non-compliance of the Performance Requirements by the TSI or the TCS shall take effect regardless of whether or not a Corridor maintenance period has begun, BAIFA will assess penalties for failure by the Toll System Integrator (TSI) to comply with the Performance Requirements beginning 90 days after Tolling Commencement on the first Corridor, and 60 days after Tolling Commencement on each subsequent Corridor. The Performance Requirements for the TCS appear in Tables 2 and 3 below. TSI shall capture measurement details in the Performance Measurement Manual.

Table 2: Read Point Accuracy and Performance

No.	Area	Performance Requirement	Minimum Performance Measure	Measurement	Measurement Period/Increment	Penalties																												
2.1	Read Point	<p>Date/Time Synchronization: All components of TCS shall be time-synchronized - as noted in the Host architecture design document, to within the defined variance thresholds based on device type per the following table to correctly synchronize all parts of all lane and trip transactions, images and video.</p> <table border="1"> <thead> <tr> <th>Component</th> <th>Time Resolution</th> <th>Query Time</th> <th>Sync Threshold</th> </tr> </thead> <tbody> <tr> <td>Lane controller</td> <td>Milliseconds</td> <td><10ms</td> <td>1/10 sec (100 ms)</td> </tr> <tr> <td>VTMS</td> <td>Seconds</td> <td>1-4 seconds</td> <td>5 sec (5000 ms)</td> </tr> <tr> <td>TMS (Wavetronix)</td> <td>Milliseconds</td> <td>50-100ms</td> <td>2 sec (2000 ms)</td> </tr> <tr> <td>DVAS Camera</td> <td>Seconds</td> <td>150-200ms</td> <td>3 sec (3000 ms)</td> </tr> <tr> <td>CCTV Camera</td> <td>Seconds</td> <td>100-500ms</td> <td>2 sec (2000 ms)</td> </tr> <tr> <td>Hub Switch</td> <td>Milliseconds</td> <td><10ms</td> <td>1/10 sec (100 ms)</td> </tr> </tbody> </table>	Component	Time Resolution	Query Time	Sync Threshold	Lane controller	Milliseconds	<10ms	1/10 sec (100 ms)	VTMS	Seconds	1-4 seconds	5 sec (5000 ms)	TMS (Wavetronix)	Milliseconds	50-100ms	2 sec (2000 ms)	DVAS Camera	Seconds	150-200ms	3 sec (3000 ms)	CCTV Camera	Seconds	100-500ms	2 sec (2000 ms)	Hub Switch	Milliseconds	<10ms	1/10 sec (100 ms)	Varies by Device (1/10 Second – 5 seconds) as per table in Performance Requirement column.	<p>Daily Process</p> <p>Monthly Performance Report</p> <p>TSI to provide report mechanism</p>	Per component per hour	<p>If the same device is out of sync for three consecutive months (the three months always start new from the first occurrence of a device), TransCore will pay a penalty of \$5 per instance of failure per device (over the entire period of failure and indefinitely until the problem is addressed)</p> <p>The maximum penalty is defined in Attachment F, Item #1.8.2.</p> <p>TransCore will not realize any penalty if problem is addressed by the end of the three consecutive months.</p>
Component	Time Resolution	Query Time	Sync Threshold																															
Lane controller	Milliseconds	<10ms	1/10 sec (100 ms)																															
VTMS	Seconds	1-4 seconds	5 sec (5000 ms)																															
TMS (Wavetronix)	Milliseconds	50-100ms	2 sec (2000 ms)																															
DVAS Camera	Seconds	150-200ms	3 sec (3000 ms)																															
CCTV Camera	Seconds	100-500ms	2 sec (2000 ms)																															
Hub Switch	Milliseconds	<10ms	1/10 sec (100 ms)																															
2.2	Lane Transactions	The TCS shall ensure that no Lane Transactions shall be lost even when associated with periods when communications with the Read Point is not available.	Zero Lane Transaction Loss	<p>Daily Process</p> <p>Monthly Performance Report</p> <p>TCS integrity reports shall be reconciled daily to assure that no Lane Transactions are lost during the non-zero toll rate periods. (TSI to provide report mechanism). In cases where there is communication interruption with the Host, all Lane Transactions shall be reconciled immediately upon restoration of connectivity.</p>	Per item over one-month period	\$5 per item (<i>lost transaction</i>) up to \$10,000 maximum penalty defined in Attachment F, Item #1.8.2.																												

No.	Area	Performance Requirement	Minimum Performance Measure	Measurement	Measurement Period/Increment	Penalties
				<p>The burden of proof is on BAIFA when it comes to lost transactions during system failures where there's no gap in the sequence ID but know without a doubt there were lost transactions during the outage period. BAIFA, with TSI support, will quantify the number of lost transactions as follows:</p> <ul style="list-style-type: none"> Calculate the average number of lane transactions that would have been created at the failed site for the same weekday/period during the previous four (4) weeks, excluding holidays. TransCore will combine both types of loss transactions and calculate total penalty using this sum 		
2.3	Read Point Lane Controller	Accurately detect cars and separate vehicles, read transponders mounted according to instructions in RCSC manual, take images, and properly associate the data to a Lane Transaction at the minimum performance measure.	99.5%	<p>Quarterly Process per Read Point</p> <p>Quarterly Summary Report</p> <p>The TCS shall conduct vehicle passes that detect a minimum number of transactions per Read Point to get to at least 99.5% of accurately detected parameters of Lane Transactions per Read Point in the measurement period. The following are the minimum number of vehicle passes for the respective corridors:</p> <p>I-680: Eight (8) transactions per Read Point (8 round trips driven around the corridor) Other corridors, including 680 North: Five (5) transactions per Read Point (5 loops)</p> <p>Measurement is performed and penalties incurred separately per device type (AVI reader or AVDS laser) The following are considerations:</p> <ol style="list-style-type: none"> If an AVI reader / AVDS laser failed and requires a Lane closure to fix, testing of other readers can proceed. If an AVI reader / AVDS laser is known to be failed and requires a lane closure during a test, the TSI shall test it as soon as it is repaired. If an AVI reader / AVDS laser failed on the first test and required a lane closure to fix, but then passes on second test, then no penalty for that specific AVI reader / AVDS laser. However, if AVI reader / AVDS laser failed on the second test, then the date of the first failure will be used to assess penalty. TSI may run tests over multiple days. AVI Reader testing requires testing different tag types (at least one T-21, 6C) and no duplication of settings (SOV, HOV2, HOV3+); e.g., do not use HOV3+ for all 5 runs. 	Per Read Point component over a period range within quarter (one to multiple days)	<p>\$200 per failed device per Read Point per business day the Read Point remains failed -</p> <p>The maximum penalty is defined in Attachment F, Item #1.8.2. Penalty calculation starts when it is identified the site is not working.</p>

No.	Area	Performance Requirement	Minimum Performance Measure	Measurement	Measurement Period/Increment	Penalties
2.4	Read Point Lane Controller	<i>Intentionally deleted as of CCO-15</i>				
2.5	Image Capture	Capture human readable rear license plate images as defined in Attachment A-1 Section 6.1, where both the plate number and the US state of registration are discernible.	99%	<p>Monthly Process (combined with Req 2.14 – Accuracy)</p> <p>Monthly Performance Report</p> <p>The TCS shall report the performance measure of capturing human readable images where both plate number and US state are discernible. The TSI shall compute the performance measure by dividing the number of non-human readable images by the total sample size defined below.</p> <p>The general approach is a performance analysis using the manual image review platform to determine human readability, adhering to the following to collect a sample size:</p> <ul style="list-style-type: none"> • First Wednesday of the month, at random times from 8am – 4pm • Each month TSI shall select one segment Northbound and one segment Southbound. TSI shall rotate through all live segments before repeating a segment. TSI shall collect and analyze 200 images per Read Point • Image confidence level can be anything • TSI shall create a separate queue in Manual Image Review (MIR) for this performance analysis. • Images reviewed for performance metric will not be billed to BAIFA. 	Per month	<p>\$5 per vehicle less than Minimum Performance Measure</p> <p>The maximum penalty is defined in Attachment F, Item #1.8.2.</p>

No.	Area	Performance Requirement	Minimum Performance Measure	Measurement	Measurement Period/Increment	Penalties
2.6.1	Occupancy Enforcement Beacon	<p>The lane controller shall accurately illuminate the correct number of beacon light(s) or display the accurate number on numeric beacons per toll tag occupancy switch as defined in the System Requirements at each Read Point for all express lane vehicles meeting TCS Business Requirements (e.g., Switchable Transponder set to HOV 3+ occupancy).</p> <p>This metric measures requirement 2.5.1.1: "the lane controller shall illuminate the beacon light immediately (within 10 milliseconds) upon a vehicle's exit from the second laser beam".</p>	Zero deviation from requirements	<p>Bi-annual process</p> <p>Video and Results Reporting (Submit with the Monthly Performance Summary Report every 6 months).</p> <p>The six (6) months cycle starts after the Operational Test Report is submitted for I-880 and new corridors. For I-680S, this cycle starts six months after the last quarterly measurement of metric 2.6.2. The general process is as follows (combined with 2.6.2):</p> <ul style="list-style-type: none"> • Vehicle passes (5 per corridor) with the following settings, one for each pass: valid SOV, HOV2, HOV3+; invalid SOV and invalid HOV • Mounted camera verifies beacon flash and/or correct numeric value • If the correct number of lights or the correct number on a numeric beacon is not accurately observed per the requirements, it will count as an error <p>For 2.6.1 only:</p> <ul style="list-style-type: none"> • The TSI shall produce a report displaying the vehicle pass transactions to show transponder used for testing, including, but not limited to, tag number, tag setting, tag status, and tag type • The TSI shall input accuracy observations from the vehicle passes manually to the report • Use the 2.6.1 system performance report to determine illumination latency • The report shall calculate the penalty 	Bi-annual	<p>\$500 per site per day discovered until fixed, excluding sites where the work order proves other roadside equipment failure impacting beacon's health and accuracy</p> <p>The maximum penalty is defined in Attachment F, Item #1.8.2.</p>

No.	Area	Performance Requirement	Minimum Performance Measure	Measurement	Measurement Period/Increment	Penalties
2.6.2	Occupancy Enforcement Beacon	The occupancy enforcement beacon shall have fully functioning illumination (i.e., bulbs, LEDs, etc.).	Zero total beacon failure	<p>Bi-annual process</p> <p>Video and Results Reporting (Submit with the Monthly Performance Summary Report every 6 months)</p> <p>The six (6) months cycle starts after the Operational Test Report is submitted for I-880 and new corridors. For I-680S, this cycle starts six months after the last quarterly measurement of metric 2.6.2.</p> <p>The general process is as follows (combined with 2.6.1):</p> <ul style="list-style-type: none"> Vehicle passes (5 per corridor) with the following settings, one for each pass: valid SOV, HOV2, HOV3+; invalid SOV and HOV Mounted camera verification of beacon flash Readability used to determine failure <p>For numeric beacons (LED) only, the TSI can also use CCTV recordings after hours to review visibility.</p> <p>Also, TSI or BAIFA (including the ROC) reported failures and subsequent work orders shall be used to calculate penalties.</p> <p>Penalties shall be calculated in the following manner using data inputs from all three collection methods stated above:</p> <ul style="list-style-type: none"> Each time BAIFA or TransCore notices a bulb is not illuminated and no work order exists yet, BAIFA will open a corrective maintenance MOMS work order Only one numeric beacon bulb being out does not generate a penalty – only a beacon needing replacement (e.g., one light not displaying for legacy beacon, or numbers not legible for numeric beacon) would constitute a failed beacon. Work orders will be reviewed for any exclusions, and those that remain will count as an error (failure) <p>Normal stop clock conditions apply.</p>	Bi-annual	<p>\$200 per day for failure to repair the beacon</p> <p>The maximum penalty is defined in Attachment F, Item #1.8.2.</p>
2.7	Traffic Monitoring System (TMS)	The TMS shall correctly quantify traffic at all times at every data collection location.	±15% of TMS traffic parameter for more than two 15-minute intervals within an hour. For devices located on the roadside	<p>Monthly Process</p> <p>Monthly Performance Report</p> <p>The TSI shall automate process comparing TMS with lane devices and supplement with visual verification as needed.</p> <p>The following inform the penalty calculation:</p>	Monthly	<p>\$350 per device per hour outside the Minimum Performance Measure</p> <p>The maximum penalty is defined in Attachment F, Item #1.8.2.</p>

No.	Area	Performance Requirement	Minimum Performance Measure	Measurement	Measurement Period/Increment	Penalties
			beyond 500 ft, the accuracy % shall vary on a case-by-case basis as approved by BAIFA. Prior to go-live, TransCore will work with BAIFA to determine an acceptable baseline for TMS locations more than 500 ft from the nearest read point. The percentage of allowable deviation between AVDS (laser) and TMS shall be based off this baseline.	<ul style="list-style-type: none"> • More than two 15-minute intervals within an hour exceeding the minimum performance measure counts as a failure for the hour. • 15-minute intervals with 40 or less AVDS counts are excluded from the calculation 		
2.8	Variable Toll Message Sign (VTMS)	The VTMS shall display the correct toll rate(s) and messages on posted by the TCS without distortion.	Zero unreadable error Repair error: Pricing sign repaired within 24 hours General Message sign repaired within 48 hours	Ad-hoc: BAIFA shall provide evidence of distortion Distortion is defined in the TCS Performance Monitoring Manual for both pricing and general message portions.	Per event	<p>\$100 per one (1) hour delay or fraction thereof for each pricing portion of the sign per month</p> <p>\$50 per one (1) hour delay or fraction thereof for each GM portion of the sign per month</p> <p>Penalties shall be assessed once an issue is found and reported by BAIFA with screenshots.</p> <p>The maximum penalty is defined in Attachment F, Item #1.8.2.</p>

Table 3: Host Accuracy and Performance Transaction Processing

No.	Area	Requirement	Minimum Performance Measure	Measurement	Measurement Period/Increment	Penalties
2.9	Toll Host	No Loss of Trip Transactions: The TCS shall ensure that no Trip Transactions will be lost even when associated with periods when communications with the RCSC is not available.	Zero Loss	Daily Process Monthly Performance Report TCS integrity reports shall be reconciled daily to assure that no Trip Transactions are lost. (TSI to provide report mechanism)	Per Trip Transaction over a one-month period	\$5 per lost Trip Transaction The maximum penalty is defined in Attachment F, Item #1.8.2.
2.10	Toll Host	Storage: The TCS shall have on-line storage capacity to apply retention of data per the System Requirements	See System Requirements	Monthly Process Monthly Performance Report TSI shall perform system checks on a monthly basis via preventive maintenance work order to confirm all data is being retained for the specified durations per the System Requirements (i.e., there is not early or late deletion of data – see Penalties section) and to report on used and available storage capacity. These checks will include verifying the amount of NAS/SAN storage. The TSI shall also run reports on a monthly basis to confirm all data is being retained for the durations per the System Requirements.	Per month	\$1,000 per Month for each month that the online storage is insufficient to maintain the retention of data or does not follow archiving rules per the System Requirements. The penalty shall not change as new corridors are added to the Agreement.
2.11	Trip Transaction	<i>Intentionally deleted as of CCO-15</i>				
2.12	Trip Building	Trip Processing Time: The time from the last Lane Transaction to building the final Trip Transaction shall be no more than two-hundred and sixteen (216) hours. The 216-hour clock for this requirement shall not begin until the end of the configurable toll rate correction period per System Requirement 3.9.9.12.	216 Hours	Monthly Process Monthly Performance Report The TSI shall provide the mechanism to easily audit the trip processing time of all Trip Transactions.	Per Trip Transaction	\$5 per Trip Transaction over 216 hours up to \$10,000 per month The penalty shall not change as new corridors are added to the Agreement.
2.13	Trip Building	Trip Building Automation: Trip Building shall automatically form no less than 98% of Lane Transactions into Trip Transactions prior to sending to RCSC, barring Lane Transactions containing vehicles with no license plates and no transponder.	98%	Monthly Process Monthly Performance Report The TSI shall provide the mechanism to easily audit the Trip Building automation, excluding certain UO codes as approved by BAIFA: • UO code 7 - AVI Reader Malfunction (Error counted under metric 2.13 not System Availability)	Per Lane Transaction	\$5 per Lane Transaction – up to \$10,000 per month The maximum penalty is defined in Attachment F, Item #1.8.2.

No.	Area	Requirement	Minimum Performance Measure	Measurement	Measurement Period/Increment	Penalties
				<ul style="list-style-type: none"> • UO code 8 - VES Camera Malfunction (Error counted under metric 2.13 not System Availability) • UO code 9 - Vehicle Tracking Malfunction (Error counted under metric 2.13 not System Availability) • UO code 15 - VTMS Malfunction (Error counted under metric 2.13 not System Availability) 		
2.14	Automatic License Plate Reader (ALPR)	The TCS shall automatically correctly capture license plate information for at least 80% of the total human readable images (excluding motorcycles).	80%	<p>Monthly Process (combined with Req 2.5 – Human Readability) Monthly Performance Report</p> <p>The TCS shall report the performance measure of correctly capturing license plate information for at least 80% of the total human readable images (excluding motorcycles). The TSI shall compute the performance measure by dividing the number of correctly captured license plates by the total number of human readable images using the sample size defined below.</p> <p>The general approach is a performance analysis using the manual image review platform to determine accuracy by adhering to the following to obtain the sample size:</p> <ul style="list-style-type: none"> • First Wednesday of month, at random times from 8am – 4pm • Each month TSI shall select one segment Northbound and one segment Southbound. TSI shall rotate through all live segments before repeating a segment. TSI shall collect and analyze 200 images per Read Point • Image confidence level can be any value 	Per month	<p>\$5 per vehicle less than Minimum Performance Measure</p> <p>The maximum penalty is defined in Attachment F, Item #1.8.2.</p>
2.15	Automatic License Plate Reader (ALPR)	Intentionally deleted as of CCO-15				
2.16	Image reviewer accuracy	Manual Image reviewers shall correctly identify license plate numbers for human readable images in at least 97.5% of the cases	97.5% average rate	Monthly process Monthly Performance Report	Per month	<p>Grace period for 5 months after go-live of a new corridor. Then, consecutively, when <97.5%</p> <p>1st month: warning 2nd month: \$2,500 3rd month: \$5,000 4+ months: \$10,000</p>

No.	Area	Requirement	Minimum Performance Measure	Measurement	Measurement Period/Increment	Penalties
						The penalty shall not change as new corridors are added to the Agreement.

3. Operation Equipment Availability and Maintenance Response

Upon automatic completion of Operational Testing, Performance Requirements and associated penalties for non-compliance of the Performance Requirements by the TSI or the TCS shall immediately take effect. The Performance Requirements for the Equipment Availability & Maintenance appear in Tables 4 and 5 below.

Table 4: Operational Equipment Availability

No.	Area	Requirement	Functions	Minimum Performance Measure	Measurement	Measurement Period/Increment	Penalties
3.1	Host	Host Availability: Must meet the minimum performance period.	Essential (3)	99.99%	Daily Process Monthly Summary Report (Submit with the progress report) Host system availability will be the aggregate average of all components. Availability is measured by subtracting all unscheduled downtime from 100% available time and divide by 100% available time. Unit of measure shall be in percent. Monthly availability reports shall include cumulative totals for all Host scheduled and unscheduled down time, excluding certain UO codes as approved by BAIFA and defined in the Performance Monitoring Manual. The start time of this calculation shall be at the beginning of warranty and shall go through the end of maintenance. The TSI shall track and report as part of the reporting process.	Per Day	Essential: \$500 per hour commencing at the point TCS Host essential function unavailability exceeds 0.01% and continues at a rate of \$500 per hour for each subsequent hour until the TSI has presented evidence that the system has stabilized and BAIFA has signed off. Support: \$300 per hour commencing at the point TCS Host support function unavailability exceeds 5% and continues at a rate of \$300 per hour for each subsequent hour until the TSI has presented evidence that the system has stabilized and BAIFA has signed off. Up to \$10,000 per month
			Support (4)	95%			

No.	Area	Requirement	Functions	Minimum Performance Measure	Measurement	Measurement Period/Increment	Penalties
							The penalty shall not change as new corridors are added to the Agreement.
3.2	Roadside Communications Network	Roadside Network communications shall be available 98% of the time per day	All	98%	<p>Monthly Performance Report</p> <p>Using MOMS data, identify all downtime periods in minutes in each 24-hour period (one day) in a month, divided by the total number of minutes in one day (1440 minutes). Calculate per day for each day of the month.</p>	Per Day	<p>\$500 after the first 28 minutes (2% of minutes per day) that communication is down and \$500 for each subsequent hour communication is down within a 24-hour period</p> <p>The maximum penalty is defined in Attachment F, Item #1.8.2.</p>
3.3	Roadside System Availability	Roadside System Components shall meet the minimum performance measure for Availability	<p>Essential (1)</p> <hr/> <p>Support (2)</p>	<p>Tolling hours: 99.99%</p> <p>Non-tolling: 99%</p> <hr/> <p>Tolling and non-tolling hours: 95%</p>	<p>Monthly Performance Report</p> <p>Using MOMS data, identify all downtime periods in a week for the month to measure: Total Hours = Sum of the number of hours in the week for each measured device.</p>	Monthly	<p>Essential: \$1000 per hour commencing at the point the Roadside Essential component Unavailability exceeds 0.01% and continues at a rate of \$1,000 per hour for each subsequent hour until the TSI has presented evidence that the system has stabilized and BAIFA has signed off. No cap to penalty.</p> <p>Support: \$1,000 per hour commencing at the point the Roadside Support function unavailability exceeds 5% and continues at a rate of \$1,000 per hour for each subsequent hour until the TSI has presented evidence that the system has stabilized and BAIFA has signed off. No cap to penalty.</p> <p>The penalty shall not change as new corridors are added to the Agreement.</p>

No.	Area	Requirement	Functions	Minimum Performance Measure	Measurement	Measurement Period/Increment	Penalties
-----	------	-------------	-----------	-----------------------------	-------------	------------------------------	-----------

Table 5: Maintenance Response Requirements

No.	Maintenance Area	Requirement	Functions	Response Times (Measured by MOMS)	Measurement	Measurement Period/Increment	Penalties
3.4	Host Maintenance	Host maintenance. Coverage – 24 hours a day, 7 days a week	Essential (3)	Maximum Response Time – 4 hours Maximum Repair Time – 4 hours	Per Incident	Per Incident	\$1000 per incident of not meeting combined Response and Repair Time The maximum penalty is defined in Attachment F, Item #1.8.2.
			Support (4)	Maximum Response Time – 4 hours Maximum Repair Time – 24 hours	Monthly Performance Report Continuous MOMS Measurement - TCS reports shall verify maintenance work response and completion time.		
3.5	Roadside Equipment Maintenance	Roadside Equipment maintenance. Coverage – 24 hours a day, 7 days a week	Essential (1)	Tolling hours: Maximum Response Time – 2 hours Maximum Repair Time – 2 hours Non-Tolling hours: Maximum Response Time – 4 hours Maximum Repair Time – 4 hours	Per Incident Monthly Performance Report	Per Incident	\$1000 per incident of not meeting combined Response and Repair Time The maximum penalty is defined in Attachment F, Item #1.8.2.
			Support (2)	Maximum Response Time – 4 hours Maximum Repair Time – 24 hours	Continuous MOMS Measurement - TCS reports shall verify maintenance work response and completion time. Modification to the following event codes per BAIFA and TC agreement: <ul style="list-style-type: none"> Event Code 700 - VTMS Reported FAILED has been changed from Priority 1 to Priority 2 for I-680 & 880 interim until new logic is deployed. Revert event code to a Priority 1 then. Event code 701 - VTMS Reported Warning has been changed from Priority 2 to Priority 3. No work order is generated. 		
3.6	Other Maintenance	Other maintenance not covered in 3.3 and 3.4. Coverage – 24 hours a day, 7 days a week	Essential (1,3)	Tolling hours: Maximum Response Time – 2 hours Maximum Repair Time – 2 hours Non-tolling hours: Maximum Response Time – 4 hours Maximum Repair Time – 4 hours	Per Incident Monthly Performance Report	Per Incident	\$1000 per incident of not meeting combined Response and Repair Time The maximum penalty is defined in Attachment F, Item #1.8.2.

No.	Maintenance Area	Requirement	Functions	Response Times (Measured by MOMS)	Measurement	Measurement Period/Increment	Penalties
			Support (2,4)	Maximum Response Time – 4 hours Maximum Repair Time – 24 hours			
3.7	MOT Maintenance	<p>Properly established maintenance of traffic pursuant to Implementation Requirements:</p> <p>The full width of the traveled way shall be open for use by public traffic between the hours of 5AM and 8PM all week.</p> <p>This is not applicable when the BAIFA or Caltrans requests that the closure remain in place beyond the scheduled pickup time.</p>	N/A	N/A	<p>Proper traffic control and timely reopening of the roadway</p> <p>For each 10-minute interval, or fraction thereof past the time specified to reopen the closure.</p> <p>Monthly Summary Report (Submit with the progress report)</p>	Per Incident	<p>Mainline 1st half hour = \$2,100 / 10 minutes 2nd half hour = \$3,100 / 10 minutes 2nd hour and beyond = \$4,100 / 10 minutes</p> <p>Ramp 1st half hour = \$1,000 / 10 minutes 2nd half hour = \$1,000 / 10 minutes 2nd hour and beyond = \$1,000 / 10 minutes</p> <p>Penalties are limited to 5 percent of total project cost per occurrence.</p>
3.8	Timely Reporting	The TSI is required to provide accurate Monthly Progress Reports within 10 days of month end of the preceding month to meet the reporting requirements.	N/A	N/A	Submission of the Monthly Progress Report	Monthly Progress Report submittal due within 10 days of month end.	<p>Due within 10 days of month end for the preceding month. Penalty of \$1k on day 31, The penalty increases \$100 per day for each day thereafter that the report is late</p> <p>The maximum penalty is defined in Attachment F, Item #1.8.2.</p> <p>The penalty for the submittal of a late Monthly Progress report will be assessed the month after it is due.</p>

San Mateo County Express Lanes Joint Powers Authority Agenda Report

Date: February 4, 2022

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

From: Policy/Program Manager

Subject: Review and approval of Resolution SMCEL 22-05 authorizing Chair to execute the Cooperative Agreement Between the Bay Area Toll Authority and San Mateo County Express Lanes Joint Powers Authority for Operation of the US 101 Express Lanes for an amount not to exceed \$13,000,000.

(For further information please contact Matthew Click, Policy/Program Manager, MClick@hntb.com.)

RECOMMENDATION

That the SMCEL-JPA Board of Directors review and approve Resolution SMCEL 22-05 authorizing the Chair to execute the Cooperative Agreement Between the Bay Area Toll Authority and San Mateo County Express Lanes Joint Powers Authority for Operation of the US 101 Express Lanes for an amount not to exceed \$13,000,000.

FISCAL IMPACT

The costs associated with approximately 5 months of the operations and maintenance of the Express Lanes are included in the amended Fiscal Year 2022 Budget of the SMCEL-JPA and estimated toll revenues in the same time period are included to cover these costs. Future budgets will include the costs associated with the BATA Agreement as well as estimated toll revenue.

SOURCE OF FUNDS

N/A

BACKGROUND

BATA administers the FasTrak[®] electronic toll collection system for the seven State-owned toll bridges in the San Francisco Bay Area, including the San Francisco Oakland Bay Bridge, Antioch, Benicia-Martinez, Carquinez, Richmond-San Rafael, San Mateo-Hayward, and Dumbarton Bridges and, operates a regional customer service center (RSCS) that services the customer accounts for the Bay Area State-owned toll bridges, the Golden Gate Bridge, owned by the Golden Gate Bridge, Highway and Transportation District (GGBHTD), and the I-680 Express Lane, owned by Sunol Smart Carpool Lane Joint Powers Authority (JPA), the SR-237 Express Lane, operated by the Valley Transportation Authority (VTA), the I-580 Express Lane, operated by the Alameda County Transportation Authority (ACTC), and the I-680 Contra Costa Express Lane and the I-880 Express Lane, operated by the Bay Area Infrastructure Authority (BAIFA). These agencies/authorities have similar Cooperative Agreements with BATA for the operations and maintenance of the FasTrak[®] electronic toll collection system for their respective toll facilities.

On June 11, 2021, the SMCEL-JPA Board approved Resolution 21-10 which adopted SMCEL Ordinance 2021-01 for the Administration of Tolls and Enforcement of Toll Violations for the 101 Express Lanes in San Mateo

County, administrative procedures and penalties, enacted pursuant to Article 4. The Toll Ordinance requires every motorist traveling in a SMCELJPA toll facility during its hours of operation to pay the applicable toll using a FasTrak® account with sufficient balance unless exempt by the SMCEL Ordinance 2021-01. The administrative procedures and penalties under SMCEL Ordinance 2021-01 were also adopted to ensure that motorists who evade the payment of tolls while travelling on San Mateo County 101 Express Lanes shall be subject to civil penalties, while ensuring fairness in the treatment of violators. The SMCEL Ordinance 2021-01 names BATA, as the processing agency for SMCEL-JPA, to process notices of toll evasion violations and notices of delinquent toll evasion violations, in accordance with those procedures and penalties by BATA, within the meaning of Section 40253 of the Vehicle Code.

In preparation for the opening of the southern segment of US 101 Express Lanes in San Mateo County, from the San Mateo/Santa Clara County Line to Whipple Avenue in San Mateo County, the Board has received presentations and considered information related to the operation of the express lanes, including BATA operations and policies. The southern segment is now scheduled to open on February 11, 2022 and with the opening, BATA will commence operations and services through the FasTrak® Customer Service Center.

SMCEL-JPA staff have been in negotiations with BATA to provide the services needed to integrate the 101 Express Lanes in San Mateo County toll collection system with the BATA FasTrak® Customer Service Center and carry out the processing agency responsibilities under SMCEL Ordinance 2021-01.

Some of the key provisions of the BATA agreement include:

- 1) The overall roles and responsibilities of each party related to the integration of the Express Lanes toll collection system with the BATA FasTrak® Customer Service Center including, BATA FasTrak® integration into the Customer Service Center and testing, data processing and account management, customer inquiries and dispute handling, marketing, protection of personally identifiable, and financial management.
- 2) Term of the agreement will commence upon execution and remain in effect for sixty (60) months after the first day of revenue operations of the 101 Express Lanes in San Mateo County.
- 3) The parties have agreed to a scope of services and terms for an estimated amount of \$13.0 million over the full term of the BATA agreement.

ATTACHMENT

- 1) Resolution SMCEL 22-05
- 2) Cooperative Agreement with BATA for Operations of US 101 Express Lanes

RESOLUTION SMCEL 22-05

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY (SMCEL-JPA) AUTHORIZING THE EXECUTION OF THE COOPERATIVE AGREEMENT BETWEEN THE BAY AREA TOLL AUTHORITY AND SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY FOR OPERATION OF THE US 101 EXPRESS LANES FOR AN AMOUNT NOT TO EXCEED \$13,000,000

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

WHEREAS, the San Mateo County Transportation Authority (SMCTA) and the City/County Association of Governments (C/CAG) created the SMCEL-JPA (1) to apply to 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 (the US-101 Express Lanes Project); (2) to jointly oversee the operations and administration of the US-101 Express Lanes Project, and (3) to jointly exercise ownership rights over the 101 Project; and

WHEREAS, the SMCEL-JPA was granted approval by the California Transportation Commission (CTC); and

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

WHEREAS, on June 11, 2021, the SMCEL-JPA Board approved Resolution 21-10 which adopted SMCEL Ordinance 2021-01 for the Administration of Tolls and Enforcement of Toll Violations for the 101 Express Lanes in San Mateo County, and administrative procedures and penalties including requiring every motorist traveling in a SMCEL-JPA toll facility during its hours of operation to pay the applicable toll using a FasTrak® account with sufficient balance unless exempt by the SMCEL Ordinance 2021-01; and

WHEREAS, THE SMCEL Ordinance 2021-01 names the Bay Area Tolling Authority (BATA), as the processing agency for SMCEL-JPA, to process notices of toll evasion violations and notices of delinquent toll evasion violations, in accordance with those procedures and penalties by BATA, within the meaning of Section 40253 of the Vehicle Code; and

WHEREAS, SMCEL-JPA staff and BATA negotiated the Cooperative Agreement Between the Bay Area Toll Authority and San Mateo County Express Lanes Joint Powers Authority for Operation of the US 101 Express Lanes (the Agreement); and

WHEREAS, the Agreement has a term of 60 months and describes the roles and responsibilities and costs of each party, and services for an estimated \$13,000,000; and

NOW THEREFORE BE IT RESOLVED, by the SMCEL-JPA Board of Directors that the Chair is authorized to execute the Cooperative Agreement Between the Bay Area Toll Authority and San Mateo County Express Lanes Joint Powers Authority for Operation of the US 101 Express Lanes for an amount not to exceed \$13,000,000; and further authorize the Executive Council to make revisions prior to execution, subject to approval by the SMCEL-JPA Legal Counsel.

PASSED, APPROVED, AND ADOPTED, THIS 4TH DAY FEBRUARY 2022.

Diane Papan, Chair

COOPERATIVE AGREEMENT
Between BAY AREA TOLL AUTHORITY
and SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY for
OPERATION OF THE US 101 EXPRESS LANES

This COOPERATIVE AGREEMENT (“Agreement”) is dated as of _____, 2022 by and between the BAY AREA TOLL AUTHORITY (“BATA”) and SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY (“SMCELJPA”).

RECITALS

WHEREAS, BATA administers the FasTrak[®] electronic toll collection system for the seven State-owned toll bridges in the San Francisco Bay Area, including the San Francisco Oakland Bay Bridge, Antioch, Benicia-Martinez, Carquinez, Richmond-San Rafael, San Mateo-Hayward, and Dumbarton Bridges and, operates a regional customer service center that services the customer accounts for the Bay Area State-owned toll bridges, the Golden Gate Bridge, owned by the Golden Gate Bridge, Highway and Transportation District (GGBHTD), and the I-680 Express Lane, owned by Sunol Smart Carpool Lane Joint Powers Authority (JPA), the SR-237 Express Lane, operated by the Valley Transportation Authority (VTA), the I-580 Express Lane, operated by the Alameda County Transportation Authority (ACTC), and the I-680 Contra Costa Express Lane and the I-880 Express Lane, operated by the Bay Area Infrastructure Authority (BAIFA); and

WHEREAS, the San Mateo County US 101 Express Lanes Project (“PROJECT”), a jointly sponsored project by the San Mateo County Transportation Authority (SMCTA), City/County Association of Governments (C/CAG) and Caltrans, as defined in the three-party Cooperative Agreements, 04-2687 and 04-2733, dated July 11, 2018 and June 6, 2019, respectively, is designed to alleviate congestion and increase person throughput on US 101 in San Mateo County by (1) converting an existing HOV lane to an Express Lane from the Santa Clara County line to Whipple Avenue in San Mateo County, and (2) constructing a new Express Lane from Whipple Avenue in San Mateo County to Interstate 380 in San Mateo County; and

WHEREAS, the SMCELJPA was created, pursuant to the California Joint Exercise of Powers Act, consisting of Sections 6500 through 6599.3 of the California Government Code, to oversee the operations and administration of the PROJECT, and exercise the PROJECT ownership rights; and

WHEREAS BAIFA, SMCELJPA, SMCTA and C/CAG entered into an Agreement for the Implementation (design, development, installation, integration and testing) of the PROJECT; and

WHEREAS, SMCELJPA intends to operate Express Lanes on US 101 in San Mateo County (“Express Lanes”), which will use the FasTrak[®] toll tags as a payment device; and

WHEREAS, SMCELJPA and BAIFA have entered into a cooperative agreement under which BAIFA, by itself or through its contractor(s), agreed to perform certain operation and

maintenance services for the Express Lanes; and

WHEREAS, BATA and SMCELJPA (together referred to herein as “the Parties”) wish to enter into an agreement with each other to provide for the integration of the Express Lanes’ toll collection system with the BATA FasTrak[®] Customer Service Center; and

NOW, THEREFORE, the Parties hereto agree as follows:

ARTICLE 1 – DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

“BATA Regional Customer Service Center” or “BATA CSC” means the facility operated by BATA for transmitting files in accordance with the current Interface File Specification.

“FasTrak[®] System” means the various electronic toll collection facilities administered by BATA, through its BATA CSC, as well as the electronic toll facilities operated by other members of the California Toll Operators Committee (“CTOC”).

“FasTrak[®] customer” means any electronic toll collection customer whose toll tag is valid in the FasTrak[®] system. “Bay Area FasTrak[®] customer” means any electronic toll collection customer whose account is managed by BATA CSC.

“FasTrak[®] account” means an account by that name established with BATA or any other CTOC member.

“FasTrak[®] toll tag” means a FasTrak[®] electronic toll payment device issued by BATA (or any other member of CTOC) that meets the specifications of California Code of Regulations Title 21 and ISO/IEC 18000-6C (known as 6C) communication protocol for tolling applications that use automatic vehicle identification (AVI). “FasTrak[®] toll tag” includes non-revenue FasTrak[®] toll tags and FasTrak Flex[®] toll tags. “FasTrak Flex[®] toll tag” means a FasTrak[®] toll tag featuring a switch for indicating the number of occupants in the vehicle.

“Operator” means BAIFA and/or its contractor(s) as applicable.

“PII” has the meaning assigned to that term in Section 2.7 and Appendix A.

“Transportation Corridor Agencies” (TCA) means the Foothill/Eastern Transportation Corridor Agency and the San Joaquin Hills Transportation Corridor Agency which collectively own the FasTrak[®] and FasTrak Flex[®] trademarks.

ARTICLE 2 – TOLLING OPERATIONS

2.1 Customer Availability and Rules of Use

All FasTrak[®] customers may use their valid FasTrak[®] toll tags to pay tolls on the Express Lanes

administered by SMCELJPA.

SMCELJPA, in cooperation with and in agreement with BATA, shall develop a set of business rules governing the operation of the Express Lanes.

BATA will incorporate such agreed to business rules for the Express Lanes into the operation of the FasTrak[®] System and BATA CSC operations, as required.

2.2 In-Lane and Communications Equipment

SMCELJPA, by itself or through its Operator, shall:

- Procure, install, maintain and operate all in-lane equipment and toll collection hardware and software systems necessary to implement FasTrak[®] use on the Express Lanes. All such equipment must be in compliance with California Code of Regulations, Title 21, Chapter 16 specifications for automatic vehicle identification equipment required under the FasTrak[®] brand and permitted for operation with the State's Right of Way.
- Procure and maintain a communications connection between the Express Lanes designated host computer center and the BATA CSC computer located in San Francisco, California, in accordance with the FasTrak[®] BATA Customer Service Center to Revenue Control System Interface – Interface Control Document (“ICD”).

BATA CSC shall:

- Provide any modifications to the BATA CSC account management system to be able to accommodate the communications connection from the Express Lane toll collection system.
- Have sufficient Customer Service Representatives available for the handling of Express Lanes calls to meet performance standards in the BATA-CSC Contract.

2.3 In-Lane Testing, Integration and Operations

SMCELJPA, by itself or through its Operator, shall:

- Conduct in-lane testing and achieve integration between the BATA CSC and the Express Lane toll collection system consistent with the testing and integration required for toll lanes under the ICD and a Test Plan to be developed and agreed to by the Parties.
- Provide BATA with opportunities to observe operation of the Express Lanes toll collection equipment during testing to ensure confidence in system performance. Provide maintenance services for the Express Lanes toll collection equipment, hardware and software systems throughout the term of this Agreement to ensure that in-lane systems are performing properly at all times.

2.4 Data Processing, Transfer of Files and Account Management

SMCELJPA, by itself or through its Operator, shall:

- Transfer to the BATA CSC, one or more times a day, at a time or times that the Parties determine to be mutually convenient and in accordance with the agreed ICD, all trip records that are constructed by utilizing FasTrak[®] transactions that are processed at the

Express Lanes facilities. Each Express Lanes trip record shall include the following information:

- The date and time of each trip
- The identity of the Express Lanes facility
- The toll as calculated by SMCELJPA
- FasTrak® toll tag read for FasTrak® toll tag-based transactions
- License plate images and license plate number for image-based transactions
- Transfer the tag status file provided by the BATA CSC to the Express Lanes tolling zone level system and any enforcement systems, as required.

BATA CSC shall:

- Transfer to SMCELJPA one or more times a day, at a time or times that the Parties determine to be mutually convenient, a FasTrak® toll tag status file.
- Manage FasTrak® accounts that use the Express Lanes, including:
 - Charging customer's FasTrak® account for all Express Lanes trip records sent to the BATA CSC.
 - Including and specifically identifying Express Lanes use on FasTrak® customer account statements.
 - Processing violation trips, including securing mailing addresses on DMV Records, based on license plate images and license plate number, mailing violation notices, and transmitting unpaid violation records to DMV for vehicle registration holds or to the BATA collection agency.
 - Complying with all applicable DMV requirements in connection with obtaining or utilizing DMV information

2.5 Customer Inquiries/Disputed Charges

SMCELJPA shall:

- Maintain a system for responding to customer inquiries and for handling escalation of customer issues in regard to the Express Lanes, including providing a customer complaint phone number.
- Provide a representative to handle escalated customer inquiries and/or disputes related to the Express Lanes, including those involving toll violation notices.
- Be responsible for any decision to dismiss a toll charge on the Express Lanes. If SMCELJPA dismisses a disputed toll charge, that will be communicated to the BATA CSC (in writing).
- Handle administrative review hearings in accordance with California Vehicle Code Section 40255.

BATA, through the BATA CSC, will:

- Handle general calls regarding FasTrak® use on the Express Lanes and general information about the Express Lanes to the extent feasible.
- Allow secure, read-only system access to SMCELJPA personnel assigned to resolve disputes.

- Refer all appealed customer calls regarding the Express Lanes to the SMCELJPA. These appeals should address issues that BATA CSC customer service representatives (CSRs) do not have the appropriate information or authority to handle.
- Other than appealed customer calls referenced in the previous bullet, handle customer disputes related to toll violation notices and process penalties. Support SMCELJPA in (i) administrative review proceedings as described in California Vehicle Code Section 40255 and (ii) judicial proceedings, such as by assembling information and serving as witness on behalf of SMCELJPA at the proceedings, as necessary.

2.6 Marketing and Other Expenses

SMCELJPA shall:

- Execute a FasTrak[®] License Agreement with the Transportation Corridor Agencies (“TCA”), prior to using the FasTrak[®] Service Mark for any purpose, in a form prescribed by TCA and then submit a copy thereof to BATA.
- Obtain BATA’s approval prior to utilizing any marketing materials or communicating with customers regarding the use of FasTrak[®] on the Express Lanes.
- Approve any marketing activities that BATA may undertake specifically regarding the Express Lanes.
- Provide funding or reimburse BATA for prepaid toll funds added to eligible FasTrak[®] customer accounts under SMCELJPA’s equity program. Eligibility criteria and validation to be performed by SMCELJPA. Reimburse BATA for any other expenses related to SMCELJPA equity program that are incurred by BATA.

BATA shall:

- Review and approve any marketing materials or FasTrak[®] customer communications provided by SMCELJPA, within a reasonable time period.
- With the cooperation and agreement of SMCELJPA, provide marketing activities, promotions or other activities to promote the use of the Express Lanes.
- Assist SMCELJPA in becoming a retail tag retailer so that SMCELJPA can issue retail tags to eligible customers under SMCELJPA’s equity program.

2.7 Personally Identifiable Information

BATA may provide designated SMCELJPA personnel access to personally identifiable information (“PII”), including but not limited to name, address, telephone number, email address, toll tag number, FasTrak[®] account number, credit card number and expiration date, license plate number, travel pattern data, or other information that identifies or describes a person, for toll collection purposes as needed. The requirements set out in Appendix A, Special Conditions Relating to PII, of this Agreement apply to PII.

ARTICLE 3 – COSTS, SETTLEMENT AND PAYMENT

3.1 Reconciliation / Funds Transfer

BATA and SMCELJPA shall:

- Establish a daily reconciliation process whereby all valid FasTrak[®] Express Lane trip records sent to the BATA CSC for processing will be matched against those that were successfully posted to FasTrak[®] customer accounts.
- Identify and process adjustments such as: forgiving of a toll charge on the Express Lanes based on a customer dispute; and writing off bad debts which can be attributed to Express Lane transactions.

BATA shall:

- Electronically transfer to SMCELJPA, no less frequently than once per week as mutually established in reconciliation and settlement procedures, all funds for valid transactions successfully posted against BATA FasTrak[®] customer accounts for use on the Express Lanes. A transaction shall be considered valid if SMCELJPA has complied with the timely implementation of transponder validation files in accordance with Article 2.4 of this Agreement and the FasTrak[®] customer's transponder received a valid read when it passed through the Express Lanes.
- Electronically transfer to SMCELJPA, no less frequently than once per month, all funds collected as a result of Express Lane violation notices.
- Provide to SMCELJPA daily, at a mutually convenient time, a report of Express Lanes trip records which are rejected as specified in the ICD. BATA will not be liable for revenue loss to SMCELJPA incurred as a result of any malfunction of equipment or an irrecoverable loss of data from lane equipment or transmission of files from SMCELJPA or an inability to recover lost revenue from the FasTrak[®] toll tag customer.

3.2 Costs

Calculated Share: SMCELJPA shall also reimburse BATA for its Calculated share shown in Attachment C, attached hereto, associated with (i) CSC staff and material costs for clean air vehicles (“CAV”) toll tag enrollment and swap-out mailing for replacement of toll tags for an existing FasTrak account holder; (ii) CSC equipment procurement required to install additional CSC phone lines and computers required specifically for Express Lane toll processing, (iii) ongoing CSC accounting specialist support staff needed for Express Lane toll processing, and (iv) CSC system development, testing and any startup costs during the ramp up period. SMCELJPA's monthly share of additional startup costs will be based on the SMCELJPA proportion of all Bay Area express lanes operations (including SMCELJPA, BAIFA, ACTC, VTA, and JPA (collectively, “Bay Area Express Lanes”) transactions. Estimated additional costs are shown in Attachment C, attached hereto.

Transaction Costs: SMCELJPA shall pay to BATA a transaction fee of \$0.1741 per transaction for each trip record SMCELJPA sends to BATA for processing and BATA CSC services including Express Lane transaction and correction file processing, customer enrollment and account management, call answering and dispute processing, and revenue settlement. The

transaction fee shall be applicable to original transactions only as reported in the Electronic Toll Collection (ETC) Response File and shall not be applicable to the subsequent handling of a trip record. The transaction fee shall be reviewed on an annual basis, as agreed by BATA and SMCELJPA, to reflect changes in actual BATA CSC processing costs.

License Plate Image-Based Costs: SMCELJPA shall pay to BATA a transaction fee of \$0.1741 per transaction for each license plate image-based trip record SMCELJPA sends to BATA for (i) reviewing the images to identify the toll tag associated with the license plate, (ii) processing the toll, and (iii) reflecting any changes in the revenue posting and/or correction files, as defined in the ICD. The transaction fee must be reviewed by BATA and SMCELJPA on an annual basis, as agreed by BATA and SMCELJPA, to reflect changes in actual BATA CSC processing costs.

Violation Notice Costs: SMCELJPA shall pay to BATA a fee of \$0.9508 for each 1st Violation Notice generated by BATA CSC for an image-based trip record sent by SMCELJPA to BATA for processing. BATA CSC services include Express Lane transaction and correction file processing, image review, 1st and 2nd Violation Notice mailings, call answering and dispute processing, and revenue settlement. The transaction fee will be applicable to only the 1st Violation Notice reported in CSC violation reports and will not be applicable to the subsequent handling of the transaction record, which will be undertaken by BATA at no additional cost to SMCELJPA. The transaction fee must be reviewed by BATA and SMCELJPA on an annual basis, as agreed by BATA and SMCELJPA, to reflect changes in actual BATA CSC processing costs.

Transaction costs, license plate image based costs, and Violation Notice costs are based on October 2021 prices and will be increased beginning October 2022, and annually thereafter, according to the then-current California Consumer Price Index for San Francisco Consolidated Metropolitan Statistical Area (“CMSA”) as published by the California Department of Finance, consistent with the BATA CSC contract costs.

CSC System Operation and Maintenance Costs:

SMCELJPA shall reimburse BATA for its share of the monthly costs for operation and maintenance of software and hardware that support the US 101 Express Lanes. SMCELJPA’s share of monthly costs for operation and maintenance of software and hardware will be based on the SMCELJPA proportion of all Bay Area Express Lane transactions, calculated as follows:

(SMCELJPA monthly number of transactions) / (Monthly cumulative number of Bay Area Express Lane transactions from SMCELJPA, BAIFA, ACTC, VTA, JPA)

Credit Card and Banking Fees: SMCELJPA shall pay to BATA a credit card fee for each transaction sent by SMCELJPA to BATA for processing. SMCELJPA’s share of banking costs shall be determined by the following formula:

Total Monthly Banking Fee x [50% x (SMCELJPA Monthly number of Transactions/Total monthly number of Transactions) + 50% x (SMCELJPA Monthly Revenue/Total Monthly Revenue)]

Cash Payment Network Costs: SMCELJPA shall reimburse BATA for its share of Cash Payment Network (CPN) convenience fees that are paid on behalf of the customer to the CSC CPN subcontractor. SMCELJPA's monthly share of CPN fees for funds added to FasTrak[®], License Plate and One Time Payment accounts will be based on the SMCELJPA proportion of all Bay Area bridge and express lane transactions (including BATA bridges, Golden Gate Bridge SMCELJPA, BAIFA, ACTC, VTA, and JPA transactions. SMCELJPA's monthly share of CPN fees for violations will be based on convenience fees for SMCELJPA US101 violation notices paid at CPN locations.

BATA Direct Costs:

Effective the first month of operation in 2022, SMCELJPA shall pay BATA \$6,290 per month for direct staff costs, including overhead, expended by BATA for ongoing management and support of the Express Lanes including daily settlement and revenue transfer.

The fee for BATA costs will be reviewed annually and adjusted to reflect actual costs expended.

Equipment/Supplies: SMCELJPA will reimburse BATA for any equipment, supplies or other components BATA purchases on behalf of or supplies to SMCELJPA at SMCELJPA's written request.

Marketing Costs and Other Expenses: SMCELJPA will reimburse BATA for any marketing or promotions-related expenses that were mutually agreed to by the Parties prior to incurrence, pursuant to Article 2.6.

3.3 Payment

For Transaction Costs, Credit Card and Banking Fees, BATA Direct Costs, Equipment and Supplies, Marketing Costs, BATA will prepare and submit to SMCELJPA an invoice on a monthly basis for payment. All invoices shall be made in writing and delivered or mailed to SMCELJPA as follows:

c/o Accounts Payable
San Mateo County Express Lane Joint Powers Authority
555 County Center, 5th Floor
Redwood City, CA 94063

SMCELJPA shall remit to BATA payment for each such invoice within a sufficient time such that payment is received by BATA within thirty (30) days of the invoice date. If BATA does not receive payment within the thirty (30)-day period, BATA may deduct the amount of such invoice from the next funds to be electronically transferred to SMCELJPA in accordance with section 3.1 of this Agreement. If there is a dispute between BATA and SMCELJPA in regards to payments, BATA and SMCELJPA agree to abide by the dispute resolution procedures in Appendix A, Dispute Resolution, attached hereto and incorporated herein by this reference, to resolve disputes.

ARTICLE 4 – GENERAL PROVISIONS

4.1 Term of Agreement

This Agreement shall commence on the date first above written and remain in effect for sixty (60) months after the first day of revenue operations of the Express Lanes. The Parties shall have the option of extending the term of this Agreement for a like time period. Both Parties shall have the right to terminate this Agreement for cause at any time. A Party that intends to exercise such right shall give the other Party sixty (60) days advance written notice of such exercise. Further, either party shall have the right to terminate this Agreement at any time for convenience upon sixty (60) days advance written notice to the other party. Within ten (10) days following the effective date of termination, SMCELJPA shall remove all FasTrak[®] signage. All outstanding items of performance relating to this Agreement shall be settled within one hundred eighty (180) days of the effective date of termination.

4.2 Data Furnished by BATA

All data, reports, surveys, drawings, software (object or source code), electronic databases, and any other information, documents or materials (“BATA Data”) made available to SMCELJPA by BATA for use by SMCELJPA in the performance of this Agreement shall remain the property of BATA and shall be returned to BATA at the completion or termination of this Agreement. No license to such BATA Data, outside of the services to be provided by SMCELJPA under this Agreement, is conferred or implied by SMCELJPA’s use or possession of such BATA Data.

All data, reports, surveys, drawings, software (object or source code), electronic databases, and any other information, documents or materials (“SMCELJPA Data”) made available to BATA by SMCELJPA for use by BATA in the performance of this Agreement shall remain the property of SMCELJPA and shall be returned to SMCELJPA at the completion or termination of this Agreement. No license to such SMCELJPA Data, outside of the services to be provided by BATA under this Agreement, is conferred or implied by BATA’s use or possession of such SMCELJPA Data.

4.3 Confidentiality

“Confidential Information” includes:

a) All information regarding BATA CSC operations, software, data, encryption methods, processing techniques, network architecture, security and procedures, including but not limited to, source code, source code documentation, writings, documents (electronic or hard copy), databases, drawings, passwords, Ethernet or IP addresses, and any record-bearing media containing or disclosing such information, which is disclosed by BATA to SMCELJPA; and

b) All information (i) marked as “Confidential” or for which a similar notice has been provided to the receiving party by the disclosing party before, during, or promptly after disclosure of the information; or (ii) if disclosed in a manner in which the disclosing party

reasonably communicated that the disclosure should be treated as confidential, whether or not the specific designation “Confidential” or any similar designation is used.

Confidential Information may be proprietary to BATA, SMCELJPA or a third party contractor not party to the Agreement.

Confidential Information does not include information that:

- a) Is publicly known at the time of disclosure or later becomes publicly known through no breach of this Agreement by the receiving party, provided that Confidential Information shall not be deemed to be publicly known merely because any part of said information is embodied in general disclosures or because individual features, components or combinations thereof are now known or may become known to the public; or
- b) Was, as between the receiving party and the disclosing party, lawfully in the receiving party’s possession prior to receipt from the disclosing party without obligation of confidentiality or is lawfully obtained by the receiving party from third parties whom the receiving party reasonably believes obtained it lawfully; or
- c) Is independently developed by the receiving party without use of or access to the disclosing party’s Confidential Information.

During the term of the Agreement, it may be necessary for one party to this Agreement to disclose or make Confidential Information available to the other party. The receiving party agrees to use all such Confidential Information solely in connection with the Agreement and to hold all such information in confidence and not to disclose, publish, or disseminate the same to any third party, other than those of its directors, commissioners, officers, employees, or agents with a need to know, without the prior written consent of the disclosing party, except as required by a court of competent jurisdiction, or as otherwise required by law. The parties agree to take reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of such Confidential Information.

A party may disclose the Confidential Information of the other party to the extent it is required to be disclosed by law in accordance with a judicial or other governmental order, including a search warrant or subpoena compliance with which is mandated by applicable law (“Process”), to the extent of and for the purposes of such Process; provided that (i) the receiving party immediately notifies the disclosing party of such Process; and (ii) the receiving party shall not produce or disclose Confidential Information in response to the Process unless the disclosing party has: (a) requested protection from the legal or governmental authority requiring the Process and such request has been denied, (b) consented in writing to the production or disclosure of the Confidential Information in response to the Process, or (c) taken no action to protect its interest in the Confidential Information within 14 business days after receipt of notice from the receiving party of its obligation to produce or disclose Confidential Information in response to the Process, or earlier if required by the Process.

The Parties agree to require any agents or third parties to whom Confidential Information must be disclosed to execute a nondisclosure agreement that incorporates the substantive requirements of this article, the terms of which will be provided in advance to the other party for review and

comment.

4.4 General Indemnification

SMCELJPA shall indemnify, defend and hold harmless BATA and its commissioners, officers, agents and employees (“BATA Indemnified Parties”) from any and all claims which arise out of the (a) negligent or otherwise wrongful acts or omissions of SMCELJPA, its directors, officers, agents or employees in the performance of its activities under this Agreement; or (b) SMCELJPA’s breach of this Agreement. It is further agreed that BATA shall indemnify, defend and hold harmless SMCELJPA and its directors, officers, agents, and employees (“SMCELJPA Indemnified Parties”) from any and all claims which arise out of the (a) negligent or otherwise wrongful acts or omissions of BATA, its commissioners, officers, agents or employees in the performance of its activities under this Agreement; or (b) BATA’s breach of this Agreement.

4.5 Indemnification for Personal Injury and Property Damage

SMCELJPA shall indemnify, defend and hold harmless the BATA Indemnified Parties from any and all claims for or from loss of life or damage or injury to any person or property of any person or entity, including users of the SMCELJPA toll facilities and their passengers, arising out of, connected with or incidental to, directly or indirectly, the use, maintenance, or operation of the Express Lanes including the in-lane equipment and toll collection hardware and software systems, other than claims or damage or injury proximately caused by BATA’s or its contractors’ sole and active negligence or willful misconduct in performing physical work in the lane, which such exception shall not apply if work is in connection with a project constructed based on designs prepared or approved by entities other than BATA, BAIFA, or the Metropolitan Transportation Commission.

4.6 Contractors

SMCELJPA shall contractually require its contractors and consultants to include BATA as an indemnitee and additional insured with respect to services provided pursuant to this Agreement. BATA shall contractually require the CSC Contractor to include SMCELJPA as an indemnitee and additional insured with respect to services provided pursuant to this Agreement.

4.7 Survival

The parties’ obligations to indemnify, defend, and hold harmless shall survive termination or expiration of this Agreement.

4.8 Observance of Laws

The Parties agree to observe all applicable Federal, State and local laws and regulations and SMCELJPA agrees to procure all necessary licenses and permits to operate as contemplated in this Agreement. SMCELJPA agrees to file necessary Federal Communications Commission site licenses in order to operate automatic vehicle identification equipment to read FasTrak[®] transponders. BATA may request evidence of the licenses and permits at any time.

4.9 Cooperation

The Parties shall consult with one another promptly and regularly regarding any known technical questions and problems that may arise with the Express Lanes, including but not limited to the transmission of data, reporting requirements, and payments. The Parties shall provide one another promptly with all documentation, reports, and information which the other Party may reasonably request in order to fulfill its obligations under this Agreement, subject to any claims of privilege or limitations either Party may have as a result of agreements with other persons or entities.

4.10 Records

Excepting PII, which shall be retained for no longer than the time-frame specified in Section 2, Protecting PII, Appendix A, Special Conditions Relating to PII, the parties shall maintain complete and adequate books, records, documents, and accounts directly pertinent to performance under this Agreement for a period of three (3) years following the final transaction processed under this Agreement. The parties shall have access to such books, records, documents, and accounts during the term of this Agreement and for said following three (3) year period for purposes of inspection, auditing and copying.

4.11 Notices

Except for invoices submitted by BATA pursuant to Article 3, Section 3, any notices permitted or required to be given hereunder to either Party by the other shall be deemed given when made in writing and delivered, mailed, emailed or faxed to such party at their respective addresses as follows:

To BATA: Beth Zelinski, FasTrak[®] Program Manager
 Bay Area Toll Authority
 375 Beale Street, Suite 800
 San Francisco, CA 94105
 Fax: (415) 536-9800
 Email: bzelinski@bayareametro.gov

To SMCELJPA:
 Sean Charpentier
 Executive Director
 San Mateo County Express Lanes Joint Powers Authority
 555 County Center, 5th Floor
 Redwood City, CA 94063
 Phone: (415) 370-2174
 Email: scharpentier@smcgov.org

And

Carter Mau
Acting Executive Director
San Mateo County Transportation Authority
1250 San Carlos Avenue
San Carlos, CA 94070
Phone: (650) 622-7874
Email: mauc@samtrans.com

4.12 Third-Party Beneficiaries

Except as specifically provided herein, nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not party to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the electronic toll collection operations different from the standard of care imposed by law.

4.13 Assignment

SMCELJPA shall not assign this Agreement, or any part thereof without BATA's prior written consent, and any attempts to assign this Agreement without BATA's prior written consent shall be void and unenforceable.

4.14 No Waiver of Provisions

Either Party's failure to exercise or delay in exercising any right or remedy under this Agreement shall not constitute a waiver of such right or remedy or any other right or remedy set forth herein. Either Party's waiver of any right or remedy under this Agreement shall not be effective unless made in a writing duly executed by an authorized officer of the Party, and such waiver shall be limited to the specific instance so written and shall not constitute a waiver of such right or remedy in the future or of any other right or remedy under this Agreement.

4.15 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be effected, but shall remain binding and effective as against SMCELJPA and BATA.

4.16 Governing Law

This Agreement shall be governed by the laws of the State of California.

4.17 Dispute Resolution

Appendix B, Dispute Resolution, is incorporated by this reference as though set forth in full.

4.18 Entire Agreement

This Agreement constitutes the entire agreement of the parties and there are no other oral or extrinsic understandings of any kind. This Agreement may not be altered, amended or modified in any manner except by a subsequent written instrument duly executed by BATA and SMCELJPA.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto on the date first above written.

BAY AREA TOLL AUTHORITY

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

Therese W. McMillan, Executive
Director

Diane Papan
Chair

Approved as to form:

SMCELJPA Counsel

Appendix A
Special Conditions Relating to Personally Identifiable Information:

SMCELJPA will have access to personally identifiable information (“PII”) in connection with the performance of the Agreement. PII is any information that is collected or maintained by BATA or SMCELJPA that identifies or describes a person or can be directly linked to a specific individual, including that individual’s FasTrak[®] account. Examples of PII include, but are not limited to, name, address, email address, phone or fax number, FasTrak[®] account number, credit card information, toll tag number, license plate number, and travel pattern data. The following special conditions related to the confidentiality and use of PII apply to this Agreement:

1. Right to Audit

SMCELJPA shall permit BATA and its authorized representatives to audit and inspect: (i) SMCELJPA’s facilities where PII is stored or maintained, including third party hosting or service provider systems; (ii) any computerized systems used to share, disseminate or otherwise exchange PII; and (iii) SMCELJPA’s security practices and procedures, data protection, business continuity and recovery facilities, resources, plans and procedures. The audit and inspection rights hereunder shall be for the purpose of verifying SMCELJPA’s compliance with this Agreement, and all applicable laws. Additionally, when requested by BATA, SMCELJPA shall request their contractors that handle PII to submit their most recent audit and compliance reports, subject to confidentiality requirements.

When requested by SMCELJPA, BATA shall request its CSC contractor to submit its most recent audit and compliance report, subject to confidentiality requirements.

2. Protecting PII

All PII made available to or independently obtained by SMCELJPA in connection with this Agreement shall be protected by SMCELJPA from unauthorized use and disclosure through the observance of adequate security measures consistent with industry standards and technology best practices. This includes, but is not limited to, the secure transport, transmission and storage of PII used or acquired in the performance of this Agreement.

SMCELJPA agrees to properly secure at all times any computer systems (hardware and software applications), third party hosting or cloud services, or electronic media that it will use in the performance of this Agreement, and shall ensure that any third party hosting or service providers with access to PII adhere to the terms of this Appendix A. This includes ensuring all security patches, upgrades, and anti-virus updates are applied as appropriate to secure PII which may be used, transmitted, or stored on such systems in the performance of this Agreement.

SMCELJPA agrees to retain PII for no longer than the time-frame specified in subsections (c) and (d) of Street and Highways Code Section 31490. At the conclusion of this retention period, SMCELJPA agrees to use purge methods described in National Institute of Standards and Technology (NIST) Special Publication 800-88, as may be revised or superseded (“NIST Publication”) to remove PII from any files. Discarded PII will be unavailable and unrecoverable following the purge on any storage media including, but not limited to, magnetic disk, optical disk, memory chips, cloud storage, or other computing system (“Storage Media”). SMCELJPA

agrees to destroy hard-copy documents containing PII by means of a cross-cut shredding machine. SMCELJPA also agrees to use purge or destroy methods, as described in NIST Publication, to sanitize any Storage Media prior to disposal (including selling, discarding, donating, transferring, and abandoning). At the conclusion of the performance period of this Agreement, SMCELJPA shall submit a certification to the BATA Project Manager as follows: “All PII whether in electronic or hard-copy format, has been destroyed in accordance with the requirements contained in Section 2. Protecting PII of Appendix A, Special Conditions Relating to Personally Identifiable Information.” These requirements shall survive termination of expiration of this Agreement.

3. Compliance with Statutes and Regulations

SMCELJPA agrees to comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and BATA relating to information handling and confidentiality of PII, including but not limited to Streets and Highways Code Section 31490 and the terms and conditions contained in this Appendix A, Special Conditions Relating to Personally Identifiable Information.

4. Contractors

Prior to any disclosure by SMCELJPA of PII to a contractor or prior to any work being done by a contractor that entails receipt of or access to PII, SMCELJPA agrees to require such contractor to sign an agreement in substantially identical terms as this Appendix, binding the contractor to comply with its provisions. Such agreement shall also include (a) a requirement for the contractor to obtain Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to BATA and having minimum limits of \$2,000,000 per claim and shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage, first party privacy coverage and media coverage; Such cyber risk coverages shall include liability arising from the loss, theft or failure to protect, or unauthorized acquisition of personally identifiable information or confidential information; and (b) a requirement for the contractor to guarantee the following:

Contractor shall not, except as authorized by SMCELJPA or required by its duties by law, reveal or divulge to any person or entity any PII which becomes known to it during the term of this Agreement.

Contractor shall keep all PII entrusted to it completely secret and shall not use or attempt to use any such information in any manner which may injure or cause loss, either directly or indirectly, to BATA or SMCELJPA.

Contractor shall not use or process PII for any purpose other than performance of the scope of work set forth in this Agreement.

Contractor shall ensure that all PII that is stored, processed, or transmitted is encrypted, using at least then-current best industry practices (or encryption methods mandated by law, whichever provides higher levels of protection).

Contractor shall comply, and shall cause its employees, representatives, agents and contractors to comply, with such directions as SMCELJPA may make to ensure the safeguarding or confidentiality of PII.

If requested by BATA or SMCELJPA, Contractor shall sign an information security and confidentiality agreement provided by BATA or SMCELJPA and attest that its employees, representatives, agents, and contractors involved in the performance of this Agreement shall be bound by terms of a confidentiality agreement with SMCELJPA substantially similar in nature.

6. Notice of Potential Security Breach

SMCELJPA shall immediately notify BATA when it discovers that there may have been a potential breach in security which has or could have resulted in unauthorized access to PII. For purposes of this section, immediately is defined as within two hours of discovery. BATA's contacts for such notification are as follows:

Privacy Officer
privacyofficer@bayareametro.gov

Chief Information Security Officer
pkant@bayareametro.gov

Appendix B **Dispute Resolution**

BATA and SMCELJPA agree to resolve disputes concerning this Agreement based on the following dispute resolution principles.

1. Informal Dispute Resolution

BATA and SMCELJPA agree to attempt to resolve informally all disputes. In the event of a dispute, BATA and/or SMCELJPA shall provide notice in writing about the substance of the dispute. BATA and SMCELJPA representatives shall meet and confer by exchanging written positions on the dispute, and by meeting in person thereafter to discuss and resolve the dispute. If those representatives are unable to resolve the dispute, the chief executives of BATA and SMCELJPA shall be informed of the substance of the dispute and provided all writings that have been exchanged regarding the dispute. The chief executives shall meet and confer in person or by telephone concerning the dispute, and may choose to exchange letters in preparation for the meet and confer.

2. Mediation

If the dispute is not resolved, prior to the initiation of any legal proceedings, BATA and SMCELJPA shall avail themselves to mediation, arbitration (binding or non-binding), or any other dispute resolution resource (collectively Alternate Dispute Resolution (ADR) processes"). All procedures and methodologies in ADR processes shall be by mutual consent of BATA and SMCELJPA, including but not limited to the choice of the mediator or arbitrator, dates and times and timelines, whether documents are exchanged in preparation for the ADR session, etc. Fees and expenses of the mediator or arbitrator will be borne equally, unless otherwise agreed. BATA and SMCELJPA may choose their respective representation, except that BATA and SMCELJPA must agree on the question of whether lawyers are present or not. The entire process shall be confidential and treated as a compromise negotiation for purposes of federal and state rules of evidence. Once ADR processes are agreed on, the BATA and SMCELJPA shall agree on the identity of the mediator or arbitrator within 30 days of agreeing on the ADR process. BATA and SMCELJPA shall not unreasonably withhold consent as to the choice of the mediator or arbitrator. Unless the schedule of the mediator or arbitrator does not permit, or unless otherwise agreed to by the Parties, the Parties shall have their ADR process completed within 60 days after agreement on the choice of the mediator or arbitrator.

Attachment C
US 101 Express Lane
Summary of Estimated Costs

Item	Unit	Unit Price	SMCELJPA Share*
Ongoing accounting specialists	Monthly	\$13,968	Calculated
CAV Application Validation	Each	\$6.6639**	Calculated
CAV Tag Kit Assembly (replacement tags only)	Each	\$3.133**	Calculated
CAV Tag Kit Postage (replacement tags only)	At Cost	NA	Calculated
Start-up Costs: CSC staff training associated with SM 101 opening	At Cost	NA	100%
Start-up Costs: CSC system development and in-lane and integration testing, including any software development to which the parties mutually agree	At Cost	NA	100%
Start-up Costs: Additional customer service staff during ramp up, from 2 months prior to each SM 101 openings, to five (5) months after opening	At Cost	NA	100%
Start-up Costs: Equipment/Supplies for any purchases at BAIFA's or SMCEL-JPA's request	At Cost	NA	100%
Start-up Costs: Marketing costs for any expenses to which the parties mutually agree	At Cost	NA	100%

SMCELJPA's "Calculated" share of startup costs shall be based on the SMCELJPA proportion of all Bay Area Express Lanes transactions:

SMCELJPA Monthly number of Transactions / Monthly number of Bay Area Express Lanes Transactions from SMCELJPA, BAIFA, ACTC, VTA, JPA

*Any cost with "100%" shown in the "SMCELJPA Share" column is considered a one-time startup cost; any cost with "Calculated" shown in the "SMCELJPA Share" column is considered a cost that will be charged to SMCELJPA on a continual basis as part of the operation of the Bay Area Express Lanes.

**CAV prices are based on October 2021 prices and will be increased beginning October 2022, and annually thereafter, according to the then-current California Consumer Price Index for San Francisco Consolidated Metropolitan Statistical Area ("CMSA") as published by the California Department of Finance, consistent with the BATA CSC contract costs.

San Mateo County Express Lanes Joint Powers Authority Agenda Report

Date: February 4, 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 22-06 authorizing the Chair to execute the Toll Facility Operations and Maintenance Agreement (Including Real Property Lease) Between the State of California Department of Transportation and the San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) US 101 Express Lanes in San Mateo County for a term of 40 years.

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

RECOMMENDATION

That the SMCEL-JPA Board of Directors Review and Approve Resolution SMCEL 22-06 authorizing the Chair to execute the Toll Facility Operations and Maintenance Agreement (Including Real Property Lease) Between the State of California Department of Transportation and the San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) US 101 Express Lanes in San Mateo County for a term of 40 years.

FISCAL IMPACT

There is no fiscal impact related to approving the AGREEMENT. The lease payment and maintenance costs associated with the operations and maintenance of the Express Lanes are including in the amended Fiscal Year 2022 Budget of the SMCEL-JPA

SOURCE OF FUNDS

N/A

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 for the full toll price, while carpools of two persons and clean air vehicles will be charged a reduced toll.

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, and the northern segment from Whipple to Interstate-380. CALTRANS is the owner of the State Highway System (SHS) including the right of way over and on which the Project is being constructed.

California Streets and Highways Code Section 149.7 allows for regional transportation agencies, such as the SMCEL-JPA, to apply to the , California Transportation Commission (CTC), to develop and operate high-occupancy toll (HOT) lanes or other toll facilities, including the administration and operation of a value-pricing program and exclusive or preferential lane facilities for public transit or freight.

On August 14, 2019, the CTC adopted Resolution G-19-42 which determined the SMCEL-JPA's application for the TOLL FACILITY to be consistent with the requirements of California Streets and Highways Code Section 149.7 and the Commission's Public Partnership High Occupancy Toll Guidelines. The development and operation of the eligible facilities is carried out in cooperation with CALTRANS, pursuant to a cooperative agreement being reached between PARTIES.

Caltrans issued an encroachment permit authorizing the construction of the Express Lanes with the condition that the SMCEL-JPA enter into an Operation and Maintenance Agreement with CALTRANS prior to commence of toll operations. Staff from both SMCEL-JPA and CALTRANS have been in negotiation since the beginning of 2021. Negotiations took longer than anticipated as Caltrans, in their effort to standardize O&M agreements statewide, has introduced a leased property component into the AGREEMENT.

Some of the key provisions of the AGREEMENT include:

- 1) The overall roles and responsibilities of each Party related to maintenance and operation of the Express Lanes including, risk management, data sharing, performance monitoring; financial management, allocation of liability and annual audits and reports in connection with the value pricing program.
- 2) The term of the AGREEMENT is for a period of 40 years renewable upon the mutual agreement of both parties. There is also no limit to the number of term extensions.
- 3) Concurrent with the commencement of the term of this AGREEMENT, CALTRANS grants a lease to SMCEL-JPA for use of the identified portions of the State Highway right of way for the development, operation and maintenance of the Toll Facilities
- 4) CALTRANS will be responsible for performing much of the Routine Roadway Maintenance (excluding maintenance of the highway lighting), to be reimbursed from the revenue generated by the Express Lanes
- 5) SMCEL-JPA is responsible for the maintenance of the Electronic Toll Collection System (ETC SYSTEM) including the median signs and highway lighting to be performed by an independent contractor hired through the Bay Area Infrastructure Financing Authority (BAIFA).

SMCEL-JPA is also about to enter into an operations and maintenance agreement with BAIFA for maintenance services of the Electronic Toll Collection System (ETC SYSTEM) which will be the subject of a separate Board action.

ATTACHMENTS

- 1) Resolution SMCEL 22-06
- 2) Toll Facility Operations & Maintenance Agreement (including Real Property Lease) 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

RESOLUTION SMCEL 22-06

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY (SMCEL-JPA) AUTHORIZING THE EXECUTION OF THE TOLL FACILITY OPERATIONS AND MAINTENANCE AGREEMENT (INCLUDING REAL PROPERTY LEASE) BETWEEN THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION AND THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY (SMCEL-JPA) US 101 EXPRESS LANES IN SAN MATEO COUNTY

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 a Resolution SMCEL 21-10 for the Toll Ordinance for the Administration of Tolls and Enforcement of Toll Violations for the San Mateo County US 101 Express Lanes, and

WHEREAS, SMCEL-JPA staff and Caltrans negotiated the Toll Facility Operations and Maintenance Agreement with a Term of 40 years that identifies overall roles and responsibilities of each Party related to maintenance and operation of the Express Lanes; and includes a lease to SMCEL-JPA for use of the identified portions of the State Highway right of way for the development, operation, and maintenance of the Toll Facilities; and

WHEREAS, Pursuit California Streets and Highways Code Section 149.7, SMCEL-JPA shall enter into an agreement with Caltrans related to maintenance and operation of the San Mateo County Express Lanes; and

NOW THEREFORE BE IT RESOLVED, by the SMCEL-JPA Board of Directors that the Chair is authorized to execute the Toll Facility Operations and Maintenance Agreement (Including Real Property Lease) Between the State of California Department of Transportation and the San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) US 101 Express Lanes in San Mateo County for a term of 40 years; and further authorize the Executive Council to make revisions prior to execution, subject to approval by the SMCEL-JPA Legal Counsel.

PASSED, APPROVED, AND ADOPTED, THIS 4TH DAY FEBRUARY 2022.

Diane Papan, Chair

**TOLL FACILITY OPERATIONS & MAINTENANCE AGREEMENT (INCLUDING
REAL PROPERTY LEASE) BETWEEN THE STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION AND THE SAN MATEO COUNTY EXPRESS
LANES JOINT POWERS AUTHORITY (SMCEL-JPA)
US 101 EXPRESS LANES IN SAN MATEO COUNTY**

THIS AGREEMENT, ENTERED INTO AND EFFECTIVE ON the _____ day of _____, 2022, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as “CALTRANS,” and the San Mateo County Express Lanes Joint Powers Authority, referred to herein as “SMCEL-JPA” and collectively referred to herein as PARTIES.

RECITALS

1. CALTRANS and SMCEL-JPA, pursuant to California Streets and Highways Code Sections 114, 130, and 149.7, are authorized to enter into this Toll Facility Operations & Maintenance Agreement (AGREEMENT).
2. CALTRANS is the owner of the State Highway System (SHS) including the right of way over and on which the TOLL FACILITY will be constructed.
3. The San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) was formed by San Mateo County Transportation Authority and the City/County Association of Governments of San Mateo County to develop and operate express lanes in San Mateo County.
4. Capitalized words and words with all capital letters represent acronyms or terms defined in this AGREEMENT unless the context specifies or requires an alternate meaning.
5. EXPRESS LANES are generally referred to as a highway facility which authorizes the entry and use of high-occupancy vehicle lanes for toll-free travel for eligible vehicles or for travel with a toll for vehicles that do not otherwise meet minimum eligibility requirements.
6. The proposed TOLL FACILITY which is the subject of this AGREEMENT is located on US 101 in San Mateo County and includes 21.8 miles in length both northbound and southbound from the Santa Clara County line (postmile SM 0.0) to near the I-380 Overcrossing (postmile SM 21.8) as more particularly defined below and in EXHIBIT A.
7. California Streets and Highways Code Section 149.7 authorizes a regional transportation agency, such as the SMCEL-JPA, and as approved by the California Transportation Commission (CTC), to develop and operate high-occupancy toll (HOT) lanes or other toll facilities, including the administration and operation of a value-pricing program and exclusive or preferential lane facilities for public transit or freight. The development and operation of the eligible facilities is carried out in cooperation with CALTRANS, pursuant to a cooperative agreement being reached between PARTIES. Such agreement shall define overall roles, responsibilities and requirements related to maintenance and operation of the

TOLL FACILITY, risk management, data sharing, performance monitoring and annual audits and reports in connection with the value pricing program. Separate agreements and documents including but not limited to a Concept of Operations and a Cooperative Agreement with the California Highway Patrol relating to law enforcement are anticipated.

To date, CALTRANS and the San Mateo County Transportation Authority along with the City and County Association of Governments of San Mateo County, on behalf of the SMCEL-JPA, have entered into the following Cooperative Agreements (COOPs), listed below:

- Project Study Report – Project Development Support (PSR-PDS):
 - COOP No. 04-2407 with SMCTA was executed on December 3, 2013
 - Project Approval and Environmental Document (PA&ED):
 - COOP No. 04-2595 with SMCTA was executed on June 22, 2016
 - Plans, Specifications, and Estimate (PS&E) and Right of Way:
 - COOP No. 04-2687-A1 with SMCTA and C/CAG was executed on June 28, 2019
 - Construction:
 - COOP No. 04-2733 with SMCTA and C/CAG was executed on June 6, 2019
 - COOP No. 04-2726 with SMCTA and C/CAG was executed on November 12, 2019
 - Operations and Maintenance Agreement Between State of California Department of Transportation and the San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) for the Operation of Fiber Optic Infrastructure in San Mateo and Santa Clara Counties to be executed with this AGREEMENT (Backhaul Network O&M)
8. SMCEL-JPA has also entered into a cooperative agreement with the Bay Area Infrastructure Financing Authority (BAIFA) in order to have BAIFA provide maintenance services for the electronic toll collection system (ETC SYSTEM). To the extent BAIFA staff provides the maintenance of the ETC SYSTEM, BAIFA staff will not be required to apply for or procure an ENCROACHMENT PERMIT from CALTRANS before entering onto the SHS. Notwithstanding any other provision of this AGREEMENT to the contrary, should BAIFA retain consultants, contractors or sub-contractors to perform maintenance of the ETC SYSTEM, those consultants, contractors or sub-contractors shall be required to apply for and receive an ENCROACHMENT PERMIT from CALTRANS before conducting any work or activity on the SHS.
9. On August 14, 2019, the CTC adopted Resolution G-19-42 which determined the SMCEL-JPA's application for the TOLL FACILITY to be consistent with the requirements of California Streets and Highways Code Section 149.7 and the Commission's Public Partnership High Occupancy Toll Guidelines.

10. Concurrent with the commencement of the term of this AGREEMENT, CALTRANS grants LEASE to SMCEL-JPA for use of the identified portions of the State Highway right of way for the development, operation and maintenance of the TOLL FACILITY as is set forth in EXHIBIT A below.
11. SMCEL-JPA has constructed and/or installed and plans to construct and/or install, various improvements, including but not limited to the ETC FACILITY and the ETC SYSTEM used to operate DYNAMIC VALUE PRICING. SMCEL-JPA shall be the owner of the ETC FACILITY and ETC SYSTEM.
12. The TOLL FACILITY will include both newly constructed lanes as well as converted existing HOV lanes, with both ultimately being operated as HOT lanes.
13. The ETC SYSTEM will utilize FasTrak[®] for toll collection.
14. The TOLL FACILITY will utilize DYNAMIC VALUE PRICING.
15. Any and all REMAINING REVENUE after the expenditures listed below shall be available to SMCEL-JPA pursuant to an EXPENDITURE PLAN developed by SMCEL-JPA in consultation with CALTRANS, consistent with California Streets and Highways Code section 149.7, subdivision 5 and SMCEL-JPA shall strive to reinvest a minimum of 20% of the net revenue in San Mateo County projects on the SHS in which tolls were collected.
16. TOLL FACILITY REVENUE shall be expended by SMCEL-JPA as provided by California Streets and Highways Code Section 149.7. TOLL FACILITY REVENUE shall be available to SMCEL-JPA for repayment of debt issued to construct, install, repair, rehabilitate or reconstruct any portion of the TOLL FACILITY; the development, maintenance, repair, rehabilitation, improvement, reconstruction, reinstallation, administration and operation of the TOLL FACILITY, including toll collection, enforcement, and equity program implementation; and RESERVES (DIRECT EXPENSES) associated with the foregoing. Any and all REMAINING REVENUE after the expenditures listed above shall be available to SMCEL-JPA pursuant to an EXPENDITURE PLAN developed by SMCEL-JPA, in consultation with CALTRANS, consistent with California Streets and Highways Code section 149.7, subd. (e).
17. SMCEL-JPA has entered into a loan agreement (SMCEL-JPA LOAN AGREEMENT) in August 2020, attached hereto as EXHIBIT F, to borrow \$100 million to fund a portion of the construction costs of the San Mateo 101 Express Lanes Project and to pay FINANCING COSTS. Repayment of the loan is secured by a pledge of US 101 TOLL FACILITY REVENUE. Currently, and until full repayment of the loan, the net amount of all such revenues after deduction for the purposes authorized by California Streets and

Highways Code section 149.7 are transferred to a fiscal agent that administers funds related to the loan.

18. SMCEL-JPA shall obtain consent from CALTRANS on any toll revenue funded project on the SHS that adds capacity to the corridor to ensure they align with CALTRANS' goals.
19. All sections of this AGREEMENT including specific duties and obligations set forth in these Recitals are contractual in nature and legally enforceable as permitted by law.
20. The CHP provides enforcement of the existing and planned HOV lanes and will continue to enforce Sections 21655.5 through 21655.9 of the Vehicle Code on the TOLL FACILITY. CHP and SMCEL-JPA will enter into a separate agreement for law enforcement within the TOLL FACILITY. To augment CHP enforcement, SMCEL-JPA will use a violation enforcement system (VES) to pursue violators in accordance with sections 4770, *et seq.*, and 40250, *et seq.*, of the Vehicle Code.
21. Consistent with California Streets and Highways Code section 149.7, CALTRANS and SMCEL-JPA herein define the terms and conditions under which the TOLL FACILITY is to be operated by SMCEL-JPA and maintained by both CALTRANS and SMCEL-JPA. This AGREEMENT shall also provide for reimbursement to CALTRANS by SMCEL-JPA for OPERATION AND MAINTENANCE EXPENSES, which include costs incurred by CALTRANS in connection with the maintenance expenses of the TOLL FACILITY but excluding the ETC SYSTEM.

AGREEMENT

LIST OF EXHIBITS

EXHIBIT A: TOLL FACILITY and Leased Property Legal Description

EXHIBIT B: ROUTINE ROADWAY MAINTENANCE & Operations Responsibility Matrix

EXHIBIT C: REHABILITATION Responsibility Matrix

EXHIBIT D: Handback Requirements

EXHIBIT E: Traffic Incident Management Plan (TIMP)

EXHIBIT F: SMCEL-JPA LOAN AGREEMENT

DEFINITIONS

Unless the context otherwise specifies or requires an alternate meaning, for the purposes of this AGREEMENT, the following terms shall have the meaning as set forth below:

ANNUAL BUDGET shall mean the document, as it may be amended from time to time, that constitutes the prospective expenditures for each successive fiscal year for the planned allocations and expenditures of the TOLL FACILITY as provided in California Streets and Highways Code Section 149.7. The ANNUAL BUDGET (the draft of which shall be prepared in consultation with CALTRANS) will be adopted by the Board of the SMCEL-JPA. The ANNUAL BUDGET shall be accompanied by a revenue and expenditure forecast for a five-year horizon to facilitate with planning.

CALTRANS shall refer to the California Department of Transportation.

CHP shall refer to the California Highway Patrol.

CLEAN AIR VEHICLE (CAV), as defined by California Department of Motor Vehicles shall mean a motor vehicle described in Vehicle Code Section 5205.5(a) which enables toll-free or reduced-rate passage.

DIRECT EXPENSE shall mean expenditures related to (1) debt issued to construct, install, repair, rehabilitate, or reconstruct any portion of the TOLL FACILITY, payment of debt service, and satisfaction of other covenants and obligations related to indebtedness of the TOLL FACILITY; (2) the development, maintenance, repair, rehabilitation, improvement, reconstruction, reinstallation, administration, and operation of the TOLL FACILITY, including toll collection, enforcement and equity program implementation; and (3) establishment or supplementation of reserve funds for the purposes specified in (1) and (2).

DYNAMIC VALUE PRICING shall mean variable tolls (higher prices under more congested conditions and lower prices at less congested times and locations) intended to maintain traffic volumes in the HOT lane at optimal levels. Toll can vary based on a fixed schedule, or they can be responsive to changing traffic conditions.

ENCROACHMENT PERMIT shall mean a permit issued pursuant to CALTRANS' authority as described in the Streets and Highways Code section 670 et. seq.

ETC EQUIPMENT shall mean the electronic toll collection (ETC) automated vehicle identification systems, video or other surveillance equipment and enforcement equipment, communications equipment and all other hardware necessary for ETC.

ETC FACILITY shall mean the signs, gantries and utility connections related to the ETC SYSTEM.

ETC MAINTENANCE shall mean the routine and corrective maintenance, support, repair or replacement of the ETC EQUIPMENT, ETC SYSTEM and the ETC FACILITY.

ETC SYSTEM shall mean the ETC EQUIPMENT and software which monitors, controls or executes the ETC EQUIPMENT.

EXPENDITURE PLAN shall mean the document prepared, adopted and updated by SMCEL-JPA in consultation with CALTRANS that lists planned expenditures of REMAINING REVENUE for all expenses as provided in California Streets and Highways Code Section 149.7. The EXPENDITURE PLAN is updated every two years for a ten-year programming duration on the same schedule as the SHOPP.

FasTrak[®] shall mean the electronic payment and accounting system that facilitates the operation of DYNAMIC VALUE PRICING in the State of California, which authorizes the entry and use of EXPRESS LANES by vehicles that do not meet the minimum HOV lane occupancy requirements in exchange for payment of a toll.

FHWA shall refer to the Federal Highway Administration or to any delegate or successor, as the case may be.

FIBER FACILITY shall mean the concurrently installed and co-located fiber optic network infrastructure consisting of a set of four conduits, splice vaults, and pull boxes jointly owned by CALTRANS and SMCEL-JPA in the right-of-way of US 101 as defined with more detail in the Backhaul O&M.

FINANCING COSTS shall mean amounts required to pay the loan principal and interest and any other costs for any loan (or bond), where that loan will be repaid from TOLL FACILITY REVENUE.

GENERAL PURPOSE LANES shall mean those non-tolled parts of the SHS including, but not limited to, freeway lanes, ramps, shoulders, structures, embankments, cut slopes, drainage facilities, utilities, safety devices, traffic control devices, and signage owned and operated by CALTRANS, but which do not include the TOLL FACILITY. Refer to EXHIBIT A.

HOT shall mean High Occupancy Toll.

HOV shall mean High Occupancy Vehicle.

LEASE shall mean the lease and such other rights, real property interest or authority for SMCEL-JPA to utilize CALTRANS' right of way for the operation of the TOLL FACILITY for the period set forth below.

MAJOR MODIFICATION shall be defined as material changes, alterations, modifications, improvements or additions to the TOLL FACILITY.

MAZEEP shall mean the Maintenance Zone Enhanced Enforcement Program. CALTRANS contracts with CHP (California Highway Patrol) for enhanced enforcement in maintenance zones under the Maintenance Zone Enhanced Enforcement Program (MAZEEP). This program provides traffic management strategies to improve project safety using supplemental CHP units to assist in the enforcement of speed restriction and provide faster incident response through the selected maintenance zones. Services provided are active speed and DUI enforcement, traffic control, and emergency assistance. This may be a part of ROUTINE ROADWAY MAINTENANCE.

MINOR MODIFICATION shall be defined as the installation of any new, and not replacement, signs, gantries, and other tolling equipment, traffic control devices and video surveillance and enforcement equipment, and other similar equipment necessary for the safe and efficient operation of the TOLL FACILITY.

OPERATION AND MAINTENANCE EXPENSES include costs incurred by CALTRANS in connection with the ROUTINE ROADWAY MAINTENANCE and TRAFFIC OPERATIONS expenses of the TOLL FACILITY, excluding ETC SYSTEM.

REHABILITATION shall mean those activities which are required for preservation, repair, rehabilitation and replacement of transportation assets or infrastructure and which are beyond the scope of ROUTINE ROADWAY MAINTENANCE, excluding maintenance to ETC EQUIPMENT, ETC SYSTEM or the ETC FACILITY, which are identified in EXHIBIT C, and which are performed using a capital contract.

REMAINING REVENUE shall mean the TOLL FACILITY REVENUE generated from the operation of the TOLL FACILITY and available to the SMCEL-JPA and remaining after payment of DIRECT EXPENSES and deposits into RESERVES (REHABILITATION) and RESERVES (ETC SYSTEM REPLACEMENT).

RESERVES (DIRECT EXPENSES) shall mean those DIRECT EXPENSES established by the SMCEL-JPA LOAN AGREEMENT (EXHIBIT F) as reserves to meet future costs or financial obligations consistent with California Streets and Highways Code Section 149.7(e)(4)(C).

RESERVES (REHABILITATION) is the account held by the loan trustee or fiscal agent that monies are accumulated in to pay for non-routine REHABILITATION as programmed in the SHOPP.

RESERVES (ETC SYSTEM REPLACEMENT) is the account held by the loan trustee or fiscal agent that monies are accumulated in to pay for future ETC SYSTEM replacement.

ROUTINE ROADWAY MAINTENANCE shall mean the routine and recurrent maintenance services as listed in the CALTRANS Maintenance Manual in effect at the time of the maintenance activity or as CALTRANS' resources can provide. ROUTINE ROADWAY MAINTENANCE does not include maintenance to ETC EQUIPMENT, ETC SYSTEM or the ETC FACILITY.

SHOPP is the State Highway Operation and Protection Program that is updated every two years for a ten-year programming duration.

SMCEL-JPA is the San Mateo County Express Lanes Joint Powers Authority.

SMCEL-JPA LOAN AGREEMENT (EXHIBIT F) is the document dated as of September 1, 2020 between San Mateo County Express Lanes Joint Powers Authority and San Mateo County Transportation Authority for the US 101 EXPRESS LANES Project and herein incorporated by reference.

STATE HIGHWAY SYSTEM (SHS) is defined at Streets and Highways Code sections 23 and 24.

TOLL FACILITY shall mean that part of the SHS as defined in EXHIBIT A. The TOLL FACILITY also includes ETC SYSTEM, ETC EQUIPMENT and the ETC FACILITY. The TOLL FACILITY does not include the adjacent GENERAL PURPOSE LANES or other elements of the SHS not specifically identified in EXHIBIT A.

TOLL FACILITY REVENUE shall mean the gross revenue, prior to payment of any expenses or withholding for DIRECT EXPENSES and REMAINING REVENUE.

TRAFFIC INCIDENT MANAGEMENT PLAN (TIMP) (EXHIBIT E) shall mean the current approved plan prepared by SMCEL-JPA, approved by the SMCEL-JPA Executive Council responsible for TOLL FACILITY Operations and the CALTRANS District Deputy Director of Operations, in consultation with the CHP Golden Gate Division Assistant Chief, to define the coordinated, preplanned use of technology, processes, and procedures to reduce the duration and impact of incidents, and to improve the safety of motorists, crash victims, and incident responders involving the TOLL FACILITY. Changes to the document may be implemented by authorized representatives of both PARTIES in consultation with the CHP Golden Gate Division Assistant Chief mutually executing an amendment to it or replacing the entire plan formally. No amendment to this AGREEMENT is required.

TRAFFIC OPERATIONS are functions performed by CALTRANS, CHP, and SMCEL-JPA as described in the TIMP, with the use of technology, processes, and procedures to reduce the duration and impact of incidents, and to improve the safety of motorists, crash victims, and incident responders on the TOLL FACILITY.

VARIABLE TOLL MESSAGE SIGNS (VTMS) shall mean those signs which are part of the ETC FACILITY and which communicate information to motorists, such as toll rate information or the operating status of the TOLL FACILITY.

USE OF CALTRANS' RIGHT OF WAY

22. The Grant of LEASE shall be implemented as stated below.

- a. For the period set forth below, CALTRANS hereby grants to SMCEL-JPA LEASE for the operation of the TOLL FACILITY. The CALTRANS right of way subject to the LEASE is described in EXHIBIT A. Upon completion of the TOLL FACILITY, a final description of the real property shall be prepared by SMCEL-JPA and submitted to CALTRANS for review and approval. Upon approval, EXHIBIT A shall be collectively amended and superseded and shall reflect the legal description of the real property interests being leased by SMCEL-JPA.

Prior to commencing toll operations on any segment of the TOLL FACILITY, SMCEL-JPA shall prepare a draft legal description of that segment of the TOLL FACILITY. Upon review and approval of the draft legal description by CALTRANS, the approved legal description(s) shall collectively amend and supersede the preliminary description of the Leased Property, as set forth in the attached EXHIBIT A, and shall reflect the legal description of the real property interests being leased by SMCEL-JPA.

The LEASE shall include any improvements now or hereafter located on EXHIBIT A. Such rights shall be provided at a cost of \$1.00 per year. From and after the effective date of this AGREEMENT, CALTRANS shall not sell, convey, transfer, lease or otherwise diminish or encumber its right, title or interest in the real property required for the TOLL FACILITY so as to inhibit its ability to lease said property to SMCEL-JPA upon the terms and conditions set forth herein.

- b. The PARTIES recognize the rights conveyed by this AGREEMENT including, without limitation, the LEASE, may be over, under or on existing state right of way which crosses several local jurisdictions and which is improved with, among other things, an existing State Highway and other improvements such as local roads and utilities. While SMCEL-JPA is granted exclusive use and possession of the surface of EXHIBIT A for operation of the TOLL FACILITY, it is understood that this AGREEMENT is subject to all existing rights conveyed to others, including, but not limited to, local entities and utilities, and CALTRANS is not obligated to clear, remove, relocate or otherwise extinguish the rights of third parties as a condition of this AGREEMENT. Further, the grant of exclusive use and possession of EXHIBIT A as described in the foregoing sentence is not intended to, and shall not prevent CALTRANS from entering the TOLL

FACILITY to perform its own surveillance, monitoring, inspections and similar activities, provided that the same do not materially interfere with operation of the TOLL FACILITY. Similarly, this AGREEMENT does not preclude CALTRANS from issuing new ENCROACHMENT PERMITS to third parties nor does it preclude CALTRANS from amending or extending the term of existing ENCROACHMENT PERMITS, provided that SMCEL-JPA is first provided notice of any new ENCROACHMENT PERMITS proposed or amendments to existing ENCROACHMENT PERMITS and is afforded an opportunity to review and comment on the issuance/amendment of such permits. PARTIES shall collaborate to minimize if not avoid adverse impacts to the operation of the TOLL FACILITY and GENERAL PURPOSE LANES. Moreover, this AGREEMENT does not preclude CALTRANS from requesting that existing utilities be relocated or preclude CALTRANS from causing utilities to be relocated, provided that SMCEL-JPA is first provided timely notice and an opportunity to review and comment to such relocation, and provided that such relocation does not unreasonably impact SMCEL-JPA's use and operation of the TOLL FACILITY.

23. SMCEL-JPA agrees to follow the terms and conditions set in the AGREEMENT and EXHIBIT A with CALTRANS.
24. This AGREEMENT is specifically subject to the terms and provisions of Division 1, Chapter 3 of the Streets and Highways Code (Streets and Highways Code section 660 et seq.) and any subsequent amendment thereto, as may be applicable for the care and protection of State Highways.
25. Term of Use Rights shall be implemented as stated below.
 - a. The term of this AGREEMENT and the LEASE rights described above shall be for forty (40) years commencing as of the first day on which the TOLL FACILITY opens for toll operations. The term may be extended by mutual agreement of the PARTIES and any such extension shall be in writing and executed by the appropriate representatives of the PARTIES. There is no limit on the number of such extensions.
 - b. If toll revenues are found to be insufficient to fund those expenditures authorized or required by Streets and Highways Code section 149.7, subdivision (e)(4), this AGREEMENT may, upon mutual agreement of the PARTIES, be renegotiated and amended to address the insufficiency.
26. CALTRANS retains the right to protect public safety, preserve property rights, and ensure that all projects on the SHS are in the best interest of the system, as determined by CALTRANS.

OPERATIONS

27. The PARTIES have collaborated and agreed upon on various goals associated with the operation of the TOLL FACILITY. Notwithstanding any other provisions of this AGREEMENT, the PARTIES agree as follows.
28. SMCEL-JPA agrees to designate CALTRANS to provide TRAFFIC OPERATIONS functions and to perform TRAFFIC OPERATIONS as outlined in the TIMP (EXHIBIT E) including TIMP coordination meetings. SMCEL-JPA shall reimburse CALTRANS for all its actual costs related to TRAFFIC OPERATIONS including MAZEEP.
29. SMCEL-JPA agrees to operate and maintain the ETC SYSTEM which includes the implementation of the FasTrak[®] toll collection system, and to administer a DYNAMIC VALUE PRICING program for TOLL FACILITY at no cost to CALTRANS, including:
 - a. Operating and maintaining any devices installed by SMCEL-JPA or its authorized agent(s), exclusively needed for the ETC FACILITY, ETC EQUIPMENT and ETC SYSTEM;
 - b. Establishing DYNAMIC VALUE PRICING program business rules and account policies, including setting the amount of the tolls; and
 - c. Collecting tolls from customers in accordance with the business rules and account policies.
30. CALTRANS agrees to perform TRAFFIC OPERATIONS functions as outlined in EXHIBIT E and as identified in the ANNUAL BUDGET, including TIMP coordination meetings and to confer with SMCEL-JPA prior to the start of each fiscal year on the anticipated level of effort for TRAFFIC OPERATIONS in the coming fiscal year.
31. The PARTIES agree vehicles with the occupancy requirement set forth in the TIMP, currently set at HOV3+ (three or more persons), which will be able to use the TOLL FACILITY without imposition of a toll during toll operating hours. Any change to the minimum occupancy requirement in the TIMP or otherwise shall require the PARTIES' mutual written consent.
32. JPA has adopted an equity program that will design, fund and implement new transportation programs for historically underserved communities in San Mateo County in furtherance of improving transportation mobility for persons of lower socioeconomic status. Funding for these programs will come from the tolls collected from the express lane users as specified in EXHIBIT F. Base program funds are part of DIRECT EXPENSES, and additional funds to enhance the program may be added from REMAINING REVENUE

by decision of the SMCEL-JPA. CALTRANS and SMCEL-JPA will continue the effort to support the equity program with this agreement.

33. The PARTIES recognize the policy of allowing discounted or free trips in the TOLL FACILITY may be impacted by various factors including, but not limited to, actual or anticipated revenues or changes in state policy related to changes in the vehicle occupancy requirements (see TIMP for current occupancy requirements).
34. CAVs are permitted to use the TOLL FACILITY on terms provided by state and federal law, including reduced-rate use as established the SMCEL-JPA. SMCEL-JPA agrees that the TOLL FACILITY will comply with state law as it evolves.

Through 2025, the CAV decal program is run by the Department of Motor Vehicles in partnership with the California Air Resources Board. The program allows a vehicle that meets specified emissions standards to display CAV decals and to use HOV (carpool) lanes with only one occupant in the vehicle (see California Vehicle Code (CVC) §§5205.5 and 21655.9).

The SMCEL-JPA will coordinate with CALTRANS and the other Bay Area EXPRESS LANES operators to provide a consistent EXPRESS LANES customer experience in the area of toll rates and discounts. SMCEL-JPA may make a decision to change or modify tolling of CAVs, or a subset of CAVs, to use the TOLL FACILITY in compliance with state law in response to any one of the following bases:

- a. Degradation of the performance standard in the EXPRESS LANES established under section 166(d) of Title 23 of the United States Code due to an increase of usage by CAVs above the baseline CAVs as defined by the Environmental Document; or
- b. By agreement between SMCEL-JPA and adjoining Express Lane Operators on a CAV discount for the 101 Corridor, subject to the process outlined in the Regional Managed Lanes Executive Steering Committee (ESC) MOU; and in consultation with CALTRANS District 4; or
- c. If the CAVs use substantially and adversely impacts the flow of toll revenues to the extent the revenues would not meet baseline operating and debt service obligations; or
- d. If SMCEL-JPA demonstrates the vehicle registrations for Zero Emission Vehicle (ZEV) cars and light duty trucks in San Mateo County have increased at a rate of not less than five percent (5%) from the prior year based on the most recent annual data for the ZEV registration of all light vehicles, as provided by the California Energy Commission; or

- e. If the SMCEL-JPA modifies the tolling of CAVs to improve or expand the SMCEL-JPA equity program;

Otherwise, shall require the PARTIES' mutual consent.

- 35. The PARTIES agree to manage the operations of the TOLL FACILITY, including toll rates, such that the minimum speed of vehicles using the TOLL FACILITY shall be in compliance with FHWA requirements.
- 36. It is the PARTIES' mutual goal to increase the vehicle occupancy in the US 101 corridor. The PARTIES agree to manage operations and implement strategies to maximize average vehicle occupancy.
- 37. The PARTIES agree that continuous vehicular access to the TOLL FACILITY may be detrimental to the financial and operational requirements based upon current technology. Should technological advancements allow for effective fare enforcement SMCEL-JPA in partnership with CALTRANS may consider a change to the TOLL FACILITY access if feasible and within the approved standards or approved design exceptions.
- 38. SMCEL-JPA shall be responsible for the operation of the TOLL FACILITY including, but not limited to, performing, or causing to be performed, the administrative, toll collection, and traffic management activities associated with the operation of the TOLL FACILITY for use by the general public. Because operations of the TOLL FACILITY and the GENERAL PURPOSE LANES can impact each other, the PARTIES shall mutually review corridor mobility and operations eighteen months after the opening of the TOLL FACILITY, again at thirty-six months after the opening of the TOLL FACILITY and every three years thereafter, but not limiting interim reviews as needed.
- 39. Tolls shall be implemented as stated below.
 - a. It is the intent of the PARTIES that tolls shall be determined using a Congestion Pricing model in order to manage demand.
 - b. All toll equipment utilized for the TOLL FACILITY shall be compatible with Title 21 of the California Code of Regulations or future equivalent standard.
 - c. Except as provided for above for TOLL FACILITY policies, SMCEL-JPA shall have the sole right to establish policies and rules governing use of the TOLL FACILITY, including toll systems, pricing systems, toll collection methodology, account and violation fees, discounts and exemptions, vehicle occupancy rules, vehicle classifications, tolling policies, business rules, toll rates and evasion/enforcement policies, provided that any such policies and rules shall be in compliance with state and federal laws in consultation with CALTRANS.

40. Safety investigations and safety related improvements shall be implemented as stated below.
- a. CALTRANS may, at its sole cost, perform safety investigations and analysis relating to the ETC FACILITY and ETC SYSTEM. CALTRANS and SMCEL-JPA shall cooperatively review the recommendations of the investigations, if any, and jointly determine corrective action necessary, if any, to remedy any identified deficiency or any potential enhancement. SMCEL-JPA shall fund and implement the jointly identified corrective action or enhancement to the ETC FACILITY and ETC SYSTEM as provided in subsection (d) below.
 - b. After consultation with SMCEL-JPA, including the collaboration described in subsection (c) below, CALTRANS may, if the identified safety issues has a safety index that qualifies the proposed improvement project for funding under the SHOPP 201.010 Program, as detailed in Section 4 of the most recent version of the California Highway Safety Improvement Program (HSIP) Guidelines, or any successor guidance published by CALTRANS and adopted pursuant to 23 U.S.C. section 152, issue an order to make a modification to the TOLL FACILITY for safety reasons (a “Safety Improvement Order” or “SIO”).
 - c. CALTRANS and SMCEL-JPA shall work collaboratively on the scope, design, and schedule, for implementation of SIOs. CALTRANS shall take into consideration all relevant factors including, but not limited to, the extent of the risk which the modification proposes to address, and all concerns of SMCEL-JPA as the PARTY responsible for the TOLL FACILITY during the term of this AGREEMENT. SMCEL-JPA shall take into consideration all relevant factors, including, but not limited to, the extent of the risk which the modifications propose to address, and all concerns of CALTRANS as the PARTY generally responsible for the safety of the SHS.
 - d. CALTRANS may, but is not obligated to, participate in the cost of the SIO. If CALTRANS agrees to participate in the cost of implementing the SIO, the cost of the modifications shall be negotiated and allocated between CALTRANS and SMCEL-JPA and the allocation shall be documented in the SIO.
 - e. The modifications agreed upon shall be implemented by SMCEL-JPA in accordance with (i) CALTRANS’ normal time frames for safety enhancements of similar scope; or (ii) the SIO. If SMCEL-JPA is unable or unwilling to implement an SIO, CALTRANS may unilaterally implement such SIO, and such right shall not be subject to enjoinder. SMCEL-JPA shall reimburse CALTRANS for its actual and reasonable costs associated with the implementation of such SIO, as determined pursuant to subsection (d) above CALTRANS shall assume all costs and liability for any SIO unilaterally implemented by CALTRANS, unless the dispute resolution process ultimately results

in the determination that the SIO was warranted or appropriate, in which case the costs shall be determined accordance with subsection (d) above and the SIO will be considered part of the TOLL FACILITY.

41. Operation of the TOLL FACILITY shall be implemented as stated below.
 - a. SMCEL-JPA shall be responsible for operation and management of the TOLL FACILITY in response to incidents located within the TOLL FACILITY and reference TIMP (EXHIBIT E) to address traffic issues and responses within the TOLL FACILITY. Motorists shall be notified of any closures of the TOLL FACILITY through SMCEL-JPA-owned VTMS or other means. The CALTRANS Traffic Management Center (TMC) located in Alameda County (District 4) shall be notified of closures of the TOLL FACILITY in accordance with a mutually agreed upon TIMP so that CALTRANS can broadcast such closure through its Traveler Information System and Intelligent Transportation Systems (ITS) field elements.
 - b. The PARTIES agree the SMCEL-JPA is authorized to establish and implement additional safety policies, as SMCEL-JPA deems necessary, for the TOLL FACILITY in addition to those required by law and this AGREEMENT. Such additional safety policies shall be consistent with applicable law. Notwithstanding the forgoing, oversize, overweight and/or over-length permits for vehicles operating on the SHS and the TOLL FACILITY shall only be issued by CALTRANS.
 - c. Operations of the TOLL FACILITY may be interrupted as SMCEL-JPA may deem necessary or advisable for reasons of, among other things, construction, repair, maintenance, improvement, modification, security, emergency and public safety. SMCEL-JPA shall notify CALTRANS at least ten (10) business days in advance of any planned closure of the TOLL FACILITY. Notification of planned closures shall be made to the CALTRANS TMC located in Alameda County (District 4).
 - d. Operations of the TOLL FACILITY may be interrupted as CALTRANS may deem necessary or advisable for reasons of, among other things, construction, repair, maintenance, improvement, modification, security, emergency and public safety. CALTRANS shall consult and coordinate with SMCEL-JPA at least ten (10) business days in advance of any planned closure of the TOLL FACILITY.
 - e. In the case of any major incidents on or blockages of the TOLL FACILITY caused by accidents or debris, SMCEL-JPA shall, consistent with EXHIBIT E and available resources and constraints, promptly take action to assist CHP in performing its duties, consistent with the policies and practices of SMCEL-JPA and the CHP, and SMCEL-JPA shall be responsible for its own costs related thereto.
42. Changes in standards shall be implemented as stated below.

- a. CALTRANS, after coordination and consultation with SMCEL-JPA, may issue an order for SMCEL-JPA to make a modification to the TOLL FACILITY, the ETC FACILITY or the ETC SYSTEM based on adoption of new standards by FHWA or CALTRANS [Standards Modification Order (SMO)], provided that any required modifications is to the same extent being imposed by CALTRANS on existing State-operated, leased or funded transportation facilities of substantially equivalent size, location and character.
 - b. The timing, scope, design and schedule for implementation of modifications to the TOLL FACILITY under a SMO will be proposed by CALTRANS and will be subject to SMCEL-JPA's reasonable comment and approval. The modifications agreed upon shall be paid for by SMCEL-JPA and implemented in consideration of (i) the time in which CALTRANS applies such improvements to existing facilities it owns and operates or leases of a substantially equivalent size, location and character; (ii) the time period for implementation set forth in the revised standard, if any; and (iii) the timing for implementation of a pending or scheduled MAJOR MODIFICATION, repair or rehabilitation affecting the affected area or structure that is not part of the SMO, where implementation of such SMO would reasonably be included within the scope of work of the modification.
 - c. CALTRANS shall consider any requests by SMCEL-JPA for alteration or deferral of a SMO, taking into consideration the anticipated availability of SMCEL-JPA funds, the remaining term of this AGREEMENT in light of SMCEL-JPA's obligations to its loan, the schedule for upcoming repair and rehabilitation of the TOLL FACILITY, the extent of inconvenience and delay necessitated by the modification and the extent of the risk or public benefit which the modification proposes to address.
 - d. In the case of a SMO to address a Critical Safety Standard, after the aforementioned coordination and consultation has occurred, if SMCEL-JPA fails to implement a mutually approved SMO by the deadline contained in the SMO, CALTRANS reserves the right and authority, but not the obligation, to enter onto the TOLL FACILITY, and to implement the modifications called for in such SMO to invoice SMCEL-JPA for the actual and reasonable cost of implementation.
43. Coordination related to installation of new equipment shall be implemented as stated below:
- a. Unless otherwise agreed upon by the PARTIES, any equipment installed by SMCEL-JPA following the effective date shall not unreasonably interfere with or adversely affect the operation of any CALTRANS' equipment existing at the time SMCEL-JPA installs its equipment.

- b. Unless otherwise agreed upon by the PARTIES, any equipment installed by CALTRANS shall not unreasonably interfere with or adversely affect the operation of any SMCEL-JPA equipment existing at the time CALTRANS installs its equipment.
44. Nothing in this AGREEMENT shall prevent the construction of facilities that compete with the TOLL FACILITY and SMCEL-JPA shall not be entitled to compensation for the adverse effects on toll revenue due to those competing facilities.

MODIFICATION OF TOLL FACILITY

45. MAJOR MODIFICATIONS of the TOLL FACILITY shall be implemented as stated below.
- a. SMCEL-JPA shall submit any proposed MAJOR MODIFICATIONS to CALTRANS for approval pursuant to the CALTRANS' ENCROACHMENT PERMIT process, as set forth in California Streets and Highways Code Section 670. et. seq., as may be amended, and as further established in the relevant CALTRANS' procedure manual in effect at the time. CALTRANS shall review the application in a timely manner for an ENCROACHMENT PERMIT for a MAJOR MODIFICATION, and shall issue in a timely manner such ENCROACHMENT PERMIT on reasonable conditions as long as the MAJOR MODIFICATION is consistent with the terms of this AGREEMENT and with state and federal standards.
 - b. If SMCEL-JPA requires any modification that is not within the TOLL FACILITY, a CALTRANS ENCROACHMENT PERMIT shall be required per CALTRANS' standard requirements for SMCEL-JPA, and, as applicable, for its contractors, which permit shall be timely granted by CALTRANS upon approval of the modifications. The parties acknowledge that MAJOR MODIFICATIONS not within the TOLL FACILITY may require a separate agreement pursuant to the procedures set forth in the CALTRANS Project Development Procedures Manual.
 - c. MAJOR MODIFICATIONS shall be completed in accordance with all applicable laws and environmental regulations, and to applicable CALTRANS/FHWA standards and policies to the extent that CALTRANS is applying the same standards to its own existing transportation facilities of substantially equivalent size, location and character.
 - d. Upon completion of the MAJOR MODIFICATIONS, SMCEL-JPA shall, within 180 days, provide revised "as-built" plans to CALTRANS which address the MAJOR MODIFICATIONS including, as applicable, all contract records, survey documents, records of surveys, and structure as-built documents according to CALTRANS requirements. Should SMCEL-JPA fail to provide the "as-built" plans within the timeframe specified herein, CALTRANS shall provide notice of such failure to

SMCEL-JPA. The notice shall state that if SMCEL-JPA does not submit the “as-built” plans within thirty (30) days of receipt of the notice, CALTRANS may prepare the plans. If CALTRANS prepares the plans, SMCEL-JPA shall pay the actual cost thereof within thirty (30) days following receipt of an invoice from CALTRANS.

- e. SMCEL-JPA shall procure, on its own behalf or through a contract requirement with any contractor, and as a condition precedent to any modification to the TOLL FACILITY, a policy or policies of insurance naming the CALTRANS parties as an additional insured with coverage provided to CALTRANS to the same degree provided to SMCEL-JPA. Such insurance shall be primary and non-contributory with any insurance maintained by CALTRANS. Such policy or policies shall be consistent with the insurance coverage requirement published by CALTRANS in its Standard Specifications or Standard Special Provisions in effect at the time of commencement of construction of the MAJOR MODIFICATION.

46. MINOR MODIFICATION of the TOLL FACILITY shall be implemented as stated below.

- a. SMCEL-JPA shall have the right to erect and maintain ETC FACILITIES and ETC EQUIPMENT and to install and utilize traffic control devices necessary for the safe and efficient operation of the TOLL FACILITY. All signs utilized by SMCEL-JPA for the TOLL FACILITY located within or adjacent to CALTRANS’ right of way shall comply with the California Manual on Uniform Traffic Control Devices (“MUTCD”) or the applicable state and federal standards operative at the time of purchase of such signs. Signs, gantries, or other tolling equipment shall not be installed in a manner which negatively impacts the GENERAL PURPOSE LANES or in a manner which would cause the GENERAL PURPOSE LANES to no longer conform to their original design or to applicable state or federal standards in effect at the time of installation. No signage identifying an entity, business or brand other than SMCEL-JPA, CALTRANS, tolling interoperability logos or other logos directly related to the operation of the TOLL FACILITY or identifying the “101 Express Lanes” shall be displayed at any location where it is visible from the State Highway or otherwise in conflict with the Outdoor Advertising Act. Notwithstanding the foregoing, if mutually agreed upon by the PARTIES, SMCEL-JPA may display signage related to other transportation opportunities including, but not limited to, signage advertising express bus or other transportation modes providing transportation for the US 101 corridor.
- b. Any installation of new ETC FACILITY or ETC EQUIPMENT necessary for the safe and efficient operation of the TOLL FACILITY which were not included or accepted as part of the TOLL FACILITY shall be considered MINOR MODIFICATION if they are installed within the TOLL FACILITY. SMCEL-JPA shall be responsible for the installation and maintenance of said MINOR MODIFICATION. To effectuate the purposes of this section, and to maintain an accurate history of all improvements placed in the state right of way, SMCEL-JPA agrees to submit to CALTRANS a completed

ENCROACHMENT PERMIT application including SMCEL-JPA approved engineering plans, prior to performing any MINOR MODIFICATION. This paragraph shall not apply to replacement of equipment accepted as part of the TOLL FACILITY with substantially similar equipment.

47. If SMCEL-JPA requests that CALTRANS implement, on behalf of SMCEL-JPA, modifications to the TOLL FACILITY, SMCEL-JPA shall reimburse CALTRANS for staff time and shall pay for costs associated with such modifications. Any such work performed by CALTRANS shall be pursuant to a separate agreement to be negotiated between the PARTIES.
48. CALTRANS agrees to issue, upon proper application by SMCEL-JPA and/or its authorized agent(s), the necessary ENCROACHMENT PERMIT(s) for required work not covered as part of this AGREEMENT within the State Highway rights-of-way. Permits will be issued at no charge to SMCEL-JPA, or its authorized agent(s), unless an inspection is required, in which case, a fee at standard CALTRANS rates will be charged based on job type, length of work, traffic closure, and as may be required by state regulations.

MAINTENANCE OF TOLL FACILITY

49. SMCEL-JPA shall be responsible for regular inspection and maintenance of the TOLL FACILITY, in order to identify the need for ROUTINE ROADWAY MAINTENANCE, REHABILITATION, or ETC MAINTENANCE.
50. CALTRANS shall perform the ROUTINE ROADWAY MAINTENANCE and REHABILITATION activities on a reimbursed basis reflecting the actual cost of the activities.
51. CALTRANS agrees to consult with SMCEL-JPA when developing a preventative maintenance program that includes REHABILITATION.
52. The maintenance standard for ROUTINE ROADWAY MAINTENANCE shall be at least as stringent as the standards applicable to similar facilities on the SHS and as described in the then-current edition of the CALTRANS Maintenance Manual or based on the available CALTRANS resources.
53. CALTRANS agrees to provide a qualified CALTRANS representative who shall have the authority to accept or reject work and materials, or to order actions needed for public safety or the preservation of property, and to assure compliance with the requirements of this AGREEMENT.

54. CALTRANS shall allocate to the maintenance services to be provided under this AGREEMENT, qualified staff and adequate equipment and shall deliver to SMCEL-JPA information reasonably requested by SMCEL-JPA to verify that CALTRANS has sufficient equipment, personnel and other resources to satisfy its obligations hereunder. CALTRANS will staff a maintenance supervisor or “equivalent” designee to be responsible for coordinating Maintenance Services and assuring quality control, to be reimbursed by SMCEL-JPA.
55. The PARTIES agree to share the responsibilities of ROUTINE ROADWAY MAINTENANCE as indicated in EXHIBIT B.
56. The PARTIES shall address any additional integrated maintenance, permit and maintenance liability issues that may arise following commencement of operations of the TOLL FACILITY, and shall, subject to a separate written agreement or an amendment hereto, determine a cost split and shared responsibility for such integrated maintenance issues, if any.
 - a. SMCEL-JPA shall coordinate its schedule to consider potential impacts of SMCEL-JPA’s maintenance activities on the TOLL FACILITY on the operations of the GENERAL PURPOSE LANES.
57. SMCEL-JPA shall be responsible for ETC MAINTENANCE. To the extent SMCEL-JPA has contracts with third parties to perform ETC MAINTENANCE, SMCEL-JPA agrees to require those third parties to agree in writing to the third party’s indemnification and defense of CALTRANS as identified and described in the *ALLOCATION OF RESPONSIBILITY & LIABILITY* section of this AGREEMENT, inclusive and to require those third parties to procure at least the minimum insurance coverage consistent with the requirements of the *INSURANCE* section of this AGREEMENT, inclusive. The third party insurance coverage shall identify CALTRANS as a first-party, additional insured.
58. CALTRANS’ efforts to ensure that SMCEL-JPA’s maintenance of the TOLL FACILITY is in accordance with the standards and practices in the CALTRANS Maintenance Manual shall consist of oversight of SMCEL-JPA’s maintenance including review of records and an occasional site visit to verify inspection practices. When CALTRANS performs oversight maintenance of SMCEL-JPA, it will not develop, produce, validate, verify, re-check, or quality control SMECL-JPA’s work products. Such oversight work will be paid for by the SMECL-JPA.
 - a. CALTRANS shall be authorized to, but is not obligated to, inspect ROUTINE ROADWAY MAINTENANCE, REHABILITATION or the maintenance of the TOLL FACILITY and its related structures at its own cost; provided that such inspection does not interfere with SMCEL-JPA’s operation or maintenance of the TOLL FACILITY.

- b. If upon either oversight or inspection it is CALTRANS' opinion that appropriate maintenance of the TOLL FACILITY has not been performed in accordance with the applicable Maintenance Standards, CALTRANS shall provide SMCEL-JPA with a written notification of the specific items requiring maintenance.
 - c. Upon such written notification and SMCEL-JPA's agreement therewith, SMCEL-JPA shall provide CALTRANS with a plan to promptly initiate steps to cure maintenance deficiencies identified in the written notice.
59. CALTRANS hereby grants SMCEL-JPA, and its contractors, a right of entry onto the GENERAL PURPOSE LANES, as required for SMCEL-JPA to conduct maintenance activities with its own or its contractors' forces, or by contract. SMCEL-JPA contractors shall, prior to entry onto the GENERAL PURPOSE LANES, obtain from CALTRANS an ENCROACHMENT PERMIT for such entry pursuant to CALTRANS' standard practices and shall provide CALTRANS evidence of insurance reasonably sufficient for the work to be conducted by the SMCEL-JPA contractor, as determined by SMCEL-JPA, under which CALTRANS shall be added as a first-party additional insured.
60. The PARTIES shall coordinate maintenance schedules with each other in order to minimize impacts of maintenance activities on the GENERAL PURPOSE LANES or the TOLL FACILITY. Each PARTY shall notify the other PARTY at least ten (10) business days in advance of any planned closure that may reasonably impact any facility operated by the other PARTY.
61. The PARTIES shall cooperate and coordinate the schedule of maintenance activities to the maximum extent practicable.
62. SMCEL-JPA agrees to be responsible for the operation, maintenance, and repair of the TOLL FACILITY, to the extent provided in this AGREEMENT.
- a. Said work at all times shall be conducted to assure safety and convenience of State Highway users.
 - b. Said work and TOLL FACILITY shall be subject to inspection by CALTRANS as to safety conditions affecting CALTRANS' highway facilities, and SMCEL-JPA shall, upon notice from CALTRANS that an unsafe condition exists, take immediate steps to correct such unsafe conditions.
 - c. If SMCEL-JPA fails to perform the needed repairs to address such unsafe condition(s) after thirty (30) days or other specified number of days of such notice from CALTRANS, CALTRANS may take necessary corrective action, and SMCEL-JPA shall be billed and shall pay all costs for such corrective work performed by CALTRANS.

- d. Such inspection by CALTRANS, if performed at all, does not relieve SMCEL-JPA of its responsibilities under this AGREEMENT.
63. In the event of damage to or destruction of ETC FACILITY, ETC EQUIPMENT or ETC SYSTEM, SMCEL-JPA shall have responsibility for repair and replacement. CALTRANS will be financially responsible for damage or destruction caused by CALTRANS, its agents, or its contractors.

PUBLIC SAFETY/POLICING

64. SMCEL-JPA shall enter into an agreement with CHP to engage law enforcement services from CHP for the TOLL FACILITY.
65. SMCEL-JPA agrees to enter into a separate agreement with the CHP regarding reimbursement for CHP resources used for law enforcement, including the prohibition on unauthorized use of the TOLL FACILITY as requested by SMCEL-JPA, at no cost to CALTRANS.
66. At SMCEL-JPA's request, CALTRANS shall assist SMCEL-JPA in negotiation of the law enforcement service contract with CHP.
67. The PARTIES agree that the agreement with CHP shall provide that law enforcement services for the TOLL FACILITY shall be at least equivalent to that provided on comparable CALTRANS-operated routes.
68. Toll violation enforcement shall be implemented as stated below. SMCEL-JPA shall have the right to:
- a. Engage service of CHP to apprehend and/or cite toll violators in accordance with state law.
 - b. Initiate civil and administrative actions and other toll enforcement and collection actions against violators consistent with applicable law.
 - c. Enforce all private rights against toll violators.
 - d. Engage private security to identify toll violators.
 - e. Take other legally permissible actions to collect, enforce and protect TOLL FACILITY REVENUE.

69. SMCEL-JPA shall follow applicable traffic enforcement laws and regulations and both PARTIES shall comply with all applicable privacy laws in respect to customer information.

CALTRANS USE OR CLOSURE OF TOLL FACILITY

70. Should a closure of all or a portion of the TOLL FACILITY be required to accommodate CALTRANS' construction or maintenance activities on the GENERAL PURPOSE LANES adjacent to the TOLL FACILITY, CALTRANS shall notify SMCEL-JPA no less than ten (10) business days prior to any such proposed closure. CALTRANS shall make its best efforts to conduct construction and maintenance activities in such a manner as to minimize any required closures of the TOLL FACILITY.
71. CALTRANS in cooperation with CHP may close and/or open TOLL FACILITY to general-purpose traffic for incident management, or emergency response in accordance with established rules, guidelines and criteria, at CALTRANS' discretion, as detailed in EXHIBIT E.
72. CALTRANS may close and/or open TOLL FACILITY to general-purpose traffic for construction purposes and maintenance purposes in accordance with required CALTRANS rules, guidelines, and criteria. In such event (*e.g.*, roadway sweeping or ROUTINE ROADWAY MAINTENANCE) not of an incident management or emergency response nature, CALTRANS shall notify SMCEL-JPA at least ten (10) business days in advance of such occurrences and SMCEL-JPA shall adjust its VTMS signs to reflect the special operating configuration of TOLL FACILITY. This work shall be performed outside the revenue generating hours, when possible and unless there is an emergency, so as to avoid creating traffic congestion. In no event shall SMCEL-JPA be subject to reimbursement of lost or reduced TOLL FACILITY REVENUE caused by a closure of the TOLL FACILITY for emergency, construction or maintenance purposes.
73. CALTRANS vehicles shall be allowed to access and use the TOLL FACILITY in order to allow CALTRANS staff to perform their official duties at no cost.

REPRESENTATION AND WARRANTIES

74. In addition to the other representation and warranties of CALTRANS contained herein, CALTRANS hereby represents and warrants as follows:
- a. CALTRANS is a department of the executive branch of the State of California, duly organized and existing under the laws and Constitution of the State of California, is authorized to execute and deliver this AGREEMENT and to perform its obligations

hereunder and by proper action has duly authorized the execution, delivery and performance of this AGREEMENT.

- b. The execution and delivery by CALTRANS of this AGREEMENT and the consummation of the transactions contemplated hereby, is not in conflict with, or a breach of or a default under any law or regulation applicable to CALTRANS, and to the best of CALTRANS' knowledge after due inquiry, there is no restriction or prohibition which would impair or render unenforceable or illegal, as to CALTRANS, any provision of this AGREEMENT including, without limitation, the LEASE, or any other related AGREEMENT to which it is a party.
 - c. CALTRANS has determined that SMCEL-JPA will incur substantial cost and expense to operate the TOLL FACILITY, and that it is necessary, appropriate and reasonable to provide the assurances, protections, rights and warranties contained herein.
 - d. No litigation is pending or, to the best knowledge of CALTRANS, threatened challenging the authority of CALTRANS to enter into this AGREEMENT and CALTRANS is in compliance with all applicable laws and regulations.
 - e. CALTRANS owns and controls the SHS, subject to those existing rights granted to third parties.
 - f. The representations and warranties of CALTRANS contained herein are, as of the date of execution hereof and thereof, accurate and complete.
75. In addition to the other representations and warranties of SMCEL-JPA contained herein, SMCEL-JPA hereby represents and warranties as follows:
- a. SMCEL-JPA has the authority to execute, deliver and perform this AGREEMENT, and the terms and conditions hereof are valid and binding obligations of SMCEL-JPA.
 - b. The execution and delivery by SMCEL-JPA of this AGREEMENT and the consummation of the transactions contemplated hereby is not in conflict with, or a breach of or a default under any law or regulation applicable to SMCEL-JPA, and to the best of SMCEL-JPA's knowledge after due inquiry, there is no restriction or prohibition which would impair or render unenforceable or illegal, as to SMCEL-JPA, any provision of this AGREEMENT, or any other related AGREEMENT to which it is a party.
 - c. To SMCEL-JPA's best knowledge, there is no litigation in effect challenging SMCEL-JPA's authority to enter into this AGREEMENT and SMCEL-JPA is in compliance with all applicable laws and regulations.

- d. The representations and warranties of SMCEL-JPA contained herein are, as of the date of execution hereof and thereof accurate and complete.

ALLOCATION OF RESPONSIBILITY & LIABILITY

76. SMCEL-JPA shall be responsible for inspecting, operating, maintaining, policing, administering the TOLL FACILITY and for collecting tolls for the use of the TOLL FACILITY, subject to and in accordance with the terms of this AGREEMENT, except to the extent SMCEL-JPA engages CALTRANS to perform maintenance as provided in the *MAINTENANCE OF TOLL FACILITY* section of this AGREEMENT, or any other services, and CHP to perform law enforcement services as provided in the *PUBLIC SAFETY/POLICING* section of this AGREEMENT.
 - a. SMCEL-JPA shall indemnify, hold harmless and defend CALTRANS from any Third-Party Claim to the extent such Third-Party Claim is asserted against CALTRANS and arises out of or is attributable to any negligent or willful act or omission of SMCEL-JPA in the performance of the activities described above, except to the extent that such Third-Party Claim is attributable to or arises out of any of the matters described below.
77. CALTRANS shall indemnify, hold harmless and defend SMCEL-JPA from any Third-Party Claims to the extent such Third-Party Claim is asserted against SMCEL-JPA and arises out of or is attributable to any negligent or willful act or omission of CALTRANS in performance of the activities described above, except to the extent such Third-Party Claim is attributable to or arises out of the matters described above.
78. Except as provided above, SMCEL-JPA and CALTRANS each waive any and all rights to defense and indemnity of any kind (whether equitable, comparative, express or implied) from each other with respect to Third-Party Claims.
79. If CALTRANS and SMCEL-JPA are named joint defendants pursuant to a Third-Party Claim arising under this AGREEMENT, the legal issues between the plaintiff(s) bringing forth such claim and CALTRANS and SMCEL-JPA, as joint defendants, shall be resolved first without consideration as to the allocation or apportionment of liability or damages between CALTRANS and SMCEL-JPA, if any liability or damages can be allocated or apportioned between them. A determination regarding allocation or apportionment of liability or damages between CALTRANS and SMCEL-JPA shall be made following final resolution of the Third-Party Claim, either in a separate or second phase of trial or by some other mechanism the PARTIES may agree upon.
80. If either CALTRANS or SMCEL-JPA is named as a defendant pursuant to a Third-Party Claim for inverse condemnation arising out of or related to the TOLL FACILITY (“Inverse Claim”), the defendant agency shall immediately notify the other PARTY of the existence

of the Inverse Claim. If an Inverse Claim is litigated, the legal issues between the plaintiff(s) bringing forth the Inverse Claim and either CALTRANS or SMCEL-JPA, as applicable, shall be resolved first without consideration as to the allocation or apportionment of liability or damages between CALTRANS and SMCEL-JPA, if any liability or damages can be allocated or apportioned between them. The PARTY that is not a named defendant shall have the right, at its sole cost and expense, to intervene in the action and to participate in the defense and resolution of the Inverse Claim. Within ninety (90) days of the final resolution of the Inverse Claim, either CALTRANS or SMCEL-JPA may refer to the dispute resolution process section of this AGREEMENT the apportionment of liability or damages for the Inverse Claim between CALTRANS and SMCEL-JPA. Liability or damages will be apportioned based on the extent to which the Claim is found to have arisen out of SMCEL-JPA's construction or operation of the TOLL FACILITY.

RECORDS

81. The PARTIES shall hold all administrative draft and administrative final reports, studies, materials, As-built plans, and documentation relied upon, produced, created, or utilized for operation and/or maintenance of the TOLL FACILITY in confidence to the extent permitted by law. Where applicable, the provisions of California Government Code section 6254.S(e) shall govern the disclosure of such documents in the event that the PARTIES share said documents with each other. The PARTIES shall not distribute, release, or share said documents with anyone other than employees, agents, and consultants of the PARTIES who require access to such documents for a purpose related to operation and maintenance of the TOLL FACILITY without the written consent of the PARTY authorized to release them, unless required or authorized to do so by law.

INSURANCE

82. Commercial general liability insurance shall be implemented as stated below:
 - a. SMCEL-JPA shall procure and maintain throughout the term of this AGREEMENT comprehensive general liability insurance protecting SMCEL-JPA from risks arising from SMCEL-JPA's activities covered under this AGREEMENT. Such liability insurance policy shall include coverage for bodily injury and property damage. If SMCEL-JPA uses existing coverage to comply with the requirements and that coverage does not meet these requirements, SMCEL-JPA agrees to amend, supplement, or endorse the existing coverage to meet the requirements herein.
 - b. CALTRANS shall be included as an additional first-party insured under the insurance policy(ies). As respects CALTRANS, for claims arising out of the activities

contemplated in this AGREEMENT, such insurance shall be primary and non-contributory with any insurance maintained by CALTRANS.

- c. The insurance coverage required shall be in amount not less than \$25 million general aggregate per year.

83. Evidence of coverage shall be shown as stated below:

- a. Evidence of insurance in compliance with the requirements shall be furnished to CALTRANS by providing complete copies of the underlying policy(ies) of insurance as well as an endorsement naming CALTRANS and all addenda and exclusions as well as by standard certificates of insurance. Neither the insurance policies nor the additional insured endorsements shall contain provisions or exclusions inconsistent with this AGREEMENT. Such policies or endorsements shall include a notice of cancellation, of not less than 30 days (10 days for non-payment of premiums), to CALTRANS.
- b. Such insurance shall be issued by a company or companies authorized to transact business in the State.

84. Denial of coverage shall be addressed below:

- a. If the insurance carriers for the policies of insurance deny coverage to SMCEL-JPA or CALTRANS with respect to any Claims reported to such carriers, CALTRANS and SMCEL-JPA shall cooperate to establish whether, to what extent, and how to fund the cost of contesting the denial of coverage.

DEFAULT/REMEDIES

85. Subject to the extensions of time set forth in this AGREEMENT and/or any extensions agreed upon by the PARTIES, failure or delay by either PARTY to perform any material term or provision of this AGREEMENT constitutes a default under this AGREEMENT.

86. The non-defaulting PARTY shall give written notice of such default to the PARTY in default, specifying the alleged default. The defaulting PARTY shall commence to cure, correct and/or remedy the default as soon as reasonably practicable. The PARTY shall complete the cure of the default within 30 days or such longer time as the non-defaulting PARTY agrees in the event the default cannot be cured within that time. Except as otherwise expressly provided in this AGREEMENT, any failures or delays by either PARTY in asserting any of its rights or remedies with respect to a default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either PARTY in asserting any of its rights and remedies shall not deprive either PARTY of its right to

institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

87. In the event that the defaulting PARTY fails to complete the cure or remedy of a default within thirty (30) calendar days following receipt of written notice, or within such time as the non-defaulting PARTY otherwise agrees, a breach of this AGREEMENT shall be deemed to have occurred, and the defaulting PARTY shall be liable to the non-defaulting PARTY for any damages caused by such breach.
88. In the event of a breach, the non-defaulting PARTY may exercise the right to seek damages, specific performance or other injunctive or equitable relief. The exercise of a PARTY's rights and remedies shall be cumulative with the exercise of other rights and remedies. CALTRANS also acknowledges that it shall not have the right to collect or retain TOLL FACILITY REVENUE on account of or as an offset against damages or otherwise during the period that TOLL FACILITY REVENUE are pledged to repayment of indebtedness incurred to finance or refinance the TOLL FACILITY project.
89. Dispute resolution shall be implemented as stated below:
 - a. SMCEL-JPA and CALTRANS shall attempt to resolve all disputes. In the case of a dispute and prior to the exercise of any judicial remedies for a breach of this AGREEMENT, the following procedure shall govern:
 - i. Representatives of CALTRANS and SMCEL-JPA shall attempt to resolve the dispute within fifteen (15) days, or such longer period as agreed on by the PARTIES.
 - ii. If the representatives of CALTRANS and SMCEL-JPA are unable to resolve the dispute, the matter shall be referred to the District Director of CALTRANS and to the SMCEL-JPA Executive Council. The foregoing officers of the PARTIES shall attempt to resolve the dispute within thirty (30) days, or such longer period as agreed on by the PARTIES.
 - iii. If the District Director of CALTRANS and the SMCEL-JPA Executive Council are unable to resolve the dispute, and if the disputed amount claimed by a PARTY does not exceed \$500,000 and, in the aggregate, unresolved disputes do not exceed \$5,000,000, either PARTY may demand that the dispute be submitted to binding arbitration. The amounts specified in the foregoing sentence shall be subject to annual adjustment, commencing as of the first day on which the TOLL FACILITY is placed into toll operations, in an amount equal to the percentage increase in the Index as of the effective date hereof.

- iv. If the dispute does not meet the specifications above, the PARTIES may agree to submit the dispute to arbitration or other form of alternative dispute resolution, or either PARTY may seek any other legal remedies available.
- b. Available remedies to the PARTIES shall include, without limitation, (i) injunctive relief and other equitable remedies, (ii) specific performance, (iii) termination, in whole or in part, of any obligation on the part of the prevailing PARTY to reimburse the losing PARTY for the disputed work at issue conducted by the losing PARTY, (iv) the right of the prevailing PARTY to recover monies paid to the losing PARTY as reimbursement for the disputed work at issue, or portions thereof, conducted by the losing PARTY, and (v) the right of the prevailing PARTY to reimbursement for costs incurred in conducting or completing work ordered by the losing PARTY.

TRANSFER BACK TO STATE

- 90. At the end of the term of this AGREEMENT, including any extension thereof, all property granted via the LEASE provisions above, as well as all personal property owned by SMCEL-JPA and which is related to the TOLL FACILITY, ETC FACILITY, ETC EQUIPMENT, ETC SYSTEM, including the signs, gantries, other tolling equipment, traffic control devices and video surveillance and enforcement equipment, and other similar equipment utilized for the operation of the TOLL FACILITY, excluding any computer software or hardware for which a license maybe required, shall automatically become the property of CALTRANS. CALTRANS may, but is not obligated to, assume the rights and obligations of SMCEL-JPA with respect to personal property, ETC EQUIPMENT and ETC SYSTEMS which are not owned by SMCEL-JPA, but which are subject to a lease or other financing arrangement with a third party. SMCEL-JPA shall take all reasonable steps to allow for the substitution of CALTRANS for SMCEL-JPA with respect to any such lease or arrangement.
- 91. At the end of the term of this AGREEMENT, including any extension terms, and to the extent the Handback Requirements identified in EXHIBIT D have been met, all maintenance and other obligations of SMCEL-JPA shall become the responsibility of CALTRANS, other than, unless otherwise agreed upon by the PARTIES, any then-existing financing obligations of SMCEL-JPA to third parties that relate to the FACILITY.
- 92. SMCEL-JPA agrees to be solely responsible for future relocation or removal of the ETC FACILITY, ETC EQUIPMENT and ETC SYSTEM if and when required by CALTRANS consistent with the terms in AGREEMENT.
- 93. Upon termination of this AGREEMENT, the ETC FACILITY, ETC EQUIPMENT and ETC SYSTEM, which is the property of the SMCEL-JPA, shall be removed from the CALTRANS right of way in a twelve (12)-month timeframe agreed to by both

CALTRANS and SMCEL-JPA, unless otherwise modified by mutual agreement of both CALTRANS and SMCEL-JPA.

94. CALTRANS may, but is not obligated to, assume the role of SMCEL-JPA with respect to any third-party vendor contracts relating to the maintenance or operation of the TOLL FACILITY. SMCEL-JPA agrees to take all reasonable steps to allow for the substitution of CALTRANS for SMCEL-JPA with respect to any third-party vendor contracts.
95. The PARTIES agree that a punch list, to include all outstanding maintenance and repair obligations of SMCEL-JPA related to the TOLL FACILITY, shall be developed by the PARTIES one (1) year prior to transfer of the TOLL FACILITY to CALTRANS. SMCEL-JPA shall complete all agreed upon items on the punch list prior to the end of the term of this AGREEMENT.
96. At the end of the term of this AGREEMENT, SMCEL-JPA shall transfer to CALTRANS all records pertaining to material maintenance, operations, unresolved complaints, safety and modifications of the TOLL FACILITY generated within five (5) years prior to termination of this AGREEMENT and maintained by SMCEL-JPA.
97. This AGREEMENT may be terminated by mutual written consent of the PARTIES, or SMCEL-JPA's or CALTRANS' failure to comply with the provisions of this AGREEMENT may be grounds for a Notice of Termination by CALTRANS or SMCEL-JPA. Notice of Termination by a PARTY shall be given to the other PARTY within at least one hundred eighty (180) days of instance of failure to comply with the provisions of this AGREEMENT.
98. Should either PARTY wish to terminate this AGREEMENT prior to the end of its Term, the PARTIES agree to promptly engage in negotiations to determine matters including but not limited to: schedule of termination, remaining maintenance obligations, the identification of ETC SYSTEM and ETC FACILITIES which may be required to remain installed and functioning as part of the TOLL FACILITY; and the status of ongoing or executed vendor or service contracts. Once agreed by both PARTIES upon a portion or entirety of TOLL FACILITY is terminated for any reason, with prior written approval from FHWA and CALTRANS, SMCEL-JPA shall convert the TOLL FACILITY to GENERAL PURPOSE LANES or managed lanes as determined by CALTRANS. SMCEL-JPA shall obtain an ENCROACHMENT PERMIT from CALTRANS prior to restoration. CALTRANS and SMCEL-JPA agree that any costs incurred for said restoration or conversion shall be funded solely by the revenues generated from TOLL FACILITY, or from the operating budget of SMCEL-JPA. In the event there are insufficient revenues to cover the costs of said restoration or conversion, CALTRANS and SMCEL-JPA agree to work cooperatively to secure funding from other sources.

FINANCIAL MANAGEMENT

99. That while there is a loan outstanding within a corridor, repayment of the loan and compliance with loan covenants, including all FINANCING COSTS, will have the priority over other obligations of the TOLL FACILITY as specified in EXHIBIT F. CALTRANS will make no claim of priority of any payment of any kind from any TOLL FACILITY REVENUE that would cause SMCEL-JPA to breach any provision of EXHIBIT F, and SMCEL-JPA shall be entitled to prioritize any DIRECT EXPENSE or RESERVES (DIRECT EXPENSES) required by any provision of EXHIBIT F from TOLL FACILITY REVENUE. If any of the above covenants require amendments, it will require to be consulted with CALTRANS and priorities may be reconsidered.
100. SMCEL-JPA agrees to develop the SMCEL-JPA's ANNUAL BUDGET, as defined herein.
101. SMCEL-JPA, in consultation with CALTRANS, shall determine the portions of the ANNUAL BUDGET pertaining to the annual reimbursement cost to CALTRANS for ROUTINE ROADWAY MAINTENANCE and TRAFFIC OPERATIONS.
102. The ANNUAL BUDGET will detail the amount needed for fiscal year DIRECT EXPENSES. The ANNUAL BUDGET will also specify anticipated amounts to be placed in RESERVE annually to address operational emergencies, as well as in the RESERVES (ETC SYSTEM REPLACEMENT) for future TOLL FACILITY rehabilitation and replacement and in the RESERVES (REHABILITATION) for REHABILITATION. The ANNUAL BUDGET will identify REMAINING REVENUE for non-operational costs which may include augmentation of the Equity Program, the development and implementation of the remainder of the TOLL FACILITY in San Mateo County, and for transit operations in the corridor, and other eligible expenses. The amount of REMAINING REVENUE for operational and non-operational costs will depend on the amount of funds remaining after funding of DIRECT EXPENSES required by any loan or bond payment of all current operational and maintenance costs including ROUTINE ROADWAY MAINTENANCE and TRAFFIC OPERATIONS performed by CALTRANS.
103. The RESERVES (REHABILITATION) for REHABILITATION, if not completely spent in any given year, remaining funds should be rolled over to the following year, unless otherwise advised not to by CALTRANS or if the cap would be exceeded. The cap for total funds in RESERVES (REHABILITATION) is the maximum amount of the SMCEL-JPA obligation based on programmed projects in the then current SHOPP and based on contributions called for in EXHIBIT C.
104. Concurrent with development of the ANNUAL BUDGET, the SMCEL-JPA will provide CALTRANS with information or data on the balance in RESERVES (DIRECT EXPENSES) as well as the RESERVES (REHABILITATION) for REHABILITATION.

105. The details regarding the funding and distribution of effort for individual REHABILITATION will be agreed to and addressed and will be addressed under separate project specific agreements (Cooperative Agreement or Encroachment Permit Agreements) as needed.
106. SMCEL-JPA agrees to reimburse CALTRANS for its actual costs for ROUTINE ROADWAY MAINTENANCE, including associated Maintenance Zone Enhanced Enforcement Program (MAZEEP) costs. SMCEL-JPA agrees to reimburse CALTRANS for all its actual costs of other items of work requested by SMCEL-JPA and performed by CALTRANS. If CALTRANS elects not to perform ROUTINE ROADWAY MAINTENANCE in any instance, SMCEL-JPA agrees to perform such maintenance in accordance with the standards and practices in the CALTRANS Maintenance Manual and use the funds budgeted therefore in the ANNUAL BUDGET.
107. SMCEL-JPA agrees to pay for CALTRANS costs for non-routine REHABILITATION as specified in EXHIBIT C.
108. During the period of any loan agreement specific to the TOLL FACILITY, SMCEL-JPA's obligation to pay for non-routine REHABILITATION, as specified in EXHIBIT C, will not exceed the funds on deposit in the RESERVES (REHABILITATION). Once the anticipated future expenditures for REHABILITATION exceeds the funds anticipated to be available in in the RESERVES (REHABILITATION), SMCEL-JPA is to immediately advise and consult with CALTRANS.
109. SMCEL-JPA shall be responsible for the costs of any services of CALTRANS requested by SMCEL-JPA including, but not limited to, those services that state law mandates CALTRANS to perform directly related to TOLL FACILITY which shall be paid for by SMCEL-JPA, including CALTRANS' oversight of maintenance provided by SMCEL-JPA as specified herein.
110. SMCEL-JPA agrees to deposit payment with CALTRANS within forty-five (45) days of receipt of invoices for the expenses incurred.
111. The PARTIES agree the cost allocation for ROUTINE ROADWAY MAINTENANCE which is required by both the TOLL FACILITY as well as the GENERAL PURPOSE LANES shall be addressed between the PARTIES but in no event shall ROUTINE ROADWAY MAINTENANCE for the TOLL FACILITY be deferred.
112. CALTRANS agrees to perform ROUTINE ROADWAY MAINTENANCE activities as identified in EXHIBIT B for the TOLL FACILITY at SMCEL-JPA's expense in accordance with the ANNUAL BUDGET. If CALTRANS chooses (after ANNUAL BUDGET approval) not to perform ROUTINE ROADWAY MAINTENANCE activities in some instances, CALTRANS agrees to notifying SMCEL-JPA, and the SMCEL-JPA shall

have 365 calendar days to perform the ROUTINE ROADWAY MAINTENANCE activities that CALTRANS declines to perform.

113. CALTRANS agrees to submit to SMCEL-JPA, a signed itemized invoice for costs incurred and paid by CALTRANS with specific details and supporting documentation sufficient to allow confirmation by SMCEL-JPA that work was performed, and documentation with sufficient detail to support an audit of SMCEL-JPA costs billed to SMCEL-JPA. Presentation of invoice information should also be consistent with the SMCEL-JPA ANNUAL BUDGET for providing ROUTINE ROADWAY MAINTENANCE and for TRAFFIC OPERATIONS functions as outlined in EXHIBIT B. Each invoice shall be submitted to SMCEL-JPA for approval and payment and shall be e-mailed to SMCEL-JPA accounts payable as shown below with a copy to the designated SMCEL-JPA Point of Contact.
114. If Electronic Fund Transfer (EFT) is available, CALTRANS shall submit electronically, a summary listing of ROUTINE ROADWAY MAINTENANCE and TRAFFIC OPERATIONS expenditures for reimbursement to CALTRANS by means of EFT. Within ten (10) days after submittal of that EFT, to submit an invoice with specific details and supporting information of all costs incurred during the period of the invoice. Upon notice of invoice discrepancy from SMCEL-JPA, CALTRANS shall conduct review to determine an appropriate response. If CALTRANS disputes such claim, CALTRANS shall notify SMCEL-JPA, and PARTIES will enter the issue resolution process as described in the *DEFAULT/REMEDIES* section. Upon final resolution of a disputed claim, SMCEL-JPA shall make the appropriate credit or debit to the DIRECT EXPENSES related to the ROUTINE ROADWAY MAINTENANCE and TRAFFIC OPERATIONS. If CALTRANS agrees with the claim, CALTRANS shall credit undisputed claims to SMCEL-JPA in its current funding request.
115. All REVENUE and REMAINING REVENUE used by CALTRANS shall augment and not replace CALTRANS resources (such as SHOPP) used for maintenance of State-owned facilities (such as the adjacent GENERAL PURPOSE LANES) within San Mateo County.
 - a. CALTRANS agrees to provide documentation annually to SMCEL-JPA to show the CALTRANS resources for maintenance of State-owned facilities spent on work in support of the San Mateo County EXPRESS LANES relative to the total that is spent District-wide to confirm that TOLL FACILITY REVENUE are being used to augment and not replace CALTRANS resources.
116. All obligations of CALTRANS under the terms of this AGREEMENT are subject to the appropriation of resources by the Legislature, State Budget Act authority, and the collection of resources by the CTC. Likewise, all obligations of SMCEL-JPA are subject to the appropriation of resources by the SMCEL-JPA Board, as well as subject to the availability of TOLL FACILITY REVENUE.

117. The PARTIES will conduct a joint inspection of the roadway prior to start of operation of the TOLL FACILITY to document pre-existing conditions prior to SMCEL-JPA's assuming financial responsibility for ETC MAINTENANCE. Corrective actions for pre-operation conditions are not SMCEL-JPA's financial responsibility.
118. SMCEL-JPA, and/or its designee, shall have the right to conduct interim and final audits of CALTRANS' cost determinations for its reimbursement requests from SMCEL-JPA, at SMCEL-JPA expense, including financial and compliance audits, and other audits as SMCEL-JPA deems appropriate in accordance with Generally Accepted Governmental Audit Standards ("GAGAS"). SMCEL-JPA shall use reasonable efforts to commence the final audit within ninety (90) days of SMCEL-JPA's receipt of the annual invoice and will make every reasonable attempt to conduct such audits in a timely manner. CALTRANS agrees to establish and maintain proper accounting procedures, cash management records and related documents in accordance with state law, CALTRANS' Budgetary Basis of Accounting, and Generally Accepted Accounting Principles ("GAAP"). CALTRANS shall reimburse SMCEL-JPA for any reimbursement received by CALTRANS that is not in compliance with the terms and conditions of this AGREEMENT. SMCEL-JPA shall use applicable Federal Acquisition Regulations (FAR) in determining the reasonableness of costs incurred.
119. Cost of ROUTINE ROADWAY MAINTENANCE and TRAFFIC OPERATIONS performed by CALTRANS as specified in this AGREEMENT will be reimbursed at 100% of actual costs. Actual cost includes the cost of labor, plus its associated overhead, MAZEEP, equipment, and material. The cost of support work performed by CALTRANS includes all direct and applicable indirect costs.
120. On a fiscal year annual basis, SMCEL-JPA will provide CALTRANS with a copy of the TOLL FACILITY revenue, performance, and expenditures reports provided to the Legislative Analyst (per Section 149.7).
121. SMCEL-JPA agrees to reimburse CALTRANS for all its actual costs of TRAFFIC OPERATIONS as shown in EXHIBIT E and other items of work requested by SMCEL-JPA and agreed to by CALTRANS.

DATA COLLECTION, SECURITY, AND SHARING

122. SMCEL-JPA agrees:
 - a. To be responsible for the security of all SMCEL-JPA data collected for the purpose of operating TOLL FACILITY except to the extent such data is no longer in SMCEL-JPA's possession and control.

- b. To defend, indemnify, and hold harmless CALTRANS and all its officers and employees from all claims or suits arising due to a data or security breach to the extent such data or security breach occurs while breached data is in SMCEL-JPA's possession and sole control.
 - c. To be responsible for the security of all BAIFA data collected for the purpose of operating EXPRESS LANES to the extent such data is in possession and control of CALTRANS.
123. CALTRANS shall defend, indemnify and save harmless BAIFA and all its commissioners, officers and employees from all claims or suits arising due to a data or security breach to the extent such data or security breach occurs while breached data is in the possession and control of CALTRANS.
124. CALTRANS agrees to be responsible for the security of all SMCEL-JPA data collected for the purpose of operating TOLL FACILITY to the extent such data is in the possession and control of CALTRANS. To defend, indemnify and save harmless SMCEL-JPA and all its commissioners, officers, and employees from all claims or suits arising due to a data or security breach to the extent such data or security breach occurs while breached data is in the possession and control of CALTRANS.
125. SMCEL-JPA, or its authorized agent(s), agrees to provide CALTRANS, at no cost to CALTRANS, all tolling and traffic data (such as VTMS messages and traffic speed, volume, occupancy, transponder location data and density) and closed-circuit television camera feeds from the TOLL FACILITY elements, including changeable message signs and traffic monitoring stations, to CALTRANS TMC in a mutually agreed format subject to the provisions of applicable laws and the privacy policies adopted for TOLL FACILITY.
126. All collected data and published reports related to the TOLL FACILITY generated by CALTRANS and SMCEL-JPA, or its authorized agent(s), shall be made available upon request by either party to this AGREEMENT within thirty (30) days. SMCEL-JPA, or its authorized agent(s), will abide by the TOLL FACILITY Privacy Policy to prevent disclosures of personally identifiable information. CALTRANS and SMCEL-JPA receive no warranty regarding provided data, whether express or implied, and all warranties of merchantability and fitness of provided data for any particular purpose are expressly disclaimed.
127. CALTRANS and SMCEL-JPA make no warranty that the data provided will be free of errors, and that the provided data is on an "as is" and "with all faults" basis.
128. CALTRANS and SMCEL-JPA will not license or distribute any shared data to any parties not included in this AGREEMENT, without the written consent of the other party, except

for purposes of 511, PeMs and the National Evaluation required by USDOT unless it is required pursuant to the California Public Records Act, subpoena or similar legal obligation.

OTHER MISCELLANEOUS STANDARD PROVISIONS

129. Approvals shall be implemented as stated below:

- a. Whenever CALTRANS' comment, approval or consent is required under this AGREEMENT, such comment, approval or consent shall not be unreasonably withheld or delayed and, unless otherwise expressly provided herein, CALTRANS' consent or approval shall be deemed given if CALTRANS has not responded to SMCEL-JPA's request therefor within twenty-one (21) days (or such other time period specified in this AGREEMENT) after such request is received, or for a MAJOR MODIFICATION, within a reasonable period of time, not to exceed the timeframe set forth by law for the ENCROACHMENT PERMIT process.
- b. Whenever SMCEL-JPA's comment, approval or consent is required under this AGREEMENT, such comment, approval or consent shall not be unreasonably withheld or delayed and, unless otherwise expressly provided herein, SMCEL-JPA's consent or approval shall be deemed given if SMCEL-JPA has not responded to CALTRANS' request therefor within twenty-one (21) days (or such other time period specified in this AGREEMENT) after such request is received, provided that such time may be extended by mutual AGREEMENT.

130. The assignment of AGREEMENT shall be implemented as stated below:

- a. Except as provided in clause (c) below, any proposed assignment of this AGREEMENT to a private entity shall require CALTRANS' approval, in its sole discretion. Any proposed assignment shall require that notice shall be given to CALTRANS three (3) months prior to the effective date of said assignment. Any potential assignee shall immediately upon request provide information reasonably required by CALTRANS to determine whether said potential assignee can meet the obligations of this AGREEMENT. SMCEL-JPA may assign its right, title and interest in and to TOLL FACILITY REVENUE with CALTRANS' approval to the extent permitted by EXHIBIT F. Any potential assignee shall maintain the existing SMCEL-JPA account balances at the time of assignment.
- b. Any proposed assignment of this AGREEMENT to a public entity shall require that notice shall be given to CALTRANS three (3) months prior to the effective date of said assignment. Such notice shall include provision to CALTRANS of evidence that the proposed assignee has the demonstrated financial ability to meet its obligations under

this AGREEMENT. CALTRANS shall approve such assignment within fifteen business (15) days of receiving notice from SMCEL-JPA, unless it reasonably determines that the proposed assignee cannot meet the obligations of this AGREEMENT. Any potential assignee shall immediately upon request provide information reasonably required by CALTRANS to determine whether said potential assignee can meet the obligations of this AGREEMENT.

131. SMCEL-JPA agrees to contract directly with Pacific Gas and Electric Company (PG&E) and other utilities as needed for electrical power and communication of field elements specifically related to the TOLL FACILITY including, but not limited to service connections, engineering fees, service, and energy costs, at SMCEL-JPA's sole expense.
132. SMCEL-JPA agrees to provide the designated Point of Contact to perform operations and maintenance in accordance with this AGREEMENT.
133. SMCEL-JPA agrees to obtain approval from the designated CALTRANS Point of Contact prior to closing traffic lanes or shoulders and to obtain approval from the designated CALTRANS Point of Contact prior to conducting activities that have the potential to affect traffic operations.
134. The designated SMCEL-JPA Point of Contact:
Joe Hurley, P.E.
Director, San Mateo County Transportation Authority Program
1250 San Carlos Avenue
San Carlos, California 94070
Office: (650) 508-7942
hurleyj@samtrans.com
135. The designated CALTRANS Point of Contact:
Earl Sherman III
South Region's Maintenance Manager II
380 Foster City Boulevard
Foster City, CA 94404
(510) 590-4611
earl.sherman.III@dot.ca.gov
136. CALTRANS agrees to permit SMCEL-JPA and its contractors access to a communication hub that is part of the FIBER FACILITY to facilitate the communications and operations associated with the TOLL FACILITY, at no cost to SMCEL-JPA. See Backhaul O&M for details.
137. Nothing in the provisions of this AGREEMENT is intended to create duties or obligations to or rights in third parties not parties to this AGREEMENT, or effect the legal liability of

any party to the AGREEMENT by imposing any standard of care with respect to the maintenance of State Highways different from the standard of care imposed by law.

138. Neither CALTRANS nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of negligent act or omission by SMCEL-JPA under or in connection with any work, authority or jurisdiction allocated to SMCEL-JPA under this AGREEMENT. It is understood and agreed that, SMCEL-JPA will fully defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tort, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of negligent act or omission by SMCEL-JPA under this AGREEMENT.
139. Neither SMCEL-JPA nor its member agencies, nor any commissioner, officer, nor employee or agent thereof is responsible for any injury, damage or liability occurring by reason of negligent act or omission by CALTRANS under or in connection with any work, authority or jurisdiction allocated to CALTRANS under this AGREEMENT. It is understood and agreed that, CALTRANS will fully defend, indemnify, and save harmless SMCEL-JPA and each of its member agencies, and respective commissioners, officers and employees thereof, from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tort, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of negligent act or omission by CALTRANS under this AGREEMENT.
140. The Recitals are a material term of this AGREEMENT as if they were restated in full here.
141. This AGREEMENT may be amended by mutual consent of both PARTIES to comply with federal, state, and CTC laws and policies.
142. This AGREEMENT shall become effective on the date first shown on its face sheet and shall remain in full force and effect until amended or terminated at any time upon mutual consent of the PARTIES.

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

SAN MATEO COUNTY EXPRESS LANES
JOINT POWERS AUTHORITY

CALIFORNIA
DEPARTMENT OF
TRANSPORTATION

By: _____
DIANE PAPAN
CHAIR

By: _____
DINA EL-TAWANSY
District 4 Director

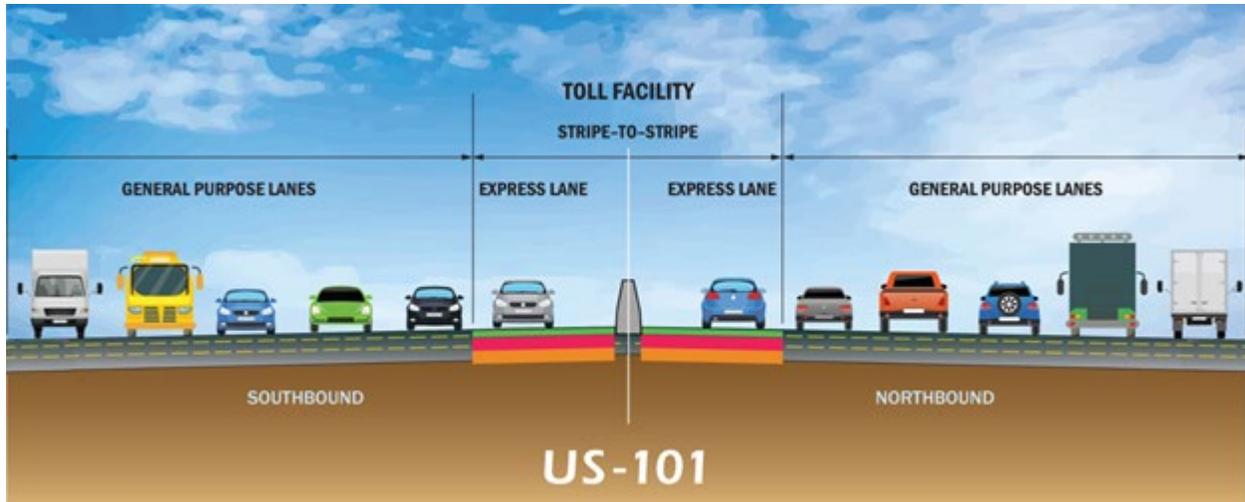
Approved as to form:

Approved as to form:

By: _____
TIMOTHY FOX
Legal Counsel

By: _____
GLENN B. MUELLER
Attorney

EXHIBIT A
TOLL FACILITY AND LEASED PROPERTY
LEGAL DESCRIPTION



This is the legal description of the TOLL FACILITY, a portion of which is the LEASED PROPERTY as identified below.

TOLL FACILITY

Two (2) high occupancy toll lanes, one lane northbound and one lane southbound, in the median of US 101 in San Mateo County, extending 21.8 miles in length both northbound and southbound from the Santa Clara County line (postmile SM 0.0) to near the I-380 Overcrossing (postmile SM 21.8) will be known as the San Mateo 101 Express Lanes and will be operated by the SMCEL-JPA from 5 a.m. to 8 p.m. Monday through Friday as the TOLL FACILITY as detailed below.

1. The facilities existing between the outer stripes of each lane:
 - a. Express Lanes pavement structural section
 - b. Express Lanes striping and pavement markings
 - c. Median shoulders
 - d. Median drainage inlets
 - e. Median barriers both concrete and metal beam
 - f. Median Express Lanes signing (sign bridges are excluded)
 - g. Median highway lighting
 - h. CHP Express Lanes observation areas (5)
2. Median sign locations upstream of the limits specified above that advise drivers of the upcoming Express Lane facility
3. Freeway shoulder areas upon which Toll System infrastructure (ETC FACILITY) is established

4. Toll equipment located in spot locations throughout the corridor along the outside freeway shoulder:
 - a. Toll equipment:
 - i. Express Lanes equipment cabinets
 - ii. Express Lanes closed circuit television (CCTV) poles
 - iii. Express Lanes PG&E service pedestals
 - iv. Express Lanes pull boxes and conduit connecting each tolling equipment site to the appropriate cabinet(s)
 - v. Guardrail to protect the Express Lanes infrastructure and equipment from traffic
 - b. Variable Toll Message Signs (VTMS) at the following on-ramps:
 - i. Southbound US 101 on-ramp from Produce Avenue
 - ii. Southbound US 101 on-ramp from Marsh Road
 - iii. Southbound US 101 on-ramp from Brittan Avenue
5. Conduit running beneath the GP lanes from the toll equipment located on the shoulder to the median toll infrastructure (ETC FACILITY)
6. ETC SYSTEM

LEASED PROPERTY

All of Parts 1, 2 and 3 of the TOLL FACILITY as underlined above constitute the LEASED PROPERTY.

EXHIBIT B: ROUTINE ROADWAY MAINTENANCE and Operations Responsibility Matrix

		SMCEL-JPA's Leased Property	SMCEL-JPA Routine (Preventative and Corrective) Roadway Maintenance / Operations Funding Responsibility	Maintenance / Operations Performed By*
1	Toll System leased median roadway infrastructure features			
	a. Pavement structural section (loop detector replacement as needed)	100%	100%	Caltrans
	b. Striping and pavement markings	100%	100%	Caltrans
	c. Median shoulder	100%	100%	Caltrans
	d. Median drainage inlets	100%	100%	Caltrans
	e-1. Median concrete barrier	100%	100%	Caltrans
	e-2. Median thrie beam barrier	100%	100%	Caltrans
	f. Median Express Lanes signing	100%	100%	Caltrans
	g. Median lighting	100%	100%	SMCEL-JPA
	h. CHP observation areas (5)	100%	100%	Caltrans
2	Traffic Analysis & Operations (Related to the Toll Facility) **			
	a. TMC/DCC Activities	100%	100%	Caltrans
	b. Incident Management Support	100%	100%	Caltrans
	c. Special Inquiry	100%	100%	Caltrans
	d. Traffic Investigation	100%	100%	Caltrans
	e. Traffic Analysis & Operations	100%	100%	Caltrans
3	Toll System elements located outside of the limits of the striped Express Lanes			
	Median sign locations upstream of the limits of the striped Express Lanes that advise drivers of the upcoming Express Lane facility	100%	100%	SMCEL-JPA
4	Toll System elements located on the outside shoulder			
	a. Toll equipment located in spot locations throughout the corridor along the outside freeway shoulder	100%	100%	SMCEL-JPA
	i. Equipment cabinets	100%	100%	SMCEL-JPA
	ii. CCTV poles	100%	100%	SMCEL-JPA
	iii. PG&E service pedestals	100%	100%	SMCEL-JPA
	iv. Pull boxes and conduit connecting each tolling equipment to the cabinet	100%	100%	SMCEL-JPA
	v. Guardrail to protect equipment from traffic	100%	100%	Caltrans
	b. Variable Toll Message Signs (VTMS) at the following on-ramps:	100%	100%	SMCEL-JPA
	i. Southbound US 101 on-ramp from Produce Avenue	100%	100%	SMCEL-JPA
	ii. Southbound US 101 on-ramp from Marsh Road	100%	100%	SMCEL-JPA
	iii. Southbound US 101 on-ramp from Brittan Avenue	100%	100%	SMCEL-JPA
5	Toll System equipment placed on or within the infrastructure detailed above			
	ETC SYSTEM equipment, including cabinets	100%	100%	SMCEL-JPA
6	Conduit laterals across 101			
	Conduit runs beneath the GP lanes between on the shoulder and the median	100%	100%	SMCEL-JPA
7	Caltrans' pre-existing roadway features			
	a. Median highway signing other than Express Lanes facilities (including foundation)	Not included	0%	Caltrans
	b. Drainage systems	Not included	0%	Caltrans
	c. Loop detectors	Not included	0%	Caltrans
	d. Bridge columns of overcrossings and freeway connectors	Not included	0%	Caltrans
	e. Graffiti removal from Express Lanes signs and facilities	100%	100%	SMCEL-JPA
	f. Median and Express Lanes sweeping	100%	100%	Caltrans
				<i>*Subject to annual confirmation by Caltrans (see TF O&M).</i>
				<i>**Subject to the approval of JPA.</i>

EXHIBIT C: REHABILITATION Responsibility Matrix

	Caltrans' pre-existing roadway features	SMCEL-JPA's Leased Property	SMCEL-JPA's Contribution to Caltrans for Corridor Rehabilitation
a.	Pavement structural section (Express Lane)	100%	100% (Full replacement of pavement & loops)
b.	Median shoulders	100%	20% based on lane count across all lanes 100% for Express Lanes-only project
c.	Median barrier	100%	0%
d.	Median highway lighting	100%	100%
e.	Median drainage inlets	100%	100%
f.	Drainage facilities	Not included	System #1: 20% for that part of the drainage facility that crosses both the Express Lane and General Purpose Lanes System #2: 100% for drainage facility limited to inside shoulder System #3: 0% for drainage facility limited to outside shoulder
g.	Median highway signing other than Express Lanes facilities (including foundation)	Not included	0%
h.	Metal beam guardrail other than that constructed for toll equipment	Not included	0%
i.	Bridge columns of overcrossings and freeway connectors	Not included	0%

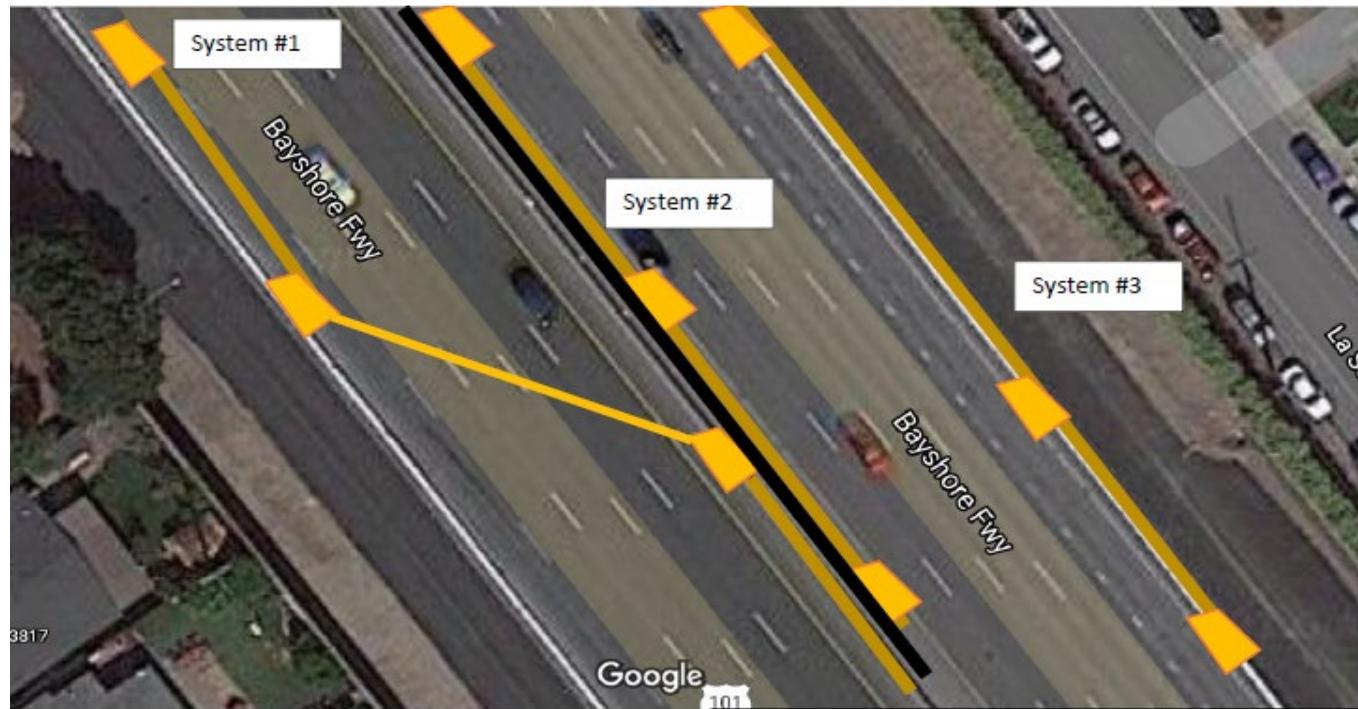


EXHIBIT D: TOLL FACILITY HANDBACK REQUIREMENTS

1. Residual Life Methodology

SMCEL-JPA shall prepare and submit to Caltrans a Residual Life Methodology (RLM), no later than 60 months before the end of Term of Use Rights (see Toll Facility Agreement). The inspection requirements and RLM requirements identified in the Handback Residual Life Requirements (Table 1) are minimum requirements. This submittal shall contain the evaluation and calculation criteria to be adopted for the calculation of the Residual Life at the Handback of all Elements of the Toll Facility (see EXHIBIT A). The scope of any Residual Life inspection or testing shall be included, together with a list of independent professional, licensed, and Caltrans certified organization to be used by SMCEL-JPA for pavement Residual Life testing. Inspections shall provide a continuous or near-continuous record of Residual Life in the Leased Property (see EXHIBIT A). Where the inspection method does not provide a continuous record of Residual Life, the number of valid measurements in each Performance Section shall be sufficient to give a statistically valid result.

Inspections shall be repeatable to an agreed level of accuracy and inspection contracts shall include an agreed proportion of inspections to verify accuracy.

Inspections shall include ride quality, skid resistance < value not listed in table, faulting, and cracking.

RLM shall be capable of calculation of Residual Life for each 0.1 mile Performance Section.

For a nominal 10 year Residual Life at Handback, 85% of Performance Sections shall have a Residual Life exceeding 10 years, and no Performance Section shall have a calculated Residual Life of less than 5 years.

2. Residual Life Inspections

Residual Life Inspections and testing shall be performed with appropriate coverage such that the results are representative of the Leased Property limits in accordance with the Handback Residual Life Requirements in Table 1. All Residual Life Inspections and testing shall be performed under the oversight of a professional licensed engineer for respective discipline. The responsible engineer shall certify each Residual Life Inspection and test results. Caltrans shall be given the opportunity to witness any of the inspections and/or tests and shall be provided with a minimum of 14 calendar days' notice prior to the performance of any such inspections or tests. SMCEL-JPA shall deliver to Caltrans, within 30 calendar days after it is created, the output data arising from any testing and any interpretation thereof made by the testing organization.

If SMCEL-JPA fails to undertake inspections within the relevant time periods described below, Caltrans shall be entitled to undertake or arrange the relevant inspections itself, following 30 calendar days written notice to SMCEL-JPA.

3. Residual Life Inspection Report

A Residual Life Inspection Report shall be developed for each of the specified Residual Life Inspections. The Residual Life Inspection Report shall provide a record of the asset conditions of all and components of Leased Property in accordance with Table 1. For each Element, it shall provide the following information: Residual Life Inspection Report shall be collated by Residual Life Elements in accordance with Table 1.

- A. Report shall provide description and location of Element.
- B. Element location shall be identified by global positioning system (GPS) coordinates. For non-fixed point Elements, provide GPS coordinates for beginning and end section limits.
- C. Provide current Element condition and rating in accordance with respective inspection and testing methodology.
- D. Provide an assessment of its current Residual Life.
- E. Provide photographs of each Element, including individual component and specific section being evaluated to support the assessment of current asset condition.
- F. Provide calculation of Residual Life at Handback for all pavement sections.

4. Initial Residual Life Inspection

SMCEL-JPA shall carry out the Initial Residual Life Inspection in accordance with Table 1, to identify and establish the asset condition of all pavement components of Leased Property and verify the extent of the required Rehabilitation Work before the end of Term of Use Rights.

The Initial Residual Life Inspection shall be carried out between 59 and 57 months before the end of the Term of Use Rights. SMCEL-JPA shall perform the Initial Residual Life Inspection of all identified Elements as set forth in Table 1. The test methods used for the Residual Life Inspections shall be the same methodology as the ones used by Caltrans at the time of the inspection.

5. Remaining Useful Life at Handback

Minor/low severity age-related non-structural weathering of concrete structures consisting of minor scaling and/or non-structural low severity hairline cracks shall not be evaluated and included as part of the handback requirements. Table 1 contains a list of pavement handback requirements.

Table 1: Handback Residual Life Requirements

Description	Residual Life at Handback (Years)	Useful Life at Handback (Years)	Inspection Requirements	Residual Life Methodology (RLM) Requirement
Pavement (rigid)	-	10 (>85)	<p>Inspections shall provide a continuous or near-continuous record of Residual Life in Leased Property pavement. Where the inspection method does not provide a continuous record of Residual Life, the number of valid measurements in each Pavement Performance Section shall be sufficient to give a statistically valid result.</p> <p>Inspections shall be repeatable to an agreed level of accuracy and inspection contracts shall include an agreed proportion of inspections to verify accuracy.</p> <p>Inspections shall include automated condition distress survey, ride quality, skid resistance, and faulting.</p>	<p>RLM shall be capable of calculation of Residual Life for each 0.1 mile Pavement Performance Section. For a nominal 10 year Residual Life at Handback, 85% of Pavement Performance Sections shall have a Residual Life exceeding 10 years, and no Pavement Performance Section shall have a calculated Residual Life of less than 5 years. The RLM for road pavement shall take into account the thickness and joint load transfer efficiency. At the end of the Term of Use Rights, the structural capacity of the Leased Property pavement shall be such that to carry projected 10 year loading without requiring rehabilitation.</p> <p>The following requirements shall be met at the time of Handback:</p> <ul style="list-style-type: none"> • Average International Roughness Index/mile < 120 in/ mile • Transverse unsealed random cracking > 0.25” wide for <5% of slab • Longitudinal unsealed random cracking > 0.25” wide for < 5% of slabs • Corner breaks with > 0.5” drop off < 5% of slabs • Average joint faulting < 0.1 inch • Average skid number >30

San Mateo 101 Express Lanes

Exhibit E: Traffic Incident Management Plan

Approved by:

SEAN CHARPENTIER
SMCEL-JPA Executive Council

Date

CARTER MAU
SMCEL-JPA Executive Council

Date

DINA EL-TAWANSY
Caltrans District 4 Director

Date

1 Introduction to Plan

1.1 Toll Facility Operations & Maintenance Agreement

The Toll Facility Operations & Maintenance Agreement (TF O&M) between the San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) and the California Department of Transportation (Caltrans) (“PARTIES”) calls for this Traffic Incident Management Plan (TIMP) to guide the management of incidents within and/or involving the San Mateo (SM) 101 Express Lanes [Express Lanes (EL)] operated by SMCEL-JPA.

1.2 Traffic Incident Management Plan

The TIMP defines the roles and responsibilities, sets forth guidelines for use of the Express Lanes, and defines communication channels when managing traffic incidents.

This TIMP does not supersede the requirements of the TF O&M. Changes to the TIMP may be implemented by authorized representatives of both PARTIES, in consultation with the CHP Golden Gate Division Assistant Chief, by mutually executing an amendment to it or replacing the entire plan formally.

No amendment to the TF O&M is required if changes to the TIMP are implemented. This TIMP neither establishes requirements on the California Highway Patrol (CHP) in the active management of incidents on Express Lanes nor does it establish a legal duty of care for any Party. It is intended to guide how the Express Lanes should be operated given the varying situations presented by traffic incidents on the freeway.

Caltrans, CHP, and SMCEL-JPA perform traffic operations using technology, processes, and procedures in order to reduce the duration and impact of incidents, and to improve the safety of motorists, crash victims, and incident responders on the Express Lanes.

2 Assumptions and Key Definitions

2.1 Assumptions

This plan assumes that the current process in place for the management of incidents by the CHP and Caltrans will continue per the CHP-Caltrans Joint Operational Policy Statements.

2.2 Frequently Used Acronyms

- CAD – Computer Aided Dispatch
- Caltrans TMC – Caltrans Transportation Management Center (in Oakland) (see Section 4.4.1)
- CHP TMC – CHP Transportation Management Center (in Oakland) (see Section 4.5.1)
- DCC – District Communication Center (Caltrans Maintenance dispatch)
- ETS – Electronic Toll System
- FSP – Freeway Service Patrol
- HOV – High Occupancy Vehicle
- ITS – Intelligent Transportation Systems (also known as TMS)
- SMCEL-JPA TMC – SMCEL-JPA’s Transportation Management Center operated by BAIFA
- VTMS – Variable Toll Message Sign

2.3 Definitions

2.3.1 Types of Incidents

Various factors such as type, location, timing, and duration of incidents are significant to the operation of the Express Lanes. The impacted lanes and the position within the corridor are addressed later in this document.

2.3.1.1 Non-collision/Traffic Hazard

This includes debris or a stalled vehicle within the Express Lanes and/or general-purpose lanes or median that adversely impacts the traffic within the Express Lanes.

2.3.1.2 Property damage only crash

This is a crash involving one or more vehicles that can often be moved to the shoulder or median for documentation, typically closing one or two lanes for approximately 30 minutes or less.

2.3.1.3 Injury crash

This is a crash in which an individual is injured and typically requires emergency vehicle response above and beyond a single CHP officer, typically closing one or two lanes for approximately 30 minutes or more.

2.3.1.4 Major incident

This type of incident may be an overturned big rig, a spill or some other major incident that requires the closure of most if not all of the freeway lanes, typically closing two or more lanes or reducing directional freeway capacity by one-half or more, for 30 minutes or more, and conceivably resulting in significant delays elsewhere on the transportation network.

2.3.2 Express Lanes Modes

The following summarizes the operations of Express Lanes modes.

2.3.2.1 Tolling

The Express Lanes hours of operation are typically from 5 a.m. to 8 p.m. Monday through Friday. During these hours, the Express Lanes mode will be in the Tolling Mode and applicable toll rate(s) will be displayed on the Variable Toll Message Signs (VTMS) panels approximately 1 to 1.5 miles apart in open access sections and ¼-mile before designated access points on the facility.

VTMS displays: Most signs have two rates to be displayed in two lines. The top line will display the toll rate to the next zone while the bottom line will display a rate to a major destination.

2.3.2.2 HOV Only Mode

During tolling operations, as the volume of traffic within the Express Lanes approaches the operational goals of the Express Lanes and the average speed drops, the ETS will increase the toll to restrict toll payers from entering the facility. If the toll rates are unable to control the volume of traffic entering the Express Lanes, the ETS will change from the Tolling Mode to the HOV ONLY Mode in an attempt to maintain an average speed of 45 mph within the Express Lanes. SMCEL-JPA EL Operations Manager or designee will work closely with Caltrans TMC lead to ensure optimal performance of the Express Lanes within State and Federal requirements. The HOV ONLY Mode will not ordinarily be used in the event of an incident unless deemed appropriate and requested by Caltrans and CHP.

VTMS displays: "HOV ONLY"

2.3.2.3 Open to All

During non-tolling hours, which are typically 8 p.m. to 5 a.m. weekdays and all day on the weekends, the Express Lanes will be in the OPEN TO ALL Mode, permitting all vehicles to use the lane. This mode may also be required in certain instances, as determined by CHP and Caltrans TMC, in order to assist with clearing traffic around an incident or to promote safety and improved traffic flow within the corridor during incidents, incident response or maintenance activities.

VTMS displays: "OPEN TO ALL"

2.3.2.4 Closed to All

When maintenance work is being performed or when the Express Lanes is blocked by an incident, the VTMS panels will display "CLOSED" to supplement provisions put in place by Caltrans and CHP (e.g., signs, cones, field equipment). The VTMS also allows for a general message line such as "INCIDENT IN LANE" or "ROADWORK IN LANE".

VTMS displays: "CLOSED" in pricing line of the sign and "INCIDENT IN LANE" or "ROADWORK IN LANE" in the general message line of the sign.

3 Intended Audience for TIMP

This plan is intended as a guide for Caltrans, CHP and SMCEL-JPA personnel who are actively engaged in managing incidents and operating the Express Lanes. No third-party beneficiaries are intended.

4 Roles and Responsibilities

4.1 Incident Management Planning

Appropriate procedures for management of the Express Lanes during incidents will be developed through coordination and collaboration among the SMCEL-JPA EL Operations Manager or designee, the Caltrans District Traffic Manager (DTM), and the CHP TMC Lieutenant or designees. This TIMP is for documenting these agreed upon procedures. The CHP Incident Commander in conjunction with the DTM or designee will have the final say in all matters regarding freeway operations, including the Express Lanes. The SMCEL-JPA EL Operations Manager or designee, the Caltrans DTM and the CHP TMC Lieutenant or designee will meet and confer on a regularly scheduled basis, initially once a month.

4.2 Freeway Management Executive Committee (FMEC)

The Freeway Management Executive Committee (FMEC) will serve as the joint management body for matters related to this plan. The FMEC consists of the Metropolitan Transportation Commission (MTC) Deputy Executive Director, Operations, the Caltrans Chief Deputy District Director and the CHP Golden Gate Division Assistant Chief. The FMEC will review the handling of incidents when needed. The FMEC will review and coordinate any adjustments to incident management procedures as recommended by the SMCEL-JPA EL Operations Manager or designee, the Caltrans DTM, and the CHP TMC Lieutenant. The FMEC may also resolve any potential conflicts as necessary.

The FMEC will also review the annual budget to ensure compensation for Express Lanes-related Caltrans TMC expenses, subject to approval by the SMCEL-JPA Board. CALTRANS agrees to provide this FMEC-approved Annual Budget every spring for incorporation into SMCEL-JPA's ANNUAL BUDGET.

4.3 SMCEL-JPA

4.3.1 SMCEL-JPA Executive Council, Operations or Designee

SMCEL-JPA is the tolling agency of the Express Lanes in San Mateo County within the State's Right of Way consistent with the terms and conditions provided in the TF O&M and associated encroachment permits. In the context of Express Lanes, the SMCEL-JPA Executive Council, Operations or designee is the individual in charge of operations for SMCEL-JPA with all responsibility for the Express Lanes tolling operations and customer service.

SMCEL-JPA shall be responsible for operation and management of the Express Lanes in response to incidents located within the Express Lanes consistent with this TIMP.

Currently, the SMCEL-JPA EL Operations Manager or designee is the responsible person for incident management planning, policies and procedures. The SMCEL-JPA EL Operations Manager or designee is the responsible person for day to day operations in accordance with those plans, policies and procedures. The SMCEL-JPA EL Operations Manager or designee will ensure a change in the Express Lanes Toll Mode upon communication from the Caltrans TMC.

In the case of any major incidents on or blockages of the TOLL FACILITY caused by crashes or debris, and when the Caltrans TMC and/or CHP requests assistance from the SMCEL-JPA, SMCEL-JPA may, consistent with available resources and constraints, promptly take action to assist CHP in performing its duties, consistent with the policies and practices of SMCEL-JPA and the CHP.

4.3.2 SMCEL-JPA TMC

SMCEL-JPA will contract for conducting operations. SMCEL-JPA has chosen to contract initially with BAIFA to provide express lane operations through their Regional Operations Center located at MTC's offices in San Francisco (also known as the SMCEL-JPA TMC). In the event BAIFA is unable to run operations from said Regional Operations Center, BAIFA will do so from its backup operations center located in the 511 Traveler Information Center in the Caltrans TMC.

4.4 Caltrans

Caltrans' role in incident management involves activities both by Caltrans TMC and by Caltrans Field Maintenance as determined necessary in conjunction with the CHP.

4.4.1 Caltrans TMC

Caltrans TMC is responsible for the overall regional and corridor traffic management and motorist information activities. Caltrans TMC also dispatches Caltrans Field Maintenance to assess damages, to provide traffic control and management, and to make necessary short-term repairs or help with the cleanup of incidents. Additionally, Caltrans TMC will contact the SMCEL-JPA EL Operations Manager or designee, as described in Section 6.3, to change the Express Lanes mode in coordination with and upon approval by the CHP Incident Commander. Examples of Caltrans assistance: rapid change to overhead changeable message signs to inform motorists of the incident; text/SMS to users in the region informing them of the incident. As traffic conditions warrant, Caltrans may implement Incident Response Plans (IRP) to manage traffic by naturally diverting off the freeway to alternate routes through use of Smart Corridor systems and other ITS elements.

4.4.2 Maintenance

Caltrans Field Maintenance may provide traffic control at the scene of the incidents, make highway repairs, assist the CHP with incident management, assist with clearing incidents and with closing the Express Lanes should that be required. The Caltrans Field Maintenance supervisor on scene will direct Caltrans activities.

In the case of any major incidents on or blockages of the Express Lanes caused by crashes or debris, Caltrans may, consistent with available resources and constraints, promptly take action to assist CHP in performing its duties, consistent with the policies and practices of Caltrans and the CHP.

4.5 California Highway Patrol (CHP)

The CHP provides enforcement of the existing and planned Express Lanes and will continue to enforce the California Vehicle Code on the Express Lanes. CHP and SMCEL-JPA will enter into a separate cooperative agreement for law enforcement within the Express Lanes. To augment CHP enforcement, SMCEL-JPA will use a violation enforcement system (VES) to pursue violators in accordance with sections 4770, *et seq.*, and 40250, *et seq.*, of the Vehicle Code.

4.5.1 CHP TMC Lieutenant and staff

The CHP Lieutenant assigned to manage the CHP TMC's operations is responsible for the CHP procedures for incident communication between the CHP Incident Commander, CHP Dispatch and the Caltrans TMC.

4.5.2 CHP Computer Aided Dispatch (CAD)

The CAD is a computerized communication and dispatch system that is used to help manage all incidents within California. Maintained by CHP, the CAD is used to dispatch CHP field officers to incident scenes and provides real-time information concerning incidents on the highway system.

4.5.2.1 CHP Media CAD

The CHP Media CAD is a specialized version of the primary CAD, with certain elements eliminated for safety and/or privacy considerations. The CHP Media CAD is utilized extensively by traveler information organizations, including 511 and local TV / radio stations.

4.5.3 CHP Dispatch

The dispatch role, performed at the CHP's Golden Gate Division Office in Vallejo, initiates the CHP incident records in the CAD and dispatches appropriate personnel. CHP officers communicate directly with CHP Dispatch, who then updates the records in the CAD accordingly.

4.5.4 CHP Officer/Incident Commander

The dispatched CHP officer will have primary responsibility for investigating, assessing, and clearing the incident in the field. Although other CHP personnel may be present on scene, the CHP Incident Commander refers solely to the CHP Officer in charge of the incident.

4.5.5 CHP Area Offices

The CHP Oakland, Hayward, Contra Costa, Dublin, Redwood City, and San Jose Area Offices as well as the Golden Gate Division Office, share jurisdiction of the Express Lanes. Officers from the corresponding office will be dispatched according to CHP policy.

5 Express Lanes Description

On August 14, 2019, the California Transportation Commission adopted Resolution G-19-42 which determined the SMCEL-JPA's application for the TOLL FACILITY to be consistent with the requirements of California Streets and Highways Code Section 149.7 and the Commission's Public Partnership High Occupancy Toll Guidelines.

6 Managing Incidents

6.1 Assessment of Incident / Early Identification

The focal point for initial identification of an emergency incident or situation is likely to be CHP Dispatch Center, which is staffed 24/7 and fields calls from CHP officers and citizens via the 911 emergency telephone service or call boxes. In many situations, notification of an incident may be made by motorists or other third parties. However, incidents can also be reported and addressed by the CHP, Caltrans Field Maintenance, SMCEL-JPA Express Lanes or the FSP.

Depending on the nature of the incident, FSP, Caltrans Field Maintenance and/or CHP and other emergency services are dispatched. The CHP provides traffic control as needed, based on the determination of the CHP Incident Commander controlling the scene, and requests Caltrans assistance for longer-term incidents.

CHP Dispatch will create a new entry in the CAD that reflects the description as provided. The SMCEL-JPA Operations Manager or designee can be aware of incidents by active monitoring / filtering of the Media CAD contents relative to the Express Lanes segment.

6.1.1 Motoring Public

Incidents identified by a motorist call-in are received via 911 at CHP Dispatch.

6.1.2 Freeway Service Patrol

The San Mateo 101 Corridor is currently covered by the FSP with FSP vehicles patrolling during the morning and afternoon peak periods. Vehicles on patrol typically include a pickup truck, a flatbed hauler and a tow vehicle.

6.1.3 Cameras

There will be Caltrans and Express Lanes cameras located throughout the corridor. These cameras will be monitored in the event of an incident by Caltrans TMC and Express Lanes Operations staff. Express Lanes cameras will be monitored and controlled by the SMCEL-JPA Express Lanes Operations Staff. Caltrans TMC will maintain primary control of its cameras located in the corridor at all times.

6.1.3.1 Camera Sharing (to be amended in once language is agreed upon)

6.1.4 Data Sharing

The SMCEL-JPA agrees to provide Caltrans, at no cost to Caltrans, all tolling and available traffic data (such as VTMS messages and traffic speed, volume, occupancy, transponder location data and density) and closed-circuit television camera feeds from the Express Lanes elements, including changeable message signs and traffic monitoring stations, to the TMC in a mutually agreed format and timeframe subject to the provisions of applicable laws, applicable interagency agreements, and the privacy policies adopted for Express Lanes.

All collected data and published reports related to the Express Lanes generated by Caltrans and SMCEL-JPA, or its authorized agent(s), shall be made available upon request by either party to this AGREEMENT within thirty (30) days. SMCEL-JPA, or its authorized agent(s), will abide by the Express Lanes Privacy Policy to prevent disclosures of personally identifiable information. Caltrans and SMCEL-JPA receive no warranty regarding provided data, whether express or implied, and all warranties of merchantability and fitness of provided data for any particular purpose are expressly disclaimed.

6.2 Categorization and Express Lanes Mode

CHP Dispatch will categorize the incident within the CAD record and dispatch a CHP Officer or FSP as per standard procedure. If there is no discernible effect on traffic flow nor need for CHP presence at the site, FSP may clear the incident in accordance with its Standard Operating Procedure. For incidents impacting traffic flow, the responding CHP Officer will investigate, assess, and begin the process of clearance. If Caltrans Field Maintenance is required to assist CHP for traffic control, highway repairs, or

clearance of spills, the CHP Officer will inform the CHP Dispatch of the request, who in turn cues the CAD to Caltrans TMC for response. Upon reviewing the CAD entry, Caltrans TMC may send Caltrans Field Maintenance to assist. The SMCEL-JPA Operations Lead or designee will monitor the Media CAD for information pertaining to the severity of the incident and CHP response.

In certain situations, allowing General Purpose Lane traffic in the Express Lanes may provide a benefit in the clearing of congestion resulting from an incident. Section 2.3.2.3 “Open to All” are potentially valuable in the management of an incident.

6.2.1 Tolling Mode incidents

The majority of incidents, whether within or adjacent to the Express Lanes, can be quickly cleared without the need to switch from the Tolling Mode. This is due to the fact that the minimum time to implement a mode change is approximately 5 minutes and the delayed effect could be another 5 or more minutes depending upon the location of the incident relative to the upstream access points.

In some situations, the CHP Incident Commander may need to briefly redirect General Purpose Lane traffic into the Express Lanes in order to pass the incident scene. In these situations, the Express Lanes may remain in its Tolling Mode and SMCEL-JPA will identify any affected motorists and reverse tolls or violations as appropriate. The CHP should notify the Caltrans TMC through CAD and the Caltrans TMC Operator will notify the SMCEL-JPA Operations Manager or designee.

6.2.2 Closed to All Mode incidents

Management of incidents in which the Express Lanes will remain blocked for more than fifteen minutes may be helped by closing the Express Lane. The decision to close a lane or lanes will be made by the CHP Incident Commander, relayed to dispatch, to the Caltrans TMC and to the SMCEL-JPA Operations Lead or designee who will execute the mode switch to close the lane to all traffic. In such cases, VTMS displays “CLOSED” in pricing sign bricks and “INCIDENT IN LANE” in general message sign bricks.

6.2.3 Open to All Mode incidents

In some instances, significant impacts associated with certain incidents within the corridor or region might be remedied, or the incident might be more easily cleared if the Express Lanes is made open to all traffic. The decision to open lanes will be made by the CHP Incident Commander, in coordination with the Caltrans TMC, who then informs the SMCEL-JPA Operations Lead or designee to execute the mode switch to open the lane to all traffic. In such cases, VTMS displays “OPEN TO ALL”.

6.2.4 Location of Incident and Impact to Express Lanes

From a practical standpoint, CHP will not be able to enforce violations when an Express Lanes mode switch is applied to only certain zones of the facility. The application of a mode switch corridor-wide or zone by zone will be made on a case by case basis depending on the location and severity of the incident.

During incidents, CHP or the Caltrans TMC and/or Caltrans Field Maintenance will coordinate with the SMCEL-JPA Operations Manager or designee and assist with communicating the changes in the normal Tolling Modes to the motoring public and the media.

In some instances, the incident requiring a mode switch may be outside the limits of the Express Lanes corridor.

6.3 Communication Procedure

This communication procedure is consistent with established requirements of the CHP. Once an incident is identified by CHP Dispatch, the Caltrans TMC will be notified through CAD. In those cases in which specific action to change the Express Lanes mode is requested by the CHP Incident Commander, the Dispatch will cue the Caltrans TMC directly via CAD or telephone. The Caltrans TMC Operator will contact the appropriate SMCEL-JPA personnel via land line telephone, mobile phone and/or text as listed in Appendix A. SMCEL-JPA Operations Manager or designee will change the mode as requested by the CHP Incident Commander through the CHP Dispatch. In some cases, the CHP/Caltrans TMC staff may identify the need to change the Express Lanes Toll Mode in coordination with the CHP Incident Commander and then contact SMCEL-JPA staff. In such cases, every effort will be made to engage SMCEL-JPA staff as early as possible.

An emergency contact phone list for SMCEL-JPA and Caltrans operations staff is included in Appendix A. The SMCEL-JPA Operations Manager or designee will update the contact list on a quarterly basis and/or when a change takes place. If SMCEL-JPA is contacted directly by others, including CHP, for a mode change, they will contact the Caltrans TMC Operator to coordinate prior to implementation.

6.4 Override of Express Lanes Operations

The SMCEL-JPA Operations Manager or designee will monitor the media CAD for the need to override the Express Lanes mode or receive a directive from CHP via the Caltrans TMC that an override is required. In both cases the SMCEL-JPA Operations Manager or designee will execute the override. The SMCEL-JPA Operations Lead will communicate with CHP and Caltrans through the Caltrans TMC staff to coordinate the mode switch to and from the Tolling Mode. In the case of major incidents, the SMCEL-JPA Operations Manager or designee will: consider use of the VTMS message panel to convey incident messages to the public and initiate media and customer service center information coordination on behalf of the Express Lanes in coordination with the CHP, Caltrans Public Information Officer and SMCEL-JPA Public Information Officer.

6.5 Clearance

Throughout the clearance of the incident and when the traffic flow warrants it, the CHP Incident Commander is in control and will initiate all necessary actions, as applicable, to address the emergency or situation that has arisen. The CHP Incident Commander will communicate with CHP Dispatch for updating the CAD.

6.6 Restoring Tolling Mode

Upon conclusion of the incident and when typical traffic flow is restored, the CHP or Caltrans TMC Operator will inform the SMCEL-JPA Operations Manager or designee that Tolling Mode can be restored. The SMCEL-JPA Operations Manager or designee will confirm with the Caltrans TMC the conclusion of the incident prior to returning Express Lanes to Tolling Mode.

6.7 Express Lanes Toll Charges for Affected Motorist

It is vital that records are kept as information is passed, decisions are made, and the incident/situation develops. Most of this information will be contained within the CAD or otherwise archived by SMCEL-JPA, Caltrans and CHP as required for their purposes. The SMCEL-JPA Operations Manager or designee will be charged with monitoring and archiving incident information for reconciliation with the Express

Lanes operations log for the corridor, ensuring tolls are charged or reversed as appropriate, and responding to any customer inquiries, including reconciling toll charges.

7 Level of Effort and Costs

Each year, prior to the approval of the Annual Incident Management Budget (see Appendix B for Annual Incident Management Budget Framework), the SMCEL-JPA EL Operations Manager or designee and appropriate Caltrans Operation and Maintenance staff will recommend a budget for cost associated with operations and incident management to the FMEC for incident management and Express Lanes coordination, to be approved subsequently by SMCEL-JPA as part of SMCEL-JPA's Annual Budget. Depending upon prior year expenditures, adjustments may be made to Caltrans reimbursement budget for services in support of the Express Lanes. Once agreed upon, the requested budget is forwarded to the FMEC as called for elsewhere in this TIMP with ultimate approval subject to the SMCEL-JPA Board.

8 Monitoring and Modifying Incident Management

Incidents in the corridor will be monitored by the SMCEL-JPA Operations Manager or designee, Caltrans DTM, and CHP TMC Lieutenant on a monthly basis. If, upon review of the monitoring effort, any issues with the Incident Management Plan are identified, a meeting to determine a solution will be called. In the event that staff is unsuccessful in resolving the issue, the matter will be referred to the FMEC for resolution.

Appendix A – SMCEL-JPA 2022 Emergency Contact List

Title	Name	Phone: Mobile Office	Email
SMCEL-JPA			
SMCEL-JPA EL Operations Manager	Joe Hurley Van Dominic Ocampo	M: (650) 740-5866 O: (650) 508-7942 O: (650) 599-1460	hurleyj@samtrans.com vocampo@smcgov.org
BAIFA			
1. BAIFA EL Operations Manager (SMCEL-JPA EL Operations Manager designee)	Adrienne Sneed	M: (510) 495-4718 O: (415) 778-2299	asneed@bayareametro.gov
2a. BAIFA EL Operations Lead	Ken Hoang	M: (408) 646-1654 O: (415) 778-5294	khoang@bayareametro.gov
2b. BAIFA EL Maintenance Manager	Angela Louie	M: (510) 517-8308 O: (415) 778-5203	alouie@bayareametro.gov
3a. BAIFA EL Program Manager	Stephen Wolf	M: (510) 207-0152 O: (415) 778-5368	swolf@bayareametro.gov
3b. Director, Field Operations and Asset Management	Lisa Klein	M: (510) 316-5353 O: (415) 778-5232	lklein@bayareametro.gov
4. Deputy Executive Director, Operations	Andrew B. Fremier	M: (415) 278-1151 O: (415) 778-5240	afremier@bayareametro.gov
Caltrans			
1. Caltrans TMC	Kane Wong	M: (510) 593-6903	kane.wong@dot.ca.gov

2. Deputy Director, Traffic Operations	Sean Nozzari	M: O: (510) 286-6345	sean.nozzari@dot.ca.gov
3. Chief Deputy District Director	David Ambuehl	M: O: (510) 286-5893	david.ambuehl@dot.ca.gov
4. Field Maintenance Contact: Hwy.101 San Mateo Co. PM 00.0 to PM11.9 (Hwy.092)	Will Stevens	M: (650) 444-7148 O: (650) 358-4128	will.stevens.iii@dot.ca.gov
5. Field Maintenance Contact: Hwy.101 PM 11.9 to PM. 17.9 (Millbrae Ave)	Mark Polillo	M: (650) 444-7052 Hm: (510) 541-7625	mark.polillo@dot.ca.gov
6. Field Maintenance Contact: Hwy.101 PM 17.9 to PM 20.2 (San Bruno Ave)	Chris Balingit	M: (650) 333-5168 O: (415) 330-6554	chris.balingit@dot.ca.gov

Appendix B – Annual Incident Management Budget Framework ⁱ

	Caltrans Effort to be Reimbursed	\$ Reimbursed	Example estimate methodology
Caltrans TMC/DCC Activities			
Monitoring and Management Caltrans TMC Express Lanes Operations monitoring, management and communication/coordination with the SMCEL-JPA/BAIFA ROC. This work shall include a daily review of shift operations and reports from the Caltrans TMC.	xx hours	\$xx,000	The TMC shall review Mon-Fri, the a.m. shift (5 a.m. - noon) and p.m. shift (noon - 8 p.m.). There is one report for each corridor. Each report shall require 10 minutes to review; $10 \times 2 \times 5 \times 52 \times 1 / 60 = 86.7$ hrs. rounded to 90 hrs. @ \$200/hr. ⁱ
Incident Management Support	xx hours	\$x,000	One incident per quarter, average of 3 Caltrans TMC staff consisting of two CMS trucks and one spotter, 4 hrs. each per incident; $3 \times 4 \times 4 \times 1 = 48$ hrs. @ \$200/hr. ⁱ
Meetings	xx hours	\$xx,000	One meeting per month, average of 2 Caltrans Division of Operations staff participating, each 4 hrs. per meeting: $2 \times 4 \times 12 = 96$ hrs. @ \$200/hr. ⁱ
Special Inquiry	xx hours	\$x,000	Address questions or concerns from road users, public officials, or news media in regard to Express Lanes operational procedure, efficiency, and safety. Average 2 inquiries per month, 1 hr. each inquiry: $2 \times 12 \times 1 = 24$ hrs. @ \$250/hr. ⁱ
Traffic Investigation	xx hours	\$xx,000	Initiate and conduct traffic investigation, including necessary data collection, for safety or operations issues related to Express Lanes. Average 2 investigations per year, 2 staff and 12 hours each per investigation: $2 \times 2 \times 12 = 48$ hrs. @ \$250/hr. ⁱ
Annual hours and PY expenditure	xxx hours xxx PY		
Estimated Total Annual Cost		\$xx,000	

ⁱ Annually, hours to be adjusted based on previous fiscal year's data. Hourly rates to be adjusted to reflect any escalation and overhead markup changes.

**EXHIBIT F:
LOAN AGREEMENT**

Dated as of September 1, 2020

Between

SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY

and

SAN MATEO COUNTY TRANSPORTATION AUTHORITY

US-101 Express Lanes Project

SECTION 1.	DEFINITIONS.....	2
SECTION 2.	INTERPRETATION.....	11
SECTION 3.	BOND LOAN; INITIAL BOND LOAN BALANCE; NOTE	12
SECTION 4.	DISBURSEMENT OF BOND LOAN	12
SECTION 5.	TERM	12
SECTION 6.	BOND LOAN INTEREST RATE; ENHANCEMENT COST COMPONENT; LENDER BONDS COST COMPONENT	12
SECTION 7.	OUTSTANDING BOND LOAN BALANCE AND REVISIONS THEREOF.....	13
SECTION 8.	SECURITY AND PRIORITY; FUNDS AND ACCOUNTS; FLOW OF FUNDS	14
SECTION 9.	PAYMENT OF PRINCIPAL AND INTEREST	19
SECTION 10.	PREPAYMENT	20
SECTION 11.	COMPLIANCE WITH LAWS.....	20
SECTION 12.	CONDITIONS PRECEDENT	20
SECTION 13.	REPRESENTATIONS AND WARRANTIES OF BORROWER.....	21
SECTION 14.	REPRESENTATIONS, WARRANTIES, AND COVENANTS OF LENDER.....	23
SECTION 15.	BORROWER COVENANTS.....	23
SECTION 16.	INDEMNIFICATION.....	26
SECTION 17.	EVENTS OF DEFAULT AND REMEDIES	27
SECTION 18.	REMEDIES NOT EXCLUSIVE	29
SECTION 19.	DELAY OR OMISSION NOT WAIVER.....	29
SECTION 20.	DEFEASANCE.....	30
SECTION 21.	NO PERSONAL RECOURSE	30
SECTION 22.	NO THIRD PARTY RIGHTS	30
SECTION 23.	BORROWER’S AUTHORIZED REPRESENTATIVE	30
SECTION 24.	LENDER’S AUTHORIZED REPRESENTATIVE	30
SECTION 25.	SERVICER	30
SECTION 26.	FEES AND EXPENSES.....	30
SECTION 27.	AMENDMENTS AND WAIVERS	31
SECTION 28.	GOVERNING LAW.....	31
SECTION 29.	SEVERABILITY	31
SECTION 30.	SUCCESSORS AND ASSIGNS; THIRD-PARTY BENEFICIARY	31
SECTION 31.	LENDER PLEDGES AND ASSIGNMENTS	31

SECTION 32.	COUNTERPARTS	31
SECTION 33.	NOTICES; PAYMENT INSTRUCTIONS	32
SECTION 34.	EFFECTIVENESS.....	32
SECTION 35.	TERMINATION.....	33
SECTION 36.	SURVIVAL OF REPRESENTATIONS AND WARRANTIES	33

EXHIBIT A – FORM OF NOTE

EXHIBIT B – PRO FORMA BOND LOAN PRINCIPAL SCHEDULE

LOAN AGREEMENT

This **LOAN AGREEMENT** (as amended and supplemented hereafter, this “Agreement”), dated as of September 1, 2020, is between **SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY** (together with its successors and assigns, the “Borrower”), and **SAN MATEO COUNTY TRANSPORTATION AUTHORITY** (together with its successors and assigns, the “Lender”).

RECITALS

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

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

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

WHEREAS, the Lender and the City/County Association of Governments of San Mateo County (the “C/CAG”) created the Borrower under the JPA Act to oversee the operations and administration of the “US-101 Express Lanes Project” (approximately 22 miles of managed lanes in both directions on U.S. Highway 101 between the San Mateo/Santa Clara County line (to the south) and U.S. Interstate 380 (to the north)) (the “101 Project”) and to jointly exercise ownership rights over the 101 Project, which is expected to cost approximately \$581,000,000;

WHEREAS, the Lender and the C/CAG are the project sponsors for the construction of the 101 Project;

WHEREAS, approximately \$485,000,000 of 101 Project construction funding is expected to come from a variety of sources, including state, regional, local and private funds;

WHEREAS, the Lender and C/CAG entered into a cooperative agreement with Caltrans that identified up to \$86,500,000 of the construction capital funds expected to come from toll revenues;

WHEREAS, proceeds of the Lender’s limited tax bonds designated “San Mateo County Transportation Authority Subordinate Sales Tax Revenue Variable Rate Demand Bonds (Limited Tax Bonds), 2020 Series A” and “San Mateo County Transportation Authority Subordinate Sales Tax Revenue Variable Rate Demand Bonds (Limited Tax Bonds), 2020 Series B” will fund a

portion of 101 Project construction designated to be financed from toll revenues and certain other programs;

WHEREAS, the Lender agrees to make a non-revolving advance of funds to fund a portion of 101 Project construction designated to be financed from toll revenues and certain other programs, as well as \$1,000,000 for Equity Programs (as defined herein);

WHEREAS, in consideration of the funding by the Lender, the Borrower, as the agency responsible to oversee the operations of the 101 Project, agrees to apply future toll revenues to repay the Lender in accordance with the terms and provisions hereof; and

WHEREAS, as the entity responsible for receiving future toll revenues from the 101 Project, the Borrower is defined as the borrower under this Agreement to fulfill the duty of applying future toll revenues to repay the Lender as set forth herein.

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

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

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

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

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

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

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

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

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

“**Bond Loan**” means the non-revolving loan made by the Lender to the Borrower hereunder through deposit of Lender Bond proceeds into the funds and accounts under the Bond Indenture as described in Sections 3 and 4, in order to finance construction of the 101 Project.

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

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

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

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

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

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

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

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

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

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

“**Caltrans Agreement**” means the Cooperative Agreement dated November 12, 2019, among the California Department of Transportation, the Lender and C/CAG, and designated Cooperative Agreement 04-2726.

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

“**Collateral**” means all rights, title, interest and privileges of the Borrower in, to and under (i) the Net Revenue, (ii) all amounts in the Bond Loan Interest and Costs Account, the Operating

Reserve Fund, the Revenue Stabilization Reserve Fund, the Repair and Rehabilitation Reserve Fund, the Equipment Replacement Reserve Fund, and the Bond Loan Retirement Account established hereunder, and (iii) all interest or other income from investment of money in the Bond Loan Interest and Costs Account, the Operating Reserve Fund, the Revenue Stabilization Reserve Fund, the Repair and Rehabilitation Reserve Fund, the Equipment Replacement Reserve Fund, and the Bond Loan Retirement Account established hereunder.

“Debt Carry Expenses” means, collectively, (i) the interest on (but not principal of) the Bond Loan and the Operating Loans, (ii) the Enhancement Cost Component, and (iii) the Lender Bonds Cost Component.

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

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

“Effective Date” means September 10, 2020.

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

“Enhancement Cost Component” means an amount accruing on and after the second anniversary of the Lender Bonds issuance date based on the Adjusted Outstanding Lender Bond Principal Amount at a rate equal to the Enhancement Rate.

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

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

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

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

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

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

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

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

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

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

“Express Lanes Revenues” means (a) toll revenues, user fees, fines, rents or other similar charges payable for use of the Express Lanes, as well as fines and penalties and interest thereon collected as a result of a failure to pay any such amounts, (b) proceeds of insurance payable to or received by the Borrower with respect to the Express Lanes (whether by way of claims, return of premiums, ex gratia settlements or otherwise), including proceeds from business interruption insurance and loss of advance profits insurance, except for proceeds of fire and other casualty insurance that are actually applied or reserved for application to the repair, restoration or replacement of the Express Lanes, (c) proceeds of any condemnation awards with respect to the Express Lanes, except to the extent actually applied or reserved for application to the replacement of the Express Lanes, (d) liquidated damages, if applicable, for delayed completion of the 101 Project payable to or on behalf of the Borrower under any construction contract relating to the 101 Project or a portion thereof, (e) amounts transferred from the Revenue Stabilization Reserve Fund to the Express Lanes Revenue Fund under Section 8(b) and (f) any other incidental or related fees or charges, but excluding therefrom cash advances representing deposits against future toll payments from users or potential users of the Express Lanes.

“Final Maturity Date” means June 1, 2049.

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

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

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

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

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

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

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

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

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

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

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

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

“Lien” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, lien (statutory or other), or preference, priority or other security agreement of any kind or nature whatsoever, including, without limitation, any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under applicable law.

“Loan Documents” means this Agreement and the Note.

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

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

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

“Net Revenue” means, for any Fiscal Year, Revenue less Operation and Maintenance Expenses for that Fiscal Year (excluding, in such calculations, (i) any extraordinary or one-time

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Operating Loan Agreement (C/CAG)**” means the Cooperative Funding Agreement dated November 14, 2019, as amended by the First Amendment to Cooperative Funding

Agreement dated September 10, 2020, each between C/CAG and the Borrower, and as further amended from time to time.

“Operating Loan Agreement (Lender)” means the Cooperative Funding Agreement dated December 18, 2019, as amended by the First Amendment to Cooperative Funding Agreement dated September 10, 2020, each between the Lender and the Borrower, and as further amended from time to time.

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

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

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

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

“Operation and Maintenance Expenses” means all reasonable current expenses incurred and paid or payable by the Borrower for the administration of the Borrower and for the operation and maintenance of the Express Lanes payable from Revenue, determined in accordance with GAAP, including, without limitation, all amounts paid or payable under an operating agreement, a police services agreement and similar agreements, costs for operation, maintenance and repair, consumables, payments under any lease or rental payments properly considered to be operating expenses, payments pursuant to agreements for the management of the Express Lanes, taxes, premiums paid or payable on any insurance, payments for oversight services, all administrative, engineering and policing costs, costs for any security, toll collection and enforcement expenses, fees and expenses of a traffic consultant, any fiscal agent, paying agent, rating agency, credit, liquidity or remarketing fees relating to Obligations (for the avoidance of doubt, such fees, administrative costs and expenses do not include any commitment fees, termination fees, fines or other penalties or any payments to be made to swap providers), any insurance consultant, legal and accounting expenses, and any other reasonable and necessary expense paid or payable for the operation and maintenance of the Express Lanes, but excluding expenses paid or scheduled to be paid from proceeds of Obligations, capital expenditures, expenditures for rehabilitation and operational improvement projects on the Express Lanes, depreciation or obsolescence charges or reserves therefore, debt service for Obligations and any non-cash charges, such as depreciation, amortization of intangibles and other bookkeeping entries of a similar nature.

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

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

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

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

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

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

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

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

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

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

(d) repurchase agreements when collateralized by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the repurchase agreement so collateralized, including interest;

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

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

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

(h) any investment approved by the Board.

“Permitted Liens” on the Project means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Revenue Stabilization Reserve Fund Cap” means, as of any date, the sum of (i) the total Operation and Maintenance Expenses budgeted in the Borrower’s annual budget for the then-current Fiscal Year; (ii) the total Debt Carry Expenses budgeted in the Borrower’s annual budget for the then-current Fiscal Year; and (iii) \$600,000.

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

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

“State” means the State of California.

“Tax Certificate” means the Tax Certificate dated the date of issuance of the Lender Bonds, executed by the Lender and the Borrower.

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

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

Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 19 and signed by a duly authorized representative of such party.

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

(a) The Lender hereby loans to the Borrower, and the Borrower hereby borrows from the Lender, the Bond Loan, by causing the net proceeds (after underwriter's discount) from the sale of the Lender Bonds to be deposited as provided under the Bond Indenture to the funds and accounts thereunder. The Borrower will not receive the proceeds except by requisition from the funds and accounts under the Bond Indenture of \$1,000,000 for Equity Programs. The initial Bond Loan Balance shall be \$100,000,000 (calculated as the amount of Lender Bond proceeds deposited to the funds and accounts under the Bond Indenture plus the underwriters' discount upon initial sale of the Lender Bonds to the underwriters thereof). Thereafter, the principal amount of the Bond Loan at any time shall be the Bond Loan Balance as determined in Section 7.

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

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

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

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

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

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

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

SECTION 7. Outstanding Bond Loan Balance and Revisions Thereof.

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

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

(ii) plus the Enhancement Cost Component accrued on and after the second anniversary of the Lender Bonds issuance date as of each Monthly Funding Date that is not funded by a corresponding deposit to the Bond Loan Interest and Costs Account;

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

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

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

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

(c) The Lender shall make applicable revisions to the Bond Loan Balance upon any optional or mandatory prepayment of the Bond Loan, which shall reflect, to the extent reasonably practicable, proportionate adjustments, if necessary. Upon any such revision the Lender shall provide the Borrower with the revised Bond Loan Balance. No failure to provide or delay in providing the Borrower with such schedule shall affect any of the obligations of the Borrower under this Agreement or the other Loan Documents. The Bond Loan Balance shall be calculated

without considering whether Lender Bonds are or are not redeemed from amounts paid to the Lender under this Agreement or otherwise. The Borrower shall bear no responsibility for the Lender's choice not to redeem Lender Bonds from amounts paid to the Lender under this Agreement.

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

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

- (i) the Express Lanes Revenue Fund;
- (ii) the Operation and Maintenance Fund;
- (iii) the Equity Program Fund;
- (iv) the Rebate Fund;
- (v) the Operating Loan Interest Fund, and within the Operating Loan Interest Fund, the Operating Loan (Lender) Interest Account, and the Operating Loan (C/CAG) Interest Account;
- (vi) the Bond Loan Interest and Costs Account;
- (vii) the Operating Reserve Fund;
- (viii) the Revenue Stabilization Reserve Fund;
- (ix) the Repair and Rehabilitation Reserve Fund;
- (x) the Equipment Replacement Reserve Fund;

(xi) the Revenue Sharing Fund, and within the Revenue Sharing Fund, the Operating Loan (C/CAG) Retirement Account, the Operating Loan (Lender) Retirement Account, and the Bond Loan Retirement Account; and

(xii) the Insurance and Condemnation Proceeds Account.

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

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

(b) So long as any obligations under the Loan Documents or under the Operating Loan Agreement (C/CAG) or under the Operating Loan Agreement (Lender) remain unpaid, the Borrower shall deposit all Revenue following receipt in the Express Lanes Revenue Fund. On each Monthly Funding Date, before the deposits required by the remainder of this subsection (b), the Borrower or the Fiscal Agent, as applicable, shall calculate the Revenue Stabilization Reserve Cap. If the amount then on deposit in the Revenue Stabilization Reserve Fund exceeds the Revenue Stabilization Reserve Cap, the difference shall be transferred from the Revenue Stabilization Reserve Fund (to the extent of amounts therein) to the Express Lanes Revenue Fund. After any such transfer, amounts on deposit in the Express Lanes Revenue Fund shall be set aside and shall be applied in the following order of priority, at the times and in the amounts set forth below to the extent that Revenue is available to make such deposits.

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

Second, on each Monthly Funding Date, to the Rebate Fund, the amount required to satisfy any applicable rebate requirement payable and not previously paid to the United States Treasury in respect of the Lender Bonds, in such amount as is indicated in writing to the Borrower by the Lender, which shall be conclusive in the absence of manifest error;

Third, on each Monthly Funding Date, to the Equity Programs Fund, the amount of \$50,000, plus the amount of any unsatisfied deficiency on any prior Monthly Funding Date during the current Fiscal Year;

Fourth, on each Interest Payment Date and on the maturity date of the Operating Loan (C/CAG) and the maturity date of the Operating Loan (Lender), to the Operating Loan Interest Fund, an amount estimated to equal the sum of (1) Operating Loan (C/CAG) interest accrued or to accrue on the Operating Loan (C/CAG) to that Interest Payment Date or its maturity

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

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

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

Seventh, on each May 1 (or if such day is not a Business Day, the next Business Day), to the Revenue Stabilization Reserve Fund, such amount as will result in the total amount on deposit in the Revenue Stabilization Reserve Fund equating to the Revenue Stabilization Reserve Fund Requirement but no more than would result in the amount then on deposit in the Revenue Stabilization Reserve Fund equaling the Revenue Stabilization Reserve Cap, but if any amount is required to be transferred on such date from the Revenue Stabilization Reserve Fund to the Express Lanes Revenue Fund under this subsection (b) or if the amount then on deposit in the Revenue Stabilization Reserve Fund equals the Revenue Stabilization Reserve Cap, then no deposit shall be made on such date to the Revenue Stabilization Reserve Fund;

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

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

Tenth, on each May 1 (or if such day is not a Business Day, the next Business Day), (i) to the Revenue Sharing Fund 85% of amounts remaining after all other deposits required under this section (rounded to the nearest cent) and (ii) to the Borrower the remainder of amounts in the Express Lanes Revenue Fund for any lawful purpose, including without limitation for Equity

Programs. But if the amount calculated in the preceding clause (i) is greater than the amount required to fully discharge payment of all principal and interest on the Bond Loan on the next Bond Loan Prepayment Date or the Final Maturity Date (whichever occurs next) plus the amount required to fully discharge all principal and interest on the Operating Loans on the next Operating Loan Prepayment Date or the maturity date of the Operating Loans, then the transfer under the preceding clause (i) shall be in such amounts instead.

(c) Reserved.

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

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

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

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

(g) Operating Loan Interest Fund. Money at any time deposited in the Operating Loan Interest Fund shall be transferred by the Borrower on the date of such deposit to the Operating Loan (Lender) Interest Account and the Operating Loan (C/CAG) Interest Account

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

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

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

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

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

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

(m) Revenue Sharing Fund. The Revenue Sharing Fund shall be funded from amounts transferred pursuant to clause Tenth of subsection (b) and subsection (n) of this Section

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

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

SECTION 9. Payment of Principal and Interest.

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

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

SECTION 10. Prepayment.

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

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

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

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

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

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

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

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

(d) The Borrower shall certify in writing that as of the Effective Date: (i) no Event of Default currently exists (or with the passage of time, will exist) of the Agreement; and

(ii) the representations and warranties of the Borrower set forth in the Agreement are true and correct in all material respects on such date, as if made on such date.

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

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

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

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

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

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

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

(e) No consent or approval of any holder of any indebtedness of the Borrower or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority required as of the date hereof is necessary in connection with the execution and delivery by the Borrower of the Loan Documents, the consummation of any transaction contemplated by the Loan Documents, or the fulfillment of or

compliance with the Borrower of the terms and conditions of the Loan Documents, except as have been obtained or made and as are in full force and effect.

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

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

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

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

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

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

(l) No representation, warranty or other statement made by the Borrower with respect to the Net Revenue in or pursuant to this Agreement or any Loan Document or any other document or financial statement with respect to the Express Lanes Revenues provided by the Borrower to the Lender in connection with this Agreement or any other Loan Document, except as disclosed to the Lender in writing, contains any untrue statement of a material fact. All information, reports and other papers and data with respect to the Net Revenue furnished to the Lender were, at the time the same were so furnished, accurate in all material respects or were replaced with accurate information. Any financial statements and cash flows furnished to the Lender with respect to the Net Revenue were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of conditions existing at the time of the delivery of such financial statements and cash flows. No fact is known to the Borrower that in the future may (so far as it can reasonably foresee) materially and adversely affect the

security for the Note, or the Borrower's ability to repay when due its obligations under this Agreement or the Note.

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

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

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

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

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

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

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

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

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

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

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

(e) Reserved.

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

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

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

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

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

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

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

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

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

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

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

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

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

(s) Reserved.

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

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

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

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

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

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

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

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

SECTION 16. Indemnification. To the extent authorized by law, the Borrower shall indemnify the Lender and any official, employee, agent or representative of the Lender (each such Person being herein referred to as an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including, without limitation, the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution, delivery and performance of this Agreement or any of the Loan

Documents, (ii) the Bond Loan or the use of the proceeds thereof, or (iii) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the 101 Project or any other project funded with Lender Bond proceeds or Express Lanes Revenues; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower upon notice from such Indemnitee shall defend the same and such Indemnitee shall cooperate with the Borrower at the expense of the Borrower in connection therewith. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. All amounts due to any Indemnitee under this Section shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section shall survive the payment or prepayment in full or transfer of the Bond Loan, the enforcement of any provision of the Loan Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder.

SECTION 17. Events of Default and Remedies.

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

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

(ii) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement (other than a Payment Default), and such failure shall not be cured sixty (60) days after receipt by the Borrower from the Lender of written notice thereof; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such 60-day period, then no Event of Default shall be deemed to have occurred or be continuing under this clause (ii) if and so long as within such 60-day period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions; provided, however, that no such extension shall be for a period in excess of 90 days;

(iii) Bankruptcy. The Borrower files a petition in voluntary bankruptcy for the composition of its affairs or for its reorganization under any State or federal bankruptcy or insolvency law, or makes an assignment for the benefit of creditors, or admits in writing to its

insolvency or inability to pay debts as they mature, or consents in writing to the appointment of a trustee or receiver for itself;

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

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

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

(vii) (A) The Borrower, pursuant to official action on the part of its governing body, contests in an administrative or judicial proceeding, repudiates or otherwise denies (including, without limitation, authorizing the filing of a claim to such effect in an administrative or judicial proceeding) that it has any further liability or obligation under or with respect to any provision of this Agreement or the Note relating to (1) the ability or the obligation of the Borrower to pay, when due, the principal of or interest on the Note or (2) the Revenue securing the Note; or (B) the Borrower, pursuant to official action on the part of its governing body, contests in an administrative or judicial proceeding, repudiates or otherwise denies (including, without limitation, authorizing the filing of a claim to such effect in an administrative or judicial proceeding) the legality, validity or enforceability of any provision of this Agreement, the Note relating to (1) the ability or the obligation of the Borrower to pay, when due, the principal of or interest on the Note or (2) the Revenue securing the Note; or (C) any provision of this Agreement, or the Note relating to (1) the ability or the obligation of the Borrower to pay, when due, the principal of or interest due hereunder or (2) the Revenue securing the Note shall, at any time, and for any reason, cease to be valid and binding on the Borrower, or shall be declared to be null and void, invalid or unenforceable, in each case, as the result of a final nonappealable judgment by any federal or state court or as a result of any legislative or administrative action by any Governmental Authority having jurisdiction over the Borrower; or (D) a debt moratorium or comparable extraordinary restriction by any Governmental Authority having jurisdiction over the Borrower on repayment of principal or interest on any debt shall have been declared or imposed (whether or not in writing) with respect to the Note;

(b) Subject to subsection (c) of this Section, whenever any Event of Default hereunder shall have occurred and be continuing, the Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder, and may prosecute any such judgment or final decree against the Borrower

including confession of judgment by the Borrower against the Borrower and collect in the manner provided by law the moneys adjudged or decreed to be payable from the Collateral, and the Lender may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by Borrower under this Agreement then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement or the other Loan Documents. No action taken pursuant to this Section shall relieve Borrower from its obligations pursuant to this Agreement or the other Loan Documents, all of which shall survive any such action.

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

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

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

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

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

(c) Amounts in the Operating Reserve Fund, the Revenue Stabilization Reserve Fund, the Repair and Rehabilitation Reserve Fund and the Equipment Replacement Reserve Fund shall remain available to the Borrower for the respective uses permitted under Section 8 and shall not be available to the Lender unless toll collection on the Express Lanes ceases with no reasonably foreseeable resumption of normal toll collection.

SECTION 18. Remedies Not Exclusive. No remedy conferred herein or reserved to the Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

SECTION 19. Delay or Omission Not Waiver. No delay or omission of the Lender to exercise any right or remedy provided hereunder upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this

Agreement or by law to the Lender may be exercised from time-to-time, and as often as may be deemed expedient by the Lender.

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

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

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

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

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

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

SECTION 26. Fees and Expenses.

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

(b) The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the Lender on demand from time-to-time on and after the date hereof for any and all fees, costs, charges and expenses incurred by it (including the reasonable fees, costs and expenses of counsel and other advisors) in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the other Loan

Documents and the transactions hereby and thereby contemplated, including without limitation, reasonable attorneys', engineers', and planning fees and professional costs, including all such fees, costs and expenses incurred as a result of or in connection with:

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

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

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

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

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

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

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

SECTION 30. Successors and Assigns; Third-Party Beneficiary. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns, except that C/CAG shall be a third party beneficiary of Section 8 and Section 17(b) hereof. Neither the Borrower's rights or obligations hereunder nor any interest therein may be assigned or delegated by the Borrower without the prior written consent of the Lender.

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

SECTION 32. Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts

and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

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

If to the Lender: San Mateo County Transportation Authority
1250 San Carlos Avenue
San Carlos, California 94070-1306
Attention: Derek Hansel
Telephone: (650) 508-6466
E-mail: hanseld@samtrans.com

For Payment –

Currency: USD
Receiving Bank: JP Morgan Chase Bank
ABA #: 322271627
Acct. Name: San Mateo County Transportation Authority
Acct. #: 522885935
Beneficiary Info: SMCTA
Attention: Treasury

If to the Borrower: San Mateo County Express Lanes Joint Powers Authority
County Office Building
555 County Center
Fifth Floor
Redwood City, California 94063
Attention: Sean Charpentier or April Chan
Telephone: (650) 599-1462 (Sean Charpentier) or (650) 508-6228
(April Chan)
E-mail: scharpentier@smcgov.org or chana@samtrans.com

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

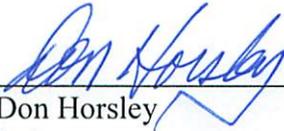
SECTION 34. Effectiveness. This Agreement shall be effective on the Effective Date.

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

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

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

SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY

By: 
Name: Don Horsley
Title: Chair

Approved as to form:

By: _____
Name: Timothy Fox
Attorney for San Mateo County
Express Lanes Joint Powers Authority

SAN MATEO COUNTY TRANSPORTATION AUTHORITY

By: _____
Name: Jim Hartnett
Title: Executive Director

Approved as to form:

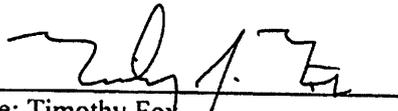
By: _____
Name: Shayna M. van Hoften
Attorney for San Mateo County
Transportation Authority

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

SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY

By: _____
Name: Don Horsley
Title: Chair

Approved as to form:

By: 
Name: Timothy Fox
Attorney for San Mateo County
Express Lanes Joint Powers Authority

SAN MATEO COUNTY TRANSPORTATION AUTHORITY

By: _____
Name: Jim Hartnett
Title: Executive Director

Approved as to form:

By: _____
Name: Shayna M. van Hoften
Attorney for San Mateo County
Transportation Authority

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

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

By: _____
Name: Don Horsley
Title: Chair

Approved as to form:

By: _____
Name: Timothy Fox
Attorney for San Mateo County
Express Lanes Joint Powers Authority

**SAN MATEO COUNTY TRANSPORTATION
AUTHORITY**

By: _____
Name: Jim Hartnett
Title: Executive Director

Approved as to form:

By: _____
Name: Shayna M. van Hoften
Attorney for San Mateo County
Transportation Authority

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

SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY

By: _____
Name: Don Horsley
Title: Chair

Approved as to form:

By: _____
Name: Timothy Fox
Attorney for San Mateo County
Express Lanes Joint Powers Authority

SAN MATEO COUNTY TRANSPORTATION AUTHORITY

By: _____
Name: Jim Hartnett
Title: Executive Director

Approved as to form:

By:  _____
Name: Shayna M. van Hoften
Attorney for San Mateo County
Transportation Authority

EXHIBIT A
FORM OF NOTE

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

SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY
NONREVOLVING NOTE

DATED DATE: September 10, 2020

For value received, the SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY (with its successors, the “*Borrower*”) hereby promises to pay to the order of San Mateo County Transportation Authority, and its successors and assigns, as their respective interests may appear (the “*Lender*”) located at 1250 San Carlos Avenue, San Carlos, California 94070-1306, the aggregate unpaid principal amount of the Bond Loan made by the Lender pursuant to the Loan Agreement, dated as of September 1, 2020 (together with any amendments or supplements thereto, the “*Agreement*”), by and between the Borrower and the Lender, plus interest thereon, on the dates, in the amounts and in the manner provided for in the Agreement.

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

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

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

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

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

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

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

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

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

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

By: _____
Name: Don Horsley
Title: Chair

ASSIGNMENT

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

Please insert Social Security or
Taxpayer Identification Number of Transferee

/_____/

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

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

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

Dated:_____

Signature Guaranteed:

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

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

EXHIBIT B

PRO FORMA BOND LOAN PRINCIPAL SCHEDULE

	<u>Principal Amount</u>
Effective Date through April 30, 2024	\$ 0
May 1, 2024 and thereafter	5,000,000