

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

Meeting No. 32

<b>Date:</b> Friday, January 14, 2022 <b>Time:</b> 9:00 A.M.	<b>Join by Zoom:</b> <a href="https://us02web.zoom.us/j/88573459954?pwd=L3o5VlA3ckQ4MUhWL3l6cldrU1pnUT09">https://us02web.zoom.us/j/88573459954?pwd=L3o5VlA3ckQ4MUhWL3l6cldrU1pnUT09</a> <b>Meeting ID:</b> 885 7345 9954 <b>Password:</b> 011422 <b>Join by Phone:</b> (669) 900-6833
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**Board of Directors:** Diane Papan (Chair), Rico Medina (Vice Chair), Alicia Aguirre, Emily Beach, Maryann Moise Derwin, and Don Horsley

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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](mailto: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 Review and approval of Resolution 22-01 finding that, as a result of the continuing COVID-19 pandemic state of emergency declared by Governor Newsom, meeting in person would present imminent risks to the health or safety of attendees. ACTION p. 1

- 4.0 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.

- 5.0 APPROVAL OF CONSENT AGENDA

This item is to set the final consent and regular agenda, and to approve the items listed

on the consent agenda. All items on the consent agenda are approved by one action. There will be no separate discussion on these items unless members of the Board, staff or public request specific items to be removed for separate action.

- 5.1 Approval of the minutes of Board of Directors regular business meeting No. 30 dated December 10, 2021. ACTION p. 6
- 5.2 Review and Approval of Resolution SMCEL 22-02 authorizing the SMCEL-JPA Chair to sign the License Agreement with the City of Palo Alto for Express Lanes Toll facilities within City Rights of Way. ACTION p. 13
- 5.3 Accept the Sources and Uses of Funds for the FY22 Period Ending November 30, 2021. ACTION p. 27
- 5.4 Review and Approval of Resolution SMCEL 22-03 authorizing the SMCEL-JPA Chair to execute an Agreement with Eide Bailly LLP for Financial Audit Services for an amount not to exceed \$48,500 through January 31, 2027. ACTION p. 29
- 5.5 Approval of the minutes of the Board of Directors Special Meeting No. 31 dated December 23, 2021. ACTION p. 51

## 6.0 REGULAR AGENDA

- 6.1 Receive an update on the logo for the San Mateo County Express Lanes Equity Program. INFORMATION p. 53
- 6.2 Receive an update on the San Mateo 101 Express Lanes Project opening schedule for the southern segment from Whipple Avenue to the San Mateo/Santa Clara border, along with status update on the negotiation of the Caltrans Operations & Maintenance (O&M) Agreement, and the BAIFA and BATA O&M Agreements. INFORMATION p. 55

## 7.0 CLOSED SESSION

- 7.1 CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Cal. Gov't Code § 54956.8)  
Property: No. 1 lanes on US 101 N/S from Santa Clara/San Mateo County Line to I-380 interchange  
Agency Negotiator: SMCEL-JPA Executive Council  
Negotiating Parties: SMCEL-JPA; California Department of Transportation  
Under Negotiation: Price and terms of payment for leasehold interest

## 8.0 REPORTS

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

## 9.0 WRITTEN COMMUNICATIONS

None.

## 10.0 NEXT REGULAR MEETING

February 11, 2022

## 11.0 ADJOURNMENT

**PUBLIC NOTICING:** All notices of San Mateo County Express Lanes Joint Powers Authority Regular Board meetings, standing committee meetings, and special meetings will be posted at the San Mateo County Transit District Office, 1250 San Carlos Ave., San Carlos, CA.

**PUBLIC RECORDS:** Public records that relate to any item on the open session agenda for a regular Board meeting, standing committee meeting, or special meeting are available for public inspection. Those public records that are distributed less than 72 hours prior to a regular Board meeting are available for public inspection at the same time they are distributed to all members, or a majority of the members, of the Board. The Board has designated the location of 555 County Center, 5<sup>th</sup> Floor, Redwood City, CA 94063, for the purpose of making public records available for inspection. Please note this location is temporarily closed to the public; please contact Mima Crume at [mcrume@smcgov.org](mailto: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](mailto: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: January 14, 2022

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

From: Executive Council

Subject: Review and approval of Resolution 22-01 finding that, as a result of the continuing COVID-19 pandemic state of emergency declared by Governor Newsom, meeting in person would present imminent risks to the health or safety of attendees.

(For further information please contact Timothy Fox at [tfox@smcgov.org](mailto:tfox@smcgov.org))

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### **RECOMMENDATION**

Review and approval of Resolution 22-01 finding that, as a result of the continuing COVID-19 pandemic state of emergency declared by Governor Newsom, meeting in person would present imminent risks to the health or safety of attendees.

### **FISCAL IMPACT**

There is no Fiscal Impact associated with this item.

### **SOURCE OF FUNDS**

None.

### **BACKGROUND**

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

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

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

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

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

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

## **DISCUSSION**

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

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

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

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

Because local rates of transmission of COVID-19 are in the "high" tier as measured by the Centers for Disease Control as of the date of this report, we recommend that the Board avail itself of the provisions of AB 361 allowing continuation of remote meetings by adopting findings to the effect that conducting

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

**ATTACHMENTS**

1. Resolution SMCEL 22-01

## RESOLUTION SMCEL 22-01

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

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

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

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

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

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

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

**WHEREAS**, California Department of Public Health (“CDPH”) and the federal Centers for Disease Control and Prevention (“CDC”) caution that the Delta variant of COVID-19, currently the dominant strain of COVID-19 in the country, is more transmissible than prior variants of the virus, may cause more severe illness, and that even fully vaccinated

individuals can spread the virus to others resulting in rapid and alarming rates of COVID-19 cases and hospitalizations (<https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>); and

**WHEREAS**, the CDC has established a “Community Transmission” metric with 4 tiers designed to reflect a community’s COVID-19 case rate and percent positivity; and

**WHEREAS**, the County of San Mateo currently has a Community Transmission metric of “substantial” which is the second most serious of the tiers; and

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

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

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

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

**NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that**

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

**PASSED, APPROVED, AND ADOPTED, THIS 14TH DAY OF JANUARY 2022.**

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*Diane Papan, Chair*

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

Meeting No. 30  
December 10, 2021

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

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

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## 1.0 CALL TO ORDER/ ROLL CALL

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

**Members Present:**

C/CAG Members:

Diane Papan, Maryann Moise Derwin, Alicia Aguirre

SMCTA Members:

Rico Medina, Emily Beach, Don Horsley

**Members Absent:**

None.

**Staff Present:**

Sean Charpentier – Executive Council

Carter Mau – Executive Council

Mima Guilles – Clerk

Tim Fox – Legal Counsel

Van Ocampo – C/CAG staff supporting SMCEL-JPA

April Chan, Derek Hansel, Robert Casumbal – SMCTA staff supporting SMCEL-JPA

Lacy Vong, Matt Click, Christa Cassidy – HNTB

Latrice Taylor – Samaritan House

Other members of staff and the public were in attendance.

## 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.

Mima Crume reported there was no public comment submitted before the meeting. There was no public comment.

#### 4.0 APPROVAL OF CONSENT AGENDA

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

4.1 Approval of the minutes of Board of Directors regular business meeting No. 29 dated November 12, 2021. APPROVED

4.2 Accept the Sources and Uses of Funds for the FY22 Period Ending October 31, 2021. APPROVED

4.3 Review and approval of Resolution 21-22 finding that, as a result of the continuing COVID-19 pandemic state of emergency, meeting in person for meetings of the SMCEL-JPA Board of Directors would present imminent risks to the health or safety of attendees, and that the state of emergency continues to directly impact the ability of members of the Board of Directors to meet safely in person. ACTION

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

#### 5.0 REGULAR AGENDA

5.1 Review and approval of the 2022 Calendar of SMCEL-JPA Board of Directors Meetings. APPROVED

Sean Charpentier gave a brief presentation on the 2022 Calendar of SMCEL-JPA Board of Directors Meetings. Due to the Annual League of Cities Conference in September, the meeting will be moved to September 16<sup>th</sup>. Due to a Veteran's Day holiday in November, the meeting will be moved to November 18<sup>th</sup>.

Director Aguirre MOVED to approve item 5.1. Director Beach SECONDED. Roll call was taken. **MOTION CARRIED 6-0-0**

5.2 Receive an update on the US101 Express Lanes Southern Segment Opening Public Education and Marketing efforts. INFORMATION

The Board received a presentation from Robert Casumbal on the US101 Express Lanes Southern Segment Opening Public Education and Marketing efforts.

Chair Papan asked if we are referring to advertising through social media.

Robert Casumbal said that we are using social media for “organic messaging”. It’s not paid advertising per se, but we are using that platform to make sure the messages are out across all channels.

Chair Papan asked if the signs that are currently overhead be used to say the lanes will start to operate on X date or any other information.

Robert Casumbal said that he believes there is an on-corridor signage plan but not exactly sure what the messaging will be other than what the current rules are.

Director Derwin asked will FasTrak be prepared for this crush of applicants to get their flex toll tags.

Robert Casumbal said that they have regular meetings with our partners: MTC, BAIFA, and BATA. They are aware and will be launching campaign to encourage people to get FasTrak, which is scheduled after January 15<sup>th</sup>, slightly a little bit after our campaign’s kickoff.

Director Medina commented on one of the messages that states new rules, to him new rules can be taken negatively.

Robert Casumbal responded that they’re still developing this campaign and they’re constantly trying to do message-testing. Robert thanked Director Medina and will adjust the messaging accordingly.

Director Beach asked if there are opportunities for roadshows 15-20 minutes among community groups. A staff presentation may be good to reach out to people which may be another medium to get the word out.

- 5.3 Approval of Resolution SMCEL 21-23 on the Amendment of the Fiscal Year (FY) 2022 SMCEL-JPA Revised Budget. APPROVED

The Board received a presentation from Derek Hansel on the Amendment of the Fiscal Year (FY) 2022 SMCEL-JPA Revised Budget.

Chair Papan commented and said she understands how the customer service might be a function of the usage but thinks the other costs are fixed.

Derek Hansel answered that there are pieces in the toll O&M contract that are not necessarily fixed costs. There are some variable volume-based components.

Director Horsley asked to describe the coordination between BAIFA, BATA and the JPA.

Derek Hansel said BAIFA and BATA each have different roles in the way toll transactions are processed and invoices are created for the customers. Lacy Vong explained that there is a daily reconciliation run by BAIFA that provides information on what happens on the lanes, those transactions then go over to BATA and BATA does the actual processing of payments. There are also daily,

as well as weekly and monthly, reconciliations. And sometimes if the image isn't correct (for those cars without transponders) there will be some reconciliation.

Chair Papan asked about 880, and whether BAIFA and BATA will be able to handle the additional volume.

Lacy Vong said because the volume was higher, they've had to make some adjustments on the transactional piece on the maintenance side because there is a license plate image review processing.

Director Horsley asked what is the percentage of license plates that can't be read and what's the percentage of violators.

Derek Hansel said they're assuming 30% to 40%.

Lacy Vong added that this was an area they've asked to work with BAIFA to get some additional data. It's a learning curve in the first few months and numbers should go down.

Director Horsley **MOVED** to approve item 5.3. Director Aguirre **SECONDED**. Roll call was taken. **MOTION CARRIED 6-0-0**

- 5.4 Review and approval of Resolution SMCEL 21-24 authorizing the SMCEL-JPA Chair to execute an Agreement with Samaritan House for San Mateo 101 Express Lanes Equity Program administration for an amount not to exceed \$108,000.  
**APPROVED**

The Board received a presentation from Christa Cassidy on the Equity Program Implementation Update.

The Board received an introduction from Latrice Taylor, Associate Director of programs and service with Samaritan House. At Samaritan House, diversity, equity, and inclusion are at the core of who they are. Their central mission is to preserve dignity, promote self-sufficiency, and provide hope with compassion to everyone in the community.

Christa Cassidy talked about partnership with Samaritan House that they would administer the program and promote and educate their clients about the equity program and enroll individuals in the equity program.

Chair Papan asked what portion of the \$100 on the transponder goes to a deposit or is it waived.

Christa Cassidy said there'll be an initial \$25 on the toll transponder and once the participant registers they will receive the other \$75.

Matt Click said the \$100 is actual toll value: \$25 of which is preloaded, then the recipients must enroll in the FasTrak program to get the other \$75.

In terms of naming the Equity program, Director Beach said her first bid for a possible name is free community travel benefits.

Director Aguirre asked is the amount that's being given and whether it's a transponder or Clipper card, is that once a year or is that just at the beginning.

Christa Cassidy said the Clipper card benefit is an annual benefit and the fastrak toll transponder is a one-time benefit.

Director Aguirre said so people can't come back next year for fastrak transponder.

Matt Click said that it's correct and that is technically how they've assessed it. However he has reminded everyone that this is a pilot that they will do in phases.

Director Aguirre said she would call it community transportation benefit. It's something that's widely understood

Director Derwin asked where this name is going to be used, will this be used in the marketing program that goes out to the community.

Christa said that is correct.

Director Derwin said she's leaning towards Director Aguirre's suggestion to community transportation benefits because it's only three words and it translates well into a lot of our users' language.

Director Horsley said he agrees with Directors Aguirre's recommendation, community transportation benefit.

Director Medina concurs with Director Aguirre's recommendations.

Chair Papan is also on board with community transportation benefits.

Director Beach shared that in their December meeting they had the unanimous support and direction from the San Mateo County Transportation Authority Board of Directors to allocate a one-time \$400K of TDM/ACR funds to the JPA Express Lane program. It'll formally be approved in January. She has also commented the sooner we can get this equity program up and running earlier than spring.

Chair Papan said the timing had her concerned and thinks we will be under a microscope when lanes open. She's less concerned about confusion but more concerned about having a complimentary community transportation benefits program in place simultaneously with the opening.

Director Derwin expressed her excitement about seeing this program actually come to life and has thanked the TA Board.

Director Aguirre concurs with Chair Papan. It's a priority to announce to at least all of the partners, that they are able to share the information and that there's some type of media saying, "next great step is going to be our community transportation benefits."

Director Medina concurs with Chair Papan and Director Aguirre's comments because he thinks we are trying to be complementary and trying to show that this has value and that everybody has an opportunity.

Matt Click said they will meet with Samaritan House and their staff early and they were looking at late February/early March. They will try to accelerate it as much as possible.

Mima Crume announced that there were no public comments from the public on this item.

Director Medina **MOVED** to approve item 5.4. Director Aguirre **SECONDED**. Roll call was taken. **MOTION CARRIED 6-0-0**

## 6.0 CLOSED SESSION

Chair Papan asked if there were any public comment on the closed session. The Clerk has announced that there are no public comments on closed session.

- 6.1 CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Cal. Gov't Code § 54956.8)  
Property: No. 1 lanes on US 101 N/S from Santa Clara/San Mateo County Line to I-380 interchange  
Agency Negotiator: SMCEL-JPA Executive Council  
Negotiating Parties: SMCEL-JPA; California Department of Transportation  
Under Negotiation: Price and terms of payment for leasehold interest

Chair Papan reported out on the discussion held and no reportable action was taken.

## 7.0 REPORTS

- a) Chairperson Report.  
None.
- b) Member Communication.  
None.
- c) Executive Council Report - Executive Council Verbal Report.

Sean Charpentier reported out that the San Mateo County Express Lanes JPA is now a member of the California Toll Operators Committee or CTOC which is a statewide organization of California toll operators where we gather to discuss many of the

same operational and policy issues during the formation and initiation of the toll lanes. He has also thanked the Board and staff for a really productive year and all the hard work and wished everybody a happy holiday season.

d) Policy/Program Manager Report.

None.

8.0 WRITTEN COMMUNICATIONS

None.

9.0 NEXT REGULAR MEETING

January 14, 2022

10.0 ADJOURNMENT – 10:53 a.m.

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

Date: January 14, 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 22-02 authorizing the SMCEL-JPA Chair to sign the License Agreement with the City of Palo Alto for Express Lanes Toll facilities within City Rights of Way.

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

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### **RECOMMENDATION**

Review and approve Resolution SMCEL 22-02 authorizing the SMCEL-JPA Chair to sign the License Agreement with the City of Palo Alto for Express Lanes Toll facilities within City Rights of Way.

### **FISCAL IMPACT**

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

### **SOURCE OF FUNDS**

None.

### **BACKGROUND**

This San Mateo 101 Express Lanes Project (Project) will create 44 miles (22 miles in each direction) of new express lanes along the US 101 between the San Mateo - Santa Clara County Line and Interstate 380 (I-380) in South San Francisco. The Project is being constructed in two segments; the southern segment from the San Mateo/Santa Clara County Line to Whipple Avenue in Redwood City, and the northern segment from Whipple to Interstate-380.

Installation of the Toll System facilities within the southern segment is complete with testing well under way. However, some of the facilities necessary for the operations of the Express Lanes were installed outside of Caltrans' Right-of-Way and on the adjacent cities' rights of way. Examples of these facilities include, pull boxes, conduits, cables, electrical meters and pedestals, transformers, close circuit televisions (CCTV), etc. An encroachment was previously issued by the City of Palo Alto for the work

to occur within its rights of way, but as the installation is now complete, it is necessary for the SMCEL-JPA to enter into a License Agreement with the City to document the presence of these facilities within the its rights of way.

Staff has negotiated the attached draft License Agreement between Palo Alto and SMCEL-JPA. However, since the draft has not been approved by Palo Alto's City Council, it is staff's recommendation that the Executive Council be authorized to negotiate final terms prior to execution by the Chair, subject to legal counsel approval.

**ATTACHMENTS**

1. Resolution SMCEL 22-02
2. Attachment A – License Agreement

## **RESOLUTION SMCEL 22-02**

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

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

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

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

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

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

**WHEREAS**, SMCEL-JPA is responsible for maintaining the facilities at no cost to the City of Palo Alto.

**NOW THEREFORE BE IT RESOLVED**, that the SMCEL-JPA Board of Directors authorizes the Chair to execute the License Agreement between SMCEL-JPA and the City of Palo Alto; and further authorize the Executive Council to negotiate the final agreement prior to execution by the Chair, subject to approval by SMCEL-JPA Legal Counsel.

**PASSED, APPROVED, AND ADOPTED, THIS 14TH DAY OF JANUARY 2022.**

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*Diane Papan, Chair*

## **LICENSE AGREEMENT**

This LICENSE AGREEMENT (“License”), made and entered into this \_\_\_ day of \_\_\_, 2022, by and between the City of Palo Alto, California, a California chartered municipal corporation (“Licensor”) and the San Mateo County Express Lanes Joint Powers Authority (“Licensee”). Together the Licensor and Licensee are referred to herein as “the Parties.” Licensee understands, acknowledges, accepts and agrees that Licensor is entering into this License in its capacity as a licensor with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing herein shall limit in any way Licensee’s obligation to obtain any required regulatory approvals from City departments, boards or commissions or other governmental regulatory authorities or limit in any way Licensor’s exercise of its police powers.

### **RECITALS**

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

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- 1. **License.** Subject to the terms and conditions of this License, the Licensor licenses Licensee to construct, install, operate, maintain, repair, replace, and remove equipment as necessary for the operation of the San Mateo County Express Lanes Project (the “Facilities”) on the Premises as more particularly shown on the drawing which is attached hereto as Exhibit A to this License. Licensee has inspected the Premises, is familiar with the present condition of the Premises and accepts the Premises in that condition as of the date of this License. Licensee hereby accepts the Premises in its “as is”, “where is”, and “with all faults” condition. Licensor shall not have any obligation to make any alterations, repairs, maintenance, or improvements to the Premises at any time.
- 2. **Use.** Licensee shall use the Premises solely for purposes of operating and maintaining the San Mateo County 101 Express Lanes equipment through Palo Alto and will not use it for any other purpose whatsoever without an amendment to this License. Unless specifically provided otherwise herein, the Licensee shall have no right to locate any surface installation or to install fencing on any part of the Premises. Licensee shall not cause, nor shall Licensee allow or permit anyone to cause any hazardous material to be released, brought upon, kept, used, stored, generated or disposed of in, on, or about the Premises.
- 3. **Term and Termination.** The term of this License shall commence upon final approval of the initial encroachment permit for the work covered by the License and last until this License is terminated or if operation of the San Mateo 101 Express Lanes ends and the Facilities will no longer be used, whichever is earlier. Licensor may terminate this License in the event of

Licensee's default of any License provisions and failure to cure within 60 days of written notice provided pursuant to Paragraph 24, "Notice" of this License. Upon termination or expiration of the License, Licensee shall immediately surrender the Premises in as good or better condition as when first entered or used by Licensee, reasonable wear and tear excepted.

4. Installation and Conformity with Approved Plans and Specifications. At its own expense, Licensee shall design, install and construct the Facilities of such material, and in a manner that will not at any time be a source of danger to, or interfere with the Licensor's present or future use of the Premises, including but not limited to, use of the Premises as public right-of-way, or the use of the Premises by any utility presently franchised by the Licensor with installations in place at the time this License is entered into. If prior to installation, Licensor determines that the Licensee's proposed installation will interfere with existing or proposed Licensor installations or any underground installations that predate this License, then Licensee shall at its sole expense redesign the Facilities to eliminate the interference as described by Licensor.

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

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

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

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

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

5. Removal. If operation of the San Mateo County Express Lanes ends and the Facilities will no longer be used, Licensee agrees to remove the Facilities within one year of the operation's termination.
6. As-Built. Upon completion of the construction and installation of the Facilities, the Licensee shall promptly provide Licensor with one set of reproducible as-built, record drawings, reflecting construction and installation as actually accomplished.
7. Location Markers and Marking. As deemed necessary by Licensor, Licensee shall furnish, install, and place signs to give notice and location of the Facilities. Licensee shall install permanent markers situated so as not to impede use of the Premises by the Licensor, members of the public or currently franchised utilities on each side of the public right-of-way where the Facilities cross the right-of-way. The permanent markers placed inside the Facilities shall indicate the location of the Facilities, the name and address of Licensee, and a telephone contact number for information regarding the Facilities. Licensee shall conduct periodic inspections of the markers to ensure that such markers are legible and in place as required herein. Licensee shall provide access to the Facilities whenever requested to do so by Licensor, any franchised utility, and any licensed contractor excavating near the Facilities.
8. Indemnity. Licensee agrees to indemnify and hold harmless the Licensor and its elected and appointed officials, agents and employees from any claims, actions, suits or other proceedings arising from or out of the acts or omissions of the Licensee, its agents, representatives, contractors or subcontractors or arising from the failure of the Licensee, its agents, representatives, contractors or subcontractors to perform any act or duty required of the Licensee herein. This indemnity shall not apply to any liability, claims, damages, losses or expenses, including attorney's fees, arising out of bodily injury to persons or damage or damage to property caused by or resulting from active negligence or willful misconduct of Licensor, or its agents or employees.
9. Insurance. During the Term of this License, Licensee shall obtain and maintain the insurance set forth in Exhibit B to this Agreement.
10. Damages. Licensee shall repair or pay for all actual damages to the Premises, caused by Licensee's activities.
11. Interference. Whenever, after Licensee installs the Facilities, Licensor determines that the Facilities are not located as indicated on as-built plans provided to Licensor by the Licensee, and the Facilities interfere with Licensor's use of the Premises, Licensee shall immediately relocate the Facilities to another location approved in advance by Licensor, at Licensee's sole expense, restoring the surface to its prior condition.

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

12. Interference with Utility. Whenever, after Licensee installs the Facilities, Licensor determines that the Facilities are not located as indicated on as-built plans provided to Licensor by

Licensee, the Facilities interfere with the reasonable use of the Premises by a utility holding a franchise issued prior to execution of this License, Licensee shall immediately relocate the facility to a location approved in advance by Licensor. None of the related costs shall be paid by Licensor. If the Facility is at the location indicated on the as-built plans provided to the Licensor by the Licensee and it is alleged by a utility franchised by the Licensor prior to the execution of this License that the Facility interferes with the previously-franchised utility's use of the Licensor's Property, the Licensee shall make a good faith effort to negotiate with the previously-franchised utility to resolve any conflict. None of the related costs shall be paid by the Licensor. The Licensee and the previously franchised utility shall determine between themselves who will pay the cost of relocation and restoration of the surface. [first in time, first in right]

13. Installation by Third Party. Unless required by a pre-existing agreement, state or federal law, applicable government regulation, or order from a court of competent jurisdiction, Licensor shall not voluntarily permit, authorize or approve any installation or construction by a third party that would deprive Licensee of, or unreasonably interfere with Licensee's use and enjoyment of, the Premises during the term of the License. If any road, street, sidewalk, passageway, fire alarm, electric light or power line, waterline, storm drain, sanitary sewer line, gas line, telephone pole, telephone line or other utility, appurtenances or facility is placed along or across the Facilities by any entity other than Licensor, and the construction requires the Licensee to relocate the Facilities, then that entity and the Licensee shall determine between themselves who will pay the cost of relocation and the restoration of the surface. None of the related costs shall be paid by Licensor.
14. Waiver. The waiver by either party of any breach or violation of any term, covenant, or condition of this License shall not be deemed a waiver of such term, covenant, condition, ordinance, or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law.
15. Mediation. Should any dispute arise out of this License, either party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties. In the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the State Mediation and Conciliation Service, or other agreed-upon service. The mediator shall be selected by a blind draw. The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.
16. Costs and Attorney Fees. [intentionally omitted]
17. Entire Agreement. This License contains the entire agreement of the parties regarding the Facilities and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.
18. Changes. Changes to this License are not binding unless made in a written amendment to this License duly authorized by each of the Parties.

19. Binding Effect and Authority. This License is binding upon and inures to the benefit of the successors and/or assigns of the parties. Each individual executing this License on behalf of a party entity represents and warrants that he or she is duly authorized to execute this License on behalf of that party.
20. Compliance with Laws. The Licensee and its contractors shall comply with all federal, state, and local laws, ordinances, regulations, and rules, including Licensor's policies, and will not discriminate illegally against any person.
21. Venue and Governing Law. This License is governed by and construed and enforced in accordance with the laws of the State of California. In the event of litigation, venue will be in the County of Santa Clara.
22. Construction and Severability. If any part of this License is held to be invalid or unenforceable, the remainder of this License will remain valid and enforceable if the remainder of the License is reasonably capable of completion.
23. Assignment. The Licensee shall not assign or transfer any interest in this Agreement without the prior written consent of Licensor which consent shall not be unreasonably withheld.
24. Notice. For purposes of giving formal written notice to the Licensee, the Licensee's address is:

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

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

City of Palo Alto  
Public Works Director  
Public Works Department  
250 Hamilton Avenue  
Palo Alto, CA 94301  
[pwd@cityofpaloalto.org](mailto:pwd@cityofpaloalto.org)  
[\(650\) 329-2151](tel:(650)329-2151)

With a copy to: [real.property@cityofpaloalto.org](mailto:real.property@cityofpaloalto.org)

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

## **EXHIBITS**

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

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

CITY OF PALO ALTO

SAN MATEO COUNTY EXPRESS LANES  
JOINT POWERS AUTHORITY

By:  
ED SHIKADA  
CITY MANAGER

By:  
DIANE PAPAN  
CHAIR

Approved as to form:

Approved as to form:

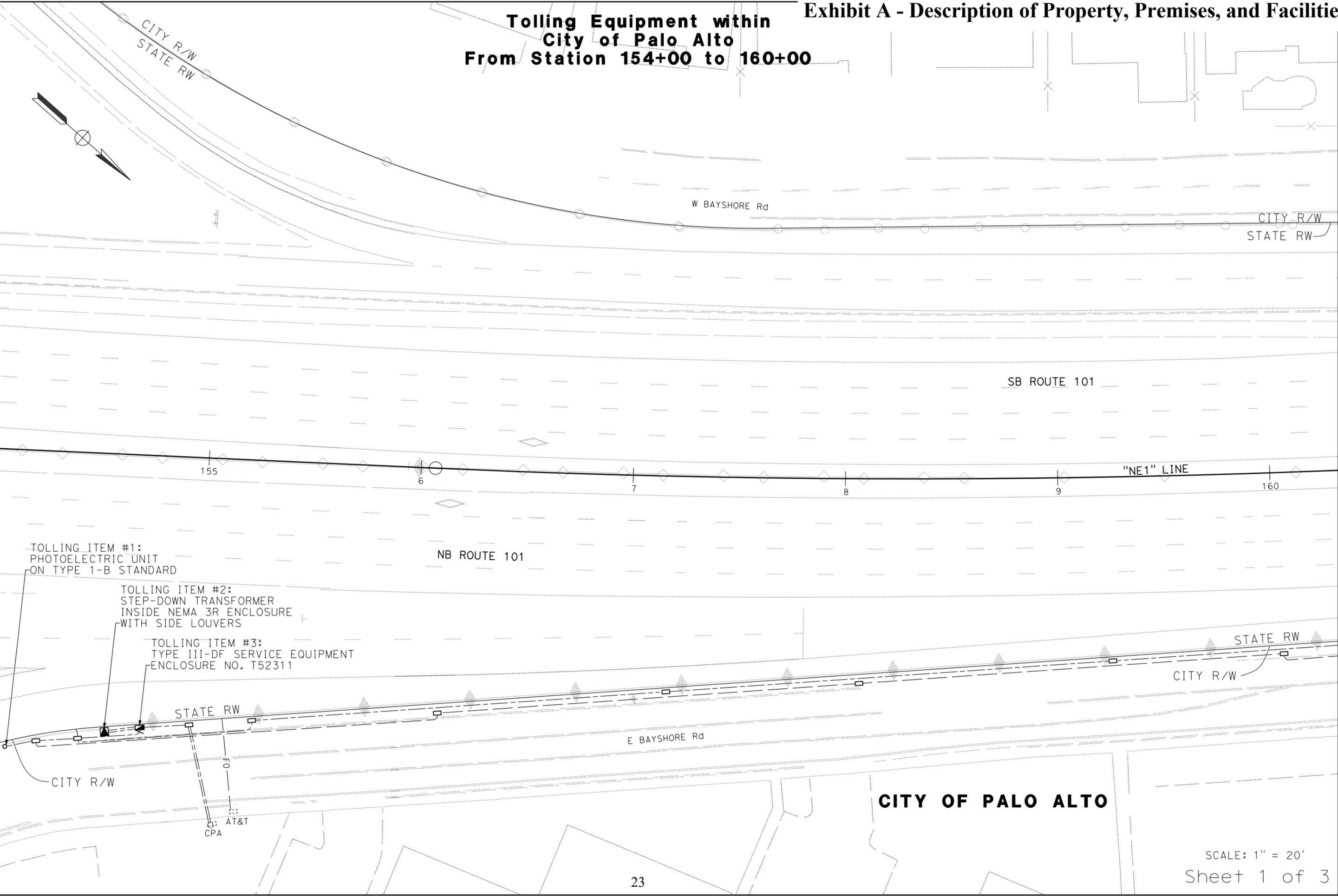
By:

By:  
Timothy Fox  
Legal Counsel

**EXHIBIT A**

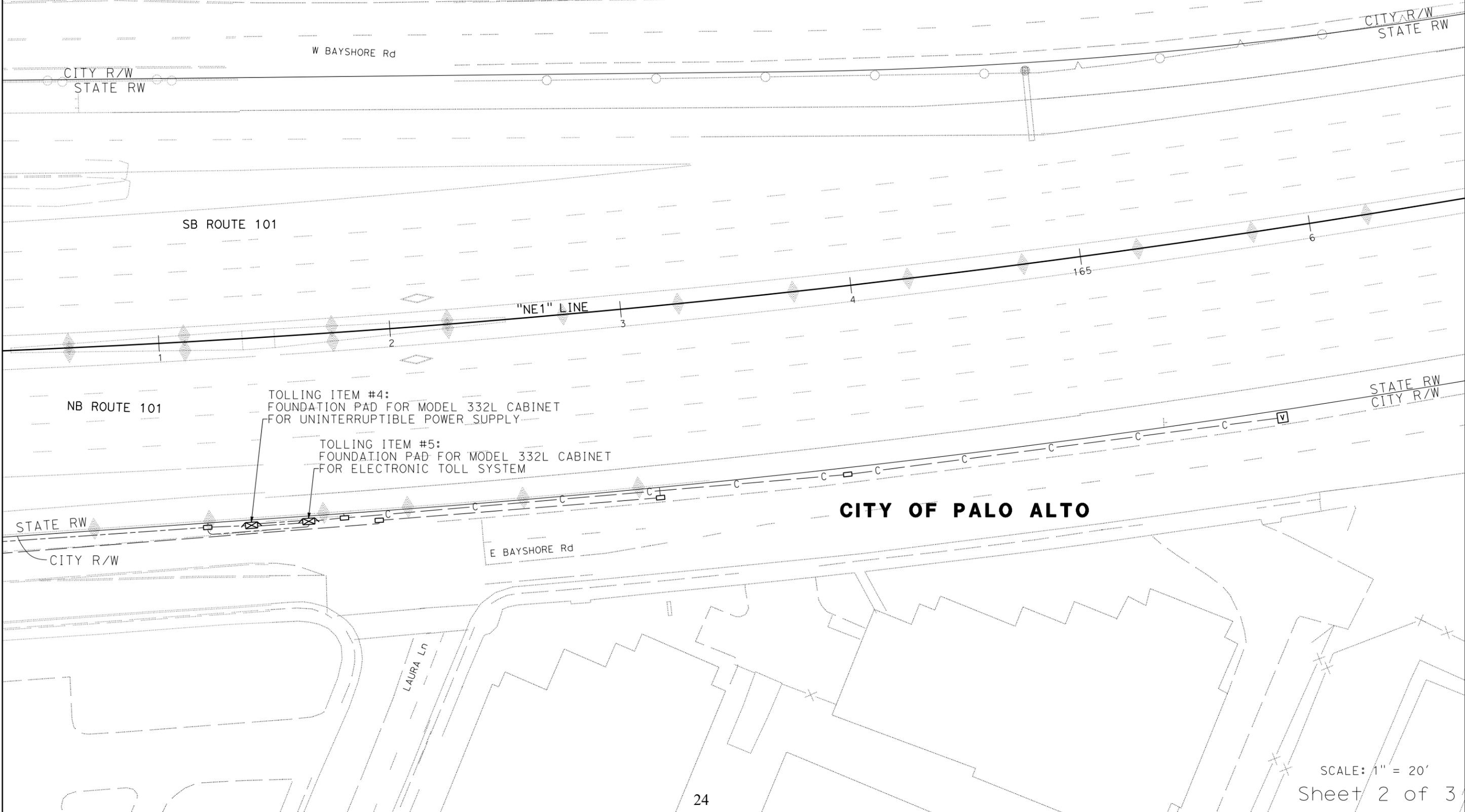
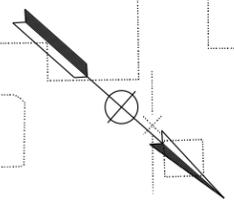
Description of Property, Premises, and Facilities

Tolling Equipment within  
City of Palo Alto  
From Station 154+00 to 160+00



**CITY OF PALO ALTO**

**Tolling Equipment within  
City of Palo Alto  
From Station 160+00 to 166+00**



**CITY OF PALO ALTO**

# Tolling Equipment within City of Palo Alto



**TOLLING ITEM #2:**  
STEP-DOWN TRANSFORMER  
INSIDE NEMA 3R ENCLOSURE  
WITH SIDE LOUVERS

**TOLLING ITEM #3:**  
TYPE III-DF SERVICE EQUIPMENT  
ENCLOSURE NO. T52311



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



**TOLLING ITEM #4:**  
FOUNDATION PAD FOR MODEL 332L CABINET  
FOR UNINTERRUPTIBLE POWER SUPPLY

**TOLLING ITEM #5:**  
FOUNDATION PAD FOR MODEL 332L CABINET  
FOR ELECTRONIC TOLL SYSTEM

## **EXHIBIT B**

### **Insurance Requirements**

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

#### **Property Insurance.**

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

#### **Liability Insurance.**

General Liability insurance at a \$1M limit per occurrence and a general aggregate limit of \$2M for bodily injury and property damage arising from the ownership of the installed toll equipment. A separate Contractor will maintain the toll equipment and will assume direct liability for such maintenance, but Licensee will have vicarious liability protection for the ownership of the toll equipment. Maintenance contractor shall have insurance meeting the City of Palo Alto's insurance requirements. CPA insurance requirements can be found here: <https://www.cityofpaloalto.org/files/assets/public/public-works/engineering-services/webpages/forms-and-permits/insurance-certificate-submission-requirements-revised-2021.pdf>

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

Date: January 14, 2022

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

From: Executive Council

Subject: Accept the Sources and Uses of Funds for the FY22 Period Ending November 30, 2021

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

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### RECOMMENDATION

That the SMCEL-JPA Board accept and enter into the record the Sources and Uses of Funds for the FY22 Period Ending November 30, 2021.

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

### BACKGROUND

Year to Date Sources of Funds: As of November year-to-date, the Total Sources of Funds are \$1,014,032 which represent the loan advances for FY22 under the two operating loan agreements between the SMCEL-JPA, the San Mateo County Transportation Authority, and the City/County Association of Governments.

Year to Date Uses of Funds: As of November year-to-date, the Total Uses of Funds are \$650,266. Major expenses are in Consultant \$220,653, Staff Support \$206,062, and Insurance \$137,275.

Budget Amendment:

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

Other Information:

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

### ATTACHMENT

1. Sources and Uses of Funds Fiscal Year 2022 (November 2021)

**SAN MATEO COUNTY EXPRESS LANE JPA**  
**SOURCES AND USES OF FUNDS**  
**Fiscal Year 2022**  
**November 2021**

	ACTUAL	BUDGET
	As of 11/30/2021	Annual
<b>SOURCES OF FUNDS:</b>		
1 Advance from the City/County Association of Governments of San Mateo County	65,555	\$ 1,314,045
2 Advance from the San Mateo County Transportation Authority	948,477 (1)	1,407,115
3 <b>TOTAL SOURCES OF FUNDS</b>	<b>1,014,032</b>	<b>2,721,160</b>
<b>USES OF FUNDS:</b>		
4 Staff Support	206,062	689,030
5 Administrative Overhead	33,228	53,415
6 Business Travel	821	10,000
7 Audit and Related Service	-	16,160
8 Office Supplies	-	3,000
9 Printing and Information Svcs	-	5,000
10 Legal Services	15,391	60,000
11 Consultant	220,653	1,614,707
12 Insurance	137,275	186,648
13 Miscellaneous	36,836	83,200
14 <b>TOTAL USES OF FUNDS</b>	<b>650,266</b>	<b>2,721,160</b>
15 <b>EXCESS (DEFICIT)</b>	<b>\$ 363,766</b>	<b>\$ -</b>
<b>Additional Information:</b>		
Loan payables to the City/County Association of Governments of San Mateo County	\$ 1,464,325	
Loan payables to the San Mateo County Transportation Authority	\$ 2,729,801	

**Note:**

(1) The advance from the Transportation Authority includes the staff support, FY22 Q1 expenses billed, and 50% of the FY22 advance budget.

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

Date: January 14, 2022

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

From: Executive Counsel

Subject: Review and Approval of Resolution SMCEL 22-03 authorizing the SMCEL-JPA Chair to execute an Agreement with Eide Bailly LLP for Financial Audit Services for an amount not to exceed \$48,500 through January 31, 2027.

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

### **Recommendation**

Review and Approval of Resolution SMCEL 22-03 authorizing the SMCEL-JPA Chair to execute an Agreement between the SMCEL-JPA and Eide Bailly LLP for Financial Audit Services for an amount not to exceed \$48,500 through January 31, 2027.

### **Fiscal Impact**

Fiscal Impact is in an amount not to exceed \$48,500 for the provision of Financial Audit Services for a term of five years beginning January 1, 2022. The \$48,500 includes the annual cost and a 10% contingency for unforeseen required services.

### **Background**

With participation of C/CAG staff, the TA and the San Mateo County Transit District (District) issued a joint Request for Proposals (RFP 21-S-T-P-076) to provide Financial Audit Services on July 16, 2021. The solicitation was advertised on the TA's and District's websites. Solicitation notices were sent to interested firms and the solicitation yielded two proposals:

- Eide Bailly, LLP, Menlo Park, California
- Maze & Associates Accountancy Corporation, Pleasant Hill, California

A Selection Committee (Committee), comprised of qualified staff representing the TA, the District, and C/CAG staff for the SMCEL-JPA, reviewed and scored the proposals in accordance with the following weighted criteria:

- Approach to Providing Services 15 points
- Company Qualifications, Experience & References 25 points
- Qualifications & Experience of Key Personnel 35 points
- Reasonableness of Cost 25 points

Following the initial proposal review, the Committee found both firms were responsive

and competitive. The two firms were invited to proceed in the evaluation and selection process, including interviews. Upon completion of interviews, and reviewing and scoring of the two proposals, the Committee determined that Eide Bailly LLP is best positioned to meet the needs of the three agencies, as detailed in the RFP Scope of Work. Eide Bailly LLP was the highest-ranked proposer. TA staff subsequently conducted a price analysis and determined Eide Bailly LLP's negotiated cost proposal to be fair and reasonable. Therefore, staff recommends award of this contract to Eide Bailly LLP.

Eide Bailly LLP was the TA's and the Districts incumbent for financial audit services and has demonstrated its in-depth knowledge of public transit audit requirements and procedures and extensive experience preparing comprehensive financial statements and reports for public transit and other government clients, including the SR 91 Express Lanes/Orange County Transportation Authority.

**ATTACHMENTS:**

1. Resolution SMCEL 22-03 Financial Audit Services
2. Attachment A: Eide Bailly LLP Financial Audit Services Agreement

**RESOLUTION SMCEL 22-03**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY (SMCEL-JPA) AUTHORIZING THE SMCEL-JPA CHAIR TO EXECUTE AN AGREEMENT WITH EIDE BAILLY LLP FOR FINANCIAL AUDIT SERVICES FOR AN AMOUNT NOT TO EXCEED \$48,500 THROUGH JANUARY 31, 2027.**

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

**WHEREAS**, with support and participation from C/CAG staff, the San Mateo County Transportation Authority (TA) and the San Mateo County Transit District (District) jointly issued Request for Proposals (RFP) 21-S-T-P076 to provide Financial Audit Services (Services); and

**WHEREAS**, in response to the RFP, the TA received two proposals; and

**WHEREAS**, a Selection Committee (Committee) comprised of qualified C/CAG, District, and TA staff reviewed and scored the proposals according to the evaluation criteria set forth in the RFP, conducted interviews with both firms, and determined Eide Bailly LLP of Menlo Park, California to be the highest consensus ranking firm; and

**WHEREAS**, staff conducted successful negotiations with Eide Bailly LLP and determined Eide Bailly LLP, as was also the incumbent to last financial auditing services contract to the San Mateo County Transit Authority and District, will perform the Services at a fair and reasonable cost to the SMCEL-JPA in a satisfactory manner.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Directors of the SMCEL-JPA authorizes the SMCEL-JPA Chair to execute an Agreement with Eide Bailly LLP for Financial Audit Services for an amount not to exceed \$48,500 through January 31, 2027; and further authorize the Executive Council to negotiate the final agreement prior to execution by the Chair, subject to approval by SMCEL-JPA Legal Counsel.

**PASSED, APPROVED, AND ADOPTED, THIS 14TH DAY OF JANUARY 2022.**

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*Diane Papan, Chair*

## Attachment

### **AGREEMENT BETWEEN SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY AND EIDE BAILLY LLP FOR FINANCIAL AUDIT SERVICES**

This Agreement entered this 14<sup>th</sup> day of January 2022, by and between the San Mateo County Express Lanes Joint Powers Authority hereinafter called “SMCEL-JPA” and Eide Bailly LLP hereinafter called “Consultant”.

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

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

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

**WHEREAS**, it is in the best interest and practice for government agencies to participate in audit services to ensure that public resources are properly used, all new mandates related to government accounting principles or best practices are integrated into agency procedures and met, and to underscore the agency’s commitment to ethics, ensuring that any misuse of public resources is detected and investigated; and

**WHEREAS**, C/CAG and the San Mateo County Transit Authority (TA) and District staff jointly completed a procurement process and identified Consultant as the preferred provider of services; and

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

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

- 1. Services.** Consultant shall provide the services as described in Exhibit A – Services & Key Personnel (“the Services”), based on the billing rates and five-year annualized quote for services provided in Consultant’s RFP response as set forth and included in Exhibit B – Billing Rates and Five-Year Annualized Quote, attached hereto and incorporated herein by this reference. Additional contingency funding of approximately 10% or \$4,169 is being added to the total amount of this Agreement to be used at the discretion of the SMCEL-JPA for unanticipated work only. The sum of the Consultants five-year annualized quote and the contingency funding is the basis of this Agreement’s Not to

Exceed Amount of \$45,800. The consultant will be reimbursed based on costs and/or rates in Exhibit B. In no case shall the cumulative cost of work exceed this Agreement's Not to Exceed Amount of \$45,800.

If additional work is identified, that is not described in Exhibit A or that exceeds the total amount of this Agreement, the SMCEL-JPA Board, through the Executive Council, will present the Consultant with a proposed amendment and request a cost proposal. The Consultant will provide the SMCEL-JPA with a cost proposal for the additional specific task applying rates set forth in Exhibit B.

The Consultant shall perform the Services with the same degree of care, skill, and diligence as is ordinarily possessed and exercised by a firm of the same profession currently practicing under similar circumstances. The Consultant will not perform or seek to perform Fiscal Agent Services to any other person or agency in relation to the Project without first obtaining the informed written consent of SMCEL-JPA. No other warranty, express or implied, is included in this Agreement or in any deliverable, in any form or media, produced in connection with the services.

Consultant shall have the right to reasonably rely on information, content, materials, or documents provided to the Consultant by the SMCEL-JPA, or any other Project participants, for the Consultant's performance of the services under this Agreement; provided; however, that the provider thereof shall remain solely responsible for the adequacy, accuracy or completeness of such information provided.

2. **Compensation and Method of Payments.** Subject to duly executed amendments, the SMCEL-JPA will reimburse Consultant in performing services as described in Exhibit A based on rates and costs estimate in Exhibit B, which include all applicable surcharges such as taxes, insurance, and fringe benefits, indirect costs, overhead, profit, sub-consultants' costs (including mark-up), travel (not eligible for separate reimbursement pursuant to the terms of this section 2), equipment, materials and supplies, expenses and any fixed fee. At no point should the total compensation for all work performance be more than the Agreement Not to Exceed Amount of \$45,800.

The rates set forth in Exhibit B may not be modified throughout the life of this contract.

Consultant shall submit billing period invoices to the SMCEL-JPA which shall be reviewed on behalf of the SMCEL-JPA by the TA and approved by a member of the SMCEL-JPA Executive Council and which shall identify expenditures and describe services performed in accordance with each task listed in Exhibit A based on labor rates in Exhibit B when applicable. The SMCEL-JPA shall pay to Consultant all undisputed amounts within thirty (30) days of the SMCEL-JPA's receipt of any Consultant invoice. If the SMCEL-JPA objects to any Consultant invoice, the SMCEL-JPA shall so advise Consultant in writing giving reasons therefor within seven (7) days of receipt of Consultant's invoice. The SMCEL-JPA shall have the right to receive, upon request, documentation substantiating charges billed to the SMCEL-JPA.

One copy of each invoice and/or requests for payments shall be submitted to the TA Contract Manager on behalf of the SMCEL-JPA. Submit as a PDF via email to:  
**AccountsPayable@samtrans.com.**

3. **Term.** Consultant's services hereunder shall commence on February 1, 2022 for a five (5) year term,

through January 31, 2027.

4. **Key Personnel.** Removal or substitution of any key personnel named in Exhibit A – Services and Key Personnel, will require the prior written notice to SMCEL-JPA. Any substitution shall be with a person of commensurate knowledge and experience, unless otherwise approved by the SMCEL-JPA. Consultant shall maintain records documenting compliance with this Article, and such records shall be subject to audit. Consultant agrees that all personnel assigned to this work will be professionally qualified for the assignment to be undertaken.
5. **Amendments.** SMCEL-JPA reserves the right to request changes in the services to be performed by Consultant. All such changes shall be incorporated in written amendments that specify the changes in work to be performed and any adjustments in compensation and schedule. All amendments shall be executed by the Parties and be specifically identified as amendments to this Agreement. The SMCEL-JPA Executive Council, nor any member thereof, is designated as representative of the SMCEL-JPA for purposes of approving an amendment to this Agreement unless expressly so designated by the SMCEL-JPA Board. For the sake of clarity, any separate agreement between SMCEL-JPA and an affiliate of Consultant shall not in any way be deemed an amendment or modification of this Agreement.
6. **Relationship of the Parties.** It is understood that Consultant is an independent contractor and this Agreement is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever with Consultant, its employees, agents, and permissible subcontractors, other than that of independent contractor. Consultant acknowledges that SMCEL-JPA has no employees, and neither Consultant nor its employees, agents, or permissible subcontractors acquire any of the rights, privileges, powers, or advantages of SMCEL-JPA employees. Consultant has no authority to contract or enter into any agreement on behalf of SMCEL-JPA without the prior approval of the SMCEL-JPA Board. Consultant has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by Consultant who are assisting in the performance of services under this Agreement. Consultant shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. Consultant shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.
7. **Non-Assignability.** Consultant shall not assign this Agreement or any portion thereof to a third party without the prior written consent of the SMCEL-JPA
8. **Termination.** This Agreement may be terminated by SMCEL-JPA at any time without a requirement of good cause upon thirty (30) days' advance written notice to Consultant. Consultant shall be entitled to receive payment for work/services provided up to the date of termination of the Agreement on a time and materials basis.

SMCEL-JPA may terminate this Agreement for cause. In order to terminate for cause, SMCEL-JPA must first give Consultant notice of the alleged breach. Consultant shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If Consultant fails to cure the breach within this period, SMCEL-JPA may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the

event that SMCEL-JPA provides notice of an alleged breach pursuant to this section, SMCEL-JPA may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. SMCEL-JPA has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and SMCEL-JPA shall use reasonable judgment in making that determination.

9. **Contract Materials.** At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, statements and transaction documents, studies, maps, photographs, reports, and other written materials (collectively referred to as “contract materials”) prepared by Consultant under this Agreement shall become the property of SMCEL-JPA and shall be promptly delivered to SMCEL-JPA. Upon termination, Consultant may make and retain a copy of such contract materials if permitted by law or regulation or if automatically saved electronically as part of Consultant’s computer disaster recovery or similar back-up system or internal document retention and business continuity policies and procedures. Any use or reuse of any contract materials by SMCEL-JPA or any third party, whether finished or unfinished, for any purpose other than as specifically intended under this Agreement shall be at the user’s sole risk and without liability or legal exposure to Consultant.
10. **Hold Harmless/ Indemnity.** Consultant shall indemnify and hold harmless the SMCEL-JPA, its board members, agents, officers, and employees from both C/CAG and the SMCTA involved the Project, against all claims, suits or actions of every name, kind, and description to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Consultant, its agents, sub-consultants, officers or employees related to or resulting from the performance, or non-performance, under this Agreement.

The duty to indemnify and hold harmless as set forth herein shall include the duty to defend.

## 11. Insurance

The insurance requirements specified in this Section shall cover CONTRACTOR’s own liability and any liability arising out of work or services performed under this Agreement by any subcontractors, subconsultants, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations (hereinafter collectively referred to as “Agents”) that CONTRACTOR authorizes to work under this Agreement. CONTRACTOR is required to procure and maintain at its sole cost and expense the insurance coverages subject to all of the requirements set forth below. Such insurance shall remain in full force and effect throughout the term of this Agreement. CONTRACTOR is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverages with appropriate limits and endorsements to cover such risks; the limit for the Commercial General Liability insurance in each subcontract shall not be less than \$1 million. To the extent that any Agent does not procure and maintain such insurance coverage, CONTRACTOR shall assume any and all costs and expenses that may be incurred in fulfilling CONTRACTOR’s indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event CONTRACTOR or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the CONTRACTOR’s insurance be primary without any right of contribution from the AGENCIES. Prior to beginning work under this Agreement,

CONTRACTOR shall provide the AGENCIES's authorized insurance consultant, Insurance Tracking Services, Inc. (ITS) with satisfactory evidence of compliance with the insurance requirements of this Section by submitting such evidence of compliance to the address indicated in C.1. below.

## **A. MINIMUM TYPES AND SCOPE OF INSURANCE**

### **1. Workers' Compensation and Employer's Liability Insurance.**

- a. Workers' Compensation with Statutory Limits, as required by Section 3700 et seq. of the California Labor Code, or any subsequent amendments or successor acts thereto, governing the liability of employers to their employees.
- b. Employer's Liability coverage with minimum limits of \$2 million.
- c. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:
  - Waiver of Subrogation.

### **2. Commercial General Liability Insurance.**

Commercial General Liability insurance for bodily injury and property damage coverage of at least \$2 million per occurrence or claim and a general aggregate limit of at least \$2 million. Such insurance shall cover all of CONTRACTOR's operations both at and away from the project site. Such insurance shall not have any exclusion for Cross Liability or Cross-Suits. In addition, for any construction and public works projects, the insurance shall not have any exclusion for Explosion, Collapse and Underground perils (xcu) and for construction or demolition work within 50 feet of railroad tracks, the contractual liability exclusion for liability assumed shall be deleted.

- a. This insurance shall include coverage for, but not be limited to:
  - Premises and operations.
  - Products and completed operations.
  - Personal injury.
  - Advertising injury.
- b. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:
  - Additional Insured.
  - Separation of Insureds Clause.
  - Primary and Non-Contributory wording.
  - Waiver of Subrogation.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

### **3. Business Automobile Liability Insurance.**

Business Automobile Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least \$2 million per accident or loss.

- a. This insurance shall include coverage for, but not be limited to:
  - All owned vehicles.
  - Non-owned vehicles.
  - Hired or rental vehicles.

b. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

- Additional Insured.
- Primary and Non-Contributory wording.
- Waiver of Subrogation.

**4. Property Insurance.**

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

a. This insurance shall include coverage for, but not be limited to:

- CONTRACTOR’s own business personal property and equipment to be used in performance of this Agreement.
- Materials or property to be purchased and/or installed on behalf of the AGENCIES, if any.
- Builders risk for property in the course of construction.

b. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:

- Waiver of Subrogation.

**5. Employee Theft Insurance/Crime Insurance.**

An Employee Theft insurance policy covering CONTRACTOR’s employees for loss of or damage to money, securities or other property resulting from theft. The following limits of liability should apply:

Employee Dishonesty	\$10,000,000
Client Property Blanket Bond	\$10,000,000

CONTRACTOR shall reimburse the AGENCIES for any and all losses within the deductible and for insured losses, the cost to prove the loss, accountants’ fees, defense costs including attorneys and any other fees associated with a claim. In lieu of a Client Property Blanket Bond, the policy shall contain a Joint Loss Payee endorsement or other Third Party coverage naming the AGENCIES as further detailed in the Endorsements Section below.

**6. Professional Liability, Including Network Security, Privacy & Media Insurance.**

A Professional Liability insurance policy covering errors and omissions and the resulting damages including, but not limited to, economic loss to the AGENCIES and having minimum limits of liability of \$ 10 million per claim or occurrence and \$10 million annual aggregate. The policy shall include coverage for all services and work performed under this Agreement. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy coverage and media coverage.

**B. ENDORSEMENTS**

**1. Additional Insured.**

The referenced policies and any Excess or Umbrella policies shall include as Additional Insureds the San Mateo County Express Lanes Joint Powers Authority, the San Mateo County Transportation Authority, and City/County Association of Governments of San Mateo County and their respective directors, officers, employees, volunteers and agents while acting in such capacity, and their

successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

**2. Waiver of Subrogation.**

The referenced policies and any Excess or Umbrella policies shall contain a waiver of subrogation in favor of the San Mateo County Transit District and its officers, directors, employees, volunteers and agents while acting in such capacity, and their successors and assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

**3. Primary Insurance.**

The referenced policies and any Excess and Umbrella policies shall indicate that they are primary to any other insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance effected or which may be effected by the San Mateo County Transit District.

**4. Separation of Insureds.**

The referenced policies and any Excess or Umbrella policies shall contain a Separation of Insureds Clause and stipulate that inclusion of the San Mateo County Transit District as an Additional Insured shall not in any way affect AGENCIES's rights either as respects any claim, demand, suit or judgment made, brought or recovered against the CONTRACTOR. The purpose of this coverage is to protect CONTRACTOR and the San Mateo County Transit District in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

**5. Client Property Blanket Bond, Third Party Bond or Joint Loss Payee Endorsement.**

On the CONTRACTOR's Employee Theft Insurance/Crime insurance policy, the AGENCIES shall be named as a Joint Loss Payee or the CONTRACTOR will provide a separate Client Property Blanket Bond or Third Party Crime coverage naming the San Mateo County Transit District.

**C. EVIDENCE OF INSURANCE**

**1. All Coverages.**

Prior to commencing work or entering onto the Property, CONTRACTOR shall provide to Insurance Tracking Services, Inc. (ITS), the DISTR AGENCIES ICT's authorized insurance consultant, a certificate of insurance with respect to each required policy to be provided by the CONTRACTOR under the Agreement. The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate. The AGENCIES Contract number and Project name shall be clearly stated on the face of each Certificate of Insurance.

Submit Certificates of Insurance to:

Sean Charpentier  
City/ County Association of Governments  
555 County Center – 5<sup>th</sup> Floor  
Redwood City, CA 94063

In addition, the CONTRACTOR shall promptly deliver to ITS a Certificate of Insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the terms specified herein. Such certificate shall be delivered to ITS not less than three business days after the expiration date of any policy.

## **D. GENERAL PROVISIONS**

### **1. Notice of Cancellation.**

Each insurance policy supplied by the CONTRACTOR shall provide at least 30 days' written notice to CONTRACTOR of cancellation or non-renewal. CONTRACTOR must then provide at least 30 days' prior written notice to the AGENCIES's authorized insurance consultant, Insurance Tracking Services, Inc. (ITS), if any of the above policies are non-renewed or cancelled.

#### Submit Certificates of Insurance to:

Sean Charpentier  
City/ County Association of Governments  
555 County Center – 5<sup>th</sup> Floor  
Redwood City, CA 94063

### **2. Acceptable Insurers.**

All policies will be issued by insurers acceptable to the AGENCIES (generally with a Best's Rating of A- 10 or better).

### **3. Self-insurance.**

Upon evidence of financial capacity satisfactory to the AGENCIES and CONTRACTOR's agreement to waive subrogation against the AGENCIES respecting any and all claims that may arise, CONTRACTOR's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance.

### **4. Failure to Maintain Insurance.**

All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of CONTRACTOR's personnel and equipment have been removed from the AGENCIES property, and the work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

### **5. Claims Made Coverage.**

If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the CONTRACTOR's start of work (including subsequent policies purchased as renewals or replacements).
- b. CONTRACTOR shall make every effort to maintain similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds.
- c. If insurance is terminated for any reason, CONTRACTOR agrees to purchase an extended reporting provision of at least three (3) years to report claims arising from work performed in connection

with this Agreement.

- d. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

## **6. Deductibles and Retentions.**

CONTRACTOR shall be responsible for payment of any deductible or retention on CONTRACTOR's policies without right of contribution from the AGENCIES. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable. In the event that the policy of the CONTRACTOR or any subcontractor contains a deductible or self-insured retention, and in the event that the AGENCIES seeks coverage under such policy as an additional insured, CONTRACTOR shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy for a lawsuit arising from or connected with any alleged act or omission of CONTRACTOR, subcontractor, or any of their officers, directors, employees, agents, or suppliers, even if CONTRACTOR or subcontractor is not a named defendant in the lawsuit.

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

- 17. Governing Law.** This Agreement shall be governed by the laws of the State of California, without regard to its choice of law rules, and any suit or action initiated by either party shall be brought in the County of San Mateo, California.
- 18. Notices.** All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid and addressed as follows:

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

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

Name: Ahmad Gharaibeh  
Title: Partner  
Company: Eide Bailly LLP  
Address: 4040 Campbell Avenue, Suite 200  
Menlo Park, CA 94025

- 19. Drafting.** This Agreement was drafted with the joint participation of the parties. Any ambiguity contained in this Agreement shall not be construed against any party as the draftsman, but this Agreement shall be construed in accordance with its fair meaning.

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

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

By: \_\_\_\_\_ Date \_\_\_\_\_  
Diane Papan – Chair

Approved as to Form:

By: \_\_\_\_\_ Date \_\_\_\_\_  
Timothy Fox – Legal Counsel

**Eide Bailly LLP (Consultant)**

By: \_\_\_\_\_ Date \_\_\_\_\_  
Ahmad Gharaibeh - Partner

# ATTACHMENT A – SERVICES AND KEY PERSONNEL

## Services

### **A. Auditing Standards**

1. Federal, State and Local Standards: All audits performed by Consultant shall be performed in accordance and in compliance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States and the provisions of Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), including, but not limited to, the following:
  - i. Generally Accepted Auditing Standards;
  - ii. Government Auditing Standards set forth for financial audits by the Comptroller General of the United States);
  - iii. Audit requirements of Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
  - iv. Governmental accounting and financial reporting standards pronouncements that are currently in effect, including any and all that may come into effect during the term of this contract;
  
2. The Auditor shall perform tests of compliance and internal controls in accordance with Generally Accepted Auditing Standards, Uniform Guidance, Government Auditing Standards, and Government Accounting Standards Board (GASB) pronouncements.

### **B. Core Audit Services**

CONSULTANT shall provide audit services, including but not be limited to, the following:

1. Examine the financial statements, conduct audits to determine compliance with all pertinent laws, regulations and contracts applicable to the AGENCY;
  
2. Audit the Schedule of Federal Financial Assistance for the AGENCY pursuant to the Single Audit Act with regard to expenditure of Federal grant funds;
  
3. All audits shall be performed in accordance with Auditing Standards set forth in Section 2.A.1, above.

### **C. Other Services**

CONSULTANT shall assist in preparing the ACFRS and the single audit report of the AGENCY in conformity with U.S. generally accepted accounting principles.

### **D. Program Deliverables**

Following completion of the audit of each fiscal year's financial statements, Consultant shall provide the following deliverables to the AGENCY's Deputy Chief Executive Officer or designee:

#### 1. Reports

Fair presentation of the Financial Statements in conformity with the Internal Control Structure based on the Auditor's understanding of the control structure and his assessment of control risk, including the following:

- a. Description of Internal Control Structure used in administering Federal financial assistance programs;
- b. Documentation of compliance with applicable Federal and State laws and regulations such as the State Transportation Development Act;
- c. Written report to the State Controller required under the Government Code 53891 in accordance with the requirements set forth in the applicable Uniform System of accounts for Special Districts.

## 2. Irregularities and Illegal Acts

- a. In the required report(s) on Internal Controls, Consultant shall communicate any reportable conditions found during the audit and specifically identify reportable conditions that are also material weaknesses in the report. Non-reportable conditions discovered by Consultant shall be stated in a separate letter which shall be referred to in the report(s) on Internal Controls.
- b. The report(s) on Compliance shall include all material instances of noncompliance. All nonmaterial instances of noncompliance shall be reported in a separate letter to the Agency, which shall be referred to in the report on Compliance.

## 3. Auditor's Opinion

The Consultant shall render opinion, as required, including:

- a. On all reports required by the Single Audit Act of 1984, as amended.
- b. Any other required opinions, reporting or deliverables as disclosed by the audit procedures conducted pursuant to Section 2. B., Core Audit Services, to determine compliance with all pertinent laws, regulations, and contracts applicable to the AGENCY.
- c. For the purposes of this Agreement, a reportable condition is defined as a significant deficiency in the design or operation of an internal control structure, which could adversely affect the AGENCY's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements.
- d. CONSULTANT shall immediately issue a written report to the AGENCY's Executive Director and the Deputy Chief Executive Officer, Finance and Administration, respectively, of all irregularities and illegal acts or indications of illegal acts of which they become aware.

## 4. Deliverables Format

- a. The CONSULTANT shall provide all deliverables in both hard copy and Adobe PDF file format via email attachment in accordance with specifications provided

by the AGENCY. The minimum presentation standards for the Adobe PDF files shall include, but will not be limited to, the following:

- i. Consultant's official letterhead;
- ii. True color;
- iii. Script signatures;
- iv. Identifying blank pages with the phrase "This page intentionally left blank"; and
- v. Designing page layouts for two-sided printing;

b. The CONSULTANT shall provide up to 50 hard copies for the AGENCY of any required reports, upon the AGENCY's request.

c. The Adobe PDF files for the audited financial and Single Audit reports shall be delivered as follows:

- i. Searchable; contain plain text; optimized for the web; scaled down to eliminate non-essential images/graphics; and total file size not to exceed 8 MB;
- ii. Do not add levels of security and/or password restrictions in Adobe Acrobat. The AGENCY must be able to edit documents as needed;
- iii. The "general purpose" version is a stand-alone document that should have a formal cover and a table of contents.

#### **E. Special Considerations**

1. The AGENCY will send its respective ACFR to the GFOA for evaluation in its Certificate of Achievement for Excellence in Financial Reporting program. The AGENCY requires CONSULTANT to provide special assistance to the AGENCY for meeting the requirements of that program, which may include, but will not be limited to, advice on ACFR content and presentation; coordination of desktop formats for headers, footers, typefaces, page numbering and other page layout issues; and developing responses for prior year GFOA comments, preparation of GFOA application forms, and quality control reviews.

2. The AGENCY prepares official statements in connection with the sale of debt securities which contain the general-purpose financial statements and Consultant's report thereof. CONSULTANT shall consent, if requested by the AGENCY's financial advisor and/or underwriter, to issue a "consent and citation of expertise" as the AGENCY's Consultant and any necessary "comfort letters."

3. The AGENCY has selected the FTA as the agency to report to in accordance with the Uniform Guidance.

4. The schedule of Federal financial assistance and related Consultant's report, as well as the reports on the Internal Controls and Compliance shall be included in the ACFRs.

5. The AGENCY plans to establish an Audit Committee (Committee) comprised of members of the respective Board of Directors. At the AGENCY's discretion, Consultant may be required to present final audit findings and reports to each Committee and to be available to address questions or concerns throughout the audit period.

## **F. Working Paper Retention and Access to Working Papers**

All working papers and reports must be retained, at CONSULTANT's expense, for a minimum of three years after the end date of the fiscal year audited, unless the firm is notified in writing by the AGENCY of the need to extend the retention period. The CONSULTANT is required to make working papers available at no cost, upon request, to the following parties or their designees:

1. The AGENCY and its respective Audit Committees
2. Federal Transit Administration (FTA)
3. U.S. General Accounting Office (GAO)
4. The Controller for the State of California
5. Parties designated by the governments of the United States or the State of California or by the AGENCY as part of an audit quality review process
6. Auditors of entities of which the AGENCY is a sub-recipient of grant funds
7. Consultant shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance at no cost to the AGENCY or the successor auditors.

## **Annual Audit Timeline**

### 1. Audit Commencement

The AGENCY will have all applicable records ready for the audit and all personnel available to meet with CONSULTANT by April 15, 2022, and each year thereafter for interim work and by September 1, 2022, and each year thereafter for year-end fieldwork.

### 2. Interim Work

Preliminary audit tasks that can be done prior to fieldwork are defined as "interim work." The CONSULTANT shall deliver to the AGENCY's appropriate personnel, a checklist of staff responsibilities for document and schedule production for interim work by January 31st for each year of the contract. For the first contract year, FY 2022 audit, interim work will commence upon issuance of a written Notice to Proceed by the AGENCY's Director, Contracts and Procurement or designee. Recognizing the complexities of the AGENCY's structure, the CONSULTANT shall design and organize the interim checklists to accommodate the needs of the AGENCY. The CONSULTANT shall complete interim work no later than the last week of May for each year of the contract, or as otherwise agreed to by the AGENCY and the CONSULTANT

### 3. Interim Deliverables

By June 15th for each year of the contract, the CONSULTANT shall provide an "Issues Memo" highlighting potential reportable conditions, material weaknesses and other concerns for the completion of the audit. The Issues Memo shall discuss the CONSULTANT's review of the prior year's audited financial statements and indicate any recommended changes in presentation of the financial and auditor's notes information.

#### 4. Detailed Audit Plan

By July 31st for each year of the contract, the CONSULTANT shall provide the AGENCY with a detailed audit plan and a list of all schedules to be prepared by the AGENCY in advance of fieldwork. The CONSULTANT shall design and organize the audit plan and fieldwork checklists to accommodate the needs of the AGENCY's structure. Concurrently, the CONSULTANT also shall deliver pro forma financial statements and notes in linked Microsoft Excel and Word format for AGENCY use during closing and preparing the fieldwork package for the CONSULTANT.

#### 5. Fieldwork

The CONSULTANT shall complete all fieldwork by October 15 for each year of the contract.

#### 6. Draft Reports

The CONSULTANT shall provide drafts of all audit reports (including ACFR and Single Audit) and recommendations for review by the AGENCY by September 15th for each year of the contract. If any of the above dates fall on a legal holiday, Saturday, or Sunday, then the report(s) shall be due the business day prior to the holiday, Saturday, or Sunday.

#### 7. Final Reports

All final reports in Adobe PDF format and all other deliverables are due on October 15th for each year of the contract.

#### 8. Entrance Conferences, Progress Reporting and Exit Conferences

The purpose of entrance and exit conferences and progress reporting meetings is to establish the overall liaison for the audit, to make arrangements for workspace and other needs of the CONSULTANT and to discuss prior audit issues, procedures, and results. At the discretion of the AGENCY, the CONSULTANT may be required to attend other meetings with the Board of Directors, Audit Committees, or other interested parties. All meetings/conferences will occur with designated AGENCY's personnel.

At a minimum, the conferences listed in this section shall be held each year of the contract term by the dates indicated on the schedule below:

- a. Attend a meeting within seven days of the delivery of the interim checklists due on January 31st for each year of the contract to discuss the interim checklist and schedule. For the FY 22 audit, this meeting is anticipated to occur in February 2022.
- b. Entrance conference on the first day of interim work.
- c. Weekly progress meetings during interim work.
- d. Exit conference on the last day of interim work.
- e. Conduct a meeting within seven calendar days of the delivery of the detailed audit plans due July 31st to discuss the fieldwork checklist and schedule.
- f. Entrance conference on the first day of fieldwork.
- g. Weekly progress meetings during fieldwork.

- h. Exit conference on the last day of fieldwork.
- i. Conduct a meeting on the day of delivery of the audit reports, due by September 15th.
- j. Conduct a meeting to present final audit reports and deliverables, due by October 15th.

**9. Audit Report Preparation and Distribution**

- a. Report preparation, editing, printing and creation of electronic files according to specifications provided by the AGENCY shall be the responsibility of the CONSULTANT
  
- b. By the due date for delivery of the final reports of October 15th, CONSULTANT shall provide the appropriate AGENCY personnel with a comprehensive list of organizations and individuals including mailing addresses, telephone numbers, and email addresses for parties to whom the AGENCY is obligated to send copies of the audit reports and deliverables.
  
- c. Any penalties assessed against the AGENCY as a result of untimely receipt of any of the required deliverables described above will be deducted from the annual audit fee.

**G. Special Assignments**

If it should become necessary for the AGENCY to request the CONSULTANT to render any additional services to either supplement the services requested in this Agreement or to perform special assignments, then such additional work shall be performed only if set forth in an Amendment to the contract between the AGENCY and the CONSULTANT and issued by the Contracts and Procurement Department. Any such additional work agreed to between the AGENCY and the CONSULTANT shall be performed at the hourly rates set forth in Section 2 Compensation of this agreement and in Exhibit B, Billing Rates and Five-Year Annualized Quote.

**H. AGENCY's Provided Resources**

**1. AGENCY Personnel**

Designated Finance and Administration Division management personnel will be available during the audit to assist the firm by providing information, documentation, and explanations. The preparation of confirmation letters will be the responsibility of the AGENCY.

**2. AGENCY Resources**

The AGENCY will provide the Consultant with reasonable workspace, desks/tables, chairs, and access to a telephone, photocopying facilities, and a fax machine during normal business hours. The AGENCY will provide reasonable computer time and the use of the AGENCY's software, subject to security requirements established by the AGENCY.

**I. Identification of Anticipated Potential Audit Problems**

CONSULTANT shall identify and describe any anticipated potential audit problems and its approach to resolving these problems. Further, CONSULTANT shall provide any special assistance that the AGENCY might request to address the identified problems.

## **Key Personnel**

<b><u>Item No.</u></b>	<b><u>Name</u></b>	<b><u>Designation(s)</u></b>	<b><u>Title</u></b>
4.2.1	Ahmad Gharaibeh	CPA	Engagement Partner
4.2.2	Roger Alfaro	CPA	Technical Review Partner
4.2.3	Nathan Edelman	CPA	Partner
4.2.4	Joe Escobar	CAP	Manager
4.2.5	Dennis Christian	CPA	Senior Manager
4.2.6	David Sundstrom	CPA	Senior Manager
4.2.7	Anders Erickson	CISA, CISSP	Principal-in-Charge of Cybersecurity
4.2.8	Hannah Hwang	CPA	Senior
4.2.9	Janice Yu	CPA	Senior

## Exhibit B – Billing Rates and Five-Year Annualized Quote

### Financial Audit Services

Description	FY 2022 Cost	FY 2023 Cost	FY 2024 Cost	FY 2025 Cost	FY 2026 Cost	Five-Year Quote
All-inclusive Annual Financial Audit Services	\$ 8,000.00	\$ 8,160.00	\$ 8,323.00	\$ 8,489.00	\$ 8,659.00	\$ 41,631.00

### Billing Rates for Additional Services

Item No.	Professional Staff Title	Unit of Measure	Hourly Rates	Notes
1	Partners	Hourly	\$ 350.00	Fully Burdened Hourly Rates
2	Managers	Hourly	\$ 200.00	Fully Burdened Hourly Rates
3	Supervisors	Hourly	\$ 150.00	Fully Burdened Hourly Rates
4	Support Staff	Hourly	\$ 120.00	Fully Burdened Hourly Rates
5	Admin	Hourly	\$ 50.00	Fully Burdened Hourly Rates

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

Meeting No. 31  
December 23, 2021

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

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

\*\*\*\*\*

**1.0 CALL TO ORDER/ ROLL CALL**

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

**Members Present:**

C/CAG Members:

Diane Papan, Maryann Moise Derwin, Alicia Aguirre

SMCTA Members:

Rico Medina, Emily Beach, Don Horsley

**Members Absent:**

None.

**Staff Present:**

Sean Charpentier – Executive Council

Carter Mau – Executive Council

Mima Guilles – Clerk

Tim Fox – Legal Counsel

Van Ocampo – C/CAG staff supporting SMCEL-JPA

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

Matt Click – HNTB

Other members of staff and the public were in attendance.

**2.0 BRIEF OVERVIEW OF TELECONFERENCE MEETING PROCEDURES**

Mima Crume, Clerk of the Board, provided an overview of the teleconference meeting procedures.

3.0 PUBLIC COMMENT ON CLOSED SESSION ITEMS / ADJOURN TO CLOSED SESSION

Mima Crume reported there was no public comment submitted on the closed session item.

3.1 CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Cal. Gov't Code § 54956.8)

Property: No. 1 lanes on US 101 N/S from Santa Clara/San Mateo County Line to I-380 interchange

Agency Negotiator: SMCEL-JPA Executive Council

Negotiating Parties: SMCEL-JPA; California Department of Transportation

Under Negotiation: Price and terms of payment for leasehold interest

4.0 REPORT OF ANY FINAL ACTION(S) TAKEN IN CLOSED SESSION

Chair Papan reported out on the discussion held and no reportable action was taken.

5.0 ADJOURNMENT – 10:10 a.m.

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

Date: January 14, 2022

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

From: Matthew Click, Policy and Program Manager (PPM)

Subject: Receive an update on the logo for the San Mateo County Express Lanes Equity Program.

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

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### RECOMMENDATION

That the SMCEL-JPA Board receive an update on the logo for the San Mateo County Express Lanes Equity Program.

### FISCAL IMPACT

This is an informational item. There is no fiscal impact related to receiving this information.

### SOURCE OF FUNDS

N/A

### BACKGROUND

At the December 10, 2021 SMCEL-JPA Board Meeting, the JPA Board agreed on re-naming the San Mateo 101 Express Lanes Equity Program the Community Transportation Benefits Program (Program) with the intent for the name to be more accessible and descriptive to those who will benefit from the Program. The below logo blends the Express Lanes logo with the Program's new name to create a cohesive look and feel that aligns with overall Express Lanes branding guidelines. The Program logo will be used on the Express Lanes website, and other marketing materials like Program factsheets, brochures, and slide decks.



As background, the logo for the express lanes is below and is available at the following website:  
<https://smcexpresslanes.org/>



**ATTACHMENTS**

None

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

Date: January 14, 2022

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

From: Executive Council

Subject: Receive an update on the San Mateo 101 Express Lanes Project opening schedule for the southern segment from Whipple Avenue to the San Mateo/Santa Clara border, along with status update on the negotiation of the Caltrans Operations & Maintenance (O&M) Agreement, and the BAIFA and BATA O&M Agreements.

(For further information please contact Sean Charpentier at [scharpentier@smcgov.org](mailto:scharpentier@smcgov.org) and April Chan at [chana@samtrans.com](mailto:chana@samtrans.com))

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### **RECOMMENDATION**

That the SMCEL-JPA Board receive an update on the San Mateo 101 Express Lanes Project opening schedule for the southern segment from Whipple Avenue to the San Mateo/Santa Clara border, along with status update on the negotiation of the Caltrans Operations & Maintenance (O&M) Agreement, and the BAIFA and BATA O&M Agreements.

### **FISCAL IMPACT**

This is an informational item. There is no fiscal impact related to receiving this information.

### **SOURCE OF FUNDS**

N/A

### **BACKGROUND**

The southern segment of the San Mateo 101 Express Lanes are slated to open in early 2022. Staff will provide an update on the opening schedule, along with status of the agreements that should be in place prior to the opening of the express lanes.

### **ATTACHMENTS**

None