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AGENDA

Joint Ad Hoc Committee On 101 Express Lanes Project

SAN MATEO COUNTY TRANSPORTATION AUTHORITY & CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY

Gallagher Conference Room, 3rd Floor
1250 San Carlos Avenue, San Carlos, CA 94070

May 24, 2019 – Friday

10:00 am

1. Call to Order
2. Approval of Minutes from the April 5, 2019 Joint Ad Hoc Committee Meeting
3. Scheduling the First San Mateo County Express Lanes Joint Powers Agency Meeting and Discussion of Upcoming Action Items
4. Status of the CTC application and other Project and Funding Updates
5. Approval of Action Minutes from May 24, 2019 Joint Ad Hoc Committee Meeting
6. Public Comment
7. Adjourn

Committee Members:

C/CAG: Alicia Aguirre, Diane Papan, Doug Kim
TA: Don Horsley, Emily Beach, Maureen Freschet

INFORMATION FOR THE PUBLIC

If you have questions on the agenda, please contact:

- San Mateo County Transportation Authority Secretary at 650-508-6279
- C/CAG Clerk of the Board at 650-599-1406

Assisted listening devices are available upon request.

Communications to the TA Board of Directors can be e-mailed to board@smcta.com. Communications to the C/CAG Board of Directors can be e-mailed to mguilles@smcgov.org.

Public Noticing:

This agenda and all notices of regular and special Authority Board meetings, and of regular and special C/CAG Board and standing committee meetings are posted at the San Mateo County Transit District Office, 1250 San Carlos Ave., San Carlos, CA, and on the Authority's website at <http://www.smcta.com> and on C/CAG's website at <http://www.ccag.ca.gov>, respectively.

Location, Date and Time of Regular Meetings

This meeting will be held at the San Mateo County Transit District Administrative Building located at 1250 San Carlos Ave., San Carlos, which is located one block west of the San Carlos Caltrain Station on El Camino Real. The building is also accessible by SamTrans bus routes ECR, FLX, 260, 295 and 398. Additional transit information can be obtained by calling 1-800-660-4287 (TTY 650-508-6448) or 511.

Public Comment

If you wish to address the Boards, please fill out a speaker's card located on the agenda table. If you have anything that you wish distributed to the Board and included for the official record, please hand it to the Authority Secretary or C/CAG Clerk of the Board, who will distribute the information to the Boards' members and staff.

Public testimony by each individual speaker shall be limited to two minute and items raised that require a response will be deferred for staff reply.

Accessibility for Individuals with Disabilities

Upon request, the TA and C/CAG will provide for written agenda materials in appropriate alternative formats, or disability-related modification or accommodation, including auxiliary aids or services, to enable individuals with disabilities to participate in public meetings. Please submit a request, including your name, mailing address, phone number and brief description of the requested materials and a preferred alternative format or auxiliary aid or service at least two days before the meeting. Requests should be made:

- by mail to the Authority Secretary at the San Mateo County Transportation Authority, 1250 San Carlos Avenue, San Carlos, CA 94070-1306; by email to board@smcta.com; or by phone at 650-508-6279 or TTY 650-508-6448; or
- by phone to the C/CAG Administrative Assistant at 650-599-1406.

Availability of Public Records

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body less than 72 hours prior to the meeting will be available for public inspection at the same time that the records are distributed or made available to the legislative bodies. Such materials will be available at:

- the Authority's office at 1250 San Carlos Avenue, San Carlos, CA 94070-1306;
- C/CAG's office at 555 County Center, 5th Floor, Redwood City, CA 94063; and
- <http://www.ccag.ca.gov>

**SAN MATEO COUNTY TRANSPORTATION AUTHORITY AND
CITY/COUNTY ASSOCIATION OF GOVERNMENTS
AD HOC COMMITTEE FOR 101 MANAGED LANES PROJECT
MINUTES OF APRIL 5, 2019 MEETING**

| | |
|-------------------------|--|
| MEMBERS PRESENT: | Transportation Authority Board (TA): Don Horsley, Emily Beach, Maureen Freschet City/County Association of Governments of San Mateo County (C/CAG) Board: Diane Papan, Doug Kim; by phone: Alicia Aguirre |
| MEMBERS ABSENT | TA: None C/CAG: None |
| STAFF PRESENT: | TA: Jim Hartnett, April Chan, Derek Hansel, Carter Mau, Joan Cassman (Legal Counsel), Shayna van Hoften (Legal Counsel) C/CAG: Sandy Wong, Jean Higaki, Matt Sanders (Legal Counsel) |
| PUBLIC MEMBERS | Maryann Moise Derwin, Jim Bourgart, Drew, Tony Harris |

CALL TO ORDER

The joint TA and C/CAG Ad Hoc Committee meeting was called to order 8:30 am in the Gallagher Conference Room at 1250 San Carlos Avenue, San Carlos, CA 94070. C/CAG Director Aguirre joined the meeting by phone and TA Director Don Horsley chaired the meeting.

Chair Don Horsley announced that Member Aguirre was participating by teleconference and that all votes taken during the meeting would be by roll call.

APPROVAL OF MINUTES FROM THE MARCH 22, 2019 JOINT AD HOC COMMITTEE MEETING

Member Emily Beach corrected page 4, paragraph 4 of minutes to read as follows: "...paying a full-time professional Executive Director ~~employee~~ would be more expensive than paying for a contracted Policy Consultant ~~person~~."

Motion/Second: Beach/Freschet

Ayes: Aguirre, Kim, Papan, Beach, Horsley, Freschet

Noes: None

Absent: None

APPROVAL OF STAFFING MODEL FOR THE SAN MATEO 101 EXPRESS LANES JOINT POWERS AGENCY AND THE UPDATED JOINT EXERCISE OF POWERS AGREEMENT TO INCLUDE THE STAFFING MODEL RECOMMENDATION

April Chan, Chief Officer, Planning, Grants and Transportation Authority, provided handouts that show the joint staff recommendation for the new Joint Powers Agency (JPA). The staff recommendation is a hybrid of the TA and C/CAG models previously presented to the Joint Ad Hoc members at the last meeting. Ms. Chan also

acknowledged that Tony Harris from PointC Partners assisted with and contributed to the joint staff recommendations. The recommendations include the following: JPA board will be made up of six members, three from C/CAG and three from the TA, and the Board will be supported by a) the Executive Council, made up of C/CAG and TA Executive Directors or his/her designee, and b) a Policy/Program Manager who will provide independent support to the JPA board as well as being responsible for developing policies required to support the express lanes operation, e.g. toll policy, toll enforcement, equity policy, and helping to develop the expenditure plan for net toll revenues.

TA and C/CAG staff agreed that, at this time, it is preferred to bring in a consultant/consultant team with existing expertise for the Policy/Program Manager role. As the JPA matures, it may eventually have this role be replaced with staff as determined by regular review by the JPA board.

With regards to staffing, TA and C/CAG will equally contribute to providing support to the JPA. TA staff will be acting as fiscal agent for the JPA, which includes providing finance, treasury, auditing, budgeting and accounting services. TA will also handle marketing and communication, including the website, interface with the public, outreach, and public education. C/CAG staff will be responsible to procure, manage, and maintain all JPA contracts and agreements. C/CAG will also provide board support for JPA's regular meetings as a body, e.g. through provision of a clerk.

Sandy Wong, Executive Director, C/CAG, noted that the division of staff support as presented today showed good compromise from the last meeting, and identified what C/CAG and TA can do and the strengths of each.

Ms. Chan mentioned several items that will probably need to be worked on immediately, including negotiations with BAIFA, the Bay Area Toll Authority, Caltrans and CHP in preparation for JPA agreements, which staff recommends to be done by the Executive Council or their designees. This means that Jim Hartnett, SMCTD General Manager/CEO, or his designee, and Ms. Wong or her designee will be working with BAIFA, the Bay Area Toll Authority, Caltrans and CHP regarding the terms and conditions that will need to go into the agreements. Mr. Hartnett noted that these negotiated agreements will go to the JPA board for approval.

Member Beach asked for confirmation with regards to division of responsibilities: toll and net revenue policies development would fall under Policy/Program Manager, management of negotiations with BAIFA, the Bay Area Toll Authority, Caltrans and CHP would fall under the Executive Council, and that express lanes infrastructure construction would be built by Caltrans. Ms. Chan confirmed the above, and added that the construction contract is being managed by Caltrans, but capital project oversight is provided by TA, Caltrans, C/CAG collectively. And that the JPA would not

be directly involved in the delivery of the capital project itself; primary role of JPA is to provide oversight of the express lanes operation.

Sandy Wong stated that, in the interest of moving the project forward, TA and C/CAG staff already started negotiations with BAIFA, and noted that going forward, there will need to be integration between overseeing BAIFA's operation and San Mateo County developing its toll policies, noting that the two things cannot be separate.

Mr. Hartnett noted that it will be a number of years before the express lanes will be operating. In the meantime, he stated that when BAIFA and associated agreements (with CHP, BATA, etc) are finalized, we will have time and a better view of the respective responsibilities and what it will take in terms of managing issues that come up in operations. We can return to these issues later to determine who should lead in the oversight of these finalized agreements (Executive Council or Policy/Program Manager).

Member Maureen Freschet asked if the Policy/Program Manager consultant would be hired immediately. Ms. Chan responded that one of the first orders of business for the JPA board would be the authorization for C/CAG staff to go out to procure the consultant contract for the Policy/Program Manager, as well as a contract for the development of the equity policy study.

Chair Don Horsley asked for the construction schedule. Ms. Chan said the section south of Whipple is currently scheduled to be complete by end of this calendar year, which is when the construction contract will begin for the section north of Whipple. The entire project, including system testing, from I-380 to the Santa Clara County border, is scheduled to be complete in April or May of 2022.

Ms. Chan shared the updated version of the joint powers agreement, highlighted with tracked changes that reflected the updated staffing changes as just discussed. Mr. Hartnett commented that both legal counsel have participated in the text changes and the updated draft agreement reflected these joint recommendations.

Shayna van Hoften, Counsel for the TA, reviewed the following changes in the agreement:

Section 4.7 addresses the need to have a Fiscal Agent/Auditor/Controller and Treasurer, and designates the TA as Fiscal Agent and the San Mateo County Transit District as the Auditor/Controller and Treasurer.

Section 4.8 is intended to express the will of this committee to emphasize that both C/CAG and TA recognize the benefits that their respective organizations and staff support bring to the Express Lanes JPA, and that both agencies will bring their best efforts to provide staff resources to the Express Lanes JPA; Attachment A provides the model. The attachment, if need be, can be amended by resolution of the board of

directors without requiring amendment of the joint powers agreement, which would require action by the C/CAG and TA boards.

Member Diane Papan asked for clarification of the requirements for changing the Fiscal Agent/Auditor/Controller and Treasurer (page 11, 1st partial paragraph, 2nd complete sentence). Counsel for the TA and C/CAG discussed the issue and agreed that changing the language to state "majority of Members" rather than "all Members" would both mirror other instances of voting practice in the JPA agreement and reduce time involved in amending the item in the future.

Ms. Wong referred to Attachment A which indicates that the TA is the Fiscal Agent, and noted that the TA is also named as the Fiscal Agent in the JPA agreement, and that, while Attachment A can be reviewed periodically and changed if needed, the wording in the agreement is much less flexible and requires revisiting both boards to amend. Joan Cassman, Counsel for the TA, said that Legal Counsel would write into the JPA agreement language stating that the JPA board could make a change in the fiscal agent if it were appropriate, referring to Attachment A which indicates that from time to time the fiscal agent can be reviewed and changed if appropriate (without going back to the TA and C/CAG boards to do so).

Matt Sanders, Legal Counsel for C/CAG, stated that we would try to preserve what we had reflected in Attachment A, that the fiscal agent is the TA, including that language in the agreement. Ms. van Hoften stated that the fiscal agent must be one of the member agencies or the County. She said she would change the sentence in Section 4.8 to conform to Attachment A.

Ms. Chan then referred to page 3 of the staff report, "Funding for the JPA", stating that there will be a number of expenditures at the beginning of the JPA, before the project generates revenues, and that the TA and C/CAG would need to advance money to support the work of the JPA. Advancing funds will require agreements to be drafted between the JPA and the TA, and between the JPA and C/CAG to figure how to repay advanced funds with future toll revenues. These agreements will need to be worked out, and once they are available, they will need to be reviewed and approved by the JPA.

Ms. Papan asked for confirmation that the Policy/Program Manager would be a consultant. Ms. Cassman noted due to complications of public employment that staff is recommending we bring on a consultant to fulfill that role for now. Mr. Harris recounted the example he had given during staff discussions regarding new organizations using consultants and waiting to see what the real needs are before committing to full time employees, citing his community of Elk Grove.

Ms. Beach said she is comfortable with how the role of Policy/Program Manager is clearly defined, and includes supporting staff. She appreciates that the Executive

Council is also in charge. Member Freschet complimented staff for their 'labor of love' in working together and developing the structure of the JPA.

Member Doug Kim stated that he thinks the structure is a good start, but not optimal. He stressed that clear roles are important, and that the org chart does not appear to address C/CAG's stated concerns for independent leadership. Mr. Kim said that the independent consultant needs to have a clear line of responsibility and accountability to the JPA, adding that 'Quarterback' was the wrong analogy for the 'Executive Director' or Policy/Program Manager position and that 'Head Coach' was more apt. He stated that he thinks the Executive Council is redundant, blurring lines of responsibility, and that only one 'box' should report to the board. Mr. Kim noted LA's hiring of a seasoned person in the QB/'Head Coach' role, who knows how to deal with 'a BAIFA', preferably an FTE but could be a consultant. He suggested that the Executive Council should advise the 'Head Coach', but not serve as a second head coach. Mr. Kim also said that a consultant would not have the loyalty to an organization that a full time staff person would, and asked why not bring on a person who would have the best interest of the project, and would grow with it, saying that he believes a consultant should never be first choice for an agency.

Ms. Papan said she understands both views, that she likes the idea of bringing in expertise, as LA did, and that perhaps it would be best to bring in the subject matter expert to deal with BAIFA and BATA.

Mr. Hartnett explained the role of the Executive Council (EC), and said the purpose of the EC is not to diminish the independence of the policy person; the policy person would independently recommend to the JPA board what the policy would be and work directly with the board, and that the EC would also have input so that it could be a joint recommendation, with policy person taking into consideration (or disregarding) input from the EC and then making a direct recommendation to the JPA Board.

Member Alicia Aguirre echoed Ms. Freschet's appreciation for staff's hard work and said she is happy to see the progress made. She asked for clarification that the Policy/Program Manager (P/PM) would not have multiple "masters" to get things done. She said that as long as the roles are defined for this person, whether staff or consultant, it should work. She expressed appreciation for the work of all those contributing to the progress made, including legal counsel and Tony Harris.

Mr. Kim said that he agreed with Mr. Hartnett, saying that if marshalling expertise is the goal that the organization would benefit by moving the P/PM or Executive Director (ED) role into a position that would report directly to the board, with the EC reporting to the ED.

Ms. Beach said that if the JPA is to be successful as we all want it to be, e.g. so that we can maximize investment in this corridor, there may be a time that this JPA could be fully staffed with an Executive Director and staff supporting the ED. However at this time

it does not make sense to have an ED until the JPA is up and running and has sufficient operating revenues. Ms. Beach said rather than assuming an Executive Director is the only way to have the best interest of the JPA in mind, she believes everyone involved in setting this up do have in mind the best interest of the JPA. She added that no one can advocate for the two agencies and for the JPA better than the two existing Executive Directors of TA and C/CAG. Her recommendation is that during this initial period that it makes sense to have the Executive Council with a key policy advisor for implementation, and she supports a wait-and-see approach for two years.

Mr. Kim said that the JPA should have a whole new administrative staff as other agencies have done. He said hardwiring the formation of this \$35-45M revenue organization wrong would be a bad start, and that an expert should be brought in from the beginning. Ms. Beach stated that the JPA would not be a "\$35-45M revenue organization" for years, and that while it is being formed, TA and C/CAG are on the hook for funding it now. In addition, we don't currently have the bandwidth to create a whole staff organization, therefore it makes sense for the Executive Council format in the org chart to remain.

Chair Horsley added that, in light of the fact that BAIFA is going to be contracted to operate the facility (and BAIFA is experienced in doing so), he does not feel that we would be building this operation from scratch. Chair Horsley opined that he does not share Mr. Kim's concerns that we need to bring in an outside expert in order to do this right. He further said that the committee has been collaborative and that a number of things need to be done now, adding that he does not see the addition of an Executive Director as making the system better. Ms. Beach then added that we can ensure we do this right by bringing a consultant to assist the JPA with developing the right policies for the operation, which staff does recommend the JPA do.

Mr. Hartnett said that having both the Executive Council and Policy/Program Manager at the same level advising the JPA as pretty powerful (offering a balance of opinions). He added that the board will still know if there was not a consensus, and will hear the other views, but the policy person reports directly to the board on policy issues and reacts to what the board is saying.

Ms. Freschet stated that she appreciates what Mr. Kim is bringing up. She stated that she is comfortable with the staff recommendation, and said that it could be changed later on but for now she feels comfortable with the program policy person being in the box they are in (reporting separately from the EC and directly to the JPA).

Ms. Papan asked, whether there is the sophistication to negotiate with BAIFA and BATA in the room or we need a consultant, if there are decisions that need to be made now that we don't have in-house, and can we recruit that expertise on a consultant basis, or do we need to hire. She asked if we can get a top-notch expert who knows all the

nuances of owning express lanes. Ms. Papan said she didn't want San Mateo to "swim with sharks in the beginning of the project".

Mr. Hartnett said that we are currently doing a combination: bringing a consultant on board for the (CTC) application, and TA and C/CAG staff working with the resources we have in examining agreements that other groups have used for managed lanes projects, with the legal teams supporting the staff.

Ms. Chan said, responding to Mr. Kim's concern whether or not we can find consultants who have the technical expertise needed, that there are a number of firms with a lot of technical expertise especially on express lanes, both local and nationwide. Ms. Chan added that the JPA agreements we need to execute are not created from scratch; there are existing ones that San Mateo will likely use and modify, and there are other agencies San Mateo can learn from, e.g. Alameda CTC and VTA, which have executed similar agreements.

Ms. Cassman stated that her assumption is that these contracts are largely written already and San Mateo is not going to write the contracts with Caltrans, with CHP, etc. and that there are models that exist and so a great deal of express lanes expertise will not be required for these high-level agreements.

Mr. Harris pointed out that Caltrans is going to build the project and BAIFA is going to operate the project on San Mateo's behalf, and that there are typical enforcement contracts with CHP that are almost boilerplate, and there are maintenance agreements for who maintains the gantries, who maintains the pavement, etc. What likely will need to be included in the agreements that are beyond the boilerplates will be the policy part, such as toll rates, equity program, etc. These are items the JPA will have to develop, such as how tolls are charged, etc. He said from his perspective 80% of the work of the JPA is somewhat established practices, and the 20% relating to policy will need to be developed. He noted that the 20% of the work will be things like: does the JPA want to minimize costs for users while moving more people or does the JPA want to maximize revenues but not move as many people.

Ms. Wong said that she has talked to other Bay Area express lane operators and found that the toll algorithm clearly affects your gross revenues, saying that she doesn't know who would be the best person to represent San Mateo County in working with BAIFA, adding that she does not believe the expertise in toll operation exists in the two organizations. She said that she struggled a bit in development of Attachment A, referring to the EC's negotiation of agreements with agencies including BAIFA, BATA, Caltrans, and CHP. She believes as soon as the Policy/Program Manager is on board, she would like the person to participate in such negotiations and contract preparation.

Mr. Hartnett said he disagrees with the statement, saying it troubles him that the committee has put a lot of time coming together with a joint recommendation and that we seem to be talking in circles. We set out on a path with the JPA being

established, we have a process for applying to the CTC, with a consultant to work with us. And we are on a path to completing the initial steps which includes completing the initial contracts/agreements. He said if the initial contracts/agreements are not done when the policy person comes on board it is fine for that person to help, but the policy person is not leading those efforts, as they are well underway, and said there is distraction regarding the role of the policy person as a lead person. He stressed that the policy person is clearly a lead person on the policy, i.e. the toll policy, etc., and the existing staff working on the agreements will be making recommendations on the final form of the contracts/agreements, adding that he doesn't feel there is any ambiguity in the role of the P/PM.

Mr. Horsley said that the structure was not set in concrete and there could be changes once the JPA is up and running, but that we do need to move on, asking if members feel comfortable with the model and if a motion could be made or if more discussion was desired.

Ms. Beach said that she did feel comfortable with the joint recommendation, and liked the narrow definition of the P/PM for the reasons discussed and the narrow expertise needed. She added that she wanted both TA and C/CAG Executive Directors equally at the table advocating for their organizations at this early stage of agency formation. Ms. Beach made a motion to support the recommendation that staff brought to the committee as proposed.

Ms. Freschet seconded.

Ms. Aguirre had no comments and agreed with making the motion.

Mr. Kim said that he couldn't agree with the motion because it was not consistent with what the board said was wanted, which is an independent program manager with sole reporting authority to the JPA, adding that he would be supportive of having the Executive Council report to the program manager/Executive Director. He also referred to the org chart and suggested removing the arrow between the bottom support staff box and the P/PM. He asked that the term 'Quarterback' be removed. He suggested that the P/PM report directly to the JPA Board.

Mr. Hartnett said that he believed the joint staff recommendation does have P/PM reporting directly to the JPA Board. Ms. Cassman affirmed that this is what was intended.

A number of exchanges between the Board members were made in terms of where the arrows and terms in the Org Chart, and it was agreed as follows:

- There would be a mutual exchange (or a dotted arrow) between the EC and the P/PM, because the P/PM cannot operate in a vacuum, saying that the P/PM is fully accountable to the JPA Board but has to consider the impact on the EC's organizations.

- Quarterback denotation is removed from the P/PM box

Ms. Wong restated her question, asking in practice how the P/PM is doing his/her work. Mr. Kim said he was satisfied with the model as long as the person brought in was a pro, whether a consultant or a hired person, and that the person has the wherewithal to get extra help. Ms. Beach stated that if the P/PM needed finance information, for example, that he/she would ask the EC for support (who would then ask the Finance team to help provide that information).

Mr. Kim asked if they had to change the joint powers agreement with the proposed changes to the org chart. Ms. Cassman said they will revise the exhibit to reflect the new lines as discussed, and going forward the JPA language says the JPA Board, once established, can make changes to the staffing org chart.

Mr. Horsley called for the vote on the organization chart. Ms. Beach amended her motion per Member Kim's changes to the reporting arrows on the org chart. Ms. Freschet seconded the motion.

Mr. Sanders asked if we wanted to allow for public comment. There was none.

In the absence of a clerk and with a teleconference in Redwood City, Mr. Hartnett called the roll regarding the staffing model with proposed changes as discussed: Aguirre, yes; Kim, yes; Papan, yes; Horsley, yes; Beach, yes; Freschet, yes; the motion carried.

Chair Horsley thanked the group and thanked Mr. Kim for a good suggestion.

The Joint Committee returned to the draft Joint Powers Agreement. Ms. Cassman distributed updated language for section 4.7 of JPA agreement with the tracked changes made based on the earlier discussion. Ms. Cassman said that the sentence which was identified by Ms. Papan is being amended as follows: "The Express Lanes JPA may change the fiscal agent, auditor, controller and/or treasurer and/or appoint other persons possessing the qualifications set forth in the government code by resolution of the board of directors. The designation set forth in this Section 4.7 will be considered concurrently with the consideration of amendments to Attachment A as described in Section 4.8 of the agreement."

Mr. Horsley asked if a motion should be made to approve recommending the revised JPA Agreement to the TA and C/CAG Boards with the change. Ms. van Hoften stated that what was just added referred to staffing and a separate motion could be made to approve making a recommendation on the final JPA. Ms. Papan made the motion and Ms. Beach seconded it.

Mr. Kim asked if there was any clean-up needed on the JPA Agreement including the attachment, after what had been discussed regarding the staffing model. Mr. Sanders responded that the agreement was drafted to provide the flexibility to simply say that

“the JPA Board will revisit the staffing model from time to time,” and that language in the agreement still applies.

Mr. Hartnett called the roll regarding the updated joint powers agreement: Aguirre, yes; Kim, yes; Papan, yes; Horsley, yes; Beach, yes; Freschet, yes; the motion carried.

The Committee agreed to schedule the next meeting for May 24, 2019 at 10:00 AM.

Public Comment

None

ADJOURN

The meeting adjourned at 10:17 am.



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AGENDA ITEM 3

C/CAG AGENDA REPORT

Date: May 24, 2019

To: Joint Ad Hoc Committee

From: Sandy Wong, Executive Director

Subject: Scheduling of the First San Mateo County Express Lanes Joint Powers Agency Board of Directors meeting and discussion of upcoming action items

(For further information, contact Sandy Wong at 650-599-1409)

RECOMMENDATION

It is recommended the Joint Ad Hoc Committee discuss scheduling of the First San Mateo County Express Lanes Joint Powers Agency Board of Directors (Board) meeting and upcoming action items.

BACKGROUND

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

As the C/CAG and SMCTA boards appointed their respective members who have been serving

on the Joint Ad Hoc Committee to serve on the San Mateo County Express Lanes Joint Powers Agency Board (Board), staff recommends that the Joint Ad Hoc Committee discuss the following items to be discussed and/or acted upon by the new Board upon formation.

It is recommended the Board to hold its first meeting on **June 6, 2019 from 3:00 to 4:30 PM** at the San Mateo County Transit District Administrative Office in San Carlos to discuss and/or take action on the following items:

1. Election of Officers:

JEPA Article IV Section 4.6 states the Board will elect a Chair and Vice-Chair from among its members, and will appoint a Secretary who may, but need not be, a member of the Board. The Chair and Vice Chair will serve one-year terms, and they must be appointees of different Members.

2. Board meeting calendar:

JEPA Article IV Section 4.4 (a) states the Board will meet quarterly, or more often as needed. The date, time and place of regular meetings of the Board will be designated on a meeting calendar adopted by the Board each year.

3. Board of Directors compensation and expense reimbursement:

JEPA Article IV Section 4.2 states that all Board members are entitled to a stipend for attending each Board meeting upon the enactment of a resolution of the Board to authorize such stipends, and describes the process for waiving these stipends. Section 4.2 also addresses an expense reimbursement policy to be established by the Board.

4. Conflict-of-interest Code:

JEPA Article IV Section 4.3 states that the Board must adopt a conflict-of-interest code in compliance with the Political Reform Act.

5. Bylaws:

JEPA Article IV Section 4.4 (d) states the Board may adopt from time to time such bylaws, rules, and regulations for the conduct of meetings of the Board and other affairs.

6. Retention agreement for legal services:

Attachment A to the JEPA provides that the San Mateo County Counsel's Office will provide legal services to the Board. The Board will need to review and approve the proposed retention agreement for such services.

7. Filing of the Agreement:

JEPA Article II Section 2.1, and relevant California Government Codes, require the filing of the executed Joint Exercise Powers Agreement and related documents within certain deadlines with the:

- California Secretary of State
- State Controller
- San Mateo County Clerk

ATTACHMENT

1. Final Joint Exercise Powers Agreement.

**JOINT EXERCISE OF POWERS AGREEMENT
FOR THE SAN MATEO COUNTY EXPRESS LANES**

THIS JOINT EXERCISE OF POWERS AGREEMENT ("Agreement"), is made and entered as of the ___ day of _____, 2019 by and between the San Mateo County Transportation Authority ("TA") and City/County Association of Governments of San Mateo County ("C/CAG"), each of which is a public entity duly organized and existing in the County of San Mateo under the constitution and laws of the State of California and individually or collectively called "Member" or "Members."

WITNESSETH:

WHEREAS, the Joint Exercise of Powers Act (California Government Code Section 6500 et seq., the "Act") authorizes the Members to enter into an agreement for the joint exercise of any power common to them and, by that agreement, create an entity that is separate from each of the Members; and

WHEREAS, the TA was formed by the voters of San Mateo County in 1988 with the passage of the original Measure A and extended by the voters of the San Mateo County in 2004 pursuant to California Public Utilities Code Section 131000, et seq.; and

WHEREAS, C/CAG is a joint powers agency formed in 1990 pursuant to the Act by the County of San Mateo and the 20 cities and towns located in the County of San Mateo to be the responsible agency in San Mateo County to prepare and adopt the congestion management program per California Government Code Section 65089 et seq., and which develops and implements countywide plans required under additional State laws, particularly concerning transportation, air quality, storm water runoff, hazardous waste, solid waste and recycling, and serves as the Congestion Management Agency for the County of San Mateo; and

WHEREAS, the TA and C/CAG are the co-sponsors of the US-101 Express Lanes Project ("Project"), which includes (i) the conversion of the existing High Occupancy Vehicle ("HOV") lanes into express lanes from the northern terminus of the Santa Clara County express lanes to the Whipple Road Interchange and (ii) the construction of new express lanes from Whipple Road to north of I-380 in San Mateo County. When completed, the Project will provide continuous express lanes in San Mateo County, in both the northbound and southbound directions of US-101; and

WHEREAS, by this Agreement, the Members desire to create a joint powers agency to apply to the California Transportation Commission to own, administer, and manage the operations of the Project; 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

described herein and 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).

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Members hereto agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1. Definitions. For the purposes of this Agreement, the following words have the following meanings:

"Act" means the Joint Exercise of Powers Act of the State of California, California Government Code Section 6500 et seq., as they now exist or may hereafter be amended.

"Agreement" means this Joint Exercise of Powers Agreement.

"Bay Area Infrastructure Financing Authority" or "BAIFA" means the joint powers authority between the Metropolitan Transportation Commission and the Bay Area Toll Authority, which oversees the planning, financing, construction and operation of freeway express lanes and related transportation projects in the San Francisco Bay Area.

"Board of Directors" or "Board" means the governing body of the Express Lanes JPA.

"Indebtedness" means bonds, notes or other obligations of the Express Lanes JPA issued pursuant to any provision of law which may be used by the Express Lanes JPA for the authorization and issuance of debt, including bonds, notes, or other obligations.

"Bond Law" means Article 2 of the Act, as now or hereafter amended, or any other law hereafter legally available for use by the Express Lanes JPA in the authorization and issuance of bonds to finance needed public facilities or services.

"Caltrans" means the California State Department of Transportation, which owns the right-of-way and roadway on which the express lanes will operate.

"C/CAG" means the City/County Association of Governments of San Mateo County, a sponsor of the Project during Project initiation and co-sponsor of the Project during environmental, and design and build phases.

"Controller" means the Controller of the Express Lanes JPA designated pursuant to Section 4.7 of this Agreement.

"County" means the County of San Mateo, State of California.

"Expenditure Plan" means a policy document establishing the plan for use of express lane revenues to facilitate travel in the corridor where tolls are collected, as required by

California Streets and Highways Code section 149.7, as it now exists and may hereafter be amended.

"Fiscal year" means the period from July 1st to and including the following June 30th, or such other period as the Board may specify by resolution.

"Gross Revenues" means all revenues received by the Express Lanes JPA for the operations of express lanes, including but not limited to tolls and interest on funds of the Express Lanes JPA.

"Joint Facilities" means all facilities, equipment, resources and property to be managed and operated by the Express Lanes JPA and, if and when acquired or constructed, any improvements and additions thereto and any additional facilities or property acquired or constructed by the Express Lanes JPA or either of the Members related to express lanes in the County.

"Express Lanes Joint Powers Authority" or "Express Lanes JPA" means the joint powers authority established by this Agreement as authorized by California Government Code Section 6503.5.

"Member" or "Members" means each party, individually or collectively, respectively, to this Agreement (e.g., the TA and C/CAG).

"Secretary" means the secretary of the Express Lanes JPA appointed pursuant to Section 4.6 of this Agreement.

"State" means the State of California.

"TA" means the San Mateo County Transportation Authority, a co-sponsor of the Project during Project environmental, and design and build phases.

"Treasurer" means the Treasurer of the Express Lanes JPA designated pursuant to Section 4.7 of this Agreement.

ARTICLE II

GENERAL PROVISIONS

Section 2.1. Express Lanes JPA.

(a) Pursuant to Section 6503.5 of the Act, the parties to this Agreement hereby recognize and confirm the continued existence of a public entity separate and independent from the Members, hereafter to be known as the "Express Lanes Joint Powers Authority" or "Express Lanes JPA," pursuant to the terms and conditions set forth in this Agreement.

(b) Within thirty (30) days after the effective date of this Agreement, and after any amendment, the Express Lanes JPA must cause a notice of such Agreement or amendment to be prepared and filed with the office of the California Secretary of State containing the information required by California Government Code Section 6503.5.

(c) Within thirty (30) days after the effective date of this Agreement, and after any amendment, the Express Lanes JPA must cause a copy of such Agreement or amendment to be filed with the State Controller pursuant to California Government Code Section 6503.6.

(d) Within ten (10) days after the effective date of this Agreement, the Express Lanes JPA must cause a statement of the information concerning the Express Lanes JPA, required by California Government Code Section 53051, to be filed with the office of the California Secretary of State and with the County Clerk, amending and clarifying the facts required to be stated pursuant to subdivision (a) of Government Code Section 53051.

Section 2.2. Purpose. The purpose of the Express Lanes JPA is to exercise the common powers of the Members to:

- (a) Own, manage, operate and maintain the Joint Facilities under authorities such as California Streets and Highways Code Section 149.7;
- (b) Collect toll and any other revenues generated by the Joint Facilities;
- (c) Implement the financing, acquisition, and construction of additions and improvements to the Joint Facilities;
- (d) Enter into and manage contracts, which may include but are not limited to the following:
 - i. the Express Lanes Operation Contract with BAIFA;
 - ii. a maintenance contract with Caltrans; and
 - iii. an enforcement contract with the California Highway Patrol;

- (c) Oversee BAIFA's operation of the facility;
- (d) Make policy decisions related to the express lane operations in the County, including but not limited to setting tolls to cover costs (operating and maintaining facility; administering system; covering BAIFA contract) and setting revenue generation targets;
- (e) Prepare and adopt the plan for expenditure of toll lane revenues within the corridor in which they are collected;
- (f) Implement or contract for implementation of such expenditure plan;
- (g) Create and implement an equity program associated with express lanes in the County, if desired; and
- (h) Issue and repay Indebtedness of the Express Lanes JPA

Each of the Members is authorized to exercise all such powers (except the power to issue and repay Indebtedness of the Express Lanes JPA) pursuant to its organic law, and the Express Lanes JPA is authorized to issue and provide for the repayment of Indebtedness pursuant to the provisions of the Bond Law or other applicable law.

Section 2.3. Term. The Effective Date of this Agreement is June 1, 2019. This Agreement will continue in effect until such time as all of the following have occurred: (i) all Indebtedness, if any, and the interest thereon issued by the Express Lanes JPA under the Bond Law, the Act or other applicable law have been paid in full or provision for such payment have been made, (ii) the Express Lanes JPA and the Members have paid all sums due and owing pursuant to this Agreement or pursuant to any contract executed pursuant to this Agreement, and (iii) dissolution has occurred pursuant to Section 3.3.

ARTICLE III

POWERS AND OBLIGATIONS OF EXPRESS LANES JPA

Section 3.1. General Powers. The Express Lanes JPA will have the power in its own name to exercise any and all common powers of its Members reasonably related to the purposes of the Express Lanes JPA, including, but not limited to, the powers to:

- (a) Seek, receive and administer funding from any available public or private source, including toll and any other revenues and grants or loans under any available federal, state, and local programs for assistance in achieving the purposes of the Express Lanes JPA;
- (b) Contract for the services of engineers, attorneys, planners, financial and other necessary consultants, and/or other public agencies;
- (c) Make and enter into any other contracts;

- (d) Employ agents or officers;
- (e) Acquire, lease, construct, own, manage, maintain, dispose of or operate (subject to the limitations herein) any buildings, works, or improvements, including but not limited to the Joint Facilities;
- (f) Acquire, hold, manage, maintain, or dispose of any other property by any lawful means, including without limitation gift, purchase, lease, lease-purchase, license, or sale;
- (g) Incur all authorized Indebtedness;
- (h) Receive gifts, contributions, and donations of property, funds, services, and other forms of financial or other assistance from any persons, firms, corporations, or governmental entities; and
- (i) Sue and be sued in its own name; and
- (j) Seek the adoption or defeat of any federal, state, or local legislation or regulation necessary or desirable to accomplish the stated purposes and objectives of the Express Lanes JPA; and
- (k) Adopt rules, regulations, policies, plans, programs, bylaws, and procedures governing the operation of the Express Lanes JPA and the Joint Facilities;
- (l) Invest any money in the treasury pursuant to California Government Code Section 6505.5 that is not required for the immediate necessities of the Express Lanes JPA, as the Express Lanes JPA determines is advisable, in the same manner and upon the same conditions as local agencies, pursuant to California Government Code Section 53601, as it now exists or may hereafter be amended;
- (m) Carry out and enforce all the provisions of this Agreement; and
- (n) Exercise all other powers not specifically mentioned herein, but common to the Members, and authorized by California Government Code Section 6508 as it now exists or may hereafter be amended.

Section 3.2. Specific Powers and Obligations.

(a) Audit. The records and accounts of the Express Lanes JPA must be audited annually by an independent certified public accountant, and copies of such audit report must be filed with the State Controller and the County Auditor and will be provided to each Member no later than fifteen (15) days after receipt of such audit reports by the Express Lanes JPA. The Board of Directors may, by unanimous vote, replace the annual audit with an audit covering up to a two-year period.

(b) Securities. The Express Lanes JPA may use any statutory power available to it under the Act and any other applicable laws of the State of California, whether

heretofore or hereinafter enacted or amended, for issuance and sale of any Bonds or other evidences of indebtedness necessary or desirable to finance the exercise of any power of the Express Lanes JPA, and may borrow from any source including, without limitation, the federal government, for these purposes.

(c) Liabilities. The debts, liabilities, and obligations, whether contractual or non-contractual, of the Express Lanes JPA will be the debts, liabilities, and obligations of the Express Lanes JPA alone, and not the debts, liabilities, or obligations of the Members or their member entities.

(d) Hold Harmless and Indemnification. To the fullest extent permitted by law, the Express Lanes JPA agrees to save, indemnify, defend, and hold harmless each Member from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, or costs of any kind, whether actual, alleged, or threatened, including attorneys' fees and costs, court costs, interest, defense costs, and expert witness fees, where the same arise out of, or are in any way attributable in whole or in part, to negligent acts or omissions of the Express Lanes JPA or its officers, or agents or the employees, officers, or agents of any Member while acting within the course and scope of an agency relationship with the Express Lanes JPA.

(e) Manner of Exercise. For purposes of California Government Code Section 6509, the powers of the Express Lanes JPA will be exercised subject to the restrictions upon the manner of exercising such powers as are imposed upon the TA.

(f) Review of Agreement. This Agreement will be reviewed every four (4) years by the Members, but its terms and conditions may be reviewed more frequently whenever the Members agree to do so. Upon the completion of every such review, the Express Lanes JPA will prepare a report regarding any recommended changes to the Agreement and transmit such report to each of the Members.

Section 3.3. Dissolution of Express Lanes JPA.

(a) Notice. Either Member can express its intent to dissolve the Express Lanes JPA with at least 12 months' written notice.

(b) Intent. Such intent may be expressed by the TA only upon a two-thirds (2/3) vote of its Board of Directors. Such intent may be expressed by C/CAG only upon a vote by a majority of its Board of Directors and only when the members voting in favor of such action represent a majority of the population of the County.

(c) Agreement with Successor Entity. The Express Lanes JPA cannot be dissolved until a successor entity, qualified by State law then in-effect, has agreed to (i) assume ownership of the Express Lanes JPA's Joint Facilities and other assets, (ii) provide for the assumption or discharge of the Express Lanes JPA's Indebtedness and other liabilities, and (iii) carry out all duties associated with operation and maintenance of the express lanes and management of the expenditure of the Gross Revenues. Such agreement must be expressed in a contract between the successor entity, the Express

Lanes JPA, the TA and C/CAG, which may be executed only upon approval of (i) a two-thirds (2/3) vote of the TA Board of Directors, (ii) a majority vote of the C/CAG Board of Directors and only when the members voting in favor of such action represent a majority of the population of the County, and (iii) a super majority (five (5) votes) of the Express Lanes JPA Board of Directors.

ARTICLE IV

ORGANIZATION, GOVERNANCE AND FUNCTIONS OF EXPRESS LANES JPA

Section 4.1. Governing Board.

(a) The Board will govern the Express Lanes JPA in accordance with this Agreement and will have three (3) Board members per Member.

(b) Each Board member will serve for a term of two years, although a Board member may be removed during his or her term or re-appointed for multiple terms at the pleasure of the appointing authority.

(c) All voting power of the Express Lanes JPA will reside in the Board.

(d) Each Board member will cease to be a member of the Board when such member ceases to hold office on the legislative body of the Member that appointed him or her. Vacancies will be filled by the respective appointing Member in the same manner as initial appointments.

(e) The composition of the Board and the Members' appointments to fill vacancies should reflect a balanced representation from the different regions of the County.

Section 4.2. Compensation and Expense Reimbursement.

(a) All Board members are entitled to a stipend for attending each Board meeting upon the enactment of a resolution of the Board to authorize such stipends.

(b) A Board member may waive the compensation to which he or she would otherwise be entitled under the preceding paragraph by notifying the Secretary in writing that he or she expressly and irrevocably waives any such compensation that he or she would otherwise be entitled to be paid in the future for services as a Board member. This written waiver must: (i) be voluntary; (ii) be irrevocable; (iii) expressly waive any and all future compensation to which the Board member may be entitled under this Section 4.2; (iv) acknowledge that, by waiving compensation, the Board member understands he or she is not entitled to any compensation he or she would otherwise be eligible to receive pursuant to this Section 4.2; (v) acknowledge that the amount of the waived compensation will be retained in the Express Lane JPA's general assets; and (vi) be dated and signed by the Board Member and filed with the Secretary before the compensation is paid. The Secretary must retain the original copy of a Board member compensation waiver in

accordance with a record retention policy established by the Board in full accordance with all applicable statutory requirements.

(c) Each Board member will be reimbursed for reasonable and necessary expenses actually incurred in the conduct of the Express Lanes JPA's business, pursuant to an expense reimbursement policy established by the Board in full accordance with all applicable statutory requirements.

Section 4.3. Conflicts of Interest.

(a) Political Reform Act. Board members will be considered "public officials" within the meaning of the Political Reform Act of 1974, as amended, and its regulations, for purposes of financial disclosure, conflict of interest, and other requirements of such Act and regulations, subject to a contrary opinion or written advice of the California Fair Political Practices Commission. The Express Lanes JPA must adopt a conflict-of-interest code in compliance with the Political Reform Act.

(b) Levine Act. Board members are "officials" within the meaning of California Government Code Section 84308 et seq., commonly known as the "Levine Act," and therefore subject to the restrictions of such act on the acceptance, solicitation, or direction of contributions.

Section 4.4. Board Meetings

(a) Time and Place. The Board will meet quarterly, or more often as needed, at a place designated by the Board with the location included in the notice of each meeting under the Ralph M. Brown Act, California Government Code Section 54950 et seq. The date, time and place of regular meetings of the Board will be designated on a meeting calendar adopted by the Board each year.

(b) Call and Conduct. All meetings of the Board will be called and conducted in accordance with the provisions of the Ralph M. Brown Act, other applicable law, and Rosenberg's Rules of Order.

(c) Quorum. Four (4) Board members will constitute the quorum of the Board required to conduct a meeting of the Board.

(d) Rules. The Board may adopt from time to time such bylaws, rules, and regulations for the conduct of meetings of the Board and of the affairs of the Express Lanes JPA consistent with this Agreement and other applicable law.

(e) Minutes. The Secretary will cause minutes of all meetings of the Board to be drafted and mailed to each Member promptly after each meeting. Upon approval by the Board, such minutes will become a part of the official records of the Express Lanes JPA.

Section 4.5. Voting.

(a) All actions of the Board will require five (5) Board members to be present for voting.

(b) Except as set forth in paragraph (c), below, actions of the Board require the affirmative vote of at least four (4) Board members. Board members may not cast proxy or absentee votes. Each member will have an equal vote.

(c) Adoption or amendment of an Expenditure Plan, or approval of an agreement with a successor agency as a prerequisite for dissolution of the Express Lanes JPA under paragraph 3.3 (c), requires the affirmative vote of at least five (5) Board members.

Section 4.6. Officers.

(a) The Board will elect a Chair and Vice-Chair from among its members, and will appoint a Secretary who may, but need not, be a member of the Board. The Chair and Vice Chair will serve one-year terms and must be appointees of different Members. The Chair and Vice Chair positions must be held by appointees of alternating Members in alternating years (e.g., in Year 1, one of Member A's appointees will be the Chair and one of Member B's appointees will be the Vice Chair; the opposite will be true in Year 2). This rotation and the term of office may be altered as designated in rules or bylaws established by the Board. The officers will perform the duties normal to said offices as described below. If the Chair or Vice Chair ceases to be a member of the Board, the resulting vacancy will be filled, for the remainder of the vacant term, at the next meeting of the Board held after each vacancy occurs.

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

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

(d) Secretary. The Secretary must countersign contracts signed on behalf of the Express Lanes JPA, and will be the official custodian of all records of the Express Lanes JPA. The Secretary will attend to such filings as required by applicable law. The Secretary will perform such other duties as may be imposed by the Board.

Section 4.7. Fiscal Agent/Auditor/Controller and Treasurer. The TA is designated as the Fiscal Agent of the Express Lanes JPA. The San Mateo County Transit District (as managing agency of the TA) will serve as the Auditor/Controller and Treasurer of the Express Lanes JPA. The Treasurer will be the depository and will have custody of all of the accounts, funds, and money of the Express Lanes JPA from whatever source. The

Auditor/Controller and the Treasurer will perform the duties and functions, assume the obligations and authority set forth in Sections 6505, 6505.5 and 6505.6 of the Act, and assure strict accountability of all funds and reporting of all receipts and disbursements of the Express Lanes JPA. The Auditor Controller and Treasurer are designated as having charge of, handling or having access to funds or property of the Express Lanes JPA for purposes of the Official's Bond required under Section 6505.5 of the Act and Section 4.10 of this Agreement.

The Express Lanes JPA may change the Fiscal Agent, Auditor/Controller and/or Treasurer, and/or appoint other persons possessing the qualifications set forth in Section 6505.5 of the Act to these offices, by resolution of the Board of Directors. The designations set forth in this Section 4.7 will be considered concurrently with consideration of amendments to Attachment A as described in Section 4.8 of the Agreement.

Section 4.8. Staffing. C/CAG and the TA recognize the benefits that their respective organizations and staff support bring to the Express Lanes JPA. Both agencies will make their best efforts to provide staff resources to the Express Lanes JPA as may be required or requested by the Express Lanes JPA. Upon execution of this Agreement, staffing for the Express Lanes JPA will be provided in accordance with the model set forth in Attachment A to this Agreement. The Express Lanes JPA may amend Attachment A from time to time by resolution of the Board of Directors.

Section 4.9. Additional Officers and Consultants. The Board may appoint any additional officers deemed necessary or desirable. Such additional officers also may be officers or employees of a Member or of the Express Lanes JPA. The Board may also retain such other consultants or independent contractors as may be deemed necessary or appropriate to carry out the purposes of this Agreement.

Section 4.10. Official's Bond. The officers or persons designated to have charge of, handle, or have access to any funds or property of the Express Lanes JPA will be so designated and empowered by the Board. Each such officer or person will be required to file an official bond with the Express Lanes JPA in an amount established by the Board. Should the existing bond or bonds of any such officer or persons be extended to cover the obligations provided herein, said bond will be the official bond required herein. The premiums on any such bonds attributable to the coverage required herein will be appropriate expenses of the Express Lanes JPA. If it is prudent to do so, the Express Lanes JPA may procure a blanket bond on behalf of all such officers and persons.

Section 4.11. Status of Officers. All of the privileges and immunities from liability, exemption from laws, ordinances, and rules, all pension, relief, disability, worker's compensation, and all other benefits that apply to the activity of officers or agents of the Express Lanes JPA when performing their respective functions within the territorial limits of a Member will apply to them to the same degree and extent while engaged in the performance of any of their functions and duties under the provisions of this Agreement and Chapter 5 of Division 7 of Title 1 of the California Government Code, commencing with Section 6500. However, none of the officers or agents appointed by the Board will

be deemed to be employed by any of the Members or to be subject to any of the requirements of such Members by reason of their appointment or employment by the Express Lanes JPA.

Section 4.12. Committees. The Board may create permanent or ad hoc committees to give advice to the Board of Directors on such matters as may be referred to such committees by the Board. Qualified persons will be appointed to such committees by the Board and each such appointee will serve at the pleasure of the Board. All regular, adjourned, and special meetings of such committees will be called and conducted in accordance with the applicable requirements of the Ralph M. Brown Act, Government Code Section 54950 et seq., as it now exists or may hereafter be amended, and all other applicable law.

ARTICLE V

OPERATIONS AND FACILITIES

Section 5.1. Assumption of Responsibilities by the Express Lanes JPA. As soon as practicable after the date of this Agreement, the Members must appoint their representatives to the Board. At its first meeting, the Board will elect a Chair and Vice-Chair, and appoint a Secretary as prescribed in Article IV.

Section 5.2. Delegation of Powers; Transfer of Records, Accounts, Funds and Property. Each of the Members hereby delegates to the Express Lanes JPA the power and duty to maintain, operate, manage, and control the Joint Facilities, as they may be expanded from time to time, and revenues generated by express lanes in the County.

Section 5.3. Joint Facilities Costs, Reserves and Capital. Upon the organization of the Board, the Express Lanes JPA will assume financial responsibility for the improvement, alteration, maintenance, and operation of the Joint Facilities and will pay all contractual and administrative expenses of the Express Lanes JPA. Once revenues are generated by express lanes in the County, the Express Lanes JPA will establish reasonable reserves and undertake appropriate capital projects to maintain the Joint Facilities. The Members acknowledge that the Express Lanes JPA likely will be required to incur Indebtedness for contractual and administrative expenses before and after express lanes are operational.

ARTICLE VI

BUDGET AND OTHER FINANCIAL PROVISIONS

Section 6.1. Fiscal Year. The Express Lanes JPA Fiscal Year will begin each July 1 and end on the following June 30.

Section 6.2 Annual Budget. The Express Lanes JPA will adopt an annual budget for each fiscal year. Once the Express Lanes JPA's first annual budget is adopted, no

expenditures may be made by or on behalf of the Express Lanes JPA unless authorized by a budget or budget amendment.

Section 6.4. Expenditures Within Approved Annual Budget. All expenditures within the limitations of the approved annual budget will be made in accordance with the rules, policies and procedures adopted by the Board.

Section 6.5. Disbursements. Warrants will be drawn upon the approval and written order of the Board, and the Board will requisition the payment of funds only upon approval of claims, disbursements, and other requisitions for payment in accordance with this Agreement and other rules, regulations, policies and procedures adopted by the Board.

Section 6.6. Accounts. All funds will be received, transferred, or disbursed by the Controller. The Treasurer will account for such funds separately, in accordance with the generally accepted accounting principles applicable to governmental entities, with strict accountability of all funds. All revenues, expenditures, and status of bank accounts and investments will be reported to the Board quarterly or as the Board may direct and, in any event, not less than annually, pursuant to procedures established by the Board.

ARTICLE VII

MISCELLANEOUS

Section 7.1. Amendments. This Agreement may be amended by a writing or writings executed by the Members approved by resolution of each Member's governing body.

Section 7.2. Notice. Any notice required to be given or delivered by any provision of this Agreement will be personally delivered or deposited in the U.S. Mail, registered or certified, postage prepaid, addressed to the Members at their addresses as reflected in the records of the Express Lanes JPA, and will be deemed to have been received by the Member to which the same is addressed upon the earlier of receipt or seventy-two (72) hours after mailing.

Section 7.3. Good Faith Negotiations. The Members acknowledge that differences between them and among the Board members may arise from time to time and agree to make good faith efforts to resolve any such differences via good faith negotiations among the Members or Board members, as the case may be. If such negotiations do not resolve the dispute, and no Member gives a notice to dissolve the Express Lanes JPA as provided in this Agreement, then the Members may resolve disputes in any manner permitted by law or in equity.

Section 7.4. Attorney's Fees. In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding will be entitled to an award of its actual and reasonable attorney's fees, costs, and expenses incurred in the proceeding.

Section 7.5. Successors. This Agreement will be binding upon and inure to the benefit of any successor of a Member.

Section 7.6. Assignment and Delegation. No Member may assign any rights or delegate any duties under this Agreement without the written consent of the other Member, and any attempt to make such an assignment will be null and void for all purposes.

Section 7.7. Counterparts. This Agreement may be executed in one (1) or more counterparts, all of which together will constitute a single agreement, and each of which will be an original for all purposes.

Section 7.8. Severability. Should any part, term or provision of this Agreement be decided by any court of competent jurisdiction to be illegal or in conflict with any applicable law, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, or provisions of this Agreement will not be affected thereby and to that end the parts, terms, and provisions of this Agreement are severable.

Section 7.9. Integration. This Agreement represents the full and entire Agreement among the Members with respect to the matters covered herein.

Section 7.10. Execution. The legislative bodies of the Members each have authorized execution of this Agreement, as evidenced by the respective signatures attested below.

IN WITNESS WHEREOF, the Parties have hereunder subscribed their names the day and year indicated below.

CITY/COUNTY ASSOCIATION OF
GOVERNMENTS OF SAN MATEO
COUNTY (C/CAG)

By: [Signature]
Name: Maryann Moise Derwin
Its: Chair
April 11, 2019

Attest:

[Signature]
C/CAG Clerk of the Board

Approved as to Form:

Matthew J. Sandoz
Legal Counsel for C/CAG

SAN MATEO COUNTY
TRANSPORTATION AUTHORITY (TA)

By: _____
Name: Don Horsley
Its: Chair

Attest:

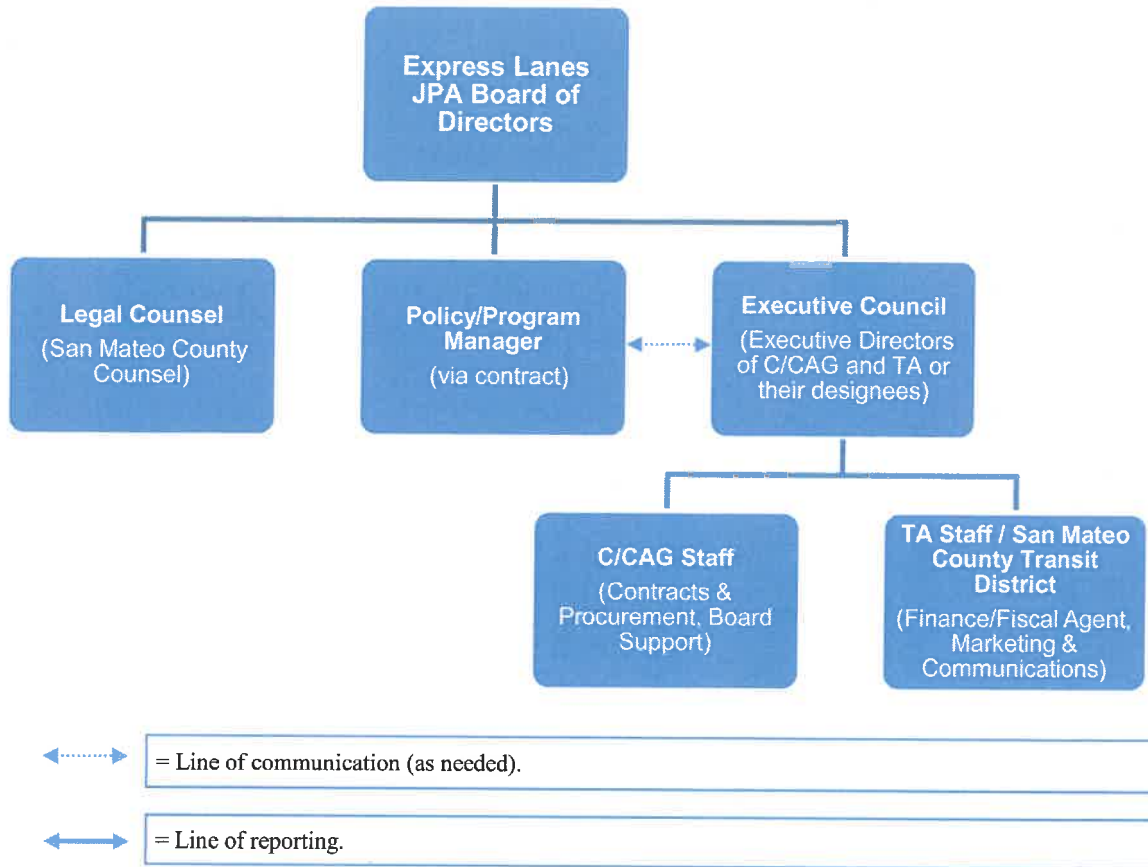
[Signature]
TA Secretary

Approved as to Form:

[Signature]
Legal Counsel for the TA

ATTACHMENT A

EXPRESS LANES JPA INITIAL STAFFING MODEL



A. The San Mateo County Express Lanes Joint Powers Authority (JPA) will retain an independent Policy/Program Manager via contract. That Manager will report directly to the JPA Board. He/she will also coordinate with the Executive Council as necessary. On a day-to-day basis, the Policy/Program Manager is expected to coordinate with any of the staff listed below under Sections (C) and (D) as necessary. The main duties of the Policy/Program Manager will be to:

- Seek input from the Executive Council and others, develop, and make recommendations to the JPA Board on policies including but not limited to tolling principles, toll ordinance, toll discounts, equity, and net revenue expenditure priorities.
- Collaborate with Bay Area Infrastructure Financing Authority (BAIFA) and make recommendations on toll system, and toll equipment maintenance and upgrades.
- Represent San Mateo County Express Lanes interests at regional and other express lanes forums, in collaboration with Executive Council.

- Collaborate with the Executive Council and all TA and C/CAG staff who provide service to the JPA on recommendations to the JPA Board, including but not limited to Toll Expenditure Plan and the JPA Budget.
 - Implement and support the management of contracts and agreements for the JPA in collaboration with the Executive Council.
 - Provide other support to the JPA Board as necessary.
- B. The JPA will have an Executive Council that consists of the Executive Director of the TA and the Executive Director of C/CAG. Each Executive Director may have one designee who will have full authority to act on behalf of the appointing Executive Director. The Executive Council may make recommendations to the JPA Board directly, or coordinate with the Policy/Program Manager on joint recommendations to the JPA Board. The Executive Council will also be responsible for negotiation of agreements with agencies to support the operations of the Express Lanes, including but not limited to the following: BAIFA to provide overall operation of the express lanes; Bay Area Toll Authority (BATA) to provide Fastrak® services; Caltrans for road maintenance; and California Highway Patrol (CHP) for enforcement. As soon as the Policy/Program Manager is on board, he/she will participate in such negotiations and contract preparation in collaboration with the Executive Council.
- C. The TA will be the Fiscal Agent for the JPA. The San Mateo County Transit District (District), which is the administering agency of the TA, will provide the following staffing for the JPA:
- Fiscal Agent and Finance
 - Budgeting and reporting
 - Accounting, including accounts payable and accounts receivables
 - Audits
 - Treasury
 - Marketing and Communications
 - Marketing use of the lanes
 - Promoting the broader benefits of the lanes
 - Media relations
 - Website creation and maintenance
 - Community relations (addressing community concerns about policies, operation of the lanes, etc.)

These staff will report to the TA Executive Director on day-to-day operations. Work performed by these staff on matters relating to the JPA will be approved by the Executive Council. These staff are expected to coordinate with the Policy/Program Manager.

D. C/CAG will provide the following staffing for the JPA:

- Contracts & Procurement
 - Procure, manage, and maintain all JPA contracts and agreements
 - Manage consultant work scope, cost and schedule
 - Review and approve invoices, and submit to TA for payments
 - Maintain contracts between JPA and other entities

- Board Clerk and Support
 - Board support to the JPA, including agenda, notices, and records of meetings
 - Serve as the Board Clerk
 - Manage public records requests
 - Ensure Form 700s are completed and filed

These staff will report to the C/CAG Executive Director on day-to-day operations. Work performed by these staff on matters relating to the JPA will be approved by the Executive Council. These staff are expected to coordinate with the Policy/Program Manager.

E. The JPA will contract with the San Mateo County Counsel's Office for legal support.

F. The JPA Board will revisit this staffing Plan, including all of the above provisions, the need of employees, and the effectiveness of the Executive Council, from time to time, but no later than two years from now or April 2021.



DON HORSLEY, CHAIR
EMILY BEACH
CAROLE GROOM
MAUREEN FRESCHET
KARYL MATSUMOTO
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**AGENDA ITEM #4
MAY 24, 2019**

Memorandum

Date: May 24, 2019

To: Joint Ad Hoc Committee

Through: Jim Hartnett
Executive Director

From: April Chan, Chief Officer,
Planning, Grants and Transportation Authority

Subject: Status of the California Transportation Commission (CTC) application and
Other Project and Funding Updates

Action

This is an informational update; no action is required.

Significance

The San Mateo County Transportation Authority (TA) and City/County Association of Governments of San Mateo County (C/CAG) Board of Directors have now each approved the Joint Exercise of Powers Agreement (JEPA) for the San Mateo County Express Lanes Joint Powers Agency (JPA). Once the JEPA is fully executed, the JPA will be in effect on June 1, 2019.

The JPA is scheduled to hold its first meeting in early June 2019. Prior to this inaugural meeting, staff is providing the following updates related to several items the JPA will likely need to take action on at near-term meetings, in addition to those items discussed under agenda item 3. These updates are provided in the Discussion section below.

Discussion

Application with the California Transportation Commission (CTC)

TA and C/CAG staff had previously reported that CTC staff agreed that TA and C/CAG, after the formation of a JPA, may apply to operate the San Mateo Express Lanes through a contract with the Bay Area Infrastructure Financing Authority (BAIFA).

We have reported that a final application should be submitted to CTC staff at least 45 days prior to a scheduled CTC meeting to have the CTC Commission consider and grant the JPA authority over the toll facility. We expect the CTC to consider and approve our application at its meeting on August 14 and 15, 2019 in San Jose. Staff is planning on submitting a final application no later than July 1, 2019.

CTC requires draft application materials to be submitted to their offices at least 60 days before the final application is submitted. The purpose of this submittal is to allow sufficient time for CTC staff review and comments. TA and C/CAG staff submitted the draft application on May 15, 2019 to CTC staff for review and are awaiting comments at this time.

In addition, in the time between the final application is submitted to the CTC and the CTC meeting on August 14-15, 2019, a public hearing must be held in the vicinity of the project location to receive public comments. As we have reported previously, the most likely location for the public hearing is the San Mateo County Transit District offices in San Carlos. We are working with CTC staff on details including the location and date, which needs to be between July 1 and early August 2019.

As reported previously, CTC staff indicated that the cost of the state review, which is capped at \$100,000, and processing of the application will need to be reimbursed by the JPA. One of the first orders of business for the JPA is to approve the funding agreement between the JPA and the CTC, which is now scheduled for JPA action at the June 6, 2019 meeting.

Cooperative Agreements between JPA and BAIFA

TA and C/CAG staff are currently working with BAIFA on the terms and conditions of a cooperative agreement to cover a number of services BAIFA will provide to the JPA over time, including the following:

1. Delivery of the toll system, which includes design, implementation, testing, and integration. The toll system provides the intelligence behind the operation of the express lanes.
2. Daily operations of the express lane once it opens for tolling.

The JPA will need to review and approve the cooperative agreement in an upcoming meeting to cover item #1 (system delivery), listed above. Staff will then continue to work with BAIFA to negotiate and amend the agreement to add detailed scope for the eventual operations.

Funding Advance needed for the Construction of the San Mateo Express Lanes Project
The San Mateo Express Lanes Project (Project) has a total Project cost of \$513 million, and is funded by the following sources:

| Funding Source | Total Funds |
|---|--------------------|
| Federal | \$9.5M |
| State STIP (C/CAG) | \$33.5M |
| State ITIP (Caltrans) | \$18.0M |
| State SB1 Local Partnership Program | \$21.5M |
| State SB1 Solutions for Congested Corridors (SCC) | \$200.0M |
| Private Sector | \$53.0M |
| Regional Bridge Tolls | \$95M |
| Local San Mateo Measure A | \$32.5M |
| Future Toll Revenues and other Local Funds | \$50M* |
| TOTAL | \$513M |

* Will be discussed further below

Of the \$513 million identified for the project, \$50 million (last line item in the table above) is identified to be funded by future toll revenues. Since the Project is not expected to be operational until 2022, collection of toll revenues is not expected to begin until then. In order to satisfy the funding of the capital project now, the TA will need to advance funds to the Project, with an expectation that it will be paid back by future toll revenues.

The TA is currently scheduled to take action on this funding advance at its July or August 2019 meeting. The JPA, as the owner of the Express Lanes and recipient of the future toll revenues, will also be taking action on an agreement with the TA covering reimbursement of this funding advance. This action is likely to be scheduled for Board action sometime this Summer.

Fiscal Year 2020 Budget Development for the JPA

The JPA will need to develop and approve a budget for the new entity in the upcoming fiscal year. Staff will be working over the next several weeks to determine the projected expenses and obligations of the JPA for Fiscal Year (FY) 2020. Since the JPA will not have any working capital over the next several years, until the express lanes are in operation, the funding will need to be advanced from the TA and C/CAG. Staff will continue to work on the above, and will provide updates and a draft FY2020 Budget to the JPA for review and approval this Summer.

Here is a recap of some of the initial costs the JPA will be incurring, as staff has previously reported:

- Application cost with the California Transportation Commission (CTC), estimated at \$60,000.
- Consultant costs associated with the preparation of the application material for CTC approval, estimated at \$80,000.
- Completion of an equity study for the corridor; staff is currently working on completing an initial scope of work and a cost estimate for completing the study.
- Contract with an independent Program/ Policy Manager.
- Initial deposit required by BAIFA before BAIFA begins contracted operation of the San Mateo Express Lanes. Deposit amount is to be negotiated with BAIFA over the next several months.
- Staffing costs associated with the oversight of the JPA start-up and operations; costs will need to be estimated and further refined over the next several months.