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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

455 County Center, Room 402  
Redwood City, CA

**March 22, 2019 – Friday**

**10:30 am**

1. Call to Order
2. Approval of Minutes from the March 1, 2019 Joint Ad Hoc Committee Meeting
3. Continued Discussion and Potential Action on the Staff Model for the Express Lanes JPA and Related Joint Powers Agreement Between the San Mateo County Transportation Authority and City/County Association of Governments of San Mateo County
4. Public Comment
5. 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](mailto:board@smcta.com). Communications to the C/CAG Board of Directors can be e-mailed to [mguilles@smcgov.org](mailto: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](mailto: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 MARCH 1, 2019 MEETING**

<b>MEMBERS PRESENT:</b>	Transportation Authority Board (TA): Don Horsley, Emily Beach, Maureen Freschet  City/County Association of Governments of San Mateo County (C/CAG) Board: Alicia Aguirre, Diane Papan, Doug Kim
<b>MEMBERS ABSENT</b>	TA: None C/CAG: None
<b>STAFF PRESENT:</b>	TA: Jim Hartnett, April Chan, Joan Cassman (Legal Counsel), Shayna van Hoften (Legal Counsel)  C/CAG: Sandy Wong, Mima Guilles, Matt Sanders (Legal Counsel)
<b>PUBLIC MEMBERS</b>	Marie Chuang, Carter Mao, Joe Hurley, Jim Bourgart, Drew

**CALL TO ORDER**

The joint TA and C/CAG Ad Hoc committee meeting was called to order by TA Ad Hoc committee member Don Horsley at 10:00 am. TA Executive Officer April Chan called the roll for the TA; C/CAG Executive Director Sandy Wong called the roll for C/CAG.

C/CAG Director Aguirre and TA Director Don Horsley co-chaired the meeting.

**APPROVAL OF MINUTES FROM THE FEBRUARY 1, 2019 JOINT AD HOC COMMITTEE MEETING**

Motion/Second: Aguirre/Beach

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

Noes: None

Absent: None

**Update on the California Transportation Commission Application Process for the San Mateo US101 Express Lanes Toll Facility**

April Chan, Chief Officer, Planning, Grants and Transportation Authority, reported that the California Transportation Commission (CTC) must approve the toll authority before express lanes can be operated in San Mateo County. In February, TA, C/CAG, and Metropolitan Transportation Commission (MTC)/ Bay Area Infrastructure Financing Authority (BAIFA) staff met with CTC staff regarding the proposal of C/CAG and TA

forming a Joint Powers Authority (JPA) that will apply to the CTC for express lanes authority. Based on that staff-level meeting, it is targeted to obtain CTC approval at the CTC's August meeting, which will be held in the Bay Area. The final application is due 45 days before that meeting. In addition, 60 days prior to the official application submittal, CTC staff would like to review the draft application. In other words, a draft application is needed by the end of April. TA has engaged consultant Gray-Bowen Scott to start working on a draft application. CTC's review fee is capped at \$100,000 and is currently estimated at \$60,000.

A public hearing by the CTC must be held near the project location prior to CTC granting the toll authority. Staff proposes to conduct that public hearing in San Carlos.

C/CAG Executive Director Sandy Wong explained that AB 194 authorized the CTC to approve toll operations in the State of California. Since the enactment of that legislation, only one application has gone forward, from Orange County Transportation Authority (OCTA). According to CTC staff, the OCTA approval process was not controversial because the applicant had already conducted extensive public outreach prior going to the CTC.

#### **Update on the Funding Obligations for the San Mateo US101 Express Lanes Capital Project, and Cost Estimates for Initial Set-up/Operating Needs for the San Mateo US101 Express Lanes Joint Powers Authority**

Ms. Chan provided an update on the project's capital funding plan. As shown on page 8 of the meeting packet, \$95 million of the total \$513 million comes from MTC's "Regional Bridge Tolls". Two weeks ago, MTC staff reached out to TA staff requesting the TA to loan \$37.5 million of the \$95 million. The request is due to MTC's original assumption that \$75 out of the \$95 million commitment would come from RM3 funds. RM3 is currently being held up in court due to a lawsuit. Ms. Chan stated that while the TA has not made a commitment to loan the \$37.5 million, TA staff is assessing the overall TA Highway Program cash flow situation.

Ms. Chan also described the 5 items as shown in the staff report on page 9 of the meeting packet, enumerating the start-up and set-up costs including the cost of Gray-Bowen Scott preparing the CTC application, the estimated \$60,000 CTC review fee, etc.

C/CAG Executive Director Sandy Wong mentioned this Joint Ad Hoc Committee is an advisory committee with no ability to make expenditure decisions. Until the new JPA is formed, these start-up and set-up expenses being "fronted" by the TA and/or C/CAG will be tracked, and could be properly deducted from future toll revenues. However, it is more important to make a formal decision on how to handle the big-ticket items such as the \$50 million needed for construction and the \$37.5 million MTC loan request.

Ms. Wong stated the \$50 million was always assumed to be from local funds. Typically, a highway project sponsor can apply to the TA for Measure A Highway grant funds. Alternatively, the new JPA can borrow the \$50 million from TA, to be paid back with future toll revenues. In that case, a formal agreement between the new JPA and TA should be in place to document the terms for how the TA will be paid back. As for the \$37.5 million MTC request, it is subject to further discussion with MTC.

TA Executive Director Jim Hartnett added there are two options for TA funding. One of the options is to go to the market place to borrow money, for which a guarantor would be needed, which likely would be the TA. The other option is to lend from Measure A proceeds. There is a risk of borrowing to cover the \$37.5 million in that, according to Mr. Hartnett's conversation with former MTC Executive Director Steve Heminger, MTC has no Plan B if RM3 is invalidated by the courts.

Joint Ad Hoc committee members questioned whether the case against RM3 is expedited. TA legal counsel searched and informed the committee that the case does not appear to be expedited. The lawsuit was filed around July, 2018, and a trial date is set for October, 2019. Member Freschet asked if we can just hold MTC to their commitment on the entire \$95 million. Member Horsley asked the timing of when that money must be made available. Ms. Chan answered it will likely be needed by mid-2020.

Member Beach reiterated her understanding that there are really three options for the \$50 million: a grant by the TA Board, a loan by the TA, or a loan from the market. She mentioned it would seem more expensive to go to the market to borrow money. So, the tradeoff would be what projects will be delayed if TA funds are used. Because MTC/BAIFA is already collecting tolls, they should get a more favorable rate.

Member Beach expressed her disappointment because MTC clearly stated they were not using RM3 money for this project. And that the \$95 million was a generous offer from BATA money.

Committee members questioned whether the decision to accommodate the MTC's request for \$37.5 million rests with this Committee or with the TA Board. TA staff said they are checking with their CFO about options for the TA to access the requested funds. The CFO said the total of almost \$90 million (\$50 plus \$37.5) makes it difficult for the TA to front the entire amount without going to the market, with Measure A funds as the backstop.

Member Kim agreed with Member Beach's concern regarding MTC's ask, because chronologically, the RM3 lawsuit was already a known fact when MTC negotiated with San Mateo County agencies on owner/operator options. But during that period of negotiation, MTC affirmed they were not counting on RM3 funds. Member Kim stated that we should go back to MTC and ask them to honor their original commitment, since San Mateo County agencies made decisions based on such MTC's representation.

Member Horsley asked if C/CAG has potential to loan that type of money. Ms. Wong said not at that high dollar amount.

**Discussion and Potential Action on the Joint Powers Authority framework for San Mateo County Transportation Authority and City/County Association of Governments of San Mateo County as co-owners of the San Mateo US101 Express Lanes**

Ms. Chan reported that legal counsel for both TA and C/CAG collaborated on the Draft JPA framework as included in the meeting packet. TA Legal Counsel Joan Cassman reported the Draft JPA framework was based on the Joint Ad Hoc's direction from past meetings. As previously agreed by the Joint Ad Hoc, the JPA Board will include 6 members, 3 each from the TA and C/CAG Boards, with a consideration given to geographic representation. A minimum of 5 board members must be present to take action. Four affirmative votes are required for a motion to pass. A supermajority is required to pass important and significant decision such as how revenues will be spent. Supermajority is defined as a majority of the C/CAG representatives representing a majority of the County population and a majority of the TA representatives. Officers will be alternating each year, that is, the chairperson will come from the TA one year and from C/CAG another year. There is no call for alternate members. The Draft JPA framework does not yet include staffing, which was addressed in the staff report.

Member Aguirre asked if the proposed 1-year term for JPA directors was a committee decision, to which Ms. Cassman answered no. Member Horsley agreed a 2-year term would be appropriate. Committee members agreed there should be no term limits. Members can be reappointed by their respective boards. Member Aguirre asked what would happen to the Ad Hoc members. Member Horsley stated that it would make sense that the initial appointed board members be the Ad Hoc members.

C/CAG Legal Counsel Matt Sanders pointed out this Draft JPA framework is expansive enough to cover future express lanes should any be built.

Member Papan pointed out that the power to receive toll and other revenues is missing from the "Powers" section of the Draft JPA. Legal counsel agreed to clarify that in the revised draft. Member Papan asked that for each item in the "Purpose" section, there should be a corresponding item in the "Powers" section. She also mentioned the supermajority vote required if the JPA is assumed by a successor agency was not mentioned in the voting section.

Member Horsley motioned, Member Freschet seconded, to approve the Draft JPA framework, subject to changes based on staffing decisions, for San Mateo County Transportation Authority and City/County Association of Governments of San Mateo County as co-owners of the San Mateo US 101 Express Lanes, as presented by staff and including changing directors' terms to two years; modifying the powers section to more

completely reflect all of the elements of the purpose statements; making clear the JPA has power to receive toll and other revenues; and adding language on the voting requirement for dissolution and succession to the section specific to voting.

Public member Drew commented that if the JPA is to be dissolved, succeeded by another entity, or merged with BAIFA, such decision should require going back to the two boards [TA Board and C/CAG Board] instead of the JPA making that decision on its own. He further commented if the JPA is to take a loan of up to \$100 million, it should make loan payments a priority when making its spending decisions, such of 50% of net revenue should be for loan payments.

**Staffing:**

For background information, Ms. Chan provided a description on current TA as well as Caltrain JPB staffing models. C/CAG Executive Director Sandy Wong provided a description on C/CAG's current staffing model.

The staff report presented two potential staffing models for the Committee's consideration. Ms. Wong mentioned while the staff report recommendation is for the committee to approve a staffing model, there is time for the committee to have another meeting, if more time is needed before a final recommendation is made.

Model 1 – San Mateo County Transit District serves as Managing Agency.  
Model 2 – Independent Executive Director for US 101 EL JPA.

Member Aguirre asked whether the recommendation was made jointly. To that, staff responded that Model 1 was proposed by TA staff, Model 2 was proposed by C/CAG staff.

After Ms. Chan and Ms. Wong described the details of Models 1 and 2, discussion on each model's pros and cons, efficiency, equality, JPA independence, financial accountability, etc. ensued.

Member Horsley asked what was the most important issue to C/CAG Board members? Ms. Wong explained that it was expressed that it was equity between the two agencies and fairness in partnership.

Member Horsley stated that from his perspective the TA has all the risk in financing the project. While he did understand the concept of an independent Executive Director (ED), he wasn't sure there would be money available for the staffing initially. He said that, in his view, contracting would add cost.

Ms. Wong stated that she understands that the TA has a lot of the initial financial risk but in her view the TA would be like a banker. There will be agreements drawn up that have the terms on loan pay-back but the bank doesn't necessary need to run the

project. Also, all the staffing, whether it is incremental or not, will have to be paid for regardless of if it comes from C/CAG, SamTrans, TA, or an outside contractor.

Member Horsley asked if there was some way to address C/CAG's concerns about control within the context of the TA's potential management of the project. He feels that contracting with different entities seems overly complex.

Member Kim said that there are really three concepts at play. One is that TA runs everything. Second is that C/CAG runs everything. The third is the middle ground. Member Kim said that he supports that middle ground. He said that back in December when the boards voted on separate options he was skeptical that the two boards could really work together but was surprised at how well the Ad Hoc came to a solution. He said that he took to heart what member Beach said at the first Ad Hoc meetings, that there may have been a perception that the TA wanted to take more power but that among the Ad Hoc they would strive for equality going forward with this project. He feels that the second staffing model is fulfilling the commitment to having an equitable share in the day-to-day staffing of the agency with a balanced board. Member Kim said there is way to work it out. For the day-to-day contracting, legal, and similar work, that could be done by the TA or San Carlos. For the professional services, no agency has that sort of expertise currently sitting on their staff. This would have to be separately hired for. This should be a dedicated person dedicated to the JPA. He noted that everyone who spoke up at the last C/CAG Board meeting agreed that this top-level staffing should be independent.

Member Aguirre was hoping for an option that didn't pit one organization against the other. She is hoping for another option that reflects the principles discussed earlier. She is uncomfortable choosing one of the models currently.

Member Freschet asked about how much work it would be to hire an ED from an efficiency standpoint. Would a full time ED be needed, or could it be part time? How much day-to-day work would be involved? Ms. Wong pointed to a page in the staff report indicating that the ED would be hands on. Mr. Hartnett pointed out that there are a variety of skills that would be provided part time by various people.

Member Beach stated that governance appears to be structured evenly. Now we are facing how staff implements that vision. There will be some expertise that will need to be hired. She believes that for an agency like C/CAG an independent ED is very necessary, but the JPA ED's job would be to represent the interests of C/CAG and TA. She believes even if there was an independent ED, it would still require a convening of TA and C/CAG staff. She thinks that careful thought should be given about hiring staff, what expertise and skills are needed, and what the role should be.

Member Kim said that he felt that was an important question. There is not a lot of precedence for two agencies to co-own a facility like this. One person won't juggle all the balls, the person will interface with BAIFA and oversee the financials and contracts.



It is likely one to two people who need to be in sync with TA's staff and C/CAG's staff. This ED would be accountable to the JPA, not to Mr. Hartnett or Ms. Wong.

Member Horsley stated that the representation from an equal board is much better than one seat on BAIFA. He also thinks that the way the Caltrain JPB is staffed is a good example of other agencies working together. He thinks this is unique but not unprecedented.

Member Aguirre stated that there are examples of merged staff that were painful at the beginning but are working well together now such as MTC and ABAG. She doesn't think the committee should micromanage and say what the actual staff should be, and their input should be limited to policy decisions. TA and C/CAG staff should determine the staffing needs until the project is completed. She has heard that there are many assets in each agency and the question is to figure out how to use them.

Member Papan thinks that the ED would serve as a quarterback drawing from the resources of various agencies. She asked if this is what member Aguirre was referring to? Member Aguirre and Ms. Wong concurred.

Member Freschet thinks there are merits to both models but one concern she has is that she doesn't feel that staff, regardless of who they report to, would not have allegiance to the JPA and for expedience reasons she would think the TA would be the easier way to go. She suggested to go with model one and if it becomes a concern they could relook at staffing. She has confidence in Ms. Wong and Mr. Hartnett to provide some oversight to the staffing, and thinks this model would be provide a more timely solution; since bringing new people on board and bringing them up to speed can take time.

Member Horsley asked if either model would still need a Project Manager (PM)? Ms. Wong said that she envisions that the ED could be the acting PM initially. Currently Ms. Chan and Ms. Wong are acting in that capacity. That can continue until a new PM is in place. TA staff said that under model 1 the TA would propose bringing someone on board. Initially, it may be a consultant to be replaced by a permanent staff. Alameda CTC has a dedicated person whose expertise is in tolling policy and express lane operations. Ms. Chan wanted to speak to allegiance of staff. She said, for example, Joe Hurley's first allegiance is 100% for the TA, and whenever she is working for a topic for an agency, her allegiance is to that agency. Mr. Hartnett joined in by saying that they have a chief officer for rail who is a SamTrans employee who works 100% for Caltrain and provides all the reporting to the Board on Caltrain issues.

Member Kim thinks they are on the same page. With the managed lane project at LA Metro, they hired a person to manage the project. Stefanie Wiggins was the quarterback. She is not a low-level admin person.

Public comment – Marie Chuang, council member from the Town of Hillsborough and vice chair of C/CAG. The Central County Fire Department is formed by Hillsborough

and Burlingame with two members from each jurisdiction on the board. The Chief Admin Officer (CAO) is a city manager who alternates on two-year terms between the Town manager of Hillsborough and City Manager of Burlingame. They nominate the chair from one city who serves a two-year term. The CAO is then the city manager from the other city. It swaps every two years. This JPA has been in existence for 14 years and has worked very well. Mr. Hartnett mentioned he likes the idea.

Member Beach thinks there is good input, and she requested that staff go back and figure out who is that quarterback and where is the need at this point. It appears to her that it is a technical expert in how to operationally manage the lanes, and the question is how to get that person. Maybe there is a hybrid ED committee or alternating director and employees. Where is the best place and most efficient place to get the others? The agencies owe it to the tax payers to be as efficient as we can and still get the expertise. At the end of the day we are doing this to maximize revenue to come back to the corridor to build out the corridor or establish equity programs. We need to be thoughtful about what we need most.

Member Aguirre asked if staff has enough input and direction for the next meeting. Mr. Hartnett stated that it was helpful and would take another meeting for staff to come up with recommendations and account for suggestions. Timing wise, the Boards would need to act in April for May submission of an application to the CTC. If the Joint Ad Hoc could have another meeting before the April Board meeting, that would work for the schedule.

Another Ad Hoc Committee meeting was scheduled for March 22, 2019, at the County Center.

There may be a CASA meeting in that morning but it should work after that meeting at 10:00am.

### **Public Comment**

None.

### **ADJOURN**

The meeting adjourned at 11:50 am.



**AGENDA ITEM #3  
MARCH 22, 2019**

## Memorandum

**Date:** March 22, 2019

**To:** Joint Ad Hoc Committee

**Through:** Jim Hartnett  
Executive Director

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

**Subject:** Continued Discussion and Potential Action on the Staff Model for the Express Lanes Joint Powers Agency and Related Joint Powers Agreement Between the San Mateo County Transportation Authority and City/County Association of Governments of San Mateo County

### Action

Staff recommends the Joint Ad Hoc Committee accept revisions made by staff of the San Mateo County Transportation Authority (TA) and the City/County Association of Governments of San Mateo County (C/CAG) to the Joint Exercise of Powers Agreement (JEPA), which the Committee approved at its March 1, 2019, meeting, and recommend the JEPA for approval by the TA and C/CAG Boards of Directors, with the understanding that further revisions to the JEPA are still required to reflect the staffing model that will be further discussed and agreed to at the March 22, 2019 meeting or possible subsequent meetings.

### Significance

The two Boards will need to approve a JEPA to outline, among other things, the organization, governance, functions, powers, and staffing model of the Joint Powers Agency (JPA). In order to stay on track to submit a timely application to the California Transportation Commission (CTC) as a JPA to be the tolling authority for the San Mateo 101 Express Lanes, it is recommended that the Joint Ad Hoc Committee recommend a proposed JEPA that addresses these issues, so the two Boards can take action at their respective April 2019 meetings.

### **Discussion**

At its March 1, 2019, meeting, the Joint Ad Hoc Committee approved the draft JEPA with certain revisions. TA and C/CAG Legal Counsel have prepared an updated draft JEPA for the Joint Ad Hoc Committee's consideration reflecting the comments received at the March 1, 2019 meeting. The updated draft JEPA is included as Attachment A.

Revisions reflecting comments received at the March 1, 2019 meeting are as follows:

- Ensure the joint powers listed in Sections 2 and 3 are consistent (pp. 4 to 5);
- Clarify that the JPA's powers to seek, receive, and administer funds include toll and any other revenues (p. 5);
- Clarify the JPA's ability to acquire Joint Facilities (p.6);
- Revise JPA board members' term to two calendar years (p.8);
- Clarify voting actions required prior to dissolution (p.10)

Further edits that were added since the March 1, 2019 meeting include the following:

- Section 3.3: C/CAG voting requirements to dissolve the JPA or enter into an agreement with a successor entity (to mirror C/CAG's special voting procedures) (p.7);
- Section 4.7: clarification of duties of the Auditor/Controller and Treasurer (p. 10)

As discussed at the March 1, 2019 Joint Ad Hoc Committee, the JPA will require staffing to support its work and to assist in the oversight of the Bay Area Infrastructure Financing Authority (BAIFA) contract. Staff will be bringing recommendations for the Joint Ad Hoc Committee consideration at the March 22, 2019 meeting.

**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 1992 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.

“Interest and redemption expenses” means those sums of money required to be expended by the Express Lanes JPA from any Indebtedness for the payment of principal of and interest on Indebtedness (if any) issued pursuant to this Agreement.

“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 4.8 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.

“Express Lanes Operations Contract” means a contract between the Express Lanes JPA and BAIFA for operating the high-occupancy toll lanes or other toll facilities, including the administration and operation of the value pricing program.

“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 4.7 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;

(b) Collect toll and any other revenues generated by the Joint Facilities;

~~(b)~~(c) Implement the financing, acquisition, and construction of additions and improvements to the Joint Facilities;

~~(e)~~(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 May 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) ~~To~~ 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 ~~two-thirds (2/3)~~ a majority of its Board of Directors and only when the members voting in favor of such action represent ~~two-thirds (2/3)~~ a majority of the population of the County.

*[This change is proposed by staff and is in addition to the changes requested by the committee.](#)*

(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 ~~two-thirds (2/3)~~ majority vote of the C/CAG Board of Directors and only when the members voting in favor of such action represent ~~two-thirds (2/3)~~ a majority of the population of the County, and (iii) a super majority (five (5) votes) of the Express Lanes JPA Board of Directors.

*[This change is proposed by staff and is in addition to the changes requested by the committee.](#)*

## 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 ~~one~~ two calendar 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 Managed Lane 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 [REDACTED], or at such other place designated by the Board if notice is provided in the manner of notice of an adjourned 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 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. Auditor/Controller and Treasurer. The \_\_\_\_\_ [is / are hereby respectively] designated 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 Board may appoint other persons possessing the qualifications set forth in Section 6505.5 of the Act to either or both of these offices with the approval of all Members. 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.

*This change is proposed by staff and is in addition to the changes requested by the committee.*

Section 4.8. [[STAFFING – include reference to California Streets & Highways Code section 149.7 responsibilities, e.g., administrative cost 3% limitation]]

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. Principal Office. The principal office of the Express Lanes JPA will initially be [REDACTED]. The Express Lanes JPA may establish another principal office from time to time by resolution of the Board.

Section 5.2. 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 5.3. 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 5.4. 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 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.