



Bay Area Infrastructure Financing Authority
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Memorandum

TO: BAIFA

DATE: April 10, 2013

FR: Executive Director

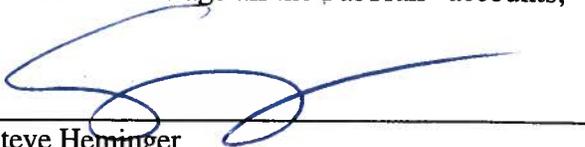
W. I. 1236

RE: BAIFA Resolution No. 4 – Cooperative Agreement with MTC for Express Lanes

Staff recommends BAIFA approve Resolution No. 4. This resolution authorizes staff to enter into a cooperative agreement with MTC through which MTC delegates authority to BAIFA to develop and operate the 270-mile Regional Express Lane Network (Network) that CTC found eligible for implementation in October 2011 (Attachment 1). This action completes the steps needed for BAIFA to assume governance of the Network, as outlined in Attachment 2.

With this action, BAIFA agrees to take on responsibility for a range of policy decisions ranging from deciding which projects get built first to what toll rates are charged on BAIFA's Network, as listed in Attachment 3. The draft cooperative agreement also allows BAIFA to secure funds for the Network. This includes taking actions that may be determined advisable as related to bonding and tolling authority for the Network. As such, BAIFA could act as the project sponsor in applications to bonding the California Transportation Financing Authority (CTFA) related to bonding and tolling. CTFA was created by the Legislature in 2009 (AB 798) to enhance the public sector's ability to construct and finance transportation projects including express lanes. Alternatively, BAIFA could pursue other avenues related to bonding and tolling authority including legislative or judicial actions such as a validation action.

At a later date, staff anticipates BAIFA will execute a cooperative agreement with BATA for services related to the toll system. At a minimum, BATA will manage all the FasTrak[®] accounts, as required by state law.



Steve Heminger

Attachments

1. Map of the Regional Express Lane Network
2. Actions for BATA, MTC and Bay Area Infrastructure Financing Authority (BAIFA) and Associated Timeline
3. Policy Decisions and Responsibilities Associated with the MTC Network: Development, Operations and Financing Regional Express Lane Network
4. BAIFA Resolution No. 4 - Authorization to enter into agreement with MTC for Toll Lanes Project
5. Draft Cooperative Agreement between BAIFA and MTC relating to Toll Lanes

SH:LK

Attachment 2

**Actions for BATA, MTC and Bay Area Infrastructure Financing Authority (BAIFA)
and Associated Timeline**

1. BATA & MTC Information Item (COMPLETE)

February 13, 2013 BATA Oversight & MTC Administration Committees

Staff presented for information its recommendation that MTC and BATA amend the BAIFA board membership and that MTC would, through a cooperative agreement, assign to BAIFA responsibility to develop and implement the 270-mile Express Lane Network (Network).

2. BATA and MTC modify BAIFA's governing board (COMPLETE)

March 6, 2013 BATA Oversight & MTC Administration Committees

March 27, 2013 BATA and MTC

Modify BAIFA's governing board in the BAIFA Joint Exercise of Powers Agreement by revising BATA Resolution No. 70 and MTC Resolution No. 3769.

3. MTC authorizes a cooperative agreement with BAIFA for the development, operation and financing of the Network (COMPLETE)

March 6, 2013 MTC Administration Committee

March 27, 2013 MTC

Authorize a cooperative agreement between MTC and BAIFA under which MTC will delegate MTC's authority to BAIFA to develop, procure, install, maintain, finance and operate the Network thereby allowing BAIFA to take all steps necessary to provide funds for the Network. (As per the CTC's 2011 action, this includes administration and operation of a toll-based value pricing program.)

4. BAIFA authorizes the cooperative agreement with MTC and revises governing rules

April 24, 2013 BAIFA

Authorize a cooperative agreement between MTC and BAIFA under which BAIFA would assume responsibility for developing, procuring, installing, maintaining, operating and financing the Regional Express Lane Network (Attachments 3 and 4).

Attachment 3

Policy Decisions and Responsibilities Associated with the Network: Development, Operation and Financing Regional Express Lane Network

- 1. Approve phasing and financing plans**
 - Determine the order in which portions of the Network will be implemented and the manner and timing in which they will be funded.
- 2. Adopt business rules and tolling, and operating policies**
 - Establish toll collection methods.
 - Establish violation procedures and penalties.
 - Set hours of operation.
 - Establish toll rates and requirement for toll-free travel (HOV2 or HOV3+).
- 3. Design, procure, install and construct the express lanes and toll system**
 - Secure all necessary environmental clearances, permits and project approvals for improvements to the roadway as well as implementation of the toll system.
 - Contract with consultants and vendors for design, installation and construction of the roadway and toll system elements, which may involve modifications to roadways and structures, installation of signs and electronic toll collection equipment, and development of toll collection software.
 - Potentially, enter into public-private partnerships for delivery of some parts of the Network.
- 4. Operate and maintain the express lanes and associated toll system**
 - Ensure the day to day operations of the toll system, including customer education and response to customer inquiries and concerns.
 - Contract with BATA for distribution of toll tags, account management and billing and with the California Highway Patrol for enforcement, as required by statute.
 - Ensure the express lane roadway features, signs, toll equipment and software are maintained and replaced as needed.
 - Enter into agreements with other agencies, and potentially into public-private partnerships for delivery of some express lane operations and maintenance.
 - As per the CTC's 2011 action, this includes administration and operation of a toll-based value pricing program.
- 5. Take all actions necessary to secure funds to develop, procure, install, construct, operate and maintain the project**
 - Potentially, submit an application to the California Transportation Financing Authority (CTFA) for bonding and/or tolling authority for the Network.
 - Potentially, pursue legislative or judicial actions to obtain or confirm bonding and/or tolling authority. This may include validation through the courts of tolling authority conferred through the October 2011 CTC finding.

Date: April 24, 2013
W.I.: 1236

ABSTRACT

BAIFA Resolution No. 4

This resolution authorizes the Executive Director and each Deputy Executive Director to negotiate and enter into agreements for BAIFA to develop and operate the Bay Area Regional Express Lane Network and to apply for bonding and tolling authority from the California Transportation Financing Authority or take such other actions as are desirable to facilitate bonding and tolling authority.

Discussion of this action is contained in the Executive Director's Memorandum, dated April 10, 2013.

Date: April 24, 2013
W.I.: 1236

Re: Bay Area Express Lane Network

BAY AREA INFRASTRUCTURE FINANCING AUTHORITY
RESOLUTION NO. 4

WHEREAS, the Metropolitan Transportation Commission (“MTC”) has been authorized by the State of California to develop and operate high-occupancy toll lane facilities constituting the Bay Area Express Lane Network (“Project”) pursuant to California Streets and Highways Code section 149.7 (“Express Lanes Statute”); and

WHEREAS, the Bay Area Infrastructure Financing Authority (“BAIFA”) is authorized by the Joint Exercise of Powers Agreement between MTC and the Bay Area Toll Authority (“BATA”) dated as of August 1, 2006, as amended, to develop and operate high-occupancy toll lane facilities pursuant to the Express Lanes Statute; and

WHEREAS, BAIFA proposes to enter into an agreement with MTC to develop and operate the Project; and

WHEREAS, BAIFA proposes to facilitate bonding and tolling authority for the Project with the California Transportation Financing Authority (“CTFA”) pursuant to the California Transportation Financing Authority Act (“CTFA Act”) and to finance and refinance the Project pursuant to the CTFA Act, the California Joint Exercise of Powers Act (“Joint Powers Act”) under which BAIFA was created, and other laws, or alternatively to pursue legislative and/or judicial action to facilitate bonding and tolling authority and to finance and refinance the Project pursuant to such action, the Joint Powers Act and other laws; and

WHEREAS, BAIFA reasonably expects bonds or other obligations in an aggregate principal amount of three billion two hundred million dollars will be issued for the Project and that proceeds of such bonds and other obligations will be used to reimburse certain Project-related expenditures (“Reimbursement Expenditures”) that may be incurred prior to the issuance of such bonds or other obligations; and

WHEREAS, Section 1.150-2 of U.S. Treasury Regulations (the "Treasury Regulations") requires BAIFA to declare its reasonable intent to reimburse prior expenditures for the Project with proceeds of a subsequent borrowing; and

WHEREAS, all acts, conditions and things required by the Constitution and the laws of the State of California to exist, to have happened and to have been performed in connection with the execution of the agreement referred to above and the other actions contemplated hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and BAIFA is now duly authorized and empowered, pursuant to each and every requirement of law, to enter into such agreement and take such actions; now, therefore, be it

RESOLVED, that BAIFA specifically finds and declares that the statements, findings and determinations of BAIFA set forth in the preambles above are true and correct; and be it further

RESOLVED, that BAIFA authorizes the Executive Director of BAIFA and each Deputy Executive Director of BAIFA, and each of them (each, an "Authorized Representative"), to negotiate, execute and deliver, for and on behalf of BAIFA, the Cooperative Agreement with MTC in substantially the form on file with the Secretary of BAIFA, with such revisions as the Authorized Representative executing the same, with the advice of the General Counsel to BAIFA, may approve, such approval to be conclusively evidenced by the execution of the agreement in final form; and be it further

RESOLVED, that each Authorized Representative is hereby authorized to take all necessary and appropriate actions to facilitate for BAIFA bonding and tolling authority for the Project with the CTFA pursuant to the CTFA Act, or in the alternative pursue legislative and or judicial action to facilitate BAIFA bonding and tolling authority; and be it further

RESOLVED, that solely for purposes of establishing compliance with the requirements of Section 1.150-2 of the Treasury Regulations, the Authority hereby declares its official intent to use proceeds of additional series of bonds and other obligations to reimburse itself for the Reimbursement Expenditures; and be it further

RESOLVED, that the officers and agents of BAIFA are hereby authorized and directed to take all further actions necessary and convenient to accomplish the purposes of this resolution; and be it further

RESOLVED, that this Resolution shall take effect from and after its adoption.

BAY AREA INFRASTRUCTURE FINANCING AUTHORITY



Amy Rein Worth, Chair

The above resolution was entered into by the Bay Area Infrastructure Financing Authority at a special meeting of BAIFA held in Oakland, California, on April 24, 2013.

**COOPERATIVE AGREEMENT BETWEEN
BAY AREA INFRASTRUCTURE FINANCING AUTHORITY AND
METROPOLITAN TRANSPORTATION COMMISSION
RELATING TO TOLL LANES**

This Agreement is made, entered into, and effective on April 24, 2013, between the Bay Area Infrastructure Financing Authority ("BAIFA") and the Metropolitan Transportation Commission ("MTC").

RECITALS

Pursuant to California Transportation Commission ("CTC") actions taken in 2011, CTC has found the development and operation of the toll lanes project described in the "Bay Area Express Lanes Public Partnership Application for High Occupancy Toll Lanes" to CTC dated September 28, 2011 ("Toll Lanes Project") to be eligible under Section 149.7 of the California Streets and Highways Code, and such CTC actions further authorized MTC and/or BAIFA, each as a regional transportation agency (as defined in Section 143 of the California Streets and Highways Code), to develop and operate the Toll Lanes Project pursuant to Section 149.7.

The authority to develop and operate the Toll Lanes Project includes authority to administer and operate a toll-based value pricing program for the Toll Lanes Project.

This Agreement sets forth the terms and conditions under which MTC and BAIFA agree that BAIFA will develop and operate the Toll Lanes Project.

No debt, obligation or liability of BAIFA shall by virtue of this Agreement constitute a debt, obligation or liability of MTC or the Bay Area Toll Authority ("BATA").

BAIFA AGREES

1. To develop and operate the Toll Lanes Project in compliance with all applicable California and federal laws, including all applicable environmental laws.
2. To administer and operate a value pricing program for the Toll Lanes Project that includes imposing and collecting tolls on users of the Toll Lanes Project (other than users exempted by law or BAIFA policy from paying tolls).
3. To provide, by borrowing, imposition and collection of tolls, contributions from its members or other means, all funds necessary to develop, procure, install, maintain and operate the Toll Lanes Project.
4. To obtain, in cooperation with MTC, any governmental approvals, consents, or documents that are necessary or appropriate for the Toll Lanes Project, and to receive assignment from, or otherwise act as successor to, MTC under any existing contracts or agreements relating to the Toll Lanes Project.
5. To contract with BATA for the FasTrak® electronic toll collection system for the Toll Lanes Project and to coordinate with MTC and BATA to maintain

continuity of management of the Toll Lanes Project and the Bay Area bridges under the jurisdiction of MTC and BATA.

6. To procure or provide adequate insurance against its tort liability and name MTC and BATA as additional insureds.
7. To indemnify, defend and hold harmless MTC and BATA and their respective commissioners, directors, officers, agents and employees from any and all claims which arise out of the development, procurement, installation, operation, maintenance, or financing of the Toll Lanes Project; provided that such amounts shall be payable solely from toll revenues derived from the Toll Lanes Project or other funds (including proceeds of insurance or the sale of Toll Lanes Project assets) available for Toll Lanes Project purposes

MTC AGREES

1. That BAIFA shall develop and operate the Toll Lanes Project, including by administration and operation of a value pricing program for the Toll Lanes Project that includes imposing and collecting tolls on users of the Toll Lanes Project (other than users exempted by law or BAIFA policy from paying tolls), and it hereby delegates to BAIFA such powers as are necessary for BAIFA to carry out its obligations under this Agreement and consents to BAIFA's taking all necessary or convenient actions for such purposes.
2. That BAIFA is directed to and has the consent of MTC to take any and all actions necessary or convenient in its sole discretion to provide funds necessary to develop, procure, install, operate, and maintain the Toll Lanes Project, including, without limitation, by issuing, or seeking the issuance by another entity of, bonds, contracts, obligations, and evidences of indebtedness to finance the Toll Lanes Project (and in that regard MTC consents to BAIFA serving as project sponsor for the Toll Lanes Project under the California Transportation Financing Act).
3. To cooperate with BAIFA in obtaining any governmental approvals, consents, or documents that are necessary or appropriate for the Toll Lanes Project, and to assign to BAIFA or otherwise take action to render BAIFA successor to MTC under any existing contracts or agreements relating to the Toll Lanes Project.

GENERAL PROVISIONS APPLICABLE TO MTC AND BAIFA

1. This Agreement shall remain in effect until the later of the date on which it is terminated by mutual agreement of the parties hereto or the date when BAIFA no longer has outstanding any bonds, notes or other obligations related to the Toll Lanes Project.
2. Upon termination of this Agreement pursuant to General Provision 1 above, MTC shall succeed to all rights and obligations of BAIFA hereunder and under agreements with other parties pertaining to the Toll Lanes Project, including BATA.

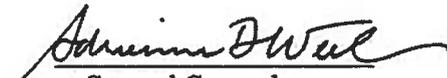
3. Except as specifically provided herein or in any financing document entered into in connection with the Toll Lanes Project, nothing in this Agreement is intended to create duties or obligations to or rights in third parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.

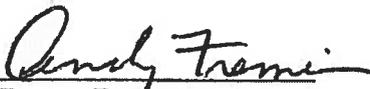
METROPOLITAN TRANSPORTATION
COMMISSION

By 
Executive Director

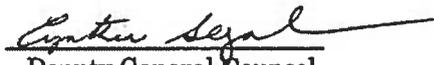
APPROVED AS TO FORM


General Counsel

BAY AREA INFRASTRUCTURE FINANCING
AUTHORITY

By 
Deputy Executive Director

APPROVED AS TO FORM


Deputy General Counsel