

AGENDA

Meeting of the Board of Directors

Location: City of Rancho Cordova City Hall
2729 Prospect Park Drive
Rancho Cordova, CA

Date: Friday, October 10, 2014, 8:30 a.m. to 10:30 a.m.

Members of the public may comment on any item on the agenda at the time that it is taken up by the Board. We ask that members of the public complete Speaker Card, submit it to the Clerk of the Board, and keep their remarks brief. If several persons wish to address the Board on a single item, the Chair may impose a time limit on individual remarks at the beginning of the discussion.

Call to Order / Roll Call

Directors Hume, Mikulaco, Nottoli, Sander, Starsky

Pledge of Allegiance

Public Comments on Non-Agenda Items

Any person wishing to address the Board on any item not on the agenda may do so at this time. After ten minutes of testimony, any additional testimony may be heard following the New Business Items. Note, under the provisions of the California Government Code, the Board is prohibited from discussing or taking action on any item not on the agenda.

1. Executive Director's Report

Consent Agenda

2. Minutes of August 22, 2014, Board Meeting
3. Authorize Executive Director to Execute Program Supplement Agreement with the State of California Department of Transportation
 - a. Staff Report
 - b. Resolution
 - c. Agreement
4. Authorization to Release a Request for Proposals for Preliminary Engineering and Environmental Review for Segments D3/E1
 - a. Staff Report

5. Introduction of Right of Way and Utilities Sections in Project Design Guidelines
 - a. Staff Report
 - b. Draft Sections

New Business Items

6. Update on Alternative Delivery Method Analysis
 - a. Staff Report

7. Adjournment

The Board may take action on any matter, however listed on this agenda, and whether or not listed on this agenda, to the extent permitted by applicable law. Staff Reports are subject to change without prior notice.

If requested, this agenda can be made available in appropriate alternative formats to persons with disabilities, as required by Section 202 of the Americans with Disabilities Act of 1990 and the Federal Rules and Regulations adopted in implementation thereof. Persons seeking an alternative format should contact the Board Secretary for further information.

A person with a disability, who requires a modification or accommodation, including auxiliary aids or services, in order to participate in a public meeting, should telephone or otherwise contact the Board Secretary as soon as possible. The Board Secretary may be reached at 10640 Mather Blvd., Suite 120, Mather, CA 95655 or by telephone at 916-876-9094.

Capital SouthEast Connector Board of Directors

Item # 1
Receive and File

October 10, 2014

Executive Director's Report

Issue: An Executive Director's report is filed every month on current JPA activities

Recommendation: Receive and File

Discussion: The following is a brief status report on some of the more significant issues and activities currently being pursued by the Connector JPA staff.

Administrative

- Staff apologizes for any stakeholder inconvenience associated with the "hacking" of the JPA website in late August. The site was restored with considerable efforts by the outreach team and steps have been taken to deter future intrusions.
- As reported at the last JPA Board meeting, there is no alternate currently appointed to the JPA Board for El Dorado County due to the Board of Supervisor vacancy in District 2. Since the JPA charter requires both primary and alternative representation from all member jurisdictions, staff will be requesting that an alternate be appointed during the annual appointment process at the beginning of 2015.
- It is expected that Director Sander will not be available for today's meeting.

Project

- On August 26th, the City of Folsom City Council approved modifications to the Folsom Plan Area Specific Plan to better reflect the Connector Project along White Rock Road, consistent with the recent Sacramento County General Plan Amendment.
- Staff continues to meet with staff in the City of Rancho Cordova in an effort to schedule a General Plan amendment hearing for their portion of the project. Staff is working towards resolution of several detailed areas of interest before scheduling the hearing.
- Staff has begun to meet with staff in the City of Elk Grove in an effort to schedule a General Plan amendment hearing for their portion of the project. No City Council hearing date has yet to be proposed.
- Staff anticipates the release of the Notice of Preparation (NOP) for the Segments A1 & A2 – the Kammerer Road portion of the Connector – by the County of Sacramento later this month. The NOP advises key stakeholders of the upcoming preparation of a State and Federal Environmental Impact Report/Study for this portion of the project. JPA staff has requested an administrative draft copy of the NOP prior to release to ensure constancy with Connector approved documentation to avoid

stakeholder confusion and policy consistency. Staff will keep the Board apprised of any noteworthy activity during this process.

Fiscal

- Invoices for the FY 2014-15 local contributions of \$10K have been mailed to each of the member jurisdictions. To date, payment has been received from the County of Sacramento and the Cities of Folsom, Rancho Cordova and Elk Grove. The JPA appreciates the promptness of their response. The contribution from the County of El Dorado has been submitted for processing and payment is expected shortly.

Media

- There are no media items of significance to report

Miscellaneous

- An informational brochure for the Folsom/El Dorado D3/E1 segment as well as an updated overall project brochure are now available.
- Staff will be participating in a breakfast forum intended to address the economic benefits of the Connector and other major transportation projects on October 17th.
- The administrative draft of the South Sacramento Habitat Conservation Plan (SSHCP) has been released to the plan partners for review. Once this review is complete, it will be introduced to key stakeholders as part of the planned outreach program. Eventually, the plan will be broadly distributed prior to the release of the draft environmental documentation in early 2015.

Respectfully Submitted,



Tom Zlotkowski
Executive Director

Capital SouthEast Connector Board of Directors

Item # 2
Receive and File

October 10, 2014

Action Minutes of the August 22, 2014, Meeting

The Capital SouthEast Connector Authority's Board of Directors met in regular session on August 22, 2014, in the Rancho Cordova Council Chambers, located at 2729 Prospect Park Drive, Rancho Cordova, CA.

Call to Order: Director Nottoli called the meeting to order at 8:32 a.m.

Roll Call: Present: Directors Hume, Mikulaco, Nottoli,* Starsky, and Sander
*Director Nottoli excused himself from the meeting after Item 5, as noted below.

Item #1: Executive Director's Report

Mr. Zlotkowski, the Executive Director of the Authority, summarized his Executive Director's Report. Highlights included: reminding the Board of Directors and all meeting attendees that the September Board meeting is cancelled and the next regularly scheduled Board meeting is October 10th; the final JPA adjusted year-end budget came in at 76% of the total budget; work is progressing on the development of a Request for Proposal for the D3/E1 segment of the project in support of the Project Segmentation Strategy, and is anticipated to be released in October, 2014; on August 26th, the City of Folsom City Council is scheduled to hear an item to amend the Folsom Plan Area Specific Plan to better reflect the Connector Project along White Rock Road; and on August 14th, CTC Commissioner Jim Earp, Mayor Howell from Folsom, and Supervisor MacGlashan from Sacramento County attended a bus tour of the Connector alignment.

Consent Agenda

The Consent Agenda included Item #2: Minutes of July 11, 2014, Board Meeting. The Consent Agenda was moved by Director Nottoli, seconded by Director Hume, and passed by unanimous vote that:

THE CAPITAL SOUTHEAST CONNECTOR AUTHORITY BOARD OF DIRECTORS APPROVES THE FOLLOWING ITEM FROM THE CONSENT AGENDA: (1) MINUTES OF THE JULY 11, 2014, MEETING.

No public comment was received on the Consent Agenda.

New Business Items

Item #3: Project Segmentation Strategy

Mr. Zlotkowski introduced the Project Segmentation Strategy and reminded the Board that this was a continuation of last month's item but with the requested modifications. Mr. Zlotkowski then introduced the JPA's Project Manager, Derek Minnema, who discussed the most current Project Segmentation Strategy and timeline of all segments. A brief discussion ensued.

A Motion was made by Director Hume to approve the Project Segmentation Strategy. The Motion was seconded by Director Starsky and passed unanimously.

Item #4: Introduction of the Annual Updates to the Plan of Finance and Project Design Guidelines

Mr. Zlotkowski introduced the annual update to the Plan of Finance and Project Design Guidelines. Discussion ensued.

A Motion was made by Director Starsky to direct staff to work with member jurisdiction staff and interested parties, on updating the Plan of Finance and Project Design Guidelines. The Motion was seconded by Director Hume and passed unanimously.

Item #5: Right of Way Manual – Utilities Framework

Mr. Zlotkowski introduced the JPAs consultant, Theron Roschen of Quincy Engineering, who presented this item. A short discussion ensued. This was an informational item only.

*Director Nottoli excused himself from the meeting prior to the start of item 6.

Item #6: Update on Governmental Relations

Mr. Zlotkowski introduced the JPAs consultant, DJ Smith of Smith, Watts and Martinez, LLC who presented this item. A short discussion ensued. This was an informational item only.

Item #7: Update on the South Sacramento Habitat Conservation Plan (SSHCP)

Mr. Zlotkowski introduced Bill Ziebron, a representative of the South Sacramento Habitat Conservation Plan, who presented this item. A short discussion ensued. This was an informational item only.

Adjournment: The meeting adjourned at 10:30 a.m.

Approved By:

Attest:

Director Nottoli
Chair of the Board

Tom Zlotkowski
Board Secretary

Capital SouthEast Connector Board of Directors

Item # 3
Resolution

October 10, 2014

Authorize the Executive Director to enter into a Program Supplement Agreement with the State of California Department of Transportation to allow the JPA to invoice all Segment D2 expenditures

Issue: As a condition of receiving federal funds, the JPA must enter into a Program Supplement Agreement which will allow the JPA to invoice Caltrans for all Segment D2 expenditures.

Recommendation: Staff recommends the Board approve the attached resolution authorizing the Executive Director to execute a Program Supplement Agreement with Caltrans to allow the JPA to invoice Caltrans for all Segment D2 expenditures.

Background: In October 2013, staff contacted Caltrans and initiated the process for obtaining a Master Agreement with Caltrans. The Master Agreement will allow for the disbursement of federal funds directly to the JPA and must be executed prior to the JPA receiving any federal funding.

In July 2014, the Board approved a resolution authorizing the Executive Director to execute a Master Agreement A. The Master Agreement was fully executed on July 21, 2014.

Now that the agreement has been executed the JPA must receive approval to begin invoicing Caltrans.

Discussion: In order for the JPA to invoice for reimbursement of federal funds, a Program Supplement Agreement must be executed per the State Transportation Program Local (STPL) guidelines.

The attached Resolution No. 2014-14 is the formal authorization by the JPA for executing the Program Supplement Agreement.

The Program Supplement Agreement No. N001 for \$2 M is also attached for your consideration.

Respectfully Submitted,



Tom Zlotkowski
Executive Director



Item # 3
Resolution

RESOLUTION NO. 2014-14

RESOLUTION OF THE BOARD OF DIRECTORS
OF THE CAPITAL SOUTHEAST CONNECTOR AUTHORITY
AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE
PROGRAM SUPPLEMENT AGREEMENT NO. N001 WITH THE
CALIFORNIA DEPARTMENT OF TRANSPORTATION TO ALLOW
THE JPA TO INVOICE CALTRANS FOR ALL SEGMENT D2 EXPENDITURES

BE IT RESOLVED, by the Board of Directors ("Board") of the Capital SouthEast Connector Authority that the Executive Director is hereby authorized to execute Program Supplement Agreement No. N001 with the California Department of Transportation, to allow the JPA to invoice Caltrans for all Segment D2 expenditures.

This Resolution shall take effect from and after the date of its passage and adoption.

* * * * *

PASSED AND ADOPTED this 10th day of October, 2014, by the following vote:

AYES:

NOES:

ABSENT:

Chairperson

ATTEST:

Secretary

PROGRAM SUPPLEMENT NO. N001
to
ADMINISTERING AGENCY-STATE AGREEMENT
FOR FEDERAL-AID PROJECTS NO 03-6498R

Adv Project ID 0315000013 **Date:** September 10, 2014
Location: 03-SAC-0-CSEC
Project Number: STPL-6498(001)
E.A. Number:
Locode: 6498

This Program Supplement hereby adopts and incorporates the Administering Agency-State Agreement for Federal Aid which was entered into between the Administering Agency and the State on 07/21/14 and is subject to all the terms and conditions thereof. This Program Supplement is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. _____ approved by the Administering Agency on _____ (See copy attached).

The Administering Agency further stipulates that as a condition to the payment by the State of any funds derived from sources noted below obligated to this PROJECT, the Administering Agency accepts and will comply with the special covenants or remarks set forth on the following pages.

PROJECT LOCATION:

Grant Line Rd; intersect imp. from Jackson Hwy to White Rock Road at Rancho Cordova Pkwy, Keifer Blvd, University Blvd, Chrysanthy Blvd, N. Loop Rd, Centennial Dr, and Douglas Rd.

TYPE OF WORK: Road Reconstruction

LENGTH: 0.0(MILES)

Estimated Cost	Federal Funds		Matching Funds	
	M230		LOCAL	OTHER
\$2,259,121.00		\$2,000,000.00	\$259,121.00	\$0.00

CAPITAL SOUTHEAST CONNECTOR

STATE OF CALIFORNIA
Department of Transportation

By _____
Title _____
Date _____
Attest _____

By _____
Chief, Office of Project Implementation
Division of Local Assistance
Date _____

I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance:

Accounting Officer _____ **Date** 9/11/14 **\$2,000,000.00**

Chapter	Statutes	Item	Year	Program	BC	Category	Fund Source	AMOUNT

SPECIAL COVENANTS OR REMARKS

1. A. The ADMINISTERING AGENCY will advertise, award and administer this project in accordance with the current published Local Assistance Procedures Manual.

B. ADMINISTERING AGENCY agrees that it will only proceed with work authorized for specific phase(s) with an "Authorization to Proceed" and will not proceed with future phase(s) of this project prior to receiving an "Authorization to Proceed" from the STATE for that phase(s) unless no further State or Federal funds are needed for those future phase(s).

C. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer within 60 days of project contract award and prior to the submittal of the ADMINISTERING AGENCY'S first invoice for the construction contract.

Failure to do so will cause a delay in the State processing invoices for the construction phase. Please refer to Section 15.7 "Award Package" of the Local Assistance Procedures Manual.

D. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six months commencing after the funds are encumbered for each phase by the execution of this Project Program Supplement Agreement, or by STATE's approval of an applicable Finance Letter. STATE reserves the right to suspend future authorizations/obligations for Federal aid projects, or encumbrances for State funded projects, as well as to suspend invoice payments for any on-going or future project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six-month period.

If no costs have been invoiced for a six-month period, ADMINISTERING AGENCY agrees to submit for each phase a written explanation of the absence of PROJECT activity along with target billing date and target billing amount.

ADMINISTERING AGENCY agrees to submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure of ADMINISTERING AGENCY to submit a "Final Report of Expenditures" within 180 days of PROJECT completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current Local Assistance Procedures Manual.

E. Administering Agency shall not discriminate on the basis of race, religion, age, disability, color, national origin, or sex in the award and performance of any Federal-assisted contract or in the administration of its DBE Program Implementation Agreement. The Administering Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of Federal-assisted contracts. The Administering Agency's DBE Implementation Agreement is incorporated by reference in this Agreement. Implementation of the DBE Implementation Agreement, including but not limited to timely reporting of DBE commitments and utilization, is a legal

SPECIAL COVENANTS OR REMARKS

obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Administering Agency of its failure to carry out its DBE Implementation Agreement, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

F. Any State and Federal funds that may have been encumbered for this project are available for disbursement for limited periods of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act to the applicable fund Reversion Date shown on the State approved project finance letter. Per Government Code Section 16304, all project funds not liquidated within these periods will revert unless an executed Cooperative Work Agreement extending these dates is requested by the ADMINISTERING AGENCY and approved by the California Department of Finance.

ADMINISTERING AGENCY should ensure that invoices are submitted to the District Local Assistance Engineer at least 75 days prior to the applicable fund Reversion Date to avoid the lapse of applicable funds. Pursuant to a directive from the State Controller's Office and the Department of Finance; in order for payment to be made, the last date the District Local Assistance Engineer can forward an invoice for payment to the Department's Local Programs Accounting Office for reimbursable work for funds that are going to revert at the end of a particular fiscal year is May 15th of the particular fiscal year. Notwithstanding the unliquidated sums of project specific State and Federal funding remaining and available to fund project work, any invoice for reimbursement involving applicable funds that is not received by the Department's Local Programs Accounting Office at least 45 days prior to the applicable fixed fund Reversion Date will not be paid. These unexpended funds will be irrevocably reverted by the Department's Division of Accounting on the applicable fund Reversion Date.

G. As a condition for receiving federal-aid highway funds for the PROJECT, the Administering Agency certifies that NO members of the elected board, council, or other key decision makers are on the Federal Government Exclusion List. Exclusions can be found at www.sam.gov.

2. In the event that right of way acquisition for or construction of this project of the initial federal authorization for preliminary engineering is not started by the close of the tenth fiscal year following the fiscal year in which the project is authorized, the ADMINISTERING AGENCY shall repay the Federal Highway Administration through Caltrans the sum of Federal funds paid under the terms of this agreement.

Capital SouthEast Connector Board of Directors

Item # 4
Motion

October 10, 2014

Release of a Request for Proposals (RFP) for Segment D3/E1 Preliminary Engineering and Environmental Documentation Services

Issue: Whether to release an RFP to the consultant community to perform preliminary engineering and environmental documentation services for Connector Segment D3/E1.

Recommendation: Staff recommends the Board approve the release of the RFP for Segment D3/E1.

Background: At the May Board meeting, as part of the Environmental Phasing Strategy, staff was directed to work with the City of Folsom to initiate project-level environmental clearance for Segment D3 (Prairie City Road to the El Dorado County Line).

In July and August, staff presented a Phase 1 Shovel Ready Segmentation Strategy. This strategy identified that Segments D3 and E1 should be combined into a single project in order to provide adequate circulation options at both ends. At the August Board meeting the Board approved the Segmentation Strategy and directed staff to proceed with project development work in support of the strategy.

Discussion: The JPA intends to solicit proposals from qualified consultants to provide Preliminary Engineering and Environmental Documentation services for the D3/E1 Segment of the Connector. The RFP will focus on identifying the consultants who have extensive experience with locally funded transportation projects and who have the variety of technical skills to perform preliminary engineering and environmental documentation services for Segment D3/E1.

This effort will consist of the following major items of work to be performed as part of the evaluation of the combined segments:

- Base Mapping and Surveying
- Geotechnical and Drainage Studies
- Project-level Traffic Analysis
- Utility Coordination
- Geometric Civil Design of the Connector
- Project-level Environmental Documentation
- Right-of-Way mapping
- Structure Type Selections
- Estimates

The work program being solicited under this RFP does not assume that the E1 section will be constructed with the D3 segment, but provides the opportunity to do so by performing project level environmental clearance and engineering for both segments. The decision to proceed with the combined section construction must still be discussed and approved by the associated member jurisdictions and approved by your Board. That

determination is expected in late 2015 or early 2016 once significant evaluation has been performed by the consultant.

It is the JPA's intent to perform sufficient preliminary engineering design to clear the project environmentally through the CEQA process and to identify right of way impacts and accurate project cost estimates as part of this contract.

Respectfully Submitted:

A handwritten signature in blue ink, appearing to read "Tom Zlotkowski". The signature is stylized and cursive.

Tom Zlotkowski
Executive Director

Capital SouthEast Connector Board of Directors

Item # 5
Motion

October 10, 2014

Introduction of Right of Way and Utilities Sections in Project Design Guidelines

Issue: To inform the Board on the compiled Right of Way and Utility Sections in the Project Design Guidelines.

Recommendation: Staff recommends the Board approve the next steps outlined for the Right of Way and Utilities Sections in the Project Design Guidelines (PDGs) and provide feedback as desired.

Background: Three major elements of the Right of Way and Utility sections of the PDGs have been presented to the Board. These elements included: *Policy, Procedures, and Utilities*. With each element, a draft was presented to the Project Development Team (PDT), which is comprised of representatives from each member jurisdiction, and then presented to the JPA Board.

The Board provided input to the Policy Framework on May 16, 2014, input to the Procedures Framework on July 11, 2014, and input to the Utilities Framework on August 22, 2014. That input was included in revisions to the various elements of the framework.

Discussion: Staff has compiled the information received from the Board, PDT, JPA Counsel, and consultants on the Right of Way and Utility Frameworks that have been prepared and has prepared a draft of the new sections within the PDGs. At this time, staff recommends that the Board take the following next steps with the intent of adopting the updated PDGs in November:

- ✓ JPA Board receives and provides feedback to staff as desired on the new sections.
- ✓ Direct member jurisdiction staff to review and provide feedback as necessary.
- ✓ Return to the Board in November for adoption of the revised Project Design Guidelines with the incorporated right of way and utilities section included.
- ✓ Direct JPA staff to schedule informal presentations with member jurisdictions in early 2015, with the intent of updating interested parties on the Project as well as relevant changes to the Project Design Guidelines.

Respectfully submitted,



Tom Zlotkowski
Executive Director

SECTION 14. RIGHT-OF-WAY

14.1 Goals

The goal of this Section is to establish a fair and efficient process to complete the acquisitions or transfers of property and coordinate any conflicting utility relocations for the Capital SouthEast Connector Project. This process shall ensure that persons, required to sell land or to move their facilities because of the Connector, are treated fairly, equitably, and humanely in an open, honest, and professional manner.

The mission of the JPA will be to expedite the acquisition of real property by agreement to avoid litigation and relieve congestion in the courts; to assure consistent, equitable treatment of all owners of real property acquired for Connector programs; and to promote public confidence in right-of-way acquisition policies related to these programs.

Right-of-way or parts thereof shall not be acquired, abandoned and/or vacated so as to leave any real property adjoining the public right-of-way without access to an established public right-of-way.

14.2 Applicable Laws, Codes and Regulations

The JPA will comply with the requirements of all applicable federal and state laws, statutes and regulations, particularly, 49 CFR part 24, Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended (Uniform Act); Title 25, California Code of Regulations Ch 6, Art 1, Section 6000 et seq., Relocation Assistance and Real Property Acquisition Guidelines; California Code of Civil Procedure; California Government Code Section 7260-7277; and Uniform Standards of Professional Appraisal Practice (USPAP).

Just Compensation

State and Federal Law require that an owner of private property that is acquired for public use is entitled to the payment of just compensation for the property acquired. This includes, but is not limited to, the fair market value of the property acquired and compensation for impacted structures or site improvements. Residential occupants and business operators on the property who are relocated are afforded relocation payments. Machinery, equipment and fixtures that cannot be moved are appraised separately and acquired as part of the real estate. The owner of a business is also entitled to payment for the loss of business goodwill if, after moving and unsuccessfully attempting to preserve goodwill, a loss is suffered.

Compliance with the Americans with Disabilities Act

Property to be appraised shall be inspected on the date of valuation for its compliance or non-compliance with ADA regulations. All comparable sales should be analyzed as to their compliance or non-compliance to ADA regulations.

14.3 Reciprocal Use and Funding Agreements

Many of the elements defined in Right-of-Way and Utilities Section may have applicability to subsequent Reciprocal Use and Funding Agreements between the JPA and the member agencies. Any such agreement will govern this Section.

14.4 Property Owned By a JPA Employee or Board Member

When property or property rights to be acquired is owned by a JPA employee or a member of the JPA Board, the JPA will order two (2) appraisals for the property/property rights to be acquired. The Offer of Just Compensation shall be based on the higher of the two appraisals. Should the property owner reject the Offer of Just Compensation, the JPA will not conduct further negotiations with the property owner and immediately refer the acquisition to the JPA legal counsel for condemnation.

14.5 Administrative Procedures

Use of a Consultant

The JPA will assign work to a Right-of-Way Consultant to assist in the delivery of the assigned work. The Right-of-Way Consultant shall be selected through the JPA's contract procurement process. The JPA will oversee all work assigned to the Right-of-Way Consultant to ensure compliance with JPA's policies and procedures, federal and state regulations, and in cases of On-System Connector projects, the Cooperative Agreement with Caltrans.

Consistent Process

All right-of-way acquisition policies and procedures, including those applicable to title search, appraisal, negotiations, payments, closings, condemnation, possession, clearing and all other related right-of-way activities, shall be identical, and shall be identically applied in all dealings with property owners from whom lands, property or rights must be acquired for Connector or rail purposes without regard to the owner's race, color, religion, national origin, sex, age, ancestry or physical ability.

Right-of-Way Key Map

A key map that depicts the right-of-way needs of the Connector will be created by the JPA, in cooperation with the member agencies, once a project specific environmental document has been identified by the JPA. At a minimum, this right-of-way needs map will be used in an advisory capacity for the member agencies when working with developers. It is recommended, that the member agencies adopt the map as part of the member agencies future planning documents, in order to require that developers set aside land to meet future transportation facility needs.

Title and Escrow Services

- 1) The JPA will secure title insurance on fee parcels to be acquired upon recommendation by the Right-of-Way Consultant.
- 2) Purchase and sale of permanent interests in real property will be handled through an escrow account with a Title Company.

- 3) Matters where there are title issues, vesting is in question, or cloud on title, will be referred to the JPA legal counsel.
- 4) When acquiring real property pertaining to real estate, a mobile home or manufactured dwelling, requiring a Limited Power of Attorney to transfer title, the Real Property Manager must obtain authorization memorandum from JPA's General Counsel's Office to execute documents on behalf of JPA.

Eminent Domain Actions

The JPA will process all eminent domain actions with an affirmative 4/5 vote of the JPA Board of Directors, and with the affected jurisdiction's policy board's notice, consideration and concurrence, per the amended JPA charter.

CA Department of Transportation Coordination

When Caltrans oversight of federal funding is required, the JPA will conform to the Caltrans Right-of-Way Manual and seek Caltrans concurrence of right-of-way requirements prior to completing the appraisal and making the offers per Caltrans policies and procedures.

Payment Authorization

The JPA Executive Director is authorized to release funds for payment of invoices, escrow fees, just compensation, relocation claims, condemnation deposits, return of security deposits, rent credits, and any other right-of-way or property management related payments. If the amount to be released exceeds the Director's signature authority, the Director will submit a request for approval to the JPA Board.

Document Control

The JPA Executive Director shall maintain an electronic copy and a physical file for each parcel, either being acquired, leased, or maintained by the Agency.

14.6 Access Control

The Connector is an Access Controlled facility. Control of access is achieved by acquiring rights of access to the Connector from abutting property owners and by permitting ingress and egress only at locations determined by the JPA.

On the Expressway, direct access from private property to the highway is prohibited without exception. Abutting ownerships are served by frontage roads or streets connected to interchanges.

Access Openings - Expressway

The number of access openings on the Connector shall be held to a minimum. (Private property access openings on expressways are not allowed.) Parcels which have access to another public road or street as well as frontage on the expressway are not allowed access to the expressway. In some instances, parcels fronting only on the expressway may be given access to another public road or street by constructing suitable connections if such access can be provided at reasonable cost.

Access Openings - Thoroughfare

With the exception of extensive frontages, access openings to the Thoroughfare are limited to one opening per parcel. Wherever possible, one opening should serve two or more parcels. In the case of a large frontage under one ownership, the cost of limiting access to one opening may be prohibitive, or the property may be divided by a natural barrier such as a stream or ridge, making it necessary to provide an additional opening. In the latter case, it may be preferable to connect the physically separated portions with a low-cost structure or road rather than permit two openings.

Access Openings – Intersections/Interchanges

Access rights shall be acquired along the Connector and intersection/interchange ramps to their junction with the nearest public road. At each junction, access control shall extend 100 feet beyond the end of the curb return or as far as necessary to ensure that entry onto the facility does not impair operational characteristics.

The minimum distance (curb return to curb return) between ramp intersections and local road intersections must be 500 feet, 1,000' preferred.

Protection of Access Rights

For proper control of acquired access rights, fencing or other approved barriers shall be installed

Relation of Access Opening to a Median Opening

Access openings should not be placed within 300 feet of a median opening unless the access opening is directly opposite the median opening.

14.7 Phase 1 and Phase 2 Right-of-Way and Easement Acquisition

The JPA will acquire Phase 2 right-of-way (or at a minimum an irrevocable offer of dedication), with a lease back option, where feasible, for properties adjacent or having an impact along the corridor.

The notable exception will be at future locations of interchanges, where the jurisdictional General Plans should reserve the right-of-way for the ultimate ROW needed at that phase of the project. It is anticipated that a combination of building setback requirements, zoning requirements, access requirements, right-of-way dedication, and irrevocable offers of dedications will be needed to secure the future Connector interchanges. When the Connector moves forward, the easement area would be dedicated as right-of-way at that time. This would allow the easement area to remain under the care of the underlying property owner until the Connector is constructed.

The Connector further intends to construct frontage roads and/or consolidate access to adjacent properties to concentrate access at appropriate intersections/interchanges onto the Connector roadway, as defined by the Project Design Guidelines and subsequent General Plan updates. These frontage roads may be public or private. The JPA would be responsible for acquiring the necessary ROW to accommodate the planned public frontage roads and compensating property owners for the configuration of private frontage roads.

This allows the JPA to: Preserve ROW from conflicting encroachments for the ultimate project phase, Avoid conflicts and additional project throwaway cost, Optimize funding with present dollars.

14.8 Development Adjacent to the Connector

The JPA, as far in advance as possible, shall be notified by member agencies when a development proposal, application or Tentative Map is being considered or has been submitted to the member agency. The JPA shall be allowed to review, and comment on the development proposal, agreement or Tentative Map.

The JPA will review and assess the potential impacts that the proposed developments will have on the Connector and will evaluate the preliminary development proposals for conformance to JPA Project Design Guidelines including but not limited to access control, location of streets and accesses that may impact the Connector footprint, and appropriate setbacks based on the proposed right-of-way footprint. Consideration should also be given to the location of pedestrian and bicycle facilities so that connections to the future Connector pedestrian and bicycle trail are anticipated.

The following land use proposals should trigger a right-of-way preservation action by the member agencies:

- Rezoning
- Annexation
- Subdivision
- Commercial or Industrial Development (Where applicable)

The member agencies may wish to allow property within the Connector right-of-way footprint to be used as interim open space for a subdivision development and designated as an easement until needed for roadway improvements. When the Connector moves forward, the easement area could be dedicated as right-of-way at that time. This would allow the easement area to remain under the care of the underlying property owner until the Connector would be constructed.

Dedication of right-of-way, irrevocable offer of dedication, or granting of a permanent roadway right-of-way easements in the name of the local agency are recommended as a condition of each of the above proposals. Transfer of right-of-way to the JPA will occur at a later time, once a specific project has been identified. The road right-of-way and easements will be transferred back to the jurisdictions upon project acceptance by the JPA for the individual sequence or phase, as will be detailed in the subsequent Reciprocal Use and Funding Agreements that will be executed among the JPA and the member agencies.

14.9 Environmental Soil Assessment, Remediation and Mitigation

1. JPA will follow the Caltrans Request for Acquisition of Contaminated Property (RACP) policies and procedures.
2. If Hazardous Material Disclosure Documents (HMDD) recommends a Phase II, acquisition with remediation and requires concurrence of the Director prior to purchase.

3. Where the property is being conveyed to the State for incorporation into the freeway system, a Request for Acquisition of Contaminated Property will be obtained per Caltrans Policies and Procedures.

14.10 Appraisal of Property for Acquisition

1. JPA will secure an Appraisal of all properties to be acquired, exchanged or sold, except those that are exempt under the Uniform Act. Appraisals shall conform to the requirements of the Uniform Standards of Professional Appraisal Practice and the Uniform Act.
2. All appraisals shall be reviewed by an Independent Appraiser who will either approve, amend, or reject the appraisal.
3. An Independent Review Appraiser shall approve the appraisal in writing.
4. All property owners shall be given notice of the date and time of inspection and shall be given the opportunity to be present or be represented when the appraiser inspects their property. Property owners can submit evidence as to the value of their property.
5. Fixtures and Equipment valuations, if applicable, shall be included in the Appraisal Report.
6. Loss of Goodwill appraisal will be performed upon receipt of a Loss of Goodwill Claim, tax returns and any other supporting financial data that is furnished by the business owner affected by the Connector project. The premise for the goodwill appraisal is not estimated directly but by a residual process. The first step is to estimate the value of the total business enterprise and then subtract the value of the separately valued assets of the business, both tangible and marketable intangible, from the total value. The residual value, if any, represents the intangible asset of goodwill.
7. The Real Property Manager, prior to approval of just compensation, shall determine that the appraisal has addressed all design impacts.

Approaches to Value

1. Sales Comparison Approach. This approach should be developed and relied upon whenever there is adequate market data. The approach shall include adequate research to identify all pertinent similar properties for which sales, listings, or rental data are available. All comparable information will be confirmed by the buyer, seller, broker, or other person having knowledge of the price, terms and conditions, or the reason for not confirming shall be stated. Significant adjustments for similarities and dissimilarities such as time, location, physical and economic characteristics, and motivation for the transaction shall be individually explained. Substantial lump sum adjustments are not acceptable.
2. Cost Approach. This approach can be relied upon when appraising a special purpose property. However, this should not be used unless the special purpose improvements develop the property to its highest and best use and a potential buyer would reasonably consider, as an alternative, the cost of acquiring a comparable site and reproducing the improvements. The cost of the

improvements to a site with a different highest and best use should be addressed together with the incurable obsolescence inherent in this type of analysis.

It shall consist of factual data beginning with reproduction or replacement cost and shall state the specific sources of all figures used. Physical deterioration and functional and economic obsolescence shall be individually supported in narrative form. All calculations must be shown. The appraiser's opinion of the value of the land shall be supported by confirmed comparable sales in the same manner as in the sales comparison approach.

3. Income Approach. Reliance in this approach normally occur only when the property is truly an investment property where market data is inadequate. It shall include verified market data arranged to show and support, as a minimum: gross economic rent or income, allowance for vacancy and credit losses, itemized estimate of total expenses statement, and, any reserves for replacement.

Capitalization of net income shall be at a rate prevailing in the market for the type of property and location. Capitalization technique, method and rate used shall be explained in a narrative form and supported by a statement of the market facts, which support such rates and factors, and appraiser's analysis of such market factual data that leads to the conclusion of the capitalization rate.

The value of access rights is measured by the loss of value of the remaining property before and after the restriction. In cases involving acquisition of access rights, relinquishments or subordinations are to be secured from all parties whose interest would be detrimental to the achievement of access control. Ordinarily, these include trustees and beneficiaries under deeds of trust; mortgages; lessees; holders of liens, the foreclosure of which would either nullify or jeopardize the rights being acquired by the JPA; and holders of easements or rights-of-way of any kind whose ability to utilize and enjoy them would be materially diminished or damaged by JPA's acquisition of access rights to the subject property.

Agricultural buildings, farm residences, and specialized fences will be valued as improvements at depreciated value in place.

Severance damage is the loss in value of remaining property after acquisition and construction. Severance damages are valued by appraisal of the remainder as a portion of the total property in the before condition and as a remainder in the after condition (disregarding the benefits of the construction project). Some severance damages may be mitigated or entirely eliminated by estimating the cost to cure the damage.

Property owned in fee by public utilities (including governmental utility agencies) utility agencies, irrigation districts, and flood control districts may be subject to special treatment, including the purchase of replacement land for exchange.

A fair market rent determination is an estimate of the amount of rent that a parcel would command in the open market, if offered under the terms and conditions typical of the market for similar properties.

14.11 Acquisition Process

Upon certification of the National Environmental Policy Act and/or the California Environmental Quality Act (NEPA/CEQA) Environmental Document by the JPA Board of Directors, the JPA will begin the Right-of-Way Engineering and Acquisition process.

Right-of-way already in possession by the member agencies will be transferred from the member agency to the JPA. This right-of-way transfer will follow the procedures identified in the Streets and Highways Code.

The following describes the process the JPA will follow:

1. All offers shall comply with Section 7267.2 of the California Government Code.
2. All offers will include acquisition of all applicable real property interests, land and improvements, fixtures and equipment, and tenant interests for permanent right-of-way, or for temporary construction.
3. An un-segregated offer for fixtures and equipment will be made to the property owner and business owner, if applicable. A segregated offer shall be made to the property owner and tenant upon receipt of the executed Offset Statement, signed by all parties of interest.
4. An offer for Loss of Business Goodwill, if any, will be made upon an approved Loss of Business Goodwill appraisal. An appraisal will be completed after the business owner files a claim for Loss of Goodwill.
5. Prior to making the Loss of Goodwill offer, the acquisition agent shall recognize any "in-lieu" or reestablishment payments that may have been or will be made under Relocation Assistance in order to avoid duplication of payment.
6. The Director has the authority to approve Just Compensation.
7. Prior to making the first written offer, JPA's right-of-way staff shall ensure that the offer is consistent with the appraisal.
8. Just Compensation shall not be less than the approved appraisal.
9. Property owners are entitled to order their own appraisal of the real property interests being acquired by JPA in compliance with the California Code of Civil Procedure Section 1263.025.
10. The Director and/or JPA Legal Counsel and/or JPA right-of-way Consultants, under the direction of Director or Legal Counsel, will conduct negotiations for acquisition of property rights for JPA.
11. At any time during the acquisition process, if the property owner is represented by legal counsel, JPA's general counsel shall be notified.
12. Mobile Home acquisition, condominium complex, or when there is a Home Owners' Association ownership or involvement, shall seek legal opinion as to ownership interests prior to making the first written offer.

13. The Director makes recommendations to the designer of record as to the least harm to determine design changes and when to seek Resolutions of Necessity (RONs).
14. All negotiations shall be expeditious, no coercion, and result in the property owner receiving just compensation.
15. Execution of Contracts, Agreements, and other Real Estate Documents are delegated by the Director provided they are within the delegated authority limits.
16. The JPA may sell at public auction or exchange excess or surplus real property no longer needed for present or future roadway improvements or JPA maintenance and operations.
17. If the acquisition of only a portion of a property would leave the remaining portion in such a shape or condition as to constitute an uneconomic remnant, the JPA shall offer to acquire the entire property if the owner so desires.
18. The replacement of an existing water well can be done by a cash payment or by the JPA contracting for the drilling of a replacement well. If the JPA will be contracting for the replacement of the well, copies of all the standard tests on both the existing well and new well should be kept in the parcel file. The new well should produce the same or better quality and quantity of water compared to the old well.
19. Interests in land owned by Federal and State agencies are secured under appropriate Federal or State statutes (Federal Connector Act of August 27, 1958 (23 USC 107(d) and/or 317), Section 101.5 of the Streets and Connectors Code, and 6210.3 Public Resources Code). In most cases, the right to the land is secured at no cost in terms of cash payment, although there can be considerable expenditure for replacement or relocation of existing facilities.
20. An unpatented mining claim establishes an interest in land, which will continue in existence until eliminated, whether by an appropriate conveying document or legal process before a court of competent jurisdiction. Every reasonable effort shall be made to obtain quitclaim deeds to the right-of-way from persons holding mining claims on the land to be acquired even though the claim may appear to be abandoned. If clearance of the claim cannot be obtained by Purchase Contract and Quitclaim Deed, then condemnation shall be instituted. However, if after diligent search, the owner cannot be located, a statement of the facts is to be noted on the Acquisition File and a recommendation may be made to acquire title subject to this outstanding interest. Such recommendation must be approved by the JPA Legal Counsel.

14.12 Advance Right-of-Way Acquisition, Hardship and Protective Buying

Where necessary or appropriate, the JPA will consider full acquisition of “non-viable” uneconomic remnant properties, if the owner so desires, on areas outside the ROW take needed for the project. This allows the JPA to maintain goodwill with property owner(s), maintain access control, and potentially use the area for environmental mitigation.

In extraordinary cases, the JPA Board may acquire a limited number of parcels prior to completion of processing of the final environmental statement, which are in the public interest to:

1. Alleviate particular hardship to a property owner.
2. Prevent imminent development and increased costs of a parcel that would tend to limit the choice of Connector alternatives (Protective Acquisition).
3. Take advantage of willing seller/owner opportunities.
4. Reserve environmental mitigation sites.

23 CFR 710.503 provides that in extraordinary cases and emergency situations, an agency may request and the Connector JPA may approve federal participation in the acquisition of a particular parcel or a limited number of parcels within the limits of a proposed Connector corridor prior to completion of processing of the final environmental statement or adoption of the appropriate documents. Proper documentation shall be submitted to show that the acquisition is in the public interest and is necessary.

The requirements for advance acquisition criteria for hardship and protective buying, when federal funds are involved, are set forth in 23 CFR 771.117 (d) (12):

1. Section 771.117 (d) (12) Categorical Exclusions (CE). Acquisitions of land for hardship or protective purposes; hardship and protective buying will be permitted only for a particular parcel or limited number of parcels. These types of land acquisition qualify for CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process.
2. No project development on such land may proceed until the CEQA and/or NEPA process has been completed. Hardship acquisition is early acquisition of property by the agency at the property owner's request to alleviate particular hardship to the owner, in contract to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety, or financial reasons that remaining in the property poses an undue hardship compared to others.
3. Protective acquisition is done to prevent imminent development of a parcel that is needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent.
4. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project. In practice, hardship and protective buying are approved only after the acquiring agency has given official notice to the public that it has selected a particular location for the project alignment, or a public hearing has been held, or an opportunity for such hearing has been afforded, except when "core parcels" are to be acquired in advance of environmental clearance. Properties not considered "core parcels" may be acquired in exceptional cases when:
 - a. Property has been offered by property owner for sale;
 - b. Seeking federal agency concurrence;

- c. Acquisition will not limit the evaluation of alternatives;
- d. No project development on the property can proceed until the NEPA/CEQA process has been completed.

A major consideration in making a decision on Advance Acquisition is the effect on federal funding for the parcel and the project as a whole. It is important to keep in mind that if federal regulations (40 CFR part 24) are not followed in the advance acquisition of a parcel, the FHWA or FTA, as the case may be, may deny federal funding for the whole project; or, if it is determined that the advance acquisition of a parcel influenced the environmental assessment of the project, the cost to acquire the parcel may not become eligible for use as the credit towards the agency's share of a federal-aid project. In the latter instance, the project's application for environmental clearance under NEPA may also be denied.

14.13 Settlement Delegation Authority

Administrative and Legal Settlement Delegation Authority Thresholds (Real Property Interests Only, excludes Relocation Assistance):

1. The Director is authorized to approve an administrative or legal settlement when the difference between the approved appraisal and the property settlement is no more than 10% or \$50,000 over the approved appraisal whichever is greater; or
2. When the difference between the approved appraisal and the proposed settlement is over 10% or \$50,000 above the appraisal, the proposed settlement must be approved by the JPA Board of Directors.

This allows the JPA to react quickly to settlements outside the monthly JPA Board hearings, effectively manage the schedule, project priorities, budget, and environmental mitigation, best determine project needs and share risk with the contractor.

14.14 Administrative and Legal Settlements

All Administrative Settlements must be accompanied by a written recommendation prepared by a Real Property Agent, recommending an Administrative Settlement to the Real Property Manager, who will determine if the settlement is in the best interest of the property. The Director shall then approve. All Legal Settlements shall be accompanied by a written justification prepared by the JPA General Counsel. Legal Settlements may be recommended once an eminent domain suit has been filed.

14.15 Eminent Domain: Resolutions of Necessity (RONs)

As stated in Amendment No. 1 to the "Joint Exercise of Powers Agreement" for the Capital SouthEast Connector Joint Powers Authority (JPA) provides in amended Section 7.a. that:

"The affirmative vote of at least four directors is required to exercise the powers of eminent domain and to amend the Functional Guidelines referenced In Section 1 of this Agreement. The Board will not exercise its power of eminent Domain within the jurisdiction of a Member without that affected Member's Governing body's prior consideration and concurrence."

If the JPA votes to exercise its power of eminent domain, the JPA will comply with the requirements of federal and state law, statutes and regulations, particularly, 49 CFR part 24, Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended (Uniform Act); Title 25, California Code of Regulations Ch 6, Art 1, Section 6000 et seq., Relocation Assistance and Real Property Acquisition Guidelines; California Code of Civil Procedure; California Government Code Section 7260-7277; and Uniform Standards of Professional Appraisal Practice (USPAP).

In addition to federal and state law, the United States Constitution and California State Constitution provide that an owner of private property that is acquired for public use is entitled to the payment of just compensation for the property acquired. This includes, but is not limited to, the fair market value of the property acquired and compensation for any impacted structures or site improvements. Residential occupants and business operators on the property who are being forced to relocate due to the project are afforded relocation payments to assist in moving to a new location. Machinery, equipment and fixtures that cannot be moved are appraised separately and acquired as part of the real estate. Finally, the owner of a business is entitled to payment for the loss of business goodwill if, after moving and unsuccessfully attempting to preserve goodwill, a loss is suffered.

Upon the affirmative vote of the Members of the JPA Board to exercise its power of eminent domain to take a specific property, RONS shall be prepared pursuant to Code of Civil Procedure, Section 1245.230. The Director, in consultation with the Member Jurisdiction, or designee shall establish an amount that it believes to be just compensation. A written offer will be made to the owner or owners of record to acquire the property for the full amount so established, unless the owner cannot be located with reasonable diligence. The offer may be conditioned upon the JPA's ratification of the offer by execution of a contract of acquisition or adoption of a Resolution of Necessity or both.

In no event shall such amount be less than the JPA's approved appraisal of the fair market value of the property. Any decrease or increase in the fair market value of real property to be acquired prior to the date of valuation caused by the JPA project for which the property is acquired or by the likelihood that the property would be acquired for such project, other than that due to physical deterioration within the reasonable control of the owner or occupant, shall be disregarded in determining the compensation for the property.

The JPA shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as Just Compensation. Where the property involved is owner occupied residential property and contains no more than four residential units, the homeowner shall, upon request, be allowed to review a copy of the appraisal upon which the offer is based. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

If an owner believes that its property should not be required or that the project should be realigned to avoid its property, the owner may request an appearance before the JPA Board regarding the Resolution of Necessity. This request must be made in writing within 15 days from mailing of the Notice by JPA. The negotiating process continues and assures that all issues are identified and resolved, if possible, prior to Board meeting.

Property Owners shall be given, at least 30 days, to consider the offer prior to scheduling a RON hearing.

1st and 2nd Level Review Prior to RON Hearing

If the Property owner has issues relating to project need, project design, and/or the necessity, the Property Owner can request a Review Hearing at any time during the acquisition process.

At any time during the acquisition process, JPA Executive Director will request a 1st Level Review prior to a Notice of Hearing.

1. **1st Level Review:** JPA Executive Director will conduct the 1st Level Review. This will be attended by the Property Owners and their representatives, JPA legal counsel, if necessary, the Real Property staff and/or right-of-way consultant, Caltrans representative(s), if applicable and chaired by the JPA Executive Director. This 1st Level Review panel will not consider issues relating to compensation. If issues remain unresolved after the 1st Level Review Hearing, an Appearance Information Sheet (AIS) will be prepared and issued by the Real Property staff and/or right-of-way consultant and a 2nd Level Review Hearing will be scheduled within thirty (30) days after the issuance of the AIS, if requested by the Property Owner.
2. **2nd Level Review:** The 2nd Level Review Panel will consist of a Chairperson of the JPA Board and representative from the JPA Board if the property is not within the jurisdictional representation of the Chair, the JPA Legal Counsel, if necessary, Caltrans Representative(s), if applicable, and the JPA Executive Director. If issues remain unresolved after the 2nd Level Review Hearing, documents will be prepared consisting of (a) a written summary of unresolved issues; and (b) Chronology of contacts with the Property Owner or representative(s).

14.16 Relocation Assistance Payments

The Relocation Assistance and Payment is available to eligible individuals, families, businesses, farm operations and non-profit organizations that are wholly or partially displaced by JPA projects. Relocation advisory services (not payments) are also available to any person occupying property immediately adjacent to property acquired by JPA when the JPA determines such person is caused substantial economic injury because of the acquisition.

To be eligible for relocation benefits, relocatees must legally occupy the property that is scheduled for acquisition by the JPA at the time negotiations are initiated for the subject property and also meet minimum ownership and/or occupancy time requirements and other specific requirements as discussed in this chapter for each of the various relocation payments available. Relocatees who vacate their parcel prior to the initiation of negotiations shall also be eligible (if they meet other requirements) if they were in legal occupancy at the time the JPA notified them, in writing, of its intention to acquire the property.

The preceding eligibility requirements also apply to moving cost payments except that relocatees who move to and legally occupy properties being acquired by JPA after the initiation of negotiations can qualify for moving cost payments and advisory services, but normally for no other type of relocation

payment, provided that they are still in occupancy of the subject property at the time it is acquired by the JPA. There is no limitation on the distance a relocatee moves personal property; however, moving cost payments must not include the expenses involved in moving the personal property more than 50 miles distance.

When the relocation cannot be accomplished within the 50 miles from the subject location, the Director may allow reimbursement of cost to the nearest adequate and available site. Moving cost payments can be made to cover the cost of moving personal property on to remaining or other lands owned by the relocatee or his/her landlord.

In addition to the moving payments previously discussed, a small business, farm or nonprofit organization may be eligible to receive reestablishment payment not to exceed \$10,000. This payment is for expenses actually incurred in relocation and reestablishment at a replacement site and does not apply to part-time businesses in the home that do not contribute materially to the household income.

1. Anyone who is wholly or partially displaced as a result of an JPA project is entitled to relocation assistance and benefits as defined in the Uniform Relocation and Real Property Acquisition Act of 1970, as amended, 49 CFR part 24 (Implementing Regulations), California Government Code 7260, and Title 25 California Regulations, Chapter 6, Article 1, Section 6000 et seq. (Guidelines); except in cases of voluntary sales where the owner-occupant of the property sells their property to JPA, after being informed (in writing and prior to negotiations) that if a mutually satisfactory agreement cannot be reached, the property will not be acquired via eminent domain. In addition, if non-federal funds are utilized within the project, the property must have been offered for sale by the property owner on the open market prior to the initiation of negotiations by JPA in order to qualify as a “voluntary acquisition”. Any tenant displaced as a result of a voluntary sale to JPA is entitled to relocation assistance, assuming they meet the other requirements for eligibility.
2. A Relocation Plan must be prepared in accordance with the uniform Act, if the project will cause residential or business displacements. If non-federal funds are utilized for the project, and there is even one residential displacement for the project, the draft Relocation Plan must be circulated for a 30-day public review and comment period. Public comments and responses incorporated into the final Relocation Plan and the Plan must be approved by the JPA Board or other local governing body.
3. Eligibility for relocation assistance shall begin on the date of initiation of negotiations.
4. Appeals Process: The claimant will file an appeal in writing with the relocation agent representing JPA, who will forward the appeal to the Director. The Director will either concur or disagree with the issues presented in the formal appeal. If the Director agrees with the issues presented by the request, additional relocation benefits will be awarded and/or eligibility status will be adjusted accordingly to remedy the matter. If the Director does not concur with the issues presented, a date will be set within 30 days from the receipt of the appeal request for a review panel to hear the claimant’s appeal (panel appointed by the Director). The panel will be comprised of knowledgeable personnel not a party to the project to hear the appeal. Staff will promptly (within 30 days) notify the

claimant of the panel's decision. The appeal board's decision is final; however, the claimant has the right of seek judicial review of the appeal board's decision. The claimant may be represented by legal counsel during any phase of the appeal's process; however, there will be no reimbursement to the claimant by JPA of legal fees incurred.

5. Policy on Negative Equity Situations: JPA will adhere to adopted Caltrans and Federal Highway Administration's (FHWA) Temporary Programmatic Waiver and Methodology for calculating replacement housing payments for residential owner-occupants who are in negative equity situations on federally funded and non-federally funded projects. A Payment to purchase the property may be in excess of the appraised value or a typical administrative settlement to pay off any existing loan(s) on the property. The Price Differential Payment may be calculated based on the original appraised value of the property rather than the final acquisition settlement amount. JPA will utilize the temporary waiver as long as it is in effect as publicly noticed by the FHWA.
6. Where the Replacement Housing for a displacee (for new place of business for a business displacee) is unavailable, an owner or tenant may be allowed an extension of possession based on a monthly rental rate. An extension of possession agreement shall be developed by JPA through its legal counsel. The extension shall be for a period not to exceed one hundred eighty (180) days following the close of escrow and may be terminated by JPA at 30 days' written notice, provided that the displacee is provided with alternative housing. When an owner or tenant is granted an extension of possession, a monthly rental rate shall be established and collected in advance for each monthly period of extension.
7. Individuals and families displaced from dwelling units they have rented and occupied for not less than 90 consecutive days prior to the initiation of negotiations for the parcel, displaced short-term owners, and displaced long-term owners who rent rather than purchase replacement housing, are entitled to a rental subsidy payment if they meet the payment eligibility requirements. When displaced tenants are involved, payments of this type are based either on the increased monthly rental costs above the rental they were paying for the unit acquired that they would have to pay over 42 months for an available comparable replacement dwelling unit, or the increased rental for 42 months that the tenants actually pay for their replacement dwelling unit, whichever is less. Replacement housing is defined by 24 CFR 902.21 - Physical condition standards for public housing—decent, safe, and sanitary housing in good repair.
 - a. For owners who rent rather than purchase a replacement dwelling, the same principle applies. The payment will be based on either the difference between the economic rental fee of the subject dwelling and the actual rental fee charged for the most nearly comparable DS & S replacement dwelling available, or the difference between the economic rental fee and the actual rental fee paid for the replacement unit, whichever is less.

14.17 Property Management

When the JPA acquires real property for transportation purposes, the JPA will strives to manage its real property with the objective of maximizing existing and future public transportation benefits, safety, and

financial income by means of professional property management policies and procedures. This includes entering into lease agreements, issuing licenses and rights of entry for authorized third-party uses, as well as investigating and resolving issues regarding uses that are not authorized by JPA. On certain occasions, JPA may also grant easement. General maintenance activities and security measures are also part of the property management scope of work on all JPA properties.

The JPA staff and/or right-of-way consultant shall have management responsibilities for properties acquired and owned by JPA, including the following:

1. Manage existing leases, licenses, and rights of entry through periodic field inspections to assure compliance with the terms and conditions of their respective agreements.
2. Review the terms and conditions of existing agreements, ensuring annual license/lease rates are based on the property's fair market value and consistently implement fair market adjustments and Consumer Price Index (CPI) adjustments with lease terms greater than one year. Property's fair market value shall be reviewed, at least, every five (5) years.
3. Maintain a tenant revenue spreadsheet that flags fair market adjustments 90 days in advance of scheduled adjustment dates.
4. Implement insurance requirements as determined by the JPA General Counsel. Consult with JPA General Counsel for approval of changes to the standard insurance requirements. Review tenant insurance certificates to ensure compliance with the insurance terms and conditions in their respective agreements.
5. Prepare and issue new licenses, leases and rights of entry for use of JPA property in conformity with JPA policies.
6. Consult with JPA General Counsel for approval of changes to the standard rights of entry, licenses and lease agreements.
7. Coordinate with JPA's Accounting Department in the organization and maintenance of a revenue collection system designed to operate in conjunction with other JPA staff.
8. Manage all properties to minimize maintenance and prevent unauthorized uses.
9. Identify excess/surplus properties that may be candidates for sale and maximize benefits to be received from sale.

Excess Land

JPA shall follow Government Code Section 54220-54323 in the disposal and sale of excess or surplus properties. Excess property may be used in exchange for other property required for the project. Exchanges of land in right-of-way transactions should be limited to those cases where the excess real property is contiguous to the remaining property owned by the grantor of the property being acquired. Non-contiguous exchanges are not recommended since it may be injurious to the interests of an abutting property owner.

JPA Excess Land Committee

The JPA Excess Land Committee is empowered by the JPA Board to declare JPA owned property as Excess. The Excess Land Committee is likewise empowered to determine the manner of disposal and the consideration for the disposal of Excess Land.

The Excess Land Committee shall include the JPA Executive Director, Finance and Administration staff, Real Property staff and/or right-of-way consultant, JPA General Counsel, and member agency representative.

The JPA Excess Land Committee shall meet when there is a need to present a request to declare a property as excess to the JPA Board.

14.18 Notice of Completion and Right-of-Way Transfer to Member Agencies

Upon a Notice of Completion adopted by the JPA Board of Directors, the JPA will begin the right-of-way transfer process to return the right-of-way to the member jurisdictions. This right-of-way transfer will follow the procedures identified in the Streets and Highways Code.

SECTION 15. UTILITIES

This Section prescribes policies, procedures, standards, and practices for the coordination of utility relocations required for the construction of the Connector. In general, utility policies apply to public utilities. "Public utilities" are defined as those utilities either publicly, cooperatively or privately owned that provide a product or service, either directly or indirectly, to the public for a fee.

15.1 Goals

The goal of this Section is to establish a fair and efficient process to coordinate any conflicting utility relocations for the Capital SouthEast Connector Project. The JPA intends to design the project to avoid conflicts where possible. The JPA also does not intend to preclude the acquisition of a public utility easement (PUE) immediately adjacent to the Connector right-of-way.

15.2 Applicable Laws, Codes and Regulations

State law authorizes the free use of local thoroughfare rights of way for public utility facilities owned by public agencies or by private companies recognized by the California Public Utilities Commission for a public utility service, when such use does not interfere with the primary purpose of the local thoroughfare.

15.3 Administrative Procedures

The JPA, as far in advance as possible, shall be notified by member agencies when Encroachment Permit applications are being considered or have been submitted to the member agency. The JPA shall be allowed to review, and comment on the Encroachment Permit.

The JPA will review and assess the potential impacts that the proposed encroachment will have on the Connector and will evaluate the permit application for conformance to JPA Project Design Guidelines including but not limited to access control, planned Connector facilities or with its maintenance and operations. These evaluations will be based upon several factors:

- Construction staging
- Interim and ultimate roadway alignments
- Future interchange locations and vertical/horizontal clearance to pole lines and buried facilities
- Existing topography
- Future and existing alignments of connecting streets
- Adjacent land owner impacts
- Development needs
- Design criteria and safety concerns adopted by the JPA Board
- Visual impacts to future urban land uses
- Potential environmental impacts identified in the JPA's Final Program Environmental Impact Report

Utilities on State Facilities

JPA will follow the Caltrans Right-of-Way Manual on all On-System projects and adhere to existing Cooperative Agreement(s) entered into between the agency and the utility for cost share and other

conditions. JPA will follow the Caltrans Local Assistance Manual for all federally funded off-system projects.

15.4 Accommodating a Public Utility Easement

As described in earlier Sections, the JPA desires to accommodate a Public Utility Easement directly adjacent to the Connector right-of-way. The PUE location is defined in these Project Design Guidelines and can vary in location. All existing and future utility facilities shall be relocated into the PUE at the time and manner as determined by the JPA. The JPA considers a Public Utility Easement to be a land right for all utilities occupying the easement and does not assume liability for facilities outside of the right-of-way.

Frontage Roads

In cases where a frontage road adjacent to the Connector alignment is proposed, the road should be incorporated into the PUE and maintenance access to and from the PUE shall be from the frontage road.

15.5 Utility Relocations - Utility Owner under Franchise Agreement

For utility relocations that involve franchise agreement utilities the member agency will make the relocation demand of the utilities and state that the JPA staff is acting as their agent. The JPA will coordinate with the utilities for relocation of all facilities into a public utility easement.

The Director shall notify in writing any owner or operator having utility facilities of any nature upon, in, over or under the Connector to remove or adjust so much of their facilities as will allow the prosecution of the public work. The Notice shall be accompanied by a copy of the plans and specifications for the authorized public work showing the location of the work in the streets and describing the same. The Notice shall specify a time within which all affected utility facilities must be removed or adjusted.

The facility owner shall be responsible for design of all utility facility relocations. The only exception is when the utility owner has requested the JPA to perform the design and construction to be done as part of the Connector project. The design and construction of the relocation shall be included in a special Utility Agreement that may be entered into with the utility owner.

In the event that an establishment of prior rights is not clear or a relocation schedule does not meet the project goals, these situations may be resolved by the JPA negotiating a cost sharing settlement or agreement to advance payment by the JPA in return for schedule compliance, with a reservation of rights to determine who was responsible for the cost at a later date. Alternatively, it may be desired to “share” the work required for a utility relocation and incorporate the work into design-build contract. In order to address this, the JPA may enter into Master Utility Relocation Agreements with the utility company that address cost allocation, work allocation, schedule compliance, payment requirements, betterments and other matters.

During the design and engineering process, utilities affected by the proposed construction will be identified. Typically, the affected utilities may need to be relocated, protected in place, or possibly

abandoned. The JPA will undertake early identification of affected utilities and early coordination with the affected utility company, as timely design and completion of all utility adjustments will affect the JPA's ability to commence project construction. In addition, it is recognized that Utility Owners require lead-time to develop budgets and plan work required for ordered relocations. Additional lead time may be required to order long lead time materials, to schedule work during non-peak demand periods when utility facilities may be removed from service, and to comply with PUC General Orders. The JPA staff will identify all necessary utility relocations and provide a public utility easement for relocation.

If any owner or operator shall fail, neglect, or refuse to comply with the requirements set forth in the Notice issued then, and in that event, the Director shall cause to be removed or adjusted so much of the utility facilities as may be required for the prosecution of the said authorized public work according to the plans and specifications; and any incidental expenses incurred in the removal or adjustment shall be chargeable to the owner or operator failing, neglecting, or refusing to comply with the requirements of the Notice, and may be recovered in an action at law brought in the name of the JPA against such owner or operator. It is the further the intention of the JPA for the Director to be empowered to levee a fine of up to \$1,000 per calendar day for a utilities' failure to remove facilities in a timely fashion. This authority to fine is based upon several factors.

15.6 Franchise Agreements and CPUC Conformance

The California Public Utilities Code ("CPUC") outlines the conditions under which public utilities may operate franchises throughout the state and states in pertinent part...

"Every franchise or privilege to erect or lay telegraph or telephone wires, to construct or operate street or interurban railroads upon any public street or highway, to lay gas pipes for the purpose of carrying gas for light, heat, or power, to erect poles or wires for transmitting electricity for light, heat, or power, along or upon any public street or highway, or to exercise any other privilege whatever proposed to be granted by the governing or legislative body of any county, city and county, or city shall be granted upon the conditions in this article....."

Cal. Pub. Util Code Section 6001 et seq; see also Cal. Pub. Util. Code Section 6201 et seq. (gas, oil, water, and electric franchises); Cal. Pub. Util. Code Section 6091, 6092 (steam heat franchises).

State law requires utilities to relocate their facilities at their own expense for the purposes of certain street improvements. The CPUC states, in pertinent part, that "the grantee shall remove or relocate without expense to the municipality any facilities installed, used, and maintained under the franchise if and when made necessary by any lawful change of grade, alignment, or width of any public street, alley, or place; see also Cal. Pub. Util. Code § 6297.

In addition to its efforts to articulate the franchise rights of utilities throughout California, the State nevertheless allows for the imposition of additional terms and conditions on franchise agreements that do not conflict with state law. § 6002 provides that local governments "impose such other and additional terms and conditions" that do not conflict with state law, "whether governmental or

contractual in character, as in the judgment of the legislative body thereof are to the public interest.” Cal. Pub. Util. Code § 6002.

Article XI, § 7 of the California Constitution provides that “a county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” Thus, in the absence of state preemption, every municipality is authorized by the California Constitution to exercise its police power to deal with local situations. *Hernandez v. City of Sacramento*, 54 Cal. Rptr. 3d 698 (2007). The power to fine utilities by ordinance arises by implication where penalty provisions are necessary for purposes of enforcement. The general rule is that a grant of the police power to a local government or political subdivision necessarily includes the right to carry it into effect and empowers the governing body to use proper means to enforce its ordinances. See generally 5 *McQuillin Mun. Corp.*, Section 17.04 (3rd ed.). Pursuant to this rule, it has been held that even in the absence of an express grant of authority, the power to punish by a pecuniary fine or other penalty is implied from the delegation by the legislature of the right to enforce a particular police power through ordinances or regulations. *Id.*

Public or private utility easements may or may not have a facility located (overhead, surface or underground) in the property. Clearance and elimination of private easements from the right-of-way being acquired may be required. This is usually done by Quitclaim Deed with an obligation in the Purchase contract to secure a replacement easement, if necessary. If the easement is public (easement in gross) and no facility exists, it must be determined whether to take title subject to the easement. The utility company may have plans for a future facility and it is incumbent upon the JPA to negotiate an agreement with the utility company recognizing such future use.

15.7 Utility Relocations – Utility Owner with Prior Rights

The JPA will coordinate with the utilities for relocation of all facilities into a public utility easement that will be acquired by the JPA. This replacement area is subject to the same controls and clearances that apply to regular rights-of-way, including hazardous waste clearances. The JPA will obtain and analyze data to allocate cost between Owner, JPA, State and/or Local (when applicable) for all required utility adjustment work and to clearly document, support, and set for the basis of the finding in a Report of Investigation. The JPA will coordinate positive location requirements for all High Risk utility facilities within the project limits and prepare and issue Notices to Owner and Utility Agreements for relocations.

The facility owner shall be responsible for design of all utility facility relocations. The only exception is when the utility owner has requested the JPA to perform the design and construction to be done as part of the Connector project. The design and construction of the relocation shall be included in a special Utility Agreement that may be entered into with the utility owner. If the utility owner's new facilities are planned for installation in a local street or road underlying JPA's project, any additional cost is the utility owner's. Where the utility owner has a superior right to JPA's interest, the additional utility construction features required to satisfy the future project needs is at JPA's expense. The utility owner is responsible to prepare, document, and submit a claim for their declared right of occupancy. If the JPA's

investigation confirms the owner has rights prior and superior to those of JPA, and JPA concurs, the owner is paid for all or a portion of the relocation work.

15.8 Utility Encroachments into Right-of-Way

It is the JPA's intent to have the Connector right-of-way free from utility encroachments and for all utilities to be located within an easement outside of JPA right-of-way. However the JPA recognizes that circumstances may arise where an encroachment into the right-of-way is necessary.

Utilities may be issued permits to place their facilities within Connector right-of-way as long as they adhere to the requirements of the permit and State regulations governing the permits. The permit stipulates how utilities must be installed to minimize risk to the traveling public, and makes the utility responsible for the proper installation.

In addition to the requirements set forth by an Agreement or Permit from the State or local jurisdiction, the following special conditions of the Connector JPA below shall apply. Should there be ambiguity or conflict between the Agreement and/or Permit (issued by the local jurisdiction) and special conditions of the Connector JPA, the JPA conditions shall apply.

1. Vertical clearance above pavement, and location of poles, guys, and related ground-mounted utility appurtenances along the roadside are factors of major importance to preserve a safe traffic environment, the appearance of the Connector, and the efficiency and economy of maintenance. In all cases, full consideration shall be given to measures, reflecting sound engineering principles and economic factors, necessary to preserve and protect the integrity and visual quality of the Connector, its maintenance efficiency and the safety of Connector traffic. All encroachments shall be thoroughly engineered and properly installed so as they are integrated into and become an unseen part of the Connector corridor itself. The type and size of utility facilities and the manner and extent to which they are permitted along or within the Connector right-of-way can materially alter the scenic quality, appearance, and view of highway roadsides and adjacent areas.

For these reasons additional controls are applicable. Therefore, all new above ground utilities may be conditioned to be placed underground so as to not impair the visual quality of the lands being traversed where there is feasible and prudent alternative. Where this is not the case, aerial facilities shall be considered only where:

- a. Other locations are unusually difficult and unreasonably costly, or are more undesirable from the standpoint of visual quality; and/or
- b. Undergrounding is not technically feasible or is unreasonably costly, and the proposed installation can be made at another location and will employ suitable designs and materials that give adequate attention to the visual qualities of the area being traversed.

These controls shall be determined the Director of the Connector JPA or designee and apply to installations that are needed for a Connector purpose, such as for highway lighting, traffic signals, changeable message signage, or other JPA use.

2. All utility installations on, over, or under Connector right-of-way and attachments to Connector structures shall be of durable material designed for a minimum service life of 30 years and be relatively free from routine servicing and maintenance.
3. Utility facilities shall be located to minimize need for later adjustments to accommodate future Connector improvements and to permit servicing such lines with minimum interference to Connector traffic.
4. Any necessary permits, including the accommodation of utilities on Connector right-of-way and environmental controls, shall be the responsibility of the utility. Underground installations will be so designed that the facility can be located without disturbing the roadway structure. If the installation includes the use of “non-toneable” piping, conduit, or direct bury lines, locator lines will be placed in conjunction with the utility line installation.
5. Longitudinal installations shall be located on a uniform alignment as near as practicable between the ditch line and the right-of-way line so as to provide a safe environment for traffic operation and preserve space for future Connector improvements or other utility installations.
6. If the installation is between the ditch-line and right-of-way line, the utilities facilities must have a minimum cover depth of thirty-six (36) inches. If the installation is between the ditch line and the edge of pavement, the utilities facilities must have a cover depth of forty-two (42) inches below the top of pavement. If the minimum bury as set forth cannot be obtained, the facility shall be re-routed. When not practicable to re-route, it shall be protected by other approved methods. The top of the pipe must not project into the sub-base.
7. Conditions which are generally unsuitable or undesirable for utility crossings must be avoided. These include locations such as deep cuts; near footings of bridges and retaining walls; across at grade intersections or ramp terminals; at cross drains where flow of water, drift, or stream bed load may be obstructed; within basins of an underpass drained by a pump if the pipeline carries a liquid or liquefied gas; and in wet or rocky terrain where it will be difficult to attain minimum bury.
8. Only (CPUC defined) public utility companies may occupy the Connector right-of-way longitudinally along the roadway in the PUE. Perpendicular crossings may be permitted to private companies or individuals, subject to conditions described herein.
9. To the extent feasible and practicable, utility line crossings of the Connector shall cross on a line generally normal (90 degrees) to the Connector alignment but in no case shall the angle of crossing be less than 75 degrees. Permanent markers which are readily identifiable and suitable shall be placed by the utility at the Connector right-of-way line where it is crossed by a utility facility and over longitudinal encroachments in the Connector right-of-way at appropriate intervals, as determined by the Director of the Connector JPA or designee.
10. The horizontal and vertical location of utility lines within the Connector right-of-way limits shall conform to the clear roadside policies applicable and consistent with the clear zones as stated in

the AASHTO-Roadside Design Guide, latest edition, and the Access and Roadside Management Standards, latest edition. The minimum vertical clearance for overhead power and communication lines above the Connector and the minimum lateral and vertical clearance from bridges shall be as required by the determination of the Director of the Connector JPA or designee and/or applicable Public Utility Commission Rules and Regulations.

11. Manholes shall not be located in the pavement or shoulders of the Connector. Exception may be made on streets at those locations where manholes are essential parts of existing lines that are permitted to remain in place under existing and proposed roadways as determined by the Director of the Connector JPA or designee.
12. In some cases, attachment of utility facilities to highway structures, such as bridges, is a practical and necessary arrangement and may be permitted by Permit. However, attaching utility lines to a highway structure can materially affect the structure, the safe operation of traffic, the efficiency of maintenance and inspection, and the appearance. Therefore, where it is feasible and reasonable to locate utility lines elsewhere, attachments to bridge structures should be avoided.
13. All costs of installing and maintaining any utilities within the JPA right-of-way shall be at the expense and effort of the utility company, with typical "Franchise Utilities". Failure to maintain such utility in an acceptable manner shall be grounds for revoking the encroachment permit and removal of the utility at the utility company's expense. Any damages or adverse impacts to the structural integrity of the structure resulting from installation or maintenance of the utility will be corrected at the expense and effort of the utility company.
14. Upon completion of the permitted work, the utility must supply accurate as built drawing within 60 days to the Director of the Connector JPA or designee. Records shall be maintained by the utility owner that describe the utility, usage, size, configuration, material, location, height or depth, and any special features such as encasement. This information should be in a reproducible form available to other utilities and highway agencies.

Capital SouthEast Connector Board of Directors

Item #6
Staff Report

October 10, 2014

Update on Alternative Delivery Method Analysis

Issue: To present to the Board the initial findings and results of the Alternative Delivery Method analysis.

Recommendation: Staff recommends the Board receive the initial findings and approve the next steps outlined for Alternative Delivery Method procurement and provide feedback as desired.

Background: At your November, 2013 meeting, the Board executed a contract with Granite Construction Company (Granite) for design-build consultation services. The intent of this contract was for an active and experienced heavy construction company to provide the JPA its insight and recommendations on a number of alternative delivery aspects of the Connector that could result in significant savings and reduced disruption along the corridor. Granite was tasked to provide input on the feasibility of using Design-Build delivery or Construction Manager/General Contractor (CM/GC) delivery on project segments as it relates to cost and time savings and to provide input on Contractor/JPA risk allocation for using such a delivery method.

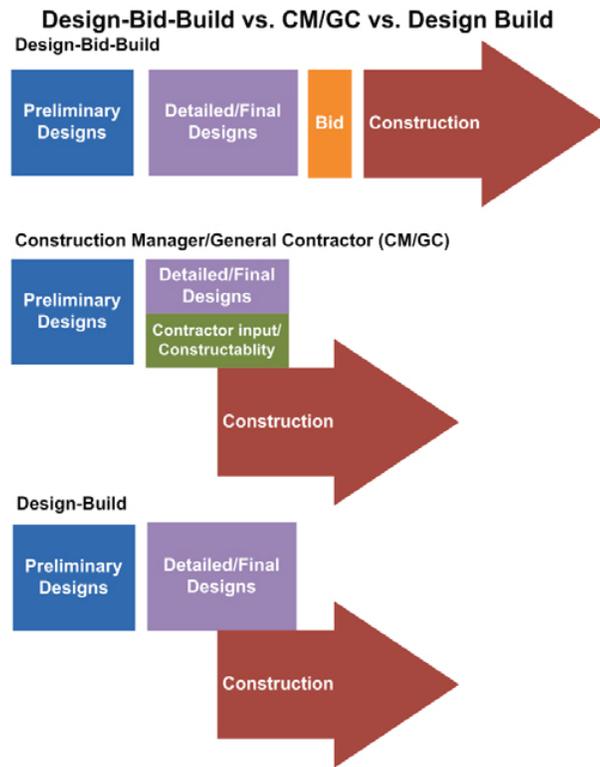
Granite and the JPA team have conducted numerous meetings since the contract began. The initial efforts were to provide Granite the existing public documents for them to review and become familiar with the project, as well as to have an understanding of the Authority's proposed direction, opportunities, and risks. Granite then performed a field review of the entire corridor looking for constructability issues and identifying opportunities and constraints that may impact construction estimates. The result of these efforts provided them with a better understanding of the overall project.

Related to alternative delivery methods, in September 2013, the Governor signed into law AB 401, which enables the use of Design-Build construction procurement for the Connector Project. In 2014 AB 1724 (Frazier) was introduced and would have authorized regional transportation agencies to use CM/GC as a procurement method, however this bill was not sent to the Governor for signature.

The State of California has used Design-Build delivery on a trial basis over the past five years, but almost exclusively on the State Highway System. The State also began a pilot program in 2013 for projects to use the CM/GC delivery method.

Discussion: In order to deliver the project as efficiently as possible, several different methods of construction have been considered for the project. These delivery options include traditional Design-Bid-Build and alternative delivery methods such as Design-Build or Construction Manager/General Contractor.

Alternative Delivery Methods have proven to minimize risks for the project owner and to reduce the delivery schedule, and therefore time, by overlapping the design phase and construction phase of the project. In the case of the Connector Project, it could result in a time savings of up to two years with a cost reduction factor of up to 20 percent.



Outline of traditional Design-Bid-Build

Design-Bid-Build is the traditional method for project delivery in which the owner contracts with separate entities for the design and construction of a project. The only criterion for final selection is lowest total construction cost. An owner contracts with an engineer to deliver full construction documents. Those documents are then bid in the marketplace to select general contractors. The winning bidder then contracts with the owner to build what has been designed. The design firm and general contractor have separate contracts with the owner and their interaction is directly with the owner, not each other

Outline of Design-Build

Design-Build is a method of project delivery in which one entity – the design-build team – works under a single contract with the project owner to provide design and construction services. In all other project delivery systems, there are separate contracts for design and construction. The single contract, secured by the project owner for both design and construction, is the distinguishing characteristic of Design-Build. With one design-build entity or team, the roles of designer and constructor are integrated. One entity drives one unified flow of work from initial concept through completion. Streamlining project delivery through a single contract between the owner and the design-build team transforms the relationship between designers and builders into an alliance that fosters collaboration and teamwork. It also assists the project owner by combining separate design and construction aspects into a single contract. United from the onset of the project, an integrated team readily works to successfully complete a project faster, more cost effectively, and with optimized project quality.

Outline of Construction Manager / General Contractor

The CM/GC project delivery method allows an owner to engage a construction manager during the design process to provide constructability input. The Construction Manager is generally selected on the basis of qualifications, past experience or a best-value basis. During the design phase, the construction manager provides input regarding scheduling, pricing, phasing and other input that helps the owner design a more constructible project. At approximately an average of 60% to 90% design completion, the owner and the construction manager negotiate a 'guaranteed maximum price' for the construction of the project based on the defined scope and schedule. If this price is acceptable to both parties, they execute a contract for construction services, and the construction manager becomes the general contractor.

An outline representing the comparative time requirements of the major processes of the three delivery methods is shown below. With several of the major procurement processes occurring simultaneously rather than sequentially, years of project development and construction along with their commensurate expense can be eliminated from the program.

Impacts on Project Timeliness

The greatest motivation and realized benefit to a contracting agency using Alternative Delivery Methods instead of traditional design-bid-build contracting, is the ability to reduce the overall duration of the project development process by eliminating a second procurement process for the construction contract. This reduces the potential for design errors and omissions, and allows for more concurrent processing of design and constructing activities for different portions of the same project.

Impacts on Project Cost

Greater cost efficiencies are most likely to occur when using Alternative Delivery Methods as a result of enabling the contractor to propose more cost-effective ways to realize the performance objectives of the project. This can be achieved by:

- A fundamental shift in the adversarial nature of transportation construction contracting, particularly for high visibility projects where cooperation between agencies and their design and construction contractors is essential to project success.
- Greater opportunities to use value engineering than in Design-Bid-Build.
- Integrating the design and construction activities to reduce the potential for design errors and discontinuities between the design plans and construction efforts that can result in fewer change orders and extra work orders; and
- Encouraging the contractor to use the latest innovative technologies and methodologies to more fully leverage available public resources

At this time, staff recommends that the Board take the following next steps with regard to an Alternative Delivery Method:

- ✓ Direct staff to pursue engineering design contracts under the assumption that an Alternative Delivery Method will be used instead of the traditional Design-Bid-Build.

- ✓ Direct staff to update the Plan of Finance with more specifics regarding the financial benefits of the two Alternative Delivery Methods.
- ✓ Direct staff to pursue legislation that authorizes the JPA to use CM/GC as an Alternative Delivery Method.

As Granite completes its work for the JPA, it may become clearer which alternative delivery method is superior for specific segments of the project. It will be at that time that staff will bring a final recommendation to the Board for a procurement method for that particular segment.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Tom Zlotkowski". The signature is stylized and cursive.

Tom Zlotkowski
Executive Director