

AMENDED

JOINT EXERCISE OF POWERS AGREEMENT / CONTRIBUTION AGREEMENT

EAST CONTRA COSTA REGIONAL FEE AND FINANCING AUTHORITY
AND
CONTRA COSTA COUNTY

This AGREEMENT is entered into on this _____ day of _____, 2009, between the East Contra Costa Regional Fee and Financing Authority, a joint exercise of powers agency (hereinafter referred to as the "AUTHORITY"), and Contra Costa County, a political subdivision of the State of California (hereinafter referred to as "COUNTY").

RECITALS:

- A. AUTHORITY and COUNTY contemplate construction of the State Route 4 Bypass – Phase 1 improvements, referred to herein as "PROJECT." State Route 4 Bypass – Phase 1 improvements include 1) 6-lane freeway from SR4 to Laurel Road; 2) 4-lane freeway from Laurel Road to Lone Tree Way; 3) 2-lane expressway from Lone Tree Way to Vasco Road; 4) upgraded 2-lane Marsh Creek Road (conventional highway) from the SR4 Bypass to Byron Highway (existing SR4); 5) Interchanges at Laurel Road and Lone Tree Way; and 6) the portion of John Muir Parkway from Foothill Blvd. to Briones Road.
- B. COUNTY desires to contribute \$3,000,000 in Proposition 1B Funds, referred to herein as "FUNDS", to be applied towards PROJECT construction costs. AUTHORITY desires to provide COUNTY an equivalent amount of Regional Transportation Development Impact Mitigation (RTDIM) Fees for use on the Vasco Road Safety Improvement project as those fees are received and become available in the future. Parties recognize and acknowledge that the Vasco Road Safety Improvement project, to the extent that it is located within Contra Costa County, is one of the twenty-six road projects on the AUTHORITY's project list for which RTDIM fees are imposed.
- C. In accordance with Section 9 "Contributions and Advances" of the Joint Exercise of Powers Agreement dated 8/9/94, by and among the cities of Antioch, Brentwood, Pittsburg and Contra Costa County relating to the Authority, the parties intend to define herein the terms and conditions under which PROJECT is to be partially financed by this contribution of FUNDS from COUNTY and by which the COUNTY is to receive RTDIM Fees in the future for the Vasco Road project.

NOW, THEREFORE, pursuant to Government Code section 6500 and following, the parties mutually agree and promise as follows:

1. Responsibilities of COUNTY and AUTHORITY.

A. COUNTY shall be responsible for the following:

- (1) Submit application to State Department of Finance for receipt of Proposition 1B Funds to be used on PROJECT construction costs.
- (2) If PROJECT qualifies under Proposition 1B and COUNTY receives FUNDS, providing AUTHORITY the sum of \$3,000,000 within thirty days after receipt of such FUNDS.

B. AUTHORITY shall be responsible for the following:

- (1) Constructing PROJECT and paying for all costs associated with the design, acquisition of real property, utility relocations and construction for PROJECT.
- (2) Providing COUNTY a total of \$3,000,000 plus interest (to account for escalation in project costs) for the Vasco Road Safety Improvement project (one of the twenty-six road projects on the AUTHORITY's project list for which RTDIM fees are imposed), using future RTDIM Fees as those fees become available in lump sums of \$100,000 or greater. Interest will be calculated as though the Prop 1B funds had been invested in the County Pooled Investment Earnings Account. The payment to COUNTY will be the first priority for AUTHORITY's use of RTDIM Fees once PROJECT is completed and payment to the COUNTY will be made before RTDIM Fees are used for any other projects, with the exception of the following items: 1) AUTHORITY administration costs; 2) SR4 Bypass Authority administration and Transfer and Relinquishment costs; 3) environmental clearance activities for SR4 Bypass – Phase 2; and 4) outstanding allocations for the Buchanan Bypass project. Full payment to COUNTY must be completed no later than June 30, 2011.

2. Agreement Modification: This Agreement shall be subject to modification only by the written approval of the legislative bodies of both parties. Neither party shall unreasonably withhold its consent to modification for the implementation and accomplishment of the overall purpose for which this Agreement is made.

3. Accountability: As required by Government Code section 6505, both parties to this Agreement shall provide strict accountability of all funds received for PROJECT.

4. Agreement Termination: Unless terminated earlier, this Agreement shall terminate immediately after AUTHORITY provides COUNTY \$3,000,000 in RTDIM Fees for the Vasco Road Safety Improvement project (one of the twenty-six road projects on the AUTHORITY's project list for which RTDIM fees are imposed).

5. Entire Agreement: This Agreement contains the entire understanding of the parties relating to the subject of this Agreement. Any representation or promise of the parties relating to PROJECT shall not be enforceable unless it is contained in this Agreement or in a subsequent written modification of this Agreement executed by all the legislative bodies of both parties.

6. Notices: All notices (including requests, demands, approvals or other communications) under this Agreement shall be in writing.

A. Notices shall be sufficiently given for all purposes as follows:

- (1) When delivered by first class mail, postage prepaid, notice shall be deemed delivered three (3) business days after deposit in the United States Mail.

- (2) When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
- (3) When delivered by overnight delivery by a nationally recognized overnight courier, notice shall be deemed delivered one (1) business day after deposit with that courier.
- (4) When personally delivered to the recipient, notice shall be deemed delivered on the date personally delivered.

B. The place for delivery of all notices given under this Agreement shall be as follows:

East Contra Costa Regional Fee and Financing Authority
 Attn: Program Manager
 255 Glacier Drive
 Martinez, CA 94553

Contra Costa County
 Attn: Public Works Director
 255 Glacier Drive
 Martinez, CA 94553

Or to such other addresses as AUTHORITY and COUNTY may respectively designate by written notice to the others.

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

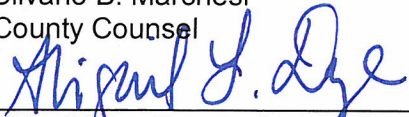
EAST CONTRA COSTA REGIONAL FEE
 AND FINANCING AUTHORITY

CONTRA COSTA COUNTY

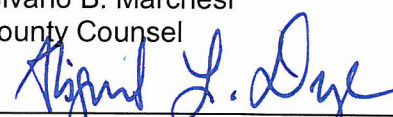
By: 
 Secretary or Designee

By: _____
 Public Works Director

Approved as to form:
 Silvano B. Marchesi
 County Counsel


 Abigail Dye, Deputy County Counsel

Approved as to form:
 Silvano B. Marchesi
 County Counsel


 Abigail Dye, Deputy County Counsel