

**EIGHTH AMENDMENT TO JOINT EXERCISE
OF POWERS AGREEMENT FOR
CONSTRUCTION OF THE
STATE ROUTE 4 BYPASS**

1. EFFECTIVE DATE AND PARTIES

Effective September _____, 2011, the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (the "County"), the CITY OF ANTIOCH, a municipal corporation duly organized and existing under the laws of the State of California ("Antioch"), the CITY OF BRENTWOOD, a municipal corporation of the State of California ("Brentwood"), and the CITY of OAKLEY, a municipal corporation of the State of California ("Oakley"), mutually agree as follows:

2. PURPOSE

Effective February 28, 1989, the County, Antioch, and Brentwood entered into a written agreement originally entitled "JOINT EXERCISE OF POWERS AGREEMENT FOR ROUTE ADOPTION OF THE DELTA EXPRESSWAY" and then renamed the "JOINT EXERCISE OF POWERS AGREEMENT FOR CONSTRUCTION OF THE STATE ROUTE 4 BYPASS" (referred to as the "Agreement"), which provides for the creation of a separate joint powers agency to perform planning and administration for the State Route 4 Bypass project, including route alignment, environmental review, design, construction, and to arrange for the maintenance and operation of the Bypass until acceptance by Caltrans and other project activities. The Agreement has previously been amended as follows: First Amendment dated October 23, 1990; Second Amendment dated May 28, 1991; Third Amendment dated August 25, 1992; Fourth Amendment dated April 30, 1993; Fifth Amendment dated September 27, 1994 (revised title of Agreement to "JOINT EXERCISE OF POWERS AGREEMENT FOR CONSTRUCTION OF THE STATE ROUTE 4 BYPASS"); Sixth Amendment dated May 20, 1997; and Seventh Amendment dated September 28, 1999 (added Oakley as a party to the Authority). The parties now wish to extend the Agreement term for an additional fifteen-year period, to refine other provisions, and to restate the original intent of the Members.

3. AMENDMENTS TO AGREEMENT

A. The following definition is added to Section 1, DEFINITIONS:

- o. "Member" or "Party" shall mean the County, Antioch, Brentwood, and Oakley as parties to this Agreement.

B. Section 3, TERM, is revised to read:

“This Agreement shall expire upon the latest of the following: (i) December 31, 2030; or (ii) after completion of all obligations of the Authority identified in the Cooperative Agreement for Route 4 Transfer of Highway Location (04275-4A690K, District Agreement No. 4-2152), SR4 Bypass Environmental Impact Report (EIR), supplemental EIR, addenda EIR, Project Study Report, Project Report, and other cooperative agreements and transfer of all real property interests owned by the Authority. Prior to the expiration date, no Party to this Agreement may withdraw from the Authority without mutual written consent from all Parties to this Agreement. Absent mutual consent, any purported withdrawal shall be void, and the Party in question shall remain responsible for performing all obligations under this Agreement, including without limitation its obligation to pay its proportional share of the cost of completing all existing and future projects approved by the Authority. Notwithstanding the expiration or termination of this Agreement, the provisions of Section 13 shall remain in full force and effect.

“Upon termination of this Agreement, all Authority assets will be transferred to the local jurisdiction in which they are located.”

C. In Section 4, AUTHORITY, Subsection B.e. is deleted in its entirety.

D. Section 13, HOLD HARMLESS, is revised to read:

“The Authority acknowledges that it is empowered through this Agreement with certain responsibilities and obligations and further acknowledges it shall defend (with counsel reasonably acceptable to Members), indemnify, and hold harmless Members and their officers, employees, volunteers, agents, and representatives from and against any and all present and future liabilities, obligations, orders, claims, suits, damages, fines, penalties, and expenses (collectively, "Claims"), of any kind or nature relating to the exercise of said Authority powers from creation of the Authority and subject matter of this Agreement or the implementation hereof, including any Claims that may be asserted for damage to property, injuries to persons, or accidental death (including reasonable attorneys fees and costs). The Authority's defense and indemnity obligations under this section shall not extend to Claims occasioned by the sole negligence or willful misconduct of a Member or a Member's officers, employees, volunteers, agents, or representatives acting on behalf of the Member, whether pursuant to a separate agreement between the Authority and a Member or not. The Authority's defense and indemnity obligations under this Section shall survive termination of this Agreement. The provisions of this section are not intended to and shall not limit the defense and indemnification or insurance provided by the consultants and contractors hired pursuant to the powers of the Authority or the insurance, if any, obtained by the Authority or Members.”

E. Section 14, TERMINATION OF POWERS, is revised to read:

“The Authority shall continue to exercise the powers herein conferred upon it until the termination of this Agreement, notwithstanding the provisions of Section 13, which shall remain in full force and effect.”

F. Section 18, BREACH, is revised to read:

“If default shall be made by a Member in any covenant contained in this Agreement, such default shall not excuse the defaulting Member from fulfilling its respective obligations under this Agreement, and the defaulting Member shall continue to be liable for its performance as specified in Section 3. The Parties hereby declare that this Agreement is entered into for the benefit of the Authority hereby created, and the Parties grant to the Authority the right to enforce by whatever lawful means the Authority deems appropriate all of the obligations of each of the Parties hereunder. Each and all of the remedies given to the Authority hereunder, or by any law now or hereafter enacted, are cumulative, and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.”

G. In Section 25, NOTICES, Antioch’s address is revised to read:

“Antioch -- City Manager
City of Antioch
P.O. Box 5007
Antioch, CA 94531-5007”

4. **REMAINING PROVISIONS**

Subject to the changes made by this and previous Amendments, all provisions of the Agreement shall remain in full force and effect.

5. **SIGNATURES**

These signatures attest the parties’ agreement to this Amendment:

COUNTY OF CONTRA COSTA

CITY OF ANTIOCH

By: _____
Chair, Board of Supervisors

By: _____
James D. Davis, Mayor

ATTEST: David Twa, Clerk of the Board
of Supervisors and County Administrator

ATTEST: L. Jolene Martin, City Clerk

By: _____
Deputy

By: _____

FORM APPROVED:
Sharon L. Anderson, County Counsel

FORM APPROVED:
Lynn Tracy Nerland, City Attorney

By: _____
David F. Schmidt,
Deputy County Counsel

By: _____

CITY OF BRENTWOOD

CITY OF OAKLEY

By: _____
Robert Taylor, Mayor

By: _____
Jim Frazier, Mayor

ATTEST: Margaret Wimberly, City Clerk

ATTEST: Nancy Ortenblad, City Clerk

By: _____

By: _____

FORM APPROVED:
Damien Brower, City Attorney

FORM APPROVED:
William Galstan, City Attorney

By: _____

By: _____