

JOINT EXERCISE OF POWERS AGREEMENT
BETWEEN CONTRA COSTA COUNTY AND
CITY OF CONCORD
FOR THE
MARSH DRIVE BRIDGE (NO. 28C-0442) REPLACEMENT OVER WALNUT CREEK CHANNEL PROJECT

This Joint Exercise of Powers Agreement (AGREEMENT) is entered into as of _____, 2021 (the “Effective Date”) by and between the Contra Costa County (COUNTY), a political subdivision of the State of California, and the City of Concord (CITY), a municipal corporation. The COUNTY and the CITY are sometimes referred to herein together as the “Parties”, and each as “Party”.

RECITALS

- A. The Marsh Drive Bridge Replacement over Walnut Creek Channel Project (PROJECT) is a COUNTY sponsored project that is proposed to replace the existing Marsh Drive Bridge over Walnut Creek Channel with a new concrete bridge that is intended to meet current structural, geometric, and hydraulic standards. The new replacement bridge will be wider and approximately seven feet higher than the existing bridge. As part of the bridge replacement, the PROJECT will also include reconstruction of the approach roadways on both the east (approximately 500 feet) and west (approximately 400 feet) sides of the bridge due to increased bridge profile and roadway realignment.
- B. The portion of Marsh Drive from the centerline of the bridge (*i.e.*, the approximate location above the approximate centerline of the Marsh Creek channel) westward is a county highway located in the COUNTY’s jurisdiction. The portion of Marsh Drive from the centerline of the bridge eastward is a city street located in the CITY’s jurisdiction, as shown on the map attached hereto as Exhibit A and incorporated herein by reference (the “PROJECT Area Map”).
- C. Marsh Drive is an important regional transportation facility, as it serves as a reliever route to State Route 4 (SR 4), which is the major transportation link between Central and East County. Marsh Drive also serves as an emergency route in the event of an SR 4 closure.
- D. The COUNTY and the CITY have been coordinating regarding the PROJECT design and planning, and the COUNTY and the CITY desire to share PROJECT responsibilities as set forth in this AGREEMENT. While the Bridge is jointly owned, operated, and maintained by the COUNTY and the CITY, at the time of the Effective Date of this AGREEMENT, CITY lacks sufficient Capital Improvement Project (CIP) funds to contribute towards the PROJECT. As a result of the CITY’s current financial constraints, the COUNTY has agreed to pay the entire cost to construct this PROJECT under the terms of this AGREEMENT, subject to the COUNTY’s receipt of federal funds under the Federal Highway Bridge Program.
- E. On September 11, 2019, California Department of Transportation (Caltrans) as lead agency for National Environmental Policy Act (NEPA) determination purposes, determined the PROJECT has no significant impacts on the environment as defined by NEPA and determined that the PROJECT is a Categorical Exclusion under 23 CFR 77.117(d) activity (d)(13).

- F. On November 19, 2019, the COUNTY Board of Supervisors approved the PROJECT, authorized the advertisement of the PROJECT construction, and, as lead agency under the California Environmental Quality Act (CEQA), adopted the Mitigated Negative Declaration and Mitigation and Monitoring Reporting Program for the PROJECT in compliance with CEQA.
- G. The COUNTY and the CITY are authorized to enter into this AGREEMENT pursuant to Code of Civil Procedure section 1240.140, Government Code sections 6500 *et seq.*, and other applicable laws.

AGREEMENT

Now therefore, for good and valuable consideration, the COUNTY and the CITY mutually agree as follows:

1. PURPOSE; CONDITIONS PRECEDENT. The purpose of this AGREEMENT is to set forth the Parties' obligations with respect to constructing the PROJECT within their respective jurisdictions. This AGREEMENT shall only be construed to create the specific rights and obligations set forth herein. This AGREEMENT is not intended to create, and shall not be construed as creating, any other rights and obligations not expressly set forth herein, except as may otherwise be required by law. Specifically, and without limitation, the COUNTY's payment of the entire PROJECT construction costs under this AGREEMENT shall not waive the CITY's future obligation to be responsible for the future operation, repair, maintenances, and improvement of that portion of the Bridge and those PROJECT improvements located in the CITY's jurisdiction. The Parties agree that the ability to proceed with the PROJECT is contingent on the receipt of federal funds under the Federal Highway Bridge Program. Excepting the CITY's obligations under Section 6(b), neither Party shall have any obligations under this AGREEMENT until the COUNTY notifies the CITY in writing that the COUNTY has secured sufficient federal funds to enable the COUNTY to deliver the PROJECT, as determined by the COUNTY in its sole discretion.
2. TERM. The term of this AGREEMENT begins on the Effective Date. This AGREEMENT terminates upon the COUNTY's delivery of a warranty release to its contractor under Section 8.
3. ENGINEERING. The COUNTY will complete PROJECT preliminary engineering, environmental documentation, final design, and right of way engineering activities. The COUNTY will submit to the CITY the 35%, 65%, 95%, and final plans, specifications, and estimates (PS&Es) for the portion of the PROJECT located within the CITY's jurisdiction. Within 20 days after receiving each of the 35%, 65%, 95%, and final PS&Es, the CITY will provide the COUNTY any CITY comments on those PS&Es. The COUNTY will ensure that all engineering and design work for PROJECT improvements in the CITY's jurisdiction is performed to the satisfaction of the CITY, in accordance with the CITY standards and requirements, and in accordance with all applicable State of California, Department of Transportation standard plans and specifications.
4. RIGHT OF WAY ACQUISITION. Right of way acquisition will be necessary for this PROJECT. The COUNTY will perform all PROJECT related right of way activities, including but not limited to acquisition of right of way, roadway easements, access easements, slope easements, utility easements, license agreements, temporary construction easements, right of entry permits, storm drainage easements, drainage releases, and relinquishment of abutter's rights. The COUNTY is hereby designated as the

Party to acquire all property interests required for the PROJECT within the Parties' jurisdictions, by eminent domain or otherwise, by and through the COUNTY's Board of Supervisors, officials and departments, and designated attorneys. The COUNTY shall be responsible for conducting all public hearings to the end of adopting a resolution of necessity, and for taking all steps necessary to pursue to conclusion eminent domain proceedings as may be necessary to obtain property and property interests in the COUNTY's name for or relating to the PROJECT, and, in connection therewith, for entering into any and all contracts to obtain performance of all legal, engineering, appraisal, right-of-way, relocation assistance, and related services. After the CITY accepts the PROJECT as complete under Section 7, the COUNTY will convey or assign to the CITY any roadway and other easements acquired for the PROJECT within the CITY's jurisdiction, and the CITY shall accept said roadway and other easements within 60 days following receipt of conveyance or assignment instruments from the COUNTY.

5. PROJECT CONSTRUCTION.

- (a) Lead contracting agency. The COUNTY agrees to act as lead agency for PROJECT construction, and it will be responsible for the overall management, advertisement and award, and contract administration for construction activities within the jurisdictional boundaries of both the COUNTY and the CITY. The COUNTY's and the CITY's respective legislative bodies shall approve the final PROJECT improvement plans and specifications prior to the COUNTY's award of the PROJECT construction contract.
- (b) Encroachment permit. When requested to do so by the COUNTY or its contractor, the CITY shall issue to the COUNTY's contractor, at no cost to the COUNTY or its contractor, an encroachment permit for all PROJECT improvements and work within the jurisdictional boundaries of the CITY.
- (c) CITY's designation of representative. For PROJECT features within the CITY's jurisdiction, the CITY may elect to provide, at its sole cost and expense, a qualified representative who shall have authority to accept or reject work or materials, or to order any actions needed for public safety or the preservation of property, and to assure compliance with all provisions of the CITY's encroachment permit. The CITY's representative shall have no direct contact with the COUNTY's contractor, and shall make all comments and recommendations to the COUNTY's representative.

6. FINANCIAL RESPONSIBILITY.

- (a) COUNTY's financial responsibility. The COUNTY will pay all PROJECT construction, design, engineering, contract administration, and other PROJECT-related costs. The CITY agrees that the COUNTY's payment of said costs shall not relieve the CITY from any future obligations to pay costs to operate, maintain, improve, repair, or replace the portion of the Bridge and other improvements located in the CITY's jurisdiction following their acceptance by the CITY and as more particularly described in Section 9.
- (b) CITY's responsibility. The CITY shall cooperate with the COUNTY in seeking federal funding for the PROJECT.

7. COMPLETION AND ACCEPTANCE. Within 10 days after the COUNTY notifies the CITY that PROJECT construction is complete, the COUNTY's and the CITY's representatives will conduct a joint final inspection of the PROJECT prior to acceptance of improvements as complete. If the COUNTY or the CITY is not reasonably satisfied with the PROJECT improvements, the COUNTY will notify the contractor and will require the contractor to complete the improvements to the COUNTY's and the CITY's reasonable satisfaction. Within sixty (60) days following the COUNTY's acceptance of the PROJECT as complete, the CITY shall accept the PROJECT improvements within its jurisdiction as complete. The COUNTY's acceptance of the PROJECT as complete will start the contractor's one-year warranty period.
8. GUARANTEE AND WARRANTY. The COUNTY will require that its contractor guarantees and warrants the PROJECT, as more particularly described in Section 10(b). No later than 30 days prior to expiration of the one-year warranty period for the PROJECT, the COUNTY and the CITY will conduct a joint inspection of the PROJECT. After the COUNTY and the CITY reasonably determine that the PROJECT improvements have performed during the warranty period to the COUNTY's and the CITY's reasonable satisfaction, the CITY shall provide concurrence for a release of the warranty for the PROJECT. The CITY shall not unreasonably withhold said concurrence for release. The COUNTY will be responsible for providing the contractor its and the CITY's warranty release following the COUNTY's receipt of the CITY's concurrence for release.
9. OWNERSHIP AND MAINTENANCE.
 - (a) COUNTY's obligations. Beginning on the date that the COUNTY accepts the PROJECT as complete under Section 7, and continuing thereafter, the COUNTY will own, operate, and maintain the portion of the PROJECT located within the COUNTY's jurisdiction, and the COUNTY assumes total responsibility for the operation, maintenance, repair, removal, and replacement of that portion of the PROJECT. Beginning on the date that the COUNTY accepts the PROJECT as complete under Section 7, and continuing thereafter, the COUNTY will defend, indemnify, save, and hold harmless the CITY, its governing body, officers, agents, and employees, against all claims, demands, lawsuits, costs, expenses and liability for any claims for damages, injury, sickness, or death (collectively, "Liabilities") that arise from or are related to the design, construction, use, operation, or maintenance of the portion of the PROJECT located in the COUNTY's jurisdiction, except for any Liabilities that arise out of the sole or willful misconduct of the CITY, or its officers, agents or employees.
 - (b) CITY's obligations. Beginning on the date that the CITY accepts the PROJECT as complete under Section 7, and continuing thereafter, the CITY will own and maintain the portion of the PROJECT located in the CITY's jurisdiction, and the CITY assumes total responsibility for the operation, maintenance, repair, removal, and replacement of that portion of the PROJECT. Beginning on the date that the CITY accepts the PROJECT as complete under Section 7, and continuing thereafter, the CITY will defend, indemnify, save, and hold harmless the COUNTY, its governing body, officers, agents, and employees, against all Liabilities that arise from or are related to the use, operation, or maintenance of the portion of the PROJECT located in the CITY's jurisdiction, except for any Liabilities that arise out of the sole negligence or willful misconduct of the COUNTY, or its officers, agents or employees.

- (c) Survival. The requirements of this Section 9 will survive the expiration or termination of this AGREEMENT.

10. CONTRACTOR'S OBLIGATIONS.

- (a) Contractor's indemnity. The COUNTY will require its contractor to defend, indemnify, and hold harmless the COUNTY and the CITY, and their governing bodies, officers, agents, and employees, from and against any and all liabilities, claims, actions, causes of action, and demands whatsoever against them, including related attorneys' fees, arising from or connected with any injury, or death of any person, or damage to property, or other liability of any nature arising from or in any way connected with the construction of the PROJECT, except for any Liabilities that arise out of the sole negligence or willful misconduct of the COUNTY or CITY, or their respective officers, agents or employees.
- (b) Contractor's warranty. In addition to the warranties existing at law, the COUNTY will require its contractor to provide an express warranty for the benefit of the COUNTY and the CITY for a one-year period following the COUNTY's acceptance of the PROJECT as complete. Said warranty will include the contractor's guarantee that the work has been completed in accordance with the plans and specifications for the PROJECT, and it will include the contractor's agreement to repair or replace all work that fails to conform to the plans and specifications, or that proves to be defective in workmanship or materials during the above-stated one-year period of time.
- (c) Bonds. The COUNTY will require its contractor to present two good and sufficient surety bonds, one for payment and one for performance, each in an amount equal to 100 percent of the contract payment limit, issued by a surety admitted in the State of California, using the COUNTY's standard forms, naming the COUNTY and the CITY as obligees on the bonds.
- (d) Insurance. Prior to advertising the PROJECT, the COUNTY will provide the CITY the insurance requirements in the PROJECT construction contract for the CITY's review. If the CITY does not comment on or object to the insurance requirements within 10 days after receiving the requirements from the COUNTY, the CITY will be deemed to have approved the insurance requirements. The CITY shall not unreasonably withhold its approval of the insurance requirements. The COUNTY will require its PROJECT construction contractor to name the City, its officers, employees, and agents as additional insureds under its policies of insurance, with primary and non-contributory coverage. The COUNTY will require the contractor to provide certificates of insurance and policy endorsements evidencing the foregoing, and the COUNTY will provide copies of those certificates and endorsements of insurance to the CITY.

11. GENERAL TERMS.

- (a) Modification. This AGREEMENT may be modified or amended only with the written consent of the legislative bodies of each Party hereto.

- (b) Accountability. The Parties will provide strict accountability of any and all PROJECT funds and will report to each other all receipts and disbursements.
- (c) Format. The section headings and captions of this AGREEMENT are, and the arrangement of this instrument is, for the sole convenience of the Parties to this AGREEMENT. The section headings, captions, and arrangement of this instrument do not in any way affect, limit, amplify, or modify the terms and provisions of this AGREEMENT.
- (d) Entire AGREEMENT. This AGREEMENT contains the entire understanding of the Parties relating to the subject matter of this AGREEMENT. No promise, representation, warranty, or covenant not included in this AGREEMENT has been or is relied upon by any Party.
- (e) Counterparts. This AGREEMENT may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to an original with all counterparts be constituting but one and the same instrument. Facsimile or other copies of manual signatures on this AGREEMENT or any notice, consent, or amendment required under this AGREEMENT are binding.
- (f) Notices. All correspondence regarding this AGREEMENT, including invoices, payments, and notices, shall be directed to the following persons at the following addresses, which may be changed by written notice from one Party to the other:

COUNTY:

Brian M. Balbas, Public Works Director
Contra Costa County
255 Glacier Drive
Martinez, CA 94553
Fax: 925-313-2333
brian.balbas@pw.cccounty.us

CITY:

Kevin Marstall, City Engineer
City of Concord
1950 Parkside Drive
MS/52
Concord, CA 94519
Fax: 925-680-4877
Kevin.Marstall@cityofconcord.org

Notices shall be deemed given on the day of delivery if personally delivered on the business day following the date of mailing if sent by overnight delivery, and three business days following the date of mailing if sent by U.S. Mail. Email addresses are included as a convenience to the Parties, but a notice sent by email is not properly given under this AGREEMENT, unless it is also given personally, by overnight mail, or by U.S. Mail.

- (g) Governing law; venue. This AGREEMENT will be governed and construed in accordance with the California Law.
- (h) Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this AGREEMENT shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this AGREEMENT, which shall be interpreted to carry out the intent of the Parties hereunder.

(i) Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of either Party shall be deemed to waive or render unnecessary such Party's consent to or approval of any subsequent act of the other Party. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this AGREEMENT.

(j) No third-party beneficiaries. There are no third-party beneficiaries to this AGREEMENT.

IN WITNESS WHEREOF, the parties have each executed this AGREEMENT as of the Effective Date first set forth above.

CONTRA COSTA COUNTY:

CITY OF CONCORD:

Brian M. Balbas, Public Works Director

Valerie Barone, City Manager

APPROVED AS TO FORM:

Sharon L. Anderson, County Counsel

APPROVED AS TO FORM:

By: Deputy County Counsel

City Attorney