



Joint Exercise of Powers Agency

City of Antioch City of Brentwood City of Oakley County of Contra Costa

Board of Directors

Thursday, November 10, 2011

6:55 p.m.

Tri-Delta Transit Meeting Room
801 Wilbur Avenue
Antioch, California

1. Call to Order
2. Public Comment
3. Consent Items
 - A. **APPROVE** Minutes of October 13, 2011 meeting.
 - B. **APPROVE** amendments to Consulting Services Agreements with the following consultants (no payment limit increases) to extend the term of the existing agreements through the dates listed below, and **AUTHORIZE** the Secretary, or designee, to sign the amendments on behalf of the Authority (*no attachment*):
 1. Parsons Brinckerhoff –Construction Management Services (June 30, 2012)
 2. Ray Zwemmer – Right of Way Engineering Support for SR4 Bypass Transfer (January 30, 2012)
 - C. Staff recommends the Authority take the following actions:
 1. **DETERMINE** that the real property described in Exhibit "A" to be excess and longer necessary for State Route 4 Bypass purposes.
 2. **APPROVE** the conveyance of said excess property, to the City of Brentwood, pursuant to Government Code Section 960.
 3. **AUTHORIZE** the Secretary, or designee, to execute the attached Grant Deed.
 4. **DIRECT** the Real Property Division to deliver the Deed to the City of Brentwood for acceptance and recording.
4. Determination Items
 - A. **APPROVE** a Memorandum of Understanding (MOU) between the Authority and the Contra Costa Transportation Authority (CCTA) to provide for the project management, environmental clearance, utility relocation, design, and construction of the SR4 Bypass/Sand Creek Interchange and 4-Lane Widening project and the SR4/SR160 Connector Ramps project and for the apportionment of the respective project duties

Board of Directors:
Jim Frazier, Chair
Robert Taylor, Vice Chair
Mary N Piepho
Brian Kalinowski

Authority Staff Office:
Contra Costa County
255 Glacier Drive
Martinez, CA 94553
(925) 686-0619

between the Authority and CCTA, and **AUTHORIZE** the Chair to sign the MOU on behalf of the Authority.

B. RECEIVE status report on the State Route 4 Bypass projects. *(No attachment)*.

5. Board Member Comments
6. Correspondence
7. Adjournment

The Authority will provide reasonable accommodations for persons with disabilities planning to attend Board meetings who contact the Program Manager at least 24 hours before the meeting, at (925) 686-0619.

"Any disclosable public records related to an open session item on a regular meeting agenda and distributed by the State Route 4 Bypass Authority to a majority of members of the Board of Directors less than 72 hours prior to that meeting are available for public inspection at 255 Glacier Drive, Martinez, CA during normal business hours."

**STATE ROUTE 4 BYPASS AUTHORITY
Antioch - Brentwood - Oakley and Contra Costa County**

JOINT EXERCISE OF POWERS AGENCY

MINUTES
October 13, 2011

The STATE ROUTE 4 BYPASS AUTHORITY meeting was called to order in the Tri Delta Transit Meeting Room, 801 Wilbur Avenue, Antioch, California by Chair Jim Frazier at 7:09 P.M.

ROLL CALL

PRESENT: Brian Kalinowski (Antioch), Mary Piepho (Contra Costa County Board of Supervisors), Robert Taylor (Brentwood), and Chair Jim Frazier (Oakley)

ABSENT: None

STAFF: Dale Dennis, Program Manager
David Schmidt, Legal Counsel

Program Manager Dale Dennis advised that after the agenda had been posted for the current meeting, an item had come to his attention that required immediate action. The item involved potential litigation by the Authority against two property owners relating to loan encumbrances against a parcel that the property owners conveyed to the Authority. The property owners had just notified the Authority not to contact them anymore. He reported that the matter required immediate action to enable the Authority to transfer clear title to the parcel to the State in a timely manner, as required for the transfer of the Bypass, and to avoid a potential delay to the transfer. As a result, he recommended that the Board:

- (1) Determine that there is a need to take immediate action and that the need for action came to the Authority's attention subsequent to the agenda being posted; and
- (2) Add the following item to the agenda and take action as appropriate.

CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Initiation of litigation pursuant to Government Code Section 54956.9(c): One potential case.

On motion by Director Piepho, seconded by Director Taylor, the Authority unanimously added the Closed Session item to the end of the agenda.

PUBLIC COMMENT

There were no comments from the public.

CONSENT ITEMS

On motion by Director Kalinowski, seconded by Director Taylor, the Authority unanimously adopted the Consent Items, as follows:

- A. APPROVED Minutes of August 11 and September 8, 2011 meetings.
- B. APPROVED amendment to Consulting Services Agreement with Gray Bowen and Company in the amount of \$50,000, for a revised not-to-exceed amount of \$420,000, to assist Authority staff to complete the acceptance and transfer of the State Route 4 Bypass to Caltrans, and AUTHORIZED the Secretary or designee to sign the amendment on behalf of the Authority.

DETERMINATION ITEMS

- A. APPROVE a Memorandum of Understanding (MOU) between the SR4 Bypass Authority (SR4BA) and the Contra Costa Transportation Authority (CCTA) to provide for the project management, environmental clearance, utility relocation, design, and construction of the SR4 Bypass/Sand Creek Interchange and 4-Lane Widening project and the SR4/SR160 Connector Ramps project and for the apportionment of the respective project duties between SR4BA and CCTA, and AUTHORIZE the Secretary or designee to sign the MOU on behalf of the Authority, substantially in the form attached to the staff report dated October 13, 2011.

Steve Kowalewski, Deputy Public Works Director, stated that at the July 14, 2011 meeting of the SR4 Bypass Board of Directors, staff had presented an item to discuss the future management structure brought on by the impending transfer of the SR4 Bypass to the State of California. Noting that several options had been discussed at that meeting, he stated that the focus was that the CCTA would assume the project management duties. The Board had directed staff to initiate discussion with the CCTA to focus on project management for the Sand Creek Interchange and 4-Lane Widening, and the SR4/SR160 Connector Ramps projects. After several meetings, he reported that an agreement had been reached on roles and responsibilities, which were shown in the MOU included in the Board packet.

Mr. Kowalewski referred to a revised copy of the MOU that had been handed out, which included comments from Legal Counsel and asked the Board to approve the MOU, in concept, with staff to continue to work with the CCTA to finalize the MOU and to return the MOU to the Board for approval.

On motion by Director Kalinowski, seconded by Director Piepho, the Authority unanimously APPROVED a Memorandum of Understanding (MOU), in concept, between the SR4 Bypass Authority (SR4BA) and the Contra Costa Transportation Authority (CCTA) to provide for the project management, environmental clearance, utility relocation, design, and construction of the SR4 Bypass/Sand Creek Interchange and 4-Lane Widening project and the SR4/SR160 Connector Ramps project and for the apportionment of the respective project duties between SR4BA and CCTA, with the understanding that the Final MOU would come back to the Board for approval.

B. RECEIVE Status Report on the State Route 4 Bypass Projects

Mr. Dennis reported that besides the ongoing punch list and East Bay Municipal Utility District (EBMUD) activity on the Bypass, the major effort was the transfer and relinquishment of the Bypass to Caltrans. He advised that Bill Gray had taken the lead to assist in completing the transfer process and was working to facilitate the item through Caltrans district and headquarter levels.

Bill Gray, Gray Bowen, Transportation Consulting, advised of the continuing work with Caltrans and the few issues remaining from a list of action items primarily related to hazardous waste. A meeting on October 17 was intended to finalize the list of what needed to be done, who would do it, and the timeline. The December meeting of the California Transportation Commission (CTC) was still being targeted from a schedule standpoint, although he noted that a January meeting would be preferable since the Cooperative Agreement would need to be signed in advance of the CTC meeting. He did not recommend signing the Cooperative Agreement until the availability of the \$33 million in funding was known, which was scheduled for the December CTC meeting. He referred to contingency language that could be added to the Cooperative Agreement if acceptable to Caltrans, which was to be discussed on October 17, and noted that a full packet would be submitted to the CTC.

BOARDMEMBER COMMENTS

There were no Boardmember comments.

CORRESPONDENCE

There was no correspondence.

Chair Frazier adjourned into closed session at 7:20 P.M.

CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Initiation of litigation pursuant to Government Code Section 54956.9(c): One potential case.

Chair Frazier reconvened from closed session at 7:34 P.M.

Legal Counsel Schmidt reported that by unanimous vote in closed session with Directors Frazier, Kalinowski, Piepho, and Taylor, the Board voted to initiate litigation and will disclose the specifics on inquiry once the litigation has been formally commenced.

ADJOURNMENT

With no further business to come before the State Route 4 Bypass Authority, Chair Frazier adjourned the meeting at 7:35 P.M. to the next meeting scheduled for Thursday, November 10, 2011.

Respectfully submitted,

Anita L. Tucci-Smith
Minutes Clerk

STATE ROUTE 4
BYPASS AUTHORITY

DATE: November 10, 2011

TO: Board of Directors

FROM: Dale Dennis, Program Manager



SUBJECT: State Route 4 Bypass Authority – Segment 2. Approve the Conveyance of excess property to the City of Brentwood. Brentwood Area [SCH# 89032824 and SCH# 198903824] Project No.: 4660-6X4426

Recommendation: Staff recommends the Authority take the following actions:

- A. **DETERMINE** that the real property described in Exhibit "A" attached hereto to be excess and longer necessary for State Route 4 Bypass purposes.
- B. **APPROVE** the conveyance of said excess property, to the City of Brentwood, pursuant to Government Code Section 960.
- C. **AUTHORIZE** the Secretary or Designee to execute the attached Grant Deed.
- D. **DIRECT** the Real Property Division to deliver the Deed to the City of Brentwood for acceptance and recording.

Discussion:

The SR4 Bypass Authority and City of Brentwood have been working collaboratively for the past two decades on delivering the SR4 Bypass and ensuring the implementation of the SR4 Bypass is consistent with City's planning and development. As part of this effort, the SR4 Bypass Authority acquired an uneconomic remnant parcel in Segment 2 on the west side of the SR4 Bypass, just north of San Jose Road. Staff is recommending Board approve conveyance of this uneconomic remnant parcel to the City of Brentwood, since is not required for use by the SR4 Bypass.

DD:LO:nw
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ACTION OF BOARD ON _____ APPROVED AS RECOMMENDED ____ OTHER ____

VOTE OF DIRECTORS
UNANIMOUS (ABSENT _____)
AYES: _____ NOES: _____
ABSENT: _____ ABSTAIN: _____

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Directors on the date shown.

ATTESTED: _____
Secretary to the Authority



State Route 4 Bypass Authority
 Excess Parcel to City of Brentwood
 Portion of APN 019-110-051 and tract adjoining
 Adjacent to CT 62080-37 & -38
 Right-of-Way Record Map R-10284.08

EXHIBIT "A"

Real property in the City of Brentwood, County of Contra Costa, State of California, being a portion of the parcel of land granted to the State Route 4 Bypass Authority, a joint powers agency, by a Grant Deed recorded November 4, 2004 as document number 2004-0424204, and being a portion of "Part of Lot 247", as shown on the Amended map of Subdivision No. 6, Brentwood Irrigated Farms, filed August 4, 1920, in Book 17 of Maps, Page 373, together with a portion of the parcel of land granted to the State Route 4 Bypass Authority, by a Grant Deed recorded December 13, 2000 as document number 2000-0279603 and being a portion of Lot 109 as shown and designated on Subdivision 7948 filed February 16, 1996 in Book 384 of Maps at page 44 in the Office of the County recorder of Contra Costa County described as follows:

Commencing at a granite monument at the centerline intersection of San Jose Avenue (Road No. 10) and San Jose Avenue (Road No. 13) as shown on said Subdivision No. 6 (17 M 373); thence northerly along the centerline of San Jose Avenue (Road No. 13) north $0^{\circ}56'05''$ east 7.660 meters; thence leaving said centerline south $89^{\circ}03'55''$ east 7.620 meters to the easterly right of way line of San Jose Avenue (Road No. 13), and the Point of Beginning; thence from said Point of Beginning northerly along said easterly right of way line north $0^{\circ}56'05''$ east, 164.377 meters to the westerly right of way line of the State Route 4 Bypass Road as shown on the Right of Way Record Map R-10284.08; thence southerly along said westerly right of way line south $29^{\circ}59'02''$ east, 191.006 meters to a point on the northerly right of way line of San Jose Avenue (Road No. 10); thence westerly along said northerly right of way line north $89^{\circ}21'54''$ west, 98.144 meters to the Point of Beginning.

Containing an area of 8,066 square meters of land more or less.


Reserving therefrom any and all abutter's rights of access, appurtenant to grantor's remaining property (access controlled highway 4).

Bearings are based on the California Coordinate System of 1983 (CCS83), Zone III, Epoch 1991.35. Distances given are grid distances. To obtain ground distance, multiply distance given by 1.0000650.

Distances shown are in meters. Multiply distances shown by 3.28083333 to convert to U.S. survey foot. Areas shown are in square meters, multiply areas shown by 10.764 to convert to square feet.

Exhibit "B" a plat is attached hereto and by this reference made a part hereof.

This real property description has been prepared by me or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: 

Licensed Land Surveyor
Contra Costa County Public Works

Date: 11/1/2011

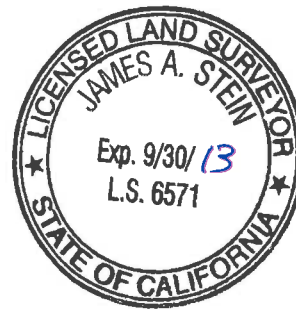




EXHIBIT "B"

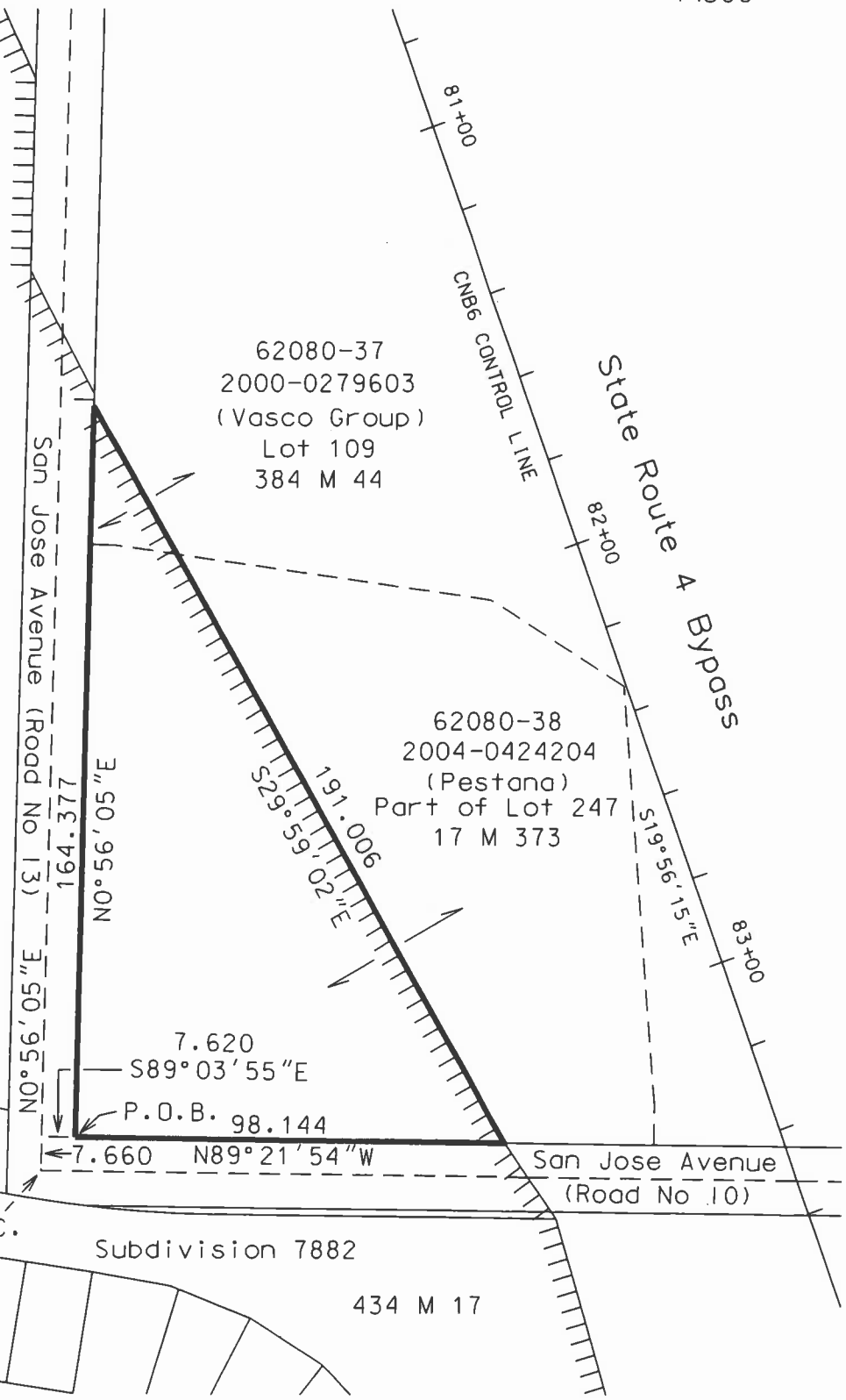
PLAT TO ACCOMPANY EXHIBIT "A"



West Coast
Home Builders Inc.
98-257575

62080-37
2000-0279603
(Vasco Group)
Lot 109
384 M 44

62080-38
2004-0424204
(Pestana)
Part of Lot 247
17 M 373

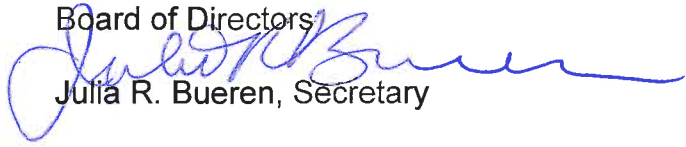


State Route 4 Bypass Segment 2 Excess Property

Instrument	Recorded	Scale	1:1500	Date	October 2011
Document No.		Drawn By	KT	File No.	A-SR4BP2-2011
		Checked By	JS	Cod File	SR4BP2Seg2Pestana VoscoExcessProperty2D

STATE ROUTE 4
BYPASS AUTHORITY

DATE: November 10, 2011

TO: Board of Directors
FROM:  Julia R. Bueren, Secretary

SUBJECT: Approve the Memorandum of Understanding between the State Route 4 Bypass Authority and the Contra Costa Transportation Authority to provide for delivery of the Sand Creek Interchange and 4-Lane Widening Project and the SR4/SR160 Connector Ramps Project.

Recommendation: APPROVE a Memorandum of Understanding (MOU) between the Authority and the Contra Costa Transportation Authority (CCTA) to provide for the project management, environmental clearance, utility relocation, design, and construction of the SR4 Bypass/Sand Creek Interchange and 4-Lane Widening project, and the SR4/SR160 Connector Ramps project and the apportionment of the respective project duties between the Authority and CCTA, and AUTHORIZE the Chair to sign the MOU on behalf of the Authority.

Discussion

CCTA staff has been successful in securing external funding for two projects on behalf of the Authority. Specifically, \$50 million in bridge toll funds have been secured from the Metropolitan Transportation Commission (MTC) for the SR4/SR160 Connector Ramps project, and \$25 million in Corridor Mobility Improvement Account (CMIA) funding has been secured from the California Transportation Commission (CTC) for the SR4 Bypass/Sand Creek Interchange and 4-Lane Widening project, with an additional \$8 million expected to be approved soon by the CTC.

The Authority is currently in final negotiations with Caltrans to transfer the SR 4 Bypass to the State. It is anticipated that the transfer of the SR 4 Bypass to the State will be approved at the January 2012 California Transportation Commission (CTC) meeting. Concurrently, the existing SR 4 through Oakley, Brentwood and east Contra Costa County will be relinquished to the respective jurisdictions

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ACTION OF BOARD ON _____ APPROVED AS RECOMMENDED ___ OTHER ___

VOTE OF DIRECTORS
UNANIMOUS (ABSENT _____)
AYES: _____ NOES: _____
ABSENT: _____ ABSTAIN: _____

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Directors on the date shown.

ATTESTED _____
Secretary to the Authority

to operate as a local facility. Upon transfer to the State, the SR 4 Bypass will no longer be a local facility. Rather, it will be designated as the legislatively-defined State Route 4 and will be maintained and operated by Caltrans as a State Highway similar to other highway facilities.

Recognizing that the SR 4 Bypass will soon be a State Highway, the Authority has requested that CCTA take over project delivery responsibility for SR 4 Bypass capital improvement projects. The purpose of the proposed MOU is to specify roles and responsibilities for CCTA and the Authority as it relates to completion of the SR4/SR160 Connector Ramps and the SR4 Bypass/Sand Creek Interchange and 4-Lane Widening projects.

Approval of the MOU, as recommended by staff, would provide a structure for CCTA to assume the project development activities for the two SR4 Bypass projects described above. The MOU includes insurance and indemnification protection for the Authority (see Sections 2.A.2, 2.B.2, and 3.A). It also contains mutual indemnification language requiring the Authority to indemnify CCTA (see Section 3.B). Other provisions would allow CCTA to terminate the MOU or stop work in CCTA's discretion and would provide for reimbursement to CCTA of all costs and expenses (with no limitation as to the total amount or rates) in the event the MOU is terminated (see Section 5). However, any required reimbursement would come from sources other than the Authority (see Section 1).

Without approval of the MOU, the project management for the State Route 4 Bypass would stay with the Authority. If the subject MOU is not executed, new financial arrangements would have to be negotiated between affected funding agencies (California Transportation Commission [CTC] and the Bay Area Toll Authority [BATA]) and the Authority. In consultation with CCTA, Authority staff has been advised that the following adverse scenarios could occur.

There is a potential risk of losing between \$8 and \$83 million in project funding and unknown delays to project schedules. BATA requires that CCTA be party to any agreement for their funding. If the Authority is added to the BATA agreement, CCTA will still require an arrangement similar to the attached MOU to protect itself from financial risks. Absent such protection, CCTA cannot sign the funding agreement with BATA. CCTA has negotiated a tentative arrangement for full funding from the CTC which relies on amending the Project Baseline Agreement between the CTC and CCTA for the SR 4 – East Widening project. This Baseline Agreement amendment adds the SR4 Bypass/Sand Creek Interchange and 4-Lane Widening project as a new segment to the existing SR 4 - East Baseline Agreement and transfers \$8 million of savings to SR 4 – East to the SR 4 Bypass. It is unlikely that the CTC will agree to move the \$8 million from SR 4 – East to the SR 4 Bypass if they are in independent Project Baseline Agreements. In this case, the Authority would need to identify \$8 million to supplement the \$25 million CMIA funds to fully fund the SR4 Bypass/Sand Creek Interchange and 4-Lane Widening project. Failure to do so will result in losing the \$25 million in CMIA funding for that project.

In addition there would likely be a delay in transferring the SR 4 Bypass to Caltrans, since the Board has previously conditioned the transfer of the SR4 Bypass to the State on the CTC

amendment of the Project Baseline Agreement between the CTC and CCTA, which fully funds the SR4/Sand Creek Interchange and 4-Lane Widening project. The Authority and ECCRFFA have tentatively agreed to waive State funding for “state of good repair” of existing SR 4 through Oakley, Brentwood and County jurisdiction contingent on \$33 million CMIA funding for the SR4/Sand Creek Interchange and 4-Lane Widening project. If CCTA stays involved, the Baseline Agreement amendment is scheduled for the December 2011 CTC meeting with the transfer of the SR 4 Bypass to Caltrans in January 2012. As explained above, failure to approve the MOU will take CCTA out of the discussion for the SR 4 Bypass project and likely call into question the ability to retain the \$25 million in approved CMIA funding and the ability to obtain \$8 million in additional CMIA funding. At a minimum, failure to approve the MOU would delay full funding for the two SR4 Bypass projects, as the Authority tries to secure funding from the CTC.

The MOU generally does not put any financial obligation on CCTA. Based on currently available project information and estimated design and construction costs, the funds programmed by MTC and the CTC are expected to be sufficient to complete both the SR4/SR160 Connector Ramps and the SR4 Bypass/Sand Creek Interchange and 4-Lane Widening projects. However, in the event that the work cannot be completed with the allocated funds, TRANPLAN and ECCRFFA would be required to assist in seeking funding options to complete the projects. This responsibility logically exists with or without the subject MOU.

In addition to this MOU that addresses respective project duties between the Authority and CCTA, a MOU is being approved between CCTA, TRANSPLAN, and the East Contra Costa Regional Fee and Financing Authority (ECCRFFA) to provide for TRANSPLAN and ECCRFFA to assist in seeking additional funds to complete the SR4 Bypass/Sand Creek Interchange and 4-Lane Widening project and the SR4/SR160 Connector Ramps project if additional funds are needed for those projects.

As discussed at the July 14, 2011 Board meeting, the Authority will continue to be responsible for the following obligations:

- Segment 1 mitigation disposition
- Mokelumne Overcrossing
- Segment 3 mitigation site monitoring and disposition
- Excess right-of-way and property rights
- Transfer of property to Antioch, Brentwood, County
- Maintain fee title ownership until a portion of the SR4 Bypass that has groundwater contamination from Kinder Morgan pump station until No Further Action letter is obtained from the Regional Water Board
- Claims/potential lawsuits existing at time of transfer of SR4 Bypass to Caltrans

The Secretary to the Authority recommends approval of the MOU and staff will be available to answer

questions at the meeting.

Attachments

1. 11/3/11 Staff Report to the CCTA Administration and Projects Committee
2. CCTA Agreement 14.07.17 Memorandum of Understanding



Administration and Projects Committee Meeting **STAFF REPORT**

Meeting Date: November 3, 2011

Subject	Authorization to Enter into Memorandum of Understanding (MOU) with State Route 4 (SR 4) Bypass Authority (Projects 5001, 5002 and 5003)
Summary of Issues	The SR 4 Bypass Authority has requested that Contra Costa Transportation Authority (Authority) staff assume responsibility for project development activities to design and construct capital improvement projects to complete Segment 1 and Segment 2 of the SR 4 Bypass. To date, the Authority has secured funding for SR 4 Bypass projects based on estimates produced by SR 4 Bypass Authority staff. Specifically, \$50 million in bridge toll funds and \$33 million in Corridor Mobility improvement Account (CMIA) funds have been secured for the SR 4 Bypass / SR 160 connector ramps and the SR 4 Bypass Widening / Sand Creek interchange projects respectively. The proposed MOU would specify roles and responsibilities for the Authority and the SR 4 Bypass Authority in completing the two projects.
Recommendations	Authorize the Chair to enter into a MOU with the SR 4 Bypass Authority, and delegate authority to the Executive Director to make non-substantive changes to the MOU.
Financial Implications	None. The SR 4 Bypass projects have no Measure J funding in the current Measure J Expenditure Plan.
Options	Decline to accept project development responsibilities for SR 4 Bypass projects.
Attachments	A. Proposed MOU No. 14.07.07 with the SR 4 Bypass Authority. (To be emailed to Commissioners as a separate attachment and to be posted to the Web.)
Changes from Committee	

Background

Authority staff have been successful in securing external funding for two projects on behalf of the SR 4 Bypass Authority. Specifically, \$50 million in bridge toll funds have been secured from the Metropolitan Transportation Commission (MTC) for the SR 4 Bypass / SR 160 connector ramps project, and \$33 million in Corridor Mobility improvement Account (CMIA) funding has been secured from the California Transportation Commission (CTC) for the SR 4 Bypass Widening / Sand Creek interchange project.

The SR 4 Bypass Authority is currently in final negotiations with Caltrans to transfer the SR 4 Bypass to the State. It is anticipated that the transfer of the SR 4 Bypass to the State will be approved at the December 2011 California Transportation Commission (CTC) meeting. Concurrently, the existing SR 4 through Oakley, Brentwood and east Contra Costa County will be relinquished to the respective jurisdictions to operate as a local facility. Upon transfer, the SR 4 Bypass will no longer be a local facility. Rather, it will be designated as the legislatively defined State Route 4 and will be maintained and operated by Caltrans as a State Highway similar to other highway facilities.

Recognizing that the SR 4 Bypass will soon be a State Highway, the SR 4 Bypass Authority has requested that Authority staff take over project delivery responsibility for SR 4 Bypass capital improvement projects. Negotiations are underway among Authority staff, SR 4 Bypass Authority staff and County staff regarding this transfer of responsibility. The current focus of the negotiation is for the SR 4 Bypass / SR 160 connector ramps and the SR 4 Bypass Widening / Sand Creek interchange projects as these are currently the only funded projects.

The purpose of the proposed MOU is to specify roles and responsibilities for the Authority and the SR 4 Bypass Authority as it relates to completion of the SR 4 Bypass / SR 160 connector ramps and the SR 4 Bypass Widening / Sand Creek interchange projects.

Staff recommends approval of the MOU.



Administration and Projects Committee Meeting **STAFF REPORT**

Meeting Date: November 3, 2011

Subject	Authorization to Enter into Memorandum of Understanding (MOU) with TRANSPLAN Committee and the East Contra Costa Regional Fee and Finance Authority (ECCRFFA) (Projects 5002 and 5003)
Summary of Issues	The SR 4 Bypass Authority has requested that Contra Costa Transportation Authority (Authority) staff assume responsibility for project development activities to design and construct capital improvement projects to complete Segment 1 and Segment 2 of the SR 4 Bypass. To date, the Authority has secured funding for SR 4 Bypass projects based on estimates produced by SR 4 Bypass Authority staff. Specifically, \$50 million in bridge toll funds and \$33 million in Corridor Mobility improvement Account (CMIA) funds have been secured for the SR 4 Bypass / SR 160 connector ramps and the SR 4 Bypass Widening / Sand Creek interchange projects respectively. The proposed MOU would provide that TRANSPLAN and ECCRFFA commit to assist in securing additional funds to complete the projects, if needed.
Recommendations	Authorize the Chair to enter into a MOU with TRANSPLAN and ECCRFFA, and delegate authority to the Executive Director to make non-substantive changes to the MOU.
Financial Implications	None. The SR 4 Bypass projects have no Measure J funding in the current Measure J Expenditure Plan.
Options	<ol style="list-style-type: none"> 1. Decline to accept project development responsibilities for SR 4 Bypass projects. 2. Reject the MOU and accept financial risk.
Attachments	A. Proposed MOU No. 14.07.08 with TRANSPLAN and ECCRFFA. (To be emailed to Commissioners as a separate attachment and to be posted to the Web.)
Changes from Committee	

Background

Authority staff have been successful in securing external funding for two projects on behalf of the SR 4 Bypass Authority. Specifically, \$50 million in bridge toll funds have been secured from the Metropolitan Transportation Commission (MTC) for the SR 4 Bypass / SR 160 connector ramps project, and \$33 million in Corridor Mobility improvement Account (CMIA) funding has been secured from the California Transportation Commission (CTC) for the SR 4 Bypass Widening / Sand Creek interchange project. The funding request for each project was based on the estimated cost to complete provided by SR 4 Bypass Authority staff. Authority staff have not developed detailed, independent estimates to verify these amounts, however, staff believes the estimates provided by the SR 4 Bypass Authority are reasonable for the scope of work.

The SR 4 Bypass Authority is currently in final negotiations with Caltrans to transfer the SR 4 Bypass to the State. It is anticipated that the transfer of the SR 4 Bypass to the State and will be approved at the December 2011 California Transportation Commission (CTC) meeting. Concurrently, the existing SR 4 through Oakley, Brentwood and east Contra Costa County will be relinquished to the respective jurisdictions to operate as a local facility. Upon transfer, the SR 4 Bypass will no longer be a local facility. Rather, it will be formally designated as the legislatively defined State Route 4 and will be maintained and operated by Caltrans as a State Highway similar to other highway facilities.

Recognizing that the SR 4 Bypass will soon be a State Highway, the SR 4 Bypass Authority has requested that Authority staff take over project delivery responsibility for SR 4 Bypass capital improvement projects. Negotiations are underway among Authority staff, SR 4 Bypass Authority staff and County staff regarding this transfer of responsibility. The current focus of the negotiation is for the SR 4 Bypass / SR 160 connector ramps and the SR 4 Bypass Widening / Sand Creek interchange projects as these are currently the only funded projects.

As a condition of funding, each funding agency (MTC and CTC) is requiring that the Authority enter in a funding agreement that, among other requirement, specifies that the funding provided is a "not to exceed" amount. Notwithstanding this constraint, the funding agreements also commit the Authority to complete the project, even if costs exceed the approved amounts.

The purpose of the proposed MOU is to provide the Authority with protection in the event that the actual project cost exceeds the estimates provided by the SR 4 Bypass Authority. The

Administration and Projects Committee Meeting STAFF REPORT

November 3, 2011

Page 3 of 3

Authority commits to deliver the project with a goal of completing within or below budget. By signing the MOU, TRANSPLAN and ECCRFFA commit to assist in securing additional funds to complete the projects, if the funds provided by MTC and the CTC are not sufficient to complete the work. TRANSPLAN and ECCRFFA have been the primary sponsors of the SR 4 Bypass project.

Staff recommends approval of the MOU.

CCTA AGREEMENT 14.07.17
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CONTRA COSTA TRANSPORTATION AUTHORITY
AND
STATE ROUTE 4 BYPASS AUTHORITY

FOR THE
SAND CREEK INTERCHANGE AND 4-LANE WIDENING PROJECT
AND
SR 4 / SR 160 CONNECTOR RAMPS PROJECT

This MEMORANDUM OF UNDERSTANDING (“MOU”), effective October ____, 2011, is entered into by the Contra Costa Transportation Authority, a local transportation authority (hereinafter referred to as “CCTA”), and the State Route 4 Bypass Authority, a joint powers agency organized and existing under the laws of the State of California (hereinafter referred to as “SR4BA”).

RECITALS

- A. SR4BA and the California Department of Transportation (“Caltrans”) are in final negotiations to transfer the State Route 4 Bypass (“SR4 Bypass”) from local control to the State Highway System.
- B. The SR4 Bypass/Sand Creek Interchange and 4-Lane widening project (“PROJECT 1”) and the SR4/SR160 Connector Ramps project (“PROJECT 2”) are two of the remaining capital improvement projects to complete Segment 1 and Segment 2 of the SR4 Bypass.
- C. CCTA has secured programming of \$25 million in Corridor Mobility Improvement Account (“CMIA”) funds from the California Transportation Commission to construct PROJECT 1 and expects soon to secure programming of \$8 million more in CMIA funds, for a total of \$33 million in CMIA funds for Project 1.
- D. CCTA has secured an allocation of \$50 million from the Bay Area Toll Authority (“BATA”) to design and construct Project 2.
- E. All costs to CCTA incurred in performing under this MOU are considered project costs to be paid from funds available to PROJECT 1 and PROJECT 2.

UNDERSTANDING

- 1. Purpose and Scope of Work: SR4BA and CCTA desire to complete PROJECT 1 and PROJECT 2. The purpose of this MOU is to provide for the project management, environmental review, utility relocation, design, and construction of the above-mentioned projects and the apportionment of the respective project duties between SR4BA and CCTA. All costs associated with PROJECT 1 and/or PROJECT 2 that are not covered by CMIA and/or BATA funds will be addressed in a separate MOU that will be executed by CCTA, the TRANSPLAN Committee and the East Contra Costa Regional Fee and Financing Authority.

2. Responsibilities of SR4BA and CCTA:

A. SR4 Bypass Sand Creek and 4-Lane project (PROJECT 1):

1) SR4BA agrees:

- To complete environmental review and approval for PROJECT 1 in accordance with the California Environmental Quality Act ("CEQA");
- To pay mitigation fees required by the Habitat Conservation Plan;
- To obtain the Fish and Game Code Section 1602 Permit ("1602 Permit") for PROJECT 1 and ensure the 1602 Permit remains in effect until the work covered under the 1602 Permit is completed;
- To issue an encroachment permit to CCTA and/or its contractor at no cost, until such time as transfer of the SR4 Bypass to Caltrans occurs;
- To arrange for pre-construction utility relocations or protection required for PROJECT 1;
- To prepare Right-of-Way certification for PROJECT 1;
- To prepare plans and specifications for PROJECT 1;
- To process all documents related to service points from PG&E for PROJECT 1.

2) CCTA agrees:

- To act as a responsible agency and adopt the findings of the CEQA document, if appropriate;
- To obtain an agreement/permit with the East Contra Costa County Habitat Conservancy to construct PROJECT 1;
- To prepare the final construction package, including CCTA standard contract documents, and to solicit competitive bids and award a construction contract for PROJECT 1 to the extent there is adequate funding to complete and close out PROJECT 1 as determined by CCTA;
- To include in the construction, construction management and related contracts for PROJECT 1 provisions requiring the contractors, construction managers and others to provide insurance and indemnification naming SR4BA, its member agencies, officers, employees, agents and representatives to the same extent as provided to CCTA;
- To require the contractor responsible for constructing PROJECT 1 obtain an encroachment permit from SR4BA, if the SR4 Bypass has not been transferred to Caltrans, and to obtain an encroachment permit from Caltrans, if the SR4 Bypass is transferred to Caltrans;
- To manage the construction of PROJECT 1.

B. SR4/SR160 Connector Ramps Project (PROJECT 2):

1) SR4BA agrees:

- To complete environmental review and approval of PROJECT 2 under CEQA and the Project Report for PROJECT 2;
- To issue an encroachment permit to CCTA and/or its contractor at no cost, until such time as transfer of the SR4 Bypass to Caltrans occurs.

2) CCTA agrees:

- To act as a responsible agency and adopt the findings of the CEQA document as appropriate;
- To prepare plans and specifications for PROJECT 2;
- To obtain any permits needed to construct PROJECT 2;
- To prepare Right-of-Way certification for PROJECT 2;
- To prepare the final construction package, including CCTA standard contract documents, and to solicit competitive bids and award a construction contract for PROJECT 2 to the extent there is adequate funding to complete and close out PROJECT 2 as determined by CCTA;
- To include in the design, construction, construction management, and related contracts for PROJECT 2 provisions requiring the designers, construction managers, contractors and others to provide indemnification and insurance naming SR4BA, its member agencies, officers, employees, agents and representatives to the same extent as provided to CCTA;
- To require the contractor responsible for constructing PROJECT 2 obtain an encroachment permit from SR4BA, if the SR4 Bypass has not been transferred to Caltrans, and to obtain an encroachment permit from Caltrans, if the SR4 Bypass is transferred to Caltrans;
- To manage the design and construction of PROJECT 2.

3. Mutual Indemnification:

- A CCTA hereby agrees to indemnify, defend, assume all liability for and hold harmless SR4BA and its member agencies, officers, employees, agents and representatives, to the maximum extent allowed by law, from all actions, claims, suits, penalties, obligations, liabilities, damages to property, costs and expenses (including, without limitation, any fines, penalties, judgments, actual litigation expenses and experts' and actual attorneys' fees), environmental claims or bodily and/or personal injuries or death to any persons, arising out of or in any way connected to the negligence or willful misconduct of CCTA, its officers, agents or employees in connection with or arising from any of its activities pursuant to this Agreement. This indemnity shall apply except as to the sole negligence or willful misconduct of SR4BA.

- B SR4BA hereby agrees to indemnify, defend, assume all liability for and hold harmless CCTA and its officers, employees, agents and representatives, to the maximum extent allowed by law, from all actions, claims, suits, penalties, obligations, liabilities, damages to property, costs and expenses (including, without limitation, any fines, penalties, judgments, actual litigation expenses and experts' and actual attorneys' fees), environmental claims or bodily and/or personal injuries or death to any persons, arising out of or in any way connected to the negligence or willful misconduct of SR4BA, its officers, agents or employees in connection with or arising from any of its activities pursuant to this Agreement. This indemnity shall apply except as to the sole negligence or willful misconduct of CCTA.
4. MOU Modification: This MOU may be modified only by the written approval of the legislative bodies of both parties.
 5. MOU Termination: Unless terminated earlier, this MOU will terminate immediately after both parties complete their respective responsibilities as listed above, except for the provisions relating to indemnification and insurance (see Sections 2 and 3), which shall survive termination of this MOU. If either party fails to perform as specified in this MOU, either party may terminate for cause. Termination shall be effected by serving sixty (60) days advance written notice of termination on the other party's Secretary or Executive Director, setting forth the manner in which the defaulting party is in default. If the defaulting party does not cure the breach within the sixty (60) day period or longer period as may be required to cure the breach, the non-defaulting party may terminate this MOU for cause. If either party terminates this MOU, CCTA will be entitled to payment for all costs and expenses incurred in connection with PROJECT 1 and/or PROJECT 2. Notwithstanding the foregoing, CCTA may terminate this MOU or stop work on this MOU at any time, if in its sole discretion it determines, that there is inadequate funding to complete and/or close out either PROJECT 1 or PROJECT 2.
 6. Counterparts. The parties hereto recognize and agree that separate counterpart signature pages may be used to execute this MOU, but that all such pages constitute one and the same MOU.
 7. Construction. The section headings and captions of this MOU are, and the arrangement of this instrument is, for the sole convenience of the parties to this MOU. 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 MOU. This MOU will not be construed as if it had been prepared by one of the parties, but rather as if all parties have prepared it. The parties to this MOU and their respective counsel have read and reviewed this MOU and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply to the interpretation of this MOU. The recitals are, and will be enforceable as, a part of this MOU.
 8. No Third Party Beneficiaries. This MOU is intended solely for the benefit of the parties hereto, and no third party will have any right or interest in any provision of this MOU or as a result of any action or inaction of any party in connection therewith.
 9. Governing Law and Venue. This MOU will be governed and construed in accordance with California law. The venue of any litigation pertaining to this MOU will be Contra Costa County, California.
 10. Entire MOU: This MOU contains the entire understanding of the parties relating to the subject of this MOU. Any representation or promise of the parties relating to PROJECT 1 or PROJECT 2 shall not be enforceable unless it is contained in this MOU or in a

subsequent written modification of this MOU executed by all the legislative bodies of both parties.

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

STATE ROUTE 4 BYPASS AUTHORITY
("SR4BA")

CONTRA COSTA TRANSPORTATION
AUTHORITY ("CCTA")

By: _____
Jim Frazier
Chair

By: _____
David E. Durant
Chair

Attest:

Attest:

By: _____
Julia R. Bueren
Secretary

By: _____
Randell H. Iwasaki
Executive Director

Approved as to form:
Sharon L. Anderson, County Counsel

Approved as to form:
Best Best & Krieger LLP

By: _____
David F. Schmidt
Deputy County Counsel

By: _____
Malathy Subramanian
Authority Counsel