

**SECOND AMENDMENT TO JOINT EXERCISE
OF POWERS AGREEMENT FOR EAST
CONTRA COSTA REGIONAL FEE AND
FINANCING AUTHORITY**

1. EFFECTIVE DATE AND PARTIES

Effective July 11, 2005, 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 duly organized and existing under the laws of the State of California ("Brentwood"), the CITY OF OAKLEY, a municipal corporation duly organized and existing under the laws of the State of California ("Oakley"), the CITY OF PITTSBURG, a municipal corporation duly organized and existing under the laws of the State of California ("Pittsburg"), and the COUNTY OF CONTRA COSTA, a legal subdivision and body corporate and politic of the State of California (the "County"), mutually agree as follows:

2. PURPOSE

- A. On August 9, 1994, Antioch, Brentwood, Pittsburg, and the County formed the East Contra Costa Regional Fee and Financing Authority (ECCRFFA), a separate joint powers agency, by entering into a written agreement entitled "EAST CONTRA COSTA REGIONAL FEE AND FINANCING AUTHORITY JOINT EXERCISE OF POWERS AGREEMENT" (referred to as the "Agreement"). ECCRFFA was formed to assist in establishing and administering a uniform regional development fee program and funding and implementing road improvement projects in the East County area.
- B. On October 4, 1999, following the incorporation of the City of Oakley, Oakley was added as a party to ECCRFFA by a written amendment to the Agreement entitled "FIRST AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT FOR EAST CONTRA COSTA REGIONAL FEE AND FINANCING AUTHORITY."
- C. On December 18, 2001, Antioch, Brentwood, Oakley, and the County formed the East County Transportation Improvement Authority (ECTIA), another separate joint powers agency, by entering into a written agreement entitled "EAST COUNTY TRANSPORTATION IMPROVEMENT AUTHORITY JOINT EXERCISE OF POWERS AGREEMENT" (referred to as the "ECTIA Agreement"). ECTIA was formed to assist in establishing and administering an additional uniform regional development fee program

and funding and implementing additional road improvement projects in the East County area.

- D. Pittsburg has expressed an intention to participate in a uniform regional development fee program at the same level as Antioch, Brentwood, Oakley, and the County and to coordinate its transportation impact mitigation fees with those collected by the other agencies.
- E. Antioch, Brentwood, Oakley, Pittsburg, and the County now wish to consolidate the activities of ECCRFFA and ECTIA by amending the Agreement to provide for ECCRFFA to take over the uniform regional development fee program and projects previously administered by ECTIA and by terminating ECTIA and the ECTIA Agreement.

3. AMENDMENTS TO AGREEMENT

Pursuant to Section 16 of the Agreement, the Agreement is amended as follows:

- A. The following definitions are added to Section 1:

“Member Agency” or “Member Agencies,” individually and collectively respectively, means the City of Antioch, the City of Brentwood, the City of Oakley, the City of Pittsburg, and the County of Contra Costa.

“Regional Transportation-Development Mitigation Fees” or “RTDIM Fees” means the fees to be enacted and imposed by each Member Agency upon new development to fund regional transportation improvements.

- B. Attachment 1 – 2005 Amendment attached to this Amendment is made a part of the Agreement and shall replace Attachment 1 to the original Agreement.
- C. Attachment 2 – 2005 Amendment attached to this Amendment is made a part of the Agreement and shall replace Attachment 2 to the original Agreement.

4. REMAINING PROVISIONS

All other provisions of the Agreement and the First Amendment to the Agreement shall remain in full force and effect except as may be specifically amended or superseded by this Amendment. This Amendment shall take effect only if it and the termination of ECTIA and the ECTIA Agreement are unanimously approved by the ECCRFFA and ECTIA member agencies. The effective date of this

Amendment shall be the date on which the last Member Agency, through its duly-authorized representative, executes this Amendment.

5. SIGNATURES

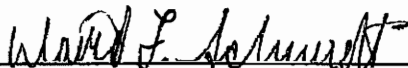
These signatures attest the parties' agreement hereto.

COUNTY OF CONTRA COSTA

By: 
County Administrator

FORM APPROVED:

Silvano B. Marchesi, County Counsel

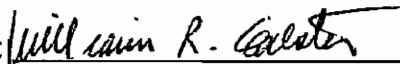
By: 
David F. Schmidt, Deputy
County Counsel

CITY OF ANTIOCH

By: 
City Manager

FORM APPROVED:

William Galstan, City Attorney

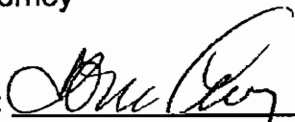
By: 

CITY OF BRENTWOOD

By: 
City Manager

FORM APPROVED:

McDonough, Holland & Allen, City
Attorney

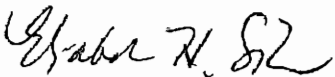
By: 
Tom Curry

CITY OF OAKLEY

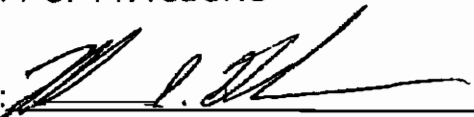
By: 
City Manager

FORM APPROVED:

Meyers, Nave, Riback, Silver & Wilson,
City Attorney

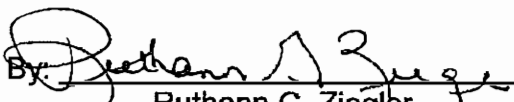
By: 
Elizabeth H. Silver

CITY OF PITTSBURG

By: 
City Manager

FORM APPROVED:

Meyers, Nave, Riback, Silver & Wilson,
City Attorney

By: 
Ruthann G. Ziegler

**Attachment 1 – 2005 Amendment
to
East Contra Costa Regional Fee and Financing Authority
Joint Exercise of Powers Agreement**

**IMPLEMENTATION OF REGIONAL TRANSPORTATION-DEVELOPMENT IMPACT
MITIGATION (RTDIM) FEE PROGRAM**

- A. Imposition and Modification of Fee; Credit for Existing Congestion Mitigation Developer Fees.** In order to fund the Program and Projects of the Authority, the parties agree that the following Regional Transportation-Development Impact Mitigation Fees ("RTDIM Fees") shall be implemented by Antioch, Brentwood, Oakley, Pittsburg, and the County. The fees are payable at the time of issuance of building permits:

Regional Transportation-Development Impact Mitigation (RTDIM) Fees		
Type of Use	Fee Units	Fee Amount
Single family residential units, duet homes, and residential condominiums	Per dwelling unit	\$15,000.00
Multiple family residential	Per dwelling unit	\$9,207.92
Commercial	Per square foot of gross floor area	\$1.25
Office	Per square foot of gross floor area	\$1.10
Industrial	Per square foot of gross floor area	\$1.10
Other	Per peak hour trip as determined	\$15,000.00/peak hour trip

The above fee schedule is based on the June 2005 East Contra Costa Regional Fee Program Update (referred to as the "Report") prepared by Fehr & Peers, which has been approved by the Authority's Board. The Report is adopted as the governing program of the Authority and is incorporated in this Agreement by reference. The fee schedule is subject to annual adjustment as provided below and in the fee ordinances or resolutions adopted by the parties. In addition to the listed amounts, each party may collect and retain an administrative charge up to 1% of the listed amounts.

Within 60 days of June 16, 2005, each of the parties (Antioch, Brentwood, Oakley, Pittsburg, and the County) shall adopt a fee ordinance or resolution implementing the above fee schedule.

From time to time, the Authority may approve a revision to the above fee schedule. Within 60 days of such approval, each of the parties (Antioch, Brentwood, Oakley, Pittsburg, and the County) shall adopt a fee ordinance or resolution implementing the revised fee schedule. This procedure does not apply to annual fee adjustment, which is automatic and does not require Authority approval.

The fees for uses not listed shall be determined by the governing jurisdiction through information generated by appropriate traffic studies conducted in accordance with ITE standards and applicable Authority policies. These traffic studies shall be approved by the Authority.

Beginning January 1 of each year following the year in which the above fee schedule was adopted and continuing every January 1 thereafter, each party shall increase the above fee amounts by the amount of the increase in the Engineering News-Record Construction Cost Index for the San Francisco Bay Area for the one-year period ending September 30 of the preceding year.

With approval of the Authority, credit may be granted against the payment of the fee for construction of a usable portion of any of the Projects identified in the Agreement. The amount of credit shall be the cost of construction of the portion of the Project and the cost of the land acquired to complete the portion as determined by the Authority. No credit shall be granted for any lands that are required to be dedicated as specified in Attachment 2, Section B.

B. Fee Collection and Management. Fee revenues received by the parties shall be disbursed monthly by the parties to the Authority. Fees and other revenue shall be held by the Authority in a general fund account; bond proceeds shall be held in accordance with the applicable indenture and may be invested, consistent with the provisions of the applicable indenture, in accounts such as the CAMP or LAIF fund. Subject to any provision in an applicable indenture, interest accruing on funds held in such accounts and accrued interest on funds held in the general fund account shall be deemed general funds available for any lawful purpose of the Authority. Unless otherwise agreed by the parties, the total obligation of each party shall be the contribution of fees collected by that party from owners seeking issuance of building permits as provided for in this Section. The obligation to contribute fees to the Authority shall terminate on the date on which the Projects have been fully funded and completed or such earlier date as may be permitted under Section 3 of the Agreement.

Upon the termination of the East County Transportation Improvement Authority (ECTIA), the Authority shall receive the developer fees transferred from ECTIA and shall use those fees to administer the uniform regional development fee program and projects previously administered by ECTIA.

**Attachment 2 – 2005 Amendment
to
East Contra Costa Regional Fee and Financing Authority
Joint Exercise of Powers Agreement**

**PROJECTS: FUNDING COMMITMENTS AND ELIGIBLE COSTS:
IMPLEMENTATION SCHEDULE**

A. Current List of Projects. The fees provided for in the above fee schedule shall be used for project development, right-of-way acquisition, and construction for the following regional Projects:

- (1) State Route 4 freeway widening from Railroad Avenue to the State Route 4 Bypass, including reconstruction of interchanges as necessary.
- (2) State Route 4 Bypass, Segment 1 from State Route 4 to Lone Tree Way, including interchanges at Laurel Road and Lone Tree Way.
- (3) State Route 4 Bypass, Segment 2 from Lone Tree Way to Balfour Road, including an interchange at Sand Creek Road.
- (4) State Route 4 Bypass, Segment 3 from Balfour Road to Vasco Road, including interchanges at Balfour Road, Marsh Creek Road, and Vasco Road.
- (5) Laurel Road Extension from State Route 4 Bypass to Empire Avenue.
- (6) State Route 239/84 Connector consisting of the Armstrong Road extension (formerly Byron Airport Road).
- (7) State Route 239 corridor study and preliminary design.
- (8) State Route 4 (Main Street or Brentwood Boulevard) widening from Vintage Parkway in Oakley to Marsh Creek bridge in Brentwood and Chestnut Street to Balfour Road in south Brentwood.
- (9) Balfour Road widening from Deer Valley Road to Brentwood city limits.
- (10) Marsh Creek Road and Deer Valley Road safety enhancements from Walnut Boulevard to Clayton and from Balfour Road to Marsh Creek Road.
- (11) Route 84/Vasco Road widening to County line.

Northern Parallel Arterials

- (12) Pittsburg-Antioch Highway from Somersville Road to Loveridge Road.
- (13) Ninth and Tenth Streets couple improvements from A Street to L Street.
- (14) California Avenue from Railroad Avenue to Loveridge Road.
- (15) Willow Pass Road from Range Road to Loftus Road and Bailey Road to city limits.

Southern Parallel Arterials

- (16) Buchanan Bypass (new arterial) or Buchanan Road from Railroad Avenue to Somersville Road.
- (17) West Tregallas Road/Fitzuren Road from Lone Tree Way to Buchanan Road.
- (18) West Leland Road or Evora Road from San Marco to Avila Road and from Willow Pass Road (Bay Point) to Willow Pass Road (Concord).

New Regional Arterial Projects

- (19) Wilbur Avenue from Minaker Drive to State Route 160.
- (20) Neroly Road from Oakley Road to Laurel Road.
- (21) Deer Valley Road from Antioch city limits to Balfour Road.
- (22) Walnut Boulevard from Brentwood city limits to State Route 4 Bypass.
- (23) John Muir Parkway (new roadway between Balfour Road and Fairview Avenue).
- (24) Byron Highway safety enhancements from Delta Road to State Route 4.

Regional Transit Projects

- (25) East County express bus.
- (26) Commuter rail (eBART).

B. Funding Commitments and Eligible Costs. Program revenues shall be available for all necessary Project costs through completion of construction. Costs include, but are not limited to, environmental clearance, conceptual engineering, traffic studies, design, right-of-way acquisition, utility relocation, litigation and settlement costs,

and costs of construction. The commitment to each Project shall be considered complete when the Project is accepted by the sponsor or sponsors.

The Authority's administrative costs shall not exceed 1% of program revenues. Administrative costs include the development of the JPA as well as the administration of duties included in the Agreement.

Eligible Project costs will be determined by Authority based on cost guidelines and other criteria to be developed by the Authority. Where the Authority deems it advisable in order to avoid undue burdens on Project sponsors, the Authority may advance fund Project expenses on a monthly, quarterly or other basis. Project costs otherwise will be reimbursed pursuant to procedures to be determined by the Authority.

Project sponsors, as a condition of Project funding through regional fees, commit to protect Project rights-of-way, by, among other things, requiring dedication of right-of-way as a condition of land use entitlement approval or otherwise, pending Project commencement. Project sponsors further commit not to take actions that could adversely impact the cost of Projects, including, but not limited to, utility location or relocation, public development, and the granting of easements in a proposed right-of-way.

The right-of-way dedication policy for the State Route 4 Bypass is as follows. Properties along or fronting the Projects identified in this Agreement shall be required to dedicate right-of-way up to 110 feet wide as measured from the centerline of the adopted precise alignment with no credit or compensation from the regional fee. Any additional right-of-way in excess of the 110-foot width may be either credited toward the regional fee or compensated. However, in circumstances where the allowable density has been transferred off the right-of-way area, then no compensation or credit will be granted for the right-of-way dedicated. The Authority shall develop policies that will encourage the early dedication of lands that are required under this provision.

Any costs of defense and any liability incurred in connection with implementation of the regional fee proposal shall be borne by the Authority. The Authority agrees to the fullest extent legally permitted to indemnify and hold harmless the parties to this Agreement from any liability, loss, costs, and claims related to the adoption or implementation of the regional fee program. Fee revenues and any other revenues transferred to the Authority by the parties pursuant to this Agreement may be used for this purpose.

C. Implementation Schedule. Subject to environmental clearance, right-of-way acquisition and dedication, utility relocation, and other factors, the timing of which may be beyond the control of the Authority, and subject to the availability of regional fee and other funding sources as may be required, the following implementation guidelines shall apply to Project development:

(i) The parties intend that funding will be provided to support steady progress in construction of the State Route 4 Bypass.

(ii) The Authority shall prepare, adopt, and periodically update a Strategic Plan for implementation of the Projects, reflecting current information on Project costs and schedules, the Project sponsor(s) for the various Projects, the availability of other revenue sources, the pace of fee collection, the schedule for and the costs associated with the sale of bonds to advance funds, and other relevant factors.

D. Indemnification. As a condition of funding for Projects in this Program, Project sponsors shall enter into an agreement with the Authority that shall provide indemnification and insurance coverage for the Authority and the parties to this Agreement during design and construction. The indemnification and insurance shall be subject to approval by the Authority.