

JOINT EXERCISE OF POWERS AGREEMENT

STATE ROUTE 4 BYPASS AUTHORITY
AND
CITY OF BRENTWOOD

This AGREEMENT is entered into on this 24 day of April, 2007, between the State Route 4 Bypass Authority, a joint exercise of powers agency (hereinafter referred to as the "AUTHORITY"), and the City of Brentwood, a municipal corporation of the State of California (hereinafter referred to as "CITY").

RECITALS:

- A. AUTHORITY is constructing a new Realigned Jeffrey Way ("JEFFREY WAY") as more specifically described on Exhibit A, attached hereto and incorporated herein, as part of the State Route 4 Bypass - Segment 1 project.
- B. As part of the SR4 Bypass – Segment 1 project, AUTHORITY is required to initially construct JEFFREY WAY as a two lane roadway with drainage ditches to connect the State Route 4 Bypass to existing Lone Tree Way and Amber Lane to account for existing and near term traffic conditions.
- C. CITY has requested that AUTHORITY construct the ultimate improvements to JEFFREY WAY, including all utilities, storm drain, curb, gutter and sidewalk in areas that will ultimately be controlled by the California Department of Transportation (Caltrans) or in areas where development already exists adjacent to the roadway with little or no opportunity to be improved in the future.

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

1. Responsibilities of AUTHORITY and CITY.

A. AUTHORITY shall be responsible for the following:

- (1) Constructing JEFFREY WAY, including those improvements requested by CITY and approved by AUTHORITY.
- (2) Accepting JEFFREY WAY as complete and convey a portion of JEFFREY WAY ("CONVEYED CITY SEGMENT"), as more specifically described on Exhibit B, attached hereto and incorporated herein, to CITY as soon as practicable after acceptance of JEFFREY WAY.

B. CITY shall be responsible for the following:

- (1) Pay to AUTHORITY the sum of \$657,504 to cover the cost of design, construction, and construction administration for the improvements to JEFFREY WAY, including all utilities, storm drain, curb, gutter and sidewalk.
- (2) Perform a joint final inspection with the AUTHORITY of JEFFREY WAY, provide AUTHORITY with a punchlist and upon determining that JEFFREY WAY

is complete (including punchlist items), give approval for AUTHORITY's acceptance of the same.

2. Financial Responsibility. CITY shall pay \$657,504 to AUTHORITY no later than June 30, 2007. A breakdown of costs is shown in Exhibit C, attached hereto and incorporated herein.
3. Field Inspections. AUTHORITY will perform field inspections of JEFFREY WAY to determine conformance with project plans and specifications and any change orders.
4. As Built Drawings. AUTHORITY will prepare 5 mil mylar as-built drawings of JEFFREY WAY and deliver them to CITY within ninety (90) days of AUTHORITY's acceptance of the State Route 4 Bypass – Segment 1 project.
5. Acceptance:
 - A. Approval of Work. Upon completion of JEFFREY WAY, as determined by the AUTHORITY in its sole discretion, AUTHORITY and CITY shall conduct a joint final inspection of JEFFREY WAY. After CITY, through its city engineer, has determined that JEFFREY WAY has been completed (including punchlist items), AUTHORITY shall accept JEFFREY WAY as complete for itself and for the CITY. CITY shall not unreasonably withhold or delay its determination that JEFFREY WAY is complete.
 - B. Ownership. Upon acceptance and conveyance of JEFFREY WAY to CITY by AUTHORITY, CITY shall own the CONVEYED CITY SEGMENT including all necessary rights of way, which shall be part of the CITY-maintained street system.
6. Maintenance: Upon AUTHORITY's acceptance of JEFFREY WAY, CITY will be responsible for maintaining all of JEFFREY WAY, including the portion of JEFFREY WAY owned by AUTHORITY and any successors in interest (AUTHORITY SEGMENT) as further described in 5(B) above and as further shown on Exhibit B.
7. Insurance and Hold Harmless:
 - A. AUTHORITY and CITY are both self insured.
 - B. The contract documents for the SR4 Bypass – Segment 1 project include language requiring the contractor to provide insurance and indemnification for CITY and their respective officers, agents, and employees to the same extent as the AUTHORITY and its officers, agents, and employees and requires the contractor to provide to the AUTHORITY and CITY a guarantee against defects in material and workmanship for a period of one (1) year from the date of acceptance of the SR4 Bypass – Segment 1 project, which includes JEFFREY WAY.
 - C. Subject to provisions 7(D) and 7(E) below, the parties' obligations to defend, hold harmless and indemnify are as set forth in Section 13, Hold Harmless, of the Joint Exercise Powers Agreement for Construction of the State Route 4 Bypass, attached hereto as Exhibit D.
 - D. CITY acknowledges that entry into the construction area carries certain risk and agrees to release, indemnify, and hold harmless the AUTHORITY and its members,

officers, and employees from any liability for death of, or injury to CITY's representative(s) while present in the construction area, except for liability resulting from the sole negligence or sole willful misconduct of AUTHORITY.

E. Nothing in this Agreement is intended to affect the legal liability of any of the parties to this Agreement to third parties by imposing any standard of care different from that normally imposed by law.

8. 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.

9. Restrictions: Pursuant to Government Code Section 6509, the powers of the parties under this Agreement shall be subject to the restrictions on such powers applicable to the AUTHORITY.

10. Accountability: As required by Government Code section 6505, both parties to this Agreement shall provide strict accountability of all funds received for the SR4 Bypass Project – Segment 1.

11. Agreement Termination:

A. This Agreement may be terminated immediately by the mutual written consent of the governing bodies of both parties.

B. Unless terminated earlier, this Agreement shall terminate upon the payment described in section 2 above or upon acceptance of JEFFREY WAY by AUTHORITY as provided in section 5(A) above, whichever occurs later, except that the provisions 6, 7(B), 7(C), 7(D), and 7(E) shall survive the termination of this Agreement.

12. 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 JEFFREY WAY 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.

13. 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:

State Route 4 Bypass Authority
Attn: Dale Dennis, Program Manager
255 Glacier Drive
Martinez, CA 94553

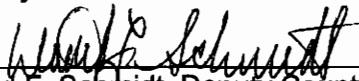
City of Brentwood
Attn: Bailey Grewal, Public Works Director
708 Third Street
Brentwood, CA 94513

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

STATE ROUTE 4 BYPASS AUTHORITY

By: 
Secretary/Designee

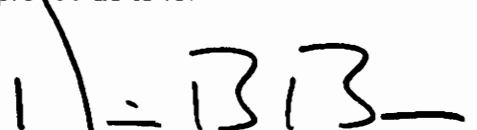
Approved as to form:
Silvano B. Marchesi
County Counsel


David F. Schmidt, Deputy County Counsel

CITY OF BRENTWOOD

By: 
Donna Landeros, City Manager

Approved as to form:


City Attorney

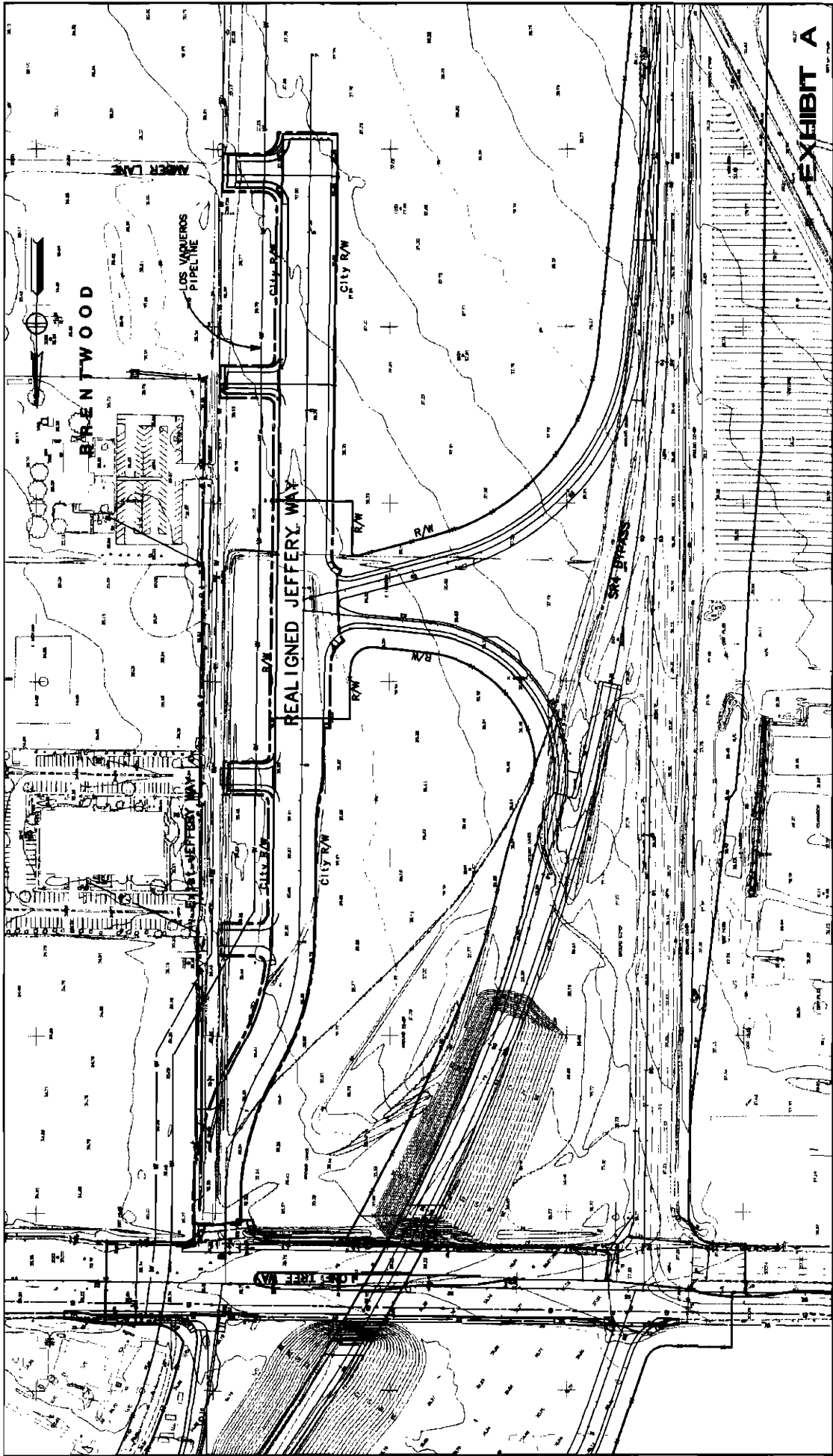


EXHIBIT A

DESIGNED BY: SD
 DRAWN BY: CW
 SCALE: 1" = 100'
 DATE: MARCH 2007
 JOB: 01-00042-100

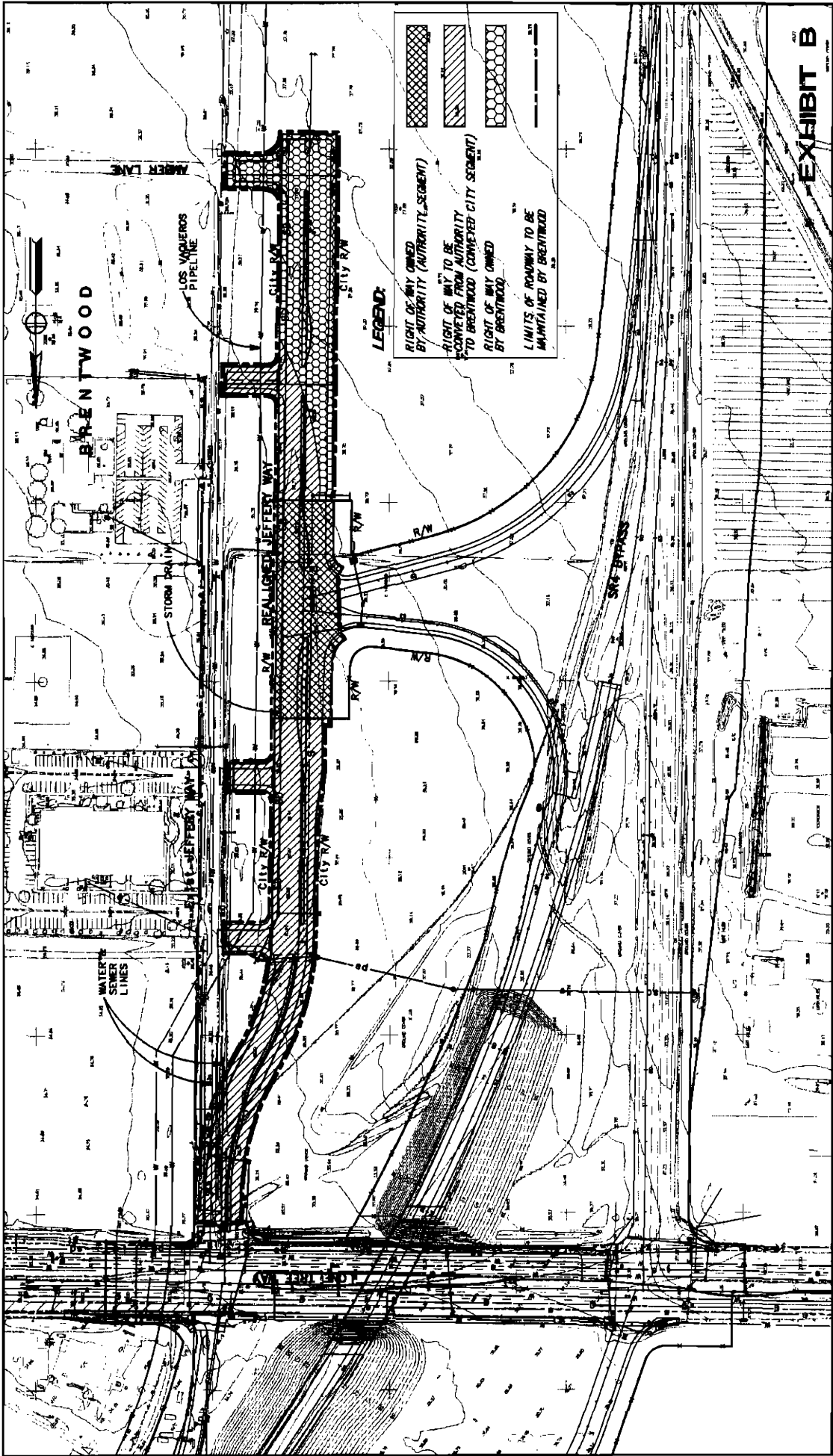


ROUTE 4 BYPASS
JEFFERY WAY EXHIBIT



MARK THOMAS & COMPANY, INC.
 1243 ALPINE ROAD, SUITE 222
 WALNUT CREEK, CA 94596
 TEL: (925) 938-0363 FAX: (925) 938-0369

DATE PLOTTED: 03/05/07 10:00 AM



DESIGNED BY: CW
 DRAWN BY: CW
 SCALE: 1" = 100'
 DATE: MARCH 2007
 JOB: 81-880-65-154



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ROUTE 4 BYPASS
JEFFERY WAY RIGHT OF WAY & MAINTENANCE EXHIBIT



MARK THOMAS & COMPANY, INC.
 1243 ALPINE ROAD, SUITE 222
 WALNUT CREEK, CA 94596
 TEL: (925) 936-0363 FAX: (925) 939-0389

EXHIBIT B

EXHIBIT C

JEFFREY WAY SEGMENT - COST BREAKDOWN

Description	Total
Design Engineering @ 10% of construction	\$ 54,000
Construction Management @ 11.76% of construction	\$ 63,500
Construction Costs - Jeffrey Way Improvements for City of Brentwood	\$ 540,000
Total Cost	\$657,500