

**JOINT EXERCISE OF POWERS AGREEMENT
BY AND AMONG
CONTRA COSTA COUNTY,
EAST CONTRA COSTA REGIONAL FEE AND FINANCING AUTHORITY, AND
STATE ROUTE 4 BYPASS AUTHORITY,
FOR THE
VASCO ROAD SAFETY IMPROVEMENTS – PHASE 2 PROJECT**

Effective on _____, 2025 (“Effective Date”), this Joint Exercise of Powers Agreement (“Agreement”) is entered into by and among Contra Costa County, a political subdivision of the State of California (“COUNTY”), the East Contra Costa Regional Fee and Financing Authority, a joint exercise of powers agency (hereinafter referred to as “ECCRFFA”), and the State Route 4 Bypass Authority, a joint exercise of powers agency (hereinafter referred to as “SR4BA”). COUNTY, ECCRFFA, and SR4BA are sometimes referred to herein together as the “Parties,” and each as a “Party.”

1. Purpose: The Parties enter into this Agreement to exercise powers common to them with respect to the completion of the Vasco Road Safety Improvements – Phase 2 project (the “PROJECT”), pursuant to Government Code section 6500, et seq. The purpose of this Agreement is to specify the Parties that will be responsible for the design, project management, environmental clearance, utility relocation, right-of-way acquisition, construction management, construction, acceptance, and funding of the PROJECT. This Agreement also designates SR4BA as the Party to exercise the power of eminent domain within the Parties’ jurisdictions for the purpose of acquiring property and property rights necessary for the PROJECT, pursuant to Code of Civil Procedure section 1240.140.
2. Responsibilities of COUNTY, ECCRFFA, and SR4BA,:
 - A. COUNTY agrees:
 - 1) As the lead agency under the California Environmental Quality Act (“CEQA”), to complete any required subsequent or supplemental environmental review for the PROJECT, the reasonable cost of which will be reimbursed by SR4BA using ECCRFFA Funding following written demand for payment.
 - 2) To provide, at no cost, a designated representative to coordinate with ECCRFFA and SR4BA on all activities required to complete the PROJECT under this Agreement.
 - 3) To provide staff to review the PROJECT plans and specifications developed by the PROJECT design consultant, the reasonable cost of which will be reimbursed by SR4BA using ECCRFFA Funding following written demand for payment. COUNTY will cause its Board of Supervisors to consider approving the PROJECT final design plans and specifications for the PROJECT.

- 4) To authorize SR4BA and its contractors to construct the PROJECT on right(s) of way held in COUNTY's name, subject to the terms of this Agreement. Within seven (7) days after SR4BA's PROJECT construction contractor submits an application for an encroachment permit, COUNTY will issue to SR4BA's PROJECT construction contractor, at no cost, a COUNTY encroachment permit authorizing entry and occupancy within the PROJECT right of way owned by the COUNTY.
- 5) To cooperate with SR4BA to identify any additional right(s)-of-way required for the PROJECT.
- 6) To award a PROJECT construction management contract and assign the contract to SR4BA within 10 days following contract award.
- 7) To appoint a representative with authority to approve any necessary changes or extra work related to the PROJECT. COUNTY shall require its designated representatives to respond to any request for approval of a proposed change order within seven (7) working days after SR4BA delivers a change order to COUNTY. If COUNTY's representative does not respond within that period, COUNTY shall be deemed to have approved the proposed change order. COUNTY's representative shall not unreasonably withhold approval of a PROJECT change order.
- 8) Before the PROJECT is accepted as complete, to cause the COUNTY Public Works Director, or designee, to (a) perform a joint final inspection of the PROJECT, and (b) subject to the requirements of Section 6.A. of this Agreement, issue a Concurrence Letter (defined in Section 6.A., below).
- 9) Beginning on the Recording Date (defined in Section 6.A, below) and continuing thereafter, to operate and maintain the PROJECT and all PROJECT right(s)-of-way.
- 10) Within 60 days following a request by SR4BA to transfer PROJECT right(s)-of-way to COUNTY, to accept PROJECT right(s)-of-way acquired in the SR4BA's name; and to accept all PROJECT right(s)-of-way conveyed directly to COUNTY as part of any terms of acquisition negotiated by SR4BA.

B. ECCRFFA agrees:

- 1) To provide regional transportation demand impact mitigation ("RTDIM") fee funding allocated to the PROJECT in the ECCRFFA June 2025 Strategic Plan, in the amount of \$25.0 million of the PROJECT costs ("ECCRFFA Funding") to be used for the following phases of the PROJECT: any subsequent environmental review, project management, design, utility relocation, right-of-way acquisition, construction management, and construction. If PROJECT costs exceed the Regional Measure 3 ("RM3") Funding ("RM3 Funding") and the ECCRFFA Funding, combined, any excess costs will be paid first from funding secured by any other Party

under Section 4.A., and second from ECCRFFA funds as the PROJECT is eligible for funding from ECCRFFA in 100% of its actual cost. Within 60 days following the Effective Date, the entire amount of the ECCRFFA Funding (\$25 million) will be transmitted to SR4BA.

- 2) To take further actions reasonably necessary to ensure the PROJECT is completed in accordance with this Agreement.

C. SR4BA agrees:

- 1) To accept ECCRFFA Funding and to use ECCRFFA Funding for the following phases of the PROJECT: any subsequent environmental review, project management, design, utility relocation, right-of-way acquisition, construction management, and construction. SR4BA will coordinate with the Metropolitan Transportation Commission (“MTC”) to cause MTC to provide all RM3 Funding allocated to the PROJECT, in the amount of up to \$15.0 million. It is anticipated that the RM3 Funding will be requested and used for the costs incurred during the construction phase of the PROJECT.
- 2) To act as the fiscal agent for the PROJECT and to account for all PROJECT expenses and all uses of ECCRFFA Funding, RM3 Funding, and, if required, additional ECCRFFA funds or other funds, used to pay for PROJECT costs.
- 3) To accept an assignment of the PROJECT construction management contract from COUNTY, and, thereafter, to act as the agency responsible for managing the construction management of the PROJECT. The SR4BA Program Manager, or designee, is hereby authorized to execute the assignment on behalf of SR4BA. SR4BA shall allow the COUNTY Public Works Director, or designee, to review and comment on all PROJECT plans and specifications at each design milestone and prior to advertising the PROJECT for construction bids.
- 4) To act as the agency responsible for PROJECT right-of-way acquisition, utility relocation, construction management, and construction. Right-of-way acquisition includes all legal, engineering, appraisal, relocation assistance, and related services required by SR4BA to acquire PROJECT right-of-way, and all right-of-way required for any utility relocation, whether through negotiated purchase and sale or through eminent domain, as well as all payments for the fair market value of the property and property interests being acquired, including all judgments entered by the court and all settlements negotiated by SR4BA and other parties to any eminent domain action.
- 5) To acquire, in the name of the SR4BA right(s)-of-way required for the PROJECT, after consulting with the COUNTY regarding the right(s)-of-way required for the PROJECT. At SR4BA’s discretion, temporary construction easements required for the PROJECT may remain in the name of SR4BA through the completion of the PROJECT. SR4BA may, in its discretion,

negotiate terms requiring any permanent easements or fee interests required for the PROJECT to be conveyed directly to COUNTY.

- 6) To contract directly with a design consultant firm for PROJECT design following any required solicitation.
- 7) Following the COUNTY Board of Supervisors' approval of the PROJECT design, to cause the SR4BA Board of Directors to approve the design and approve advertising for bids, and to approve the award of a PROJECT construction contract to the lowest responsible bidder, in accordance with all laws and policies applicable to SR4BA and COUNTY.
- 8) To prepare PROJECT change orders, and to consult with COUNTY's Public Works Director, or designee, on any necessary changes and extra work required to deliver the PROJECT.
- 9) To cause to be prepared as-built drawings and deliver the final as-built drawings to COUNTY after the PROJECT is accepted as complete.
- 10) If the PROJECT is accepted as complete prior to the vesting of title to all required PROJECT right(s)-of-way in the name of COUNTY (e.g., where there is an order of possession in a pending condemnation action the SR4BA files), to license the use of said right(s)-of-way to the COUNTY. Once title to the right(s)-of-way vests in SR4BA, the right(s)-of-way will be transferred to the COUNTY and the license will be terminated.

3. Designation of Party to Exercise the Power of Eminent Domain. Pursuant to Code of Civil Procedure section 1240.140, the Parties hereby agree that SR4BA has, and shall continue to have, the authority relating to the PROJECT, to:

- A. Conduct all public hearings to the end of adopting a Resolution of Necessity, which shall be a discretionary decision for SR4BA's Board of Directors;
- B. Take whatever steps are necessary to initiate, conduct, and resolve or conclude such eminent domain proceedings as are necessary to obtain title to any and all real property interests that are required for the construction of the PROJECT, or otherwise necessary to protect or preserve the safety and usefulness of the PROJECT, or to mitigate the effects of the PROJECT, or as otherwise required to be acquired as a condition of any permit for the PROJECT; and
- C. In connection therewith, to enter into any and all contracts to obtain performance of all legal (including outside counsel), engineering, appraisal, right-of-way acquisition, relocation assistance, related services, and any required experts.

4. Funding and Financial Responsibility; Audit; Cooperation.

- A. Funding and Financial Responsibility. The PROJECT will be funded with the ECCRFFA Funding and RM3 Funding, and, if necessary, additional ECCRFFA or other funding required to complete the PROJECT. Provided, however, that if any Party is able to secure PROJECT funding from another source, such additional

PROJECT funding shall be used to reduce ECCRFFA's share of the cost to complete the PROJECT. SR4BA is designated as the fiscal agent for the PROJECT, will receive ECCRFFA Funding, and any additional ECCRFFA funds or other funds required to complete the PROJECT, will cooperate with MTC to obtain RM3 Funding to pay PROJECT expenses, and will be responsible for keeping all records related to the receipt and disbursement of funds required to complete the PROJECT.

- B. Audit. During the term of this Agreement and for a period of three (3) years following its expiration or termination (the "Audit Period"), each Party shall keep and maintain accurate financial accounts, in accordance with generally acceptable accounting principles, of all PROJECT-related costs. In order to make an audit, during the Audit Period each Party shall have the right of access to any books, documents, papers, and other records of all other Parties that are pertinent to the use of public funds for PROJECT-related costs. Within 10 days after a Party's written request to another Party, the receiving Party shall provide the requesting Party copies of accounting and financial records regarding the use of public funds for PROJECT-related costs, or shall make such records available for inspection and copying during the receiving Party's normal business hours, at the receiving Party's office or the office of its financial consultant. The requirements of this Section 4.B. shall survive for a period of three years following the expiration or termination of this Agreement.
- C. Cooperation. If any Party determines that additional activities are required beyond those contemplated in this Agreement, the Parties' authorized representatives will meet and confer to determine a course of action consistent with the purpose of this Agreement, which may require an amendment to this Agreement to memorialize the Parties' additional agreements and understandings. If any dispute arises under this Agreement, the Parties shall seek to resolve the dispute, first, informally through their authorized representatives, and, if not resolved, at mediation before an agreed upon mediator, the cost of which shall be paid by the Parties in equal shares.

5. Insurance and Hold Harmless:

- A. SR4BA shall require the PROJECT construction contractor to indemnify COUNTY and ECCRFFA, and their respective officers, employees, and agents, to the same extent as the construction contractor is required to indemnify SR4BA and its officers, employees, and agents.
- B. SR4BA shall require the PROJECT construction contractor to provide, for the benefit of SR4BA and COUNTY, a guarantee against defects in material and workmanship for a period of one year from the date the PROJECT is accepted as complete by COUNTY.
- C. SR4BA shall require the PROJECT construction contractor to provide a payment and performance bond, using standard COUNTY bond forms, guaranteeing 100% of the maximum construction contract price, and naming SR4BA and COUNTY as obligees under the bonds.

- D. SR4BA shall require the PROJECT construction contractor to maintain the following policies of insurance:
- 1) Workers' compensation insurance pursuant to state law.
 - 2) Commercial general liability insurance, including contractual liability (or blanket contractual) coverage, owners' and contractors' protective coverage, and broad form property damage coverage, per current Caltrans Standard Specifications at the time of bid. Said policy shall include a policy limit of \$5,000,000 individually and \$10,000,000 in the aggregate, and a waiver of subrogation for COUNTY, ECCRFFA, and SR4BA.
 - 3) Builders' risk insurance in an amount equal to the construction contract price, with a waiver of subrogation for COUNTY, ECCRFFA, and SR4BA.
 - 4) Except where already covered by the commercial general liability policy, vehicle liability insurance with a minimum combined single-limit coverage of \$1,000,000 per occurrence.
- SR4BA shall provide the other Parties certificates of insurance, copies of policies, or endorsements evidencing the above insurance coverage and requesting at least 30 days' advance written notice to SR4BA prior to policy lapse, cancellation, or material change in coverage. The above policies shall contain a provision that the policies are primary coverage to the full limits of the policies and that, if any additional insured has other insurance or self-insurance against a loss covered by any policy, the additional insured's insurance or self-insurance shall be excess insurance only.
- E. COUNTY shall defend, indemnify, save, and hold harmless ECCRFFA and SR4BA, and their governing bodies, officers, agents, and employees, from the proportion of any claims, demands, suits, costs, expenses (including attorney's fees and attorney's fee awards), and liabilities for any damages, injury, sickness, or death (collectively "Liabilities") that arise from the negligence or willful misconduct of the COUNTY, its officers, employees, or agents in the performance of COUNTY's obligations under this Agreement.
- F. ECCRFFA shall defend, indemnify, save, and hold harmless COUNTY and SR4BA, and their governing bodies, officers, agents, and employees, from the proportion of any Liabilities that arise from the negligence or willful misconduct of ECCRFFA, its officers, employees, or agents in the performance of ECCRFFA's obligations under this Agreement.
- G. SR4BA shall defend, indemnify, save, and hold harmless COUNTY and ECCRFFA, and their governing bodies, officers, agents, and employees, from the proportion of any Liabilities that arise from the negligence or willful misconduct of SR4BA, its officers, employees, or agents in the performance of SR4BA's obligations under this Agreement.
- H. Nothing in this Agreement is intended to affect any Party's legal liability to third parties by imposing any standard of care different from that normally imposed by law.

6. Joint Inspection, Acceptance, Maintenance & Operation, and Transfer:
- A. Joint Inspection and Acceptance. Upon completion of PROJECT construction, SR4BA's construction manager and COUNTY's Public Works Director, or designee, shall conduct a joint final inspection of the PROJECT to determine whether the PROJECT has been constructed in accordance with the PROJECT plans and specifications and approved PROJECT change orders to the reasonable satisfaction of SR4BA and COUNTY. If the COUNTY Public Works Director, or designee, determines that the PROJECT has been constructed in accordance with the PROJECT plans and specifications and any change orders: (1) within five days after the joint inspection, COUNTY's Public Works Director, or designee, shall provide SR4BA a letter concurring that the PROJECT has been so constructed ("Concurrence Letter"); (2) within 30 days after the date of the Concurrence Letter SR4BA's Board of Directors shall consider whether to accept the PROJECT as complete; and (3) after the PROJECT is accepted as complete, SR4BA shall cause a notice of completion to be recorded in the Official Records of the Contra Costa County Clerk-Recorder, the date of said recording being the "Recording Date." Within 5 days after the Recording Date, SR4BA will provide each other Party a copy of the recorded notice of completion.
- B. Maintenance & Operation. Effective upon the Recording Date, COUNTY shall be solely responsible for operating and maintaining the PROJECT and all PROJECT right(s)-of-way. From and after the Recording Date, COUNTY shall defend, indemnify, save, and hold harmless ECCRFFA and SR4BA, and their governing bodies, officers, agents, and employees, from any Liabilities that arise from the design, construction, operation, maintenance, or repair of the PROJECT, notwithstanding anything to the contrary in Section 5. The requirements of this Section 6.B. shall survive the termination or expiration of this Agreement.
7. Agreement Modification: This Agreement may only be amended in writing following the approval of the legislative bodies of all Parties hereto.
8. Accountability: As required by Government Code section 6505, all Parties to this Agreement shall provide strict accountability of all funds received for the PROJECT.
9. Agreement Expiration and Termination; Survival:
- A. The term of this Agreement begins on the Effective Date. This Agreement shall expire upon the last of the following to occur: (a) the Recording Date; (b) the date title to the last of all PROJECT right-of-way vests in COUNTY; (c) the date SR4BA is fully reimbursed for all PROJECT-related expenses SR4BA incurs under this Agreement.
- B. Any Party may terminate this Agreement for non-appropriation of funds at any time prior to SR4BA's award of a PROJECT construction contract by providing written notice of termination to all other Parties hereto. In the event of termination, costs incurred by SR4BA through the termination date will be paid using ECCRFFA Funding; and any remaining ECCRFFA Funding held by SR4BA will be returned to ECCRFFA.

- C. Notwithstanding the expiration or termination of this Agreement, the provisions of Sections 4.B., 5.E., 5.F., 5.G., 5.H., and 6.B. shall survive the expiration or termination of this Agreement.
10. Entire Agreement; Construction: 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 the PROJECT shall not be enforceable unless it is contained in this Agreement or in a subsequent written modification of this Agreement executed on behalf of all Parties following the approval by the Parties' governing bodies. The section headings and captions of this Agreement are, and the arrangement of this Agreement is, for the sole convenience of the Parties to this Agreement. The section headings, captions, and arrangement of this Agreement do not in any way affect, limit, amplify, or modify the terms and provisions of this Agreement. This Agreement shall 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 Agreement and their attorneys have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.
11. Notices: All notices (including requests, demands, approvals or other communications) under this Agreement shall be in writing.
- A. A notice 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 upon receipt if delivery listed on the 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 it is personally delivered.
- B. The place for delivery of all notices given under this Agreement shall be as follows:
- To COUNTY:
Contra Costa County Public Works Department
Attn: Steve Kowalewski, Chief Deputy Public Works Director
255 Glacier Drive
Martinez, CA 94553
- To ECCRFFA:
East Contra Costa Regional Fee and Finance Authority
Attn: Dale Dennis, Program Manager
255 Glacier Drive
Martinez, CA 94553

To SR4BA:
State Route 4 Bypass Authority
Attn: Dale Dennis, Program Manager
255 Glacier Drive
Martinez, CA 94553

Or to such other addresses as COUNTY, ECCRFFA, and SR4BA may respectively designate by written notice to the other Parties. Courtesy copies of any notices may be given by email, provided that the notice also is given in any manner authorized by this Section.

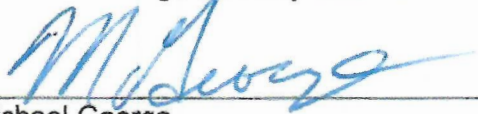
12. Governing Law. This Agreement will be governed and construed in accordance with California law.
13. No Third-Party Beneficiaries. Nothing in this Agreement express or implied confers on any person or entity other than the Parties any rights, benefits, or obligations under this Agreement.
14. Waiver. A waiver or breach of any covenant or provision in this Agreement will not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver will be valid unless in writing and executed by the waiving Party.
15. Severability. If any term or provision of this Agreement is, to any extent, held invalid or unenforceable by a court of competent jurisdiction, this Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.
16. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original with all counterparts constituting but one and the same instrument.

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CONTRA COSTA COUNTY


By: _____
Warren Lai, Public Works Director

Approved as to form:
Thomas L. Geiger, County Counsel




Michael George
Deputy County Counsel

**EAST CONTRA COSTA REGIONAL FEE
AND FINANCING AUTHORITY**

By: 

Secretary/Designee

Approved as to form:
Thomas L. Geiger, County Counsel




Stephen M. Siptroth
Assistant County Counsel

STATE ROUTE 4 BYPASS AUTHORITY

By: 

Secretary/Designee

Approved as to form:
Thomas L. Geiger, County Counsel



Stephen M. Siptroth
Assistant County Counsel