

**JOINT EXERCISE OF POWERS AGREEMENT**

**EAST COUNTY TRANSPORTATION IMPROVEMENT AUTHORITY,  
STATE ROUTE 4 BYPASS AUTHORITY,  
CITY OF OAKLEY  
AND  
CITY OF ANTIOCH**

**LAUREL ROAD EXTENSION PROJECT**

1. Parties: Effective on 9/14, 2004, the East County Transportation Improvement Authority, a joint powers agency (hereinafter referred to as "ECTIA"), the State Route 4 Bypass Authority, a joint exercise of powers agency (hereinafter referred to as the "AUTHORITY"), the Cities of Oakley and Antioch, municipal corporations of the State of California (hereinafter referred to as "OAKLEY" and "ANTIOCH" respectively), pursuant to Government Code Section 6500 and following, mutually agree and promise as follows:
2. Purpose and Scope of Work: ECTIA, AUTHORITY, OAKLEY and ANTIOCH desire to complete the Laurel Road Extension project as shown on Exhibit "A", attached hereto and incorporated herein (hereinafter referred to as the "PROJECT").

The purpose of this Agreement is to provide for the project management, environmental clearance, utility relocation, right-of-way acquisition, design, construction and acceptance of PROJECT and the apportionment of the respective project duties and costs between ECTIA, AUTHORITY, OAKLEY and ANTIOCH.

3. Responsibilities of ECTIA, AUTHORITY, OAKLEY and ANTIOCH:

A. ECTIA agrees:

- 1) To provide funding for all phases of PROJECT, including project management, environmental clearance, right-of-way acquisition, utility relocations, design, construction management and construction.

B. AUTHORITY agrees:

- 1) To act as a responsible agency and to retain a consultant to prepare the environmental clearance for PROJECT pursuant to the California Environmental Quality Act (CEQA), and obtain all permits necessary to construct PROJECT and to adopt CEQA document upon completion.
- 2) To prepare plans and specifications for PROJECT in consultation with ECTIA, OAKLEY, and ANTIOCH. ECTIA, OAKLEY, and ANTIOCH staff shall have the

opportunity to review and comment on the PROJECT plans and specifications prior to advertising.

- 3) To acquire property in the name of the AUTHORITY and to transfer to the appropriate City (OAKLEY or ANTIOCH) upon completion of project or as soon thereafter as practicable.
- 4) To arrange for utility relocations required for PROJECT.
- 5) To arrange for the construction of PROJECT per plans and specifications.
- 6) To consult with affected City's (OAKLEY or ANTIOCH) appointed representative on any necessary changes or extra work prior to the issuance of any contract change orders for PROJECT and prepare said change orders and provide a copy to the affected City (OAKLEY or ANTIOCH) within 5 working days of approval.
- 7) To prepare as-built drawings, based on the AUTHORITY inspector's "mark up drawings" and deliver the final as-built drawings to the affected City (OAKLEY or ANTIOCH) within 90 days of formal AUTHORITY project acceptance.
- 8) To accept PROJECT as complete but not until the city engineer of affected City (OAKLEY or ANTIOCH) has determined that the portion of PROJECT within its jurisdiction has been constructed in accordance with the pertinent PROJECT plans and specifications and approved change orders.
- 9) To perform field inspections of PROJECT in accordance with the affected City's (OAKLEY or ANTIOCH) standard practices and procedures and oversight to determine conformance with project plans and specifications and any approved change orders.
- 10) To reimburse OAKLEY and ANTIOCH for its costs related to quality assurance and inspection of the PROJECT.
- 11) To require the contractor to obtain an encroachment permit from affected City (OAKLEY or ANTIOCH) for PROJECT related work located within the affected City's (OAKLEY or ANTIOCH) right of way or easements.

**C. OAKLEY agrees:**

- 1) To be the lead agency for the environmental document and to adopt the environmental document once AUTHORITY has completed its preparation.
- 2) To provide, at no cost, a designated representative to participate with ECTIA, AUTHORITY, ANTIOCH in completing PROJECT.
- 3) To provide staff to review the PROJECT plans and specifications prepared by the AUTHORITY in a timely manner, at no cost to AUTHORITY.
- 4) To grant to the AUTHORITY and its officers, officials, employees, agents, contractors, subcontractors and consultants a right to enter upon OAKLEY right of way and easements, to the extent reasonably necessary for the preparation of the preliminary and final plans and specifications, and the construction of the PROJECT, subject to the terms and conditions of an encroachment permit to be issued by OAKLEY to AUTHORITY, its contractors or agents.
- 5) To appoint an OAKLEY representative with the authority to approve any necessary changes or extra work prior to the issuance of any contract change orders for PROJECT related work located within OAKLEY'S jurisdiction. OAKLEY shall respond to all requests for proposed changes to the final plans within 10 working days after receipt, unless otherwise agreed to by both parties. The decision of OAKLEY shall not be withheld unreasonably.
- 6) To perform a joint final inspection of the PROJECT with the AUTHORITY for final acceptance.
- 7) To prepare and submit to the AUTHORITY a report of actual costs incurred for the PROJECT related to quality assurance in accordance with 5(A) below.
- 8) To issue a no fee encroachment permit, with no bond requirements to AUTHORITY's contractor for PROJECT related work located within the City's right of way or easements.
- 9) To require any developments adjacent to PROJECT to submit all development plans, such as the tentative map, grading plans, final improvement plans, and final map, to AUTHORITY for review.

**D. ANTIOCH agrees:**

- 1) To be a responsible agency for the environmental document and to adopt the environmental document once the AUTHORITY has completed its preparation.
- 2) To provide, at no cost, a designated representative to participate with ECTIA,

AUTHORITY, OAKLEY in completing PROJECT.

- 3) To provide staff to review the PROJECT plans and specifications prepared by the AUTHORITY in a timely manner, at no cost to the AUTHORITY.
- 4) To grant to the AUTHORITY and its officers, officials, employees, agents, contractors, subcontractors and consultants a right to enter upon ANTIOCH right of way and easements, to the extent reasonably necessary for the preparation of the preliminary and final plans and specifications, and the construction of the PROJECT, subject to the terms and conditions of an encroachment permit to be issued by ANTIOCH to AUTHORITY, its contractors or agents.
- 5) To perform a joint final inspection of the PROJECT with the AUTHORITY for final acceptance.
- 6) To appoint an ANTIOCH representative with the authority to approve any necessary changes or extra work prior to the issuance of any contract change orders for PROJECT related work located within ANTIOCH'S jurisdiction. ANTIOCH shall respond to all requests for proposed changes to the final plans within 10 working days after receipt, unless otherwise agreed to by both parties. The decision of ANTIOCH shall not be withheld unreasonably.
- 7) To prepare and submit to the AUTHORITY a report of actual costs incurred for the PROJECT related to quality assurance in accordance with 5(B) below.
- 8) To issue a no fee encroachment permit with no bond requirements to AUTHORITY's contractor for PROJECT related work located within the City's right of way or easements.
- 9) To require any developments adjacent to PROJECT to submit all development plans, such as the tentative map, grading plans, final improvement plans, and final map, to AUTHORITY for review.

4. Financial Responsibility

ECTIA shall be responsible for the costs to complete the PROJECT and will provide AUTHORITY funding as necessary for AUTHORITY to complete its responsibilities as defined in Agreement.

AUTHORITY shall pay for all reasonable costs incurred by OAKLEY and ANTIOCH to perform quality assurance on the PROJECT on a time and materials basis.

5. Adjustment:

- A. Within 90 calendar days of acceptance of PROJECT, OAKLEY may invoice AUTHORITY for any remaining PROJECT expenditures incurred in performing OAKLEY duties described in 3(C) above.
- B. Within 90 calendar days of acceptance of PROJECT, ANTIOCH may invoice AUTHORITY for any remaining PROJECT expenditures incurred in performing ANTIOCH duties described in 3(D) above.
- C. Payment of the amount owed to City (OAKLEY or ANTIOCH) shall be made by the AUTHORITY no later than 45 calendar days after the date of actual billing by City (OAKLEY or ANTIOCH).

6. Insurance and Hold Harmless:

- A. The contract documents for PROJECT shall include provisions requiring the contractor to provide insurance and indemnification naming ECTIA, OAKLEY and ANTIOCH and their officers and employees to the same extent as the AUTHORITY and its officers and employees and shall require the contractor to provide to the AUTHORITY and ECTIA, OAKLEY, and ANTIOCH a guarantee against defects in material and workmanship for a period of 1 year from the date of acceptance of PROJECT.
- B. Neither ECTIA nor any officer or employee thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by AUTHORITY, OAKLEY, or ANTIOCH in connection with any work delegated to AUTHORITY, OAKLEY, or ANTIOCH under this Agreement and AUTHORITY, OAKLEY, or ANTIOCH shall defend, indemnify, save, and hold harmless ECTIA and its governing body, officers, agents, and employees from the same, except liability that is the sole negligence or willful act of ECTIA.
- C. Neither AUTHORITY nor any officer or employee thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by ECTIA, OAKLEY, or ANTIOCH in connection with any work delegated to ECTIA, OAKLEY, or ANTIOCH under this Agreement and ECTIA, OAKLEY, or ANTIOCH shall defend, indemnify, save, and hold harmless AUTHORITY and its governing body, officers, agents, and employees from the same, except liability that is the sole negligence or willful act of AUTHORITY.
- D. Neither OAKLEY nor any officer or employee thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by AUTHORITY, ECTIA, or ANTIOCH in connection with any

work delegated to AUTHORITY, ECTIA, or ANTIOCH under this Agreement and AUTHORITY, ECTIA, or ANTIOCH shall defend, indemnify, save, and hold harmless OAKLEY and its governing body, officers, agents, and employees from the same, except liability that is the sole negligence or willful act of OAKLEY.

- E. Neither ANTIOCH nor any officer or employee thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by AUTHORITY, OAKLEY, or ECTIA in connection with any work delegated to AUTHORITY, OAKLEY, or ECTIA under this Agreement and AUTHORITY, OAKLEY, or ECTIA shall defend, indemnify, save, and hold harmless ANTIOCH and its governing body, officers, agents, and employees from the same, except liability that is the sole negligence or willful act of ANTIOCH.
  
- D. OAKLEY and ANTIOCH 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, the City's (OAKLEY or ANTIOCH) 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 either party to third parties by imposing any standard of care different from that normally imposed by law.

7. Acceptance and Maintenance:

- A. Upon completion of the PROJECT, each City (OAKLEY and ANTIOCH) and AUTHORITY shall conduct a joint final inspection for portion of PROJECT included in each respective jurisdiction. After AUTHORITY has determined that the PROJECT has been completed to the satisfaction of the city engineers of Oakley and Antioch, AUTHORITY shall accept the PROJECT as complete. Upon acceptance by the Authority, the city engineers of Oakley and Antioch will then process acceptance of improvements by their respective City Councils. OAKLEY and ANTIOCH shall not unreasonably withhold or delay its determination of the PROJECT's satisfactory completion.
  
- B. Upon acceptance of the PROJECT, OAKLEY shall own and be responsible for maintaining the portion of PROJECT within its jurisdiction, and notwithstanding the provisions of 6(C) above, shall defend, indemnify, save, and hold harmless the AUTHORITY and its members, officers, and employees against any and all claims, demands, suits, costs, expenses, and liability for any damages, injury, sickness, or death occurring after

acceptance and relating to the design, use, operation, or maintenance of the PROJECT, except for liability resulting from the sole negligence or sole willful misconduct of the AUTHORITY and its members, officers, and employees.

C. Upon acceptance of the PROJECT, ANTIOCH shall own and be responsible for maintaining the portion of PROJECT within its jurisdiction, and notwithstanding the provisions of 6(D) above, shall defend, indemnify, save, and hold harmless the AUTHORITY and its members, officers, and employees against any and all claims, demands, suits, costs, expenses, and liability for any damages, injury, sickness, or death occurring after acceptance and relating to the design, use, operation, or maintenance of the PROJECT, except for liability resulting from the sole negligence or sole willful misconduct of the AUTHORITY and its members, officers, and employees.

8. Agreement Modification: This Agreement shall be subject to modification only by the written approval of the legislative bodies of all affected parties.

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, all parties to this Agreement shall provide strict accountability of all funds received for the PROJECT.

11. Agreement Termination: Unless terminated earlier through the mutual, written consent of the parties, this Agreement shall terminate upon the payment described in 5(C) above. The provisions of 6(B), 6(C), 6(D), 6(E), 7(B) and 7(C) shall survive any 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 the work 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 all parties.

13. Notices: All notices (including requests, demands, approvals or other communications) under this Agreement shall be in writing.

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 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:

East County Transportation Improvement Authority  
Attn: Dale Dennis, Program Manager  
255 Glacier Drive  
Martinez, CA 94553

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

City of Antioch  
Attn: Joe Brandt, City Engineer  
P.O. Box 5007  
Antioch, CA 94531-5007

City of Oakley  
Attn: Jason Vogan, City Engineer  
3639 Main Street  
Oakley, CA 94561

Or to such other addresses as ECTIA, AUTHORITY, ANTIOCH and OAKLEY may respectively designate by written notice to the others.



STATE ROUTE 4 BYPASS AUTHORITY

By: [Signature]  
Secretary/Designee

Approved as to form:  
Silvano B. Marchesi  
County Counsel

[Signature]  
David F. Schmidt, Deputy County Counsel

CITY OF OAKLEY

By: [Signature]  
Michael Oliver, City Manager

Approved as to form:

[Signature]  
Elizabeth Silver, City Attorney

CITY OF ANTIOCH

By: [Signature]  
Jim Jakal, City Manager

Approved as to form:

[Signature]  
Bill Galstan, City Attorney

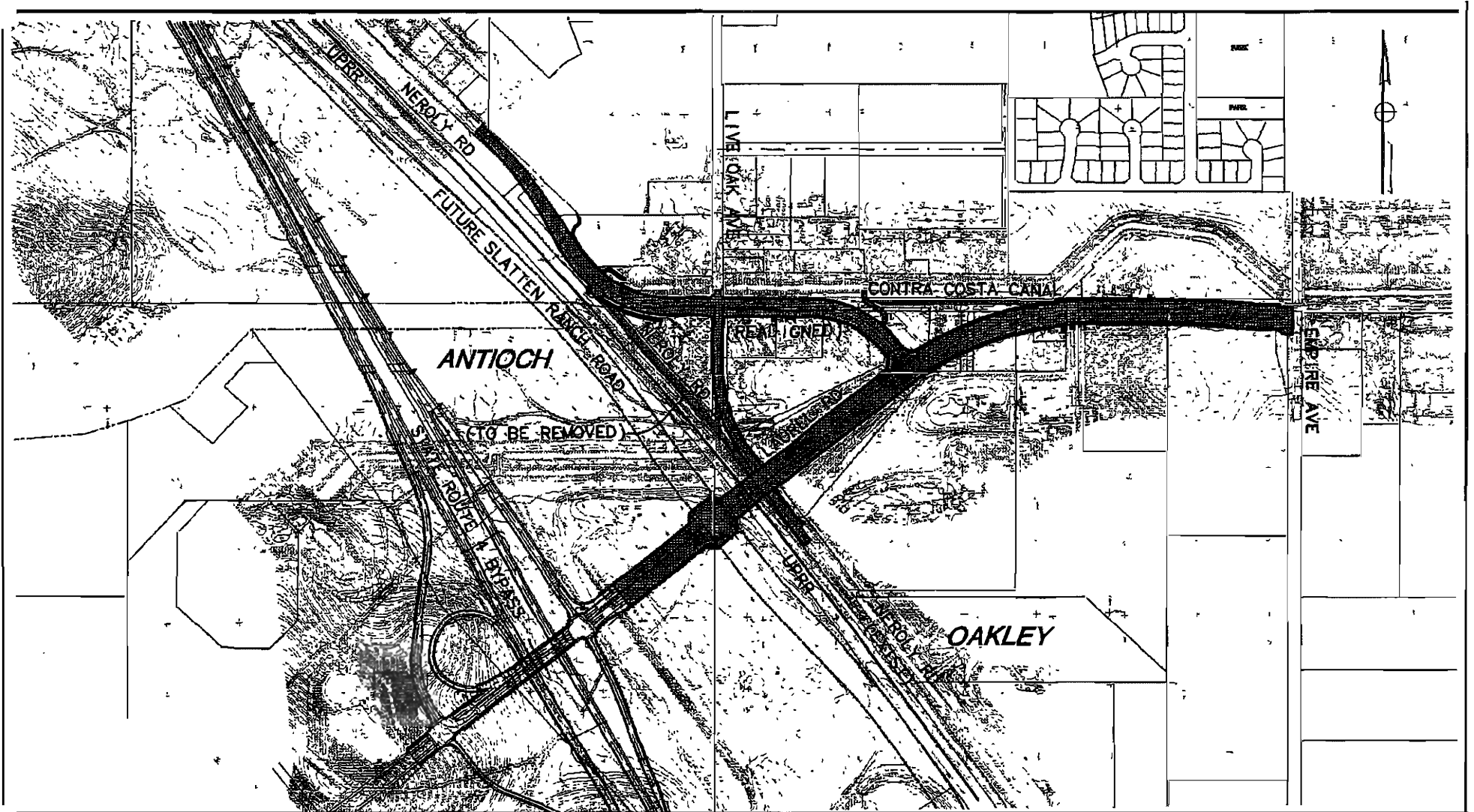
EAST COUNTY TRANSPORTATION  
IMPROVEMENT AUTHORITY

By: [Signature]  
Secretary/Designee

Approved as to form:  
Silvano B. Marchesi  
County Counsel

[Signature]  
David F. Schmidt, Deputy County Counsel

# Exhibit A



DRAWN BY  
CHECKED BY  
SCALE  
DATE

CCW  
FH  
NOT TO SCALE  
05/19/04



DRAFT RIGHT OF WAY EXHIBIT  
LAUREL ROAD EXTENSION PROJECT  
EXHIBIT "A"



MARK THOMAS & COMPANY, INC.  
1243 ALPINE ROAD, SUITE 222  
WALNUT CREEK, CA 94598  
TEL. (925) 938-0383 FAX. (925) 938-0389