

TRANSPLAN Committee *Special** Meeting

*The TRANSPLAN Committee will hold a special meeting to review and discuss the “*Third Amendment to Joint Exercise of Powers Agreement for East Contra Costa Regional Fee and Financing Authority*” (JEPA)

Monday, September 23, 2013 – 6:30 PM

Tri Delta Transit Board Room, 801 Wilbur Avenue, Antioch

We will provide reasonable accommodations for persons with disabilities to participate in TRANSPLAN meetings if they contact staff at least 48 hours before the meeting. Please contact Jamar Stamps at 925-674-7832 or jamar.stamps@dcd.cccounty.us

AGENDA

Items may be taken out of order based on the business of the day and preferences of the Committee.

- 1. OPEN** the meeting.
- 2. ACCEPT** public comment on items not listed on agenda.

Consent Items (see attachments where noted [♦])

~ None ~

End of Consent Items

Open the Public Meeting

Action/Discussion Items (see attachments where noted [♦])

3. RECEIVE update on East County Regional Transportation Mitigation Program (RTMP) status, **APPROVE** letter from TRANSPLAN Chair to CCTA communicating the status of the City of Pittsburg’s participation in the East County RTMP, and **TAKE** any other action as appropriate. ♦ **PAGE 2**

4. ADJOURN to next meeting on Thursday, October 10, 2013 at 6:30 p.m. or other day/time as deemed appropriate by the Committee.

Kevin Romick, Chair
Oakley
City Council

Salvatore Evola, Vice-Chair
Pittsburg
City Council

Wade Harper
Antioch
City Council

Robert Taylor
Brentwood
City Council

Mary N. Piepho
Contra Costa County
Board of Supervisors

Gil Azevedo
Antioch
Planning Commission

Joseph Weber
Brentwood
Planning Commission

Duane Steele
Contra Costa
Planning Commission

Vacant
Representing the
Contra Costa County
Board of Supervisors

Doug Hardcastle
Oakley
Planning Commission

Larry Wirick
Pittsburg
Planning Commission

Staff Contact:


Jamar Stamps
TRANSPLAN
30 Muir Road
Martinez CA 94553

Phone
(925) 674-7832
Facsimile
(925) 674-7258
www.transplan.us
jamar.stamps@dcd.cccounty.us

TRANSPLAN COMMITTEE

EAST COUNTY TRANSPORTATION PLANNING

Antioch • Brentwood • Oakley • Pittsburg • Contra Costa County
30 Muir Road, Martinez, CA 94553

TO: TRANSPLAN Committee
FROM: John Cunningham, TRANSPLAN Staff 
DATE: September 17, 2013
SUBJECT: East County Regional Transportation Mitigation Fee Program

Background

At the July 16, 2013 TRANSPLAN meeting, the Board received an update from staff on the status of the proposal being negotiated with the City of Pittsburg to settle the East County Regional Transportation Mitigation Fee Program dispute. At that time, it was reported that all jurisdictions had conceptually approved Option 1 (with some approving both Option 1 and 2), Option 1 being the adoption of the “*Third Amendment to Joint Exercise of Powers Agreement (JEPA) for East Contra Costa Regional Fee and Financing Authority*” by all East County jurisdictions.

Staff also described remaining issues with the JEPA amendment that were still being resolved. Since the July meeting, the remaining issues have been resolved and all East County jurisdictions have adopted the JEPA amendment as follows:

Jurisdiction	Date
City of Pittsburg*	August 19, 2013
City of Brentwood	August 27, 2013
Contra Costa County	September 10, 2013
City of Oakley	September 10, 2013
City of Antioch	September 10, 2013

*The Pittsburg City Council adopted a resolution (attached) approving the Third Amendment to the JEPA and authorized the City Manager and the Council's TRANSPLAN representative to take steps consistent with the resolution. The City Council's approval is subject to several conditions:

- 1) The East Contra Costa Regional Fee and Financing Authority (ECCRFFA) and TRANSPLAN to provide written concurrence and support for the Contra Costa Transportation Authority's (CCTA) approval that Pittsburg is participating in a regional transportation mitigation program that fulfills the requirements of the Measure J Growth Management Program, and
- 2) All other ECCRFFA members agreeing to the third JEPA amendment and attachments.

The **Recommendation** section below includes actions which fulfill condition #1. As of September 10, 2013 condition #2 has been met.

Discussion

Status of Third Amendment to Joint Exercise of Powers Agreement (JEPA) for East Contra Costa Regional Fee and Financing Authority. In addition to the JEPA amendment being adopted by all East

County jurisdictions staff anticipates ECCRFFA will meet just prior to the September 23rd TRANSPLAN Board meeting to approve the JEP A amendment.

City of Pittsburg status relative to requirements in the *East County Action Plan for Routes of Regional Significance (Action Plan)*. On January 27, 2011 the TRANSPLAN Board determined that the City of Pittsburg was not in compliance with the East County Action Plan's requirement to participate in the ECCRFFA fee program (i.e., the approved RTMP for East County jurisdictions). Staff communicated the TRANSPLAN Board's position to the Contra Costa Transportation Authority (CCTA) in a 1/31/11 letter (see attached). The TRANSPLAN Board reaffirmed this position in an 11/29/12 letter to the City of Pittsburg (see attached).

On September 5, 2013, Joe Sbranti, Pittsburg City Manager, sent a letter to the Chairs of TRANSPLAN and ECCRFFA on the subject issue (see attached). Mr. Sbranti, noting the approval of the JEP A amendment, requested that TRANSPLAN and ECCRFFA withdraw the 1/31/11 and 11/29/12 letters previously sent to CCTA and the City of Pittsburg.

Recommendation

In light of the adoption of the JEP A amendment by all East County jurisdictions, the anticipated approval by ECCRFFA, and the 9/5/13 request from the City of Pittsburg, staff **RECOMMENDS** that the Board take the following actions:

- 1) RECEIVE** this report from staff on the status of the status of *Third Amendment to Joint Exercise of Powers Agreement for East Contra Costa Regional Fee and Financing Authority*; and
- 2) APPROVE** letter, in substantially the form presented, from the TRANSPLAN Chair to CCTA communicating the withdrawal of the 1/31/11 and 11/29/12 letters and supporting the City of Pittsburg's receipt of return to source funds.



City of Pittsburg

Civic Center • 65 Civic Avenue • Pittsburg, California 94565-3814

September 5, 2013

Kevin Romick, Chair
TRANSPLAN Committee
30 Muir Road
Martinez, CA 94553

Mary N. Piepho, Chair
East Contra Costa Regional Fee and Financing Authority
255 Glacier Drive
Martinez, CA 94553

**SUBJECT: THE CITY OF PITTSBURG'S COMPLIANCE WITH THE GROWTH
MANAGEMENT PROGRAM REQUIREMENT FOR A REGIONAL
TRANSPORTATION MITIGATION PROGRAM**

Dear Chair Romick and Chair Piepho:

The City of Pittsburg respectfully requests that TRANSPLAN and East Contra Costa Regional Fee and Financing Authority (ECCRFFA) rescind their January 27, 2011 and November 8, 2012 actions, when TRANSPLAN and ECCRFFA determined and reaffirmed that Pittsburg was out of compliance with its regional transportation mitigation obligations under Measure J and so notified the Contra Costa Transportation Authority (CCTA). The City also requests TRANSPLAN affirm that the City of Pittsburg is now in compliance with the Regional Transportation Mitigation Program (RTMP) requirements of Measure J's Growth Management Program (GMP) and so notify CCTA, supporting Pittsburg's efforts to receive withheld Measure J Local Street Maintenance and Improvement Funds (LSM) for Fiscal Year 2011-12, and following years.

As you know, CCTA has withheld Pittsburg's LSM funding until CCTA determines that Pittsburg's RTMP is approved by TRANSPLAN. Pittsburg has adopted the Third Amendment to the Joint Exercise of Powers Agreement for East Contra Costa Regional Fee and Financing Authority (ECCRFFA), which re-admits Pittsburg as a member of ECCRFFA, contingent on TRANSPLAN's and ECCRFFA's support of Pittsburg receiving its prior and future LSM fees. Now that Pittsburg has acted to re-join ECCRFFA and adopted its RTMP, there should be no question that Pittsburg fulfills the

Kevin Romick, Chair
September 5, 2013
Page 2 of 2

current GMP requirement for an RTMP “that has been developed and adopted by the applicable Regional Transportation Planning Committee, including any regional traffic mitigation fees, assessments, or other mitigation as appropriate.”

Thank you for your prompt attention to this matter. If you have questions or would like to discuss this issue further, please do not hesitate to contact me or Paul Reinders of my staff.

Sincerely,



Joe Sbranti
City Manager

Cc: Martin Engelmann, CCTA
John Cunningham, TRANSPLAN staff
Jamar Stamps, TRANSPLAN staff
Dale Dennis, ECCRFFA staff

TRANSPLAN COMMITTEE

EAST COUNTY TRANSPORTATION PLANNING

Antioch • Brentwood • Oakley • Pittsburg • Contra Costa County
30 Muir Road, Martinez, CA 94553

September 23, 2013

Randell H. Iwasaki, Executive Director
Contra Costa Transportation Authority
2999 Oak Road, Suite 100
Walnut Creek, CA 94597

Re: City of Pittsburg's Receipt of Measure J Return to Source Funds

At the direction of the TRANSPLAN Committee and pursuant to the Pittsburg City Council's 8/19/13 decision to re-join the East Contra Costa Regional Fee and Financing Authority (ECCRFFA) and to approve the Third Amendment to the ECCRFFA Joint Exercise of Powers Agreement (JEPA), I am sending this letter to support Pittsburg's receipt of Measure J return to source funds from CCTA. With Pittsburg's re-admission as a fully-participating member of the ECCRFFA fee program through 2030, TRANSPLAN has determined that Pittsburg is now participating in a Regional Transportation Mitigation Program that fulfills the requirements of Measure J's Growth Management Program and the East County Action Plan for the time period from September 7, 2010 through September 10, 2013 (the date by which all ECCRFFA jurisdictions approved the JEPA amendment). Accordingly, upon signature of the JEPA amendment, TRANSPLAN withdraws the 1/31/11 and 11/29/12 letters previously sent to you and the City of Pittsburg (copies enclosed) and fully supports Pittsburg's application for and receipt of previously-withheld and future return to source (LSM) funds.

TRANSPLAN would appreciate anything you and CCTA could do to expedite Pittsburg's receipt of return to source funds that were previously withheld because of the former dispute between TRANSPLAN/ECCRFFA and Pittsburg. TRANSPLAN would also like to express thanks to you, Don Tatzin, Julie Pierce, and CCTA staff for your support and assistance in helping to resolve this dispute for the mutual benefit of East County jurisdictions and Contra Costa County as a whole.

Very truly yours,

Kevin Romick, Chair
TRANSPLAN Committee

Enclosure

cc: City Managers, TRANSPLAN Member Agencies
David J. Twa, County Administrator, Contra Costa County

g:\transportation\committees\transplan\tplan_year\2013-14\meetings\pac\09_september 2013\draft letter\final\9-16-13 final\transplan to ccta reecrffa-pittsburg.doc

TRANSPLAN COMMITTEE

EAST COUNTY TRANSPORTATION PLANNING
Antioch • Brentwood • Oakley • Pittsburg • Contra Costa County
30 Muir Road, Martinez, CA 94553-0095

East Contra Costa Regional Fee and Financing Authority

Antioch – Brentwood – Oakley – and Contra Costa County

A JOINT EXERCISE OF POWERS AGENCY

255 Glacier Drive, Martinez, CA 94553

November 29, 2012

Ben Johnson, Mayor
City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565

Re: TRANSPLAN and ECCRFFA v. City of Pittsburg

Mayor Johnson,

On November 8, TRANSPLAN and ECCRFFA reviewed the current status of the tentative settlement with Pittsburg and decided that continuing to pursue an elusive and illusory settlement is not in the best interest of East County communities and the public we serve. Accordingly, we have been authorized to notify the Pittsburg City Council and staff that TRANSPLAN and ECCRFFA will proceed to dismiss the present lawsuit and will reaffirm to the Contra Costa Transportation Authority (CCTA) that the City of Pittsburg is out of compliance with the Regional Transportation Mitigation Program (RTMP) requirements of the Growth Management Program (GMP).

When the tentative settlement was negotiated, TRANSPLAN and ECCRFFA were relying on figures provided by Pittsburg's City Manager about Pittsburg's project development during the next 18 years. The figures we were given were 7,500-8,000 units, which translated into roughly \$120 million in fees expected to be collected and forwarded by Pittsburg. Unfortunately, the figures were inaccurate, which only came to light recently when questions were raised about the data. Actual figures for the next 18 years are 2,500-3,000 units and \$36-\$51 million in potential fees from Pittsburg.

As the correct information has come to light, it has become increasingly apparent that the fees collected by Pittsburg would go solely or mostly to the James Donlon Extension project and would provide little or no benefit to other projects important to the overall East County region. Given that reality, it has also become apparent that the special treatment and concessions that Pittsburg would receive under the tentative settlement are unjustified.

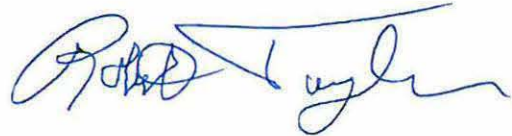
In terms of the benefit to East County regional projects, it no longer makes sense to continue using public funds for litigation to force Pittsburg to participate in ECCRFFA. Therefore, TRANSPLAN and ECCRFFA have decided to dismiss the present lawsuit. TRANSPLAN maintains that compliance with the GMP requires Pittsburg to re-join ECCRFFA and participate

in the ECCRFFA fee program without insisting on special treatment or concessions. Accordingly, TRANSPLAN and ECCRFFA will reaffirm to the CCTA that since withdrawing from ECCRFFA (effective 9/7/2010), Pittsburg has not had a valid RTMP and has not been fulfilling its GMP obligation to participate in a cooperative, multi-jurisdictional process for managing growth in the East County region.

Very truly yours,



Brian Kalinowski
Past Chair, TRANSPLAN Committee



Robert Taylor
Chair, ECCRFFA

cc: Don Tatzin, CCTA Chair
Member Jurisdictions: TRANSPLAN
Member Jurisdictions: ECCRFFA
David F. Schmidt, Deputy County Counsel
Ruthann Ziegler, City Attorney – City of Pittsburg
Members, TRANSPLAN TAC

TRANSPLAN COMMITTEE

EAST COUNTY TRANSPORTATION PLANNING

Antioch • Brentwood • Oakley • Pittsburg • Contra Costa County
651 Pine Street -- North Wing 4TH Floor, Martinez, CA 94553-0095

January 31, 2011

Mr. Randell H. Iwasaki, Executive Director
Contra Costa Transportation Authority
2999 Oak Road, Suite 100
Walnut Creek, CA 94597

Dear Mr. Iwasaki:

This correspondence reports on the actions and discussions at the TRANSPLAN Committee during their meeting on January 27, 2011.

3. Receive Report on City of Pittsburg Adoption of Fee Program and Take Action as Appropriate on the Following and Related Issues:

- a) Whether Pittsburg's PRTDIM Fee Program constitutes a valid regional development mitigation program for the East County region.**
- b) Whether Pittsburg is in compliance with its obligations under the East County Action Plan to participate in a cooperative, multi-jurisdictional process for managing growth in the East County region.** The Committee discussed the subject issue and in response to agenda item 3.a) the Committee recognized the East Contra Costa Regional Fee and Financing Authority is the regional development mitigation program, and in response to agenda item 3. b) the Committee determined that the City of Pittsburg was not in compliance with its obligations under the East County Action Plan to participate in a cooperative, multi-jurisdictional process for managing growth in the East County region.

The next regularly scheduled TRANSPLAN Committee meeting will be on Thursday, March 10, 2011 (The February Committee Meeting was cancelled) at 6:30 p.m.

Sincerely,



John W. Cunningham
TRANSPLAN Staff

c:
TRANSPLAN Committee
A. Dillard, SWAT & TVTC
B. Neustadter, TRANSPAC
C. Atienza, WCCTAC
E. Smith, BART

G:\Transportation\Comminces\Transplan\PLAN_Year(2010-1)\letters-summary_letter_CCTA_Jan2011-3.doc

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

1. EFFECTIVE DATE AND PARTIES

Effective September _____, 2013, 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 political subdivision of the State of California (the “County”), mutually agree as follows:

2. PURPOSE

Effective 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 in funding and implementing regional road improvement projects in the East County area. The Agreement has previously been amended as follows: First Amendment dated October 4, 1999 (added Oakley as additional party) and Second Amendment dated July 11, 2005 (coordinated activities of ECCRFFA and East County Transportation Improvement Authority (ECTIA) and revised ECCRFFA regional fee schedule). In addition, effective September 7, 2010, the City of Pittsburg withdrew as a party to ECCRFFA. The remaining parties (Antioch, Brentwood, Oakley, and the County) now wish to further amend the Agreement by re-admitting Pittsburg as a member of ECCRFFA, by revising the provisions for withdrawal from ECCRFFA and for the appointment of representatives to the ECCRFFA Board, and by providing for uniformity of the regional fees collected by Pittsburg and the other ECCRFFA members, including equalization of any fee shortfall between September 7, 2010 and the end of the current, two-year Pittsburg fee rebate program (December 31, 2014).

3. AMENDMENTS TO AGREEMENT

- A. In the first paragraph of the Agreement, add the CITY OF PITTSBURG, a municipal corporation duly organized and existing under the laws of the State of California, to the parties listed in that paragraph.

- B. In the Agreement, Section 1, DEFINITIONS, change or add the following definitions to read:

“‘City’ and ‘Cities,’ individually and collectively, mean the City of Antioch, the City of Brentwood, the City of Oakley, and the City of Pittsburg, each an existing municipal corporation under the laws of the State of California.

“‘Project Sponsor’ means the party that assumes responsibility for the implementation of a Project, including, as applicable, the securing of funding, environmental clearance, right-of-way acquisition, design, construction, and other necessary Project tasks.”

- C. Section 3.A is revised in its entirety to read:

“This Agreement shall become effective as of the date hereof and shall expire on December 31, 2030.”

- D. Section 3.B is revised in its entirety to read:

“Prior to the expiration date, no party to this Agreement may withdraw from the Authority without mutual written consent from all parties to this Agreement. Absent mutual consent, any purported withdrawal shall be void, and the party in question shall remain responsible for performing all obligations under this Agreement, including without limitation its obligation to levy, collect, and forward Regional Transportation-Development Mitigation Fees to the Authority in the amount approved by the Authority and its obligation to pay its proportional share of the cost of completing all existing and future projects approved by the Authority. Notwithstanding the expiration or termination of this Agreement, the indemnification and insurance provisions of Section B (last paragraph only) and Section D of Attachment 2 shall remain in full force and effect.

“Upon termination of this Agreement, all Authority assets will be transferred to the local jurisdiction in which they are located.”

- E. The first paragraph of Section 4.B is revised in its entirety to read:

“B. Governing Board. The Authority shall be administered by the Board, which shall be composed of elected board or council members from the Cities and the County. Each party shall have one representative appointed by the governing body of the party that such member represents. Alternate directors may be designated and appointed by each party from the membership of its respective governing body. An alternate shall be authorized to act only in the absence of his or her corresponding Board member. Board members and alternates shall serve at the pleasure of their respective governing bodies. In any event, the term of office of each Board member or alternate shall terminate when such member or alternate ceases to be an elected official of the governing body of the appointing party or when such member or alternate is replaced by the governing body of the appointing party.”

- F. Section 4.D(3) and (4) is revised in its entirety to read:

“(3) The County Treasurer is hereby designated as Treasurer of the Authority. Subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent, the Treasurer is designated as the depository of the Authority to have custody of all the money of the Authority, from whatever source, and, as such, shall have the powers, duties, and responsibilities specified in Section 6505.5 of the Law.

“(4) The County Auditor-Controller, who performs the functions of auditor and controller for the County, is hereby designated as Controller of the Authority, and, as such, shall have the powers, duties, and responsibilities specified in Section 6505.5 of the Law. The Controller shall draw checks to pay demands against the Authority when the demands have been approved by the Authority.”

G. Attachment 1 (2005 Amendment) is replaced in its entirety with Attachment 1 (2013 Amendment) attached to this Amendment.

H. Attachment 2 (2005 Amendment) is replaced in its entirety with Attachment 2 (2013 Amendment) attached to this Amendment.

4. **REMAINING PROVISIONS**

Subject to the changes made by this and previous Amendments, all provisions of the Agreement shall remain in full force and effect.

5. **COUNTERPARTS**

This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original instrument.

6. **SIGNATURES**

These signatures attest the parties’ agreement to this Amendment:

CITY OF ANTIOCH

FORM APPROVED:
Lynn Tracy Nerland, City Attorney

By: _____
Jim Jakel, City Manager

By: _____

CITY OF BRENTWOOD

FORM APPROVED:
Damien Brower, City Attorney

By: _____
Paul Eldredge, City Manager

By: _____

CITY OF OAKLEY

FORM APPROVED:
Cota Cole LLP, City Attorney

By: _____
Bryan H. Montgomery, City
Manager

By: _____
William R. Galstan

CITY OF PITTSBURG

FORM APPROVED:
Meyers, Nave, Riback, Silver & Wilson,
City Attorney

By: _____
Joe Sbranti, City Manager

By: _____
Ruthann G. Ziegler

COUNTY OF CONTRA COSTA

FORM APPROVED:
Sharon L. Anderson, County Counsel

By: _____
David J. Twa, County
Administrator

By: _____
Thomas L. Geiger, Assistant
County Counsel

Attachment 1 – 2013 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 of RTDIM Fees by Antioch, Brentwood, Oakley, and County. In order to fund the Program and Projects of the Authority, the parties agree that the following Regional Transportation Development Impact Fees (“RTDIM Fees”), which were originally adopted in 2005, shall continue to be implemented by Antioch, Brentwood, Oakley, and the County.

Regional Transportation-Development Impact Mitigation (RTDIM) Fees			
Type of Use	Fee Units	Fee Schedule	
		2005	2013*
Single family residential units, duet homes, and residential condominiums	Per dwelling unit	\$15,000	\$18,972 (\$9,486)
Multiple family residential	Per dwelling unit	\$9,207.92	\$11,646 (\$5,823)
Commercial	Per square foot of gross floor area	\$1.25	\$1.58
Office	Per square foot of gross floor area	\$1.10	\$1.38
Industrial	Per square foot of gross floor area	\$1.10	\$1.38
Other	Per peak hour trip as determined	\$15,000	\$18,972

* The 2013 fee schedule includes the annual adjustments specified in the Authority’s Resolution No. 2005/06. The figures in parentheses reflect the net residential fee amounts payable under the Authority’s fee rebate program approved December 2011, which provides for a 50% rebate applicable to residential fee rates through December 31, 2013 (see Section B below).

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 was previously 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 and/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.

B. Adoption of Revised RTDIM Fees by the Authority. On August 8, 2013, the Authority approved a revision to its current fee rebate program, which revision resulted in the following net residential fees payable for the period through December 31, 2015:

August 8, 2013 through December 31, 2013

Single family \$18,972 - 50% rebate = \$9,486

Multiple family \$11,646 - 50% rebate = \$5,823

January 1, 2014 through December 31, 2014

Single family \$18,972 + annual adjustment - 38% rebate

Multiple family \$11,646 + annual adjustment - 38% rebate

January 1, 2015 through December 31, 2015

Single family \$18,972 + annual adjustments - 29% rebate

Multiple family \$11,646 + annual adjustments - 29% rebate

C. Imposition of PRTDIM Fees by Pittsburg. In order to fund the Program and Projects of the Authority, the parties agree that the following Pittsburg Regional Transportation Development Impact Fees ("PRTDIM Fees"), which were originally adopted in 2010, shall continue to be implemented by Pittsburg as follows:

- (1) Within thirty days of the effective date of this Amendment, Pittsburg shall revise its commercial, office, and industrial fee rates to match and collect the Authority's commercial, office, and industrial fee rates listed in Section A above, including the annual adjustment specified in Section F below. Up to that time, Pittsburg shall collect at least the following amounts:

Commercial -- \$1.35/square foot of gross floor area

Office -- \$1.18/square foot of gross floor area

Industrial -- \$1.18/square foot of gross floor area

Should a valid Memorandum of Understanding (MOU) signed prior to September 11, 2010 prevent Pittsburg from collecting commercial, office, or industrial fees at the rates listed above, Pittsburg shall make up the shortfall from its own separate funds and shall forward the full amount to the Authority per the terms of this Agreement.

- (2) Pittsburg shall revise its residential fee collection as follows:

- (a) At the same time as the other Authority Members, Pittsburg shall apply fee rebates to match and collect the same net residential fee amounts collected by the other Member Agencies under the ECCRFFA fee rebate program (see Section B above). Up to that time, Pittsburg shall continue collecting the following residential fees: Single family residential -- \$16,176/dwelling unit; and multiple family residential -- \$9,934/dwelling unit.
 - (b) In the event that the Authority approves a revised fee schedule or a new or revised fee rebate program pursuant to Section D below, at the same time as the other Authority Members, Pittsburg shall adopt and collect the revised fee schedule or shall apply the new or revised fee rebates to match and collect the same net residential fee amounts as the other Member Agencies, including the annual adjustment specified in Section F below.
 - (c) The residential fees collected by Pittsburg under this Subsection C(2) shall apply uniformly to all development in Pittsburg, except as provided otherwise for MOUs in Subsection C(3) below.
- (3) During the current Pittsburg fee rebate program, which ends on or before December 31, 2014, should a valid Memorandum of Understanding (MOU) signed prior to September 11, 2010 prevent Pittsburg from collecting residential fees at the rates specified in Subsection C(2) above, Pittsburg may collect the rebated fees specified in the MOU, in which case Pittsburg's collection of such rebated fees shall be subject to Subsection C(4) below. Following termination of the current Pittsburg fee rebate program on or before December 31, 2014, Pittsburg shall apply fee rebates and collect the same net residential fee amounts approved by the Authority pursuant to Section B above, which rates shall apply uniformly to all development in Pittsburg, without exception for MOUs or otherwise.
- (4) The Authority and Pittsburg will calculate the total fees collected by Pittsburg between September 7, 2010 and the end of the current, two-year Pittsburg fee rebate program (December 31, 2014) and compare it with the total fees that Pittsburg would have collected during that same period if Pittsburg had charged the same fee rates as the other Member Agencies. If there is a shortfall, Pittsburg shall eliminate the shortfall by collecting increased fees (up to \$16,176/single family dwelling unit and \$9,934/multiple family dwelling unit, subject to the annual adjustment specified in Section F below) for the next 150 single family residential and/or multiple family residential permits issued by Pittsburg after

December 31, 2014, or if the shortfall has not been eliminated through Pittsburg collecting the maximum rates for 150 permits, for such additional permits as are required to completely eliminate the shortfall.

- (5) Pittsburg shall defend (with counsel selected by Pittsburg), indemnify, save, and hold harmless the Authority, the other Member Agencies, and their officers, agents, and employees from any litigation, claims, costs, expenses, or liability arising from or in any way related to Pittsburg's fee rebate program or Pittsburg's collection of different fee rates pursuant to Subsection C(3) or C(4) above. The Authority and the other Member Agencies shall not be required to defend, indemnify, save, or hold harmless Pittsburg under Section B of Attachment 2 or otherwise for claims related to the Pittsburg fee rebate program or Pittsburg's collection of different fee rates pursuant to Subsection C(3) or C(4) above.

D. Subsequent Approval of Revised Fee Schedule or New or Revised Fee Rebate Program by the Authority. Between January 1, 2016 and December 31, 2030, the Authority may approve a revised fee schedule or a new or revised fee rebate program, which shall be subject to the following limitations unless otherwise approved unanimously by the full Authority Board, with all Board members present:

- (1) Any revised residential fees shall not exceed the following maximum rates, subject to the annual adjustment specified in Section F below: Single family residential \$16,176/dwelling unit; Multiple family residential \$9,934/dwelling unit; Other \$16,176/peak hour trip.
- (2) Any new or revised residential fee rebates shall result in net residential fee amounts at least 50% of the maximum rates listed in Subsection D(1) above.

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 or shall promptly apply the new or revised fee rebates. This procedure does not apply to annual fee adjustments, which are automatic and do not require further approval or action.

E. Fees for Uses Not Listed. The fees for uses not listed shall be determined by the Member Agency with land use authority 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 Board.

F. Annual Fee Adjustment. Every January 1, the fee rates listed above, including any maximum fee rates, shall be automatically adjusted by the amount of the increase or decrease 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.

G. Credit for Construction Costs or Land Acquisition. Subject to the priority order set forth in Section E of Attachment 2, with approval of the Authority Board, credit may be granted against the payment of the fee for construction of a usable portion of any Project. 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 Board. No credit shall be granted for any lands that are required to be dedicated as specified in Attachment 2, Section B.

H. Fee Collection and Management. Except for approximately \$5.5 million of PRTDIM fees used by Pittsburg as described in the last paragraph of Section E of Attachment 2, all fee revenues received or collected by the parties, together with any separate funds and increased fees to eliminate a shortfall (see Subsections C(1) and (4) above), shall be disbursed monthly by the parties to the Authority. Fees and other revenues 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 December 31, 2030 (i.e., the termination date specified in Section 3 of the Agreement).

Attachment 2 – 2013 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 this Agreement.

Eligible Project costs will be determined by the 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 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 environment 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.

E. Project and Funding Priorities. The following priority order shall hereafter apply to funding and implementation of the Authority's regional Projects:

First Priority:

Initial projects and ECCRFFA existing commitments:

- (a) SR4 East widening (for project description, see CCTA's Measure J Strategic Plan);
- (b) eBART extension to Hillcrest Avenue, which excludes Railroad Avenue station, with ECCRFFA to provide \$1.2 million to BART by 12/31/2013 (for project description, see CCTA's Measure J Strategic Plan);
- (c) SR4 Bypass projects, including the following:
 - (1) SR4/SR160 Connector Ramps (project involves constructing direct connectors between SR4 Bypass and SR160);
 - (2) Sand Creek Road Interchange (project includes a partial cloverleaf configuration on west side and a tight diamond on east side);
 - (3) Balfour Road Interchange – Phase 1 (project includes partial cloverleaves on both east and west sides and a single bridge over Balfour Road with two-directional traffic);
 - (4) 4-Laning between Lone Tree Way and Balfour Road; and
- (d) Outstanding ECCRFFA commitments (\$13.0 million), consisting of the following:
 - (1) Reimburse Contra Costa County Proposition 1B funds – \$3.0 million;
 - (2) John Muir Parkway – Brentwood: \$2.9 million;
 - (3) Vasco Road – Alameda County: up to \$3.0 million (final amount to be determined based on actual bids received); and
 - (4) Old SR4 relinquishment costs: \$4.1 million.

Second Priority:

eBART extension beyond Hillcrest Avenue – environmental review for the eBART extension (up to \$3.0 million).

Third Priority:

James Donlan Extension (JDE; project includes a 2.7-mile (approximate) extension from Somersville Road to Kirker Pass Road, consisting of a four-lane road for approximately 0.72 mile through Black Diamond Estates and Sky Ranch II Subdivisions (western edge), then a two-lane road for approximately 1.7 miles

through an undeveloped area, then expanded to four lanes for the remaining 0.28 mile (approximate) near Kirker Pass Road (east end), and realignment of a portion of Kirker Pass Road to match project grades and to conform the project to existing topography).

The above priority order cannot be changed unless both of the following conditions are met: (1) there are extenuating circumstances regarding regional priorities or difficulties in implementing one of the priority projects listed above and (2) there is a unanimous vote by the full ECCRFFA Board, with all Board members present, to change the above priority order.

Pittsburg shall use PRTDIM fees collected between September 7, 2010 and the effective date of this Amendment (approximately \$5.5 million) as follows: approximately \$5.3 million for JDE (i.e., environmental clearance, right-of-way acquisition, and project design) and the Railroad Avenue eBART station; and up to \$196,000 for legal fees incurred by Pittsburg in the TRANSPLAN/ECCRFFA lawsuit.”

F. Cooperation among ECCRFFA Member Agencies. ECCRFFA and each of its Member Agencies agree to cooperate so as to maximize all regional, state, and federal funding available to complete construction of the Priority Projects, as set forth in Section E above, as soon as reasonably possible, unless the Priority Projects would not compete as well as other candidate projects in East County, due to project readiness or other funding criteria required for project selection. For clarity, the intent is to ensure that the Priority Projects receive priority for available outside funding, while balancing the goal of maximizing funding/delivery of all transportation projects in East County.”