



Joint Exercise of Powers Agency

City of Antioch City of Brentwood County of Contra Costa City of Oakley

AGENDA Board of Directors

(No In-person Meeting)

Thursday, February 9, 2023

6:30 p.m.

Tri-Delta Transit Meeting Room
801 Wilbur Avenue
Antioch, California

To slow the spread of COVID-19, in lieu of a public gathering, the State Route 4 Bypass Authority Board of Directors meeting will be accessible via Zoom to all members of the public as permitted by Government Code Section 54953(e). Members of the public may participate in the meeting online, or by telephone. To participate in the meeting please use the information.

To participate by phone, dial **+17207072699 US.**

The meeting ID is **862 9146 9029** Passcode: **526337**

To participate online using Zoom, hold down CTRL + click the following:

[Join Zoom Meeting Here](#) Meeting ID: **862 9146 9029** (Passcode: **526337**).

In lieu of making public comments at the meeting, members of the public also may submit public comments before or during the meeting by emailing comments to Program Manager Dale Dennis at dodennis@theycyberjungle.com. If you have difficulty emailing a public comment, please contact Nancy Wein, Contra Costa County Public Works Department, at (925) 313-2275.

All comments submitted by email to the above email address before the conclusion of the meeting will be included in the record of the meeting. When feasible, the Board Chair, or designated staff, also will read the comments into the record at the meeting, subject to a two-minute time limit per comment.

The Board Chair may reduce the amount of time allotted to read comments at the beginning of each item or public comment period depending on the number of comments and the business of the day. Your patience is appreciated.

A break may be called at the discretion of the Board Chair.

To obtain a copy of a staff report or other written materials related to an open session item on the agenda, please contact Nancy Wein, at the Contra Costa County Public Works Department, by phone at (925) 313-2275, or by email to Nancy.Wein@pw.cccounty.us.

Board of Directors:

Diane Burgis, Contra Costa County – Chair
Lamar Thorpe, City of Antioch – Vice Chair
Joel Bryant, City of Brentwood
Aaron Meadows City of Oakley

Authority Staff Office:

Contra Costa County
255 Glacier Drive
Martinez, CA 94553
(925) 313-2000

AGENDA
February 9, 2023

1. Call to Order
2. Public Comment
3. Determination
 - A. **Teleconference Meetings: CONSIDER and ADOPT Resolution No. 2023/01** to authorize the Board of Directors to conduct teleconference meetings under Government Code section 54953(e), and make related findings set forth in the resolution; **DETERMINE** that the Authority will hold virtual meetings through the end of February 2023.
4. Election of Officers
5. Consent Items
 - A. **APPROVE** minutes of the November 2022 meeting (December 2022 and January 2023 meetings cancelled).
 - B. **Mokelumne Bicycle/Pedestrian Overcrossing Project: ACCEPT** a status update on construction of the Mokelumne Bicycle/Pedestrian Overcrossing Project.
 - C. **Sand Creek Road Parcel: APPROVE and AUTHORIZE** the Program Manager to negotiate and execute, on behalf of the Authority, a Fifth Amendment to Purchase and Sale Agreement with LRG Investors, LLC, effective February 9, 2023, to allow LRG to perform additional due diligence activities including Limited Phase II Subsurface Investigation in connection with the sale of Authority-owned property identified as APN 019-110-074 adjacent to State Route 4 and Sand Creek Road, Brentwood.
6. Boardmember Comments
7. Adjournment

The Authority will provide reasonable accommodations for persons with disabilities planning to attend Board meetings who contact Staff at least 24 hours before the meeting, at (925) 595-4587. Any disclosable public records related to an open session item on a regular meeting agenda and distributed by the State Route 4 Bypass Authority to a majority of members of the Board of Directors less than 72 hours prior to that meeting are available for public inspection at 255 Glacier Drive, Martinez, CA during normal business hours.

Board of Directors:

Diane Burgis, Contra Costa County – Chair
Lamar Thorpe, City of Antioch – Vice Chair
Joel Bryant, City of Brentwood
Aaron Meadows City of Oakley

Authority Staff Office:
Contra Costa County
255 Glacier Drive
Martinez, CA 94553
(925) 313-2000

**STATE ROUTE 4
BYPASS AUTHORITY**

DATE: February 9, 2023

TO: Board of Directors

FROM: Dale Dennis, Program Manager 

SUBJECT: Authorizing Teleconference Meetings (AB 361, Government Code § 54953(e))

Recommendation: Staff recommends the Board take the following actions:

1. **Consider and Adopt Resolution No. 2023/01** to authorize the Board of Directors to conduct teleconference meetings under Government Code section 54953(e), and make related findings set forth in the resolution;
2. **Determine** that the Authority will hold virtual meetings through the end of February 2023

Discussion:

When the COVID-19 pandemic began, Governor Newsom issued an executive order that allowed local agencies to meet remotely without complying with all teleconferencing requirements of the Brown Act. Executive Order N-29-20 suspended certain non-emergency teleconferencing rules, including the requirements that each teleconference location be listed on the agenda and be physically accessible to the public during the meeting and that the public must be given an opportunity to comment at each teleconference location. Since March 2020, the Board of Directors has met virtually, as authorized by Executive Orders N-29-20, N-35-20, N-08-21 and N-15-21. This authority expired September 30, 2021.

New legislation known as Assembly Bill 361, amended the teleconferencing provision of the Brown Act, Government Code section 54953. Effective October 1, 2021, section 54953, subsection (e), authorizes a local agency to use special teleconferencing rules

ACTION OF BOARD ON _____ APPROVED AS RECOMMENDED ___ OTHER ___

VOTE OF DIRECTORS
_____ UNANIMOUS (ABSENT _____)
AYES: _____ NOES: _____
ABSENT: _____ ABSTAIN: _____

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Directors on the date shown.

ATTESTED _____
Secretary to the Authority

when a legislative body of a local agency holds a meeting during a state of emergency declared by the state and either A) state or local health officials have imposed or recommended measures to promote social distancing, or B) the legislative body is meeting to determine whether, or has determined, by majority vote, that meeting in person would present imminent risks to the health or safety of meeting attendees.

When a legislative body uses the emergency teleconferencing provisions under section 54953(e), the following rules apply:

- The agency must provide notice of the meeting and post an agenda as required by the Brown Act, but the agenda does not need to list each teleconference location or be physically posted at each teleconference location.
- The agenda must state how members of the public can access the meeting and provide public comment.
- The agenda must include an option for all persons to attend via a call-in or internet-based service option.
- The body must conduct the meeting in a manner that protects the constitutional and statutory rights of the public.
- If there is a disruption in the public broadcast of the meeting or of the call-in or internet-based meeting service, the legislative body must stop the meeting and take no further action on agenda items until public access and ability to comment is restored.
- Local agencies may not require public comments to be submitted in advance of the meeting and must allow virtual comments to be submitted in real time.
- The body must allow a reasonable amount of time per agenda item to permit members of the public to comment, including time to register or otherwise be recognized for the purposes of comment.
- If the body provides a timed period for all public comment on an item, it may not close that period before the time has elapsed.
- The body must reconsider the circumstances of the state of emergency and the findings in support of emergency teleconference meetings every 30 days.
- AB 361 sunsets on January 1, 2024.

On February 1, 2023, the Contra Costa County Health Officer issued the attached recommendations for safely holding public meetings that include recommended measures to promote social distancing. Among other things, the Health Officer continues to encourage, where practical, teleconference meetings as those meetings present the lowest risk of transmission.

A Board resolution authorizing teleconferencing under section 54953(e) is attached. It would determine that the State has declared a state of emergency related to COVID-19

and find that social distancing recommendations are in place and that there is an imminent risk of harm to the public, staff, and officials if live meetings are conducted. If adopted, for the next 30 days the resolution would require the Board of Directors to hold teleconference meetings consistent with the above-described rules until February 28, 2023, when the State COVID-19 emergency proclamation expires.

Because the State COVID-19 emergency is expiring February 28, 2023, the Bypass Authority Board will be required to resume in-person meetings in March 2023. However, individual Board members may participate remotely for “just cause” or due to “emergency circumstances,” as permitted under AB 2449, which became effective January 1, 2023. To participate in meetings this way, a virtual meeting platform (e.g., Zoom) will be required to enable the public to see and hear the Board members. Additionally, the Board may rely on the traditional Brown Act teleconferencing requirements.

RESOLUTION NO. 2023/01

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE STATE ROUTE 4 BYPASS
AUTHORITY AUTHORIZING TELECONFERENCE MEETINGS UNDER ASSEMBLY
BILL 361

Recitals

- A. On March 4, 2020, Governor Gavin Newsom proclaimed the existence of a state of emergency in California under the California Emergency Services Act, Gov. Code § 8550 et seq.
- B. On March 10, 2020, the Board of Supervisors found that due to the introduction of COVID-19 in the County, conditions of disaster or extreme peril to the safety of persons and property had arisen, commencing on March 3, 2020. Based on these conditions, pursuant to Government Code section 8630, the Board adopted Resolution No. 2020/92, proclaiming the existence of a local emergency throughout the County.
- C. On March 17, 2020, Governor Newsom issued Executive Order N-29-20, which suspended the teleconferencing rules set forth in the California Open Meeting law, Government Code section 54950 et seq. (the Brown Act), provided certain requirements were met and followed.
- D. On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which clarified the suspension of the teleconferencing rules set forth in the Brown Act and further provided that those provisions would remain suspended through September 30, 2021.
- E. On September 16, 2021, Governor Newsom signed Assembly Bill 361, which provides that under Government Code section 54953(e), a legislative body subject to the Brown Act may continue to meet using teleconferencing without complying with the non-emergency teleconferencing rules in Government Code section 54953(b)(3) if a proclaimed state of emergency exists and state or local officials have imposed or recommended measures to promote social distancing.
- F. On February 1, 2023, the Contra Costa County Health Officer issued recommendations for safely holding public meetings that include recommended measures to promote social distancing.
- G. Among the Health Officer's recommendations: (1) on-line meetings (teleconferencing meetings) are encouraged, where practical, as those meetings present the lowest risk of transmission of SARS-CoV-2, the virus that causes COVID-19; (2) if a local agency determines to hold in-person meetings, offering the public the opportunity to attend via a call-in option or an internet-based service option is recommended when possible to give those at higher risk of an/or higher concern about COVID-19 an alternative to participating in person; (3) a written safety protocol should be developed and followed,

and it is recommended that the protocol require social distancing – i.e., six feet of separation between attendees – and face masking of all attendees; (4) seating arrangements should allow for staff and members of the public to easily maintain at least six-foot distance from one another at all practicable times.

- H. The California Department of Public Health (CDPH) and the federal Centers for Disease Control and Prevention (CDC) caution that the Omicron variant of COVID-19, currently the dominant strain of COVID-19 in the country, is more transmissible than prior variants of the virus, may cause more severe illness, and even fully vaccinated individuals can spread the virus to others resulting in rapid and alarming rates of COVID-19 cases and hospitalizations.
- I. As of January 25, 2023, the CDC-reported seven-day rolling average of new cases in the County was 50.02 cases per day, per 100,000 of population – a case rate that remains in the “substantial” community transmission tier, the second most serious of the CDC’s community transmission tiers. According to the Contra Costa County Health Officer, the predominant variant of COVID-19 being identified continues to be the Omicron variant and its subvariants, which have been shown to dramatically increase COVID-19 transmission.
- J. In the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, the State Route 4 Bypass Authority Board of Directors intends to invoke the provisions of Assembly Bill 361 related to teleconferencing.

NOW, THEREFORE, the Board of Directors of the State Route 4 Bypass Authority resolves as follows:

1. The Board of Directors finds that the Contra Costa County Health Officer continues to recommend that public meetings be held by teleconferencing as those meetings present the lowest risk of transmission of SARS-CoV-2, the virus that causes COVID-19.
2. The Board of Directors finds that meeting in person for meetings of the State Route 4 Bypass Authority Board of Directors would present imminent risks to the health or safety of attendees because (a) as of January 25, 2023, the County remains in the “substantial” community transmission tier, with a case rate of 50.02 cases per day, per 100,000 of population, and (b) the Omicron variant and its subvariants have been shown to dramatically increase COVID-19 transmission.
3. As authorized by Assembly Bill 361, the State Route 4 Bypass Authority Board of Directors will use teleconferencing for its meetings in accordance with the provisions of Government Code section 54953(e).
4. The Program Manager and/or Secretary is authorized and directed to take all actions necessary to implement the intent and purpose of this resolution, including conducting open and public meetings in accordance with Government Code section 54953(e) and all

other applicable provisions of the Brown Act.

5. The Program Manager and/or Secretary is directed to return no later than 30 days after this resolution is adopted with an item for the Board of Directors to consider whether to continue meeting under the provisions of Assembly Bill 361.
6. Notwithstanding the foregoing, this resolution shall no longer be effective following the expiration of the Governor's emergency proclamation, which is currently anticipated to expire on February 28, 2023.

PASSED AND ADOPTED on February 9, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

I HEREBY CERTIFY that the foregoing resolution was duly and regularly introduced, passed and adopted by the above vote of the State Route 4 Bypass Authority Board of Directors, at a meeting of said Board of Directors on the date indicated above.

Date: _____

Brian Balbas, Secretary
State Route 4 Bypass Authority

By: _____

Recommendations for safely holding public meetings

Each local government agency is authorized to determine whether to hold public meetings in person, on-line (teleconferencing only), or via a combination of methods. The following are recommendations from the Contra Costa County Health Officer to minimize the risk of COVID 19 transmission during a public meeting.

1. Online meetings (i.e. teleconferencing meetings) are encouraged, where practical, as these meetings present the lowest risk of transmission of SARS CoV-2, the virus that causes COVID 19. This is particularly important when community prevalence rates are high. Our current trends as of February 1, 2023 in Covid-19 case rate, test positivity, Covid-19 hospitalizations, and Covid-19 wastewater surveillance are decreasing, but there continues to be COVID-19 in the community and changes in case rate, test positivity, COVID-19 hospitalization and wastewater surveillance may change or increase rapidly. In addition to this, the predominant variant of Covid-19 being identified continues to be the Omicron variant and it's subvariants the impact of which on the spread of Covid-19 has shown to dramatically increase COVID-19 transmission.
2. If a local agency determines to hold in-person meetings, offering the public the opportunity to attend via a call-in option or an internet-based service option is recommended, when possible, to give those at higher risk of and/or higher concern about COVID-19 an alternative to participating in person.
3. A written safety protocol should be developed and followed. It is recommended that the protocol require social distancing, where feasible – i.e. six feet of separation between attendees; and consider requiring or strongly encouraging face masking of all attendees and encouraging attendees to be up-to-date on their COVID-19 vaccine.
4. Seating arrangements should allow for staff and members of the public to easily maintain at least six-foot distance from one another at all practicable times.
5. Consider holding public meetings outdoors. Increasing scientific consensus is that outdoor airflow reduces the risk of COVID-19 transmission compared to indoor spaces. Hosting events outdoors also may make it easier to space staff and members of the public at least 6 feet apart. If unable to host outdoors, consider ways to [increase ventilation and flow](#) of the indoor space to reduce the risk of COVID-19 while indoors.
6. Current evidence is unclear as to the added benefit of temperature checks in addition to symptom checks. We encourage focus on symptom checks as they may screen out individuals with other Covid-19 symptoms besides fever and help reinforce the message to not go out in public if you are not feeling well.
7. Consider a voluntary attendance sheet with names and contact information to assist in contact tracing of any cases linked to a public meeting.

Revised 2-1-2023

Sefanit Mekuria

Sefanit Mekuria, MD, MPH
Deputy Health Officer, Contra Costa County



STATE ROUTE 4 BYPASS AUTHORITY
Antioch - Brentwood - Oakley and Contra Costa County

JOINT EXERCISE OF POWERS AGENCY

November 10, 2022

To slow the spread of COVID-19, in lieu of a public gathering, the STATE ROUTE 4 BYPASS AUTHORITY (SR4BA) Board of Directors meeting was accessible via Zoom to all members of the public as permitted by Government Code Section 54953(e). Members of the public were permitted to participate in the meeting online, or by telephone, and in lieu of making public comments at the meeting, members of the public could submit public comments before or during the meeting through dodennis@thecyberjungle.com.

Chair Diane Burgis called the meeting to order at 6:30 P.M.

ROLL CALL

PRESENT: Joel Bryant (Brentwood), Aaron Meadows (Oakley), Vice Chair Lamar Thorpe* (Antioch), and Chair Diane Burgis (Contra Costa County)
*Arrived after Roll Call and before consideration of Consent Items

ABSENT: None

STAFF: Dale Dennis, Program Manager
Stephen Siptroth, Deputy County Counsel

DETERMINATION

A. **Teleconference Meetings:** CONSIDER and ADOPT Resolution No. 2022/05 to authorize the Board of Directors to conduct teleconference meetings under Government Code Section 54953(e) and make related findings set forth in the resolution; DETERMINE that the Authority will hold virtual meetings for the next 30 days; and DIRECT the Program Manager or Secretary of the Board to return this matter to the Board within 30 days for reconsideration.

No written comments were submitted, or oral comments made, by any member of the public.

On motion by Director Meadows, seconded by Director Bryant, the Authority ADOPTED Resolution No. 2022/05 to authorize the Board of Directors to conduct teleconference meetings under Government Code Section 54953(e) and make related findings set forth in the resolution; DETERMINED that the Authority will hold virtual meetings for the next 30 days; and DIRECTED the Program Manager or Secretary of the Board to return this matter to the Board within 30 days for reconsideration.

The motion carried by the following Roll Call vote:

AYES: Bryant, Meadows, Burgis

NOES: None

ABSTAIN: None

ABSENT: Thorpe

PUBLIC COMMENT

No written comments were submitted, or oral comments made, by any member of the public.

Deputy County Counsel Stephen Siptroth advised that further negotiations for Item E under Consent had occurred after the agenda had been published. He recommended that the Authority seek public comment for Items A through D, reserving Item E for discussion and a later vote.

CONSENT ITEMS

On motion by Director Meadows, seconded by Director Bryant, the Authority APPROVED Consent Items A through D, as follows, which carried by the following Roll Call vote, and reserved Item E for discussion and a later vote.

- A. APPROVED minutes of the July 14, 2022 meeting (*August, September and October meetings cancelled*).
- B. Mokelumne Bicycle/Pedestrian Overcrossing Project: ACCEPTED a status update on construction of the Mokelumne Bicycle/Pedestrian Overcrossing Project.
- C. Mokelumne Bicycle/Pedestrian Overcrossing Project: APPROVED and AUTHORIZED the transfer of right-of-way acquired for the Mokelumne Bicycle/Pedestrian Overcrossing Project to the City of Brentwood and took related actions.
- D. Balfour Road Interchange Project: APPROVED the revised Purchase and Sale Agreement between the Authority and Kinder Morgan (SFPP) in connection with a real property exchange and utility relocation for the SR4/Balfour Road Interchange Project, and AUTHORIZED the Secretary or Designee to execute the Purchase and Sale Agreement substantially in the form attached to the staff report.

The motion carried by the following Roll Call vote:

AYES: Bryant, Meadows, Thorpe, Burgis

NOES: None

ABSTAIN: None

ABSENT: None

- E. Sand Creek Road Parcel: APPROVE and AUTHORIZE the Program Manager to execute, on behalf of the Authority, a Fourth Amendment to Purchase and Sale Agreement with LRG Investors, LLC, effective November 10, 2022, to allow LRG to extend its due diligence period by up to nine additional months, in exchange for depositing \$7,500 per month into escrow, in connection with the sale of Authority-owned property identified as APN 019-110-074 adjacent to State Route 4 and Sand Creek Road, Brentwood.

Program Manager Dale Dennis reported that things were moving forward on the sale of the Sand Creek Road parcel and LRG Investors, LLC, the purchaser, was working with the City of Brentwood Planning Department to secure their entitlements and had been pleased with how the project was moving forward, although the Purchase and Sale Agreement was going to expire and there was a need to extend LRG's due diligence period by up to nine additional months.

Deputy County Counsel Stephen Siptroth referred to a memo in the Board packet that had outlined the terms of the Amendment negotiated close to the Board meeting deadline, with a slight change that had been negotiated following circulation of the packet affecting when LRG's original \$35,000 deposit would become nonrefundable, with no other changes to the deal points outlined in the staff report.

Following a question by Chair Burgis, Mr. Dennis clarified that the due diligence period had been extended a few times already, initially LRG had 180 days and it had been extended after that which had taken them through the majority of the pandemic, although that had slowed the marketing for users of the property. Currently, LRG was waiting for Planning Commission hearings to secure land use approvals, and once that was done LRG could pull building permits and close on the property. LRG would be able to extend its due diligence period by up to nine months, 30 days at a time so it could close quickly when able. After the third 30-day extension, the initial \$35,000 deposit would be non-refundable. Each deposit made for each extension would be non-refundable once made, unless the Authority was in default. If all went as planned, LRG expected to close within the next three months.

Deputy County Counsel Siptroth read a prepared modified staff recommendation into the record to reflect the changed deal point, as follows:

APPROVE and AUTHORIZE the Program Manager to negotiate and execute, on behalf of the Authority, a Fourth Amendment to Purchase and Sale Agreement with LRG Investors, LLC, effective November 10, 2022, that: allows LRG to extend its due diligence period by up to nine additional months, in exchange for depositing \$7,500 per month into escrow; requires all due diligence extension deposits to be nonrefundable except in the event of an Authority default or where the property is condemned by another agency during the due diligence period; provides that the initial deposit becomes nonrefundable after the third due diligence extension, except in the event of an Authority default or where the property is condemned by

another agency during the due diligence period; prohibits construction and preconstruction prior to closing; prohibits LRG from encumbering the property prior to closing; and requires LRG to proceed to closing upon issuance of the last of its entitlements from the City of Brentwood, all in connection with the sale of Authority-owned property identified as APN 019-110-074 adjacent to State Route 4 and Sand Creek Road, Brentwood.

No written comments were submitted, or oral comments made, by any member of the public.

On motion by Director Bryant, seconded by Director Meadows, the Authority APPROVED and AUTHORIZED the Program Manager to negotiate and execute, on behalf of the Authority, a Fourth Amendment to Purchase and Sale Agreement with LRG Investors, LLC, effective November 10, 2022, that: allows LRG to extend its due diligence period by up to nine additional months, in exchange for depositing \$7,500 per month into escrow; requires all due diligence extension deposits to be nonrefundable except in the event of an Authority default or where the property is condemned by another agency during the due diligence period; provides that the initial deposit becomes nonrefundable after the third due diligence extension, except in the event of an Authority default or where the property is condemned by another agency during the due diligence period; prohibits construction and preconstruction prior to closing; prohibits LRG from encumbering the property prior to closing; and requires LRG to proceed to closing upon issuance of the last of its entitlements from the City of Brentwood, all in connection with the sale of Authority-owned property identified as APN 019-110-074 adjacent to State Route 4 and Sand Creek Road, Brentwood. The motion carried by the following Roll Call vote:

AYES: Bryant, Meadows, Thorpe, Burgis

NOES: None

ABSTAIN: None

ABSENT: None

BOARDMEMBER COMMENTS

Director Bryant thanked staff for working with the City of Brentwood to get the Sand Creek Road property sale accomplished.

ADJOURNMENT

Chair Burgis adjourned the meeting of the State Route 4 Bypass Authority at 6:43 P.M. to Thursday, December 8, 2022 at 6:30 P.M. or other day/time deemed appropriate.

Respectfully submitted,

Anita L. Tucci-Smith
Minutes Clerk

**STATE ROUTE 4
BYPASS AUTHORITY**

DATE: February 9, 2023

TO: Board of Directors

FROM: Dale Dennis, Program Manager 

SUBJECT: Mokelumne Trail-Bicycle/Pedestrian Overcrossing Project - Status Update on Construction

Recommendation: Staff recommends the Board **ACCEPT** the status update on the construction of the Mokelumne Bicycle/Pedestrian Overcrossing Project.

Discussion:

The Authority is working in partnership with the Contra Costa Transportation Authority (CCTA), the City of Brentwood and the East Contra County Regional Fee and Financing Authority in the delivery of the Mokelumne Bicycle/Pedestrian Overcrossing Project.

Now that the Project is under construction, the Board has requested periodic status updates on the Project. Below is a list of summary construction milestone activities with current anticipated dates of completion. Also, attached are several recent construction pictures.

- Bridge to be completed: July 2023
- Mokelumne Bike/Ped Overcrossing Opening: September 2023

ACTION OF BOARD ON _____

APPROVED AS RECOMMENDED ___ **OTHER**___

VOTE OF DIRECTORS

_____ **UNANIMOUS (ABSENT** _____)

AYES:_____ **NOES:** _____

ABSENT:_____ **ABSTAIN:** _____

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Directors on the date shown.

ATTESTED _____

Secretary to the Authority





**STATE ROUTE 4
BYPASS AUTHORITY**

DATE: February 9, 2023

TO: Board of Directors

FROM: Dale Dennis, Program Manager 

SUBJECT: State Route 4 Bypass Authority – State Route 4 Project (Formally Bypass). Brentwood Area. [SCH# 89032824, SCH# 1989032824] Project Number: 4660-6X4444

Recommendation: Staff recommends the Board **APPROVE** and **AUTHORIZE** the Program Manager to negotiate and execute, on behalf of the Authority, a Fifth Amendment to Purchase and Sale Agreement with LRG Investors, LLC, effective February 9, 2023, to allow LRG to perform additional due diligence activities including Limited Phase II Subsurface Investigation in connection with the sale of Authority-owned property identified as APN 019-110-074 adjacent to State Route 4 and Sand Creek Road, Brentwood.

Discussion:

On June 11, 2020, the Authority and LRG Investors, LLC, entered into a purchase and sale agreement (“Agreement”) to sell, for \$3,596,779, an approximately 5.29-acre parcel of Authority-owned property, identified as APN 019-110-074, adjacent to State Route 4 Sand Creek Road, in Brentwood. The Agreement, as amended, provided LRG a due diligence period during which it may conduct inspections of the property and seek land use entitlements and other approvals from the City of Brentwood before LRG closes escrow on the purchase of the property.

LRG’s land use entitlement applications are currently being processed by Brentwood’s planning department. It is not yet known when the City’s planning commission will consider approving those entitlements. The City notified LRG that they would need to complete a Limited Phase II Subsurface Investigation and at a minimum, re-abandon an old oil well that was abandoned in 1999.

ACTION OF BOARD ON _____

APPROVED AS RECOMMENDED ___ **OTHER**___

VOTE OF DIRECTORS

_____ **UNANIMOUS (ABSENT** _____)

AYES: _____ **NOES:** _____

ABSENT: _____ **ABSTAIN:** _____

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Directors on the date shown.

ATTESTED _____

Secretary to the Authority

This fifth amendment to the purchase and sale agreement would provide for the following:

- Amend Section 5.A. to provide that all Due Diligence Activities shall be at LRG's sole cost and expense, excepting only the Limited Phase II Subsurface Investigation ("Phase II"), which shall be completed by LRG at the Authority's cost, as provided under the terms below. Specify that the Phase II is considered among the "Due Diligence Activities," as defined in Section 5.
- Section 5.A.2 of the Purchase and Sale Agreement will be amended to specify that LRG shall complete the Phase II during the Due Diligence Period.
- LRG shall contract with AEI Consultants to complete the Phase II, and LRG shall be solely responsible for paying AEI Consultants for their work.
- LRG shall provide the Program Manager a copy of the Phase II report prepared by AEI Consultants.
- Following receipt of confirmation that AEI Consultants has been paid for the Phase II, the Program Manager will waive Due Diligence Payments as Due Diligence Extensions are exercised until Due Diligence Payments representing all of LRG's actual costs for those activities have been waived ("LRG Phase II Costs"); provided, however, that the LRG Phase II Costs shall not exceed \$12,000.
- If all LRG Phase II Costs have not been fully waived by the time LRG proceeds to Closing, any remaining amount shall be deducted from the Purchase Price at the Closing.
- If LRG elects to not proceed to Closing and, instead, terminates the Agreement, the Authority will reimburse LRG for the difference between (a) the LRG Phase II Costs minus, (b) the amount of the LRG Phase II Costs previously reimbursed to LRG as of the termination date. Such payment, if required, will be made within 45 days after the termination date.

Staff recommends that the Board authorize the Program Manager to negotiate and execute, on behalf of the Bypass Authority, a fifth amendment to the Agreement, inclusive of terms that substantially reflect the deal points outlined above. The Program Manager would be authorized to make non-substantive changes. Should any substantial changes be required to the fifth amendment to the Agreement, it will be brought back to the Board for approval or ratification. Also, should any further work be required in relation to the Limited Phase II Subsurface Investigation beyond the well abandonment, staff will bring that information back to the Board.