

Authority Board **STAFF REPORT**

Meeting Date: February 19, 2025

<p>Subject</p>	<p>NEW ITEM: State Route 4 Mokelumne Bike Trail/Pedestrian Overcrossing (Project 5002b) – Authorization to Execute a Settlement Agreement and Release with Mark Thomas & Company, Inc. (MTCO) to Settle Potential Claims</p>
<p>Summary of Issues</p>	<p>The Authority has partnered with the State Route 4 Bypass Authority (SR4BA), East Contra Costa Regional Fee and Finance Authority (ECCRFFA), and City of Brentwood (City) to complete the State Route 4 (SR4) Mokelumne Bike Trail/Pedestrian Overcrossing (POC) (Project 5002b) (Project).</p> <p>In September 2012, the Authority Board approved Agreement No. 358 with MTCO to provide final design services for the Project. The Project resulted in the to construction of a bridge spanning over SR4, which now closes the existing gap along the Mokelumne Trail and provides safe access for bicyclists and pedestrians.</p> <p>On September 15, 2021, the Authority Board approved Agreement No. 561, authorizing the contract award to Joseph J. Albanese (JJA), to provide construction services. Resolution 21-41-P was also approved, which established a construction allotment amount of \$8,626,589.</p> <p>Construction on the Project began in January 2016 and the contract allotment was amended three times during construction to address issues ranging from unforeseen field conditions and design related issues.</p> <p>During construction, several design related issues by MTCO</p>

Recommendations	<p>resulted in the issuance of change orders. Staff have been in discussions with MTCO to address its legal responsibility for the design changes. At this time, MTCO has agreed to settle with the Authority, eliminating the need for arbitration or litigation.</p> <p>Staff seeks authorization for the Executive Director or designee to execute a Settlement Agreement and Release with MTCO in the amount of \$234,699 and allow the Executive Director or designee to make any non-substantive change to the language.</p>
Staff Contact	Ivan Ramirez
Financial Implications	Settlement payments from MTCO will fund the Project budget.
Options	The Authority Board could elect to not approve the Settlement Agreements at this time.
Attachments	A. Settlement Agreement with MTCO
Changes from Committee	N/A

Background

The Authority has partnered with the SR4BA, ECCRFFA, and City to complete the Project.

In September 2012, the Authority Board approved Agreement No. 358 with MTCO to provide final design services for the Project. The Project proposed to construct a bridge spanning over SR4, which closes the existing gap along the Mokelumne Trail and provides safe access for bicyclists and pedestrians.

On September 15, 2021, the Authority Board approved Agreement No. 561, authorizing the contract award to JJA, to provide construction services. Resolution 21-41-P was also approved, which established a construction allotment amount of \$8,626,589. Since the start of construction in March 2021, the Project encountered numerous design issues, which required additional funding to complete the Project. The contract allotment was amended

three times to address issues ranging from unforeseen field conditions and design related issues. The contract allotment currently stands at \$10,934,247 (\$2,307,668 or 26.7% higher than the original planned allotment).

Staff have been in discussions with MTCO to address its liability for three specific design changes. At this time, MTCO has agreed to settle these design-related claims with the Authority, eliminating the need for arbitration or litigation. The proposed settlement is strictly limited to these three design-related issues and is not intended to release MTCO of other potential claims, should they arise in the future.

The POC opened to the public in March 2024 and the Project is in the plant establishment period. No more allotment increases are expected at this time since the Project is essentially complete.

Staff seeks authorization for the Executive Director or designee to execute a Settlement Agreement and Release with MTCO in the amount of \$234,699 and allow the Executive Director or designee to make any non-substantive change to the language.

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