

**ONE BAY AREA GRANT (“OBAG”) FUNDING AGREEMENT
BETWEEN
THE SOLANO TRANSPORTATION AUTHORITY
AND**

FOR THE _____ PROJECT

THIS ONE BAY AREA GRANT (OBAG) FUNDING AGREEMENT (“Agreement”) is entered into as of _____, 2013 between the SOLANO TRANSPORTATION AUTHORITY (“STA”), a joint powers authority organized under Government Code section 6500 et seq. consisting of the County of Solano and the cities of Benicia, Dixon, Fairfield, Rio Vista, Suisun, Vacaville and Vallejo, and _____ (“City”), a municipal corporation. Unless identified, the public agencies may be commonly referred to individually as “Party” or collectively as “Parties”.

RECITALS

WHEREAS, STA was created in 1990 through a Joint Powers Agreement between the cities of Benicia, Dixon, Fairfield, Rio Vista, Suisun City, Vacaville, Vallejo and the County of Solano to serve as the Congestion Management Agency (CMA) for Solano; and

WHEREAS, STA, as the CMA for the Solano area, partners with various transportation and planning agencies, such as the Metropolitan Transportation Commission (MTC) and Caltrans District 4 and is responsible for countywide transportation planning, programming transportation funds, managing and providing transportation programs and services, delivering transportation projects, and setting transportation priorities; and

WHEREAS, MTC has established the One Bay Area Grant (OBAG) funding program to integrate the Bay Area region’s federal transportation program with California’s climate law (Senate Bill 375, Steinberg, 2008) and the Sustainability Communities Strategy; and

WHEREAS, MTC has authorized CMAs to program OBAG funds to projects that meet the eligibility requirements of any one of the following six transportation categories: 1) Local Streets and Roads Preservation, 2) Bicycle and Pedestrian Improvements, 3) Transportation for Livable Communities, 4) Safe Routes to Schools, 5) Priority Conservation Areas, and 6) CMA Planning Activities; and

WHEREAS, in order to qualify for OBAG funds, a jurisdiction must have adopted a Complete Streets Policy Resolution or have adopted a general plan that complies with the California Complete Streets Act of 2008 as well have a general plan housing element adopted and certified by the State Department of Housing and Community Development for 2007-14 RHNA prior to January 31, 2013; and

WHEREAS, MTC has established the Project Selection Policies (“Policies”) to govern the use of OBAG funds; and

WHEREAS, STA has issued a Call for Projects in accordance with the Policies and has determined that City's _____meets the requirements for OBAG Funds.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, the Parties agree:

Part I **Description of Project**

Insert Description of Project.

Part II **Respective Roles and Responsibilities**

A. City's Role and Responsibilities.

City agrees to deliver the Project as proposed in its submission to STA's Call for Projects, dated _____.

B. STA's Role and Responsibilities.

STA agrees to provide:

1. Process and approve OBAG funding requests, as appropriate.
2. Review project design and monitor implement of project to ensure it is consistent with OBAG guidelines.

C. Anticipated Schedule.

Time is of the essence with regard to this Project. Due to project funding requirements, the Parties agree to the following schedule:

Insert Schedule

D. Mutual Responsibilities.

1. Parties agree to abide by MTC Resolution No. 4035, incorporated into this Agreement as Exhibit A by this reference, and it's implementing instructions, as provided by MTC during the term of this Project.
2. The Parties agree to communicate information in a timely format and provide direction as needed so as to not impact the Project Schedule. To the extent that any Party is not performing its duties under this Agreement in such a manner as to impact either the schedule and/or Project funding, the Parties agree to meet and confer to resolve any dispute.

Part III
Funding

STA has programmed OBAG Funds in the amount of _____ in FY _____ for this Project.

Part IV
General Terms and Conditions

A. Term of Agreement

This Agreement shall remain in effect through the filing of the Notice of Completion on the Project or the completion of the reimbursement by City, whichever is later, unless it is terminated or amended earlier as stipulated in this Agreement. This Agreement may also be terminated due to Project funding shortfalls or other unforeseen event(s), as mutually agreed to by the Parties. In the event of loss of funding, the Parties agree to work collaboratively to redirect the Project funds or other OBAG projects eligible for such funding.

B. Indemnification

1. STA to indemnify City

STA agrees to indemnify, defend, protect, hold harmless, and release City, its elected bodies, agents, officers and employees (collectively referred to in this paragraph as 'City'), from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and witness costs) arising from or in connection with, or caused by any negligent act or omission or willful misconduct of STA. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers' compensation acts, disability benefit acts, or other employee benefit acts.

At its sole discretion, City may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve STA of any obligation imposed by this Section. City shall notify STA within thirty (30) days of any claim, action or proceeding and cooperate fully in the defense. Notwithstanding the foregoing, City's failure to notify STA within said thirty (30) day time limit shall not relieve STA of any obligation imposed by this Section unless STA has been actually prejudiced by such delay.

2. City to indemnify STA

City agrees to indemnify, defend, protect, hold harmless, and release the STA, its elected bodies, agents, officers and employees (collectively referred to in this paragraph as 'STA') from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and witness costs) arising from or in connection with, or caused by any negligent act or omission or willful misconduct of City. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers' compensation acts, disability benefit acts, or other employee benefit acts.

At its sole discretion, STA may participate at its own expense in the defense of any such claim, action or proceeding, but such participation shall not relieve City of any obligation imposed by this Section. STA shall notify City within thirty (30) days of any claim, action or

proceeding and cooperate fully in the defense. Notwithstanding the foregoing, STA's failure to notify City within said thirty (30) day time limit shall not relieve City of any obligation imposed by this Section unless City has been actually prejudiced by such delay.

3. Each Party to defend itself for concurrent claims

STA agrees to defend itself, and City agrees to defend itself, from any claim, action or proceeding arising out of the negligent act or omission or willful misconduct of STA and City in the performance of this Agreement. In such cases, STA and City agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in subparagraph 5 below.

4. Joint Defense

Notwithstanding subparagraph 3 above, in cases where STA and City agree in writing to a joint defense, STA and City may appoint joint defense counsel to defend the claim, action or proceeding arising out of the negligent act or omission or willful misconduct of City and STA in the performance of this Agreement. Joint defense counsel shall be selected by mutual agreement of STA and City. STA and City agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in subparagraph 5 below. STA and City further agree that neither Party may bind the other to a settlement agreement without the written consent of both STA and City.

5. Reimbursement and/or Reallocation

Where a trial verdict or arbitration award allocates or determines the comparative fault of the Parties, STA and City may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault.

C. Insurance

1. Each Party agrees to maintain its status as a legally self-insured public entity for general, auto and professional liability insurance coverage with limits of no less than \$1,000,000 per occurrence and no less than twenty-five million dollars (\$25,000,000) aggregate. Each Party's insurance will be considered primary for all claims arising out of acts of that Party. Each Party agrees to endorse the other Party, its officials, employees and agents, using standard ISO endorsement No. CG2010 or its equivalent for general liability coverage. Each Party also agrees to require all consultant, contractors and subcontractors engaged to work on this Project to name the other Party as an additional insured as well.

2. Each Party will maintain Workers' Compensation as required by law for all its employees with limits not less than \$1,000,000 per occurrence. Neither Party's insurance shall be called upon to satisfy any claim for workers' compensation filed by an employee of the other Party. Each Party will provide the other with a Waiver of Subrogation endorsement for Workers Compensation. Each Party also agrees to require all consultants, contractors and subcontractors engaged to work on this Project to carry the same Workers Compensation insurance limits and endorsements.

3. Each Party will require all consultants, contractors, and subcontractors engaged to work on this Project to carry insurance in levels commensurate with the exposure of the respective work provided by the consultant, contractor or subcontractor.

D. No Waiver

The waiver by any Party of any breach or violation of any requirement of this Agreement shall not be deemed a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

E. Assignability

No Party to this Agreement shall assign or transfer any interest nor performing any duties or obligations, without the prior written consent of the other Parties, and any attempt by a Party to so assign or transfer this Agreement or any rights, duties or obligations arising shall be void and of no effect.

F. Governing Law and Venue

The construction and interpretation of this Agreement and the rights and duties of the Parties shall be governed by the laws of California with venue residing in Solano County.

G. Force Majeure

No Party shall be liable or deemed in default for any delay or failure in performance under this Agreement or for any interruption of services, directly or indirectly, from acts of god, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of the Party.

H. Notices

All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that a Party desires to give to the other Parties shall be addressed to the other Parties at the addresses set forth below. A Party may change its address by notifying the other Parties of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

SOLANO TRANSPORTATION
AUTHORITY
Janet Adams, Director of Projects
Solano Transportation Authority
One Harbor Center, Suite 130
Suisun City, CA 94585

CITY OF _____
_____, Director of Public Works
City of _____

I. Subcontracts

Within the funds allocated by the Parties under this Agreement, any Party may be authorized to contract for any and all of the tasks necessary to undertake the projects or studies contemplated by this Agreement. Agencies must follow federal procedures in selecting consultants.

J. Prior Agreements and Amendments

This Agreement represents the entire agreement of the Parties regarding the matter described, and no representation, warranties, inducements or oral agreements have been made by the Parties except as expressly set forth in this Agreement. This Agreement may only be modified by a written amendment duly executed by the Parties.

K. Severability

If any provision or portion of this Agreement is found by any court of competent jurisdiction to be unenforceable or invalid such provision shall be severable and shall not impair the enforceability of any other provision of this Agreement.

L. Compliance with all Laws

The Parties shall observe and comply with all federal, state and local laws, ordinances, and codes including those of the Federal Highway Administration (FHWA) and Federal Transit Authority (FTA).

M. Non-Discrimination Clause

1. During performing this Agreement, the Parties and their subcontractors shall deny no benefits or privileges to any person on the basis of race, religion, color, ethnic group identification, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, sex or sexual orientation, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, ethnic group identification, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, sex or sexual orientation. Each Party shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

2. The Parties shall comply with Title VI of the Civil Rights Act of 1964, the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated under it (Title 2, California Code of Regulations, section 7285.0, et seq.), Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement the foregoing, as such statutes and regulations may be amended from time to time.

N. Access to Records and Retention

All Parties, acting through their duly authorized representative, and any federal or state grantor agency providing all or part of the funding associated with this Agreement, the State Controller, the Comptroller General of the United States, and the duly authorized representatives of the Parties, shall have access to any books, documents, papers and records of any Party directly pertinent to the matter of this Agreement to make audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, the Parties shall maintain all required records for three years after final payment for any work associated with this Agreement, or after all pending matters are closed, whichever is later.

This Agreement was executed by the Parties on the day and year first written above.

SOLANO TRANSPORTATION AUTHORITY

By: _____
Daryl K. Halls, Executive Director

By: _____
STA Legal Counsel

CITY OF _____

By: _____

By: _____
City Attorney

Draft