RESTATED FUNDING AGREEMENT
Between the
SOLANO TRANSPORTATION AUTHORITY,
And
CITY OF VACAVILLE
FOR THE DESIGN AND CONSTRUCTION OF THE JEPSON PARKWAY PROJECT INCLUDING PORTIONS OF VANDEN ROAD AND LEISURE TOWN ROAD (A PORTION of SEGMENTS 7 to SEGMENT 13)

This Funding Agreement ("Agreement") is made among the Solano Transportation Authority, 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 ("STA"); and the City of Vacaville, a municipal corporation ("City"), each individually referred to as a “Party” and collectively as the “Parties” to be effective as of May _____, 2014.

RECITALS

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

WHEREAS, STA, as the CMA for the Solano County area, partners with various transportation and planning agencies, such as the Metropolitan Transportation Commission (MTC) and Caltrans District 4; and

WHEREAS, STA 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, STA has sponsored various studies of the Jepson Parkway Corridor, a 12 mile long four lane multimodal arterial connecting State Route 12 in Suisun City to Interstate 80 in Vacaville; and

WHEREAS, the Jepson Parkway Concept Plan was approved by the STA Board in 2000 with a recommendation to pursue its development in order to provide improved local traffic circulation in northern Solano County as well as to reduce current and future congestion in the region; and

WHEREAS, STA, the County of Solano and the cities of Vacaville and Fairfield have entered into a Memorandum of Understanding (“MOU”) dated June 22, 2011 in order to promote the collective implementation of the Jepson Parkway Concept Plan; and

WHEREAS the STA, the County of Solano and the City entered into a prior funding agreement for the design and construction of the Jepson Parkway project Segments 7-13 dated March 1, 2012; and

WHEREAS, the commitments of the County of Solano stated in the March 1, 2012 Agreement remain unchanged; and

WHEREAS, this funding agreement updates and supersedes the prior agreement between STA and the City for Segments 7-13; and

WHEREAS, working in partnership, early segments of the Jepson Parkway Project (the "Project") have been successfully funded and constructed in Suisun City (Walters Road) and the City of Vacaville (Leisure Town Road Interchange, and Leisure Town Road Extension); and

WHEREAS, given the total cost to complete the remaining segments of the Project, the Project will be constructed in phases based upon funds that have been identified to date and future potential funding sources; and

WHEREAS the City has nearly completed preparation of plans, specifications and estimate for the Phase 2 project defined as Vanden Road from 2000 feet south of Leisure Town Road and Leisure Town Road from Vanden Road to Commerce Drive; and

WHEREAS, this update to the Agreement is based upon the completed work to date providing more detailed understanding of the scope and costs to deliver project phase 2; and

WHEREAS, STA and the City desire to enter into this Funding Agreement to further define the respective roles and responsibilities of the Parties as well as to facilitate the completion of design and construction of the stated Project Segments; and

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement, STA, County, and City agree as follows:

A. STA's Role and Responsibilities.

STA agrees to provide the following:

1. Design oversight of entire Jepson Parkway Corridor.
2. Review construction plans for quality assurance and compliance with the Updated Jepson Parkway Concept Plan.
3. Finalize the update to the Jepson Parkway Concept Plan (the "Updated Concept Plan") in cooperation with the Parties in accordance with the MOU.
4. Right of way appraisals for all parcels acquired as part of this Project.
5. Right of way acquisitions either through fee takes and/or temporary construction easements for those parcels not acquired through dedication to City by developers.
6. STA will act on behalf of the City and or County, if required, to handle any required condemnations for parcels needed to construct the project phase identified in this agreement.
7. Assist City with consultant selection and participate in the selection process.

8. Payment of costs allocated to STA as its share of the Project.
9. Review and approve City invoices for reimbursement from the various STIP funds programmed.
10. Complete project management and coordination with Caltrans Local Assistance including, but not limited to, processing reimbursements through Caltrans Local Assistance, requests for authorization, reporting, right of way certification, and environmental certification.
11. Transfer City portion of Caltrans reimbursement to City upon receipt from Caltrans.
12. Work cooperatively with City to determine the timing of construction and project limits based upon cash flow and bid prices (the project limits will be adjusted to a baseline project with additive alternates bid to maximize available funding).
13. Advance funding for the Project above and beyond STA's required 50% contribution as outlined in Section H below with the City and/or County providing reimbursement in accordance with Sections B and C below.
14. Payment of those costs associated with the County Segment that exceed the County contribution described below in Section C, except those costs that are attributed to requests from the County for enhancements to the project.

B. City's Role and Responsibilities.

City agrees to provide the following:

1. Roadway plans, specifications and estimates including drainage, sound walls, city utilities, signing, striping, signals and lighting.
2. Right of way engineering for all needed parcels (acquired or received via dedication), in accordance with City's proposal.
3. Hire any consultants required as part of the design or construction management phases in accordance with appropriate federal procedures.
4. Secure environmental mitigation credits as required by the Biological Opinion for the Phase 2 project; and prior to actual construction of this project.
5. Coordinate through completion of required relocations of utilities with private utility companies.
6. Secure resource agency and local agency permits needed for construction.
7. Construction contract administration (construction management and inspection) including the advertising and award of the contract for the Phase 2 project.
8. Reimbursement to STA of costs assigned to City as further described in Section H of this Agreement. Cost sharing shall be based upon an overall 50% City share of the project costs. A portion of the City share will be subject to a future payback provision as shown in the table in Section H and will be paid back over the period shown starting from initiation of construction (payments will commence on August 1st in the fiscal year following the start of construction and would follow each subsequent August 1st). The required annual payback amount established in this Agreement will not exceed 50% of Vacaville's Annual Traffic Impact Fees collected in the prior year. If available funds in a given year fall short of required payment, the City would increase subsequent payments up to the same limitation on TIF funding available each year until payments

are caught up. Thus yearly amounts may vary; however entire payback balance shall be paid in full within the specified period shown in this Agreement.

9. Payment of 100% of design and construction costs associated with betterments and future utility needs not otherwise required for the Jepson Parkway roadway improvements within City jurisdiction at the time of construction; such as embellishments to landscaping or other project features beyond what was anticipated in the Jepson Parkway Concept Plan; installation of soundwalls and utilities required to serve or mitigate for adjacent planned development, etc.. Said payment shall be made as costs are incurred. For the purposes of this section of the Agreement, any additional improvements required as mitigation to impacts as a result of the Project (i.e. - environmental, property owner, etc.) are not considered "embellishments."
10. STA shall have the right to review City's expenses that are covered by this agreement

C. County's Funding Contribution to Jepson Parkway Project.

County shall provide the following for the entire Project:

1. Payment of the County share of the project which has been set at $1.793 million as stated in the Agreement dated March 1, 2012, based upon the anticipated 2500 feet +/- of remaining County jurisdiction after the City annexations both south (Fairfield) and north (Vacaville) of remaining segment. The County will not be obligated to pay for cost overruns. The County will also not receive any refunds or credits in the event that the bids come in less than anticipated or if the County Segment costs are less than currently anticipated. All parties reserve the right to revisit this fully funded County commitment in the event that the remaining County segment after annexations is substantially longer than 2500 feet.
2. The portion of funding stated in the previous paragraph dedicated to the Phase 2 project is $619,000 with the remaining portion of County funds being dedicated to the Phase 1 project being delivered by Fairfield. It should be noted that this project is utilizing additional County funds beyond the $619,000 commitment because of the Federal funding requirements. That over payment is being subtracted in the funding chart and will roll over to the Phase 1 project.

D. Mutual Responsibilities.

All Parties agree as follows:

1. The design of this project will comply with all aspects of the updated Jepson Parkway Concept Plan.
2. Costs will be updated at each major milestone including award of all consultant contracts needed for delivery, bid opening, and completion of the project. The cost allocation and the payment plan shall be adjusted accordingly.
3. Each Party's share may increase as a result of unforeseen conditions and/or circumstances.

4. If the City fails to timely reimburse STA pursuant to this Agreement and does not cure such failure within forty five (45) days of written notice from STA, the City's "Federal Cycle Funding" allocated by STA may be suspended at STA's discretion and be utilized to cover the City's payment toward the project.
5. All parties shall have the right to review bids before the construction contract is awarded.
6. Upon completion of the design and prior to the award of a construction contract, the parties agree to reconvene to review all the costs to date and the project construction costs. As a result, this Agreement may need to be amended and the Parties agree to negotiate in good faith to effect such amendment.
7. Parties acknowledge that the City of Fairfield may have the ability to secure right of way through development agreements for parcels needed for this project and to the extent that Fairfield is able to deliver said right of way, Fairfield would be provided compensation credit against obligations in another agreement. To the extent that Fairfield is able to deliver said right of way to this project, the Parties of this agreement shall not be credited for said right of way.

E. Design Services Cost Reimbursement (Phases 2 and 3):

The Parties agree that for the design services phase of Project Segments 7-13, the following will apply (future amendments to this Agreement will be negotiated between Parties to address the specifics of other project development phases, or scope modifications):

1. STA and the City have agreed upon a Scope and Budget for the City to deliver Design Services as reflected in the City's "Proposal" for this Project at a "Not to Exceed" cost of $1.914 million including indirect costs and additional scope identified to date. The City acknowledges that the design budget will not be increased over the authorized amount unless additional scope of services is authorized.
2. It is acknowledged by both Parties that there may be unforeseen scope changes related to completing the design of Project Segments 7-13. If additional design changes are needed that require additional budget, the increase will be agreed by both parties in an amendment to this agreement. It is also agreed that any savings in final design costs shall be shared by both parties and shall be reconciled in a later update to this agreement.
3. It is acknowledged by both Parties that STA agrees to reimburse the City up to a maximum of $702,000 utilizing STIP design funds and up to $793,000 from the High Priority Project Funding contribution from the County as shown in Section H of this Agreement for providing design services based upon actual expenditures by City for those services identified in the Proposal. STA shall exhaust the entirety of their design phase share, including reimbursement for any approved scope changes or adjustments to indirect rates, prior to the City contributing design phase funding. Any design costs exceeding $1.495 million shall be contributed by the City; and for the purposes of this Agreement, that amount is estimated to be up to $419,000.
4. City shall submit monthly invoices showing hours worked per person in each task utilizing approved hourly rates. The hourly rates are stated in the Proposal, and based upon labor rates plus benefit costs plus approved indirect costs for each classification. Each invoice shall be accompanied by a project status report describing the work that was accomplished during the

invoice period and the anticipated work that is to be accomplished during the following month. STA will review and approve each invoice prepared by City before requesting reimbursement from Caltrans Local Assistance utilizing authorized STIP funds for design. STA will make timely submittals of invoices to Caltrans Local Assistance for payment based upon City prepared invoices.

5. Upon receipt of Caltrans reimbursement for STIP design funds, STA will process payment to City within 30 days.
6. All Parties acknowledge that currently authorized STIP funds for design were completely expended by February 28, 2014. Thus the remaining design costs will utilize the identified City funds to complete. Since the construction portion of the funding for the Project is not available until July 2015, it is likely that reimbursement for the cost to "advertise for construction bids" will come from the identified City Funds.

The Parties agree that to the extent additional requirements are associated with funding for future phases, e.g., construction, this section may need to be amended and the Parties will work mutually and cooperatively to effect such amendment.

F. Anticipated Schedule:

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

1. City will complete the Plans, Specifications and Construction Estimate by June 30, 2014. Design Funds are approved and must be utilized by February28, 2014. Thus design efforts starting March 1, 2014 will utilize Vacaville funds.
2. STA engaged a consultant for Right of Way Appraisal and Acquisition in Spring 2012. Right of Way Appraisals and First Written Offers have all been completed. Right of Way Funds Authorized must be utilized by June 30, 2014, unless a funding extension is granted by CTC.
3. Construction funding is programmed in Fiscal Year 2015/16 which would allow authorization in July 2015 and construction to commence in late 2015.

G. Term:

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 pursuant to Sections B, 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 to other portions of the Project or other roadway projects eligible for such funding.

H. Estimated Phase 2 Project Costs and Allocation of Cost Sharing By Component

The costs used in the chart below are based on the 95% PS&E level costs estimates and the agreed upon design services costs in Section E above. Actual construction costs will be

determined upon the award of the construction contract based upon the actual bid amounts and any adjustments to the Project construction scope to which both Parties agree.

	Total Costs	STA Portion	Vacaville Portion	County Funding Commitment
Design**	$1,914,000	$702,000	$419,000	$793,000
R/W	$683,400	$463,400	$220,000	
R/W Support	$334,750	$334,750		
Utility Relocations	$494,000		$494,000	
Environmental Mitigation	$2,385,000		$2,385,000	
Construction Capital	$21,347,200	$17,445,300	$3,901,900	
Construction Management	$2,340,200	$1,931,700	$408,500	
Deferred Landscape Project (done by developers)	$1,013,000		$1,013,000	
Developer Installed Improvements	$1,093,000		$1,093,000	
Betterments (Vacaville only cost)	$2,050,000		$2,050,000	
6 year payback (2016 to 2021)*		<$3,574,875>	$3,748,875 (average of $624,812.50/year)	<$174,000>
Previous contribution		<$1,500,000>	$1,500,000	
Net Totals	$33,654,550	$15,802,275	$17,233,275	$619,000

*6 year payback is as further defined in Section B above of this Agreement
**Refer to Section E, "Design Services Cost Reimbursement" for specifics of design reimbursement

I. Mutual Indemnification:

1. STA to indemnify City

STA agrees to indemnify, defend, protect, hold harmless, and release City, their 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 solely 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, their 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 solely 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, 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 where there is a concurrent claim against one or both of the other parties. 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 4 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 Parties. Parties agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in subparagraph 5 below. Parties further

agree that no individual Party may bind another to a settlement agreement without the written consent of all Parties.

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

J. 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.

K. Dispute Resolution

The Parties agree that any disputes should be resolved at the lowest possible level. Accordingly, should a dispute arise between the STA and City regarding the performance of this Agreement, the Parties agree that the STA Executive Director and City Manager shall initially meet and confer. Should these two fail to reach consensus, the dispute shall be referred first to the Jepson Parkway Working Group and if that Group cannot resolve the dispute then to a STA Board Subcommittee comprised of the Mayors of Fairfield and Vacaville along with the Solano County Supervisor. Should that Subcommittee fail to resolve the dispute, the issue will be presented to the full STA Board.

L. Subcontracts.

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

consultants. To the extent that such party does subcontract such work, each party will include a provision in that contract that requires all consultants and contractors to indemnify STA and City for any work associated with this Agreement.

M. Notice

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 Party shall be addressed to the other Party at the addresses set forth below. A Party may change its address by notifying the other Party 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.

TO PROJECT SPONSOR:
Daryl K. Halls, Executive Director
Solano Transportation Authority
One Harbor Center, Suite 130
Suisun City, CA 94585
Attn: Janet Adams, Director of Projects

TO CITY:
Laura Kuhn, City Manager
City of Vacaville
650 Merchant Street
Vacaville, CA 95688
(707) 449-5100
Attn: Steven Hartwig, Public Works Director

N. No Waiver

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

O. Assignability

Neither Party to this Agreement shall assign or transfer any interest in this Agreement nor the performance of any duties or obligations hereunder, without the prior written consent of the other Party, and any attempt by either Party to so assign or transfer this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

P. 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 the State of California with venue residing in Solano County.

Q. Force Majeure

Neither the STA nor City shall be liable or deemed to be 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 Parties.

R. Prior Agreements and Amendments

This Agreement represents the entire agreement of the Parties with respect to the subject matter described in this Agreement, and no representation, warranties, inducements or oral agreements have been made by any of 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.

S. Severability

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

T. Compliance with all Laws

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

U. Non-Discrimination Clause

1. During the performance of this Agreement, the Parties and their subcontractors shall not deny any 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 the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated pursuant to it (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of 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 any of the foregoing, as such statutes and regulations may be amended from time to time.

V. Access to Records and Retention

All Parties, acting through their duly authorized representative, as well as 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 any of the Parties, shall have access to any books, documents, papers and records of any Party which are directly pertinent to the subject matter of this Agreement for the purpose of making 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.

W. Interpretation

Each Party has reviewed this Agreement and any question of doubtful interpretation shall not be resolved by any rule or interpretation providing for interpretation against the drafting Party. This Agreement shall be construed as if both Parties drafted it. The captions and headings contained herein are for convenience only and shall not affect the meaning or interpretation of this Agreement.

The Parties have executed this Agreement on the day and year first written above.

"STA"
Solano Transportation Authority

By_____
Daryl K. Halls, STA Executive Director
DATE: _____

Approved as to form:

By_____
STA Legal Counsel
DATE: _____

"CITY"
City of Vacaville

By_____
Laura Kuhn, City Manager
DATE: _____

Approved as to Form

By_____
Shana Faber, Assistant City Attorney
DATE: _____