AMENDED FUNDING AGREEMENT FOR THE CORDELIA HILLS SKY VALLEY PROJECT BETWEEN THE COUNTY OF SOLANO AND THE SOLANO LAND TRUST

This Amended Funding Agreement ("Agreement"), dated December 9, 2016, between the County of Solano ("County"), a body corporate and politic, and the Solano Land Trust ("Trust"), a California nonprofit public benefit corporation, collectively known as the "Parties", is based upon the following facts:

RECITALS

A. The Parties collaborated to seek funding to acquire open space lands to be owned by the Trust. Congressman George Miller sponsored a $2.4 million federal SAFETEA-LU high-priority project funding grant to the Trust ("Earmark") that was received for the following purpose: "Undertake Cordelia Hill Sky Valley transportation enhancement project, including upgrade of pedestrian and bicycle corridors, Solano County" ("Project"), which the Parties understand can be used for the development of pedestrian and bicycle facilities and acquisition of open space.

B. Of the total $2,400,000 in Earmark funds, $2,159,760 in federal funds are available for the Project due to federal funding policies, with the remainder not available to the Parties.

C. The County and the Trust entered into an agreement ("Original Agreement") in 2009 to facilitate the acquisition(s).

D. The County received federal NEPA and State of California ("State") CEQA environmental clearance for the Project, and has completed appraisals and made offers for purchase of certain real property (as further described below) to facilitate the Project.

E. The Project has recently become eligible to receive federal Toll Credits, which would relieve the Parties of their local match commitment during the Right Of Way ("ROW") phase for purchase of the Brown Property (as defined below), but may require an equivalent local match payback during the construction phase.

F. Given these changes, the Parties wish to amend and restate the Original Agreement to reflect the latest Project conditions and funding opportunities.

AGREEMENT

The Parties agree to replace in its entirety the Original Agreement with the conditions in this Agreement, as follows:

A. The Parties will cooperatively work towards the purchase of a 148.62-acre parcel located in Solano County identified as APN 0180-050-020 ("Brown Property").

B. The County agrees to continue to act as the lead agency for the Project and to complete the Project on a timely basis, in consultation with the Trust.

C. The County shall seek modification of the federal Transportation Improvement Program ("TIP") to request federal Toll Credits in the Right Of Way phase for purchase of the Brown Property.

D. If Toll Credits are approved, then 100% federal Earmark funds will be used for the purchase of the Brown Property. However, the following local match commitments would apply, to be determined at the discretion of Metropolitan Transportation Commission ("MTC") and Caltrans (collectively, the "Regional Agencies"):

1) A federal local match expenditure would be required in the construction phase (MTC Toll Credit). The local match expenditure commitment will equate to a 20% federal local match formula against federal funds expended in ROW towards purchase of the Brown Property (up to $425,000). This will require construction administered by the County utilizing the federal process; or
2) No further federal local match would be required (Caltrans Toll Credit). A locally funded construction project administered by the County would be required (approximately $100,000) to satisfy the construction commitment of the Project.
    i. The remainder local funds required of the Trust under this Toll Credit option (local match requirement in #1 above minus construction costs) can be expended through improvements, land management plan subject to concurrence with the County, up to 10 years of realized land management costs, and/or conservation easement costs associated with the Trust's ownership of the Brown Property.

E. After the TIP modification is approved by the MTC and the State, the County shall confirm the Brown Property offer, and complete the purchase agreement, escrow, and purchase of the Brown Property for a base value of $10,000 per acre.

F. The Trust remains responsible to pay all local match costs currently expended by the County that will be unreimbursed by Toll Credits (should they be awarded). These local match costs shall be paid by the Trust to the County, within 90 days of invoice by the County to the Trust, but in no event shall such local match costs exceed the total amount of $425,000.

G. During escrow, the Trust shall pay to the County the Toll Credits local match commitment amount for the construction phase, as determined by the Regional Agencies in Section D above; or at the Trust's election, the Trust shall provide another form of security for that amount. For example, bonding, letter of credit, or tax revenue sharing agreement would satisfy the financial assurances requirement.

H. After purchase of the Brown Property, the County shall:

1) Design improvements in consultation with the Trust, and in accordance with the Project's environmental commitments.

2) Acquire a transferrable encroachment permit across the State parcel (5295-0A-01 shown on right of way map R-196.22) to connect the Brown Property to the State ROW; or acquire a permanent easement across the State parcel to connect the Brown Property to the State ROW; or both (County will make a reasonable effort to secure a permanent easement across the State parcel and acknowledges that this is the preference of the Trust).
3) Construct improvements equivalent to the Toll Credits requirement, as determined in Section D above, on the Brown Property.

I. After satisfying the requirements in Section H above, the County agrees to convey title of the Brown Property, and any easements of interest, to the Trust. The Trust agrees to accept title of the Brown Property from the County within 60 days of formal offer, estimated to be one year after the County's purchase of the Property.

J. After receipt of the Brown Property, the Trust agrees to manage the Brown Property in accordance with the Project commitments, and as follows:

1) Maintain ownership as required under federal requirements for property acquisition using federal funds.
2) Pursue a Williamson Act Contract on the property.
3) Manage the property in accordance with the Trust's mission.

<u>Cooperation</u>

The Parties understand that the following (or lack thereof), may create hardship to complete the Project:

A. Any TIP modification and/or Toll Credit for Project funding is at the discretion of MTC and the State; and/or

B. The Toll Credit payback may be contingent upon the receipt of grants, for which the Trust will make applications, and which are at the discretion of other agencies to award; and/or

C. The escrow/purchase agreement is at the discretion of the private owner(s) of the Brown Property.

Should the Parties encounter such hardship(s), they agree to meet and reconsider new terms to this Agreement or relinquishment of the Earmark funds for other purposes ("Federal Repurposing").

In addition, the Parties agree to meet and consider project concepts for the remaining (unexpended) Earmark funds.

<u>Indemnification and Defense of Claims</u>

A. Each party (the County and Trust individually) agrees to indemnify and hold harmless the other party, its agents, officers and employees, from any claim, action or proceeding against itself, arising solely out of its own acts or omissions in the performance of this Agreement. At its sole discretion, each party may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve the other party of any obligation imposed by this Section. Each party shall notify the other party promptly of any claim, action or proceeding and cooperate fully in the defense.

B. The County agrees to defend itself, and the Trust agrees to defend itself, from any claim, action or proceeding arising out of the concurrent acts or omissions of the County and the Trust, respectively. In such cases, the County and Trust 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 herein.

C. Notwithstanding the paragraphs above, in cases where the County and Trust agree in writing to a joint defense, the Parties may appoint joint defense counsel to defend the claim, action or proceeding arising out of the concurrent acts or omissions of the County and Trust. Joint defense counsel shall be selected by mutual agreement of the County and Trust. The County and Trust agree to share the costs of such joint defense and any agreed settlement as mutually agreed upon, except as otherwise provided in herein. The Parties further agree that neither party may bind the other to a settlement agreement without the written consent of the County and Trust.

D. Where a trial verdict or arbitration award allocates or determines the comparative fault of the Parties, the allocation of County and Trust defense costs, settlement payments, judgments and awards shall be consistent with such adjudicated/arbitrated comparative fault.

Entire Agreement

This Agreement constitutes the entire agreement between the Parties, thereby replacing the Original Agreement, and there are no inducements, promises, terms, conditions or obligations made or entered into by the Parties other than those contained in this Agreement. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties..

Independent Contractor

Each of the Parties is an independent contractor and neither is an officer, employee, or agent of the other. Neither Party shall have any claim against the other for employee rights or benefits, and each Party is solely obligated to pay all applicable taxes, deductions, and other obligations with respect to its own officers, employees, and agents. The Parties mutually understand that this Agreement is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

Term

This agreement shall expire in 10 years.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

SOLANO LAND TRUST

Nicole Braddock
Nicole Braddock 12/9/16
Executive Director

Approved as to form:

Ellen A. Fred
Attorney for Solano Land Trust

COUNTY OF SOLANO

Bill Emlen
~~Birgitta E. Corsello~~ Bill Emlen, Director
~~County Administrator~~ Resource Management

Approved as to form:

Lori Mazzella
Deputy County Counsel