

**FUNDING AGREEMENT  
BETWEEN  
SOLANO COUNTY  
AND  
THE CITY OF DIXON  
FOR PORTER ROAD IMPROVEMENTS**

**THIS FUNDING AGREEMENT (“Agreement”)** is entered into as of \_\_\_\_\_, 2019 between the COUNTY OF SOLANO (“County”), a political subdivision of the State of California, and the CITY OF DIXON ("City"), a municipal corporation. Unless identified, the public agencies may be commonly referred to individually as “Party” or collectively as "Parties”.

**RECITALS**

WHEREAS, the completion of the Vacaville-Dixon Bike Route is a priority for the City, County, and Solano Transportation Authority; and

WHEREAS, Porter Road, from Pitt School Road to West A Street, is the last portion of the Vacaville-Dixon Bike Route without paved shoulders for cyclists; and

WHEREAS, Porter Road, from Pitt School Road to West A Street, is approximately 1.47 miles in total length of which 0.43 miles are in the County and 1.04 miles are in the City; and

WHEREAS, the Parties have worked together to conceptualize and facilitate a new project (“Project”) estimated to cost \$650,000 to construct shoulder improvements on Porter Road from Pitt School Road to West A Street; and

WHEREAS, the City and County have jointly secured regional fund sources to improve Porter Road, including \$350,000 in Transportation Development Act Article 3 (TDA) funds and \$150,000 in Yolo Solano Air Quality Management District (YSAQMD) funds; and

WHEREAS, the City is the primary recipient of the grant funds, and the County is the lead project delivery agency; and

WHEREAS, the Parties wish to enter into this Agreement to establish the roles and funding responsibilities of each agency in delivery of the Project.

**AGREEMENT**

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

## **Part I**

### **Description of Project**

Project work primarily includes edge widening and construction of paved shoulders to the sides of Porter Road. The finished road section will incorporate two 11-12 foot traffic lanes, 5-foot paved class II bike lanes on both sides, and varying width (6in – 4 foot) dirt shoulders outside of the pavement. Depending on structural needs and funding capacity, the finish surface of the road will be asphalt concrete and/or asphalt rubberized chip seal with cape seal for a smooth finish. The road corridor will be signed and striped to current MUTCD code for bike lanes and traffic, including thermoplastic striping and high prismatic sign sheeting.

## **Part II**

### **Respective Roles and Responsibilities**

#### **A. County's Roles and Responsibilities.**

The County shall:

1. Design and prepare the Project plans and specifications, utilizing up to \$40,000 of the grant funds as reimbursement;
2. Solicit design review comments from the City during the design process and implement all reasonable design requests by City;
3. County shall act as the lead CEQA agency and environmentally clear the project, which will include a CEQA determination/filing as well as acquire any applicable permits by resource agencies;
4. Solicit, award, and execute a construction contract or contracts to the lowest responsive and responsible bidder(s);
5. Administer the contract(s), which includes engineering, surveying, environmental, and inspection oversight of the work;
6. Provide invoices and copies of pertinent documents to the City;
7. Provide the Notice of Completion and as-built drawings to the City at Project completion;
8. Provide final reports, photographs and other documents as required by TDA and YSAQMD funding agreements;
9. Pay all costs and expenses related to the Project, in anticipation that eligible expenses will be reimbursed by the City as specified below; and,
10. Provide invoices for all labor, materials, equipment, and contract costs for the Project, with copies of pertinent supporting documents, to the City for review and payment.

County will support the City, in partnership, in applying for any additional supplemental grant funds. County staff will provide updates to City staff on the progress of the Project as they apply to the City's road connections.

## **B. City's Roles and Responsibilities.**

The City shall:

1. Review and comment on the draft designs provided by the County, utilizing up to \$10,000 of the grant funds as reimbursement;
2. Provide a no-fee encroachment permit for the County and the Project contractor(s) to operate within the City's right of way on Porter Road and West A Street;
3. Sign, as co-applicant, any permits that are necessary for the Project work;
4. Pay to the County 100% of the County's total costs, including design, environmental, permitting, bidding, and executed bid contract(s) for the Project, up to the total amount of grant funds available to the Project (\$490,000 at the time of the Agreement);
5. Pay to the County 66.67% of all Project costs exceeding available grant funds, up to \$100,000; and,
6. Process grant reimbursement requests within 15 days of receipt of an invoice from the County.
7. Issue payment for all County invoices (1) by October 29, 2021, or (2) within 60 days of receipt of County invoice and receipt grant funds, whichever is earlier.

City will support the County, in partnership, in applying for any additional supplemental grant funds. City staff will also review and comment on Project details as they apply to the City's road connections.

## **C. Anticipated Schedule for Project.**

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

<b>Actions/Milestones</b>	<b>Date</b>	<b>Duration in Months*</b>	<b>Deadlines</b>
Design/Environmental	April 2019	2 months	May 2019
Bid Contract	May 2019	1 month	June 2019
Construction	July 2019	3 months	September 2019

\*- Schedule assumes Project will result in a CEQA Exemption.

## **D. Mutual Responsibilities.**

The Parties agree to communicate information in a timely manner and provide direction as needed to maintain the Project schedule. To the extent that any Party is not performing its duties under this Agreement which impacts either the schedule and/or Project funding, the Parties agree to meet and confer to resolve any dispute.

## **Part III** **Funding**

The Parties anticipate the following funds will be used to complete the Project, estimated to cost \$650,000:

- 1) \$350,000 in TDA Article 3 funds
- 2) \$150,000 in YSAQMD funds

- 3) \$100,000 from the City
- 4) \$50,000 from the County

The City shall request, invoice, and/or receive all grant funds allocated for the Project from the appropriate funding agency. The Parties agree that Project costs not reimbursable by grant funds shall be deemed local match requirements and shared 33.34% County and 66.66% City. The City shall pay the County for eligible costs noted above; and, retain grant funds to cover eligible City expenses noted above. Unspent funds from prior phases of work shall be rolled into latter phases of work.

If total Project costs exceed \$650,000, then the Parties will meet and confer to agree on one or more of the following remedies:

- 1) Seek additional grant funds;
- 2) Provide additional local match shares as agreed by the Party Board and/or Council; and,
- 3) Reduce Project design and/or construction provisions to reduce Project costs to within existing funding allocations.

#### **Part IV**

##### **General Terms and Conditions**

###### *A. Term of Agreement*

This Agreement shall remain in effect through the close of all contracts, claims, and the full and final fund reporting as stated in this Agreement on the Project, 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.

###### *B. Indemnification*

###### *1. County to indemnify City*

County agrees to defend and indemnify City, its agents, officers and employees (collectively referred to in this paragraph as "City"), from any claim, action or proceeding against City, arising out of the acts or omissions of County in the performance of this Agreement. 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 County of any obligation imposed by this Section. City shall notify County promptly of any claim, action or proceeding and cooperate fully in the defense.

###### *2. City to indemnify County*

City agrees to defend and indemnify the County, its agents, officers and employees (collectively referred to in this paragraph as "County") from any claim, action or proceeding against County, arising out of the acts or omissions of City in the performance of this Agreement. At its sole discretion, County 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. County shall notify City promptly of any claim, action or proceeding and cooperate fully in the defense.

###### *C. Insurance*

1. Each Party agrees to require all consultants, contractors and subcontractors engaged to work on this Project to name the other Party as an additional insured as well.

2. 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 perform 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 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.

**SOLANO COUNTY**

Bill Emlen

Director of Resource Management

675 Texas Street, Suite 5500

Fairfield, CA 94533

Att: Matt Tuggle, Engineering Manager

**CITY OF DIXON**

Jim Lindley

City Manager

600 East A St.

Dixon, CA 95620

Att: Joe Leach, Public Works Director

*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.

*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. 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.

CITY OF DIXON

By: \_\_\_\_\_  
Jim Lindley, City Manager

By: \_\_\_\_\_  
City Attorney

SOLANO COUNTY

By: \_\_\_\_\_  
Bill Emlen, Director of Resource Management

By:  \_\_\_\_\_  
Deputy County Counsel