

MEMORANDUM OF UNDERSTANDING
between
Santa Barbara County Association of Governments
and the
Santa Barbara Metropolitan Transit District
for the
Electric Transit Bus Replacement

This Memorandum of Understanding (MOU) is entered into by and between the Santa Barbara County Association of Governments (SBCAG), and the Santa Barbara Metropolitan Transit District (DISTRICT), herein referred to collectively as PARTIES.

WHEREAS, in June 2023, SBCAG and the California Department of Transportation (CALTRANS) were awarded funding for several projects including the Electric Transit Bus Replacement (PROJECT) by the California Transportation Commission (CTC). The award of funding was based on applications that had been submitted identifying SBCAG and CALTRANS as sponsors and DISTRICT as the implementing agency.

WHEREAS, the award of funding from the CTC in Cycle 3 for PROJECT, among several other projects funded, would come from the Senate Bill 1 funds from the Solutions for Congested Corridors Program (SCCP).

WHEREAS, one of the requirements for receiving SCCP funds is to have applicants, sponsors and implementing agencies named in the application by SBCAG and CALTRANS, execute a baseline agreement (SB 1 BASELINE AGREEMENT) with the CTC.

WHEREAS, DISTRICT was named the implementing agency for PROJECT and consequently is required to enter SB1 BASELINE AGREEMENT, along with SBCAG and CALTRANS.

WHEREAS, under the SB 1 BASELINE AGREEMENT, SBCAG is to receive SCCP funds for PROJECT, and DISTRICT as the implementing agency would be responsible for completing the PROJECT.

WHEREAS, SBCAG and DISTRICT have agreed to enter into a Memorandum of Understanding (MOU) to document funding and implementation efforts for PROJECT and ensure that the PROJECT is completed.

WHEREAS, this MOU represents the desire of PARTIES to define roles, responsibilities and deliverables related to the PROJECT described above.

NOW THEREFORE, the PARTIES do mutually agree as follows:

1. The above recitals are true and correct and incorporated herein.

2. Description of PROJECT

The project is located within the Santa Barbara Metropolitan Transit District boundaries, which closely corresponds to the South Coast of Santa Barbara County. This project includes installation of electrical infrastructure for charging of electric buses, procurement of six (6) replacement 40-ft. electric buses, and six (6) associated chargers to replace renewable diesel buses that are beyond their Federal Transit Administration (FTA) useful life benchmark.

3. Need and Support

The following actions define the Need and Support for the PROJECT:

- A. It has long been a goal of SBCAG and CALTRANS, to support multi-modal opportunities and enhancements to improve mobility and/or promote more modes in the Highway 101 Corridor, and the PROJECT meets those goals.
- B. SBCAG and DISTRICT have an SB1 BASELINE AGREEMENT with the CTC to deliver PROJECT with funding provided in part from the SCCP program.

4. Term

The term of this MOU shall commence as of the date of execution by PARTIES and shall extend through December 31, 2027, unless otherwise modified or earlier terminated.

5. Scope of Services and Roles and Responsibilities

PARTIES agree to the roles and responsibilities outlined in Exhibit B "Scope of Services ("WORK")" as attached hereto and incorporated by this reference, and herein referred to as WORK.

6. Funding and Invoicing

PARTIES agree to the funding identified in Exhibit C, as attached hereto and incorporated herein by reference. The PARTIES agree:

- A. SBCAG will contribute \$5,000,000 in SCCP funding for the PROJECT.
- B. SBCAG will contribute \$1,000,000 in Regional Surface Transportation Program (RSTP) funding for the PROJECT.
- C. DISTRICT will contribute \$828,000 in Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project (HVIP) funding for the PROJECT.
- D. DISTRICT will contribute \$1,229,766 in Low Carbon Transit Operations Program (LCTOP) funding for the PROJECT.
- E. DISTRICT will contribute \$335,118 in Measure A funding for the PROJECT.
- F. SBCAG will not bill any labor for its own staff costs attributable to the PROJECT.
- G. DISTRICT shall submit invoices for reimbursement to SBCAG monthly for WORK performed and/or led by DISTRICT. Invoices shall contain sufficient detail to enable an audit of the charges and be accompanied by backup documentation regarding monthly PROJECT WORK.
- H. SBCAG will provide reimbursement to DISTRICT within 30 days of receipt of a correct and complete invoice as described above for all eligible costs. SBCAG shall reimburse DISTRICT prior to seeking reimbursement from CALTRANS. If Caltrans rejects reimbursements DISTRICT agrees to properly return such funds.
- I. SBCAG will evaluate and determine the eligibility of PROJECT expenditures that will be submitted for reimbursement. Eligibility will be pursuant to the original descriptions contained in the application for PROJECT and the Project Programming Request (PPR) that was submitted with the SB 1 BASELINE AGREEMENT, as attached hereto as Exhibits D and E and incorporated by this reference.
- J. If at any time it is determined that the cost to complete the PROJECT is anticipated to exceed the total funding shown in Exhibit C, SBCAG and DISTRICT shall meet and confer to determine a course of action and may amend the MOU in accordance with the amendment provisions of this MOU .

7. Reporting

- A. DISTRICT will lead reporting requirements for the PROJECT through online tool called CalSmart and coordinate with SBCAG on progress of deliverables, expenditures, and corrective actions if necessary.
- B. PARTIES agree to work together to complete WORK within the milestones as set forth in Exhibit D for DISTRICT to report on progress to meet SCCP FUNDING requirements.

8. Other Parties of Interest

PARTIES do not intend this MOU to create a third party beneficiary or define duties, obligations, or rights for entities not signatory to this MOU.

9. Designated Representatives & Notices

PARTIES shall establish a Designated Representative for administering the work to be completed under this MOU for the PROJECTS. Any notice or consent required or permitted to be given under this MOU shall be given to the respective parties in writing, by personal delivery, or with postage prepaid by first class mail, registered or certified mail, or express courier service, to the Designated Representative. Those representatives are shown below:

Agency	Contact Individual and Information
DISTRICT	Hillary Blackerby Santa Barbara Metropolitan Transit District Planning and Marketing Manager 550 Olive Street Santa Barbara CA 93101 hblackerby@sbmtd.gov
SBCAG	Fred Luna SBCAG Director of Project Delivery and Construction 260 North San Antonio Road, Suite B Santa Barbara, CA 93110 fluna@sbcag.org

SBCAG or DISTRICT may modify its Designated Representative by providing in writing the new individual's contact name and information to the other PARTY'S Designated Representative. The PARTIES may also provide notice at such other address or to such other person that the PARTIES may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either PARTY agrees to service of process except as required by applicable law.

10. Issue Resolution

It is the intent of PARTIES to resolve issues that may arise during the completion of WORK under this MOU at the lowest level possible. However, it is agreed that certain issues may need to be elevated to obtain a resolution. Below is a tiered description of how issues shall be resolved by PARTIES. DISTRICT and SBCAG agree to meet during the course of the PROJECT to discuss progress and issues as a Project Development Team (PDT). Members of the PDT shall include SBCAG and DISTRICT.

Level 1 - PDT. The PDT shall be charged with the responsibility for resolving issues that

arise during performance of WORK when consensus cannot be reached. Issues regarding scope, cost, or schedule that do not demand action for additional budget authority shall be attempted to be resolved by the PDT. The PDT will review the project issue, develop and discuss options for resolution, and reach consensus on an approach. If consensus cannot be reached, the PDT will agree to elevate the issue to Level 2.

Level 2 - Management. The PDT will convene a meeting of Level 2 - Management when an issue cannot be resolved by the PDT in Level 1. Level 2 Management members will include the Director of Project Delivery and Construction for SBCAG and the Planning and Marketing Manager for DISTRICT.

Level 3 - Executive Management. Any issue not resolved at Level 2, will be submitted for consideration at a meeting to be held by Level 3 - Executive Management members from PARTIES. Level 3 Executive Management members will include the Executive Director for SBCAG and the General Manager for DISTRICT.

11. Indemnification and Non-Partnership

PARTIES agree to the provisions outlined in Exhibit A as attached hereto and incorporated herein by reference.

12. Entire MOU and Amendments

In conjunction with the matters considered herein, this MOU contains the entire understanding and agreement of the PARTIES and there have been no promises, representations, agreements, warranties or undertakings by any of the PARTIES, either oral or written, of any character or nature hereafter binding except as set forth herein. This MOU may be altered, amended or modified only by an instrument in writing, executed by the PARTIES to this MOU and by no other means. Each PARTY waives their future right to claim, contest or assert that this MOU was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

13. Termination

This MOU may be terminated by either PARTY for convenience or otherwise upon thirty (30) days of written notification to the other.

14. California Law and Jurisdiction

This MOU shall be governed by the laws of the State of California. Any litigation regarding this MOU or its contents shall be filed in the County of Santa Barbara, if in State court, or in the federal district court nearest to Santa Barbara County, if in federal court.

15. Compliance with Law

Each PARTY shall, at its sole cost and expense, comply with all SBCAG, Local, State, and Federal ordinances, statutes, regulations, and Presidential or Executive Orders now in force or which may hereafter be in force with regard to this MOU.

16. Execution of Counterparts

This MOU may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the PARTIES shall preserve undestroyed, shall together constitute one and the same instrument.

17. Authority

All signatories and PARTIES to this MOU warrant and represent that they have the power

and authority to enter into this MOU in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any State and/or federal law in order to enter into this MOU have been fully complied with.

18. Precedence

In the event of conflict between the provisions contained in other Agreements in existence as of the effective date of this MOUs between the PARTIES, the provisions contained herein control with respect to the PROJECT.

In the event of conflict between provisions contained in the numbered sections of this MOU and the provisions contained in the Exhibits, the provisions in the numbered section shall prevail over those in the Exhibits.

19. Debarment and Suspension

Each PARTY certifies to the other PARTY that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or local government contracts. Each PARTY also certifies to each other that it shall not contract with a consultant, contractor, or subcontractor that is so debarred or suspended.

20. No Publicity or Endorsement

Neither PARTY shall use the other PARTY's name or logo or any variation of such name or logo in any publicity, advertising, or promotional materials, unless otherwise required. Neither PARTY will use each other's name or logo in any manner that would give the appearance that the one is endorsing the other. Neither PARTY shall in any way contract on behalf of or in the name of the other PARTY. Neither PARTY shall release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the other PARTY or its projects without obtaining the prior written approval of the other PARTY.

21. Property and Information

The PARTY providing property, documents, and information for use in connection with the services shall remain the property of that PARTY. Both PARTIES shall return any such items whenever requested by the other PARTY. Each party may use such items only in connection with providing the services. Neither PARTY will disseminate any of the other PARTY's property, documents, or information without prior written consent.

22. Records, Audit, And Review

DISTRICT shall keep and maintain business records pursuant to this MOU for at least four (4) years following the termination of this MOU. All accounting records shall be kept in accordance with generally accepted accounting practices. SBCAG shall have the right to audit and review all such documents and records at any time during DISTRICT's regular business hours or upon reasonable notice. In addition, if this MOU exceeds ten thousand dollars (\$10,000.00) DISTRICT shall be subject to the examination and audit of the State Auditor General for a period of three (3) years after final payment under the MOU (Cal. Govt. Code section 8546.7). DISTRICT shall participate in any audits and review, whether by SBCAG or the State, at no charge to SBCAG.

If federal, state, or other regulatory audit exceptions are made relating to this MOU, DISTRICT shall reimburse all costs incurred by SBCAG associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature.

Immediately upon notification from SBCAG, DISTRICT shall reimburse the amount of the audit exceptions and any other related costs directly to SBCAG as specified by SBCAG in the notification.

23. Nondiscrimination

DISTRICT shall comply with Title VI of the Civil Rights Act of 1964, as amended, and with the provisions contained in Title 49, Code of Federal Regulations (CFR) Part 21 through Appendix C and 23 CFR 710.405(b). During the performance of this MOU, the DISTRICT, for itself, its assignees and successors in interest agrees as follows:

- A. **Compliance with Regulations.** DISTRICT shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this MOU.
- B. **Nondiscrimination.** The DISTRICT and its consultant(s), contractor(s), or or subcontractor(s) shall not discriminate on the basis of race, color, national origin, or sex in the performance of this MOU. The DISTRICT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the DISTRICT to carry out these requirements is a material breach of this MOU, which may result in the termination of this MOU or such other remedy as SBCAG deems appropriate. DISTRICT, with regard to the WORK performed by it during the MOU, shall not discriminate on the grounds of race, religion, color, sex, age or national origin in the selection or retention of consultant, contractor, or subcontractors, including procurement of materials and leases of equipment. DISTRICT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the regulations.
- C. **Solicitations for consultant contractor, or, subcontractor including Procurement of Materials and Equipment.** In all solicitations either by competitive bidding or negotiations made by DISTRICT for WORK to be performed, including procurement of materials or leases of equipment, each potential consultant, contractor, or subcontractor shall be notified by DISTRICT of DISTRICT's obligations under this MOU, and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.
- D. **Information and Reports.** DISTRICT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by SBCAG to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a DISTRICT is in the exclusive possession of another who fails or refuses to furnish this information, DISTRICT shall so certify to SBCAG, and shall set forth what efforts it has made to obtain the information.
- E. **Sanctions for Noncompliance.** In the event of DISTRICT's noncompliance with the nondiscrimination provisions of this MOU, SBCAG shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
 - i. Withholding of payments to DISTRICT under this MOU until DISTRICT complies, and/or
 - ii. Cancellation, termination or suspension of the MOU in whole or in part.

24. Consultants, Contactors, and Subcontractors

DISTRICT is authorized to retain consultants, contractor, and/or subcontractors to perform WORK under this MOU. DISTRICT shall be fully responsible for all WORK performed by its subcontractors. DISTRICT shall secure from its consultants, contractor, and/or subcontractors all rights for SBCAG in this MOU, including audit rights. All contractors shall be subject to Title 2, Code of Federal Regulations, Part 200 procurement provisions, if federal funds are authorized for use. In awarding contracts, as may be applicable, DISTRICT will comply with the California Public Contract Code, California Prevailing Wage, and Labor Code requirements.

25. Survival

All provisions of this MOU which by their nature are intended to survive the termination or expiration of this MOU shall survive such termination or expiration.

26. Severability

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this MOU shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

27. Remedies Not Exclusive

No remedy herein conferred upon or reserved to either PARTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

28. Exemption

Each PARTY's obligations under this MOU are subject to the appropriation of resources by the State Legislature, the State Budget Act authority, programming and allocation of funds by the California Transportation Commission (CTC), and each PARTY's governing body.

29. Conflict of Interest

The PARTIES covenant that they presently have no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this MOU. DISTRICT agrees to promptly disclose to SBCAG, in writing, any potential conflict of interest. SBCAG retains the right to waive a conflict of interest disclosed if SBCAG determines it to be immaterial, and such waiver is only effective if provided by SBCAG in writing.

30. Section Headings

The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

31. No Waiver of Default

No delay or omission of any of the PARTIES to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this MOU shall be exercised from time to time and as often as may be deemed expedient.

32. Successors and Assigns

All representations, covenants and warranties set forth in this MOU, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

33. Administrative Amendments

The SBCAG Executive Director, or designee, is authorized to make immaterial amendments to the MOU such as updating the Designated Representatives, updating addresses for notices, or other clerical error corrections which will not result in a material change to the MOU, Statement of Work, or total MOU amount, in accordance with the amendment provision in this MOU and upon review and concurrence by legal counsel.

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This Memorandum of Understanding is entered into in Santa Barbara County and shall be effective when fully executed by the PARTIES.



SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS
A Joint Powers Authority

Jenelle Osborne
Chair, SBCAG Board of Directors

Date

ATTEST:

Marjie Kirn
Executive Director
Clerk of the Board

APPROVED AS TO FORM:
Rachel Van Mullem
County Counsel

Deputy County Counsel

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This Memorandum of Understanding is entered into in Santa Barbara County and shall be effective when fully executed by the PARTIES.



SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Dave Davis
Chair

Date: _____

Jerry Estrada
General Manager
Santa Barbara Metropolitan Transit District

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Exhibit A

MUTUAL INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to California Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead all parties agree that pursuant to California Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by California Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this MOU. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other parties under this MOU.

NON-PARTNERSHIP

This MOU is not intended by the PARTIES to constitute or create a joint venture, pooling arrangement, or formal business organization of any kind. The rights and obligations of the PARTIES shall be only those expressly set forth here.

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Exhibit B Scope of Services (“WORK”)

PARTIES shall complete the tasks for the following PROJECT WORK as identified in the table below.

TASK	DISTRICT	SBCAG
Environmental Phase	L	
Preliminary Engineering and Design	L	
Detailed Design and Capital Cost Estimates	L	
Right of Way Support and Acquisition	L	
Permits and Mitigations	L	
Utility Relocations	L	
Fund Administration		L
Funding Reporting and Invoicing	L	S
Public Outreach	L	
Construction Bidding	L	
Construction Administration	L	
Construction Closeout	L	
Project Closeout	L	S

LEGEND:

<u>Symbol</u>	<u>Description</u>
S	Shared responsibility among PARTIES
L	Lead Agency is the implementing agency responsible for completing all WORK.

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Exhibit C PROJECT Funding

PARTIES, in accordance with the provisions of this MOU, hereby agree that the funding table below represents the funding provided for the WORK, as defined in Section 6. DISTRICT is responsible for completion of WORK in accordance with Exhibit D.

PROJECT Phase	PARTY Responsible for Implementing	PARTY Responsible for funding	Total Cost and Funding					Totals
			SCCP	RSTP	HVIP	LCTOP	Measure A	
CON	DISTRICT	SBCAG	\$5,000,000	\$1,000,000	-	-	-	\$6,000,000
		DISTRICT	-	-	\$828,000	\$1,230,366	\$397,997	\$2,456,363
Totals			\$5,000,000	\$1,000,000	\$828,000	\$1,230,366	\$397,997	\$8,456,363

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Exhibit D

COVER PAGE

Project Programming Request (PPR)

The attached PPR is set forth on the State of California, Department of Transportation, Project Programming Request form PRG-0010 (REV 08/2020), with PPR ID ePPR-6090-2020-0006 v0, and is a total of 7 pages.

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Exhibit E

COVER PAGE

SB1 BASELINE AGREEMENT

The attached SB1 Baseline Agreement is set forth on the State of California, California Transportation Commission form CTC-0001 (REV 03/2023), titled "ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017 PROJECT BASELINE AGREEMENT" and is a total of 3 pages.

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