

MEMORANDUM OF UNDERSTANDING
between
Santa Barbara County Association of Governments,
and the
County of Santa Barbara
for the
Santa Claus Lane Streetscape Improvements

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

WHEREAS, in October 2018, SBCAG, the COUNTY, and the California Department of Transportation (CALTRANS) executed a baseline agreement (101 BASELINE AGREEMENT) with the California Transportation Commission (CTC) for several projects in the Highway 101 corridor including the Santa Claus Lane Streetscape Improvements (PROJECT).

WHEREAS, under the 101 BASELINE AGREEMENT, SBCAG is to receive Senate Bill 1 funds from the Solutions for Congested Corridors (SCCP) program to fund PROJECT and to which the COUNTY was identified as the implementing agency for the PROJECT.

WHEREAS, in June 2019, SBCAG entered a project development phase Memorandum of Understanding (2019 MOU) with the COUNTY for the PROJECT.

WHEREAS, in early 2023 the COUNTY identified that only a portion of PROJECT was able to be delivered to meet schedule deadlines and available funding and thus developed phasing plan, for which Phase 1 would be proposed to CTC for use of the SCCP funds.

WHEREAS, the CTC approved the phasing plan through a minor scope change with the CTC agreeable to move forward with allocating funds for Phase 1 of PROJECT.

WHEREAS, in March 2023, SBCAG approved local funding from Measure A transportation sales tax funds, to augment existing SCCP programmed funds to provide the anticipated full funding for Phase 1 of the PROJECT.

WHEREAS, in June 2023, SBCAG submitted on behalf of the COUNTY a request for a time extension for award of the construction contract to revised the deadline to September 30, 2024 following allocation of the SCCP funds.

WHEREAS, the COUNTY has continued to evolve the Phase 1 PROJECT plan set and has solicited bids. Based on the results from the bidding process the COUNTY is prepared to award a construction contract that falls within the available funding provided through SCCP and MEASURE A.

WHEREAS, SBCAG and COUNTY have agreed to enter into a Memorandum of Understanding (MOU) for the construction phase with the COUNTY acting as the implementation lead for the PROJECT and responsibilities assigned pursuant to Exhibit B, Scope of Services (“WORK”).

WHEREAS, SBCAG as the PROJECT sponsor will be responsible for funding totaling \$7,620,000, which includes \$7,040,000 in SCCP funds and \$580,000 in MEASURE A funds as shown in Exhibit C, PROJECT Funding.

WHEREAS, COUNTY will be responsible for all elements of implementation during construction phase of the PROJECT, including but not limited to advertisement, award of a contract, administration of construction contract, and project closeout.

NOW THEREFORE, the PARTIES do mutually agree as follows:

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

2. Description of PROJECTS

The PROJECT improvements include the construction of sidewalks, additional formalized parking, and a Class I multi-use path along Santa Claus Lane between South Padaro Lane and Spindrift Lane/Sand Point Road.

3. Need and Support

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

- a) In October 2018, SBCAG and COUNTY entered 101 BASELINE AGREEMENT with the CTC to deliver PROJECT with funding provided in part from the SCCP program.
- b) In March 2019, COUNTY completed a Local Coastal Program amendment (LCPA) through the California Coastal Commission (CCC) and PROJECT was identified as one of several balancing projects that complete portions of the California Coastal Trail (CCT).

4. Term

The term of this MOU shall commence as of the date of mutual execution by PARTIES and shall extend through June 30, 2027 unless otherwise modified 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 by this reference.

- a) SBCAG will contribute \$7,040,000 in SCCP funding.
- b) SBCAG will contribute \$580,000 in MEASURE A funding.
- c) SBCAG will administer the SCCP funding through CALTRANS Local Assistance and will submit invoices to CALTRANS.
- d) SBCAG will not bill any labor for its own staff to the PROJECT.
- e) COUNTY shall submit invoices for reimbursement to SBCAG quarterly for WORK performed and/or led by COUNTY. Invoices shall be accompanied by backup documentation regarding construction capital and support expenditures for that reporting period.
- f) 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 101 BASELINE

AGREEMENT.

- g) SBCAG will provide reimbursement to COUNTY within 30 days of receipt of invoice based on affirmed eligibility of PROJECT costs. SBCAG shall reimburse COUNTY prior to seeking reimbursement from CALTRANS.
- h) If at any time it is determined that the cost to complete the PROJECT is anticipated to exceed the total funding shown above and in Exhibit C, SBCAG and COUNTY shall meet and confer to determine a course of action and amend the MOU in accordance with Section 12 herein, as may be required.

7. Schedule

PARTIES agree to work together to complete WORK within the timeframe in COUNTY’S construction contract with CONTRACTOR. COUNTY will continue to coordinate on milestones with SBCAG in order for SBCAG to report on progress to meet SCCP FUNDING requirements

8. Other Parties of Interest

Due to the proximity of other construction work going on in the area, COUNTY may be required to coordinate with CALTRANS related to traffic management and public information needs for PROJECT.

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
COUNTY	Chris Doolittle County of Santa Barbara Project Manager 123 East Anapamu Santa Barbara, CA 93101 cdoolit@countyofsb.org
SBCAG	Fred Luna SBCAG Director of Project Development and Construction 260 North San Antonio Road, Suite B Santa Barbara, CA 93110 fluna@sbcag.org

SBCAG or COUNTY 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 this phase of the PROJECT 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. COUNTY and SBCAG agree to meet during the course of the PROJECT construction to discuss progress and issues as a Project Development Team (PDT).

Level 1 - PDT. The PDT shall be charged with the responsibility for resolving issues that arise during the development of the PROJECT 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 Project Manager for SBCAG and the Public Works Department Transportation Engineering Manager or Deputy Director of Transportation for COUNTY.

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 Public Works Director for COUNTY.

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 and statutes, including regulations now in force or which may hereafter be in force with regard to this MOU. PROJECT specified herein may be subject to federal requirements now or in the future. PARTIES therefore agree this MOU and any consultant(s) performing WORK herein are subject to Title 2, Code of Federal Regulations, Part 200, as applicable, which is incorporated herein by reference. Each PARTY will ensure compliance with federal procurement requirements.

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

The PARTIES certify 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 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 or upon Termination of this MOU. 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

COUNTY 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 COUNTY's regular business hours or upon reasonable notice. In addition, if this MOU exceeds ten thousand dollars (\$10,000.00) COUNTY 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). COUNTY 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, COUNTY 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, COUNTY shall reimburse the amount of the audit exceptions and any other related costs directly to SBCAG as specified by SBCAG in the notification.

23. Mandatory Disclosure

COUNTY must disclose, in a timely manner, in writing to SBCAG all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award. SBCAG is required to report certain civil, criminal, or administrative proceedings to the System for Award Management (SAM) located at www.sam.gov. Failure to make required disclosures can result in any of the remedies described in Title 2 of the Code of Federal Regulations (CFR) section 200.339 Remedies for Noncompliance, including suspension or debarment. (See also 2 CFR part 180 and 31 U.S.C. 3321.)

24. Nondiscrimination

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

- a. **Compliance with Regulations.** COUNTY 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 COUNTY and its consultant(s) or contractor(s) shall not discriminate on the basis of race, color, national origin, or sex in the performance of this MOU. The COUNTY shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the COUNTY to carry out these requirements is a material breach of this MOU, which may result in the termination of this MOU. COUNTY, 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 subcontractors, including procurement of materials and leases of equipment. COUNTY 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, including Procurement of Materials and Equipment.** In all solicitations either by competitive bidding or negotiations made by COUNTY for WORK to be performed, including procurement of materials or leases of equipment, each potential consultant shall be notified by COUNTY of COUNTY'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.** COUNTY 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 COUNTY is in the exclusive possession of another who fails or refuses to furnish this information, COUNTY 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 COUNTY'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:
 - 1. Withholding of payments to COUNTY under this MOU until COUNTY complies, and/or
 - 2. Cancellation, termination or suspension of the MOU in whole or in part.

25. Subcontractors

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

26. 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.

27. 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.

28. 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.

29. 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.

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

Steve Lavagnino
Chair, SBCAG Board of Directors

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.



one COUNTY | one FUTURE

COUNTY OF SANTA BARBARA

Steve Lavagnino
Chair, Board of Supervisors

Date: _____

ATTEST:
Mona Miyasato
County Executive Officer
Clerk of the Board

By: _____
RECOMMENDED FOR APPROVAL

DocuSigned by:
Chris Sneddon
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Chris Sneddon
Director of Public Works

Approved as to Form:
Rachel Van Mullem
County Counsel

Signed by:
Rachel Van Mullem
5DB10E553F3444E

By: Deputy County Counsel

Approved as to Form:
Gregory Milligan
Risk Manager

DocuSigned by:
Greg Milligan
05E555E00269466

Approved as to Accounting Form:
Betsy Schaffer, CPA
Auditor-Controller

DocuSigned by:
Betsy Schaffer

By: _____
Deputy

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		PROJECT			
		ROLE			
		COUNTY			SBCAG
1	Project Management				
1.1	Project Meetings/Agency Coordination	L			S
1.2	Internal Team Coordination	L			
1.3	Quality Assurance and Control	L			
1.4	Constructability Reviews	L			
2	Advertise, Bid Opening and Award				
2.1	Prepare Contract Package for Advertisement for Bid	L			
2.2	Conduct Bid Opening, and Make Recommendation of Lowest Responsible/Responsive Bidder	L			
	Coordinate with SBCAG on Contract Award	L			S
	Award Contract	L			
3	Pre-Job Coordination				
3.1	Set Up Project Files and Accounting	L			
3.2	Review and Approve Submittals	L			
3.3	Review Permit and Other Conditions related to implementing WORK	L			S
3.4	Pre-Construction Meeting with Stakeholders	L			S
4	Construction Surveys/Staking, Materials Testing and Other Field Services				
4.1	Perform Construction Staking for Construction Control	L			
4.2	Perform Surveys to delineate Right of Way and Other Key Constraints	L			S
4.3	Perform Materials Testing	L			S
4.4	Other Field Services As Required	L			
5	Construction Coordination, Management and Administration				
5.1	Coordination with Contractor	L			
5.2	Contract Administration	L			
5.3	Construction Engineering	L			
5.4	Cost and Schedule Control	L			
5.5	Daily Inspection and Preparation of Logs	L			
5.6	Safety and Training	L			
5.7	Change Orders and Claims Management	L			
5.8	Utility Coordination	L			
5.9	Public Notifications and Coordination with Agencies	L			S
5.10	Project Closeout	L			

LEGEND:

- | | |
|---------------|---|
| <u>Symbol</u> | <u>Description</u> |
| S | Shared responsibility among PARTIES |
| L | Lead responsibility by either SBCAG or COUNTY. The Lead Agency is the implementing agency responsible or completing all WORK. |

**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 5. COUNTY is responsible for completion of WORK in accordance with Exhibit B.

PROJECT Phase	PARTY Responsible for Implementing	PARTY Responsible for funding	Total Cost and Funding		
			SCCP	Measure A	Totals
Construction Capital	COUNTY	SBCAG	\$6,160,000	\$580,000	\$6,740,000
Construction Support	COUNTY	SBCAG	\$880,000	\$0	\$880,000
Totals			\$7,040,000	\$580,000	\$7,620,000

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