

# WINE COUNTRY EXPRESS

## MEMORANDUM OF UNDERSTANDING

### BETWEEN THE CITIES OF LOMPOC, BUELLTON, AND SOLVANG, THE COUNTY OF SANTA BARBARA AND THE SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS

#### Regarding Continuation of the Wine Country Express Project to Provide Regular, Fixed-Route, Public Transit Service between Lompoc, Buellton, and Solvang

**Effective Date: On or about July 1, 2014**

This Memorandum of Understanding (MOU) is entered into between the City of Lompoc, a municipal corporation ("Lompoc"), the City of Buellton, a municipal corporation ("Buellton"), the City of Solvang, a municipal corporation ("Solvang"), and the County of Santa Barbara, a local governmental State agency (the "County"), **collectively referred to herein as "FUNDING PARTNERS"**, and the Santa Barbara County Association of Governments, a public body, hereinafter referred to as "SBCAG," all collectively referred to herein as **"PARTIES" or "The PARTIES"** for the purpose of defining agency roles, responsibilities, and commitments in conjunction with the continuation of a project to provide regular, fixed-route public transportation service on the Highway 246 corridor between Lompoc, Buellton, and Solvang.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, **The PARTIES** agree as follows:

#### **1. Project Description**

The Wine Country Express Continuation Project ("PROJECT") will provide regularly-scheduled, fixed-route, intercity bus service between Lompoc, Buellton, and Solvang. The PROJECT will be open to the public, for all trip purposes, and will be fully accessible to persons with disabilities. Lompoc, in coordination with Buellton, Solvang and the County will operate the service. The service will continue approximately sixty (60) additional months, commencing on July 1, 2014 or on the date when all **PARTIES** have signed the MOU, whichever occurs later, and remaining in effect until June 30, 2019, contingent on the availability of funding.

#### **2. Lead Agency**

Lompoc shall be the sole administrator of the PROJECT and shall be responsible for service contracting with a qualified bus operator ("CONTRACTOR") and compliance with all federal and state requirements.

### 3. Service Proposal

This MOU contains the budget, funding obligations, and performance requirements for the PROJECT. Annual performance measures for the term of the PROJECT will provide thresholds to gauge the PROJECT's performance. If the service is failing to meet one or more performance measures, then reasonable efforts will be made to modify the service to improve performance. The service may also be discontinued by termination of the MOU after reasonable efforts have been made.

### 4. Procurement of Insurance Coverage and Indemnification

**THE PARTIES** agree to procure and maintain liability insurance in an amount sufficient to protect against claims that may be filed against **THE PARTIES** for the services they provide, or **THE PARTIES** may elect to self-insure against such claims as provided by their respective government policies.

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to Government Code Section 895.6, **THE PARTIES** agree all losses or liabilities incurred by a **PARTY** shall not be shared pro rata but instead **THE PARTIES** agree pursuant to Government Code Section 895.4, each **PARTY** 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 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 Agreement. 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 Agreement.

### 5. Contractor Insurance

Lompoc shall require the CONTRACTOR of the PROJECT to comply with the indemnity and insurance requirements specified in Attachment A and provide all **PARTIES** with copies of the Certificates of Insurance, including the endorsement(s) naming **THE PARTIES** as additional insureds.

### 6. Nondiscrimination

Lompoc shall require CONTRACTOR to comply with the nondiscrimination requirements of funding agencies, including the following nondiscrimination language insofar as consistent with those requirements:

During the performance of this Agreement, CONTRACTOR and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee,

applicant for employment or service customer because legally protected characteristics or conduct including sex, race, color, ancestry, religious creed, national origin, physical disability, medical condition, age, or marital status. Contractor shall insure that the evaluation and treatment of their employees, applicants for employment and service customers are free from such discrimination

## 7. Service Plan

The PROJECT will operate five days a week, Monday through Friday. To the extent practicable, the services will provide for efficient interlinking connections between City of Lompoc Transit (COLT), Santa Ynez Valley Transit (SYVT), the Breeze Routes 100 and 200, and other transit services.

The PROJECT will provide three (3) round-trips per weekday in the morning, mid-day and afternoon. The service will operate generally between the Lompoc Transit Facility, Buellton Town Center (Highway 246 and McMurray Road), and Solvang Park in Solvang, with stops at intermediate locations subject to change as demand warrants.

## 8. Funding

The **FUNDING PARTNERS** will share equally in the net costs associated with the PROJECT, after deducting all passenger and other operating revenue and Federal Transit Administration grants.

The primary source of funding for the PROJECT will be Federal Transit Administration 5316 Jobs Access/Reverse Commute funds. Lompoc, Buellton, Solvang and the County will also provide Transportation Development Act funds or Local Measure A funds as matching funds, or other local funding if it becomes available. If additional Federal Transit Administration 5316 funds are not secured, the **PARTIES** will work cooperatively to identify other matching fund sources or, if other funding sources are not available, may choose to terminate the PROJECT.

Lompoc will, on a monthly basis, invoice the other **FUNDING PARTNERS** for actual net operating costs, after deducting all passenger and other operating revenue and any state or federal grants. The invoice should clearly detail monthly expenditures and revenues applied to the program in determining the "net program" costs. It should also demonstrate the allocation of net costs to each participating agency. Each local agency shall indicate, with each payment, the source(s) of funding used to make the payment. Payment shall be due thirty (30) days after the date of the invoice. Buellton, Solvang and the County have the option of including funding for the PROJECT in their annual Transportation Development Act claims so that SBCAG may make a direct payment of Transportation Development Act funds for the PROJECT to Lompoc instead of monthly invoicing.

**FUNDING PARTNERS** agree to annually commit estimated amount of Transportation Development Act contribution for the operation of the PROJECT

when SBCAG publishes the Annual Transportation Development Act Apportionment. The Working Group in Section 12 can make recommendations to adjust to the Transportation Development Act contribution from each of the **FUNDING PARTNERS** for the approval of the Policy Committee. This allocation is subject to final budget approval by Lompoc, Buellton, and Solvang City Councils and the County's Board of Supervisors.

## 9. Securing Funding

With assistance from SBCAG, the **FUNDING PARTNERS** will work cooperatively to pursue other federal or state grant opportunities where appropriate for the PROJECT in order to augment or reduce the Federal Transit Administration, Transportation Development Act and local funds needed for continuation of the service.

Lompoc will be responsible for submitting grant applications. SBCAG staff will assist Lompoc with preparation of grant applications.

If a local match is required to receive grant funding, the **FUNDING PARTNERS** will share equally in the matching funds needed to meet the required local match, and will execute the necessary paperwork to facilitate receipt of grants.

## 10. Reporting

Lompoc shall submit or have CONTRACTOR prepare and submit report(s) to the **PARTIES** that demonstrate compliance with this Agreement.

## 11. Records, Audit and Review

Lompoc shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent transit operator, and where necessary shall require CONTRACTOR to keep such records, and shall maintain or require the maintenance of such records for at least five (5) years following the termination of this Agreement. Such records shall include documents necessary to show compliance with Paragraph 13 "Performance Measures." All accounting records shall be kept in accordance with generally accepted accounting principles. Any **PARTY** shall have the right to audit and review all such documents and records at any time during Lompoc's or CONTRACTOR's regular business hours upon reasonable notice.

## 12. Policy Committee and Working Group

The Policy Committee for the PROJECT shall consist of the following individuals or such successors as may be appointed by the local agency representatives:

- The County Supervisor (appointed by Board of Supervisors)

- Buellton City Council representative on the SBCAG board
- Lompoc City Council representative on the SBCAG board
- Solvang City Council representative on the SBCAG board
- SBCAG (Ex-officio)

The SBCAG Executive Director or designee will be an ex-officio (non-voting) representative on the Policy Committee. The Policy Committee shall meet a minimum of once a year to review and approve interagency agreements, budgets, and service plans, including fare structures, for the following year.

Committee may take any action by a vote of three (3) affirmative votes.

A Working Group will be established consisting of staff representatives of the following agencies:

- Lompoc
- County
- Buellton
- Solvang
- SBCAG (Ex-officio) (non-voting)

The Working Group may take any action by a vote of three (3) affirmative votes.

The Working Group will assist in the development and evaluation of detailed service plans, routes, schedules, budget, performance measures, and other service details. The Working Group shall be appraised on the selection of the service contractor by Lompoc.

Pursuant to the Brown Act, SBCAG staff will serve as staff to the Policy Committee and will prepare and make meeting agendas and materials available to the public.

SBCAG staff will also serve as staff to the Working Group.

### 13. Performance Measures

The Working Group, as established in Section 12, shall develop performance measures and evaluate the effectiveness of the service based on the following performance measures:

- farebox recovery ratio (goal of 20%)
- operating cost per passenger
- operating cost per vehicle service hour
- passengers per vehicle service hour
- passengers per vehicle service mile
- passengers per trip
- net operating cost per each of the **FUNDING PARTNERS** (annual goal of \$11,500 or less over term of MOU)

As required by the Federal Transit Administration, Lompoc, as the administrator of the service will collect and report financial (operating expenses) and non-financial (ridership) data to the National Transit Database.

The Working group for the PROJECT will evaluate performance reports prepared by Lompoc based on performance indicators for the service biannually

#### **14. Bus Equipment**

The PROJECT service will utilize Americans with Disabilities Act (ADA) compliant transit buses suitable for freeway operations.

Lompoc shall utilize a bus from the Colt fleet for the operation of the Project.

#### **15. Service Contracting**

Lompoc will prepare any Request for Proposals (RFP) needed for the provision of operating services by a CONTRACTOR for the PROJECT. The RFP shall meet all applicable federal requirements. The Working Group will review and provide input on the scope of work. Alternatively, with the approval of the Working Group, Lompoc may amend an existing transit service contract to provide the PROJECT service. Lompoc will also be responsible for the sale of advertising, if any, on the PROJECT.

#### **16. Fares**

One-way fares for the service will be set initially at \$2.00 for adults and \$1.00 for seniors and persons with disabilities. Monthly passes will be set initially at \$75 for adults and \$37.50 for seniors and persons with disabilities. All local transit agencies will work together to insure that transfers are free from the intercommunity service to local systems. Fare changes shall be subject to approval by the Policy Committee. Lompoc, in coordination with **FUNDING PARTNERS** will hold the required hearing prior to implementing any fare changes to the service.

The Policy Committee for the PROJECT shall determine the inter-service transfer fare per recommendation from the PROJECT Working Group.

#### **17. Marketing**

Marketing activities, promotional materials, printed schedules, etc. will be developed by Lompoc. Marketing costs are included in the anticipated annual operating cost as stated in Section 13 – Performance Measures. All **PARTIES** will work cooperatively to develop marketing strategies that maximize ridership and effectiveness of the services. The service will be promoted by all **PARTIES**. All **PARTIES** will post the service schedule and other information on their websites. SBCAG's existing guaranteed-ride-home program will be available to users of the service through the

Traffic Solutions program. The guaranteed-ride-home service is not the responsibility of the **FUNDING PARTNERS** and is not a part of this agreement.

## **18. Long-Term Continuation of Service**

The Working Group shall evaluate the PROJECT annually. At the end of four years of service under this agreement, the Working Group will evaluate the service and if warranted by the performance of the bus service, based on measures included in Section 13, develop a plan for the continuation and cost sharing of the service for review by the Policy Committee. . The Policy Committee shall recommend whether to continue or discontinue the service.

## **19. Amendment**

This Agreement may be amended or extended only by the written consent of all **PARTIES**.

## **20. Termination**

Any **PARTY** to this MOU may terminate its participation under this Agreement by giving 90 days written notification to the other **PARTIES**.

## **21. Integration**

This Agreement represents the entire and integrated Agreement between **THE PARTIES** and supersedes any and all other negotiations, representations, and/or agreements, either oral or in writing, between **THE PARTIES** hereto with respect to the subject matter hereof, and no other agreement, statement or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

## **22. California Law to Apply.**

This Agreement shall be construed under and in accordance with the laws of the State of California. All obligations created under this Agreement are performable in California.

## **23. Jurisdiction**

Jurisdiction and venue of all lawsuits over the terms of this Agreement shall be in the superior court of Santa Barbara County, State of California.

## **24. Warranty of Authority**

Each person signing this Agreement on behalf of a **PARTY** warrants that he or she has authority to do so.

## **25. Waivers**

The waiver by any **PARTY** to this Agreement of any term, covenant, or condition of this Agreement or of any provision, ordinance, or law, shall not be deemed to be a continuing waiver of such term, covenant, condition, or law, or of any subsequent breach or violation of the same, or of any other term, covenant, and ordinance of law. Failure to enforce with respect to a default shall not be construed as a waiver.

## **26. Severability**

The provisions of this Agreement are severable. If any part of this Agreement is held invalid by a court of competent jurisdiction, then the remainder of the Agreement shall remain in full force and effect unless amended or modified by mutual written consent of **THE PARTIES**.

## **27. Points of Contact**

All notices referenced in this Agreement shall be in writing and shall be given by first class mail addressed as follows, or at such other address or to such person **THE PARTIES** may from time to time designate in writing:

### **City of Lompoc**

Public Works Director  
100 Civic Center Plaza  
Lompoc, CA 93436

### **City of Buellton**

Public Works Director  
107 West Highway 246  
Buellton, CA 93427

### **City of Solvang**

Public Works Director  
411 Second Street  
Solvang, CA 93463

### **County of Santa Barbara**

Alternative Transportation Manager  
123 East Anapamu Avenue, 2<sup>nd</sup> Floor  
Santa Barbara, CA 93101

### **SBCAG**

Executive Director  
260 N. San Antonio Road, Suite B  
Santa Barbara, CA 93012



**28. Counterpart Signatures & Effective Date**

**THE PARTIES** agree that this Agreement may be signed in counterparts and shall become effective when fully executed by all **PARTIES**.

**CITY OF BUELLTON**

\_\_\_\_\_  
Mayor John Connolly

\_\_\_\_\_  
Date

Approved as to Form:

Ralph Hanson

City Attorney of Buellton

By:\_\_\_\_\_

Ralph Hanson, City of Attorney of Buellton

**CITY OF LOMPOC**

\_\_\_\_\_  
Mayor John Linn

\_\_\_\_\_  
Date

**ATTEST**

**By:** \_\_\_\_\_

Approved as to Form:

Joseph W. Pannone

City Attorney

By: \_\_\_\_\_

Joseph W. Pannone, City Attorney

**CITY OF SOLVANG**

\_\_\_\_\_  
Mayor Jim Richardson

\_\_\_\_\_  
Date

**ATTEST**

**By:** \_\_\_\_\_

Approved as to Form:

Roy Hanley

City Attorney

By: \_\_\_\_\_

Roy Hanley, City Attorney for City of Solvang

**COUNTY OF SANTA BARBARA**

\_\_\_\_\_  
Supervisor Steve Lavagnino, Chair

\_\_\_\_\_  
Date

ATTEST:

By: \_\_\_\_\_

Clerk of the Board

Approved as to Form:

Michael C. Ghizzoni, County Counsel

By: \_\_\_\_\_

Brian Pettit, Deputy County Counsel

By: \_\_\_\_\_

Robert W. Geis, Auditor-Controller

By: \_\_\_\_\_

Risk Management

**SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS**

\_\_\_\_\_  
Supervisor Steve Lavagnino, Chair

\_\_\_\_\_  
Date

ATTEST

By: \_\_\_\_\_

Clerk of the Board

Approved as to Form:

MICHAEL C. GHIZZONI,  
COUNTY COUNSEL

By: \_\_\_\_\_

William M. Dillon, Senior Deputy,  
Counsel for SBCAG

## **Attachment A**

CONTRACTOR shall comply with the following requirements. CONTRACTOR shall not subcontract any services provided under this Agreement without the written consent of the City of Lompoc and full compliance by any subcontractor with the requirements of this Agreement.

1. Indemnification –CONTRACTOR (TRANSPORTATION COMPANY) agrees to indemnify, defend (with counsel reasonably approved by legal counsel for **THE PARTIES**) and hold harmless **THE PARTIES** and their authorized officers, employees, agents and volunteers from and against any and all claims, actions, losses, damages, and/or liability arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses (including but not limited to attorneys' fees) incurred by **THE PARTIES** on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. CONTRACTOR shall notify **THE PARTIES** immediately in the event of any accident or injury arising out of or in connection with this Agreement. This Indemnification provision shall survive any expiration or termination of this Agreement.

2. Insurance. Insurance Specifications –CONTRACTOR agrees to provide insurance set forth in accordance with the requirements herein. If CONTRACTOR uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, CONTRACTOR agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in any way affecting the indemnity herein provided and in addition thereto, CONTRACTOR shall secure and maintain throughout the Agreement term the following types of insurance with limits as shown:

A Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with one million dollar (\$1,000,000) limits covering all persons including volunteers providing services on behalf of CONTRACTOR and all risks to such persons under this Agreement.

If CONTRACTOR has no employees, it may certify or warrant to **THE PARTIES** that it does not currently have any employees or individuals who are defined as “employees” under the Labor Code and the requirement for Workers’ Compensation coverage will be waived by the County’s Risk Manager.

B. Commercial/General Liability Insurance –CONTRACTOR shall carry General Liability Insurance covering all operations performed by or on behalf of CONTRACTOR providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence and a two million dollar (\$2,000,000) general aggregate limit.

C. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than three million dollars (\$3,000,000) for bodily injury and property damage, per occurrence.

D. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability. An Additional Insured Endorsement shall be provided on the Umbrella policy as it relates to the primary policies requiring an Additional Insured Endorsement.

3. Additional Insured – All policies, except for the Workers’ Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming and their officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for **THE PARTIES** to vicarious liability but shall allow coverage for **THE PARTIES** to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.



4. Waiver of Subrogation Rights –CONTRACTOR shall require the carriers of required coverages to waive all rights of subrogation against **THE PARTIES**, their officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit CONTRACTOR and CONTRACTOR’s employees or agents from waiving the right of subrogation prior to a loss or claim. SUBCONTRACTOR hereby waives all rights of subrogation against **THE PARTIES**.

5. Policies Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by **THE PARTIES**.

6. Severability of Interests –CONTRACTOR agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between CONTRACTOR and **THE PARTIES** or between any FUNDING PARTNER and any other insured or additional insured under the policy.

7. Proof of Coverage –CONTRACTOR shall furnish Certificates of Insurance to the CITY OF LOMPOC Department administering the Agreement evidencing the insurance coverage, including Additional Insured Endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and CONTRACTOR shall maintain such insurance from the time CONTRACTOR commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, CONTRACTOR shall furnish a copy of the Declaration page for all applicable policies and will provide complete copies of the policies and endorsements immediately upon request.

8. Acceptability of Insurance Carrier – Unless otherwise approved by **THE PARTIES**, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best’s Insurance Guide rating of “A- VII”.

9. Deductibles and Self-Insured Retention – Any and all deductibles in excess of \$10,000 shall be declared to the **THE PARTIES**. A Self-Insured Retention is not acceptable.