

MEMORANDUM OF UNDERSTANDING
Between the
Santa Barbara County Association of Governments
and the
City of Santa Barbara

This Memorandum of Understanding (MOU) is entered into by and between the Santa Barbara County Association of Governments (SBCAG) and the City of Santa Barbara (CITY) referred to as individually PARTY and collectively as PARTIES.

WHEREAS, the California Department of Transportation (CALTRANS), in its 2017 Revised Environmental Impact Report (EIR) for Highway 101: Carpinteria to Santa Barbara (101 PROJECT) identified mitigation to address traffic operational improvements as a result of the 101 PROJECT;

WHEREAS, one of those improvements was a project to improve operations at the intersection of Milpas Street and the Highway 101 southbound off ramp;

WHEREAS, CITY has evaluated the need to improve operations at this intersection as well as improve traffic flow on Milpas Street between the Highway 101 underpass and Hutash Street;

WHEREAS, SBCAG and CITY have concluded that the best long term approach is a widening of the roadway, lane adjustments, and signal improvements at the intersection of Milpas and Hutash Street to accommodate increased traffic volumes turning onto southbound Highway 101, and extension of the median south of the Highway 101 underpass to the intersection of Milpas Street and Cacique Street (PROJECT);

WHEREAS, CITY and SBCAG agree that CITY is best equipped to provide project management for the design of the project, including engineering to create project plans for construction, preparation of technical studies for environmental approvals and permitting, and right of way certification;

WHEREAS, SBCAG and CITY desire to implement PROJECT as cost effective as possible and that CITY is best equipped to lead PROJECT by providing project management for the environmental, design, right of way and permitting phases of the PROJECT and preparing plans, specifications and estimate to ready PROJECT for receiving construction bids; and

WHEREAS, CITY and SBCAG desire to define roles and responsibilities for completion of the work on the PROJECT and coordinate work with other Highway 101 efforts that are on-going.

NOW THEREFORE, the PARTIES do mutually agree as follows:

1. Project Purpose, Limits, and Description of Improvements

The purpose of this PROJECT is to reduce traffic impacts at the intersection of the Highway 101 southbound off ramp at Milpas Street by making improvements between the Highway 101 Milpas Street undercrossing and the southbound Highway 101 on ramp intersection with Milpas Street and Hutash Street.

The PROJECT improvements include the following:

- Traffic Signal Modifications;

- Widening Milpas Street at the North East corner of the intersection of Milpas Street and Hutash Street;
- Modifying lane layout and restriping at the Milpas Street and Hutash Street intersection; and
- Extending existing median south of the Highway 101 underpass to the intersection of Milpas Street and Cacique Street.

2. Term

The term of this MOU shall commence as of the date of execution by all PARTIES and shall end no later than March 31, 2023, unless earlier terminated or otherwise agreed.

3. Scope of Services

At the completion of this MOU, CITY shall have a completed and certified environmental document (CEQA), certified right of way, and construction ready plans, specifications, and estimate as described in the Scope of Services, Exhibit A attached hereto and incorporated by this reference (referred to herein as "Services").

4. Roles and Responsibilities

- a. CITY will be the CEQA lead agency for the PROJECT.
- b. SBCAG will reimburse the CITY up to but not to exceed \$395,000 for completion of Services identified within this MOU.
- c. City may retain the services of a consultant or consultants to assist with the fulfillment of its roles and responsibilities outlined in this MOU.
- d. CITY will be responsible for managing consultant work, and shall be responsible for all work products and deliverables generated during this phase of the PROJECT.
- e. City will develop an overall PROJECT delivery schedule which will be updated regularly as to progress during this phase of the PROJECT.
- f. CITY will form a PROJECT team for convening regular meetings that will include representatives from SBCAG, CALTRANS, consultants, and other parties deemed appropriate by CITY, and collectively referred to as Project Development Team (PDT).
- g. SBCAG and CITY will work cooperatively to make presentations and provide updates as needed to CITY's Planning Commission and SBCAG's South Coast Subregional Planning Committee.
- h. PARTIES agree to work collaboratively with other PDT members toward completion of work related to PROJECT due in part to the shared jurisdiction and/or interests.
- i. PARTIES will work collaboratively to secure additional funds for future phases of the PROJECTS.

5. Funding and Invoicing

- a. CITY will appropriate CITY funds to initially pay for ongoing expenses related to the PROJECT.
- b. Reimbursement of costs shall be made upon CITY’s satisfactory performance, based upon the scope and methodology contained in EXHIBIT A as determined by SBCAG
- c. For Services rendered by CITY, SBCAG will reimburse CITY non-federal funds up to an amount not to exceed \$395,000.
- d. Should it be determined at any point in time that the not to exceed amount is insufficient to fully fund the Services under this MOU, CITY shall meet and confer with SBCAG to determine a course of action.
- e. CITY shall submit invoices for reimbursement to SBCAG on a quarterly basis. Invoices shall be accompanied by a brief progress report of Services completed for that quarterly period. CITY must have at least one copy of supporting backup documentation for costs incurred and claimed for reimbursement.
- f. SBCAG will provide reimbursement to CITY within 30 days of receipt of invoice and supporting documentation.

6. Other Parties of Interest

CALTRANS shall participate in the development of this PROJECT as a member of the PDT, by providing oversight of Services to be completed within the Caltrans operating right of way

7. Points of Contact & Notices

PARTIES shall establish a primary point of contact for administering the Services to be completed under this MOU for the PROJECT. SBCAG and CITY may modify its point of contact by providing in writing the new individuals contact name and information to the PARTIES’ point of contact.

Any notice or consent required or permitted to be given under this MOU shall be given to the primary point of contact in writing, by first-class mail, postage prepaid, or otherwise delivered. Notices and consents under this section shall be deemed to be received 5 days following their deposit in the U.S. mail. This section shall not be construed as meaning that PARTIES agree to service of process except as required by applicable law.

Agency	Contact Individual and Information
CITY	Brian D’Amour City of Santa Barbara City Engineer 630 Garden Street Santa Barbara, CA 93101 BDamour@SantaBarbaraCA.gov
SBCAG	Fred Luna SBCAG Principal Transportation Engineer

	260 North San Antonio Road, Suite B Santa Barbara, CA 93110 fluna@sbcag.org
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8. Issue Resolution: Administrative Remedies

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.

Level 1 – Project Development Team (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 the Scope of Services, 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 Deputy Executive Director for SBCAG, and Public Works Director for CITY.

Level 3 – Executive Management. Any issue not being able to be 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 City Administrator for CITY.

No court shall exercise subject matter jurisdiction prior to exhaustion of all administrative remedies described in this section.

9. Indemnification and Non-Partnership

PARTIES agrees to defend, indemnify, and hold harmless each other in accordance with the provisions of Exhibit B, attached hereto and incorporated herein by this reference.

10. Entire Agreement and Amendments

In conjunction with the matters considered herein, this MOU contains the entire understanding 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.

11. Debarment and Suspension

CITY certifies to SBCAG 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. CITY certifies that it shall not contract with a contractor to complete work that is so debarred or suspended.

12. 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. CITY 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.

13. Records, Audit and Review

The PARTIES shall keep such business records pursuant to this MOU as would be kept by a reasonably prudent practitioner of its profession and shall maintain such records for at least 4 years following the termination of this MOU. All accounting records shall be kept in accordance with generally accepted accounting practices. The PARTIES shall have the right to audit and review all such documents and records at any time during regular business hours or upon reasonable notice. In addition, if this MOU exceeds ten thousand dollars (\$10,000.00) the PARTIES shall be subject to the examination and audit of the State Auditor General for a period of 3 years after final payment under the MOU (Cal. Govt. Code Section 8546.7). The PARTIES 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, CITY 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, the CITY shall reimburse the amount of the audit exceptions and any other related costs directly to SBCAG as specified by SBCAG in the notification.

14. Nondiscrimination

The PARTIES 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 PARTIES, for itself, its assignees and successors in interest agrees as follows:

- A. **Compliance with Regulations.** The PARTIES 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 PARTIES or contractor(s) shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The PARTIES shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CITY 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 recipient deems appropriate. CITY, 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. The PARTIES shall not participate either directly or indirectly in the discrimination prohibited by Title 49, Code of Federal Regulations, section 21.5, including employment practices when the contract covers a program set forth in Appendix B of the regulations.

- C. **Solicitations for Contractors including Procurement of Materials and Equipment.** In all solicitations either by competitive bidding or negotiations made by CITY for work to be performed under this MOU, including procurement of materials or leases of equipment, each potential contractor or supplier shall be notified by CITY of the 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.** CITY 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 CITY is in the exclusive possession of another who fails or refuses to furnish this information, CITY 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 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 under this MOU until CITY complies, and/or
 2. Cancellation, termination or suspension of the MOU in whole or in part.

15. Termination

- A. **For Convenience.** Either PARTY may terminate this MOU in whole or in part upon 30 days written notice.
- B. **For Nonappropriation of Funds.** Notwithstanding any other provision of this MOU, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or local governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this MOU, then SBCAG will notify CITY of such occurrence and SBCAG may terminate or suspend this MOU in whole or in part, with or without a prior notice period. Subsequent to termination of this MOU under this provision, SBCAG shall have no obligation to make payments with regard to the remainder of the term.
- C. **For Cause.** Should CITY default in the performance of this MOU or materially breach any of its provisions, SBCAG may, at SBCAG's sole option, terminate or suspend this MOU in whole or in part by written notice. Upon receipt of notice, CITY shall immediately discontinue all work affected (unless the notice directs otherwise) and notify SBCAG as to the status of its performance. The date of termination shall be the date the notice is received by CITY, unless the notice directs otherwise.

Upon termination, the CITY shall deliver to SBCAG all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by CITY in performing this MOU, whether completed or in process, except such items as SBCAG may, by written permission, permit CITY to retain. Notwithstanding any other payment provision of this MOU, SBCAG shall pay CITY for satisfactory work performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall CITY be paid an amount in excess of the full price under this MOU. CITY shall furnish to SBCAG such financial information as in the judgment of SBCAG is necessary to determine the reasonable value of the work rendered. In the event of a dispute as to the reasonable value of the work rendered, the decision of SBCAG shall be final. The foregoing is cumulative and shall not affect any right or remedy which SBCAG may have in law or equity.

16. 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.

17. 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.

18. Remedies Not Exclusive

No remedy herein conferred upon or reserved 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.

19. No Waiver of Default

No delay or omission of either PARTY 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.

20. 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.

21. Compliance with Law

The PARTIES shall, at their 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. Applicable federal and state laws may include but are not limited to Title 2, Code of Federal Regulations (CFR), Part 200, 23 CFR, 48 CFR Chapter 1, Part 31, Local Assistance Procedures, Public Contract Code sections 10300 through 10334, and Public Contract Code sections 10335 through 10381.

22. 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.

23. Execution of MOU 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.

24. 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.

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. Precedence

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

27. Suspension for Convenience

SBCAG may, without cause, order CITY in writing to suspend, delay, or interrupt the services under this MOU in whole or in part for up to 30 days. SBCAG shall incur no liability for suspension under this provision and suspension shall not constitute a breach of this MOU.

28. Administrative Amendments

The SBCAG Executive Director, or designee, is authorized to make immaterial amendments to the MOU such as updating the Designated Representative, 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 contract amount, in accordance with Section 10 and upon review and concurrence by legal counsel.

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



SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS
A Joint Powers Authority

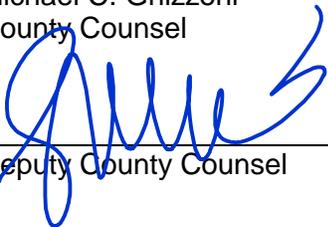
Holly Sierra
Chair, SBCAG Board of Directors

Date:

ATTEST:

Marjie Kirn
Executive Director
Clerk of the Board

APPROVED AS TO FORM:
Michael C. Ghizzoni
County Counsel



Deputy County Counsel

(Signatures continue on following page.)

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



CITY OF SANTA BARBARA
A Municipal Corporation

Mr. Paul Casey
City Administrator

Date:

ATTEST:

Sarah Gorman
City Clerk Services Manager

APPROVED AS TO FORM:

Ariel Pierre Calonne
City Attorney

EXHIBIT A

SCOPE OF SERVICES

**MILPAS STREET/HIGHWAY 101 INTERSECTION IMPROVEMENTS
SCOPE OF SERVICES and ROLES AND RESPONSIBILITIES
for
DESIGN, RIGHT OF WAY, UTILITIES AND PERMITTING**

TASK		RESPONSIBLE PARTY		COMMENTS
		SBCAG	CITY	
1-1	Project Management/Finance/Administration			
	Funding Procurement	L		
	Reimbursement Invoices to City	L	S	
2-1	30% Design			
	Complete DART process and obtain CDP		L	City anticipates two DART submittals, three planning commission hearings
	Coordinate preliminary ROW with private property and utility owners		L	
	Complete 30% plans		L	
	Complete CEQA		L	
	Obtain ABR PDA		L	
	Amend Caltrans EIR	S	S	City Planning will assist Caltrans to amend EIR noting the proposed design meets the mitigation requirement
	Public Meetings		L	
3-1	30% to Final Design			
	Complete 60% PS&E		L	
	Complete 90% PS&E		L	
	Final PS&E		L	
	Advertise and award construction contract		L	
4-1	ROW			
	Coordinate ROW with private property owners		L	
	Complete Utility Relocations		L	
	Obtain Caltrans Encroachment Permit		L	Assume work directly with Caltrans
	Certify ROW		L	

LEGEND:

<u>Symbol</u>	<u>Description</u>
S	Shared responsibility among PARTIES
L	Lead responsibility by either SBCAG or CITY

EXHIBIT B**INDEMNIFICATION & NON-PARTNERSHIP****1. 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.

2. Notification of Accidents and Survival of Indemnification Provisions

PARTIES shall notify the other PARTY immediately in the event of any accident or injury arising out of or in connection with this MOU. The indemnification provisions in this MOU shall survive any expiration or termination of this MOU.

3. 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 herein