

WINE COUNTRY EXPRESS
MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITIES OF LOMPOC, BUELLTON, AND SOLVANG AND
THE COUNTY OF SANTA BARBARA

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

Effective Date: On or about July 1, 2019

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**”), the County of Santa Barbara, a local governmental State agency (the “**County**”), collectively referred to herein as the “**Parties**,” for the purpose of defining agency roles, responsibilities, and commitments in conjunction with the continuation of a service 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. Description

The Wine Country Express Continuation Project (the “**Service**”) will provide regularly-scheduled, fixed-route, intercity bus service between Lompoc, Buellton, and Solvang. The **Service** 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 on July 1, 2019, or on the date when all **Parties** have signed this MOU, whichever occurs later. This MOU will remain in effect until June 30, 2024, contingent on the availability of funding and service performance.

2. Lead Agency

Lompoc shall be the sole administrator of the **Service** and shall be responsible for service contracting with a qualified bus operator (“**Contractor**”) and compliance with all federal and state requirements.

3. Service

This MOU contains the budget, funding obligations, and performance requirements for the **Service**. Annual performance measures for the term of the **Service** will provide thresholds to gauge the **Service’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 this 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 **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**.

5. Contractor Insurance

Lompoc shall require the **Contractor** of the **Service** 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 the **Parties**, 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 of legally protected characteristics or conduct including sex, race, color, ancestry, religious creed, national origin, physical disability, medical condition, age, or marital status. **Contractor** shall ensure that the evaluation and treatment of their employees, applicants for employment and service customers are free from such discrimination.”

7. Service Plan

The **Service** will operate six days a week, Monday through Saturday. 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 **Service** will operate a minimum of three (3) round-trips per day in the morning, mid-day and afternoon. Service may be expanded above minimum levels with the unanimous approval of the **Parties**. The service shall include stops in Lompoc, Buellton and Solvang with stops at intermediate locations subject to change as demand warrants.

8. Funding

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

The primary source of funding for the **Service** will be Transportation Development Act funds. The **Parties** will provide Transportation Development Act funds or Local Measure A funds as matching funds, or other local funding if it becomes available. If additional 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 **Service**.

Lompoc will, on an annual basis, provide an annual projection to the **Parties** for the net operating costs, after deducting passenger fares and other operating revenue and operating assistance from any state and federal grants for the purpose of the **Service**. The annual projection will also include the vehicle replacement costs and infrastructure costs specific to operate the **Service**. The annual projection will be equally divided to each Party as their contribution. **Parties** agree to commit their respective Transportation Development Act and/or Local Measure A apportionments for the operation of the **Service** and vehicle replacements for this **Service**. This allocation is subject to the **Parties'** respective governing bodies

9. Securing Funding

The **Parties** will work cooperatively to pursue other federal or state grant opportunities where appropriate for the **Service** 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. Lompoc may seek assistance from the other **Parties** with preparation of grant applications.

If a local match is required to receive grant funding, then the **Parties** 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 **MOU**. Lompoc will prepare and distribute the annual report to the **Parties** upon receiving its year-end closeout information.

11. Records, Audit and Review

Lompoc shall keep such business records pursuant to this **MOU** 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 **MOU**, or longer, if required by any granting agency providing funds for the Service. 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. Working Group

A **Working Group** will be established consisting of one (1) staff representative from each **Party**.

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

Santa Barbara County Association of Governments (SBCAG) shall be a non-voting member of the Working Group unless a majority vote is held to remove them. Additional non-voting members may be added and removed by majority vote.

The Working Group will meet as necessary to discuss the performance of and make recommendations on the **Service**.

13. Performance Measures

The Working Group, shall develop performance measures and evaluate the effectiveness of the **Service** based on the following performance measures:

- Fare box 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.

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 will evaluate performance reports prepared annually by Lompoc based on performance indicators for the **Service**.

14. Bus Equipment

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

Lompoc shall utilize a bus from its COLT fleet for the operation of the **Service**. A projected replacement service life for that bus shall be five (5) years at which time the contributions from the **Parties** shall be used to purchase a bus.

15. Service Contracting

Lompoc will prepare any Request for Proposals (RFP) needed for the provision of operating services by a **Contractor** for the **Service**. The RFP shall meet all applicable state and 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 **Service**. Lompoc will be responsible for the sale of advertising, if any, on the **Service**. Proceeds from such advertising shall be included in the operating revenues of the **Service**.

16. Fares

One-way fares for the service will be \$2.00 for adults and \$1.00 for seniors and persons with disabilities. Monthly passes will be \$75 for adults and \$37.50 for seniors and persons with disabilities. All local transit agencies will work together to ensure that transfers are free from the intercommunity service to local systems. Fare changes shall be subject to the approval of Lompoc City Council to maintain performance mandates.

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 **Parties** and is not a part of this **MOU**.

18. Amendment

This **MOU** may be amended or extended only by the written consent of all **Parties**.

19. Termination

Any **Party** to this **MOU** may terminate its participation under this **MOU** by giving 90 days' written notification to the other **Parties**.

20. Integration

This **MOU** represents the entire and integrated agreement among the **Parties** and supersedes any and all other negotiations, representations, and 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 **MOU** which is not contained herein shall be valid or binding.

21. California Law to Apply

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

22. Jurisdiction

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

23. Warranty of Authority

Each person signing this **MOU** on behalf of a **Party** warrants that they have authority to do so.

24. Waivers

The waiver by any **Party** to this **MOU** of any term, covenant, or condition of this **MOU** 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.

25. Severability

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

26. Points of Contact

All notices referenced in this **MOU** 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

Aviation/Transportation Administrator
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, 2nd Floor
Santa Barbara, CA 93101

27. Counterpart Signatures & Effective Date

The **Parties** agree that this **MOU** may be signed in counterparts and shall become effective when fully executed by all **Parties**.

CITY OF BUELLTON

Mayor Holly Sierra

Date

Approved as to Form:

Ralph Hanson

City Attorney of Buellton

By:_____

Ralph Hanson, City of Attorney of Buellton

CITY OF LOMPOC

By: _____
James Throop, City Manager

Date

ATTEST

By: _____
Stacey Haddon, City Clerk

Approved as to Form:
Jeff Malawy
City Attorney

By: _____
Jeff Malawy, City Attorney

CITY OF SOLVANG

Mayor Ryan Toussaint

Date

ATTEST

By: _____

Approved as to Form:

City Attorney

By: _____

_____, 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: _____

Michael R. Ledbetter, Senior Deputy,
Counsel for County

By: _____

Robert W. Geis, Auditor-Controller

By: _____

Risk Management

Attachment A

Contractor shall comply with the following requirements. Contractor shall not subcontract any services provided under this MOU without the written consent of the Parties 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 elected officials, 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 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 Parties.

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 the Parties and their elected officials, 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 elected officials, 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 Party and any other insured or additional insured under the policy.

7. Proof of Coverage. Contractor shall furnish Certificates of Insurance to the Parties 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 Parties, 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 Parties. A Self-Insured Retention is not acceptable.