

**ATTACHMENT B –
County of San Diego and
North County Transit District
Memorandum of
Understanding**

MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN THE COUNTY OF SAN DIEGO AND NORTH COUNTY TRANSIT DISTRICT
TO PURSUE FUNDING AND OTHER OPPORTUNITIES FOR IMPROVEMENTS
TO AREAS OF MUTUAL JURISDICTION

This Memorandum of Understanding (“MOU”) is made and entered into by and between the COUNTY OF SAN DIEGO (the “County” or “COSD”), a political subdivision of the State of California, and the NORTH COUNTY TRANSIT DISTRICT (“NCTD”), operating under and pursuant to Public Utilities Code Section 125000, et seq. and, individually referred to as a “Party” and collectively referred to herein as “Parties.”

RECITALS

The following recitals are a substantive part of this MOU:

WHEREAS, the purpose of this MOU is to document the Parties’ understanding and responsibilities with respect to the pursuit of funding and opportunities for improvements at the general locations in Figures 1 and 2 below:

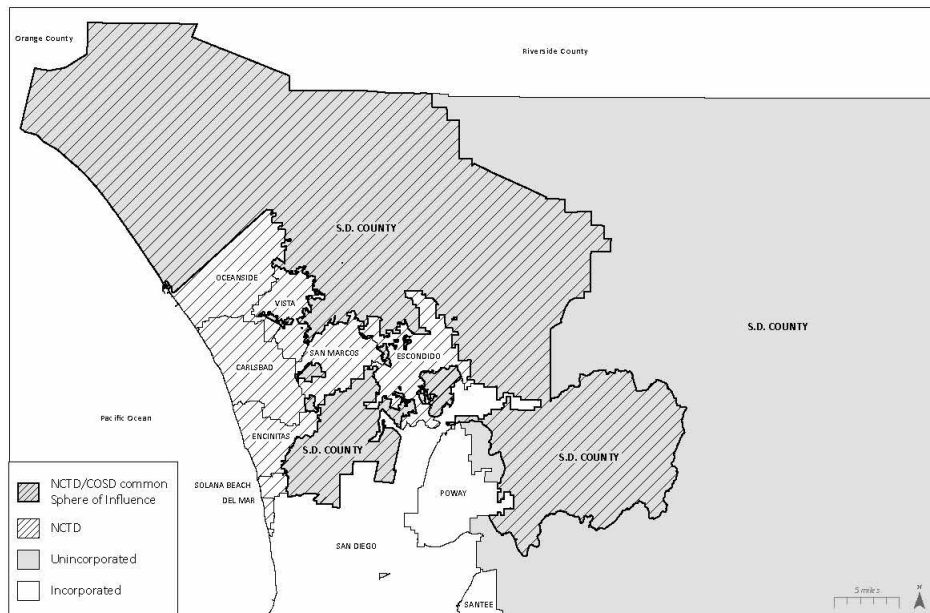


Figure 1. Map of NCTD and COUNTY mutual jurisdiction

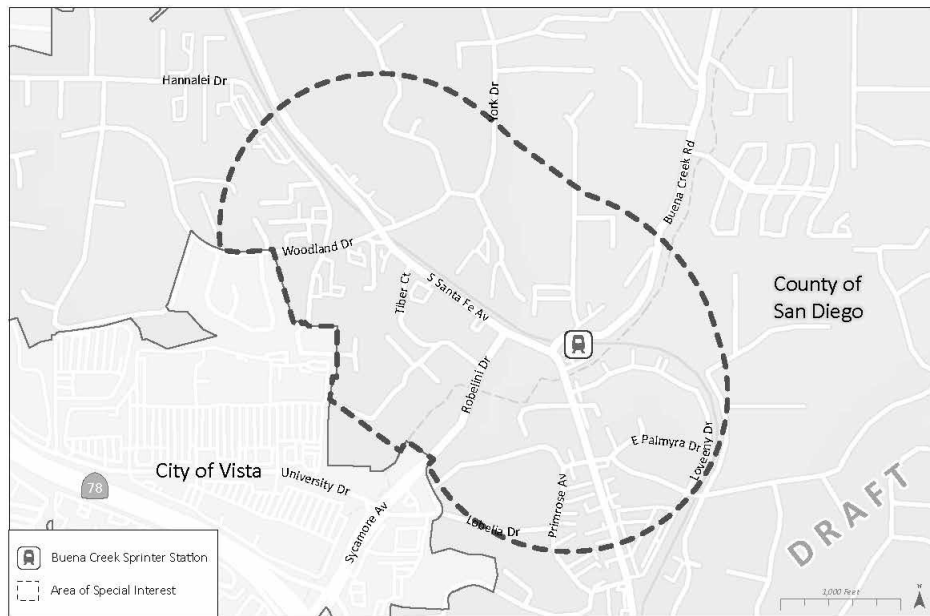


Figure 2. Map of Buena Creek Focus Area - Santa Fe Corridor from Hannalei Drive to Loveeny Drive

WHEREAS, the County supports and implements policies to increase housing production of all kinds and is prioritizing planning activities that accelerate housing production; and

WHEREAS, the County continues to identify opportunities to remove barriers to housing and encourage greater linkage between housing and transportation; and

WHEREAS, the County seeks to increase economic opportunities near existing population centers and support the construction of more diverse housing types, and mixed-use development and housing near regional mobility hubs, jobs, services, and transit; and

WHEREAS, the County has committed to focus future planning resources in areas suitable for in-fill and the most obtainable, affordable housing, including near transit; and

WHEREAS, the County is prioritizing collaboration with partners and communities to enhance economic vitality and pursue key regional housing, transportation, and economic development priorities; and

WHEREAS, NCTD supports the County's efforts to implement policies to increase housing production and construction of mixed-use development and housing near transit; and

WHEREAS, NCTD owns and maintains the Escondido Subdivision and underlying lands, upon which the SPRINTER hybrid rail operates, and which crosses through unincorporated lands within the County's jurisdiction; and

WHEREAS, the Buena Creek SPRINTER station within the Buena Creek Focus Area in Figure 2 is the only mass transit stop within the County's jurisdiction; and

WHEREAS, NCTD has prioritized certain rail safety and community enhancement projects along its Escondido Subdivision, such as the Buena Creek Grade Separation project; and

WHEREAS, the Parties mutually seek to implement projects in the San Diego region that will improve infrastructure, access, enhance housing opportunities, and help reach greenhouse gas emission reduction targets; and

WHEREAS, the Parties are seeking federal, state, and regional resources to advance these strategic objectives; and

WHEREAS, the Parties seek to enter a partnership to pursue grants and other opportunities in order to implement the listed improvements in the mutual NCTD/COSD jurisdiction including, but not limited to, the Buena Creek Focus Area; and

NOW THEREFORE, in consideration of the mutual promises set forth herein, the Parties agree as follows:

AGREEMENT

1. **Incorporation of Recitals:** The recitals set forth above are true and correct and are integrated as part of this MOU.
2. **NCTD Shall Perform the Following Tasks:**
 - a. Shall assign staff to support the development of grant applications.
 - b. Shall participate in quarterly meetings to discuss funding availability and strategies for grant application development.
 - c. Shall timely share information regarding NCTD projects, operations, grant strategies, and other information relevant to the development of the Buena Creek Focus Area.
 - d. If grant funding is received for a project on which the Parties have made joint efforts, shall work with the County to develop a separate funding agreement associated with the management and oversight of the grant funding; design of funded projects; and construction/implementation of funded projects.
3. **The County Shall Perform the Following Tasks:**
 - a. Shall assign staff to support the development of grant applications.
 - b. Shall participate in quarterly meetings to discuss funding availability and strategies for grant application development.
 - c. Shall timely share information regarding County projects, operations, grant strategies, and other information relevant to the development of the Buena Creek Focus Area.
 - d. If grant funding is received for a project on which the Parties have made joint efforts, shall work with the NCTD to develop a separate funding agreement associated with the management and oversight of the grant funding; design of funded projects; and construction/implementation of funded projects.
4. **Parties' Joint Responsibilities:**
 - a. The Parties are equal partners in the development and submittal of grant applications for projects in which they have a joint interest. All Parties shall provide timely reviews and approvals before grant applications are submitted. All Parties will agree on a lead applicant and co-applicant agency for each grant opportunity, as appropriate, depending on the expected outcome and application requirements, for each grant opportunity.

- b. To expedite the grant application process, the lead applicant may provide initial funding and other resources for a consultant/staff to develop the applications, as necessary. The funding commitment by the Parties assumes that the Parties will continue to pay or provide in-kind services as allowed for the entire cost of grant applications. The Parties agree to consider available opportunities to obtain funding from other sources to defray the cost of grant applications fully or partially.
- c. The lead applicant shall administer and manage active grant agreements, administer contracts, develop, and maintain a reporting and invoicing program, and communicate project and agreement progress to all Parties.
- d. The lead applicant shall be responsible for administering funding for projects that are receiving grant funding, including but not limited to submitting invoices and quarterly reports to the funding agency, distributing funding, and processing contract amendments as applicable.
- e. Nothing in the provisions of this MOU is intended to create duties or obligations to or rights in third parties to this MOU or affect the legal liability of the parties to this MOU. Any benefit to any third party is incidental and does not confer on any third party to this MOU any rights whatsoever regarding the performance of this MOU. Any attempt to enforce provisions of this MOU by third parties is specifically prohibited.
- f. The Parties shall perform the tasks outlined in this document subject to the availability of funds as determined by their respective governing bodies.

5. **Indemnity:**

- a. Claims Arising from Sole Acts or Omissions of a Party: Each Party hereby agrees to defend and indemnify the other Party, its agents, officers, and employees (hereinafter collectively referred to in this paragraph as "Indemnitees"), from any claim, action, or proceeding against the Indemnitees, arising solely out of the acts or omissions of the Indemnifying Party in the performance of this MOU. At their sole discretion, the Indemnitees may participate at their own expense in the defense of any claim, action, or proceeding, but such participation shall not relieve the Indemnifying Party of any obligation imposed by this MOU.
- b. Claims Arising from Concurrent Acts or Omissions: The Parties hereby agree to defend themselves from any claim, action, or proceeding arising out of the concurrent acts or omissions of Parties. In such cases, the Parties agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in Paragraph d below.
- c. Joint Defense: Notwithstanding Paragraph b above, in cases where the Parties agree in writing to a joint defense, the Parties may appoint joint defense counsel to defend the claim, action, or proceeding arising out of the concurrent acts or omissions of the Parties. Joint defense counsel shall be selected by mutual agreement. The Parties agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in Paragraph d below. The Parties further agree that neither Party may bind the other to a settlement agreement without the written consent of all Parties.
- d. Reimbursement and/or Reallocation: Where a trial verdict or arbitration award allocates or determines the comparative fault of the Parties, the Parties may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments, and awards, consistent with such comparative fault.
- e. This Paragraph 5 shall survive termination of this MOU.

6. **Matching Funds:** The Parties are not required to contribute matching funds as a condition of this MOU. To the extent the Parties contemplate matching funds for any grant, the structure of providing funds, including the amount and under what circumstances a match would be offered, shall be decided on an individual grant basis prior to submitting each application for funding and shall be subject to budget and funding availability.
7. **Other Funding Opportunities:** The Parties agree that this MOU does not preclude either Party from pursuing funding or other opportunities as a separate entity at any time.
8. **Insurance:** Each Party shall procure and maintain during the period of this MOU, insurance from insurance companies admitted to do business in the State of California or shall self-insure to cover any contractual liability.

Administration of MOU: Each Party identifies the individual below to serve as the authorized administrative representative for that Party. Any party may change its administrative representative by notifying the other party in writing of such change. Any such change will become effective upon the receipt of such notice by the other Party to this MOU. Any correspondence required or permitted under this MOU may be personally served on the other Party by the Party giving notice, or may be served by email, overnight mail service, or prepaid registered or certified USPS mail, return receipt requested, to the following addresses:

For NCTD

North County Transit District
810 Mission Avenue
Oceanside, CA 92054
Attn: Office of the General Counsel
Phone: 760-966-6700
E-mail: lwinfree@nctd.org

For County

County of San Diego
5510 Overland Ave., Suite 310
San Diego, CA 92123
Attn: Chief of Long Range Planning
Phone: 858-505-6677
E-mail: PDS.LongRangePlanning@sdcounty.ca.gov

9. **Term:** This MOU shall become effective on the date the last Party executes the MOU and unless it is amended by the Parties in writing or terminated for convenience, this MOU shall terminate on (06/30/2028).
10. **Termination for Convenience.** The Parties may, by written notice stating the extent and effective date, terminate this MOU for convenience in whole or in part, at any time.
11. **Conformance with Rules and Regulations:** The Parties shall conform with all applicable federal, state, County, and local laws, rules, and regulations, current and hereinafter enacted, including facility and professional licensing and/or certification laws, and keep in effect any and all licenses, permits, notices, and certificates as are required. The Parties shall further comply with all laws applicable to wages and hours of employment, occupational safety, fire safety, health, and sanitation.
12. **Amendments:** This MOU may be amended only by consent of both Parties. No amendment shall be effective unless it is in writing and signed by the duly authorized representatives of the Parties.
13. **Severability:** If any terms or provisions of this MOU or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this MOU, or the application of such term and provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and every other term and provision of this MOU shall be valid and enforced to the maximum extent permitted by law.
14. **Full Agreement:** This MOU represents the full and entire agreement between the parties and supersedes any prior written or oral agreements that may have existed.
15. **Scope of MOU:** This MOU only applies to the grant efforts described herein and does not set forth any additional current or future obligations or agreements between the Parties, except that the Parties may, by written amendment, amend the scope of this MOU.

16. **Governing Law and Venue:** This MOU shall be interpreted in accordance with the laws of the state of California. If any action is brought to interpret or enforce any term of this MOU, the action shall be brought in a state or federal court situated in the County of San Diego, State of California.
17. **Successors:** All terms, conditions, and provisions hereof shall inure to and shall bind each of the Parties hereto, and each of their respective heirs, executors, administrators, successors, and assigns.
18. **Independent Contractors:** For purposes of this MOU, the relationship of the Parties is that of independent entities; neither County nor County's employees shall be deemed NCTD employees or agents, nor shall NCTD or NCTD's employees be deemed County employees or agents, and the Parties shall not be deemed agents of each other or as parties to a joint venture. The Parties shall maintain sole and exclusive control over their personnel, agents, consultants, and operations.
19. **Authorization of Agreement:** Each Party declares that it has read this MOU and understands and knows the contents thereof and represents and warrants that each of the Parties executing this MOU is empowered to do so and hereby binds the respective Party.
20. **Consultation with Attorney:** Each Party declares that, prior to execution of this MOU, it has consulted with its attorney in order to intelligently exercise its own judgment in deciding whether to execute this MOU.
21. **Counterparts:** This MOU may be executed in any number of identical counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument when each party has signed one such counterpart. The Parties further agree that a facsimile copy of the executed counterparts shall have the same force and effect as an original.

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed and delivered as of the last date of a Party's signature.

NORTH COUNTY TRANSIT DISTRICT

Paul J. Ballard
Executive Director

Date Signed

APPROVED AS TO FORM

Lori A. Winfree
General Counsel

Date Signed

COUNTY OF SAN DIEGO

Dahvia Lynch
Director

Date Signed

APPROVED AS TO FORM

Claudia G. Silva
County Counsel

By: Kelsey Clayton, Senior Deputy

Date Signed