



**Foothill Transit**

**Memorandum of Understanding**

**between**

**Foothill Transit**

**and**

**Mt. San Antonio Community College District**

**Transit Center**

This Memorandum of Understanding (MOU) is made and entered into as of March 7 2017 by and between **FOOTHILL TRANSIT**, a joint powers agency organized under the laws of the State of California with its principal place of business at 100 South Vincent Avenue, Suite 200, West Covina, California 91790 and **MT. SAN ANTONIO COMMUNITY COLLEGE DISTRICT** (the District), a Community College District with its principal place of business at 1100 North Grand Avenue, Walnut, California 91789. Foothill Transit and the District are sometimes individually referred to as a "Party" and collectively as "Parties."

## **ARTICLE 1 RECITALS**

A. The District owns certain real property generally located on Temple Avenue between Mt. SAC Way and Bonita Drive, which property is more particularly described in Exhibit "A" attached hereto and incorporated by reference herein (the Property). A portion of the Property is proposed to be developed as a transit center and transit store, which will consist of three primary elements: 1) a transit center with bus bays to serve Foothill Transit's buses; 2) a Foothill Transit store; and 3) electric bus charging stations.

B. Foothill Transit operates a public transportation system that services the District and the surrounding area. Foothill Transit provides bus transportation services along specified routes for the benefits of the students at the District and residents of the surrounding communities.

C. The District and Foothill Transit wish to enter into this MOU to provide direction for the development of the transit center facility, including the joint financing, planning, design, construction and use of components of the transit center, transit store, electric bus charging stations, and potential bike storage area to be constructed on the Property to accommodate Foothill Transit buses and customers (as more particularly described herein, the Project).

## **ARTICLE 2 SCOPE OF PROJECT**

The Project generally consists of the construction of a transit center that includes eight to ten transit bays with covered walkways, a transit store, electric bus charging stations, vehicular and pedestrian circulation improvements adjacent to the transit center area, and potential bike storage area to be utilized by Foothill Transit. Exhibit "B" attached hereto and incorporated by reference herein contains a more complete description of the Project.

## **ARTICLE 3 FUNDING OBLIGATIONS OF FOOTHILL TRANSIT**

A. Except as otherwise provided herein, Foothill Transit shall provide all funding necessary to design and construct the Project. Foothill Transit will only design and construct the Project if sufficient funding is available to Foothill Transit to complete the design and construction of the Project.

B. The Parties agree that Foothill Transit will serve as the Federal Transit Administration (FTA) grantee for the Project. Foothill Transit will contribute an amount not to exceed \$8,182,724 of funding to the Project.

**ARTICLE 4  
FUNDING OBLIGATIONS OF THE DISTRICT**

The District agrees that it will contribute a portion of the Property, value to be determined at such time as the specific site for the Project can be legally defined, but generally described as the current faculty parking lot designated as "Lot D3". The District will, by way of a resolution of the District's Board of Trustees, enter into a long term lease with Foothill Transit for the purpose of constructing and operating the Transit Center.

**ARTICLE 5  
PRE-CONSTRUCTION AND RELATED ENVIRONMENTAL ACTIVITIES**

A. Foothill Transit and the District will be jointly responsible for the preparation of conceptual design drawings and specifications for the Project. The Parties shall meet and discuss 1) the design of the Project, 2) the preparation of conceptual design and landscape plans, and 3) Foothill Transit's budget for the plans and the Project, prior to commissioning the preparation of such plans. The design shall adhere to the District's campus standards.

B. Foothill Transit and the District will be jointly responsible for the funding, preparation, and assuring completion of all environmental documents and clearances required under federal and state law for the Project.

C. Foothill Transit shall be responsible for the funding, commissioning, and preparation of 1) final design plans, 2) construction drawings and specifications for construction of the Project, including the commissioning and preparation of final design drawings, and 3) construction drawings and specifications related to the electric bus charging stations. Foothill Transit will submit all construction drawings and specifications to the District for its review, comment, and approval. Foothill Transit agrees that final design plans shall be consistent with the jointly-developed conceptual design drawings and specifications for the Project prepared pursuant to subsection A. above. Foothill Transit shall afford the District the opportunity to review the construction drawings prior to Foothill Transit's issuance of the invitation for bids for construction of the Project.

D. The District will expeditiously take all actions necessary to consider the approval of the Project, including, but not limited to, conducting any public hearings required for the Project, reviewing all state and/or federal environmental documents, and obtaining all required construction permits after Project approval.

**ARTICLE 6  
CONSTRUCTION OF THE FACILITIES**

A. Hiring of Contractor(s). Foothill Transit agrees to hire a contractor or contractors to construct the Project. Foothill Transit agrees to obtain contractor bids together with bid bonds to construct the Project as soon as practicable after approval of the construction drawings and specifications by the District as provided for in Article 5 and the completion/certification of the applicable environmental documents. Foothill Transit will be solely responsible for the review of bids received to determine the lowest responsible and responsive bidder. Foothill Transit shall comply with all applicable state and federal laws governing the bidding and construction of the Project.

B. Construction Defined. Project construction shall include, but not be limited to, the erection of the physical structures comprising the Project facility(ies); the installation of all systems necessary for the proper functioning of the transit center and transit store, including but not limited to the relocation and modification of utilities; making vehicular and pedestrian circulation improvements adjacent to the transit center area; and installation of landscaping and irrigation around the transit center. Construction may also include the installation of electric bus charging stations at a location on the Property to be mutually determined by the Parties and construction of any and all ancillary bus stop facilities that Foothill Transit determines in its sole discretion are necessary to serve the Project.

C. Construction Hours. Foothill Transit will ensure that its contractor's activities do not interfere with the daily activities taking place at the District's college campus and adhere to the District's campus construction hours of work.

D. Contractor's Work Areas. Foothill Transit will ensure that any contractor staging areas are approved by the District. Foothill Transit will also ensure that the contractor will be solely responsible for the staging area including the equipment and materials stored in staging area, as well as its tools and supplies and safety of its personnel.

E. Site Cleanup. Foothill Transit will ensure that its contractor shall, at the end of each workday, clean the job site and store all equipment and material in a neat and orderly manner; that the contractor shall remove all waste generated by the contractor from the site on a timely basis; and that at the completion of the Project, the contractor shall clear and clean the job site of all materials and waste resulting from its work within 48 hours of final acceptance of the Project facility(ies) by Foothill Transit.

F. Construction Progress Meetings. Foothill Transit will hold weekly construction progress meetings with its construction contractor. A representative of the District will be invited to participate in these meetings.

G. Environmental Remediation. The District agrees that it will be solely responsible for any environmental remediation necessary to prepare the Project Property for construction activities.

## **ARTICLE 7 OWNERSHIP OF FACILITIES**

The Parties agree that the transit center, bus bays, transit store, electric bus charging stations, and potential bike storage area will be owned by Foothill Transit (collectively, the Facilities).

## **ARTICLE 8 USE OF PROPERTY**

The District shall lease the Property underlying the Facilities to Foothill Transit, at no cost to Foothill Transit, for a period of not less than fifty (50) years. The lease agreement shall provide Foothill Transit with among other things a) the exclusive right to use the Facilities without interference from the District and b) roadway access to the Facilities at all times.

Foothill Transit specifically recognizes that the lease contemplated in this Article will terminate upon completion of the fifty (50) year term. The Parties shall meet to discuss extension of the lease term or transfer of ownership of the Facilities to the District no later than twelve (12) months prior to the termination of the lease.

## **ARTICLE 9 UTILITIES**

A. Utility Services Provided by the District. The District agrees to provide water, electricity and/or sub-meter services, emergency power, and storm and sanitary sewer services for all aspects of the Project, except for the electric bus charging stations. Foothill Transit will be solely responsible for the payment of costs for the utility services provided by the District.

B. Utility Service for Electric Bus Charging Stations. Foothill Transit will be solely responsible for all electric utility charges related to the electric bus charging stations and will work with the local electric company offering preferred rates to Foothill Transit for utility charges for the electric bus charging stations.

## **ARTICLE 10 MAINTENANCE AND REPAIRS**

A. As used in this MOU, “maintenance” shall mean the provision of janitorial services; trash removal services; wall surface repairs; painting of the façade of the facilities as necessary; repairs/removal of surface vandalism; inspection, maintenance and repair of elevators; inspection, cleaning and replace of mechanical, electrical and plumbing equipment, fixtures and utilities; the removal and disposal of trash and debris; and other repairs other than structural repairs as provided for in Article 11.

B. The District will be responsible for all maintenance of the Project, except with respect to the electric bus charging stations. The District will perform all janitorial maintenance in accordance with the standards that it uses in performing janitorial maintenance services elsewhere on District-owned Property. All other maintenance work shall be done in accordance with the standards prescribed in manufacturers’ operations and maintenance manuals. All repairs and replacements made by the District will be made and performed in a good and workmanlike manner in accordance with all applicable codes, statutes, and regulations, including but not limited to prevailing wage laws and regulations, and will be made and performed so that the repairs and replacements will be at least equal in quality, value, and utility to the original work or installation. The District will be responsible for all costs associated with fulfilling its maintenance responsibilities.

C. Foothill Transit will be solely responsible for the maintenance of the electric bus charging stations. Foothill Transit will be responsible for all costs associated with maintenance of the electric bus charging stations.

D. Foothill Transit will be responsible for the development of a District-approved Preventive Maintenance Plan for the Project facilities and all of the mechanical, electrical, and plumbing equipment, fixtures, and utilities, and will be responsible for any repairs to the on-campus roadway caused by bus access to the transit center. The District will be responsible for the implementation

of the Plan so long as it is responsible for providing maintenance in accordance with the provisions of this Article.

## **ARTICLE 11 STRUCTURAL REPAIRS**

- A. As used in this MOU, “structural repairs” shall mean all repairs other than those defined as “maintenance” in Article 10. Structural repairs include, but are not limited to, repairs to any structural element of the structures including foundations, walls, and load-bearing walls.
- B. Foothill Transit will be solely responsible for structural repairs to the Facilities.
- C. Foothill Transit will notify District, in writing, in advance of making any structural repairs, and will provide the other Party detailed plans and specifications of any such repairs.

## **ARTICLE 12 CAPITAL IMPROVEMENTS**

- A. Construction of Foothill Transit-Initiated Capital Improvements. Foothill Transit will be responsible for the construction of all future capital improvements to the Facilities constructed as part of the Project.
- B. Foothill Transit-Initiated Improvements. The District must approve any capital improvements to the Project initiated by Foothill Transit, which approval shall not be unduly withheld. Foothill Transit shall be solely responsible for all costs associated with Foothill Transit-initiated capital improvements.
- C. District-Initiated Improvements. If the District initiates any capital improvements to the Project, Foothill Transit shall have the right to participate in the planning process for such improvements. The District, in consultation with Foothill Transit, will be responsible for the development of detailed plans and specifications for any such capital improvements. The District shall be solely responsible for all costs associated with District-initiated capital improvements; provided that Foothill Transit may determine, in its sole discretion, to reimburse the District for any costs associated with such capital improvements.

## **ARTICLE 13 ALTERATIONS**

Neither Party will make any alterations to the Project or Facilities without prior notice to the other Party. Each Party will have the right to approve such alterations if the alterations are integrally related to the functionality or operations of the Project or Facilities.

## **ARTICLE 14 SECURITY**

The District will be solely responsible for the security of the Project Facilities after completion of construction.

**ARTICLE 15  
SIGNS AND ADVERTISING**

A. Foothill Transit may, at its own expense, install and operate electronic or other type of information signs within the Project subject to compliance with District and City of Walnut sign ordinance(s). Foothill Transit specifically acknowledges that commercial advertisement signage is prohibited. For purposes of this MOU, the term “commercial advertisement signage” does not include signage promoting Foothill Transit’s routes and services.

B. The District must approve the installation of any signs by Foothill Transit within the boundaries of the Project.

**ARTICLE 16  
INSURANCE**

A. Foothill Transit will be responsible for obtaining and maintaining builders’ risk insurance in an amount sufficient to cover reconstruction of the Project should there be a loss during construction.

B. Foothill Transit will obtain and maintain property insurance on an all risk form on the Facilities, including but not limited to the electric bus charging stations.

C. The District will obtain and maintain property insurance on an all risk form on all District-owned property, if any, located on the Property on which the Project is built.

D. Once the Project is completed and operational, each Party shall obtain and maintain general liability insurance for injuries or damages to third parties arising out of each Party’s use of the Project, and each Party will ensure that the other Party is listed as an additional insured on the other Party’s general liability insurance policy.

**ARTICLE 17  
INDEMNITY**

A. While the Project is being constructed, Foothill Transit shall defend, indemnify, and hold the District and its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, including wrongful death, to the extent caused by any alleged acts, omissions, or willful misconduct of Foothill Transit, its Members, officials, officers, volunteers, agents, and staff in connection with the construction of the Project, including without limitation the payment of all consequential damages and attorneys’ fees and other related costs and expenses. The obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Foothill Transit or its Members, officials, officers, volunteers, agents, and staff.

B. While the Project is being constructed, the District shall defend, indemnify, and hold the Foothill Transit, its Members, officials, officers, volunteers, agents, and staff free and harmless from any and all claims, demands, causes of action, costs, including wrongful death, to the extent caused by any alleged acts, omissions, or willful misconduct of the District, its officials, officers, employees, volunteers, and agents in connection with the construction of the Project, including

without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. The obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the District, its officials, officers, employees, volunteers, and agents.

C. Once the Project is completed and operational, the Parties each agree to assume their own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may, in any manner result from, or arise out of each Party's use of the Project as described in this MOU.

## **ARTICLE 18 DISPUTE RESOLUTION**

If a dispute should arise between the Parties with respect to this MOU or any of its provisions, the Parties shall attempt to settle such dispute through the use of a mediator mutually acceptable to the Parties prior to the initiation of any legal action on the part of either Party with respect to this MOU, any of its provisions, and/or its enforcement. The costs of such mediation shall be shared equally by the Parties.

## **ARTICLE 19 COMPLIANCE WITH APPLICABLE PROVISIONS OF LAW**

The Parties agree to comply with all applicable provisions of federal law, California state law, and local ordinance which shall be considered a part of this MOU as though full set forth herein.

## **ARTICLE 20 GOVERNING LAW**

This MOU is entered into in and under the laws of the State of California and shall be interpreted in accordance therewith.

## **ARTICLE 21 NOTICES**

Notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

The District

Mike Gregoryk  
1100 N. Grand Ave.  
Walnut, CA 91789

With a copy to:

Sean Absher  
44 Montgomery Street  
Suite 4200  
San Francisco CA 94104



Foothill Transit  
Sharlane Bailey, Director of Facilities  
100 South Vincent Avenue, Suite 200  
West Covina, CA 91790  
626.931.7253

With a copy to: Thompson Coburn LLP  
1909 K Street, N.W., Suite 600  
Washington, D.C. 20006

Any notice or demand which may or must be given or made by a Party hereto under the terms of this MOU or any statute or ordinance shall be in writing and shall be deemed received on: 1) the day of delivery if delivered by hand (including overnight courier service) during the receiving Party's regular business hours; or 2) on the second business day following deposit in the United States mail, postage prepaid, to the address(es) set forth above, or to such other address(es) as the Parties may, from time to time, designate in writing pursuant to the provisions of this Article 20, provided the sender obtains and retains record of such postings. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

## **ARTICLE 22 GENERAL PROVISIONS**

A. Cooperation; Further Acts. The Parties shall fully cooperate with one another and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this MOU.

B. Successors and Assigns. This MOU shall be binding on the successors and assigns of the Parties. Neither Party shall assign, hypothecate, or transfer, either directly or by operation of law, this MOU or any interest herein without the prior written consent of the other Party. Any attempt to do so shall be null and void, and any assignees, hypothecates, or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer.

C. Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this MOU, the language of this MOU shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days. All references to the District include all personnel, employees, and agents of the District, except as otherwise specified in this MOU. All references to Foothill Transit include its elected officials, officers, agents, volunteers, and staff, except as otherwise specified in this MOU. The captions of the various sections and paragraphs are for convenience and ease of reference only and do not define, limit, augment, or describe the scope, content, or intent of this MOU.

D. Amendment; Modification. No supplement, modification, or amendment of this MOU shall be binding unless set forth in writing and signed by both Parties.

E. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by

custom, estoppel, or otherwise. The failure of either Party to enforce one or more of the terms or conditions of this MOU or to exercise any of its rights or privileges, or the waiver by either Party of any breach of such terms or conditions, shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.

F. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

G. Invalidity; Severability. If any portion of this MOU is declared as invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

H. Authority to Enter MOU. Each Party has all requisite power and authority to conduct its business and to execute, deliver, and perform the MOU. Each Party warrants that the individuals who have signed this MOU have the legal power, right, and authority to make this MOU and bind each respective Party.

I. Counterparts. This MOU may be signed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.

J. Entire Agreement. This MOU contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, and agreements.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the date first written above.

**FOOTHILL TRANSIT**

**MT. SAN ANTONIO COLLEGE DISTRICT**

By: \_\_\_\_\_  
Doran J. Barnes  
Executive Director  
Foothill Transit

By: \_\_\_\_\_  
William T. Scroggins  
President/CEO  
Mt. San Antonio College District

Approved as to Form:

Approved as to Form:

By: \_\_\_\_\_  
Kathleen Kraft  
Thompson Coburn LLP  
Special Counsel to Foothill Transit

By: \_\_\_\_\_  
Randall Porent  
Liebert, Cassidy, Whitmore  
General Counsel,  
Mt. San Antonio College District



## **Exhibit A**

### **DESCRIPTION OF PROPERTY**

Attach the preliminary Site Plan, and add a note that indicates that the legal description of the site is forthcoming with the board resolution for the site lease.