

Memorandum of Understanding

Between Golden Gate Bridge, Highway and Transportation District and Sonoma Marin Area Rail Transit District

This Memorandum of Understanding ("2017 MOU" or "Agreement") is entered into as of this ___ day of April 2017 ("Effective Date"), by and between the Golden Gate Bridge, Highway and Transportation District, a special district ("GGB"), and the Sonoma Marin Area Rail Transit District, a special district ("SMART"), (collectively referred to as the "parties").

Recitals

A. Introduction

The parties entered into a Memorandum of Understanding as of October 25, 2005 ("2005 MOU") that required GGB and SMART to enter into an agreement for the funding of construction of improvements to the San Rafael Transportation Center ("SRTC"). This 2017 MOU is entered into to satisfy this requirement of the 2005 MOU by providing the mechanism to fund and construct interim improvements to the SRTC, which are suboptimal as compared to the existing SRTC, and by providing the mechanism to insure that the funding is ultimately provided for the construction of the permanent SRTC improvements.

B. Collaboration for SRTC Plan

Since 2015, a multi-agency effort to redesign and relocate the SRTC facilities has been underway. A 2017 revised effort developed a plan that will allow bus operations to be maintained on site at the SRTC with relocated and reconstructed platforms. This interim facility design eliminates the need to relocate bus operations and construct and operate bus stops on surrounding City streets for the near term, but the interim facility is less functional than the existing SRTC. Accordingly, it does not satisfy the need for a permanent replacement of the SRTC in the long term. In order to accommodate construction of the extension of the SMART rail line to Larkspur ("Larkspur Extension") as soon as possible, this 2017 MOU identifies the roles and responsibilities of the parties for the funding and construction of interim improvements at the SRTC, and also identifies the requirements for the funding of the construction of the permanent SRTC improvements.

Agreement

The parties agree as follows:

A. Design, Funding and Construction of the SRTC Interim Improvements

1. The parties have jointly developed an interim design for improvements to the SRTC to accommodate both bus and rail service. The parties cooperated in conducting proxy tests of an interim design that reconfigures the passenger platforms and traffic circulation at the existing SRTC site. The agreed upon interim design and specific improvements were presented by the GGB General Manager to SMART's Board of Directors on March 15, 2017 and reviewed by the GGB Transportation Committee on March 23, 2017, as shown on the attached Exhibit A ("SRTC Interim Improvements").

2. The list of the SRTC Interim Improvements identified as necessary to construct and reconstruct facilities at the SRTC, together with construction design details and sequencing requirements, is shown on the table attached as Exhibit B.

3. SMART is the lead agency responsible for the final design and construction of the SRTC Interim Improvements, and will bear any and all costs including but not limited to planning, design, environmental, and construction costs. SMART has agreed to fully fund the cost of the SRTC Interim Improvements. The amount of Three Million Two Hundred Thousand Dollars (\$3,200,000) using "Port Sonoma" federal Funds has been committed to this effort. SMART, at its sole expense, will develop technical specifications and drawings to complete the design and incorporate the construction work elements described in Exhibit B. The parties recognize that the costs to construct the interim SRTC improvements will likely exceed \$3.2 million, and SMART will be responsible for funding the full cost.

4. The final design and completion of construction of the SRTC Interim Improvements shall be subject to the approval of GGB. GGB agrees it will not unreasonably withhold its review and consent to final plans. Any changes to the approved final design must be approved by GGB.

5. SMART will provide appropriate notice and signage, and its public information staff will coordinate with GGB public information staff to develop a public information campaign to inform the public in advance about the construction schedule for the SRTC Interim Improvements.

6. SMART shall incorporate the SRTC Interim Improvements into SMART's Larkspur Extension Project, to be bid, constructed and managed thereunder. All construction work for the SRTC Interim Improvements shall occur only between 10:30 p.m. Friday through 5 a.m. Monday, unless the parties agree in writing to an alternate schedule. There shall be no disruption to weekday bus schedules and the bus bays shall be open for scheduled bus operations at the SRTC. All construction of the Larkspur Extension through the SRTC will be conducted in such a manner as to not adversely affect existing bus transit operations at the SRTC. SMART shall ensure that its contracts for the Larkspur Extension incorporate these construction windows, and SMART agrees to enforce these contract provisions as a material condition of this MOU.

B. *Design and Funding For Relocation and Construction of Permanent SRTC Facility*

1. The parties recognize that the SRTC Interim Improvements are suboptimal and temporary, and as such the SRTC Interim Improvements do not satisfy the need to relocate and construct a permanent SRTC facility to accommodate reasonably anticipated levels of public transit bus and shuttle services in the long term.

2. The parties will develop a ~~full~~ funding plan for the permanent relocation and construction of improvements for the SRTC, and shall vigorously pursue all potential revenue sources, including, but not limited to, revenues derived from proposed Regional Measure 3, new State Transportation Improvement Program funds, and Federal transportation and infrastructure funding. In the event that the parties are unsuccessful in obtaining the identified and necessary funding from the referenced sources, the parties shall fully cooperate to develop an alternative funding plan.

3. SMART agrees to not issue a notice to proceed for construction of any rail construction north of Windsor until the parties have entered into a new agreement for the funding of the construction of the permanent SRTC improvements. As owner of the permanent SRTC, GGB shall be the lead agency for the environmental clearance, design, development, and construction of the permanent SRTC facility.

4. Any funds generated from the sale or redevelopment of the existing SRTC site, as applicable, will be reinvested in the permanent SRTC relocation site, with the understanding that GGB shall own the new permanent SRTC facility.

C. Property Acquisition

1. SMART agrees to acquire any property required for the Larkspur Extension, including the SRTC Interim Improvements, at its sole cost and expense.

2. The parties recognize that certain SRTC property owned by GGB will be necessary for the Larkspur Extension. The parties will negotiate the terms and conditions for SMART's purchase of the required property from GGB, subject to a permanent non-exclusive easement retained by GGB for the limited purpose of operating and maintaining the SRTC. Title to the additional rail line property acquired for the Larkspur Extension shall be held by SMART. The permanent nonexclusive easement held by GGB as described in the 2005 MOU at 1.4.a, Retained Rights, and in the Deed conveying the ROW to SMART over that portion of the SRTC located on the San Rafael ROW ("SRTC Easement") remains unchanged by this MOU.

D. Joint Use, Operation, and Maintenance of the Interim Transit Facility and the Permanent Relocation of the SRTC

1. Prior to the initiation of passenger rail service on the Larkspur Extension, the parties shall develop a program for the joint use, operation, and maintenance of the SRTC, as necessary to coordinate bus and rail operations.

2. In the event that construction of the Larkspur Extension project is terminated or abandoned for any reason, and the existing SRTC has been made unusable due to the initiation of construction (e.g., demolition of the platform(s)), SMART, at its sole expense, shall restore the SRTC to its existing functionality for public transportation operations.

E. Additional Terms

1. Dispute Resolution. Any controversy, claim or dispute arising out of or related to the interpretation, construction, performance or breach of this Agreement, which cannot be resolved by the parties after good faith discussions shall be submitted to mediation in the County of Marin, California, administered by the American Arbitration Association under its Commercial Mediation Rules. Mediation shall proceed and continue until such time as the matter is either resolved or the mediator finds or the parties agree that mediation should not continue. If the parties cannot resolve the controversy, claim or dispute through the mediation process described above, the matter shall be settled by arbitration in the County of Marin, California, administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. All direct costs and expenses of each party other than those for payment of the mediator or arbitrator(s) and/or mediation or arbitration facilities shall be borne and paid for by the party that incurs such expenses.

2. Agreement Expenses. The parties agree to bear their respective expenses, incurred or to be incurred in negotiating and preparing this Agreement and in closing and carrying out the transactions contemplated by this Agreement.

3. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. The parties to this agreement may not assign, encumber or otherwise transfer its rights under this Agreement, whether voluntarily, involuntarily, by operation of law or otherwise. Any assignment, encumbrance or other transfer in violation of the foregoing shall be void and confer no rights on the transferee.

4. Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right to subrogation or action against any party to this Agreement.

5. Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior or contemporaneous oral or written agreements, representations, statements, documents, or understandings of the parties. Except as specifically modified by this Agreement, the 2005 MOU remains in full force and effect.

6. Amendment. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by the party to be bound.

7. Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

8. Timeliness. GGB and SMART hereby acknowledge and agree that time is of the essence with respect to each and every term, condition, obligation and provision hereof.

9. Notices. Any notice or other communication required or permitted to be given under this Agreement ("Notices") shall be in writing and shall be (i) personally delivered; (ii) delivered by a reputable overnight courier; or (iii) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid. Notices shall be deemed received at the earlier of actual receipt or (i) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (ii) three business days following deposit in the U.S. Mail, as evidenced by a return receipt. Notices shall be directed to the parties at their respective addresses shown below, or such other address as any party may, from time to time, specify in writing to the other in the manner described above:

if to SMART:

Sonoma Marin Area Rail Transit District
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
Attn: Farhad Mansourian, General Manager

with copy to:

Tom Lyons, Legal Counsel
5401 Old Redwood Highway
Suite 200
Petaluma CA 94954

if to GGB:

Golden Gate Bridge Highway and
Transportation District
Box 9000 Presidio Station
San Francisco, CA 94129-0601
Attn: Denis Mulligan, General Manager

with a copy to:

Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105
Attn: Kim Manolius, Attorney for the District

10. Governing Law and Venue. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California, and any action or proceeding, including mediation or arbitration, brought by any party in which this Agreement is subject, shall be brought in the County of Marin, California.

11. Effect of Headings. The headings of the paragraphs of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

12. Invalidity. Any provision of this Agreement which is invalid, void, or illegal, shall not affect, impair, or invalidate any other provision of this Agreement, and such other provisions of this Agreement shall remain in full force and effect

13. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14. Number and Gender. When required by the context of this Agreement, each number (singular and plural) shall include all numbers, and each gender shall include all genders.

15. Further Assurances. Each party to this Agreement agrees to execute, acknowledge, and deliver such further instruments as may be necessary or desirable to accomplish the intent and purpose of this Agreement, provided that the party requesting such further action shall bear all costs and expenses related thereto.

16. Negotiated Terms. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Memorandum of Understanding with the intent to be legally bound.

GOLDEN GATE BRIDGE, HIGHWAY AND
TRANSPORTATION DISTRICT, a special district

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM

Attorney

SONOMA MARIN AREA RAIL TRANSIT DISTRICT,
a special district

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM

Attorney