



## **BOARD OF DIRECTOR MEETING AGENDA**

**November 15, 2023 - 1:30 PM**

5401 Old Redwood Highway, 1<sup>st</sup> Floor  
Petaluma, CA 94954

The SMART Board of Directors will facilitate using a dual format with listening and participation available through Zoom and in-person. SMART provides several remote methods for viewing the SMART Board Meetings and providing Public Comment.

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Webinar ID: 861 1724 9784

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#### *Prior To Meeting:*

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#### *During the Meeting:*

The SMART Board Chair will open the floor for public comment during the Public Comment period on the agenda. Please check and test your computer settings so that your audio speaker and microphones are functioning. Speakers are asked to limit their comments to two (2) minutes. The amount of time allocated for comments during the meeting may vary at the Chairperson's discretion depending on the number of speakers and length of the agenda.



# BOARD OF DIRECTOR MEETING AGENDA

**November 15, 2023**

5401 Old Redwood Highway, 1<sup>st</sup> Floor  
Petaluma, CA 94954

1. Call to Order
2. Approval of the October 18, 2023 Board Meeting Minutes
3. Board Member Announcements
4. General Manager's Report
5. Public Comment on Non-Agenda Items

## Consent Calendar

- 6a. Accept Monthly Ridership Report – October 2023
- 6b. Approval of Monthly Financial Reports – September 2023

## Regular Calendar

7. Discuss Ridership vs. Farebox Recovery Strategy and Provide Direction to Staff Regarding Future Initiatives – *Presented by General Manager Eddy Cumins*
8. Authorizing the General Manager to execute a Memorandum of Understanding (MOU) with the County of Sonoma to construct riparian enhancements at Helen Putnam Regional Park and for Regional Park staff to maintain and report on the improvements as mitigation for construction of SMART's non-motorized pathway impacts – *Presented by Chief Engineer, Bill Gamlen*
9. Adopt a Resolution Amending Resolution No. 2023-23, the Fiscal Year 2023 Adopted Budget, to carryforward an additional \$2,386,104 in revenue and increase the spending authority by \$3,832,044 – *Presented by Chief Financial Officer McKillop*
10. Adopt a Resolution Amending Resolution No. 2023-23, the Fiscal Year 2023 Adopted Budget, to add funds for the SMART Santa Rosa Airport to Windsor Rail and Pathway Extension project in the amount of \$17,663,452 – *Presented by Chief Financial Officer McKillop*
11. Adopt a Resolution Awarding the Issuance of Notices to Proceed for Project Civil Scope of Work and Change Order 015 to Construction Contract No. CV-DB-18-001 with Stacy and Witbeck, Inc. in the amount of \$8,268,237 for a total not-to-exceed amount of \$57,178,129 for the complete construction of the SMART Windsor Extension Civil Project, the civil engineering and construction portion of the overall SMART Windsor Rail and Pathway Extension – *Presented by Chief Engineer, Bill Gamlen*

12. Adopt a Resolution Awarding the Issuance of Notices to Proceed for Project Systems Scope of Work and Change Order 004 to Construction Contract No. SYS-DB-18-001 with Modern Railway Systems, Inc. in the amount of \$2,415,741 for a total not-to-exceed amount of \$17,338,233 for the complete construction of the SMART Windsor Rail Systems Project, the systems portion of the overall SMART Windsor Rail and Pathway Extension – *Presented by Chief Engineer, Bill Gamlen*
13. Discuss Freight Storage and Provide Direction to Staff Regarding Storage Limitations *Presented by General Manager Cumins*

#### Closed Session

14. Conference with Legal Counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a); Number of cases: (3)
  - 1) James Duncan v. Sonoma-Marin Area Rail Transit; City of Santa Rosa, Real Party in Interest; County of Sonoma, Real Party in Interest; Sonoma County Superior Court Case No. SCV-266092; First Dist. Court of Appeal Case No. A165783
  - 2) James Duncan v. SMART; CPUC No. C.21-06-011
  - 3) Application of City of Santa Rosa for a Crossing at Jennings Avenue; CPUC No. A.15-05-014
15. Report Out Closed Session
16. Next Regular Meeting Board of Directors, December 20, 2023 – 1:30 PM – 5401 Old Redwood Highway, 1<sup>st</sup> Floor, Petaluma, CA 94954
17. Adjournment

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## BOARD OF DIRECTORS REGULAR MEETING MINUTES

October 18, 2023, – 1:30 PM  
5401 Old Redwood Highway, 1<sup>st</sup> Floor  
Petaluma, CA 94954

### 1. Call to Order

Chair Lucan called the meeting to order at 1:30pm. Directors Colin, Coursey, Farac, Fudge, Garbarino, Pahre, and Rabbitt were present; Directors Bagby, Paulson and Sacket arrived later; Director Rogers absent.

Vice Chair Bagby arrived 1:32pm

### 2. Approval of the September 20, 2023, Board Meeting

**MOTION:** Director Garbarino moved approval of the September 20, 2023, Board Meeting Minutes as presented. Director Rabbitt second. The motion carried 9-0 (Directors Paulson and Sacket arrived later; Director Rogers absent).

### 3. Board Members Announcements

Director Garbarino stated that she had the opportunity to speak at the League of Women Voters of Marin County on October 10, 2023. She provided an update on SMART and Golden Gate Bridge.

Director Bagby stated that she has been attending the City of Healdsburg Community Meetings/Events. The next community meeting will be held on Thursday, October 19, 2023.

### 4. General Manager's Report

Directors Paulson and Sackett arrived 1:36pm

General Manager Cumins provided a brief overview on the following:

- Contracts/Procurements over \$100k
- Ridership
- Average Boardings per Trip
- Pathway Counts
- Questions



#### Contracts/Procurements over \$100k

Ghilotti Bros, Inc. Change Order No. 002 was executed for work related to the McInnis Parkway to Smith Ranch Road pathway project. The change order modifies the scope of work to install additional sheet pile walls and to perform other minor related modifications for an increase of \$50,733 for a new total contract not-to-exceed amount of \$3,541,132.

#### Ridership

- Ridership Recovery (August 2019 vs. August 2023) – SMART had the highest ridership recovery ratio in the Bay Area for the sixth (6) month in a row.
- North Bay Monthly Ridership (August 2023) – SMART had 72,171 riders; 5<sup>th</sup> highest in the North Bay
- August Passenger Miles Traveled – SMART carried 21% of North Bay passenger miles; 3<sup>rd</sup> highest in the North Bay
- September Average Weekday Ridership: 2,812; 7% higher than September 2019
- October Average Weekday Ridership to Date: 2,776; Trending 9% higher than October 2019
- September Monthly Ridership: 68,506; up 39% vs. September 2022 and 9% vs. September 2019
- September Average Boardings by Trip: 74
  - September Average Weekday Ridership – 2,812; 38 trips per day; Average AM Peak – 97; and Average PM Peak – 91
- Simple Equation
  - Seats on two-car train; 146 total (51%); and 122 usable with heavy bike load (61%)
- Train has additional capacity due to average trip length
  - 45 vs. 22 miles; Santa Rosa to Petaluma; Petaluma to San Rafael/Larkspur; on/offers at each station
- Southbound Trip 9 vs Trip 5
  - 17% more boardings and 4% less avg max load
- Staff will continue to monitor trip-based boardings and average max load to determine the need for 3<sup>rd</sup> car.

#### Pathway Counts

- September 2023: 67,600 pathway users
- Counts were up by more than 20,000 compared to September 2022.

#### Platform LED Lighting Upgrade

- Upgrading to LED lighting
  - Stations
  - Pathway
  - Park and Ride Lots
- LED lighting uses 66% less power
- Completed to date
  - All stations
  - Pathway between CalPark Tunnel and Larkspur
- Pathways are next, followed by park and ride lots

### Comments

Director Paulson asked if the Average Max Load is 25% capacity at this time. General Manager Cumins responded that there are between 28 to 126 passengers on the train at any given time. Director Paulson asked if the highlighted sections represent possible addition of the 3<sup>rd</sup> train. General Manager Cumins responded that they represent the highest southbound commute. Director Paulson asked the total pay off time for the LED light investment.

## 5. Public Comment on Non-Agenda Items

Dani Sheehan-Meyer said that the SF Chronical reported that during Fleet Week the Ferry had its record attendance. She asked about SMART's ridership during Fleet week. General Manager Cumins responded that it was a great weekend for ridership but did not break any records.

Jack Swaengen stated in response to Director Paulson comment. He said that the best way to measure ridership and capacity would be to take the seat miles occupied vs. seat miles available in each trip.

Chair Lucan asked Director Paulson if he had any Board member announcement.

Director Paulson stated that he held office hours on the SMART Train on Friday, October 8<sup>th</sup>. The trip was from the Larkspur to Hamilton Station. He invited the mailing list of 60 and approximately ¼ attended. He suggested finding a way to reach out to the senior community, since there are approximately 174,000 seniors in both counties. He will continue with office hours on the train to reach out to the senior community.

Mike Pechner addressed his concerns regarding the location of the Healdsburg Station. He said that he has pictures of the area. It used to be four (4) tracks in front of the Healdsburg depot. He stated that SMART needs a main line, a track for freight and the remaining two tracks are necessary for freight operations from Healdsburg to Cloverdale.

## 6. Consent

- a. Accept Monthly Ridership Report – September 2023
- b. Approval of Monthly Financial Reports – July/August 2023
- c. Approve Resolutions authorizing the General Manager to submit any required documents for two Affordable Housing Sustainable Communities (AHSC) grants from the State of California Strategic Growth Council and Department of Housing and Community Development and authorizing entering into Agreements with project parties
- d. Approve a Resolution Authorizing the Board Chair to Execute First Amendment to Grant of Easement with Syufy Enterprises to clarify rights and duties including providing pedestrian and bicycle access for multi-use pathway users and providing access for SMART's rail passengers to and from the Larkspur Station
- e. Approve a Resolution Authorizing the General Manager to execute all Restricted Grant Agreements, and any amendments thereto, with the California Department of Transportation (Caltrans) for the Clean California Transit Grant Program Funds

Chair Lucan asked for Board and public comments on the proposed Consent Agenda.

**MOTION:** Director Pahre moved approval of Consent Agenda as presented. Director Fudge second. The motion carried 11-0 (Director Rogers absent).

7. Strategic Marketing Communications and Public Outreach Plan – *Presented by Communications and Marketing Manager, Julia Gonzalez*

Communications and Marketing Manager, Julia Gonzalez provided a presentation which is located on SMART’s website. Highlights include:

Strategic Marketing Communications and Public Outreach Plan

- Marin Civil Grand Jury – Responses to Recommendation #2
  - SMART’s Board of Directors agreed with this recommendation
  - Staff developed a draft marketing communications and public outreach plan
- Elements of the Draft Marketing and Public Outreach Plan
  - Target audiences and messaging
  - Branding and positioning
  - Communication channels
  - Metrics to measure effectiveness
  - Analysis of budgetary and staffing resources
- A Living Document – Other opportunities to refine the Plan
  - Quality of Life and Economic Impact Assessment
  - Marin County Civil Grand Jury Recommendation #3
- Current Marketing Activities
  - Current Staffing Resources (3.0 FTE)
  - Current 2023-2024 Budget allocated to Growing Ridership
- Large Regional Audience
  - Platform and Followers
  - Paid Ads and Average per month
  - Community Events and People reached
- Marketing activities to inform residents of Sonoma and Marin Counties about benefits of SMART
  - Allow work to be completed on the 1) Quality of Life and Economic Impact Assessment and 2) Consultant studying effective messaging and marketing plan
  - Develop a comprehensive budget for the Marketing Plan to effectively reach a large audience in Sonoma and Marin counties
  - Consider marketing activities that can be initiated in current fiscal year
- Marketing activities in current fiscal year
  - Direct Mail: \$175,000
  - Video Production: \$50, 000
  - Paid Advertising: \$76,800

Comments

Director Pahre asked if the draft comprehensive marketing plan without the three marketing activities and cost fulfills the Marin County Civil Grand Jury recommendation. General Manager Cumins responded that his understanding of the recommendation was to start this process and hire a consultant.

Director Farac suggested including different key organizations in the community. She asked how staff plan to track the success of the direct mailers. Ms. Gonzalez responded that QR codes can be added to mailers for tracking purposes. The direct mail flyers can include a train pass to bring on board. Director Farac suggested focusing on events and proactively targeting various holidays, for example having a trick or treat train. Ms. Gonzalez responded that SMART does an annual holiday toy drive in December.

Director Sackett stated that the issue from the Civil Grand Jury is that the plan and the budget should be focused on educating the voters. She feels that educating the voters is different than increasing ridership. She hopes that every rider is a voter but that may not be the case. She is excited to see what the Quality of Life Survey tells us and sending out a mailer prior to receiving the information can be a missed opportunity to focus on the results. Also contracting with the professional videographer feels too soon. In the past there were efforts to get testimonials and thinks that testimonials with people that you know or may recognize are more powerful than actors. She thinks the message will be more powerful and knows it takes more time to get those stories. She suggested adding a free pass to the direct mailers. Ms. Gonzalez responded that SMART's current advertising focus is to ride the train. This item is in response to the Marin Civil Grand Jury and is a completely different campaign. This is a campaign to inform residents of Marin and Sonoma counties about the benefits that SMART brings to the community. The goal is to have residents make that connection between the relevance of this service and what it means in terms of enhancing quality of life, improving our sustainability and the impact this service has on the economic fabric of the North Bay.

Director Coursey asked who the audience is for the direct mailers. Ms. Gonzalez responded that there are 315,000 residential and business addresses in Marin and Sonoma County. Director Coursey clarified that it is not just registered voters, its every residence and business. Also, this is an opportunity to pursue our own priorities and the grand jury's priorities and a mailer can do more than one thing. Explaining the value of SMART to the community, even to the people who don't ride the train. Since we are not currently campaigning for the renewal of the sales tax this is an opportunity to educate the voters.

Director Fudge said that it's a great idea to add a free train ride to the direct mailers. She suggested educating the public how to use Clipper Cards and other values that are available. Also in terms of a videographer, and who would have stories? The Conductors/Engineers know who has stories. She said that the first Engineer hired at SMART took time to know individuals on the train. She suggested that the Engineers/Conductors nominate people with interesting stories. Ms. Gonzalez responded that in the past a SMART staff member would get testimonials from passengers, and they would be posted on social media and will be increasing. The contract of the professional videographer will entail professional level shots of the train of activities and editing to 30, 60 second pieces. Director Fudge suggested using the videographer to teach the public how to use Clipper Cards.

Vice Chair Bagby thanked Ms. Gonzalez and her team for their great staff report and well-organized Plan. She said that at Sonoma Clean Power they are required to send annual rate updates on a postcard. This is an opportunity to use a mailer for multiple uses. The journey is better on SMART than being on the Highway 101 traffic and its important to get that message

across to the voters. She strongly supports this item and sees this as the beginning of a living Plan.

Director Paulson asked the following two questions: 1) What's SMART's desired outcome of the direct mailers; and 2) If it is within the scope of work to not only to promote the brand, but also promote ridership how would staff direct the consultants. Ms. Gonzalez responded that including a message that would encourage people to ride, however, the primary focus of this marketing activity is to inform the community about the benefits of SMART. The desired outcome is that people will be versed in understanding what this agency means in terms of quality of life impact. This is an opportunity to educate the community about the connection between the rail line and pathway. Also, to have people understand what this investment means in terms of the future of Sonoma and Marin Counties.

Chair Lucan asked what the annual advertising and marketing budget at an agency will be with this increase. Ms. Gonzalez responded that the current budget is \$328,000 and with this increase it will be approximately \$630,000. Chair Lucan stated that this is relatively low compared to direct consumers who are spending 5% to 10% of their annual budget trying to attract new customers, in our case, new riders. This is a large amount, but he thinks there is an opportunity for public agencies, especially newer ones, that are still in growth mode, still trying to gain market share, still trying to get people out of their cars and to ride alternate forms of transportation, this might seem like this is a very large amount, but, relatively it's not a very large amount to consider now and moving forward. A call to action could be focused on SMART's App with advertising and promotional offers.

Vice Chair Bagby asked if the App provides permission to give push notifications. Ms. Gonzalez responded yes. Vice Chair Bagby stated that this is an opportunity to inform the public about promotion offers and events.

Ms. Gonzalez stated that if the Board chooses to move forward with this marketing and public outreach initiative, staff will bring a budget amendment to the Board at the November 15, 2023, meeting.

Steve Birdlebough suggests promoting four times a year free train rides and this will increase ridership. Also, consider reaching the bicycle coalitions to receive feedback of the pathway uses. His common barrier to riding the train is how to get to the station and where can he park his vehicle and suggested discussing this barrier.

Mike Pechner stated that this is a great opportunity to use a QR code for a free train ride and other SMART information that can be useful for first time riders. He suggested adding SMART QR Code to the billboard at Burdell crossing.

Lastly, General Manager Cumins asked for clarification whether to hold on the videographer and the paid advertising until we receive the information from the consultants. Director Sackett asked when SMART anticipates receiving the information. General Manager Cumins responded between April - June 2024. This plan can be executed in Fiscal Year 2024 and when SMART received additional information staff will be able to refine this product moving forward.

Director Coursey supports doing everything we can now and when more information arrives it can be updated.

Director Farac suggested paper mailers for the people who don't have smartphones and paper element is crucial to reach different demographics.

Director Rabbitt stated that he is supportive of moving forward with those items that you could do now, gaining additional information and then continuing to build upon that going forward.

General Manager Cumins stated that he hears on a regular basis that SMART does not spend enough money on advertising and marketing.

Director Colin supports moving forward with the items. Once the additional assessments are received the scope will need to be narrowed down to target and reach the appropriate audience.

Director Garbarino said she supports moving forward with this items because it is important.

8. Pathway Wayfinding Update *Presented by Senior Planner, Zoe Unruh*

Senior Planner, Zoe Unruh provided a brief overview presentation which is located on SMART's website. Highlights include:

Pathway Wayfinding Update

- Why Wayfinding
  - Purpose and Goals
- Timeline
- Design and Concepts
  - Concept A – Single Families
  - Concept B – Single Families
- Sign Design Engagement
  - In-person
  - Online
- Design Feedback
  - Visibility
  - Color/Style
  - Branding
  - Effectiveness
- Next Steps
  - Stay tuned! We will be notifying the public when the signs are posted and the survey is open
  - Public input will guide and result in a single, refined design
  - With the final design, SMART will begin work on design drawings and a placement plan
  - Fabrication and implementation planned for early 2024

Comments

Director Coursey asked why 11 days was chosen. Ms. Unruh responded that it would allow for two weekends. There is also flexibility to extend the timeframe if needed.

Director Garbarino asked if the signage would correlate with the signs in Marin County. She likes the first Concept. Ms. Unruh responded that Concept B – Sign Families has co-branding that will be implemented throughout.

Director Rabbitt stated that he is happy to see mileage markers on the pathway. When we cut the ribbon at the at the one section of Petaluma. He asked at what interval will that marker be and will there be any changes with a closer proximity to an urbanized area as opposed to being a little further away from civilization. How people use the trail closer to their homes vs. someone traveling from station to station. Ms. Unruh responded that mile markers were suggested though SMARTs virtual public engagement. Also, street identifiers helping point towards train stations was important to the public. We have the challenge of building out the pathway, and mile markers are important, but they may not be implemented immediately. Staff is working with our partners at the Great Redwood Trail on how to start that correctly. Director Rabbitt said that most people who want to see street identifiers are not from the community or familiar with the area. He thinks is important to take other items like dog receptacles into consideration, especially since Petaluma has great trails.

Director Pahre encouraged staff to nurture our brand with these signs and hopes that when the community sees them, they don't choose number 2, because it doesn't show SMART. She said that SMART has a distinctive look.

Vice Chair Bagby asked if Staff has received any feedback on the placement of mile marker zero (0). Ms. Unruh responded that staff have not received any feedback on where they wanted mile markers to start.

Eris Weaver stated that she is glad this project is moving forward, since she has been an advocate for this project. She looks forward to seeing which of the two concepts are easier to see when you pass by. She is curious to know where they will be placed? but knows that the placement location is still in the process.

9. SMART's Disadvantaged Business Enterprise (DBE) Plan and Goals for Federal Fiscal Years 2024-2026 – *Presented by Chief Financial Officer McKillop*

Chief Financial Officer McKillop provided a brief overview presentation which is located on SMART's website. Highlights include:

DBE Program and Goals

- What and Why
  - Disadvantaged Business Program (DBE)
  - SMART receives federal funds
- When?
  - Required to be updated every three (3) years
  - Based on a federal fiscal year (Oct. 1 – Sept. 30)
  - Needs to be updated more frequently if conditions change
- How?
  - DBE Goal Setting (1-8 Steps)
- Availability of DBE's

- Race-Neutral vs. Race- Conscious
- Small Business Participation
- Prime and Sub Supplier Report
- Comments from FTA
- New Federal Fiscal Year 2024 – 2026 Plan and Goal
- Statement of Policy
  - Page 85 of the October 18 Board Packet
  - Page 2 of the SMART Disadvantaged Business Enterprise Program Document

#### Comments

Director Paulson asked how many contracts have sub-contracts. Also, does it fulfill the disadvantaged business requirement if the prime is not disadvantaged, but has an allocation to the subcontracts. Chief Financial Officer McKillop responded that she would have to confirm the number of contacts and yes it does fulfill the DBE requirement. Director Paulson asked if historically, underutilized business districts are included in the DBE definition. Chief Financial Officer McKillop responded no, and the definition is very narrow, specific, and federally determined.

10. Approve a Resolution to Amend SMART’s Schedule of Fees – *Presented by Chief Financial Officer McKillop*

Chief Financial Officer McKillop provided a PowerPoint presentation, which is located on SMART’s website. Highlights include:

#### Proposed Fee Schedule

- History
  - Resolution No. 2003-11 - Set the first fee schedule
  - Resolution No. 2007-02 - Amended special event, right of entry, and license agreement fees
  - Fees have not been updated in 16 years
  - The existing fees did not take into consideration the complexity of operating and doing business
- License Fees – Wire/Pipe/Fiber
  - Options for Increasing Fees
    - What are others charging?
    - Inflating our current rate from 2007
    - Other options
    - Per LF charge for anything exceeding 100 LF
    - Per inch for any pipe that exceeds 24”
    - Per strand for fiber that exceeds 432 strands
    - 3% increase per year
- License Fee
  - Wire and Pipe
  - Fiber Optic Conduit
- Permit Fees - Right of Entry
  - Right of Entry Fee
  - Right of Entry Fee Amendment - New



The current fee is \$1,000 plus staff time for review. We are recommending a new fee of \$300 to process any amendments to a Right of Entry application.

- Administrative Fees - Wire, Pipe, Fiber, and Right of Entry
  - Application Fees
  - Staff Reviews

SMART currently charges a \$300 application fee. As mentioned previously, we would like to change the fee for staff review time from an actual cost to a flat fee that represents the approximate cost.

- Miscellaneous Fees
  - Special Events Fee
  - Flaggers
  - Safety Course
  - Inspection Fees - New
  - As Built Deposit (refundable) - New
  - Late Cancellation of Flaggers - New
  - Public Records Request – Digital Copies
  - Public Records Request – Paper Copies
  - Public Records Request – Data Extraction, etc.

We are recommending that the special events, flagger, and safety course fees remain the same. We are recommending three new fees: Inspection fee, a fee for late cancellation of flaggers, and a refundable fee for as-built plans.

#### Comments

Director Rabbitt stated that it is important to have transparency and updating fees on a regular basis, since cost increases every year. He asked if this would pertain to property owners along the right-of-way who have crossings and no longer have cattle. Chief Financial Officer McKillop responded that for new or renewed contracts that have access to SMART's right-of-way will have to pay the new rates.

Director Rabbitt asked if there is flexibility for long term agreements as we move forward. District Counsel Lyons responded that when those crossing agreements are up for renewal the new rates will apply to those crossing agreements. Language was placed in the contracts and or the agreements with the understanding of SMART's cost. Director Rabbitt said he appreciates the staff working with those property owners, especially since their historic land was changed upon the arrival of passenger train service.

Director Paulson asked if staff did any comparable cost data with BART, Caltrain and other transit agencies when formulating the rates. Chief Financial Officer McKillop responded that Real Estate Manager Randy Friedland did intensive research with commuter rail agencies because they own their right-of-way. Many of the agencies were charging a lot more and SMART did not feel like those charges were justifiable.

Carolyn Wasem stated that she submitted her comments in writing prior to this meeting. She spoke about her project that she placed 23 years ago from their winery facility at Airport Business Center to the Kendall Jackson Wine Center. She was shocked when we looked at the fee schedule

and knew that it would cost her 10 times more to utilize that pipeline over the next 25 years. Another concern is that this project was done to become more water resilient. The Kendall Jackson Wine Center is in the footprint of the Santa Rosa Plain Groundwater Sustainability Agency, it is near Mark West Creek. She asked to meet with SMART staff to discuss the next steps in trying to achieve our goals as a community.

Director Fudge stated that she spoke with Ms. Wasem who is representing Jackson Family Wines and she sat on the Groundwater Sustainability Agency as a representative of Windsor for 2 years. Ms. Wasem is paying \$15,000 a year and with the new proposed rates she will be paying \$42,000 a year. She asked the Board if they would like to direct staff to work with them on a fee that is less onerous and to consider some kind of reconsideration of this particular use.

Director Pahre stated that SMART was not in business 25 years ago and not aware of how the rates were set. She would like to receive additional background information. Chief Financial Officer McKillop responded that NCRA at the time was offering deals and discounts to people. In this case it was a 25 year deal for \$140,000. There are a few leases that were done with NCRA in that situation.

Chair Lucan asked for clarification of the current rates and proposed rates timeframe. Chief Financial Officer McKillop responded that the proposed new rates would be for contracts due to expire and new contracts.

Vice Chair Bagby stated that this is a legacy contract that SMART is inheriting, and the rates clearly need to be brought up to date to cover SMART's cost. This is an important legacy, private public partnership and would like to continue to maintain those relationships that were entered into in good faith. She suggested that staff meet with Jackson Family Wines and discuss something that could be amenable. This is a vital regional resource that needs to be protected. She supports SMART updating the rates because costs have increased exponentially. She is in favor of staff revisiting with this partner.

Director Rabbitt stated that is very important to make sure you're on top of your fee increases on an annual basis. He asked how many contracts are like this. District Counsel Lyons responded that SMART inherited a lot of contracts that were negotiated by NCRA up until they dissolved. He clarified that there is a recovery fee cost and fair market value cost. The public agencies are entitled to and should get a return on the investment, and not provide a gift to public funds. Those are two different aspects of a fee, the fee that SMART charges for recovering costs, and then the fee that is charged for a return on market value on properties being leased to the public. Director Rabbitt is in support of informing Jackson Family Wines that the intent of the Board is to get the full recovery of the current real estate prices. It puts SMART in a strange place when they inherited these contracts.

Director Farac stated that she admires Jackson Family Wineries' conservation effort. She suggested setting up an appeal process to consider each contract individually and favorably.

Chief Financial Officer McKillop stated that SMART would have to offer everyone the same opportunity to adjust the rates. There is not a business that has a crossing on SMART's right-of-way that will say they don't have a hardship and probably smaller landowners versus the larger

landowners. She does not feel comfortable pulling one business out of all the businesses, since there are hundreds of contracts like this. She suggested providing more information and the impacts of the contracts to have another discussion based on what is being said today.

Chair Lucan asked the Board if they would like to approve the new rates and direct staff to bring back additional information that was discussed today.

Director Fudge would like to know how many contracts have significant length that would have a huge increase. Every business makes a profit and obviously Jackson Family Wines makes millions/billions a year. Chief Financial Officer McKillop said we would rather them use shorter distances because it's less of an impact to SMART's right-of-way.

General Manager Cumins said that staff can bring this item back next month with additional information that outlines the contracts with 100 feet, 500 feet, and 1,000 feet. SMART has several big contractors that use a significant portion of the right-of-way.

Director Pahre asked if SMART would consider a client that applies for a mile long 24 inch pipe. Chief Financial Officer McKillop responded yes and if they are approved, they pay the current rate not the proposed rate prices.

Vice Chair Bagby stated that this case has a public good component. When staff comes back to the Board with more information, she wants to understand the implications of this decision regarding a private entity. Who has a component of water that is providing a community value for that area and not impacting Mark West Creek.

Director Rabbitt stated that there is a community benefit for everything that crosses the rail line. He is curious about how many contracts are parallel like this as opposed to the vast majority, must be perpendicular right? Just straight across the tracks. And I get it. Is there a way to bifurcate the user fees from the real state licenses. District Counsel Lyons responded yes it can be done.

Lastly, General Manager Cumins recommended that staff bring back the item to the Board for further discussion and approval.

**MOTION: *Defer agenda item for further discussion.***

11. Approve a Resolution Authorizing the General Manager to Execute a Funding Agreement with the City of Petaluma to include paving work in the Petaluma North Station Platform, Grade Crossing Reconstruction and Pathway Contract – *Presented by Chief Engineer, Bill Gamlen*

Chief Engineer, Bill Gamlen stated that the item before you today is to approve the General Manager to execute a funding agreement with the City of Petaluma to include paving work adjacent to the at-grade railroad crossing on McDowell Boulevard as part of the Petaluma North Station construction. He provided a brief overview presentation which is located on SMART's website. Highlights include:

*McDowell Boulevard Improvement*

- Reconstruction of the McDowell Boulevard At-Grade Crossing

- Construct two (2) sections of bicycle and pedestrian pathway
- The City Paving Integration

SMART and City staff agreed to defer a portion of the paving and incorporate it into the construction contract. Staff received bids for the work and the cost for the City's McDowell Boulevard paving work is \$806,102. Staff recommends approval of Resolution No. 2023-37 to authorize the General Manager to execute a funding agreement with the City of Petaluma.

Director Rabbitt stated that City of Petaluma Mayor Kevin McDowell was in attendance and had to leave the meeting. He thanked City of Petaluma Public Works Director and Utilities Christopher Bolt who was s in audience for the collaboration between SMART and City of Petaluma on this project.

#### Comments

Christopher Bolt expressed his appreciation and gratitude to the Board and SMART. SMART staff have been amazing in working on this partnership. The City of Petaluma have researched and verified available funds and adjusted project budgets as needed for this Agreement. This Funding Agreement will be considered for approval at the November 6, 2023, City Council meeting.

**MOTION:** Director Rabbitt moved to Approve a Resolution Authorizing the General Manager to Execute a Funding Agreement with the City of Petaluma to include paving work in the Petaluma North Station Platform, Grade Crossing Reconstruction and Pathway Contract as presented. Director Farac second. The motion carried 9-0 (Directors Colin, Coursey and Rogers absent).

12. Approve a Resolution to Amend the Fiscal Year 2024 Adopted Budget to budget additional funds for the Petaluma North Station, the McDowell Crossing, and two Sonoma County Pathway Segments Project - *Presented by Chief Financial Officer McKillop*

Chief Financial Officer McKillop stated that the current fiscal year budget needs to be amended to add additional funds to the Petaluma North Station Project, the McDowell Crossing and two Sonoma County Pathway segment projects.

The project was advertised for construction on July 24, 2023, and bids were opened on September 27, 2023. The project is recommended to be awarded to Stacy and Witbeck/Ghilotti Bros., A Joint Venture. The overall cost based on the low bid is estimated at \$37,815,161 (without Petaluma's paving). SMART originally had \$26,675,062 programmed for the project. In addition to the funds already programmed, SMART recently received notification that we will be receiving \$3,195,000 in Affordable Housing and Sustainable Communities (AHSC) funds for this project.

With these additional funding sources, the shortfall is \$7,649,409. The shortfall is all related to the pathway portion of the project. To fill this shortfall, staff is recommending that we utilize project funds that have been programmed for the Guerneville to Airport pathway project, which is currently funded in Fiscal Years 2024, 2025 and 2026. This project is scheduled to go to construction some time in Fiscal Year 2025.

Funding will need to be pursued to be able to construct the project. The Guerneville to Airport Pathway project has \$6,498,640 in Measure Q funds programmed over that three-year period.

Those funds coupled with the utilization of fund balance in the amount of \$1,150,779 will allow us to award and construct this project. The overall fiscal impact is \$7,649,409.

#### Comments

Director Fudge asked how the Guerneville to Airport Pathway project would be funded after Fiscal Year 2025. Chief Financial Officer McKillop responded that there are various Grant opportunities in the future. If SMART does not receive grant funds, staff will bring the project to the Board to have a discussion on how to move forward.

Director Rabbitt stated that the cost of oil, gas, asphalt, labor cost and inflation have taken a toll. He supports this because SMART must move forward with the ones that are ready. SMART has proven to be very successful in leveraging funds and it is good to be nimble and flexible when you have a project in front of you that you need to pull over the finish line.

**MOTION:** Director Rabbitt moved to Approve a Resolution to Amend the Fiscal Year 2024 Adopted Budget to budget additional funds for the Petaluma North Station, the McDowell Crossing, and two Sonoma County Pathway Segments Project as presented. Vice Chair Bagby second. The motion carried 9-0 (Directors Colin, Coursey and Rogers absent).

13. Approve a Resolution Authorizing the General Manager to Execute Construction Contract No. CV-BB-23-004 with Stacy and Witbeck/Ghilotti Bros, A Joint Venture in the amount of \$32,569,404 for the construction of a new SMART passenger rail station in Petaluma and two segments of pathway and the reconstruction of McDowell Boulevard at-grade crossing – *Presented by Chief Engineer, Bill Gamlen*

#### Petaluma North Station Platform, Grade Crossing Reconstruction, and Pathways

- Four Major Work Elements:
  - Petaluma North Station Platform
  - McDowell Boulevard Crossing Reconstruction
  - Pathway Southpoint Blvd. to Main St. (Petaluma to Penngrove)
  - Pathway Golf Course Dr. to Bellevue Ave. (Rohnert Park to Santa Rosa)
- Petaluma North Station
  - Illustration of the construction area
  - New station platform
  - Pathway connection to station
  - Traffic signal crossing of Corona Road
  - Future Parking Lot
- McDowell Boulevard Improvements
  - Paving location
- Pathways
  - Petaluma to Penngrove (South Point Boulevard to Main Street)
  - Rohnert Park to Santa Rosa (Golf Course Drive to Bellevue Avenue)
- Competitive Procurement
  - Release Request for Bids on July 24, 2023
  - SMART received 2 Bids on September 27, 2023
  - SMART Determined that Stacy and Witbeck, Inc./Ghilotti Brothers, Inc. A Joint Venture to be the lowest responsive and responsible bidder.

Staff recommends approving Resolution No. 2023-39 authorizing the General Manager to execute Construction Contract No. CV-BB-23-004 with Stacy and Witbeck/Ghilotti Bros, A Joint Venture in the amount of \$32,569,404 for the construction of the Petaluma North Station Platform, Grade Crossing Reconstruction and Pathway Project (Base Contract) and delegate \$1,500,000 in change order signatory authority to the General Manager.

In addition, the City of Petaluma is committed to paying \$806,102 for the additive alternate paving work but will not consider the funding agreement until their November 6, 2023, Council meeting.

#### Comments

Director Rabbitt said he appreciates all the work and is happy to move approval on the item.

Christopher Bolt, Director of Public Works with the City of Petaluma stated on behalf of Mayor McDonald shared that the City of Petaluma community certainly celebrate award of this project and the new station and the pathway. This project is great for SMART and for Petaluma and the community providing additional enhanced access to the train, in conjunction with affordable housing. He thanked SMART for moving this project forward and the partnership.

Chair Lucan thanked the City of Petaluma Mayor, City Council and City staff for the collaboration on this project.

**MOTION:** Director Rabbitt moved to Approve a Resolution Authorizing the General Manager to Execute Construction Contract No. CV-BB-23-004 with Stacy and Witbeck/Ghilotti Bros, A Joint Venture in the amount of \$32,569,404 for the construction of a new SMART passenger rail station in Petaluma and two segments of pathway and the reconstruction of McDowell Boulevard at-grade crossing as presented. Director Fudge second. The motion carried 9-0 (Directors Colin, Coursey and Rogers absent).

14. Conference with Legal Counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a): Number of Cases (3)
  - 1) James Duncan v. Sonoma-Marin Area Rail Transit; City of Santa Rosa, Real Party in Interest; County of Sonom, Real Party in Interest; Sonoma County Superior Court Case No. SCV-266092
  - 2) James Duncan v. SMART; CPUC No. C.21-06-011
  - 3) Application of City of Santa Rosa for a Crossing at Jennings Avenue; CPUC No. A.15-05-014

15. Report Out Closed Session

District Counsel Sutherland reported out of Closed Session at 5:17pm on the following:

Conference with Legal Counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a): Number of Cases (3)

- 1) James Duncan v. Sonoma-Marin Area Rail Transit; City of Santa Rosa, Real Party in Interest; County of Sonom, Real Party in Interest; Sonoma County Superior Court Case No. SCV-266092

- 2) James Duncan v. SMART; CPUC No. C.21-06-011
- 3) Application of City of Santa Rosa for a Crossing at Jennings Avenue; CPUC No. A.15-05-014

*Report Out: Direction given to staff.*

16. Next Board of Directors Meetings: November 8, 2023, and November 15, 2023, at 1:30PM – 5401 Old Redwood Highway, 1<sup>st</sup> Floor, Petaluma, CA 94954. Please Note: An additional Regular Board of Directors Meeting has been scheduled to be held on November 8, 2023.

Chair Lucan stated that the November 8, 2023, Board of Directors meeting is no longer needed, and the next Regular Board of Directors meeting is **November 15, 2023.**

17. Adjournment – Meeting adjourned at 5:20pm

Respectfully submitted,

Leticia Rosas  
Clerk of the Board

Approved on : \_\_\_\_\_



**Eric Lucan, Chair**  
Marin County Board of Supervisors

**Melanie Bagby, Vice Chair**  
Sonoma County Mayors' and  
Councilmembers Association

**Kate Colin**  
Transportation Authority of Marin

**Chris Coursey**  
Sonoma County Board of Supervisors

**Rachel Farac**  
Transportation Authority of Marin

**Debora Fudge**  
Sonoma County Mayors' and  
Councilmembers Association

**Patty Garbarino**  
Golden Gate Bridge,  
Highway/Transportation District

**Barbara Pahre**  
Golden Gate Bridge,  
Highway/Transportation District

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Marin County Council of Mayors and  
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**Chris Rogers**  
Sonoma County Mayors' and  
Councilmembers Association

**Mary Sackett**  
Marin County Board of Supervisors

**Eddy Cumins**  
General Manager

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[www.SonomaMarinTrain.org](http://www.SonomaMarinTrain.org)

November 15, 2023

Sonoma-Marin Area Rail Transit Board of Directors  
5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954

**SUBJECT:** Monthly Ridership Report – October 2023

Dear Board Members:

**RECOMMENDATIONS:** Accept Monthly Ridership Report

**SUMMARY:**

We are presenting the monthly ridership report for activity for the month of October 2023. This report shows trends in ridership for SMART by tracking Totals, Average Weekday riders, and Average Saturday riders, Average Sunday/Holiday riders, as well as bicycles and mobility devices.

With the transition to the Automatic Passenger Counter (APC) in October 2022, SMART now has a highly accurate method of tracking boardings and alightings at stations that does not depend on manual counts by the conductors. The APC system has been tested and validated at a 99% accuracy level, and has been certified for passenger count use by the Federal Transit Administration (FTA). Both APC-based ridership and fare-based collection rider counts are shown in the attached report to give a full picture of ridership. APC-based ridership captures all riders, including riders with passes who neglect to tag on or off, riders who fail to activate their mobile app tickets, as well as categories of riders such as children under five years old.

This report compares the most recent month to the same month during the prior year, as is standard industry practice for tracking trends over time. These reports also note relevant details associated with fare program discount usage and trends in riders bringing bicycles onboard as well as riders who use mobility devices.

SMART's ridership data through October 2023 is posted on the SMART website (<https://sonomamarintrain.org/RidershipReports>).

**FISCAL IMPACT:** None

**REVIEWED BY:** [ x ] Finance       /s/       [ x ] Counsel       /s/      

Respectfully,

/s/  
Emily Betts  
Principal Planner

Attachment(s): Monthly Ridership Report – October 2023



**OCTOBER 2023 SMART RIDERSHIP REPORT**

SMART Ridership Report

November 15, 2023

Page 1 of 2

October 2023 ridership remained strong, with average weekday ridership at 2,753, down 2% from September. Saturday and Sunday decreased by 4% and 9%, respectively. Total monthly ridership was 70,807, a 19% increase over last October, and 24% increase over October 2019 (pre-COVID).

As a reminder, SMART modified services in March 2020 due to the COVID-19 pandemic, with weekend service annulled and weekday service reduced to 16 trips. In May 2021, SMART added back 10 weekday trips. Saturday service was restored in May 2021, and Sunday service in May 2022. In June 2022, SMART added 10 additional weekday trips, and in October 2022, SMART added 2 additional midday trips, for the current schedule of 38 trips per weekday. In May 2023, SMART added two evening trips on Friday and Saturday, known as the Starlighter. In June 2023, SMART began offering free rides for K-12 youth along with other North Bay transit agencies, which ended in August 2023. On October 2<sup>nd</sup>, SMART suspended the Starlighter service but increased weekend service, running 16 trips total on both Saturday and Sunday.

The tables below present data for October 2022 and 2023 year-over-year, and the Fiscal Year to date (July-October). Ridership for the fiscal year to date is up 38% over the same time period for FY23.

| MONTHLY TOTALS YEAR-OVER-YEAR      | OCT 2022 | OCT 2023 | % Change |
|------------------------------------|----------|----------|----------|
| Ridership                          | 59,322   | 70,807   | 19%      |
| Fare Payments (Clipper + App Only) | 47,496   | 58,872   | 24%      |
|                                    |          |          |          |
| Average Weekday Ridership          | 2,375    | 2,753    | 16%      |
| Average Saturday Ridership         | 1,073    | 1,269    | 18%      |
| Average Sunday Ridership           | 816      | 1,031    | 26%      |
|                                    |          |          |          |
| Bicycles                           | 9,643    | 11,028   | 14%      |
| Mobility Devices                   | 207      | 135      | -35%     |

| FISCAL YEAR (Jul - Oct)            | Fiscal Year 2023 | Fiscal Year 2024 | % Change |
|------------------------------------|------------------|------------------|----------|
| Ridership                          | 200,486          | 277,263          | 38%      |
| Fare Payments (Clipper + App Only) | 174,768          | 212,353          | 22%      |
|                                    |                  |                  |          |
| Average Weekday Ridership          | 1,942            | 2,702            | 39%      |
| Average Saturday Ridership         | 1,047            | 1,368            | 31%      |
| Average Sunday Ridership           | 829              | 1,147            | 38%      |
|                                    |                  |                  |          |
| Bicycles                           | 34,761           | 42,332           | 22%      |
| Mobility Devices                   | 718              | 703              | -2%      |

## OCTOBER 2023 SMART RIDERSHIP REPORT

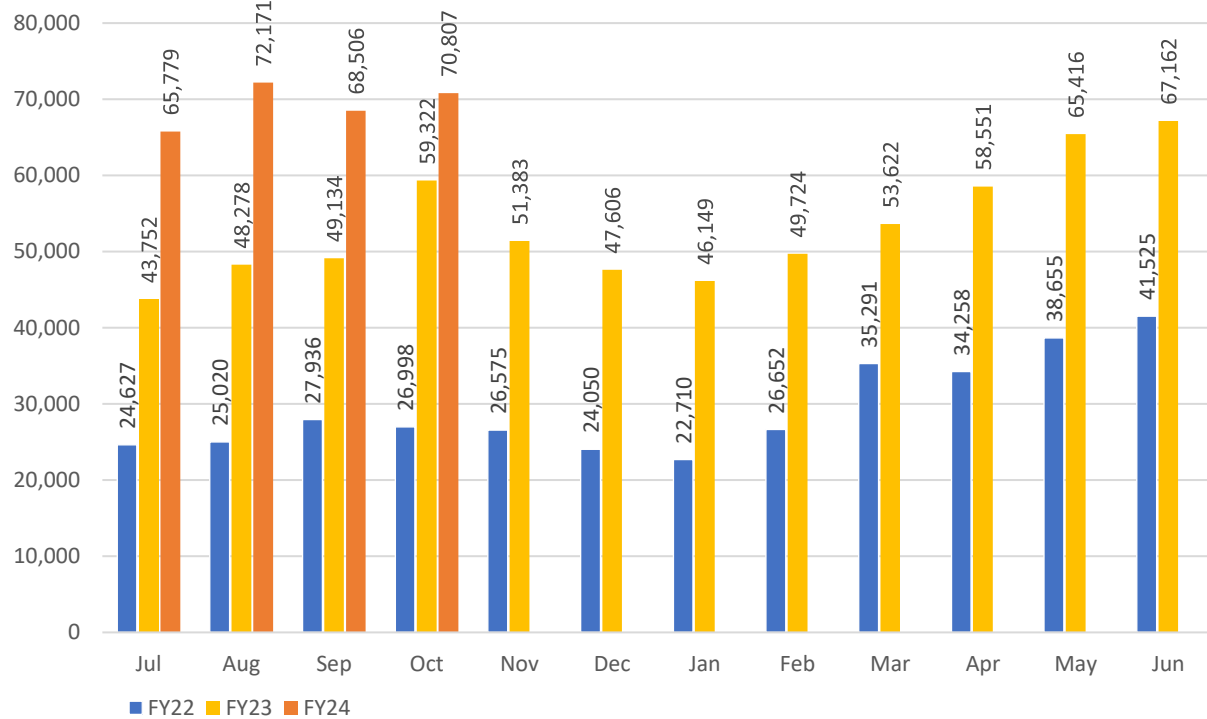
SMART Ridership Report

November 15, 2023

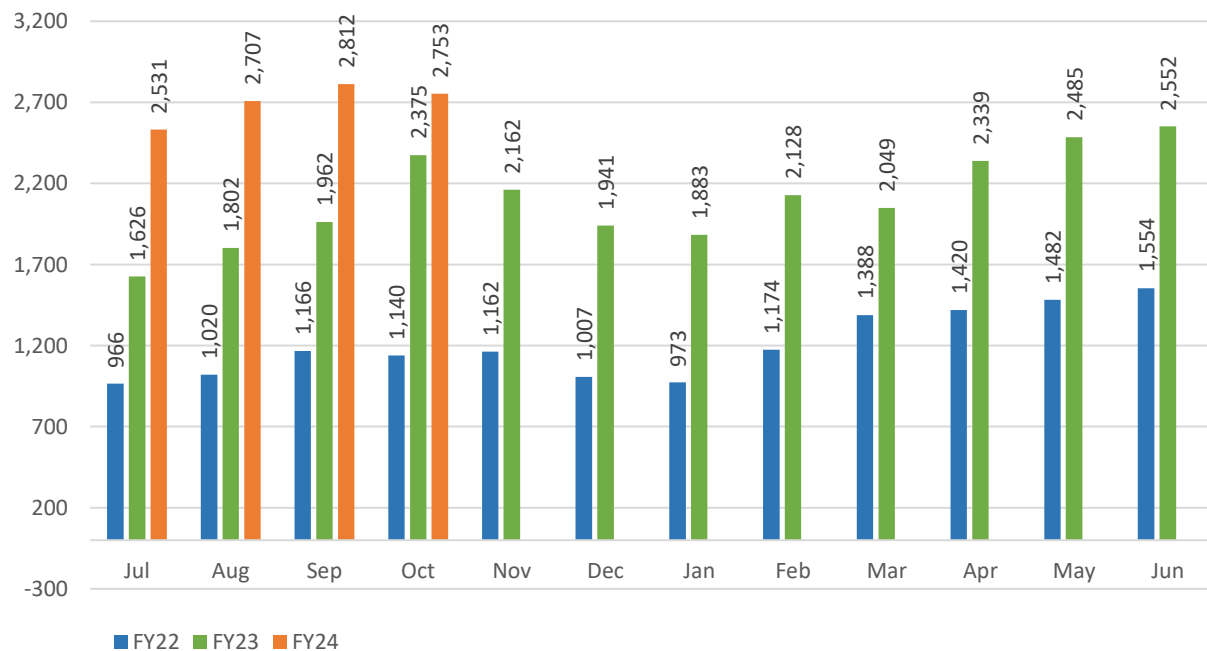
Page 2 of 2

The following charts compare the average weekday ridership and monthly totals for FY22-FY24.

### SMART Monthly Ridership (FY22 - FY24)



### SMART Average Weekday Ridership (FY22 - FY24)





**Eric Lucan, Chair**  
Marin County Board of Supervisors

**Melanie Bagby, Vice Chair**  
Sonoma County Mayors' and  
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November 15, 2023

Sonoma-Marin Area Rail Transit Board of Directors  
5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954

**SUBJECT:** Monthly Financial Status

Dear Board Members:

**RECOMMENDATION:** Approval of Monthly Financial Reports

**SUMMARY:**

We have provided budgeted revenues and actual expenditures for both passenger rail and freight in separate charts in the attached document. The actual column reflects revenues and expenditures for the first quarter of Fiscal Year 2024 (July – September). In addition, for passenger rail, we have shown more detail regarding sales tax and fare revenues to show current and comparative information over the last five years.

Information on the approved budget, actual expenditures, and remaining budget have been provided. Please keep in mind that expenditures do not always occur on a straight-line basis, many large expenditures such as debt service only occur on specific intervals.

We have also included information regarding SMART's investment policy, where our funds are being held, and how much is currently being held. In addition, we have shown the current obligations, reserves, and fund balance requirements for FY 2024.

Sincerely,

/s/

Heather McKillop  
Chief Financial Officer

Attachment(s):

- 1) Monthly Financial Status Report
- 2) Contract Summary Report



# MONTHLY FINANCIAL STATUS

## SEPTEMBER 2023

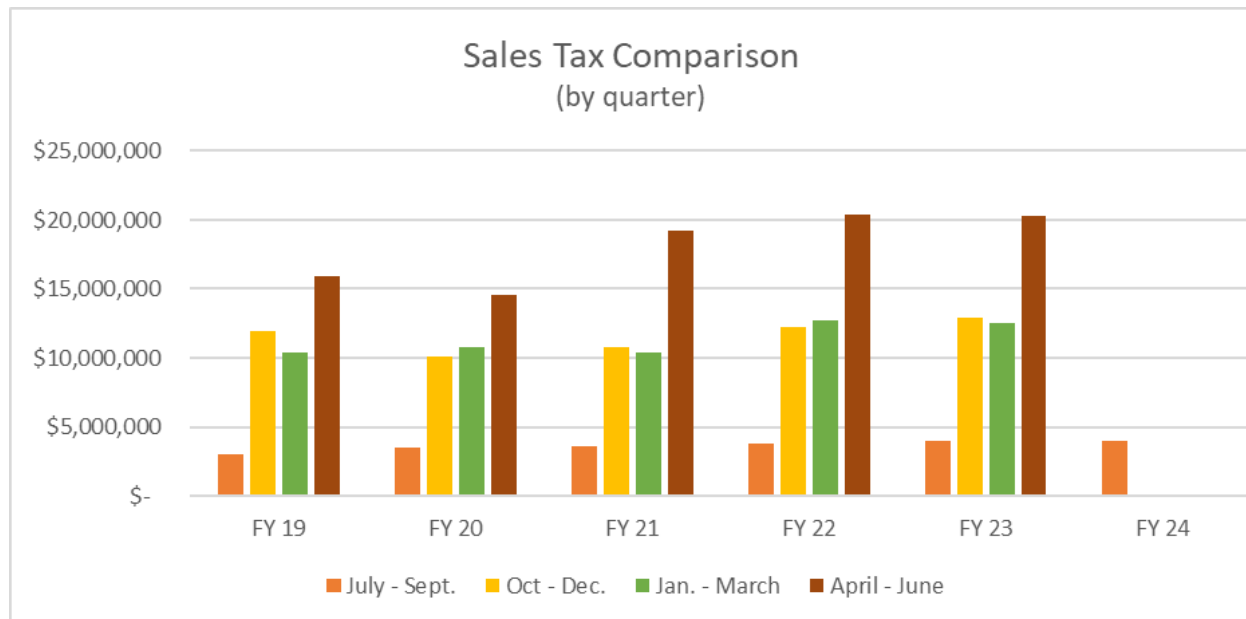
|                                     | FY 2023-24<br>Approved<br>Budget | Actual              | Amount Over /<br>(Under) Budget |
|-------------------------------------|----------------------------------|---------------------|---------------------------------|
| <b>Revenues</b>                     |                                  |                     |                                 |
| <b>Passenger Rail</b>               |                                  |                     |                                 |
| Sales/Use Taxes                     | \$ 51,103,000                    | \$ 3,942,911        | \$ (47,160,089)                 |
| Interest and Lease<br>Earnings      | \$ 1,121,647                     | \$ 217,242          | \$ (904,405)                    |
| Miscellaneous Revenue               | \$ 5,659                         | \$ 130,129          | \$ 124,470                      |
| Passenger Fares                     | \$ 1,803,384                     | \$ 552,921          | \$ (1,250,463)                  |
| Parking Fares                       | \$ 15,000                        | \$ 2,721            | \$ (12,279)                     |
| State Grants                        | \$ 34,335,252                    | \$ 2,706            | \$ (34,332,546)                 |
| Charges For Services                | \$ 75,637                        | \$ 31,706           | \$ (43,931)                     |
| Federal Funds<br>(Non-COVID Relief) | \$ 7,655,641                     | \$ -                | \$ (7,655,641)                  |
| Other Governments                   | \$ 2,480,108                     | \$ -                | \$ (2,480,108)                  |
| <b>Passenger Rail Subtotal</b>      | <b>\$ 98,595,328</b>             | <b>\$ 4,880,336</b> | <b>\$ (93,714,992)</b>          |

## PASSENGER REVENUES

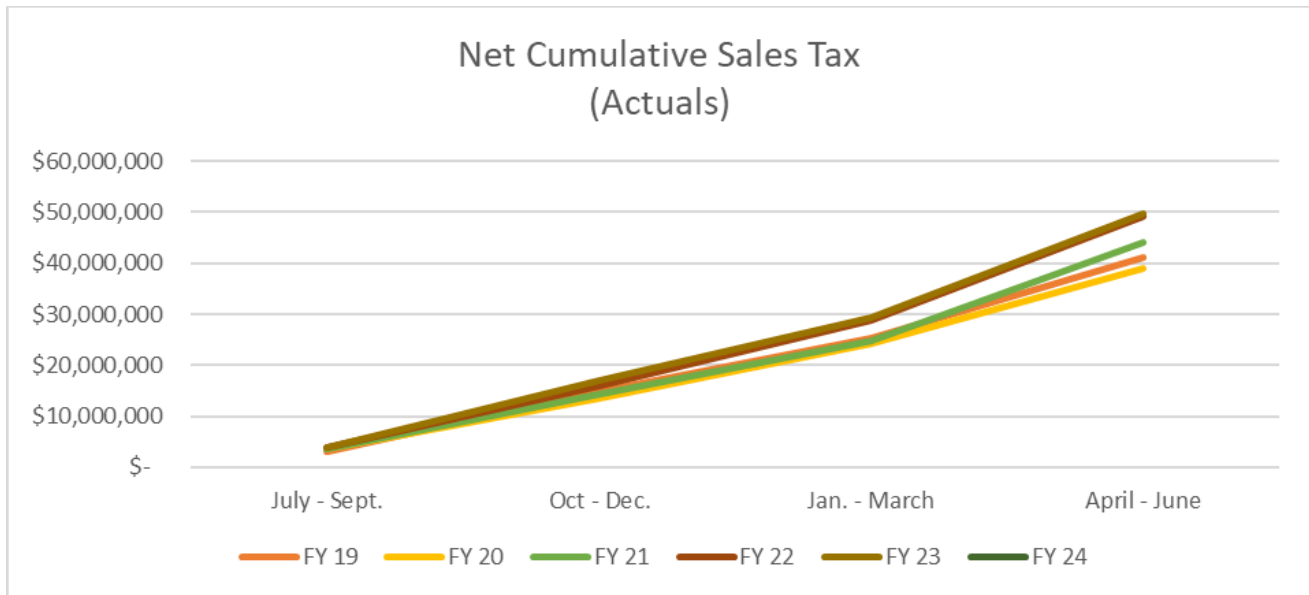
### Measure Q Sales Tax Fiscal Year (FY) 2023/2024

| Time Period             | July - Sept. | Oct - Dec.      | Jan. - March    | April - June    |
|-------------------------|--------------|-----------------|-----------------|-----------------|
| Forecasted FY Sales Tax | \$ 3,900,000 | \$ 13,000,000   | \$ 13,500,000   | \$ 20,703,000   |
| Actual                  | \$ 3,942,911 |                 |                 |                 |
| Difference              | \$ 42,911    | \$ (13,000,000) | \$ (13,500,000) | \$ (20,703,000) |

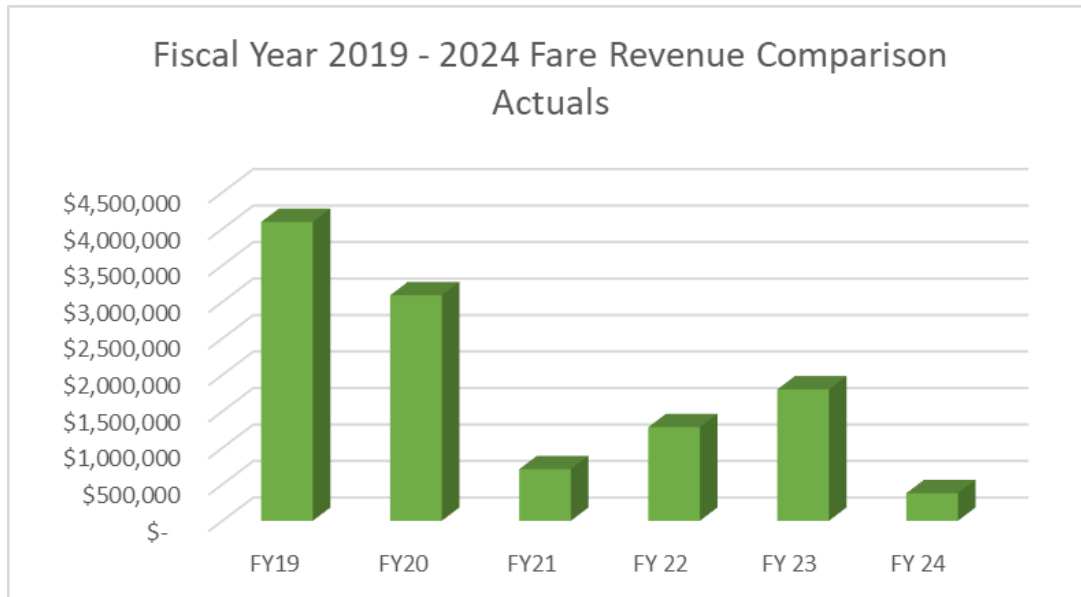
### Fiscal Year 2019-2024 Net Sales Tax Comparison (by Quarter)



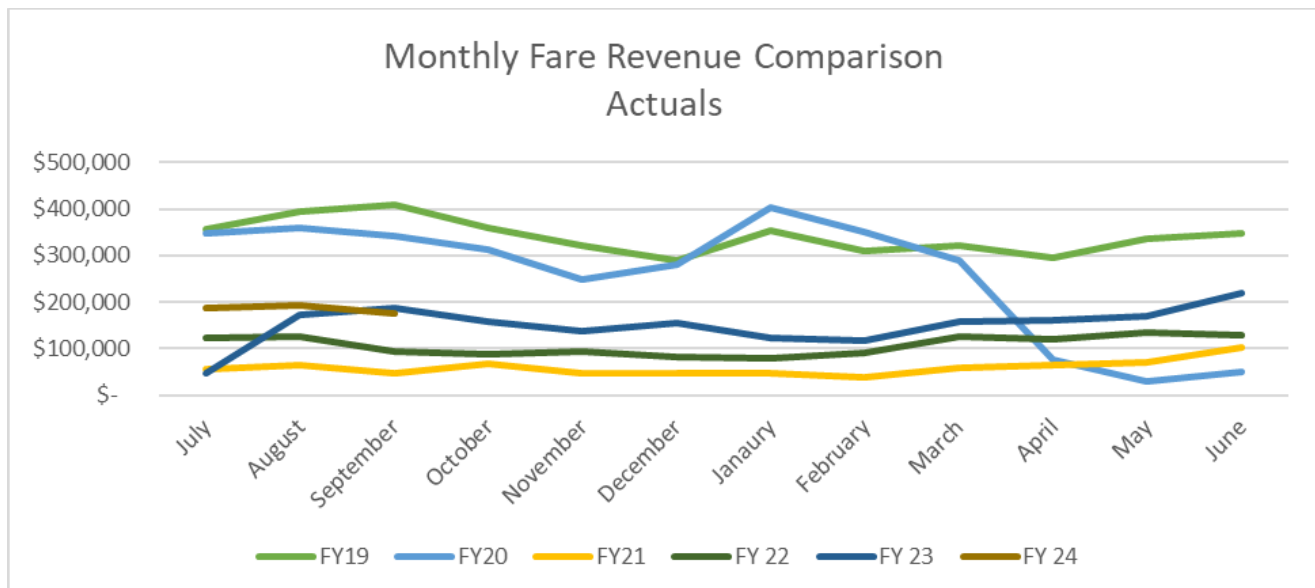
## Fiscal Year 2019-2024 Net Cumulative Sales Tax Comparison



## Fiscal Year 2019-2024 Fare Revenue Comparison



## Fiscal Year 2019-2024 Monthly Fare Revenue Comparison



## PASSENGER EXPENDITURES

|                                     | FY 2023-24<br>Approved Budget | Actual              | Amount Over /<br>(Under) Budget |
|-------------------------------------|-------------------------------|---------------------|---------------------------------|
| <b>Passenger Expenditures</b>       |                               |                     |                                 |
| <b>Administration</b>               |                               |                     |                                 |
| Salaries & Benefits                 | \$ 6,560,493                  | \$ 1,299,027        | \$ (5,261,466)                  |
| Services & Supplies                 | \$ 12,651,160                 | \$ 1,804,650        | \$ (10,846,510)                 |
| <b>Administration Subtotal</b>      | <b>\$ 19,211,653</b>          | <b>\$ 3,103,677</b> | <b>\$ (16,107,976)</b>          |
| <b>Operations</b>                   |                               |                     |                                 |
| Salaries & Benefits                 | \$ 20,014,237                 | \$ 3,922,957        | \$ (16,091,280)                 |
| Services & Supplies                 | \$ 6,645,752                  | \$ 582,460          | \$ (6,063,292)                  |
| <b>Operations Subtotal</b>          | <b>\$ 26,659,989</b>          | <b>\$ 4,505,417</b> | <b>\$ (22,154,572)</b>          |
| <b>Capital</b>                      |                               |                     |                                 |
| Salaries & Benefits                 | \$ 366,966                    | \$ 287,801          | \$ (79,165)                     |
| Services & Supplies                 | \$ 7,936,710                  | \$ 221,547          | \$ (7,715,163)                  |
| <b>Capital Subtotal</b>             | <b>\$ 8,303,676</b>           | <b>\$ 509,348</b>   | <b>\$ (7,794,328)</b>           |
| <b>Total Passenger Expenditures</b> | <b>\$ 54,175,318</b>          | <b>\$ 8,118,442</b> | <b>\$ (46,056,876)</b>          |

|   |                      |                     |                        |
|---|----------------------|---------------------|------------------------|
| <b>Passenger (Capitalized) Expenditures</b>       |                      |                     |                        |
| Buildings & Capital Improvements                  | \$ 21,732,918        | \$ 1,803,391        | \$ (19,929,527)        |
| Land  | \$ -                 | \$ -                | \$ -                   |
| Machinery & Equipment                             | \$ 3,882,730         | \$ 531,267          | \$ (3,351,463)         |
| Infrastructure                                    | \$ 15,885,471        | \$ 94,595           | \$ (15,790,876)        |
| <b>Total Passenger (Capitalized) Expenditures</b> | <b>\$ 41,501,119</b> | <b>\$ 2,429,253</b> | <b>\$ (39,071,866)</b> |

|   |                      |                      |                        |
|---|----------------------|----------------------|------------------------|
| <b>Passenger Expenditures + Capitalized</b> | <b>\$ 95,676,437</b> | <b>\$ 10,547,695</b> | <b>\$ (85,128,742)</b> |
|---|----------------------|----------------------|------------------------|



## FREIGHT REVENUES

|                                     | FY 2023-24<br>Approved<br>Budget | Actual            | Amount Over /<br>(Under) Budget | Comments                |
|-------------------------------------|----------------------------------|-------------------|---------------------------------|-------------------------|
| <b>Revenues</b>                     |                                  |                   |                                 |                         |
| <b>Freight</b>                      |                                  |                   |                                 |                         |
| Sales/Use Taxes                     | \$ -                             |                   | \$ -                            |                         |
| Interest and Lease<br>Earnings      | \$ 415,000                       | \$ 38,271         | \$ (376,729)                    |                         |
| Miscellaneous<br>Revenue            | \$ 239,190                       | \$ 250,580        | \$ 11,390                       | Includes 45G tax credit |
| Freight Traffic                     | \$ 1,004,800                     | \$ 120,567        | \$ (884,233)                    |                         |
| Parking Fares                       | \$ -                             |                   | \$ -                            |                         |
| State Grants                        | \$ 740,000                       |                   | \$ (740,000)                    |                         |
| Charges For Services                | \$ -                             |                   | \$ -                            |                         |
| Federal Funds<br>(Non-COVID Relief) | \$ -                             |                   | \$ -                            |                         |
| Other Governments                   | \$ -                             | \$ -              | \$ -                            |                         |
| <b>Freight Subtotal</b>             | <b>\$ 2,398,990</b>              | <b>\$ 409,418</b> | <b>\$ (1,989,572)</b>           |                         |

## FREIGHT EXPENDITURES

|                                   | FY 2023-24<br>Approved Budget | Actual            | Amount Over /<br>(Under) Budget |
|-----------------------------------|-------------------------------|-------------------|---------------------------------|
| <b>Freight Expenditures</b>       |                               |                   |                                 |
| <b>Administration</b>             |                               |                   |                                 |
| Salaries & Benefits               | \$ -                          | \$ -              | \$ -                            |
| Services & Supplies               | \$ -                          | \$ -              | \$ -                            |
| <b>Administration Subtotal</b>    | <b>\$ -</b>                   | <b>\$ -</b>       | <b>\$ -</b>                     |
| <b>Operations</b>                 |                               |                   |                                 |
| Salaries & Benefits               | \$ 1,084,970                  | \$ 189,590        | \$ (895,380)                    |
| Services & Supplies               | \$ 1,054,333                  | \$ 127,760        | \$ (926,573)                    |
| <b>Operations Subtotal</b>        | <b>\$ 2,139,303</b>           | <b>\$ 317,350</b> | <b>\$ (1,821,953)</b>           |
| <b>Capital</b>                    |                               |                   |                                 |
| Salaries & Benefits               | \$ -                          | \$ -              | \$ -                            |
| Services & Supplies               | \$ 1,095,097                  | \$ 660,696        | \$ (434,401)                    |
| <b>Capital Subtotal</b>           | <b>\$ 1,095,097</b>           | <b>\$ 660,696</b> | <b>\$ (434,401)</b>             |
| <b>Total Freight Expenditures</b> | <b>\$ 3,234,400</b>           | <b>\$ 978,046</b> | <b>\$ (2,256,354)</b>           |

|   |             |             |             |
|---|-------------|-------------|-------------|
| <b>Freight (Capitalized) Expenditures</b>       |             |             |             |
| Buildings & Capital Improvements                | \$ -        | \$ -        | \$ -        |
| Land  | \$ -        | \$ -        | \$ -        |
| Machinery & Equipment                           | \$ -        | \$ -        | \$ -        |
| Infrastructure                                  | \$ -        | \$ -        | \$ -        |
| <b>Total Freight (Capitalized) Expenditures</b> | <b>\$ -</b> | <b>\$ -</b> | <b>\$ -</b> |

|   |                     |                   |                       |
|---|---------------------|-------------------|-----------------------|
| <b>Freight Expenditures + Capitalized</b> | <b>\$ 3,234,400</b> | <b>\$ 978,046</b> | <b>\$ (2,256,354)</b> |
|---|---------------------|-------------------|-----------------------|

## CAPITAL PROJECTS

| Capital Project Report   | Sep-23               |                                |                  |  |  |
|--|----------------------|--------------------------------|------------------|--|--|
|  | Total Project Budget | Expended in Prior Fiscal Years | Budgeted in FY24 | Remaining to be Budgeted in Future Years | Project Status   |
| <b>PASSENGER RAIL PROJECTS</b>   |                      |                                |                  |  |  |
| Windsor Extension  | \$ 70,000,000        | \$ 24,256,464                  | \$ 10,000,000    | \$ 35,743,536                            | Developing plans to resume construction in 2024.   |
| Windsor to Healdsburg Extension  | \$ 160,400,000       | \$ -                           | \$ 5,000,000     | \$ 155,400,000                           | Preliminary work is planned to start in 2024.  |
| Sonoma County Pathway Connector Project Design: Petaluma to Penngrove & Rohnert Park to Santa Rosa | \$ 4,876,752         | \$ 3,104,611                   | \$ 1,692,050     | \$ -                                     | These pathway segments have been combined with the construction of the Petaluma North Station.   |
| Marin & Sonoma Pathway Design & Permitting   | \$ 10,660,900        | \$ 3,388,763                   | \$ 6,188,932     | \$ 1,083,205                             | Conducting engineering design to prepare for construction and pursuing environmental permits.  |
| McInnis Pkwy. at Bridgewater Dr. to Smith Ranch Rd. Construction                                   | \$ 4,658,878         | \$ -                           | \$ 4,658,878     | \$ -                                     | Construction started in September.   |
| Joe Rodota to 3rd St. Design and Construction  | \$ 450,779           | \$ 45,688                      | \$ 387,015       | \$ -                                     | In design - Construction will depend on grant execution.   |
| Hannah Ranch Rd to Vintage Way Pathway Construction  | \$ 1,933,140         | \$ -                           | \$ 246,466       | \$ 2,012,806                             | Design and permitting are underway.  |
| Guerneville Rd to Airport Blvd Pathway Construction  | \$ 14,595,629        | \$ -                           | \$ 1,429,430     | \$ 13,166,199                            | Design and permitting are underway.  |
| Puerto Suello Pathway  | \$ 708,227           | \$ -                           | \$ 708,227       | \$ -                                     | Preparing a Request for Proposal (RFP) to hire a design consultant.  |
| Petaluma North Station   | \$ 32,939,585        | \$ 1,315,027                   | \$ 15,128,695    | \$ 16,495,863                            | A construction contract has been awarded. Construction will begin in late 2023. The contract includes Sonoma County Pathway projects for construction. |
| Payran to Lakeville Pathway - Design & Construction  | \$ 1,209,818         | \$ 1,018,674                   | \$ 191,144       | \$ -                                     | Construction is complete.  |
| Basalt Creek Timber Bridge Replacement   | \$ 630,103           | \$ 120,978                     | \$ 14,000        | \$ 495,125                               | Finalizing design and working with regulatory agencies to secure environmental permits.  |
| San Antonio Tributary Timber Trestle Replacement   | \$ 1,075,264         | \$ 130,201                     | \$ 14,000        | \$ 931,063                               | Finalizing design and working with regulatory agencies to secure environmental permits.  |
| <b>FREIGHT RAIL PROJECTS</b>   |                      |                                |                  |  |  |
| Brazos Branch Bridge Repairs   | \$ 1,812,234         | \$ 711,538                     | \$ 1,100,696     | \$ -                                     | Construction is complete for the first phase, design work on the second phase planned for beginning of 2024.   |

## INVESTMENTS

Investments are guided by the SMART investment policy adopted each year with the budget. The policy outlines the guidelines and practices to be used in effectively managing SMART's available cash and investment portfolio. District funds that are not required for immediate cash requirements are to be invested in compliance with the California Code Section 53600, et seq.

SMART uses the Bank of Marin for day-to-day cash requirements and for longer term investments the Sonoma County Treasury Pool is used. This chart reflects a point in time versus a projection of future fund availability.

|   |                       |
|---|-----------------------|
| <u>Cash On Hand</u>                               |                       |
| Bank of Marin                                     | \$ 28,018,273         |
| Sonoma County Investment Pool *                   | \$ 88,592,397         |
| <b>Total Cash on Hand</b>                         | <b>\$ 116,610,670</b> |
|   |                       |
| <u>Reserves</u>                                   |                       |
| Self-Insured                                      | \$ 2,370,675          |
| OPEB/ CalPERS                                     | \$ 4,574,676          |
| Operating Reserve                                 | \$ 11,278,617         |
| Capital Sinking Fund                              | \$ 10,625,000         |
| Corridor Completion                               | \$ 7,000,000          |
| <b>Total Reserves</b>                             | <b>\$ 35,848,968</b>  |
|   |                       |
| Cash Balance                                      | \$ 80,761,702         |
| Less: Current Encumbrances                        | \$ 33,087,322         |
| Balance   | \$ 47,674,380         |
| <b>Less: Estimated FY24 Year-end Fund Balance</b> | <b>\$ 27,833,704</b>  |
| <b>Remaining Balance</b>                          | <b>\$ 19,840,676</b>  |



## Contract Summary

Active contracts as of September 30, 2023

### PASSENGER RAIL

| Contractor                                       | Scope   | Fiscal Year 23/24<br>Projected | Fiscal Year 23/24<br>Actuals |
|--|---|--------------------------------|------------------------------|
| A.J. Janitorial Service                          | Janitorial Services for all Stations, Roblar, ROC, and Fulton                               | \$ 114,000                     | \$ 27,420.00                 |
| AI-Media Technologies, LLC                       | Closed-Captioning Services  | \$ 450                         | \$ 450                       |
| Alcohol & Drug Testing Services, LLC             | DOT and FRA-regulated Drug and Alcohol Testing Services                                     | \$ 36,000                      | \$ -                         |
| Allen, Glaessner, Hazelwood LLP                  | Legal Services for Litigation and Rail Transit Issues                                       | \$ 89,445                      | \$ 888                       |
| Alliant Insurance Services                       | Insurance Brokerage and Risk Management Services  | \$ 70,000                      | \$ 22,207                    |
| American Rail Engineers Corporation              | Railroad Bridge Inspections, Bridge Engineering, and Related Services                       | \$ 40,000                      | \$ 378                       |
| Argonaut Constructors                            | Parking Lot Improvements at Petaluma Downtown Station                                       | \$ 14,925                      | \$ 14,925                    |
| Asbury Environmental Services (AES)              | Hazardous and Non-Hazardous Waste Removal and Disposal Services                             | \$ 375                         | \$ 375                       |
| Becoming Independent                             | Emergency Bus Bridge Services   | \$ 6,051                       | \$ 1,000                     |
| BKF Engineers Inc.                               | Design and Engineering Services for MUP Segments in Sonoma and Marin Counties               | \$ 952,426                     | \$ 175,663                   |
| Bolt Staffing Service, Inc.                      | Temporary Staffing Services   | \$ 30,000                      | \$ -                         |
| Bright Star Security, Inc.                       | Security Patrol at SMART's Cal Park Tunnel  | \$ 5,490                       | \$ 2,745                     |
| Business Training Library, LLC                   | Cloud-Based Learning Courses  | \$ 5,431                       | \$ 5,431                     |
| Cal Interpreting & Translations                  | Real Time Translation and Related Services  | \$ 5,000                       | \$ -                         |
| Cinquini & Passarino, Inc.                       | Right-of-Way Land Surveying and Related Services  | \$ 3,252                       | \$ 2,375                     |
| Code 3 Entertainment Services, LLC               | Microtransit Operations and Maintenance Services  | \$ 375,000                     | \$ -                         |
| CSW/Stuber-Stroeh Engineering Group              | Design and Engineering Services for 5 MUP Segments in Marin County                          | \$ 979,435                     | \$ 29,660                    |
| CSW/Stuber-Stroeh Engineering Group              | Design and Engineering for Petaluma North Station, N. McDowell Grade Crossing, Segments 2 & | \$ 510,205                     | \$ 58,320                    |
| Demsey, Filliger, & Associates, LLC              | GASB Pension Compliance Services (Actuarial Calculations)                                   | \$ 4,750                       | \$ -                         |
| Doug Williams                                    | Fire and Life Safety Consultant   | \$ 2,035                       | \$ 420                       |
| Dr. Lance O'Connor                               | Occupational Health Screening Services  | \$ 5,000                       | \$ -                         |
| Dunnigan Psychological & Threat Assessments, LLC | Employment-Related Psychological Evaluation Services  | \$ 25,000                      | \$ 4,200                     |
| Eide Bailly LLP                                  | Financial Audit Services  | \$ 58,300                      | \$ -                         |
| eLock Technologies, LLC                          | Station Bike Lockers - Ongoing Maintenance and Support Services                             | \$ 13,130                      | \$ 2,843                     |
| Empire Cleaners                                  | Operations Uniform Dry Cleaning, Laundering, and Related Services                           | \$ 18,000                      | \$ 2,495                     |
| Gary D. Nelson Associates, Inc.                  | Temporary Staffing and Placement Services   | \$ 70,000                      | \$ 22,425                    |
| George Hills Company, Inc.                       | Third Party Claims Administration Services  | \$ 40,000                      | \$ 4,077                     |
| Gallagher Benefit Services, Inc.                 | Classification and Compensation Study Services  | \$ 49,875                      | \$ 49,875                    |
| Ghilotti Bros, Inc.                              | Construction of Non-Motorized Pathway - Lakeville to Payran                                 | \$ 191,144                     | \$ 118,214                   |
| Ghilotti Bros, Inc.                              | Construction of NMP McInnis to Smith Ranch  | \$ 3,490,399                   | \$ -                         |
| Golden Five, LLC                                 | Microsoft 365 Consulting Services   | \$ 49,800                      | \$ -                         |
| GP Crane & Hoist Services                        | Cal/OSHA Inspection Services  | \$ 2,200                       | \$ 2,200                     |
| Granicus, Inc.                                   | Media Streaming and Internet Broadcasting Services  | \$ 12,860                      | \$ 12,860                    |
| Hanford A.R.C.                                   | Implementation and Monitoring, San Rafael Creek Riparian Enhancement Project                | \$ 33,558                      | \$ 6,941                     |
| Hanford A.R.C.                                   | Maintenance and Monitoring the the Las Gallinas Creek Watershed Riparian Enhancement Plant  | \$ 16,188                      | \$ 3,597                     |
| Hanson Bridgett LLP                              | Legal Services - Union Negotiations   | \$ 100,000                     | \$ 959                       |
| HCI Systems, Inc.                                | Fire Equipment Inspection and Certification   | \$ 2,406                       | \$ -                         |
| Holland Company                                  | Track Geometry and Measurement Services   | \$ 24,000                      | \$ -                         |
| Hunt and Sons, Inc.                              | Bulk Delivery of Motor Oil (15W40)  | \$ 24,000                      | \$ -                         |
| JMA Civil, Inc.                                  | On-Call Civil & Rail Engineering Design Services  | \$ 46,494                      | \$ 10,714                    |
| Khoury Consulting, LLC                           | California State Legislative and Advocacy Services  | \$ 120,000                     | \$ 20,000                    |
| LC Disability Consulting                         | Disability Access Consulting  | \$ 10,000                      | \$ 600                       |
| LeaseQuery, LLC                                  | Lease Software Licensing and Software Support Services                                      | \$ 10,596                      | \$ -                         |
| Leete Generators                                 | Generator Inspection and Maintenance Services   | \$ 2,700                       | \$ -                         |
| Lisa Wolper, LCSW, SAP                           | Substance Abuse Professional Services   | \$ 2,100                       | \$ 650                       |
| Masabi LLC                                       | SMART Mobile Ticketing Pilot Project  | \$ 32,430                      | \$ 14,250                    |



## Contract Summary

Active contracts as of September 30, 2023

### PASSENGER RAIL

| Contractor                                | Scope   | Fiscal Year 23/24<br>Projected | Fiscal Year 23/24<br>Actuals |
|---|---|--------------------------------|------------------------------|
| MaxAccel                                  | Compliance Management Software Design/Implementation/Asset Management                     | \$ 29,295                      | \$ 5,423                     |
| Mission Linen Supply                      | Employee Uniform Services   | \$ 34,000                      | \$ 5,404                     |
| Modern Railway Systems, Inc.              | Monitoring and Maintenance SMART's Communications Network and TDX System                  | \$ 94,000                      | \$ 23,040                    |
| MuniServices, LLC                         | Sales Tax Recovery Services   | \$ 38,444                      | \$ 6,497                     |
| North Bay Bottling (Alex Ruiz Sr.)        | Drinking Water Delivery Service   | \$ 2,900                       | \$ 360                       |
| North Bay Petroleum                       | Provision of Fuel for DMUs  | \$ 1,316,697                   | \$ -                         |
| Nossaman LLP                              | Litigation, Rail Transit Issues, and other related legal services                         | \$ 287,933                     | \$ 71,224                    |
| Occupational Health Centers of CA         | Pre-Employment Evaluation Services  | \$ 42,000                      | \$ 226                       |
| Oil Stop, LLC                             | Automotive Repair and Service   | \$ 4,000                       | \$ -                         |
| Oracle                                    | Fusion ERP System   | \$ 200,000                     | \$ -                         |
| Parodi Investigative Solutions            | Pre-Employment Background Investigation Services  | \$ 25,000                      | \$ 3,300                     |
| PFM Financial Advisors, LLC               | Financial Advisory Services   | \$ 20,000                      | \$ -                         |
| Portola Systems, Inc.                     | SMART Station Network Maintenance and Configuration Services                              | \$ 260,000                     | \$ 197,782                   |
| Sherwood Electromotion, Inc.              | Overhaul Services for SMART's Permanent Magnet Alternators                                | \$ 29,500                      | \$ 6,040                     |
| Sierra-Cedar, LLC                         | Oracle Enterprise Resources Planning Software   | \$ 30,000                      | \$ 20,854                    |
| Sonoma County Fleet Operation Division    | Non-Revenue Fleet Vehicle Installation, Maintenance, and Repair Services                  | \$ 56,000                      | \$ -                         |
| SPTJ Consulting, Inc.                     | Network Monitoring and Support Services   | \$ 202,419                     | \$ 33,737                    |
| Survival CPR & First Aid, LLC             | First Aid and CPR Training, AED Compliance Program Management                             | \$ 11,300                      | \$ 1,386                     |
| Swiftly, Inc.                             | AVL Mobile Application and Website Interface  | \$ 9,702                       | \$ 9,702                     |
| TDG Engineering, Inc.                     | Wayfinding System Planning and Design for the SMART Pathway                               | \$ 112,454                     | \$ 21,375                    |
| The Routing Company                       | Furnish, Implement, and Maintain a Microtransit Software Platform                         | \$ 45,662                      | \$ 4,224                     |
| Triangle Properties, Inc.                 | SoCo Pathway Riparian Enhancement Implementation and Monitoring                           | \$ 47,061                      | \$ 8,970                     |
| Urban Transportation Associates, Inc.     | Onboard Automatic Passenger Counter System Purchase, Install, and Software Implementation | \$ 9,200                       | \$ 9,200                     |
| Van Scoyoc Associates                     | Federal Lobbying Services   | \$ 30,000                      | \$ 15,000                    |
| VenTek Transit Inc.                       | Fare Vending Machine Operations and Maintenance Services                                  | \$ 30,000                      | \$ 21,438                    |
| Vista Broadband Networks, Inc.            | Broadband Services  | \$ 9,000                       | \$ -                         |
| W.J.C. Electric, Inc. dba Hahn Automotive | Non-Revenue Vehicle Repair and Service  | \$ 15,000                      | \$ -                         |
| Web Master Designs, LLC                   | As-Needed Monitoring, Management, and Support Services for Public-Facing Websites         | \$ 10,000                      | \$ -                         |
| WRA, Inc.                                 | As-Needed Environmental Consulting Services   | \$ 168,185                     | \$ 16,100                    |
|   | TOTAL   | \$ 10,864,202                  | \$ 1,100,439                 |

### FREIGHT RAIL

| Contractor   | Scope  | Fiscal Year 23/24<br>Projected | Fiscal Year 23/24<br>Actuals |
|--|--|--------------------------------|------------------------------|
| American Rail Engineers Corporation                        | Railroad Bridge Inspections, Bridge Engineering, and Related Services                  | \$ 44,439                      | \$ 5,039                     |
| Cathcart Rail Holdco, LLC dba Cathcart Field Services, LLC | Running Repair Agent Inspection and Maintenance Services                               | \$ 7,884                       | \$ 5,307                     |
| Freight Rail Tracking Software                             | Freight Rail Tracking Software   | \$ 5,000                       | \$ 352                       |
| GATX Rail Locomotive Group, LLC                            | Freight Locomotive Lease Agreement   | \$ 44,800                      | \$ 12,034                    |
| Hue & Cry, Inc.  | Security System at Schellville Depot   | \$ 3,000                       | \$ 249                       |
| Koppers Railroad Structures, Inc.                          | Brazos Branch Timber Bridge Repairs - Phase I Contract                                 | \$ 660,696                     | \$ 660,696                   |
| North Bay Petroleum  | Provision of Fuel for DMUs   | \$ 90,000                      | \$ -                         |
| Summit Signal, Inc.  | Inspection, Testing, and Maintenance Services for Signal Equipment Along Brazos Branch | \$ 35,250                      | \$ -                         |
| Wine Country Sanitary, Inc.                                | Portable Toilet Rental and Maintenance   | \$ 1,571                       | \$ 197                       |
|  | TOTAL  | \$ 892,640                     | \$ 683,874                   |

Actuals-To-Date includes invoices that have been approved as of September 30, 2023, but may not have been processed in SMART's Financial System



**Eric Lucan, Chair**  
Marin County Board of Supervisors

**Melanie Bagby, Vice Chair**  
Sonoma County Mayors' and  
Councilmembers Association

**Kate Colin**  
Transportation Authority of Marin

**Chris Coursey**  
Sonoma County Board of Supervisors

**Rachel Farac**  
Transportation Authority of Marin

**Debora Fudge**  
Sonoma County Mayors' and  
Councilmembers Association

**Patty Garbarino**  
Golden Gate Bridge,  
Highway/Transportation District

**Barbara Pahre**  
Golden Gate Bridge,  
Highway/Transportation District

**Gabe Paulson**  
Marin County Council of Mayors and  
Councilmembers

**David Rabbitt**  
Sonoma County Board of Supervisors

**Chris Rogers**  
Sonoma County Mayors' and  
Councilmembers Association

**Mary Sackett**  
Marin County Board of Supervisors

**Eddy Cumins**  
General Manager

5401 Old Redwood Highway  
Suite 200  
Petaluma, CA 94954  
Phone: 707-794-3330  
Fax: 707-794-3037  
[www.SonomaMarinTrain.org](http://www.SonomaMarinTrain.org)

November 15, 2023

Sonoma-Marin Area Rail Transit Board of Directors  
5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954

**SUBJECT:** Ridership vs. Farebox Recovery

Dear Board Members:

**RECOMMENDATIONS:**

Discuss ridership versus farebox recovery strategy and provide direction to staff regarding future initiatives.

**SUMMARY:**

In early 2022, the SMART Board of Directors completed strategic planning work that developed the vision, mission, values, and strategic objectives for the district. One of the strategic objectives was ridership. Since early 2022, numerous initiatives have been implemented to facilitate ridership growth with excellent results. SMART currently has the highest ridership recovery rate in the Bay Area when compared to 2019 and has the second highest commuter rail ridership recovery rate in the country. However, this ridership growth has come as a tradeoff to SMART's farebox recovery ratio.

In Fiscal Year 2023, SMART had a 6% farebox recovery ratio. Although the farebox recovery ratio has improved over the past two years, it remains less than FY19's ratio of 15%.

The purpose of this agenda item is to review recent ridership initiatives and associated impacts on farebox recovery, analyze results, and discuss strategies moving forward. Board direction to staff will help inform the 2024 Strategic Plan update.

Very truly yours,

/s/

Eddy Cumins  
General Manager



**Eric Lucan, Chair**  
Marin County Board of Supervisors

**Melanie Bagby, Vice Chair**  
Sonoma County Mayors' and  
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November 15, 2023

Sonoma-Marin Area Rail Transit Board of Directors  
5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954

**SUBJECT:** Approve a Resolution authorizing the General Manager to execute a Memorandum of Understanding with the County of Sonoma for the maintenance and reporting of Environmental Riparian mitigation

Dear Board Members:

**RECOMMENDATION:**

Approve Resolution No. 2023-40 authorizing the General Manager to execute a Memorandum of Understanding (MOU) with the County of Sonoma to construct riparian enhancements at Helen Putnam Regional Park and for Regional Park staff to maintain and report on the improvements as mitigation for construction of SMART's non-motorized pathway impacts.

**SUMMARY:**

SMART would like to construct riparian enhancements in Sonoma County's Helen Putnam Regional Park to satisfy environmental permitting requirements for the construction of a non-motorized pathway between McInnis Parkway and Smith Ranch Road. SMART staff has negotiated the attached MOU that permits SMART to make improvements in the Helen Putnam Regional Park and for Regional Park staff to maintain the improvements and prepare annual reports documenting the establishment of the improvements for ten years.

**BACKGROUND:**

SMART is implementing a section of pathway between McInnis Road and Smith Ranch Road in San Rafael. Environmental impacts will occur as part of the planned pathway construction. Both the California Department of Fish and Wildlife and the California Regional Water Quality Control Board have conditioned the pathway construction project with riparian mitigation requirements. In partnership with Sonoma County Regional Parks, SMART has identified riparian enhancement opportunities at Helen Putnam Regional Park that will repair erosion damage and plant native trees and plants. Helen Putnam Regional Park in Petaluma is owned and operated by Sonoma County and is in the same watershed as the McInnis Parkway to Smith Ranch Road pathway project.



Implementation of riparian enhancements in Helen Putnam Regional Park (Project) is beneficial to both parties – it satisfies permit requirements for SMART and makes desirable site improvements at Helen Putnam Regional Park. SMART, through the attached MOU, proposes to reimburse the County for its effort for riparian maintenance, monitoring, and reporting, up to \$320,988.20 over the 11-year term of this agreement. SMART has been conditioned with a 10-year establishment period for the enhancements to the natural environment. The reason the term of the MOU is for eleven years is because the reporting on the establishment is at the end of each year. SMART, through the attached MOU, would pay all costs associated with the design, permitting, and construction of the Project.

Staff recommends approving Resolution No. 2023-40 authorizing the General Manager to execute a MOU with Sonoma County to construct and maintain riparian enhancements in Helen Putnam Park in an amount of \$320,988.20 and term of 11 years.

**FISCAL IMPACT:** \$320,988.20 over an 11-year term. The funds for construction are budgeted in the current Board adopted budget and funds for the on-going mitigation have been included in the SMART's long-range plan.

**REVIEWED BY:** [ x ] Finance       /s/                            [ x ] Counsel       /s/      

Respectfully,

      /s/        
Bill Gamlen, P.E.  
Chief Engineer

Attachment(s):

- 1) Resolution No. 2023-40
- 2) Memorandum of Understanding

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE COUNTY OF SONOMA TO MAINTAIN AND REPORT ON RIPARIAN ENHANCEMENTS IN PETALUMA AT HELEN PUTNAM PARK**

---

**WHEREAS**, SMART is implementing a section of non-motorized pathway between McInnis Parkway and Smith Ranch Road in San Rafael in which environmental impacts will occur as a result of the construction of the pathway; and

**WHEREAS**, the California Department of Fish and Wildlife and the San Francisco Bay Regional Water Quality Control Board have conditioned the project with mitigating for riparian impacts; and

**WHEREAS**, SMART has identified riparian enhancement opportunities to fulfill permit mitigation requirements in the Helen Putnam Regional Park in Petaluma which is in the same San Francisco Bay watershed as the McInnis Parkway to Smith Ranch Road pathway project; and

**WHEREAS**, County owns and operates Helen Putnam Regional Park; and

**WHEREAS**, The parties desire to enter into this Memorandum of Understanding to permit SMART to construct the mitigation improvements and for County Regional Parks staff to own, maintain and prepare reports documenting the establishment of the mitigation improvements; and

**WHEREAS**, SMART, through this Memorandum of Understanding, has agreed to pay all costs associated with the design, permitting, and construction of the Project; and

**NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD OF DIRECTORS OF SMART HEREBY FINDS, DETERMINES, DECLARES, AND ORDERS AS FOLLOWS:**

1. The foregoing Recitals are true and correct and are incorporated herein and form a part of this Resolution.
2. The General Manager is authorized to execute a Memorandum of Understanding with Sonoma County to permit SMART to construct the mitigation improvements and for County Regional Parks staff to own, maintain and prepare reports documenting the establishment of the mitigation improvements in Helen Putnam Park.

**Resolution No. 2023-40**  
**Sonoma-Marín Area Rail Transit District**  
**November 15, 2023**

**PASSED AND ADOPTED** at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 15<sup>th</sup> day of November 2023, by the following vote:

**DIRECTORS:**

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Eric Lucan, Chair, Board of Directors  
Sonoma-Marín Area Rail Transit District

ATTEST:

---

Leticia Rosas, Clerk of Board of Directors  
Sonoma-Marín Area Rail Transit District

# MEMORANDUM OF UNDERSTANDING AGREEMENT

## SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AND SONOMA COUNTY REGIONAL PARKS

### HELEN PUTNAM RIPARIAN MITIGATION

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into as of \_\_\_\_\_, 20\_\_, by and between the **SONOMA-MARIN AREA RAIL TRANSIT DISTRICT** (hereinafter SMART), a public entity duly established under the laws of California, and **COUNTY OF SONOMA**, a political subdivision of the State of California, by and through the Department of Regional Parks (County).

#### Recitals

- A. The SMART rail corridor, historically known as the Northwestern Pacific Railroad (NWPR), generally parallels Highway 101 running north - south in Sonoma and Marin Counties. The corridor is owned by the SMART District from Milepost (MP) 89.9 in Cloverdale southward to MP 11.4 in Corte Madera.
- B. SMART has completed California Environmental Quality Act (CEQA) review and designed and constructed a passenger rail service, stations and accompanying multi use path along an approximately 45-mile existing rail corridor which will eventually extended to 70-miles from Cloverdale in Sonoma County, California, to Larkspur, Marin County, California (the "SMART Rail and Pathway Project").
- C. SMART is implementing a section of pathway between McInnis Road and Smith Ranch Road in San Rafael. As part of the planned pathway construction, it has been determined that environmental impacts will occur. Both the California Department of Fish and Wildlife and the San Francisco Bay Regional Water Quality Control Board have conditioned the project with riparian mitigation requirements.
- D. SMART is seeking locations to construct Riparian Enhancements to comply with permits from the Environmental Permitting agencies.
- E. SMART has identified riparian enhancement opportunities to fulfill permit mitigation requirements in the Helen Putnam Regional Park in Petaluma which is in the same San Francisco Bay watershed as the McInnis Road to Smith Ranch Road pathway project.
- F. County owns and operates Helen Putnam Regional Park.
- G. SMART is interested in constructing Riparian Enhancements in Helen Putnam Regional Park (Project).
- H. The parties desire to enter into this MOU to provide for the construction, maintenance and establishment of the Project.
- I. SMART, through this MOU, has agreed to pay all costs associated with the design, permitting, and construction of the Project.

- J. County has agreed to allow the Project to be constructed on County property and to provide maintenance, monitoring, and reporting for the Project.
- K. SMART, through this MOU, has agreed to reimburse County for its effort for riparian maintenance, monitoring, and reporting, up to \$320,988.20 over the term of this agreement.

## **MOU**

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, County and SMART agree as follows:

### **1. RECITALS**

The above recitals are true and correct and are hereby incorporated in and expressly form a part of this MOU.

### **2. COORDINATION**

SMART's and County's Representative for purposes of this MOU shall be:

#### **SMART**

Bill Gamlen  
Chief Engineer  
Sonoma – Marin Area Rail Transit (SMART)  
5401 Old Redwood Highway, Suite 200  
Petaluma, California 94954  
Phone: 707.794.3330  
Email: [bgamlen@sonomamarintrain.org](mailto:bgamlen@sonomamarintrain.org)

#### **County**

Melanie Parker  
Deputy Director, Regional Parks  
2300 County Center Drive  
Suite A120  
Santa Rosa, CA 95403  
Phone: 707.565.2041  
Email: [Melanie.parker@sonoma-county.org](mailto:Melanie.parker@sonoma-county.org)

### **3. SCOPE OF WORK**

- A. Design, construction, maintenance, and monitoring of riparian enhancements in the Helen Putnam Regional Park in Petaluma according to the permits from the San Francisco Bay Regional Water Quality Control Board (RWQCB) (Exhibit D) and California Department of Fish and Wildlife (CDFW) (Exhibit E). A concept mitigation plan depicting the improvements is included as Exhibit A. The work will include design and construction of irrigation, slide repairs, earthwork, and planting.
- B. The activities covered in this agreement include the maintenance and monitoring of the Proposed Improvements. The intent is that the County will maintain the improvements as the plantings establish themselves in the natural environment and become part of the Helen Putnam Regional Park native ecosystem and prepare annual monitoring reports documenting the establishment of the improvements. At the conclusion of the term of this agreement, the Proposed Improvements will become the property of the County.

### **4. SMART'S RESPONSIBILITIES**

SMART agrees to perform the following:

A. Management:

- i. SMART shall be responsible for the management of the implementation of the Project, which will include preparing design and construction documents for the construction of the Planned Improvements.
- ii. SMART shall manage the installation and construction of the Planned Improvements.

B. Design: SMART shall submit design and construction documents to the County for review and approval, which shall not be unreasonably withheld, which approval authority is delegated to an appropriately licensed professional, such as a landscape architect, or similar.

C. Environmental Permits: SMART shall be responsible for securing environmental permits, including but not limited to, the costs associated with any environmental clearance, analysis, compliance documentation, permits or other entitlements as may be required.

- i. SMART will prepare and submit the year 1 as-built report.

D. Payment: SMART shall reimburse the County for the maintenance, monitoring, and reporting of the Project in accordance with the terms in Section 7.

E. Review: SMART shall promptly review all monitoring reports prepared by the County and will have 14 calendar days to review and respond to submittals from the County related to the Project. If no comments are received within 14 calendar days, the documents will be deemed approved, and the County will send final monitoring reports to SMART for submission to the permitting agencies.

5. **COUNTY'S RESPONSIBILITIES**

County agrees to perform the following:

A. Design Review: The County shall promptly review SMART's design and construction documents for the Project and will have 14 calendar days to review and respond to submittals from SMART related to the Project. If no comments are received within 14 calendar days, the documents and designs details will be deemed approved.

B. Plant Source: The County has an existing contract for collection of local seeds and propagation of native plants. The County shall mobilize to collect and grow plants that are genetically adapted to local park conditions. The propagated plants can be used to replace trees and vegetation that have failed. If local seed source is not collected, locally sourced native plants should be identified for the project.

C. Construction: The County may consult with SMART in overseeing the construction of the improvements but may not direct SMART's contractor.

D. Maintenance, Monitoring, and Reporting: After construction is complete, and plants are out of the contractors guarantee period, the County shall perform all maintenance, monitoring, and reporting for the project.

- i. County shall assume maintenance and monitoring responsibilities after construction is deemed complete. County shall be responsible for irrigation, preventing the return of invasive plant species that were removed as part of the Project, removing trash, maintaining any protective fencing, replacing plantings that have died or been removed, maintaining restored erosion areas and other activities as necessary to maintain the original intent of the Project improvements as identified in Exhibit A.
- ii. New planting projects typically require the most maintenance and attention in the first few years. This work consists of irrigation, weed removal and in some cases replacement of plantings that don't take hold. Once the plantings take hold, irrigation, and weeding tapers off to a point where the plantings have assimilated into the natural environment and do not require any support. Therefore, it is anticipated that the level of effort will be greatest in the first few years and reduce to nothing at the end of the term of this agreement.
- iii. SMART is required to submit monitoring reports to the permitting agencies to document the establishment of the Proposed Improvements. The County shall prepare seven (7) of these reports for SMART as required in the permits in Exhibit for years 2, 3, 4, 5, 6, 8, and 10.
  - a. Draft Reports shall be submitted to SMART no later than November 1st of all reporting years. County shall promptly respond and address comments to maintain the Final Reports schedule.
  - b. Final Reports shall be submitted to SMART no later than December 31st of the same year.
- iv. The County shall inform SMART, in a timely manner, when there are concerns about the success of the project.
- v. If regular inspections or annual monitoring reveal that the mitigation is not on track to meet performance standards after appropriate implementation of recommended maintenance activities, an assessment will be made to determine the cause and develop potential solutions following the recommendations of section 8.0 Adaptive Management of the Riparian Mitigation and Monitoring Plan. SMART will be responsible for funding remedial actions that are beyond typical maintenance, and Regional Parks will be responsible for implementing remedial actions that are within the capabilities of their existing staff and equipment.
- vi. Once the project has been deemed complete and the expiration of this MOU has expired, the park shall maintain the property as they see fit.

## 6. TERM

The term of this MOU is until January 31<sup>st</sup>, 2035.

**7. PAYMENT**

Payment for the work shall not exceed \$320,988.20, without prior consent by the parties to exceed such sum. Payment shall be made based upon the yearly expenditure schedule outlined in Exhibit C and the County meeting responsibilities outlined in Section 5. County shall invoice SMART, on an annual basis, for work completed in the upcoming year. If the reasonable completion of any task for which County has responsibility hereunder cannot be completed within the not-to-exceed amount set forth by this Section 7, then County shall have no obligation to complete such work until such time as the not-to-exceed amount has been adjusted to reflect the actual cost to County for the completion of the task.

**8. ADDITIONAL REQUIREMENTS**

**A. Amendments to MOU**

This MOU may be amended only by the mutual written consent of both parties.

**B. Indemnification**

- i. SMART shall indemnify, defend, protect, hold harmless, and release County, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and witness costs) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party. This indemnification obligation shall not be limited in any way by any limitation of the amount or type of acts, disability benefit acts, or other employee benefits.
- ii. County shall indemnify, defend, protect, hold harmless, and release SMART, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and witness costs) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party. This indemnification obligation shall not be limited in any way by any limitation of the amount or type of acts, disability benefit acts, or other employee benefits.

**C. Insurance**

- i. SMART shall require its contractors to maintain in force, during the construction of the project, a policy of general liability insurance, including coverage of bodily injury liability and property damage liability, naming the County, its officers, agents, and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate. Coverage shall be evidenced by a certificate of insurance in a form satisfactory to the County that shall be delivered to the County prior to commencement of the work.



- ii. County its agents and contractors shall maintain in force, during the maintenance, motoring and reporting period of the project, a policy of general liability insurance, including coverage of bodily injury liability and property damage liability, naming the SMART, its officers, agents, and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate. Coverage shall be evidenced by a certificate of insurance in a form satisfactory to the SMART that shall be delivered to SMART, after the construction project is complete, but prior to commencement of the County's maintenance, monitoring and reporting responsibilities.

#### D. Termination

Either party may terminate this MOU by giving 30-days prior written notice to the other party, in the manner described in Section 8.D of this MOU of its intent to terminate. SMART shall pay the County for all expenses associated with the proportion of work completed as of the termination date. Should the MOU be terminated, the County shall allow SMART and/or its contractor to take over maintenance and monitoring responsibilities of the Planned Improvements at no cost. County shall provide whatever access and permits are necessary at no cost to SMART and may confer but shall not interfere with the maintenance, monitoring and reporting obligations. At the completion of the establishment period or when the permitting agencies determine that SMART has fulfilled its riparian mitigation obligations, the Planned Improvements will become the property of the County.

#### E. Notice

Unless otherwise requested by a party, all notices, demands, requests, consents or other communications which may be or are required to be given by either party to the other shall be in writing and shall be deemed effective upon service. Notices shall be deemed to have been properly given when served on the party to whom the same is to be given by hand delivery or by deposit in the United States mail addressed to the party as follows:

SMART: Bill Gamlen, P.E.  
Chief Engineer  
Sonoma-Marin Area Rail Transit District  
5401 Old Redwood Highway  
Petaluma, CA 94954

Park: Melanie Parker  
Deputy Director  
2300 County Center Drive  
Suite A120  
Santa Rosa, CA 95403

When a notice is given by a generally recognized overnight courier service, the notice, invoice or payment shall be deemed received on the next business day. When a notice or payment is sent via United States Mail, it shall be deemed received seventy-two (72) hours after deposit in the United States Mail, registered or certified, return receipt requested, with the postage thereon fully prepaid. In all other

instances, notices, and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

F. Governing Law

This MOU shall be governed by and construed in accordance with the laws of the State of California. Venue shall be the County of Sonoma.

G. Entire MOU

This instrument contains the entire MOU between the parties, and no statement, promise, or inducement made by either party or agents of the parties that is not contained in this written contract shall be valid or binding; and this contract may not be enlarged, modified, or altered except in writing signed by the parties.

H. Authority of County

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this MOU on behalf of County.

I. No Waiver of Breach

The waiver by any of the Parties of any breach of any term or promise contained in this MOU shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this MOU.

J. Time of Essence

Time is and shall be of the essence of this MOU and every provision hereof.

K. Construction

To the fullest extent allowed by law, the provisions of this MOU shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this MOU is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. County and SMART acknowledge that they have each contributed to the making of this MOU and that, in the event of a dispute over the interpretation of this MOU, the language of the MOU will not be construed against one party in favor of the other. County and SMART acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this MOU.

L. Consent

Wherever in this MOU the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

M. Relationship of the Parties:

The parties do not intend to create a partnership, joint venture, joint enterprise, agency, or employee-employer relationship. The Parties intend by this Agreement to establish only the relationship of an independent Contractor (County) in performing the services specified herein, County shall control the work and the manner in which it is performed. County is not to be considered an agent or employee of SMART and is not entitled to participate in any pension plan, worker's compensation plan, insurance bonus, or similar benefits SMART provides its employees. In the event SMART exercises its right to terminate this Agreement County expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to SMART employees.

N. No Intended Third-Party Beneficiaries:

There is no third person or entity who is an intended third-party beneficiary under this agreement. No incidental beneficiary, whatever relationship such person may have with the Parties, shall have any right to bring an action or suit, or to assert any claim against the Parties under this agreement. Nothing contained in this agreement shall be construed to create and the Parties do not intend to create any rights in third parties.

O. Captions

The captions in this MOU are solely for convenience of reference. They are not a part of this MOU and shall have no effect on its construction or interpretation.

P. Acceptance of Electronic Signatures and Counterparts

The parties agree that this MOU, MOUs ancillary to this Contract, and related documents to be entered into this MOU will be considered executed when all parties have signed this MOU. Signatures delivered by scanned image as an attachment to electronic mail or delivered electronically through the use of programs such as DocuSign must be treated in all respects as having the same effect as an original signature. Each party further agrees that this Contract may be executed in two or more counterparts, all of which constitute one and the same instrument.

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

COUNTY OF SONOMA:

SONOMA-MARIN AREA RAIL TRANSIT  
DISTRICT:

By: \_\_\_\_\_  
Bert Whitaker,  
Director of Sonoma County Regional Parks

By: \_\_\_\_\_  
Eddy Cumins,  
General Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM FOR SMART:

By: \_\_\_\_\_

By: \_\_\_\_\_  
Tom Lyons, SMART General Counsel

EXHIBIT A

CONCEPTUAL DESIGN

DRAFT

## MEMORANDUM

|   |   |   |  |
|---|---|---|--|
| TO:   | Holly Garber, SF Bay RWQCB<br>Alex Single, CDFW   | FROM:   | Leslie Allen, <a href="mailto:allen@wra-ca.com">allen@wra-ca.com</a> |
| CC:   | Bryan Matsumoto, USACE SF District  | Bill Gamlen, Chief Engineer, SMART<br>Alexandra Majoulet, Associate Engineer, SMART |  |
|   | Minona Heaviland, Sonoma County Regional Parks  |   |  |
| DATE:   | May 25, 2023  |   |  |
| SUBJECT:  | SMART Non-Motorized Pathway Segment 3 (previously called Segment 1) McInnis Parkway (MP 20.1) to Smith Ranch Road (MP 21.0) – Revised Off-site Riparian Mitigation Concept at Helen Putnam Regional Park (WRA Project #31368) |   |  |
| EPIMS No. 34600 · Place ID 449618 · USACE File #2011-00346N |   |   |  |

This memorandum outlines an off-site riparian mitigation concept developed by WRA, Inc. (WRA) and proposed by the Sonoma-Marin Area Rail Transit District (SMART) as riparian mitigation for SMART's Non-Motorized Pathway Segment 3 (previously called Segment 1) McInnis Parkway (MP 20.1) to Smith Ranch Road (MP 21.0) project. The habitat enhancements at the proposed mitigation site were developed in cooperation with the landowner, Sonoma County Regional Parks (Regional Parks). By partnering together, these two public agencies hope to contribute jointly to environmental improvements in the North Bay by enhancing riparian habitat conditions at an existing park and constructing a new public pathway to facilitate non-motorized transportation.

If the San Francisco Bay Regional Water Quality Control Board (Water Board) and California Department of Fish and Wildlife (CDFW) are supportive of this revised concept for satisfying SMART's Segment 3 riparian mitigation needs, the next steps would be for WRA to prepare erosion repair and planting plans and specifications as well as a mitigation and monitoring plan detailing the proposed monitoring methods and success criteria.

**Riparian Mitigation Site Name:** Upper Pond Drainage and Windsor Drive Ephemeral Stream at Helen Putnam Regional Park

**Property Ownership:** Sonoma County Regional Parks

**Riparian Mitigation Site Location and Dimensions:** Helen Putnam Regional Park is located in the City of Petaluma (Figure 1, Attachment A) and within the limits of the San Francisco Bay Water Board Region (Region 2). The Upper Pond Drainage proposed mitigation area surrounds a drainage that flows into a pond known as the Cattail Pond (named due to the dense concentration of cattails (*Typha* sp.) surrounding the pond). A pedestrian trail encircles the pond known as the Cattail Trail, and a small picnic area is present to the east of the drainage's confluence with the pond. Another pedestrian trail, called the Ridge Trail, borders the east side of the site. The

proposed enhancement area extends from the creek channel up to the western edge of the Ridge Trail. The proposed riparian enhancements at this site collectively total approximately 0.3 acre and 700 linear feet (Figure 2, Attachment A).

The Windsor Drive Ephemeral Stream proposed mitigation site surrounds an ephemeral stream that originates within oak woodlands on the slopes above Windsor Drive and flows downhill to the northern edge of the park boundary (Figure 3, Attachment A). This proposed riparian enhancement site is situated immediately east of the West Wind Trail. The proposed riparian enhancements at this site collectively total just over 1 acre and approximately 880 linear feet.

**Current Site Conditions:** The Upper Pond drainage feature is an unnamed, freshwater stream that supports intermittent or seasonal flow. Downstream portions of the drainage closest to the pond are characterized by a mature riparian canopy consisting of native trees such as coast live oak (*Quercus agrifolia*) and buckeye (*Aesculus californica*), but the upstream portion of the drainage is mostly devoid of native overstory vegetation. Non-native invasive plant species present in this drainage include an approximately 0.04-acre infestation of Himalayan blackberry (*Rubus armeniacus*) and sparse distribution of Fuller's teasel (*Dipsacus sativus*) within the blackberry patches. A substantial headcut was observed within the densely vegetated area of the drainage.

The Windsor Drive Ephemeral Stream has minimal native riparian vegetation cover within and around the stream. A large Himalayan blackberry (*Rubus armeniacus*) infestation occupies approximately 0.07 acre of potential native vegetation planting area. The headwaters of the stream originate within a native oak savanna woodland community that is dominated by coast live oak and California bay (*Umbellularia californica*). Additionally, two headcuts and a large area of bank erosion were mapped as areas of potential instream restoration (Attachment B – Figure B-1). Repairing erosion on the creek banks and in the channel would ensure greater stability of the planting area.

Other stream corridors within Helen Putnam Regional Park support understory riparian vegetation consisting of rushes (*Juncus* spp.), yarrow (*Achillea millefolium*), and mugwort (*Artemisia douglasiana*), and mature canopy cover of oaks, buckeyes, and California bay. Figures 2 and 3 depict the locations of blackberry patches, headcuts, and areas lacking riparian canopy that would benefit from planting. Attachment B includes representative photographs of the conditions of the proposed mitigation areas collected during WRA site visits.

## Proposed Riparian Enhancements

### Invasive Plant Management

Approximately 0.04-acre and 0.07-acre of Himalayan blackberry infestation occur along the Upper Pond Drainage and Windsor Drive Ephemeral Stream, respectively. These infestations are located within areas mapped as potential riparian planting zones in Figures 2 and 3. Himalayan blackberry is included in the California Invasive Plant Council's (Cal-IPC) invasive plant inventory with a rating of "High;" a species with the potential to spread rapidly and displace native plants (Cal-IPC 2023).

To prepare planting zones for new native plantings, the Himalayan blackberry infestations will be cleared through a combination of mechanical removal and herbicide application (if allowed by Regional Parks). Additionally, Fuller's teasel (Cal-IPC rated Moderate) occurring within the

blackberry infestation within the Upper Pond Drainage will be managed with herbicide application and mechanical removal.

### Erosion Repair

There is a substantial headcut in the Upper Pond Drainage approximately 250 feet upstream from the pond (Figure 2). Regional Parks has emphasized the importance of stabilizing the channel to capture sediment upstream of the pond to prevent it from entering the pond. The stabilized channel should more closely resemble a wet meadow than a stream. WRA's restoration designers (water resources engineers and landscape architects) would develop a channel stabilization design to repair this headcut in a manner that reduces the likelihood of triggering further erosion upstream or downstream. The headcut would be repaired using biotechnical measures, in this case by placing locally collected materials such as woody debris, rock in minimal quantities, and willow stakes to stabilize it.

Two headcuts were mapped within the Windsor Drive Ephemeral Stream channel (Figure 3). The headcuts themselves are approximately 2 feet tall, but the entire stream bed in the lower portion of the stream is characterized by slumping, eroded banks. To stabilize the banks for successful revegetation, methods such as grading the banks to create inset floodplains and installing biodegradable erosion control fabric will be employed. In addition, biotechnical measures will be utilized such as installing woody debris, minimal rock, and willow stakes where appropriate to stabilize the toes of slope.

### Riparian Planting

Appropriate native plantings (trees and understory shrubs/forbs) would be prescribed for the proposed riparian planting areas identified on Figures 2 and 3. Based on WRA's observations of thriving riparian corridors elsewhere at Helen Putnam Regional Park, the plant palette presented in Table 1, below, would be a starting point. All plants will be propagated using materials collected at Helen Putnam Regional Park. Acorns and buckeye fruits gathered within the park can be planted directly into the soil (rather than propagating in containers). At a minimum, 82 trees would be included in the planting plan to compensate for riparian tree removal at SMART's proposed pathway project. WRA and Regional Parks believe temporary drip irrigation systems can be installed and a water truck can be brought to the revegetation areas along the paved trails and roads to provide the systems with water on an as-needed basis. Alternatively, a water tank could be installed at the tops of the drainages which would be accessible by a water truck to minimize the frequency of trucks within the park.

**Table 1. Proposed Riparian Planting Palette**

| SCIENTIFIC NAME             | COMMON NAME        |
|-----------------------------|--------------------|
| <b>Trees</b>                |                    |
| <i>Aesculus californica</i> | California buckeye |
| <i>Quercus agrifolia</i>    | coast live oak     |
| <i>Quercus kelloggii</i>    | black oak          |
| <i>Quercus lobata</i>       | valley oak         |
| <i>Salix lasiolepis</i>     | arroyo willow      |
| <b>Shrubs</b>               |                    |
| <i>Baccharis pilularis</i>  | coyote brush       |



|                                  |                       |
|----------------------------------|-----------------------|
| <i>Frangula californica</i>      | coffeeberry           |
| <i>Heteromeles arbutifolia</i>   | toyon                 |
| <i>Rosa californica</i>          | California rose       |
| <i>Rubus ursinus</i>             | California blackberry |
| <i>Symphoricarpos albus</i>      | common snowberry      |
| <b>Herbs, Forbs, and Grasses</b> |                       |
| <i>Achillea millefolium</i>      | yarrow                |
| <i>Artemisia douglasiana</i>     | mugwort               |
| <i>Carex barbarae</i>            | valley sedge          |
| <i>Elymus triticoides</i>        | creeping wild rye     |
| <i>Juncus patens</i>             | common rush           |

## Proposed Schedule

### Year 0 (2023)

- **Summer/Fall**—Collect native plant materials from within Helen Putnam Regional Park and begin propagation.
- **Fall**—Establish permanent photo monitoring points, document pre-enhancement conditions.
- **Fall**—Complete weed removal and treatment, repair erosion.

### Year 1 (2024)

- **Spring/Summer and/or Fall**—Conduct maintenance-level weed management.
- **Fall/Winter**—Install native plantings and temporary irrigation.
- **Submit Year 1/as-built report** by January 31 of the following year.

### Year 2 (2025)

- **Spring/Summer and/or Fall**—Conduct maintenance-level weed management.
- **Summer**—Conduct performance monitoring.
- **Submit Year 2 report** by January 31 of the following year.

### Year 3 (2026)

- **Spring/Summer and/or Fall**—Conduct maintenance-level weed management.
- **Summer/Fall**—Conduct performance monitoring.
- **Winter**—Discontinue irrigation unless replacement plantings are installed.
- **Submit Year 3 report** by January 31 of the following year.

### Year 4 (2027)

- **Summer/Fall**—Conduct performance monitoring.
- **Submit Year 4 report** by January 31 of the following year.

### Year 5 (2028)

- **Summer/Fall**—Conduct performance monitoring.
- **Submit Year 5 report** by January 31 of the following year.

### Year 6 (2029)

- **Summer/Fall**—Conduct performance monitoring.

- **Submit Year 6 report** by January 31 of the following year.

#### **Year 8 (2031)**

- **Summer/Fall**—Conduct performance monitoring.
- **Submit Year 8 report** by January 31 of the following year.

#### **Year 10 (2033)**

- **Summer/Fall**—Conduct performance monitoring.
- **Submit Year 10 report** by January 31 of the following year.

## **Performance Criteria**

Performance criteria related to planting survival, native vegetation cover, invasive plant species cover, and erosion would be developed as part of a Riparian Mitigation and Monitoring Plan, once a riparian mitigation concept is approved by CDFW and the Water Board.

## **Mitigation Ratios**

Both CDFW and the Water Board responded to the earlier mitigation proposal by requesting riparian mitigation ratios of at least 5 to 1 due to the distance of the proposed mitigation site from the pathway project impact site. Additionally, CDFW requires compensatory mitigation for the removal of riparian trees. The minimum replacement ratios vary depending on whether the removed tree is native, non-native, or an oak tree, as copied from prior SMART NMP projects' Streambed Alteration Agreements:

- **1:1** for removal of non-native trees;
- **3:1** for removal of native trees (excluding oak trees);
- **4:1** for removal of oak trees between 5 and 10 inches in diameter;
- **5:1** for removal of oak trees between 10 and 15 inches in diameter; and
- **10:1** for removal of oak trees greater than 15 inches in diameter

According to updated impact details being prepared following a meeting with the Water Board on May 2, 2023, this expanded riparian enhancement concept at Helen Putnam Regional Park would mitigate for impacts to riparian habitat (excluding wetlands being mitigated at SMART's permittee responsible mitigation project known as Mira Monte Marsh Restoration Project) at ratios of at least 5:1 by area and length (exact dimensions to be determined if restoration plans and specifications are developed), as outlined in Tables 2 and 3 below. We propose that mitigation for CDFW's jurisdiction would be limited to the Upper Pond Drainage site, while mitigation for the Water Board's jurisdiction would be satisfied through a combination of both the Upper Pond Drainage and Windsor Drive Ephemeral Stream sites.

**Table 2. Proposed Ratio and Quantities for CDFW Mitigation at Upper Pond Drainage Site**

| AGENCY      | RIPARIAN IMPACTS | PROPOSED MINIMUM MITIGATION RATIO (MITIGATION TO IMPACT) | MINIMUM MITIGATION QUANTITY | MITIGATION OFFERED | POTENTIAL MITIGATION RATIO (MITIGATION TO IMPACT) |
|-------------|------------------|--|-----------------------------|--------------------|---|
| <b>CDFW</b> | 0.05 acre        | 5:1  | 0.25 acre                   | 0.34 acre          | ~6:1  |
|             | 135 linear feet  |  | 675 linear feet             | 700 linear feet    | ~5:1  |

**Table 3. Proposed Ratio and Quantities for Water Board Mitigation at Upper Pond Drainage and Windsor Drive Ephemeral Stream Sites**

| AGENCY             | RIPARIAN IMPACTS | PROPOSED MINIMUM MITIGATION RATIO (MITIGATION TO IMPACT) | MINIMUM MITIGATION QUANTITY | MITIGATION OFFERED | POTENTIAL MITIGATION RATIO (MITIGATION TO IMPACT) |
|--------------------|------------------|--|-----------------------------|--------------------|---|
| <b>Water Board</b> | 0.112 acre       | 5:1  | 0.56 acre                   | 1.37 acre          | >10:1   |
|                    | 270 linear feet  |  | 1,350 linear feet           | 1,580 linear feet  | ~5:1  |

## List of Attachments

### Attachment A: Figures

*Figure 1. Proposed Riparian Mitigation Project Location*

*Figure 2. Proposed Riparian Mitigation Concept at Upper Pond Drainage, Helen Putnam Regional Park*

*Figure 3. Proposed Riparian Mitigation Concept at Windsor Drive Ephemeral Stream, Helen Putnam Regional Park*

### Attachment B: Representative Site Photographs

## Attachment A.

### Figures

Path: L:\Acad 2000 Files\31000\31368\GIS\ArcMap\_Pro\31368Base.aprx Layout Name:Helen Putnam Figure 1 Location



Sources: National Geographic, WRA | Prepared By: kobylarz, 4/3/2023

## Figure 1. Proposed Riparian Mitigation Project Location

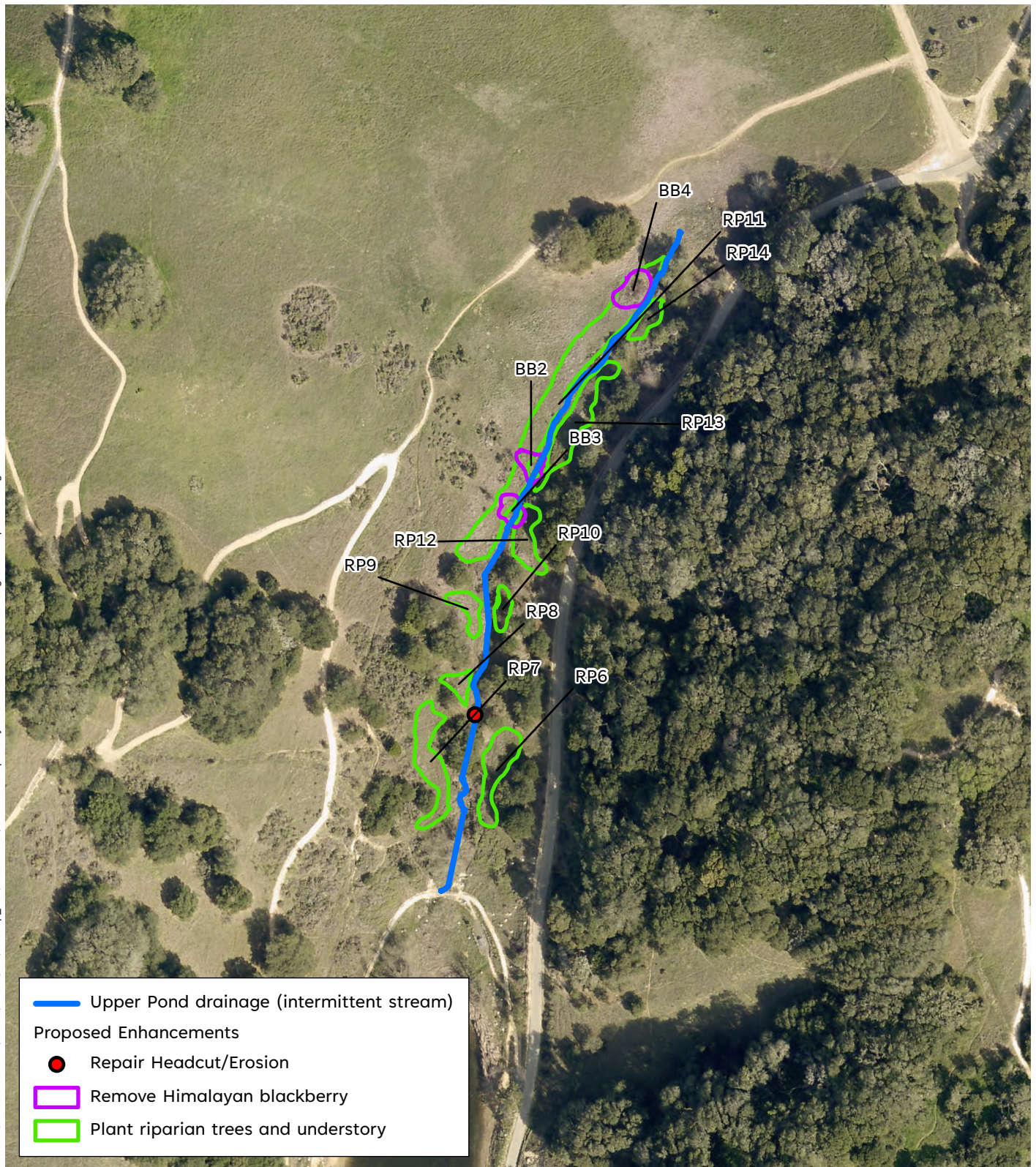
SMART Non-Motorized Pathway  
Segment 3 – McInnis Parkway (MP 20.1)  
to Smith Ranch Road (MP 21.0)  
San Rafael, Marin County, California

0 0.5 1  
Miles





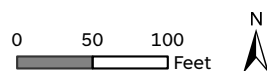
Path: L:\Acad 2000 Files\31000\31368\GIS\ArcMap\_Pro\31368Base.aprx Layout Name: Helen Putnam Figure 2 Proposed Mitigation



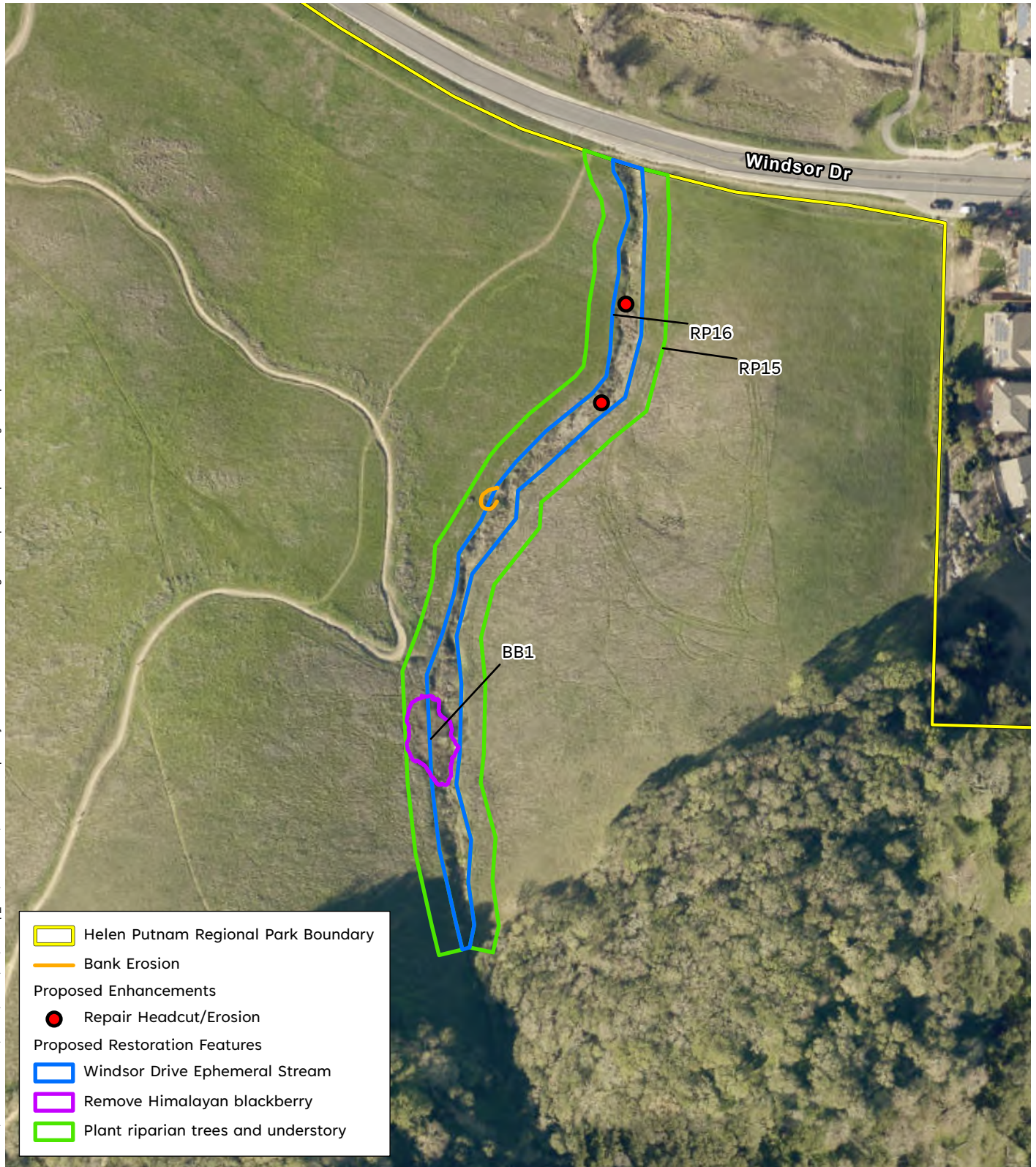
Sources: USDA NAIP Imagery 2020, WRA | Prepared By: kobylarz, 4/3/2023

**Figure 2. Proposed Riparian Mitigation Concept  
at Upper Pond Drainage, Helen Putnam Regional Park**

SMART Non-Motorized Pathway  
Segment 3 – McInnis Parkway (MP 20.1)  
to Smith Ranch Road (MP 21.0)  
San Rafael, Marin County, California



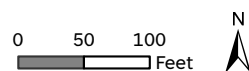




Sources: USDA NAIP Imagery 2020, WRA | Prepared By: kobylarz, 5/9/2023

### Figure 3. Proposed Riparian Mitigation Concept at Windsor Drive Ephemeral Stream, Helen Putnam Regional Park

SMART Non-Motorized Pathway  
Segment 3 – McInnis Parkway (MP 20.1)  
to Smith Ranch Road (MP 21.0)  
San Rafael, Marin County, California



## **Attachment B.**

### **Representative Site Photographs**





**Photo 1:** View of vegetation cover surrounding the Upper Pond Drainage. Native coyote brush grows along the channel. Photo taken on February 21, 2023.



**Photo 2:** View of a seasonal pond that is directly adjacent to the Upper Pond Drainage. A coast live oak (*Quercus agrifolia*) shades the pond. Photo taken on February 21, 2023.





**Photo 3:** View of steep headcut within the Upper Pond Drainage. Photo taken on February 21, 2023.



**Photo 4:** View of potential riparian planting area surrounding the upper reaches of the Upper Pond Drainage. In the northern reach of the drainage, canopy cover thins to a wet meadow environment. Photo taken on February 21, 2023.





**Photo 5:** View of bank failure taken facing northeast within Windsor Drive Ephemeral Stream. Photo taken on February 21, 2023.



**Photo 6:** View of downstream area of Windsor Drive Ephemeral Stream facing south showing native rushes (*Juncus* sp.) established within the stream channel. Photo taken on February 21, 2023.





**Photo 7:** View of a headcut within the Windsor Drive Ephemeral Stream. Multiple headcuts were observed within this feature. Photo taken on February 21, 2023.



**Photo 8:** View of large Himalayan blackberry (*Rubus armeniacus*) infestation growing within Windsor Drive Ephemeral Stream channel. Photo taken on February 21, 2023.



EXHIBIT B

SAMPLE MONITORING REPORT

DRAFT

OCTOBER 18, 2022

**Attn: Will Johnson**

Project Manager

Hanford ARC

765 Baywood Drive, Suite 237

Petaluma, CA 94954

Dear Mr. Johnson,

The purpose of this letter is to document Year 5 riparian enhancement monitoring results for the Las Gallinas Creek Watershed Riparian Enhancement Project (Project). The Project is located at 380 Merrydale Road in San Rafael, California along an unnamed creek channel and adjacent connecting drainage channel (Project Area). The two channels within the Project Area drain into Las Gallinas Creek (Attachment 1). The purpose of the Project is to provide compensatory mitigation for riparian habitat impacts resulting from a Sonoma-Marin Area Rail Transit District (SMART) project through enhancement of riparian habitat.

Construction of the SMART project was completed in June 2017 and riparian enhancement activities were completed in October 2018. The Project Area is divided into two zones:

1. Zone A: Merrydale Road Drainage Channel (Left Bank), 0.05 acre.
2. Zone C: Unnamed Creek Channel from Merrydale Road to Southwest (Left and Right Bank), 0.15 acre.

For greater detail on the existing conditions of Zone A, Zone C, and restoration activities performed in each Zone, please refer to the *Las Gallinas Creek Watershed Riparian Enhancement Plan* (Point Blue Conservation Science, March 2018).

Because the site has been consistently shy of meeting the annual performance criteria outlined in the *Las Gallinas Creek Watershed Riparian Enhancement Plan*, additional riparian plantings were installed during Year 5. Planting recommendations were developed based on past years' monitoring visits. All new plantings were placed in Zone C. (WRA 2021). On January 26, 2022, Hanford ARC installed the species listed in Table 1 below.

**Table 1. Number of Replacement Plantings Installed**

| COMMON NAME          | SCIENTIFIC NAME                            | QUANTITY PLANTED |
|----------------------|--|------------------|
| California sagebrush | <i>Artemisia californica</i>               | 2                |
| Toyon                | <i>Heteromeles arbutifolia</i>             | 2                |
| Evergreen gooseberry | <i>Ribes viburnifolium</i>                 | 3                |
| Pacific blackberry   | <i>Rubus ursinus</i>                       | 11               |
| Blue elderberry      | <i>Sambucus nigra</i> spp. <i>caerulea</i> | 4                |

## Methods

On August 30, 2022, two WRA biologists conducted a visual assessment of the health of the mitigation plantings and measured the percent canopy using the line intercept methodology outlined in the *Las Gallinas Creek Watershed Riparian Enhancement Plan*. As was done in previous monitoring years, WRA adapted the monitoring methodology to “field fit” to conditions within the Project Area. The adaptations and monitoring results are described below.

### Zone A:

In order to more accurately measure riparian canopy cover within Zone A, the following methods stated in the *Las Gallinas Creek Watershed Riparian Enhancement Plan* were modified in the field:

*“Measurements will be taken along two parallel lines within the 10-foot-wide planting strips, running parallel to the creek. The first tape-measure line will be placed 3 feet in from the upper bank edge of the project. The second tape-measure line will be placed 7 feet in from the upper bank edge of the project for the length of the project”.*

As a result of the as-built riparian plantings layout within Zone A, transects were relocated from 7 and 3 feet from the upper bank edge to 2 and 8 feet from the upper bank edge. The upper bank edge is defined as the bottom fence post in the split rail fencing that separates the planting area from the gravel access road adjacent to the storage facility. Minimal riparian plantings were located within the 7- and 3-feet range. Transects were re-located into areas within high planting densities to measure canopy cover more accurately within the mitigation planting Zone.

Zone A is split into two sections. To allow for more accurate sampling, the first section was sampled along a 200- foot transect measured from the split rail fencing as discussed above. The second half of the transect was measured from the chain link fence that runs parallel to the SMART tracks. The two transects were set at 7- and 3-feet from the fence and point intercept measurements were conducted.

In addition, to capture graminoid and forb species cover within the understory of Zone A more accurately, 0.5-meter quadrat sampling was added to the monitoring methods. Quadrats were placed every 40 feet along the length of the transect tape. The quadrats were then placed randomly within the width of the planting zone at each 40-foot interval. The width of the planting zone is 10-feet as stated above in the methods from the *Las Gallinas Creek Watershed Riparian Enhancement Plan*.

### Zone C:

In order to more accurately measure riparian canopy cover within Zone C, the methods stated in the *Las Gallinas Creek Watershed Riparian Enhancement Plan* were modified in the field. As a result of the high density and narrow as-built layout of the riparian plantings within Zone C, a single transect was located through the middle of the riparian plantings. This transect was placed in line with the utility pole at the northeastern end of the planting area.

In addition, quadrat sampling was implemented every 40 feet along the length of the transect tape in order to capture graminoid and forb species within Zone C. Quadrats were placed randomly within the width of the planting zone at each 40-foot interval.

## Results

Riparian cover within Zone A was measured to be 65.6 percent and 88.1 percent within Zone C. The average riparian cover within both zones is 73.5 percent. Tier 1 invasive species cover was measured at 0.6 percent within Zone A and Zone C during the August 2022 site visit. The only Tier 1 invasive species captured within quadrat sampling in both zones was French broom (*Genista monspessulana*, Cal-IPC ranked High).

**Table 2. Summary of Year 5 Performance**

| SUCCESS CRITERION                                  | SUCCESS CRITERION MET?   |
|--|--|
| At least 70% native riparian cover.                | Criterion <b>IS</b> met. Percent cover by native riparian vegetation is 73.5%. |
| No more than 10% cover of Tier 1 invasive species. | Criterion <b>IS</b> met. Percent cover by Tier 1 invasive species is 0.6%.     |

## Discussion

The mitigation areas are currently meeting both Year 5 success criteria. The supplemental plantings installed in Zone C have contributed to an approximately 58 percent increase in riparian cover in Zone C since Year 4. Native riparian cover in Zone A experienced a 1.88 percent increase in Year 5. The installation of shade tolerant plants such as Pacific blackberry (*Rubus ursinus*) and toyon (*Heteromeles arbutifolia*) has allowed for a denser canopy to develop within areas with less sun exposure.

Tier 1 invasive species have decreased in cover throughout the mitigation zones. Hanford conducted invasive plant management when installing the new plantings in Zone C. This management can account for the dramatic decrease observed in Year 5. A patch of invasive bamboo persists on the opposite side of the channel of Zone A but has not spread into the mitigation area.

The general health of the riparian plantings within the mitigation areas is good. Zone A is steadily increasing in native cover and appears to be progressing toward meeting future success criteria. Graminoid and forb cover had medium cover throughout the mitigation site. At the time of the site visit the site appeared to have been recently mowed, which made grass identification difficult. Identifiable vegetation was composed mainly of non-native grasses including slim oat (*Avena barbata*, Cal-IPC ranked Moderate) and Italian rye grass (*Festuca perennis*, Cal-IPC ranked Moderate). This represents a shift away from the native grass species composition observed throughout the site in Years 1 and 2, but consistent with what has been observed since Year 3. Ground cover should continue to be monitored in case future management is needed.



## Recommendations

With the addition of the newly installed plantings in Zone C, the site is now on track to meet the performance criteria set forth in the *Las Gallinas Creek Watershed Riparian Enhancement Plan* for the remainder of the ten-year monitoring period. WRA recommends the continued treatment of invasive species and irrigation of the new plantings within the enhancement area.

If you have any questions regarding this report, feel free to contact me at [schlein@wra-ca.com](mailto:schlein@wra-ca.com).

Sincerely,

*Eliza Schlein*

**Eliza Schlein**

WRA Project Manager  
[schlein@wra-ca.com](mailto:schlein@wra-ca.com)

**Attachment 1:** Figure 1. Project Location

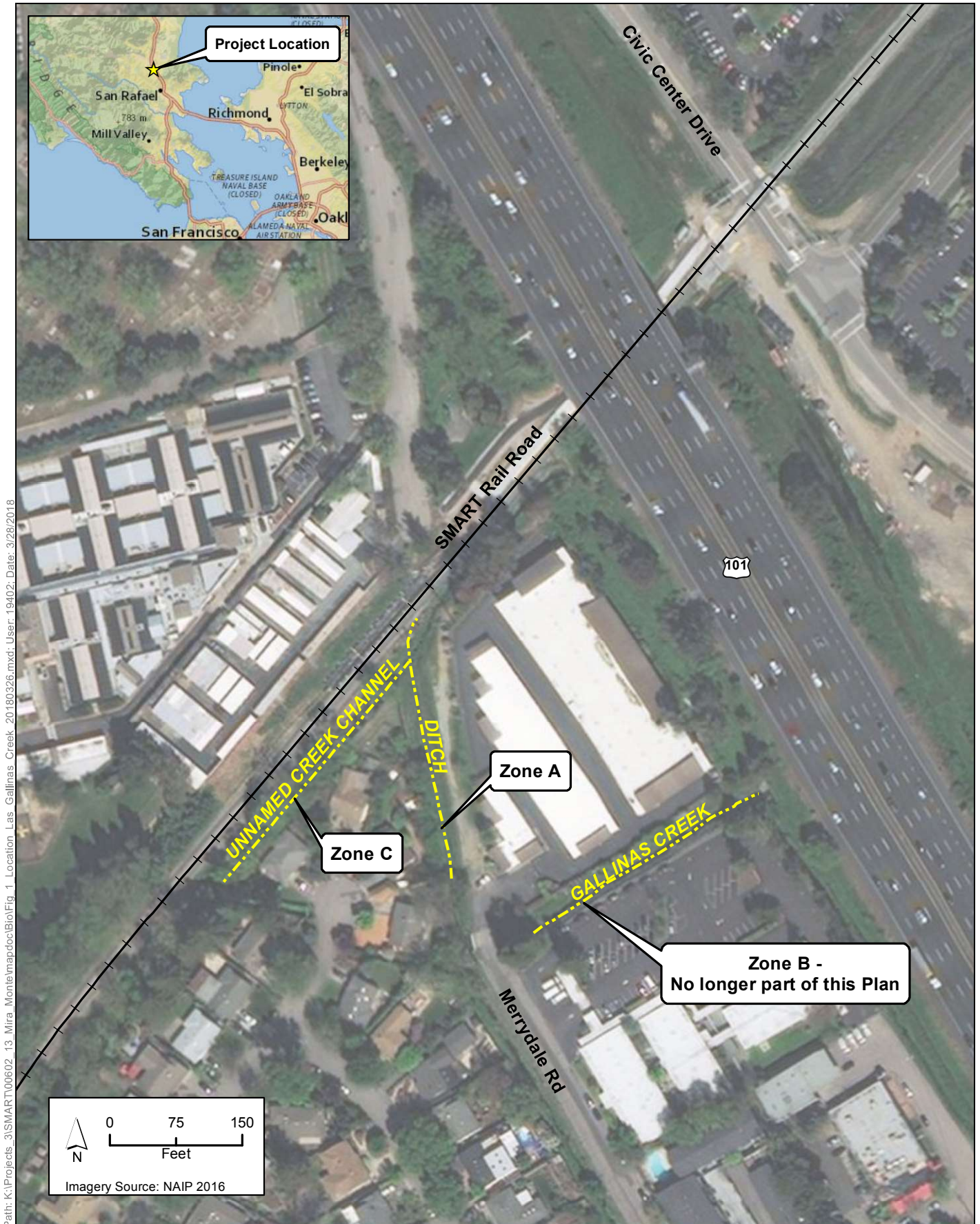
**Attachment 2:** Year 5 Site Photographs



## Attachment 1

Figure 1. Project Location





Path: K:\Projects\_3\SMART\00602\_13\_Mira\_Monte\mapdoc\Bio\Fig\_1\_Location\_Las\_Gallinas\_Creek\_20180326.mxd; User: 19402; Date: 3/28/2018



**Figure 1**  
**Location of Las Gallinas Creek Watershed**  
**Riparian Enhancement Project**

## Attachment 2

### Year 5 Site Photographs







**Photograph 1:** Image facing south in southern half of Zone A Revegetation Area. Photograph taken August 30, 2022.



**Photograph 2:** Image facing northwest towards Zone A Revegetation Area. Photograph taken August 30, 2022.





**Photograph 3:** Image facing southwest towards Zone C Revegetation Area. Photograph taken August 30, 2022.



**Photograph 4:** Image facing northeast towards Zone C Revegetation Area. Photograph taken August 30, 2022.

## EXHIBIT C

### YEARLY EXPEDITURE SCHEDULE

| Year | Fee         | Fiscal Year | Calendar Year |
|------|-------------|-------------|---------------|
| 0    | \$56,898.82 | 24/25       | 2024          |
| 1    | \$51,898.82 | 25/26       | 2025          |
| 2    | \$51,898.82 | 26/27       | 2026          |
| 3    | \$22,898.82 | 27/28       | 2027          |
| 4    | \$22,898.82 | 28/29       | 2028          |
| 5    | \$22,898.82 | 29/30       | 2029          |
| 6    | \$22,898.82 | 30/31       | 2030          |
| 7    | \$22,898.82 | 31/32       | 2031          |
| 8    | \$22,898.82 | 32/33       | 2032          |
| 9    | \$11,449.41 | 33/34       | 2033          |
| 10   | \$11,449.41 | 34/35       | 2034          |

Total \$320,988

Note: "Fiscal Year" is from July 1<sup>st</sup> to June 30<sup>th</sup> of the following year.

EXHIBIT D

CALIFORNIA WATER QUALITY CONTROL BOARD PERMIT

DRAFT



## San Francisco Bay Regional Water Quality Control Board

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### CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND ORDER for:

### SMART Non-Motorized Pathway Segment 3 Project, Marin County

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*Sent via electronic mail: No hard copy to follow.*

**Effective Date:** July 20, 2023

**RM 449618  
Place ID 883815  
WDID# 2 CW449618**

**Applicant:** Sonoma-Marín Area Rail Transit (SMART)  
5401 Old Redwood Hwy, Suite 200  
Petaluma, CA 94954  
Attention: Bill Gamlen ([bgamlen@Sonomamarintrain.org](mailto:bgamlen@Sonomamarintrain.org))  
Phone: (707) 794-3049

**Applicant's Agent:** WRA  
2169-G East San Francisco Blvd.  
San Rafael, CA 94901  
Attention: Leslie Allen ([allen@wra-ca.com](mailto:allen@wra-ca.com))  
Phone: (415) 259-9920

**Water Board Staff:** Holly Garber ([holly.garber@waterboards.ca.gov](mailto:holly.garber@waterboards.ca.gov))  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
Phone: (510) 622-2357

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## **Order**

This Clean Water Act (CWA) section 401 Water Quality Certification (Certification) and Order (Order) is issued to Sonoma-Marín Area Rail Transit (Permittee or SMART) for the SMART Non-Motorized Pathway (NMP) Segment 3 Project (Project).

Pursuant to CWA section 404, the Permittee requested authorization to fill and discharge to waters of the U.S. from the U.S. Army Corps of Engineers (Corps), Regulatory Branch, under Nationwide Permit 14 (Linear Transportation Projects). At the time of this Certification's issuance, the Corps has not yet authorized the Project.

The Permittee applied to the San Francisco Bay Regional Water Quality Control Board (Water Board) requesting Certification verifying the Project does not violate State water quality standards. The application for Certification was received on October 18, 2022 (Application). We informed the Permittee on November 22, 2022, that the Application was incomplete and requested additional information, including clarification of project impacts, a stormwater basis of design, and a mitigation and monitoring plan. Subsequent incomplete notifications were issued on December 12, 2022, and April 26, 2023, in response to supplemental information submitted by the Permittee. The Application was deemed complete on May 25, 2023.

The following sections are derived from the Application and supplemental information.

### **I. Project**

The Project site is located in the City of San Rafael, Marin County (Lat: 38.012486, Long: -122.528744) in the San Pablo Bay watershed. The site runs south to north on the east side of the existing SMART railroad from McInnis Parkway to a private airport driveway in the City of San Rafael and up to a County park entrance at Smith Ranch Road. Immediately adjacent to the Project site, within the Permittee's right-of-way (ROW) is SMART's existing active railroad track built on top of a raised railroad prism and surrounded by relatively flat ground with linear, concave depressions. The southern end of the Project site is located outside the Permittee's ROW at McInnis Parkway, where it crosses Gallinas Creek (Creek). Drainages and wetlands are scattered through the linear extent of the Project site.

The Permittee is a government transit agency that owns, maintains, and operates passenger rail service in Sonoma and Marin Counties, including the SMART Non-Motorized Pathway (NMP). The Permittee also owns, maintains, and operates freight rail service in Sonoma, Marin, and Napa Counties. Although several sections of the SMART NMP have been built by local jurisdictions and the Permittee, important sections are still missing, and a contiguous NMP connecting Santa Rosa to Larkspur does not exist. The Project will add another segment to the SMART NMP system, referred to as Segment 3 - McInnis Parkway (MP 20.1) to Smith Ranch Road (MP 21.0), that will provide non-vehicular transportation options for pedestrians and bicyclists between the Marin Civic Center campus and the recreational facilities at McInnis Park.

The Project will run south to north on the east side of the existing SMART passenger railroad tracks from McInnis Parkway, connect to an existing Class 1 pathway outside of SMART's right-of-way (ROW), and then to Smith Ranch Road, where it will connect to local streets and a future SMART-operated pathway north of Smith Ranch Road. The pathway will be 10 feet (ft) wide for approximately 2,550 linear feet (lf) and then widen to 16 ft for another 1,430 lf. In total, the Project will add 67,650 square feet (sf) of new and replaced impervious surface area.

The Project also includes construction of a clear-spanning pedestrian bridge, retaining walls along the pathway, and a drainage culvert. Grading and fill activities will occur along the pathway to provide a stable subgrade for the NMP. A new steel-and-concrete 80-ft-long by 10-ft-wide single-span pedestrian bridge will be installed on new abutments that will be located on high ground on either side of the south fork of the Creek. One abutment will impact a wetland. A new retaining wall will be constructed along approximately 2,200 lf of the NMP. A new 24-inch (in) by 24-in concrete box culvert will be installed where the NMP will cross a seasonal freshwater wetland, to maintain a hydrologic connection.

All materials and equipment will be transported to the Project site by truck and rail via paved public and private roadways. Construction equipment and supplies will be utilized and staged only within the proposed alignment of the pathway and/or on the railroad prism. Vehicles will be staged on the railroad track or off-site on existing paved parking surfaces.

## **II. Impacts to Waters of the State**

The Water Board has independently reviewed the Project record to analyze impacts to water quality and the environment and designated beneficial uses within the Project's watershed.

### **Fill and Discharge**

The Project will permanently and temporarily impact approximately 0.142 and 0.019 acres (ac) of waters of the State, respectively. As summarized in Table 1, The Project's permanent impacts will occur from installation of the culvert, retaining wall, a bridge abutment, fill for the pathway, and shading resulting from the clear span bridge structure.

**Table 1: Summary of the Project's permanent impacts to waters of the State.**

| Activity                                  | Aquatic Resource Type <sup>1</sup>  | Specific Habitat Type                           | Permanent (Acres) | Impact Type (Permanent Only) |
|---|-------------------------------------|---|-------------------|------------------------------|
| Pathway Fill and Bridge abutment          | Wetland                             | Tidal Salt Marsh                                | 0.013             | Physical Loss                |
| Pathway Fill                              | Wetland                             | Freshwater Seasonal Wetland                     | 0.039             | Physical Loss                |
| Pathway Fill, Culvert, and Retaining Wall | Wetland                             | Freshwater Seasonal Wetland                     | 0.072             | Physical Loss                |
| Clean Span Bridge Structure <sup>3</sup>  | Wetland                             | Tidal Salt Marsh                                | 0.008             | Degradation                  |
| Clean Span Bridge Structure               | Stream Channel and Riparian Habitat | Stream Open Water and Vegetated Transition Zone | 0.01              | Degradation                  |
| <b>Total<sup>2</sup></b>                  |                                     |   | <b>0.142</b>      |                              |

<sup>1</sup>These habitat types are for CIWQS reporting purposes.

<sup>2</sup>This is reported to the nearest tenth of an acre.

<sup>3</sup>This is a shading impact.

The Project will also remove 11 native and 6 non-native riparian trees, resulting in 0.091 ac of riparian canopy impacts. The Project's temporary impacts will occur primarily from vegetation clearing for salt marsh harvest mouse (SMHM) exclusion, but also from temporary grading. The temporary impacts will primarily impact wetland habitat (0.016 ac) and a small, vegetated transition zone (0.003 ac).

## Stormwater

Following construction, the approximately 67,650 sf of impervious surfaces created and replaced by the Project may impact water quality by collecting and concentrating pollutants, including trash in stormwater runoff, and may result in hydromodification impacts from increased water flows and durations.

## III. Mitigation

The Permittee will mitigate the Project's permanent and temporary impacts to waters of the State. The Project's permanent and temporary wetland impacts will be mitigated by the allocation of 0.394 ac of tidal marsh re-establishment credits from SMART's Mira Monte Marsh Restoration Project (a permittee-responsible wetlands and tidal marsh habitat mitigation project constructed for multiple SMART project impacts.)

To mitigate the Project's permanent canopy impacts to waters of the State, the Permittee will implement two off-site riparian mitigation projects described in the *Revised Off-site Riparian Mitigation Concept at Helen Putnam Regional Park* (WRA, May 25, 2023) (Conceptual Mitigation Plan), submitted with the Application, and as revised, totaling 1.37 ac of riparian habitat enhancement. The two offsite riparian mitigation projects include invasive vegetation removal, riparian plantings, including oak trees, and headcut repairs.

Upon issuance of this Order, the Permittee will further develop the offsite mitigation projects described in the Conceptual Mitigation Plan into actionable mitigation projects. This Certification requires the Permittee to prepare and submit a site-specific Mitigation and Monitoring Plan (MMP), including the specific design details for both sites, for review and acceptance by the Executive Officer. If the design details or proposed enhancement amounts (i.e., ac or lf) for either offsite riparian project differ from the Conceptual Mitigation Plan, the Water Board may require additional compensatory mitigation to sufficiently mitigate the Project's riparian impacts. The Permittee will monitor the offsite riparian mitigation project sites for a minimum 10-year period to ensure planted oak trees are fully established and verify the enhancement projects have successfully mitigated the Project's riparian impacts.

### **Stormwater Treatment**

To address potential post-construction impacts from the discharge of stormwater runoff and associated pollutants from impervious surfaces, runoff from the pathway will discharge into vegetated areas and swales for biotreatment. The vegetated areas will have sufficient area to accommodate the runoff (i.e., at least one-half the amount of the corresponding impervious area.). The Permittee will also implement the Project's Trash and Control and Abatement Program, which includes twice-weekly inspections and follow-up trash cleanups. Stormwater treatment will be implemented as described in the *Revised Drainage Management Exhibit*, received on May 25, 2023.

## **IV. California EcoAtlas**

Regional, state, and national studies have determined that tracking of mitigation and restoration projects must be improved to better assess the performance of these projects, following monitoring periods that last several years. To effectively carry out the State's Wetlands Conservation Policy of no net loss to wetlands, the State needs to closely track both losses and successes of mitigation and restoration projects affecting wetlands and other waters of the State. The Water Board must also track project performance in Bay Area creeks subject to routine repair and maintenance activities, such as recurring instabilities. Therefore, we adopted the digital interactive mapping tool called *EcoAtlas*.<sup>1</sup> *EcoAtlas* is a web-based tool that integrates maps, project plans, site conditions, restoration efforts, and other elements on a project-by-project basis based on data inputs. Accordingly, we require the Permittee to upload their Project information to *EcoAtlas* with the *Project Tracker* tool at <https://ptrack.ecoatlas.org>. The California Wetlands Monitoring Workgroup developed *EcoAtlas* and maintains detailed instructions for *Project Tracker* on its website at <https://ptrack.ecoatlas.org/instructions>.

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<sup>1</sup> Source: California Wetlands Monitoring Workgroup (CWMW), 2019. *EcoAtlas*. Accessed May 14, 2019. <https://www.ecoatlas.org>. The California Wetland Monitoring Workgroup (CWMW) provides technical oversight on the development of content and functionality of EcoAtlas. As a member of CWMW, San Francisco Estuary Institute provides day-to-day support and management of EcoAtlas, and can be contacted by email at [ptrackadmin@sfei.org](mailto:ptrackadmin@sfei.org).

## V. CEQA

The Permittee, as lead agency, evaluated the Project's potentially significant environmental effects pursuant to the California Environmental Quality Act (CEQA). The Project's environmental effects were evaluated in a series of CEQA documents including: *Sonoma-Marina Area Rail Transit Project, Draft Environmental Impact Report* (Parsons Brinckerhoff, November 2005) (DEIR); *Sonoma-Marina Area Rail Transit Project, Final Environmental Impact Report* (Parsons Brinckerhoff, June 2006) (FEIR); and subsequent modifications and addenda (State Clearinghouse No. 2002112033). The Permittee filed a Notice of Determination (NOD) for the Project on July 16, 2020. The Water Board, as a responsible agency under CEQA, has reviewed the FEIR and the Project's potentially significant effects under our purview and concurs that the NOD is appropriate.

## VI. Conditions

I, Eileen White, Executive Officer, do hereby issue this Order certifying that any discharge from the proposed Project will comply with the applicable provisions of CWA sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards), and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification," which requires compliance with all conditions of this Order, including the following:

### General Conditions

1. The Project shall be constructed in conformance with the Project description provided in the Application. The Permittee shall fully comply with engineering plans, specifications, and technical reports submitted in the Application or required as part of this Order. Any changes to information provided in the Application must be submitted to the Water Board and receive Executive Officer approval before the changes are implemented.

***Rationale:*** *This condition is necessary to ensure compliance with the permit and applicable conditions and to ensure that the proposed work and final restoration work has been conducted in accordance with the permit and all applicable conditions (California Water Code (CWC) section 13264).*

2. Disturbance or removal of vegetation shall be minimized. The site shall be stabilized through the incorporation of appropriate BMPs, including the successful re-establishment of native vegetation to enhance wildlife habitat values, and to prevent and control erosion.

***Rationale:*** *This condition is necessary to ensure minimization of impacts to waters of the State and to ensure successful restoration of all temporary impacts authorized (State*

*Board Resolution No. 68-16; 40 CFR part 131.12 (a)(1); CWC sections 13264 and 13369; San Francisco Bay Basin Water Quality Control Plan (Basin Plan) ch. 3 and 4).*

3. No equipment shall be operated in stream channels or other waters where there is flowing or standing water. Fueling, cleaning, or maintenance of vehicles or equipment during construction shall not take place within any areas where an accidental discharge to waters of the State may occur.

***Rationale:*** *This condition is necessary to minimize adverse impacts to water quality from construction activities to the maximum extent practicable (State Board Resolution No. 68-16; 40 CFR part 131.12 (a)(1); CWC section 13369; Basin Plan section 2.1.14).*

4. No unauthorized construction-related materials or wastes shall be allowed to enter into or be placed where they may be washed by rainfall or runoff into waters of the State. When construction is completed, any excess material shall be removed from the work area and any areas adjacent to the work area where such material may be discharged to waters of the State.
5. The Permittee shall obtain coverage for the Project under the General Permit of Discharges of Stormwater Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ (Construction General Permit), as amended, and Order No. 2022-0057-DWQ consistent with its effective date of September 1, 2023.

***Rationale:*** *Conditions 4-5 are necessary to ensure avoidance and minimization of impacts to waters of the State from construction activities (CWC section 13376 et seq).*

6. Concrete used in the Project shall adhere to the *Concrete and Containment Plan* submitted on May 25, 2023, and be allowed to completely cure (a minimum of 30 days) or be treated with a sealant that is non-toxic to aquatic life before it comes into contact with flowing water (Note: Demonstration of non-toxicity to aquatic life may be evaluated by measuring the survival of test organisms in a 96-hour bioassay. The bioassay should be performed according to the most up-to-date protocols in 40 CFR part 136, currently Methods for Measuring the Acute Toxicity of Effluents and Receiving Water to Freshwater and Marine Organisms, 5th Edition (EPA-821-R-02-012), including sample collection, handling, and preservation in accordance with U.S. EPA protocols). Only sealants tested and found non-toxic to freshwater aquatic life, including benthic macro-invertebrates, may be used on concrete surfaces that may come into contact with flowing water. Concrete is considered to be cured when water poured over the surface of the concrete consistently has a pH of less than 8.5.

***Rationale:*** *This Condition is necessary to ensure that contaminated material is not placed within waters of the State (Basin Plan sections 3.3.12, 3.3.19, and 4.19).*

7. In-water construction periods shall be restricted to environmental work windows (April 15 – October 31).



***Rationale:*** *This condition is necessary to minimize adverse impacts to water quality from construction activities to the maximum extent practicable (State Board Resolution No. 68-16; 40 CFR part 131.12 (a)(1); CWC section 13369; Basin Plan section 2.1.14) and to ensure avoidance and minimization of impacts to waters of the State and associated beneficial uses from construction activities (CWC section 13369(b)(1)(B) and (C); Basin Plan section 4.19).*

## **Mitigation**

8. To mitigate the Project's permanent and temporary wetland impacts the Permittee shall allocate 0.394 ac of tidal marsh re-establishment credits from SMART's Mira Monte Marsh Restoration Project to this Project.
9. To mitigate the Project's 0.018 ac of permanent shading impacts, the Permittee shall submit both a Mitigation and Monitoring Plan (MMP) and specific design and implementation details for the two compensatory mitigation projects described in the *Revised Off-site Riparian Mitigation Concept at Helen Putnam Regional Park* (WRA, May 25, 2023) (Conceptual Mitigation Plan.) The MMP shall be submitted no later than 60 days from this Order's issuance date and be acceptable to the Executive Officer. The specific design and implementation design details for the two mitigation projects shall include details regarding the proposed headcut repairs, including a basis of design, and other creek enhancement actions. An acceptable MMP shall include, but not be limited to, the following for each mitigation site: operation and maintenance activities that will be implemented along the enhanced and repaired areas, qualitative and quantitative performance criteria and final success criteria relating to the repaired headcut areas, performance criteria and final success criteria for the revegetated areas, monitoring means and methods, monitoring frequency and schedule, triggers and procedures for corrective actions, and the funding mechanism to implement maintenance and monitoring activities. The performance criteria shall be used during the monitoring period to track the restored Creek's progress towards meeting the final success criteria. If the specific design and implementation details differ substantively, in either mitigation type or mitigation quantities (e.g., ac and lf), from what was described in the Conceptual Mitigation Plan, the Water Board may require additional compensatory mitigation.
10. The Permittee shall evaluate the repaired headcut stability and revegetation areas during the monitoring period by using the annual performance criteria specified in the MMP. The Permittee shall document the repaired headcut stability and revegetation areas' progress towards meeting the final success criteria in each annual monitoring report.
11. The Project's mitigation shall be considered successful if the Executive Officer determines the final success criteria specified in MMP have been met in the final monitoring year's annual report and no adverse impacts to waters of the State have otherwise occurred;
12. The Permittee shall restore all areas of temporary impacts to waters of the State and all upland areas temporarily impacted that could result in a discharge to waters of the

State in accordance with the Application. If restoration of temporary impacts to waters of the State is not completed within one year of the impacts, additional compensatory mitigation shall be required to offset temporal impacts to waters of the State.

***Rationale:*** Conditions 8 –12 are necessary to ensure avoidance and minimization of impacts to waters of the State, as well as ensure successful compensatory mitigation and replacement of the functions of the aquatic environment that would be lost as a result from the construction of the proposed Project (Title 23 of the California Code of Regulations (23 CCR) sections 3013 and 3861(d); Dredge or Fill Procedures sections IV.A.2(d) and B.4).

## Post-Construction Stormwater Controls

13. The Permittee shall be responsible for constructing, operating, and maintaining all post-construction stormwater controls described in this Certification, including as described in the *Revised Drainage Management Exhibit*, received on May 25, 2023. The Permittee shall periodically inspect the road runoff discharge points to confirm the receiving vegetated areas have not eroded such that their intended function has not been or will not be degraded. The vegetated areas used to treat the road runoff shall operate as stormwater treatment controls in perpetuity and not be repaved or repurposed for any other use.

***Rationale:*** Conditions 13 is necessary to ensure avoidance and minimization of impacts to waters of the State and associated beneficial uses from construction activities (CWC section 13369(b)(1)(C); Basin Plan section 4.8).

## Monitoring and Reporting

14. The Permittee shall input Project information to *EcoAtlas* within 14 days from the date of this Order, consistent with Certification Section IV. The Project information shall be added to the *Project Tracker* tool in *EcoAtlas* online at <https://ptrack.ecoatlas.org>. Instructions for adding information to *EcoAtlas* are available at <https://ptrack.ecoatlas.org/instructions>, or by contacting the San Francisco Estuary Institute by email at [ptrackadmin@sfei.org](mailto:ptrackadmin@sfei.org), or the Water Board case manager listed on the cover page of this Order. The Executive Officer may grant an extension to the 14-day deadline if the Permittee submits a request in writing to the Water Board case manager listed on the cover page of this Order. The extension request may be submitted via electronic mail.

***Rationale:*** This condition is necessary to ensure compliance with the permit and applicable conditions (CWC section 13267).

15. The Permittee shall submit a Start of Construction Report at least seven days prior to start of initial ground disturbance activities. The Report shall reference **SOC\_449618\_SMART NMP Segment 3 Project** and shall be sent via email to [RB2-401Reports@waterboards.ca.gov](mailto:RB2-401Reports@waterboards.ca.gov), or by mail to the attention of 401 Certifications Reports (see address on the letterhead).

16. No later than 30 days after completing Project construction activities, the Permittee shall submit, acceptable to the Executive Officer, a Notice of Project Construction Completion. The Notice shall include the date Project construction activities (defined as construction of both the Project and any compensatory mitigation) were completed and reference **NOC\_449618\_SMART NMP Segment 3 Project**. The Notice shall be sent via email to [RB2-401Reports@waterboards.ca.gov](mailto:RB2-401Reports@waterboards.ca.gov), or by mail to the attention of 401 Certifications Reports (see address on the letterhead).

***Rationale:** Conditions 15 – 16 are necessary to ensure compliance with the permit and applicable conditions and to ensure that the proposed work and restoration work has been conducted in accordance with the permit and all applicable conditions (CWC section 13267).*

17. The Permittee shall monitor the two offsite mitigation sites for a minimum of 10 years. The annual monitoring shall include annual inspections, data collection, photo documentation, and an assessment of mitigation projects' progress towards meeting the performance criteria and final success criteria.

18. To verify that the Project is performing as intended, the Permittee shall perform vegetation and geomorphic monitoring for a minimum of 5 years for onsite temporary restoration areas in accordance with SMART's Response Letter dated May 25, 2023, and the Application, dated October 2022, as well as specified in this Condition. The annual monitoring shall include annual inspections, data collection, photo documentation, and an assessment of mitigation projects' progress towards meeting the performance criteria and final success criteria.

- a. **Geomorphic monitoring** shall consist of annual visual inspections and photo monitoring of any observed signs of erosion or sedimentation threatening the Project or aquatic habitat. Photographs shall be taken at the same time each year along the Project length of any signs of erosion or instabilities and at least two photographs (one looking upstream, one looking downstream) taken every 25 feet for 100 feet upstream and downstream (or as far as access allows) to document channel conditions.
- b. **Vegetation monitoring** shall consist of photo monitoring and revegetation data collection, such as percent absolute vegetation cover of wetland species and native vegetation.

- The annual performance criteria shall be the following:

**Year 1: 75% Absolute Vegetation Cover**

**Year 3: 80% Absolute Vegetation Cover**

**Year 5: 85% Absolute Vegetation Cover**

- For all years, no more than 10% cover of invasive species rated “high” by Cal-IPC shall be within the Project area.

19. The Permittee shall submit annual monitoring reports, acceptable to the Executive Officer, by January 31 following each monitoring year. The first monitoring year commences in the calendar year after completing the Project. Each annual report shall summarize each year’s monitoring results, including the need for, and implementation of, any adaptive management actions needed to help meet the performance criteria. The annual reports shall compare data to previous monitoring years and describe progress towards meeting final performance criteria. The annual reports shall compare data to previous monitoring years and describe progress towards meeting final performance criteria. The Permittee shall not implement any remedial measures until receiving written acceptance by the Executive Officer. The final monitoring report shall document if the sites meet the final performance criteria specified in the MMP. If the final criteria are not met, the Permittee shall, in consultation with the Water Board and appropriate agencies, identify remedial measures to be undertaken, including extension of the monitoring and reporting period until the criteria are met. The Permittee shall implement all remedial measures identified upon receiving written acceptance by the Executive Officer. Success of the mitigation program shall be determined by, and acceptable to, the Water Board Executive Officer. Annual monitoring reports shall reference **AMR\_449618\_SMART NMP Segment 3 Project** and shall be submitted via email to [RB2-401Reports@waterboards.ca.gov](mailto:RB2-401Reports@waterboards.ca.gov), or by mail to the attention of 401 Certification Reports (see the address on the letterhead).

***Rationale:*** Conditions 17 –19 are necessary to ensure compliance with the permit and applicable conditions and to ensure that the proposed work and restoration work has been conducted in accordance with the permit and all applicable conditions (CWC section 13267).

## **Administrative**

20. The Permittee shall grant Water Board staff or an authorized representative, upon presentation of credentials and other documents as may be required by law, permission to: (1) enter upon the Project site or compensatory mitigation site(s) where a regulated facility or activity is located or conducted, or where records are kept; (2) have access to and copy any records that are kept and are relevant to the Project or the requirements of this Order; (3) inspect any facilities, equipment, practices, or operations regulated or required under this Order; and (4) sample or monitor for the purposes of assuring Order compliance.

***Rationale:*** This condition is necessary to assist in scheduling compliance inspections and to ensure compliance with the permit and applicable conditions (CWC section 13267).

21. A copy of this Order shall be provided to any consultants, contractors, and subcontractors working on the Project. Copies of this Order shall remain at the Project

site for the duration of this Order. The Permittee shall be responsible for work conducted by its consultants, contractors, and any subcontractors.

22. The Permittee shall provide a signed and dated notification to the Water Board of any change in ownership or interest in ownership of the Project area at least 10 days prior to the transfer of ownership. The purchaser shall also submit a written request to the Water Board to be named as the permittee in an amended order. Until such time as this Order has been modified to name the purchaser as the permittee, the Permittee shall continue to be responsible for all requirements set forth in this Order.

***Rationale:*** Conditions 21 – 22 are necessary to ensure compliance with the permit and applicable conditions (CWC sections 13170 and 13245).

### **General Compliance**

23. The Permittee shall notify the Water Board of any event causing a violation of compliance with water quality standards as soon as practicable (ideally within 24 hours). Notification may be via telephone, email, delivered written notice, or other verifiable means.

***Rationale:*** This condition is necessary to minimize adverse impacts to water quality (CWC sections 13385 and 13267).

24. In response to a suspected violation of any condition of this Order, the Water Board may require the Permittee to furnish, under penalty of perjury, any technical or monitoring reports the Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
25. In accordance with CWC section 13260, the Permittee shall file with the Water Board a report of any material change or proposed change in the ownership, character, location, or quantity of this waste discharge. Any proposed material change in operation shall be reported to the Executive Officer at least 30 days in advance of the proposed implementation of any change. Changes to discharges include, but are not limited to, significant new soil disturbances, proposed expansions of development, or any change in drainage characteristics at the Project site. For the purpose of this Order, this includes any proposed change in the boundaries of the area of wetland/waters of the State to be impacted.
26. Where this Certification requires submittal of reports, including plans, reports, or related information, the submitted reports shall be acceptable to the Executive Officer.
27. Should new information come to our attention that indicates a water quality problem with this Project, the Water Board may issue Waste Discharge Requirements pursuant to CWC sections 13263 and/or 13377 and 23 CCR section 3857.

28. This Order shall continue to have full force and effect regardless of the expiration or revocation of any federal license or permit issued for the Project.

***Rationale:*** Conditions 24 – 28 are necessary to ensure compliance with the permit and applicable conditions (CWC sections 13170 and 13245).

### Standard Conditions

29. This Order is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to CWC section 13330 and 23 CCR section 3867.
30. This Order is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR subsection 3855(b) and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
31. This Order is conditioned upon total payment of the full fees, including annual fees, required in State regulations (23 CCR sections 2200(a)(3) and 3833(b)(3)) and owed by the Permittee. The Application fee for this Project, \$3,447, calculated using Category A – Fill & Excavation Discharges in the 2021/2022 Dredge and Fill Fee Calculator, was received by the Water Board in two payments: \$2,734 on February 24, 2023, and \$713 on June 28, 2023.

***Rationale:*** Conditions 29 – 31 are standard conditions that “shall be included as conditions of all water quality certification actions” (23 CCR section 3860(a)).

### Annual Fees

32. In accordance with 23 CCR section 2200, the Permittee shall pay an annual fee to the Water Board each fiscal year (July 1 – June 30) until Project construction activities are completed and an acceptable Notice of Project Construction Completion is received by the Water Board. Annual fees will be automatically invoiced to the Permittee. The Permittee shall pay an annual fee to the Water Board until monitoring activities are completed and an acceptable Notice of Mitigation Monitoring Completion is received by the Water Board (Note: the Annual Post Discharge Monitoring Fee may be changed by the State Water Board; at the time of Certification it was \$2,297 per year for Category A projects). **The Permittee must notify the Water Board at Project and/or mitigation completion with a final report in order to request to terminate annual invoicing.** Notification shall reference **NOT\_449618\_SMART NMP Segment 3 Project** and should be sent to Holly Garber at [holly.garber@waterboards.ca.gov](mailto:holly.garber@waterboards.ca.gov) and to [RB2-401Reports@waterboards.ca.gov](mailto:RB2-401Reports@waterboards.ca.gov). Water Board staff will verify conditions of the Certification have been met and may request a site visit at that time to confirm the Project’s status and compliance with this Certification.

This Order applies to the Project as proposed in the application materials and designs referenced above in the conditions of Certification. Be advised that failure to implement the Project in conformance with this Order is a violation of this Certification. Any violation of Certification conditions is a violation of State law and subject to administrative civil liability pursuant to CWC sections 13350, 13385, or 13399.2. Failure to meet any condition of this Certification may subject the Permittee to civil liability imposed by the Water Board to a maximum of \$25,000 per day of violation and/or \$25 for each gallon of waste discharged in violation of this action above 1000 gallons. Any requirement for a report made as a condition to this Certification (e.g., conditions 8, 12-16, 19, and 20 ) is a formal requirement pursuant to CWC sections 13267 and 13383, and failure or refusal to provide, or falsification of such required report, is subject to civil liability as described in CWC section 13268 and criminal liability under 13387. The burden, including costs, of these reports bears a reasonable relationship to the need for the report and the benefits to be obtained. Should new information come to our attention that indicates a water quality problem with this Project, the Water Board may issue Waste Discharge Requirements

If you have any questions concerning this Order, please contact Holly Garber of my staff at (510) 622-2357 or [holly.garber@waterboards.ca.gov](mailto:holly.garber@waterboards.ca.gov).

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for Eileen White  
Executive Officer

cc: SWRCB, DWQ, [stateboard401@waterboards.ca.gov](mailto:stateboard401@waterboards.ca.gov)  
Water Board, Victor Aelion, [victor.aelion@waterboards.ca.gov](mailto:victor.aelion@waterboards.ca.gov)  
U.S. EPA, Region IX 401 Inbox, [r9cwa401@epa.gov](mailto:r9cwa401@epa.gov)  
Jennifer Siu, [siu.jennifer@epa.gov](mailto:siu.jennifer@epa.gov)  
Corps, SF Regulatory Branch, Bryan Matsumoto, [bryan.t.matsmumoto@usace.army.mil](mailto:bryan.t.matsmumoto@usace.army.mil)  
CDFW, Alex Single, [alexander.single@wildlife.ca.gov](mailto:alexander.single@wildlife.ca.gov)  
Sonoma-Marín Area Rail Transit (SMART):  
Chief Engineer, Bill Gamlen, [bgamlen@sonomamarintrain.org](mailto:bgamlen@sonomamarintrain.org)  
Associate Engineer, Alexandra Majoulet, [amajoulet@sonomamarintrain.org](mailto:amajoulet@sonomamarintrain.org)  
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Carla Angulo, [Carla.angulo@wra-ca.com](mailto:Carla.angulo@wra-ca.com)  
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Ian Carpenter, [icarpenter@bkf.com](mailto:icarpenter@bkf.com)  
Becky Dower, [bdower@bkf.com](mailto:bdower@bkf.com)



EXHIBIT E

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE PERMIT

DRAFT



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534  
(707) 428-2002  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



August 25, 2023

Bill Gamlen  
Sonoma-Marin Area Rail Transit (SMART)  
5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954

Dear Mr. Gamlen:

**Final Lake or Streambed Alteration Agreement, EPIMS Notification No. EPIMS-MAN-34600-R3**

Attached is the final Streambed Alteration Agreement (Agreement) for the SMART Non-Motorized Pathways Segment 3: McInnis Parkway (MP 20.1) to Smith Ranch Road (MP 21.0) (Project). Before the California Department of Fish and Wildlife (CDFW) may issue an Agreement, it must comply with the California Environmental Quality Act (CEQA). In this case, CDFW acting as a responsible agency filed a Notice of Determination (NOD) within five working days of signing the Agreement. The NOD was based on information contained in the final Environmental Impact Report prepared by the lead agency.

Under CEQA, the filing of an NOD triggers a 30-day statute of limitations period during which an interested party may challenge the filing agency's approval of the Project. You may begin the Project before the statute of limitations expires if you have obtained all necessary local, state, and federal permits or other authorizations. However, if you elect to do so, it will be at your own risk.

If you have any questions regarding this letter, please contact Alexander Single, Environmental Scientist at (707) 799-4210 or by email at [Alexander.Single@wildlife.ca.gov](mailto:Alexander.Single@wildlife.ca.gov).

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**  
BAY DELTA REGION  
2825 CORDELIA ROAD, SUITE 100  
FAIRFIELD, CA, 94534



**STREAMBED ALTERATION AGREEMENT**  
EPIMS-MAN-34600-R3  
SOUTH FORK GALLINAS CREEK

SONOMA-MARIN AREA RAIL TRANSIT (SMART)  
SMART NON-MOTORIZED PATHWAYS SEGMENT 3: MCINNIS PARKWAY (MP  
20.1) TO SMITH RANCH ROAD (MP 21.0)

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and Sonoma-Marin Area Rail Transit (Permittee) as represented by **Bill Gamlen** acting on behalf of Permittee.

## **RECITALS**

WHEREAS, pursuant to Fish and Game Code section 1602, Permittee notified CDFW on October 28, 2022, and provided subsequent documents, that Permittee intends to complete the Project described herein.

WHEREAS, pursuant to Fish and Game Code section 1603, CDFW has determined that the Project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the Project in accordance with the Agreement.

## **PROJECT LOCATION**

The Project is located at South Fork Gallinas Creek, in the City of San Rafael in the County of Marin, State of California; with a center point of approximately Latitude 38.00705 °N, Longitude -122.53142 °W; and approximately 130 feet north-northwest the intersection of McInnis Parkway and Bridgewater Drive.

## **PROJECT DESCRIPTION**

The Project is limited to constructing a clear span bridge over South Fork Gallinas Creek and building a paved pedestrian pathway and retaining wall on the left bank of South Fork Gallinas Creek.

The bridge will be a clear span precast concrete bridge 78 feet long and 10 feet wide. Abutment areas will be cleared and graded on each side of South Fork Gallinas Creek. The abutment on the right bank will be above the top-of-bank and associated riparian vegetation. The abutment on the left bank will have two 30-inch-diameter cast-in-drilled-hole (CIDH) concrete piles below top-of-bank to prevent settlement. Holes for piles will be excavated using an auger or similar equipment to depths of 38.7 feet below existing soil level. A mold will be built and concrete will be poured to create the abutment. The abutments will connect to the bridge, which will be placed using a crane staged on McInnis Parkway.

The retaining wall will be three to eight feet tall and 110 feet long. It will be built using modular blocks filled with cement. The area to be covered by the path will be cleared and graded. Blocks will be placed by hand and galvanized steel pipes will be placed in the blocks every 10 feet at maximum. Blocks with galvanized steel pipes will then be filled with concrete, while blocks without pipes will be topped with cap blocks. The pipes will project from the top of the blocks and will be used as supports for a chain-link fence. The wall will be backfilled with compressed soil on the upslope side. The highest foot of area upslope of the wall will consist of six inches of compressed aggregate topped by six inches of hot mix asphalt to form the path surface.

The Project will result in 2,930 square feet and 135 linear feet of permanent impacts and 590 square feet and 25 linear feet of temporary impacts to South Fork Gallinas Creek and associated riparian and salt marsh areas. Bridge shading will account for 780 square feet of the permanent impacts. The Project will remove eleven oak (*Quercus* sp.) trees. No in-water work will occur.

## PROJECT IMPACTS

Existing fish or wildlife resources the Project could substantially adversely affect include:

- California Ridgway's rail (*Rallus obsoletus obsoletus*), California Fully Protected Species, state and federally listed as endangered
- Salt marsh harvest mouse (*Reithrodontomys raviventris*), California Fully Protected Species, state and federally listed as endangered
- California black rail (*Laterallus jamaicensis coturniculus*), California Fully Protected Species, state listed as threatened
- Chinook salmon (*Oncorhynchus tshawytscha*), Sacramento River winter-run Evolutionarily Significant Unit (ESU), state and federally listed as endangered
- Longfin smelt (*Spirinchus thaleichthys*), state listed as threatened and candidate for federal listing
- Tidewater goby (*Eucyclogobius newberryi*), federally listed as endangered
- Steelhead (*Oncorhynchus mykiss irideus*) Central California Coast ESU, federally listed as threatened
- Green sturgeon (*Acipenser medirostris*), Southern Distinct Population Segment (DPS) federally listed as threatened

- California red-legged frog (*Rana draytonii*), federally listed as threatened and California Species of Special Concern (SSC)
- San Pablo song sparrow (*Melospiza melodia samuelis*), SSC
- Saltmarsh common yellowthroat (*Geothlypis trichas sinuosa*), SSC
- Northern harrier (*Circus hudsonius*), SSC
- Least bittern (*Ixobrychus exilis*), SSC
- Pallid bat (*Antrozous pallidus*), SSC
- Western pond turtle (*Emys marmorata*), SSC
- White-tailed kite (*Elanus leucurus*), California Fully Protected Species
- Nesting birds
- Waterfowl
- Riparian and aquatic habitat
- Common aquatic and terrestrial species
- Water quality

The adverse effects the Project could have on the fish or wildlife resources identified above include:

- Temporary and permanent loss of riparian and aquatic habitat
- Change in contour of bed, bank, and channel
- Change in flow depth, width, or velocity
- Change in composition of channel materials
- Change in gradient of bed, channel, or bank
- Change in channel cross-section
- Degradation or aggradation of channel
- Colonization by exotic plant species
- Short term release of contaminants
- Increased turbidity
- Restriction or increase in sediment transport
- Loss of bank stability during construction
- Soil compaction or other disturbance to soil layer
- Loss of aquatic and terrestrial wildlife species
- Temporary impediment to migration of aquatic and terrestrial species
- Disruption of nesting birds and other wildlife
- Disturbance from Project activities

## **MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES**

### **1. Administrative Measures**

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily



available at the Project site at all times and shall be presented to CDFW personnel, or personnel from another state, federal, or local agency upon request.

- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the Project at the Project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the Project by another local, state, or federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that CDFW personnel may enter the Project site with the Permittee to verify compliance with the Agreement. The Permittee's presence is necessary for safety as SMART's railroad is active.
- 1.5 Notify CDFW Prior to Work. The Permittee shall notify CDFW by email at least five working days prior to commencement of covered activities. See contact information below.
- 1.6 No Trespass. To the extent that any provisions of this Agreement provide for activities that require the Permittee to traverse another owner's property, such provisions are agreed to with the understanding that the Permittee possesses the legal right to so traverse. In the absence of such right, any such provision is void.
- 1.7 Unauthorized Take. The Permittee is required to comply with all applicable state and federal laws, including the California Endangered Species Act (CESA) and federal Endangered Species Act. This Agreement does not authorize the take<sup>1</sup> of any state or federal endangered or threatened species. Liability for any take or incidental take of such listed species remains the responsibility of the Permittee for the duration of the Project. Any unauthorized take of such listed species may result in prosecution and nullification of the Agreement.
- 1.8 Fish Passage. The Project shall comply with Fish and Game Code section 5901 and shall not install or maintain any device or contrivance that prevents, impedes, or tends to prevent or impede, the passing of fish<sup>2</sup> up and down stream.

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<sup>1</sup> Take, as defined in Fish and Game Code section 86, means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. Take, as defined in title 16 of U.S. Code section 1532 subsection 19, means harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt any of those activities.

<sup>2</sup> Fish, as defined in Fish and Game Code section 45, means a wild fish, mollusk, crustacean, invertebrate, amphibian, or part, spawn, or ovum of any of those animals.

- 1.9 Designated Representative. Before initiating ground-disturbing Project activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this Agreement. The Permittee shall notify CDFW in writing five days prior to commencement of Project activities of the Designated Representative's name, business address, and contact information. Permittee shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this Agreement.

## 2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

### Work Period and Design

- 2.1 Work Period. All work shall begin on or after **June 15** and all work shall be completed by **October 15** of each year.
- 2.2 Work Period Modification. If a work period modification is needed, the work may be permitted outside of the work period specified in Measure 2.1 by a CDFW representative who reviewed the Project, or if unavailable, through contact with the Regional Office at (707) 428-2002. Permittee shall submit a written request for a work period variance on a week-by-week basis to CDFW. The work period variance request should consider the effects of noise, increased stream flows, rain delays, increased erosion control measures, limited access due to saturated soil conditions, and limited growth of erosion control grasses due to cool weather. Work period variances are issued at the discretion of CDFW. CDFW reserves the right to require additional measures, which shall be implemented by the Permittee, to protect fish and wildlife resources as a condition for granting the variance. At minimum, the work period variance request shall:
- 1) Describe the extent of work already completed.
  - 2) Detail the activities that remain to be completed.
  - 3) Provide a National Weather Service forecast covering the time needed, up to one week, to complete a phase or activity.
  - 4) Detail the time required to complete each of the remaining activities.
  - 5) Provide photographs of both the completed and proposed work sites.
  - 6) Include an assessment of additional biological impacts as a result of the work extension.
- 2.3 Conduct Work During Daylight Hours. Work is restricted to daylight hours (one hour after sunrise to sunset).
- 2.4 Work According to Documents. Except as they are contradicted by measures required by this Agreement, all work shall be conducted in conformance with the

Project description above and the avoidance, minimization, and mitigation measures provided in the notification package.

- 2.5 Work According to Plans. All work shall be completed according to the plans submitted to CDFW titled *SMART Pathway Non-motorized Pathways Marin-Sonoma Contract Number CV-PS-21-003 Segment 3: McInnis Parkway to Smith Ranch Road Milepost 20.1 to Milepost 20.9 STA 967+00 to STA 1020+00 100% Design*, prepared by I. Carpenter and T. Eaton, dated May 1, 2023 (Exhibit A). If the Permittee finds it necessary to update Project plans prior to construction, the updated plans shall be submitted to CDFW at least 30 days prior to beginning Project activities to determine if an amendment to this Agreement is required. Project activities shall not proceed until CDFW has accepted the updated plans in writing. At the discretion of CDFW, minor plan modifications may require an amendment to this Agreement. At the discretion of the CDFW, if substantial changes are made to the original plans this Agreement becomes void and the Permittee shall submit a new notification.

### **Weather Restrictions**

- 2.6 Work Period in Dry Weather and Dry Conditions Only. Project work shall be restricted to dry weather, as allowed during the work period specified in Measure 2.1, and when no surface water is present in the stream. The Permittee shall monitor National Weather Service 72-hour forecasted precipitation. All necessary erosion control measures shall be implemented prior to the onset of precipitation. Construction activities shall cease when the National Weather Service 24-hour weather forecast indicates a 30 percent chance or higher of 0.25-inch or more of precipitation, unless otherwise approved in writing by CDFW. Construction equipment and materials shall be removed if inundation is likely. After any storm event, the Permittee shall inspect all sites currently under construction and all sites scheduled to begin construction within the next 72 hours for erosion and sediment problems and take corrective action as needed. Seventy-two-hour weather forecasts from the National Weather Service shall be consulted and work shall not resume until runoff ceases and there is less than a 30 percent forecast for precipitation for the following 24-hour period. Weather forecasts shall be documented upon request by CDFW.

### **Qualified Biologist(s) and Biological Monitor(s)**

- 2.7 CDFW-Approved Qualified Biologist(s) and Monitor(s). No later than 30 days prior to project activities covered by this Agreement, the Permittee shall submit to CDFW, for review and approval, the qualifications for the biologist(s) that shall oversee the implementation of the conditions in this Agreement and conduct surveys or monitoring work using the Biologist Resume Form (available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=202869>) or another format containing the same information. Project activities covered by this Agreement may not commence unless CDFW has approved the proposed biologist(s) in writing.

- A Qualified Biologist is an individual who holds a bachelor's degree from an accredited university and: 1) is knowledgeable in relevant species' life histories and ecology, 2) can correctly identify relevant species, 3) has conducted field surveys for relevant species, 4) is familiar with relevant survey protocols, and 5) is knowledgeable of state and federal laws regarding the protection of sensitive species.
- A Biological Monitor is an individual who shall have academic and professional experience in biological sciences and related resource management activities as it pertains to this Project, experience with construction-level Biological Monitoring, be able to recognize species that may be present within the Project area, and be familiar with the habitats and behavior of those species.

2.8 CDFW Approved Qualified Biologist or Biological Monitor On-site. A Qualified Biologist or Biological Monitor shall be on site daily to monitor compliance with all conditions of this Agreement unless otherwise approved in writing by CDFW. Qualified Biologist or Biological Monitor shall have the authority to halt Project activities, through communication with the Project Manager or their on-site designee, to comply with the terms of this Agreement and otherwise avoid impacts to species and or habitats. If the on-site Biologist has requested a work stop due to failure to implement any of the conditions, CDFW shall be contacted within 24 hours.

### **General Wildlife Protection and Prevention**

2.9 Training Session for Personnel. Permittee shall ensure that a CDFW-approved Qualified Biologist conducts an education program for all persons employed on the Project prior to performing covered activities. Instruction shall consist of a presentation by the designated Qualified Biologist that includes a discussion of the biology and general behavior of any sensitive species which may be in the area, how they may be encountered within the work area, and procedures to follow when they are encountered. The status of CESA-listed species, including legal protection, penalties for violations, and Project-specific protective measures provided in this Agreement shall be discussed. Interpretation shall be provided for non-English speaking workers, and the same instruction shall be provided for any new workers prior to on-site Project activity. Copies of the Agreement for this Project shall be maintained at the worksite with the Project supervisor. Permittee or Qualified Biologist shall prepare and distribute wallet-sized cards or a factsheet handout containing this information for workers to carry on-site. Upon completion of the program, employees shall sign an affidavit stating they attended the program and understand all protection measures. These forms shall be filed at the Permittee's office and be available to CDFW upon request.

2.10 Daily Inspections. At the beginning of each workday, a Qualified Biologist or Biological Monitor shall inspect the project area unless otherwise approved in

writing by CDFW. If special status species are encountered during project activities, all work shall cease and CDFW shall immediately be notified. Work shall not proceed without written approval from CDFW.

- 2.11 Wildlife Encounters. If any wildlife is encountered during the course of construction, all work in the immediate area shall cease and the wildlife shall be allowed to leave the construction area unharmed. If any listed fish and wildlife are encountered, work shall be stopped immediately and the Permittee shall contact CDFW immediately. Permittee shall contact the U. S. Fish and Wildlife Service or National Oceanic and Atmospheric Administration if the species is federally listed. Work shall not resume at the location prior to the agencies' approval or as agreed to in prior consultation with the agencies.
- 2.12 Trenches and Holes. At the end of each workday all trenches and holes greater than one foot deep shall be covered to prevent wildlife from entering. When trenches cannot be fully covered, an escape ramp shall be placed at each end of any constructed open trench or hole to allow any wildlife that may have become entrapped in the trench or hole to climb out overnight. The ramp may be constructed of either dirt fill or wood planking or other suitable material that is placed at an angle no greater than 30 degrees.
- 2.13 Pipes, Hoses, and Similar Structures. All pipes, hoses, or similar structures less than 12 inches in diameter shall be closed or covered to prevent animal entry. All construction pipes or similar structures greater than 2 inches in diameter stored at the Project site overnight shall be inspected thoroughly for wildlife before the pipe or similar structure is buried, capped, used, or moved.
- 2.14 No Work or Equipment in Stream Where Surface Water is Present. No work or equipment operation shall occur in the portion of the stream where surface water is present or anticipated.
- 2.15 Access and Staging Areas. Construction access, staging, parking, and storage areas shall be located on ruderal or disturbed land to the extent possible.
- 2.16 Stream Buffer Zone. Potential impacts to streams from activities at staging areas shall be avoided by establishing a buffer zone. The distance of the buffer shall be determined in consultation with the Army Corps of Engineers and CDFW.

### **Salt Marsh Species and Habitat Protection**

- 2.17 Special-Status Species Survey. A Qualified Biologist, approved by CDFW for this Project, shall conduct a pre-construction survey **within 48 hours prior to the start of project activities**, focusing on the presence of special-status species including but not limited to Ridgway's rail, California black rail, and salt marsh harvest mouse. If any special-status species are discovered during the survey, Project activities shall not begin until CDFW has been consulted with regarding avoidance



and minimization measures to avoid and minimize impacts to special-status species. Permittee shall implement the avoidance and minimization measures if required by CDFW.

2.18 Fully Protected Species. A Qualified Biologist shall be present on site to survey and monitor for CDFW Fully Protected species, including salt marsh harvest mouse (SMHM), California Ridgway's (formerly California Clapper) rail (CRR), and California black rail (CBR), during: a) all vegetation removal or disturbance, b) the construction of exclusion fencing, and c) all work within 300 feet of tidal or pickleweed habitats. A Biological Monitor may be required to monitor for CDFW Fully Protected species after surveys and construction of exclusion fencing are completed. The Qualified Biologist or Biological monitor shall have the authority to stop work if deemed necessary for any reason to protect these species, or any other special-status species. Take or possession of these CDFW Fully Protected species is prohibited (Fish & G. Code, §§ 3511 & 4700).

2.19 High Tide Restrictions. No Project activities shall occur within 50 feet of suitable SMHM, CRR, or CBR habitat within two hours before and after an extreme high tide event or when adjacent tidal marsh is flooded. Extreme high tide events are defined as a tide forecast of 6.5 feet or higher measured at the Golden Gate Bridge and adjusted to the timing of local high tides. If SMHM exclusion fencing has been installed and work is conducted outside of CRR and CBR breeding season (see measures below), or as otherwise approved in writing by CDFW, this restriction is waived.

2.20 California Ridgway's Rail & California Black Rail Avoidance and Surveys. Project activities within tidal marsh or suitable CRR or CBR habitat or a 700 foot radius around such habitat shall be avoided during the breeding season (January 15 – August 31 for CRR, February 1 – August 31 for CBR) each year unless appropriately timed, yearly protocol level surveys are conducted and survey methodology and results are submitted to and accepted by CDFW. Surveys shall focus on suitable habitat that may be disturbed by Project activities during the breeding season to ensure that these species are not nesting in these locations.

If breeding CRR or CBR are determined to be present, no activities, visual disturbance (direct line of sight) and/or an increase in the ambient noise level shall occur within a minimum of 700 feet from areas where CRR and/or CBR have been detected during the breeding season. If surveys have not been conducted, all work shall be conducted a minimum of 700 feet from CCR and/or CBR habitat during breeding season.

2.21 Salt Marsh Harvest Mouse Vegetation. Prior to impacting salt marsh habitat, a CDFW approved Qualified Biologist, familiar with SMHM, shall walk through and inspect suitable habitat prior to vegetation removal and search for signs of harvest mice or other sensitive wildlife and plants. Following inspection, personnel, under the supervision of the Qualified Biologist, shall disturb (e.g., flush) vegetation to

cause movement of SMHM into adjacent downstream marsh areas. Flushing of vegetation shall first occur in the center of the site then progress toward the two sides away from the open water areas or away from impacted habitat. Immediately following vegetation flushing, personnel, under the supervision of the Qualified Biologist, shall remove vegetation with hand tools (e.g., weed-eater, hoe, rake, trowel, shovel, grazing) so that vegetation is no taller than 2 inches.

**2.22 Salt Marsh Harvest Mouse Exclusion Fencing.** After vegetation removal, a mouse proof barrier shall be placed along the edge of the area removed of vegetation to further reduce the likelihood of SMHM returning to the area prior to construction, unless otherwise approved in writing by CDFW. The fence shall be made of a heavy plastic sheeting material that does not allow salt marsh harvest mice to pass through or climb, and the bottom shall be buried to a depth of 4 inches so that salt marsh harvest mouse cannot crawl under the fence. Fence height shall be at least 12 inches higher than the highest adjacent vegetation with a maximum height of 4 feet. All supports for the exclusion fencing shall be placed on the inside of the work area. An approximately 2-foot-wide de-vegetated buffer shall be created along the habitat side of the exclusion fence.

**2.23 Exclusion Fencing Inspections.** The SMHM exclusion fencing shall remain in operating condition throughout the duration of the construction phase. The Qualified Biologist or Biological Monitor, or other CDFW approved person, shall inspect the integrity of the exclusion fencing to ensure there are no gaps, tears or damage. Exclusion fencing inspections will be conducted each day earthmoving or other construction activities take place in the Project area and a minimum of weekly if there is a lapse of one week or more in construction activities. Maintenance of the fencing shall be conducted as needed. Any necessary repairs to the fencing shall be completed within 24 hours of the initial observance of the damage. Any mice found along or outside the fence shall be closely monitored until they move away from the Project area.

### **California Red-legged Frog Protection**

**2.24 California Red-legged Frog Habitat Feature Assessment and Surveys.** No more than two weeks prior to ground-disturbing activities, the Project area and nearby vicinity, including a minimum 500-foot radius surrounding the Project area, shall be assessed by a Qualified Biologist for the presence of California red-legged frog individuals and habitat features. Habitat features include both aquatic habitat such as plunge pools and ponds and terrestrial habitat such as burrows. The results of the habitat feature assessment shall be submitted to CDFW via EPIMS or email (see Contact Information) for written acceptance prior to starting Project activities. Burrows and refugia sites shall be flagged or otherwise marked for avoidance; Project activities shall avoid habitat features to the extent feasible. If California red-legged frogs are encountered during the assessment or Project activities, the Project shall not proceed or all work shall cease, and CDFW shall immediately be notified. Work shall not proceed until the frog, through its own volition, moves out

of harm's way and CDFW has provided permission in writing to proceed with the Project. If California red-legged frog is encountered or the Qualified Biologist determines that impacts to the species are likely to occur, Permittee shall consult with USFWS pursuant to the Federal Endangered Species Act and receive written approval from CDFW prior to the impact. In this case, CDFW may require additional protection measures which shall be implemented by the Permittee.

### **Western Pond Turtle Protection**

**2.25 Western Pond Turtle Surveys.** No more than 48 hours prior to the commencement of ground-disturbing activities in or within 100 feet of western pond turtle habitat, a Qualified Biologist shall perform surveys for western pond turtles within aquatic and upland habitat at the Project site. Surveys shall target both individual turtles and nest sites. If a pond turtle or nest is detected at any time CDFW shall be notified immediately. Survey results shall be submitted to CDFW prior to construction activities. All western pond turtles observed on-site shall be avoided and allowed to leave the Project area of their own volition or may be relocated with prior written approval from CDFW. Habitat occupied by western pond turtles shall be avoided if possible; if it can be avoided temporary fencing and "Sensitive Habitat Area" signs shall be installed around the habitat. If western pond turtles are relocated, exclusion fencing shall be installed to prevent the turtles from reentering the work area. Exclusion fencing shall be monitored for effectiveness at least monthly. Any turtle nest sites shall be avoided with an appropriate buffer identified by a Qualified Biologist and accepted by CDFW. If pond turtles or their nests are found, the Permittee shall prepare and implement a Pond Turtle Habitat Improvement Plan or other protection measures, if required by CDFW.

### **Bat Protection**

**2.26 Bat Tree Habitat Assessment and Surveys.** Prior to any tree removal, a Qualified Biologist shall conduct a habitat assessment for bats, unless otherwise approved in writing by CDFW. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to tree removal and shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting species). If suitable habitat trees are found, they shall be flagged or otherwise clearly marked, CDFW shall be notified immediately, and tree trimming or removal shall not proceed without approval in writing from CDFW. Trees may be removed only if: a) presence of bats is presumed, or documented during the surveys described below, in trees with suitable habitat, and removal using the two-step removal process detailed below occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a Qualified Biologist, under prior written approval of the proposed survey methods by CDFW, conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats. Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon),

under the direct supervision and instruction by a Qualified Biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only. Limbs with cavities, crevices, or deep bark fissures shall be avoided, and 2) the second day the entire tree shall be removed.

### **Nesting Bird Surveys, Prohibitions, and Buffers**

**2.27 Breeding Bird Nest Take Prohibition.** Permittee shall avoid active nests occurring at or near the Project site. Permittee is responsible for complying with Fish and Game Code section 3503 et seq. and the Migratory Bird Treaty Act of 1918.

**2.28 Nesting Bird Surveys.** If construction, grading, vegetation removal, or other Project-related activities are scheduled during the nesting season, February 1 to August 31, a focused survey for active nests shall be conducted by a Qualified Biologist within 7 days prior to the beginning of Project-related activities. The results of the survey shall be sent to CDFW via EPIMS and by email prior to the start of Project activities, for review and acceptance (see Contact Information). If an active nest is found, Permittee shall consult with CDFW regarding appropriate action to comply with Fish and Game Code. If a lapse in Project-related work of 7 days or longer occurs, another focused survey and, if needed, consultation with CDFW, shall be required before Project work can be reinitiated.

**2.29 Active Nest Buffers.** If an active nest is found during surveys, Permittee or the Qualified Biologist shall consult with CDFW regarding appropriate action to comply with state and federal laws. Active nest sites shall be designated as "Ecologically Sensitive Areas" (ESA) and protected (while occupied) during Project work by demarking a "No Work Zone" around each nest site.

- Buffer distances for bird nests shall be site specific and an appropriate distance, as determined by a Qualified Biologist. The buffer distances shall be specified to protect the bird's normal behavior to prevent nesting failure or abandonment. The buffer distance recommendation shall be developed after field investigations that evaluate the bird(s) apparent distress in the presence of people or equipment at various distances. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards Project personnel, standing up from a brooding position, and flying away from the nest. The Qualified Biologist and Biological Monitor shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.
- The Qualified Biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by project work. Nest monitoring shall continue during Project work until the young have fully fledged (have completely left the nest site and are no longer being

fed by the parents), as determined by the Qualified Biologist. Any reduction in monitoring active nests must be approved in writing by CDFW.

- 2.30 Nesting Habitat Removal or Modification. No habitat removal or modification shall occur within the ESA-marked nest zone (see above measure) until the young have fully fledged and will no longer be adversely affected by the Project, as determined by a Qualified Biologist or Biological Monitor. Any trees or shrubs that are removed shall be “downed” in such a manner as to minimize disturbance to stable soil conditions.

### **Vegetation Protection**

- 2.31 Habitat Protection. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete the Project. Vegetation outside the construction corridor shall not be removed or damaged without prior consultation and approval of a CDFW representative. Soil disturbance shall be minimized to the extent possible.
- 2.32 Vegetation Marked for Protection. Prior to Project activities, the Permittee shall clearly mark all sensitive vegetation, including wetlands, waters, riparian zones, and oak woodlands within the Project area that shall be avoided during Project activities.
- 2.33 Riparian Tree Protection. Only eleven oak trees may be removed unless otherwise approved in writing by CDFW. For each existing tree with a greater than four-inch diameter at breast height (DBH) within or adjacent to the work area, a critical root zone shall be established by the Qualified Biologist. The critical root zone shall extend from the trunk to the drip-line (i.e., the outer extent of the tree canopy) of each tree within the project area and shall be flagged or fenced off from work. Construction equipment shall not cause root compaction. Protection and avoidance of the critical root zone shall be emphasized during the on-site education program to avoid impacts. If work will be conducted within the root protection zone of a tree, then that tree shall be considered an “impacted tree” and the Permittee or Qualified Biologist shall monitor the tree for signs of mortality as a result of project. If the tree becomes injured or shows signs of mortality, additional revegetation actions shall be required.
- 2.34 Treat Exposed Areas. All exposed/disturbed areas and access points within the riparian zone left barren of vegetation as a result of the construction activities shall be restored by seeding with a blend of native, certified weed-free erosion control seed. Seeded areas shall be mulched. Landscape fabric shall not be used. Revegetation shall be completed as soon as possible after construction activities in those areas cease. Seeding placed after October 15 must be covered with broadcast straw, jute netting, coconut fiber blanket or similar erosion control blanket.



2.35 Allowable Herbicide. If herbicide use is necessary, only herbicides registered with the California Department of Pesticide Regulation shall be used. All herbicides shall be applied in accordance with regulations set forth by the California Department of Pesticide Regulation and according to label instructions. Only herbicides approved for use in aquatic environments are permitted. Care shall be taken to avoid herbicide contact with native vegetation, and it shall only be applied on calm days (wind speed less than 5 miles per hour) to prevent airborne transfer of herbicide. No herbicides shall be used where threatened or endangered species occur, unless otherwise approved in writing by CDFW.

2.36 Disposal of Vegetation and Debris. All removed vegetation and debris shall be moved outside the ordinary high-water mark prior to inundation by water. All removed vegetation and debris shall be disposed of according to state and local laws and ordinances.

2.37 Weed Control. Vehicle travel through weed-infested areas shall be minimized.

### **Bridge Design and Construction**

2.38 Bottom of Bridges above 100-year Mark. The bottom of bridge superstructure shall be of sufficient height to allow unrestricted passage of water and debris during 100-year storms. As long as the bridge remains, the Permittee is responsible for maintaining free-flowing conditions under the bridge and clearing of all debris. Substantial changes to the bed, channel, or bank necessary for maintenance may require an amendment to this Agreement or separate notification under Fish and Game Code section 1602 subdivision (a).

2.39 Abutment Location. The abutment on the right bank, closest to McInnis Parkway, shall be located outside the stream banks and above ordinary high water.

### **Concrete and Cement-based Products**

2.40 Cement Based Products. All cement-based products (concrete, mortar, etc.) poured or applied wet onsite shall be excluded from the wetted channel or areas where they may come into contact with water for a period of 30 days after application. During that time the product shall be kept moist and runoff from the product shall not be allowed to enter the stream. Commercial sealants may be applied to the product surface or mixture where difficulty in excluding flow for a long period may occur. If sealant is used, water shall be excluded from the site until the sealant is cured.

2.41 Concrete – Primary Containment. The Permittee shall install the necessary containment structures to control the placement of wet concrete and to prevent it from entering the channel outside of those structures. No concrete shall be poured within the high flow line if the 15-day weather forecast indicates any day with a greater than 20% chance of rain.

- 2.42 Concrete – Designated Monitor. At all times when the Permittee is pouring or working with wet concrete there shall be a designated monitor to inspect the containment structures and ensure that no concrete or other debris enters into the channel outside of those structures.

### **Erosion and Sediment Control**

- 2.43 Erosion Control. At no time shall silt laden runoff be allowed to enter a river, stream, or lake or directed to where it may enter a river, stream, or lake. Erosion control measures shall be utilized throughout all phases of operation where sediment runoff from exposed slopes threatens to enter a river, stream, or lake. Erosion control measures, such as, silt fences, straw hay bales, gravel or rock lined ditches, water check bars, and broadcasted straw shall be used wherever sediment has the potential to leave the work site and enter the river, stream, or lake.
- 2.44 Monofilament. Permittee shall not use erosion control materials containing plastic monofilament netting (erosion control matting) or similar material containing netting within the project area due to documented evidence of amphibians and reptiles becoming entangled or trapped in such material. Acceptable substitutes include coconut coir matting or similar.
- 2.45 Excavation. No spoil from the excavation shall be placed on the bed or bank of the stream. Excavated spoil shall be removed to an area where the sediment will not deliver to a watercourse.
- 2.46 Groundwater Encountered. Nuisance groundwater encountered during excavation within the streambed or floodplain shall be discharged at a location where it will infiltrate into the soil, resulting in no overland flow. Turbid water shall not be allowed to flow downstream.
- 2.47 Erosion Control Monitoring. Permittee shall monitor erosion control measures during and after each storm event and repair and/or replace ineffective measures immediately.
- 2.48 Disposal and Removal of Materials. All removed spoils and construction debris shall be moved outside the work area prior to inundation by water. Spoil sites shall not be located within the stream channel or areas that may be subjected to stream flows, where spoil may be washed back into a stream, or where it may impact streambed habitat, aquatic or riparian vegetation. All removed material shall be disposed of according to state and local laws and ordinances.
- 2.49 Weed-free Materials. Sediment logs and fiber roll barriers shall be weed-free. Straw shall be certified weed-free.

## **Equipment and Vehicles**

- 2.50 Operating Equipment and Vehicle Leaks. Any equipment or vehicles driven and/or operated adjacent to the stream shall be checked and maintained daily to prevent leaks of materials that could be deleterious to aquatic and terrestrial life or riparian habitat. Any equipment or vehicles driven and/or operated adjacent to wetland and riparian areas shall be limited to existing roads and designated access paths
- 2.51 Stationary Equipment Leaks. Stationary equipment such as motors, pumps, generators, and welders, located within or adjacent to the stream shall be positioned over drip pans. Stationary heavy equipment shall have suitable containment to handle a catastrophic spill/leak.
- 2.52 Equipment Storage. Staging and storage areas for equipment, materials, fuels, lubricants, and solvents, shall be located outside of the stream channel and banks.
- 2.53 Refueling of Equipment. Refueling of construction equipment and vehicles may not occur within 175 feet of any water body, or anywhere that spilled fuel could drain to a water body. Tarps or similar material shall be placed underneath the construction equipment and vehicles, when refueling, to capture incidental spillage of fuels. Equipment and vehicles operating in the project area shall be checked and maintained daily to prevent leaks of fuels, lubricants, or other liquids.

## **Material Handling, Debris, and Waste**

- 2.54 Stockpiled Materials. Building materials and/or construction equipment shall not be stockpiled or stored where they may be washed into the water or cover aquatic or riparian vegetation. Stockpiles shall be covered when measurable rain is forecasted.
- 2.55 No Dumping. Permittee and all contractors, subcontractors, and employees shall not dump any litter or construction debris within the stream, or where it may pass into the stream.
- 2.56 Pick Up Debris. Permittee shall pick up all debris and waste daily.
- 2.57 Wash Water. Water containing mud, silt, or other pollutants from equipment washing or other activities, shall not be allowed to enter a lake or flowing stream or placed in locations that may be subjected to high storm flows.

## **Toxic and Hazardous Material**

- 2.58 Toxic Materials. Any hazardous or toxic materials that could be deleterious to aquatic life that could be washed into the stream or its tributaries shall be contained in watertight containers or removed from the project site.

- 2.59 Hazardous and Deleterious Materials. Debris, soil, silt, bark, slash, sawdust, rubbish, creosote-treated wood, raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, wildlife, or riparian habitat resulting from the Project related activities shall be prevented from contaminating the soil and/or entering the Waters of the State.

### **Spills and Emergencies**

- 2.60 Spill Kits. Prior to entering the work site, all field personnel shall know the location of spill kits and trained in their appropriate use.
- 2.61 Spill of Material Deleterious to Fish and Wildlife. In the event of a hazardous materials spill into a stream (e.g., concrete or bentonite), Permittee shall immediately notify the California Office of Emergency Services State Warning Center by calling 1-800-852-7550 and immediately provide written notification to CDFW by email at [R3LSA@wildlife.ca.gov](mailto:R3LSA@wildlife.ca.gov). Permittee shall take all reasonable measures to document the extent of the impacts and affected areas including photographic documentation of affected areas, injured fish and wildlife. If dead fish or wildlife are found in the affected area, Permittee shall collect carcasses and immediately deliver them to CDFW. Permittee shall meet with CDFW within ten days of the reported spill in order to develop a resolution including: site clean-up, site remediation and compensatory mitigation for the harm caused to fish, wildlife and the habitats on which they depend as a result of the spill. The Permittee shall be responsible for all spill clean-up, site remediation and compensatory mitigation costs. Spill of materials to waters of the state that are deleterious to fish and wildlife are in violation of Fish and Game Code section 5650 et seq. and are subject to civil penalties for each person responsible. CDFW reserves the right to refer the matter to the District Attorney's Office if a resolution cannot be agreed upon and achieved within a specified timeframe, generally six months from the date of the incident.
- 2.62 Spill Containment. All activities performed in or near a river, stream, or lake shall have absorbent materials designated for spill containment and cleanup activities on-site for use in an accidental spill. The Permittee shall immediately notify the California Emergency Management Agency at 1-800-852-7550 and immediately initiate the cleanup activities. CDFW shall be notified by the Permittee and consulted regarding clean-up procedures.

### **3. Compensatory Measures**

To compensate for adverse impacts to fish and wildlife resources identified above that cannot be avoided or minimized, Permittee shall implement each measure listed below.

- 3.1 Riparian Revegetation and Monitoring Plan. A riparian revegetation and monitoring

plan (RMP) shall be submitted to CDFW for acceptance within 60 days of the Effective Date of the Agreement and Permittee shall obtain CDFW's written approval of the RMP. The CDFW-approved RMP shall be implemented the same year that impacts occur, unless otherwise approved in writing by CDFW. If revegetation occurs in a later year, a higher replacement ratio may be required by CDFW to offset the temporal loss of habitat, and an amendment to this Agreement or another associated Agreement may be required. The RMP shall describe: 1) restoration of 590 square feet and approximately 25 linear feet of temporary impacts to South Fork Gallinas Creek and associated riparian and salt marsh areas, and 2). Restoration of a minimum of 8,790 square feet and 405 linear feet of riparian and salt marsh habitat intended to offset the Project's permanent impacts, unless otherwise approved in writing by CDFW. Restoration for permanent impacts shall occur as close to the project site as possible and within the same watershed, unless otherwise approved in writing by CDFW. Tree replacement ratios for the removal of eleven riparian trees shall adhere to the ratios identified in the measure below. The RMP shall include returning temporarily impacted areas to as close to original contours as possible and stabilizing wetlands, stream banks, and channels prior to the rainy season. The RMP shall include a detailed native plant species palette and map showing plant spacing, and specific performance criteria, monitoring, adaptive management and invasive species removal in order to allow for successful habitat creation and maintenance. An amendment to this Agreement or a separate Agreement may be required by CDFW based on the RMP.

- 3.2 Revegetation Monitoring. To ensure a successful revegetation effort pursuant to Measure 3.1, all plantings shall be monitored and maintained as necessary for a minimum of ten years. Each category of plantings (e.g., oaks, other trees, shrubs, etc.) shall have a minimum of 80% survival at the end of the minimum monitoring period and plantings shall attain 70% cover after 3 years and 75% cover after ten years. Survival and cover criteria shall both be required unless the herbaceous or spreading plants cannot be differentiated by individual, in which case only cover success criteria are required. If the survival or cover requirements are not meeting these goals, the Permittee is responsible for replacement planting, additional watering, invasive exotic eradication, or any other practice, to achieve these requirements. Irrigation shall be done in the most water-efficient manner possible, such as using hand-watering, drip/micro-irrigation, or using a time-release system. Permittee shall monitor replacement plants with the same survival and growth requirements for ten years after planting. The revegetation area shall be monitored for weed infestations at least twice annually during the growing season during the ten year monitoring period.
- 3.3 Erosion Control Monitoring. Any erosion control sites shall be monitored for weed infestations at least twice annually during the growing season for three years.
- 3.4 Tree Removal. Vegetation marked for protection may only be trimmed with hand tools to the extent necessary to gain access to the work sites or restore streamflow. Any trees which must be cut from stream bed or banks shall be cut at



ground level, leaving the root mass in place to maintain bank stability. If root mass is to be removed within the stream bed or banks, Permittee shall first obtain written approval from CDFW.

3.5 Tree Replacement. Any trees that were within the channel or riparian zone removed or impacted as a result of the Project shall be replaced pursuant to the below ratios, unless otherwise approved in writing by CDFW.

- 1:1 replacement for non-native trees;
- 1:1 for removal of native trees up to 3 inches DBH;
- 3:1 for removal of native trees greater than 3 inches to 6 inches DBH;
- 6:1 for removal of native trees greater than 6 inches DBH;
- 1:1 for removal of oak (*Quercus* sp.) trees up to 3 inches DBH;
- 4:1 for removal of oak trees greater than 3 inches to 6 inches DBH;
- 8:1 for removal of oak trees greater than 6 inches to 15 inches DBH; and
- 10:1 for removal of oak trees greater than 15 inches DBH.

Replacement oaks shall come from nursery stock grown from locally sourced acorns, or from acorns gathered locally, preferably from the same watershed in which they are planted. The trees should be able to survive the last two years of the minimum ten-year monitoring period without irrigation.

3.6 Wetland Topsoil. The top six inches of topsoil in wetlands where temporary impacts occur shall be stockpiled and replaced following construction.

3.7 Phytophthora. Permittee shall ensure that all plantings come from local nurseries implementing best management practices to avoid and minimize the spread of Phytophthora.

3.8 Exotic Plants. Permittee shall not plant, seed or otherwise introduce invasive exotic plant species. Prohibited exotic plant species include those identified in the California Invasive Plant Council's database, which is accessible at: <https://www.cal-ipc.org/plants/inventory/>.

3.9 Control Invasive Species. Permittee is responsible for monitoring and if needed, eradication of invasive exotic species that may occur within the Project area for a minimum of two years following construction. All revegetation efforts shall include local plant materials native to the Project area.

#### 4. Reporting Measures

Permittee shall meet each reporting requirement described below.

- 4.1 Notification Prior to Work. Per Measure 1.5, Notify CDFW Prior to Work, at least five days prior to the start of Project activities, Permittee shall notify CDFW that work will commence.
- 4.2 Notification of Designated Representative. Per Measure 1.9, Designated Representative, at least five days prior to the start of Project activities, Permittee shall submit to CDFW the name, business address, and contact information of the Designated Representative.
- 4.3 Qualified Biologist Approval. Per Measure 2.7, CDFW-Approved Qualified Biologist(s) and Monitor(s), no later than 30 days prior to Project activities Permittee shall submit to CDFW, for review and approval, the qualifications for the biologist(s) that shall oversee the implementation of the conditions in this Agreement and conduct surveys or monitoring work.
- 4.4 Survey Reports. Survey results for rails, if applicable, pursuant to Measure 2.20, for California red-legged frog, if applicable, pursuant to Measure 2.24, for bats pursuant to measure 2.26, and for nesting birds if applicable, pursuant to Measure 2.28 shall be submitted to CDFW for review and written acceptance prior to the start of work. The preconstruction survey results pursuant to Measure 2.17 and western pond turtle survey results pursuant to Measure 2.25 shall be submitted within two weeks of the survey date. Survey results for positive detections of all sensitive species during surveys or monitoring shall be immediately reported to CDFW using the below email address.
- 4.5 Monitoring Reports. Permittee shall submit to CDFW a status report by January 31 every year until restoration goals identified in Measure 3.2 are accomplished. This report shall include the survival and percent cover of species planted and native species that have colonized the area. The number by species of plants replaced, an overview of the revegetation effort, and the method used to assess these parameters shall also be included. The report shall include photos from designated photo stations and other relevant information such as: a summary of invasive species control, methods used to remove non-native plants, and a list of wildlife observed on-site. After CDFW's review of the tenth-year monitoring report, if plantings have achieved the required success criteria, CDFW shall email Permittee stating that the monitoring requirements have been satisfied. **Monitoring requirements will not be deemed complete until CDFW emails Permittee stating so.**
- 4.6 Photographic Documentation of Work and Project Completion Report. Prior to commencement of work a minimum of four (4) vantage points that offer representative views of the Project site and work areas shall be identified. The Permittee shall photograph the Project area from each of the vantage points, noting the direction and magnification of each photo. Upon completion of work, the Permittee shall photograph post-Project conditions from the vantage points using the same direction and magnification as pre-Project photos. A Project Completion

Report shall be submitted to CDFW with the photos and a reference key describing the location of the photo, the direction of the view, and whether the photo is pre- or post-construction. **The Project Completion Report shall be submitted within 30 days of Project conclusion.**

- 4.7 Notification to the California Natural Diversity Database. If any listed, rare, or special status species are detected during Project surveys or on or around the Project site during Project activities, the Permittee shall submit CNDDDB Field Survey Forms to CDFW in the manner described at the CNDDDB website (<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>) within five working days of the sightings. Copies of such submittals shall also be submitted to the CDFW regional office as specified below.

## CONTACT INFORMATION

Any communication that Permittee or CDFW submits to the other shall be submitted through EPIMS as instructed by CDFW.

### To Permittee:

Bill Gamlen  
EPIMS-MAN-34600-R3  
SMART Non-Motorized Pathways Segment 3: McInnis Parkway (MP 20.1) to  
Smith Ranch Road (MP 21.0)  
5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954  
[BGamlen@sonomamarintrain.org](mailto:BGamlen@sonomamarintrain.org)

### To CDFW:

Department of Fish and Wildlife  
Region 3: Bay Delta Region  
EPIMS-MAN-34600-R3  
SMART Non-Motorized Pathways Segment 3: McInnis Parkway (MP 20.1) to  
Smith Ranch Road (MP 21.0)  
[R3LSA@wildlife.ca.gov](mailto:R3LSA@wildlife.ca.gov); [Alexander.Single@wildlife.ca.gov](mailto:Alexander.Single@wildlife.ca.gov)

## LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the Project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with, the Project. The decision to proceed with the Project is Permittee's alone.

## **SUSPENSION AND REVOCATION**

CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before CDFW suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

## **ENFORCEMENT**

Nothing in the Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

## **OTHER LEGAL OBLIGATIONS**

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with, or obtaining any other permits or authorizations that might be required under, other federal, state, or local laws or regulations before beginning the Project or an activity related to it. For example, if the Project causes take of a species listed as threatened or endangered under the Endangered Species Act (ESA), such take will be unlawful under the ESA absent a permit or other form of authorization from the U.S. Fish and Wildlife Service or National Marine Fisheries Service.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the Fish and Game Code including, but not limited to, Fish and Game Code sections 2050 *et seq.* (threatened and endangered species), section 3503 (bird nests and eggs), section 3503.5 (birds of prey), section 5650 (water pollution), section 5652 (refuse disposal into water), section 5901 (fish passage), section 5937 (sufficient water for fish), and section 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.



## **AMENDMENT**

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall use the "Amendments & Extension" form in EPIMS to submit the request. Permittee shall include with the completed form, payment of the corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

## **TRANSFER AND ASSIGNMENT**

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall use the "Amendments & Extension" form in EPIMS to submit the request. Permittee shall include with the completed form, payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

## **EXTENSIONS**

In accordance with Fish and Game Code section 1605, subdivision (b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall use the "Amendments & Extension" form in EPIMS to submit the request. Permittee shall include with the completed form, payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with Fish and Game Code section 1605, subdivisions (b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the Project the Agreement covers (Fish & G. Code, § 1605, subd. (f)).

## **EFFECTIVE DATE**

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable Fish and Game Code section 711.4 filing fee listed at <https://www.wildlife.ca.gov/Conservation/CEQA/Fees>.

## **TERM**

This Agreement shall expire on December 31, 2027, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as Fish and Game Code section 1605, subdivision (a)(2) requires.

## **EXHIBITS**

The documents listed below are included as exhibits to the Agreement and incorporated herein by reference.

- A. Exhibit A. *SMART Pathway Non-motorized Pathways Marin-Sonoma Contract Number CV-PS-21-003 Segment 3: McInnis Parkway to Smith Ranch Road Milepost 20.1 to Milepost 20.9 STA 967+00 to STA 1020+00 100% Design*, prepared by I. Carpenter and T. Eaton, dated May 1, 2023.

## **AUTHORITY**

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

## **AUTHORIZATION**

This Agreement authorizes only the Project described herein. If Permittee begins or completes a Project different from the Project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with Fish and Game Code section 1602.

## **CONCURRENCE**

Through the electronic signature by the permittee or permittee's representative as evidenced by the attached concurrence from CDFW's Environmental Permit Information Management System (EPIMS), the permittee accepts and agrees to comply with all provisions contained herein.

**The EPIMS concurrence page containing electronic signatures must be attached to this agreement to be valid.**

*Version 1 uploaded July 14, 2023*

*Version 2 uploaded August 8, 2023*

*Version 3 uploaded August 10, 2023*





**Eric Lucan, Chair**  
Marin County Board of Supervisors

**Melanie Bagby, Vice Chair**  
Sonoma County Mayors' and  
Councilmembers Association

**Kate Colin**  
Transportation Authority of Marin

**Chris Coursey**  
Sonoma County Board of Supervisors

**Rachel Farac**  
Transportation Authority of Marin

**Debora Fudge**  
Sonoma County Mayors' and  
Councilmembers Association

**Patty Garbarino**  
Golden Gate Bridge,  
Highway/Transportation District

**Barbara Pahre**  
Golden Gate Bridge,  
Highway/Transportation District

**Gabe Paulson**  
Marin County Council of Mayors and  
Councilmembers

**David Rabbitt**  
Sonoma County Board of Supervisors

**Chris Rogers**  
Sonoma County Mayors' and  
Councilmembers Association

**Mary Sackett**  
Marin County Board of Supervisors

**Eddy Cumins**  
General Manager

5401 Old Redwood Highway  
Suite 200  
Petaluma, CA 94954  
Phone: 707-794-3330  
Fax: 707-794-3037  
[www.SonomaMarinTrain.org](http://www.SonomaMarinTrain.org)

November 15, 2023

Sonoma- Marin Area Rail Transit Board of Directors  
5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954

**SUBJECT:** Budget Modifications and Carryforward of Funds from Fiscal Year 2023 to Fiscal Year 2024

Dear Board Members:

**RECOMMENDATIONS:**

Approve Resolution No. 2023-41, amending Resolution No. 2023-23, the Fiscal Year 2023 Adopted Budget, to carryforward an additional \$2,386,104 in revenue and increase the spending authority by \$3,832,044.

**SUMMARY:**

Each year funds are budgeted but not expended due to projects or programs that are multi-year in nature or due to an unforeseen circumstance that delay projects into the next fiscal year. When putting together the Fiscal Year 2024 Budget, we estimated the funding to be carried forward into the next fiscal year. This estimate is done on an annual basis, months in advance of the passage of the Budget. Once the fiscal year has ended, we can calculate and compare the actual expenditures versus budgeted funds in the prior fiscal year.

For the Fiscal Year 2024 budget, we estimated that we would need to carry forward \$3,738,306, as itemized on page B 41 of the Board Adopted Budget document. Based on the year-end expenditure information, we need to carryforward an additional \$2,186,529.

In addition to carryforward additional revenue from FY 23, we are also budgeting \$1,000,000 for the Clean California Transit Grant which when combined with \$250,000 of funds already programmed in FY 24 will fund \$800,000 for wayfinding and \$450,000 for real time signage which are being budgeted in this amendment. We are also budgeting \$645,515 for the Petaluma North Station project as this action was omitted in Budget Amendment #1.

The following is a chart showing the proposed changes associated with specific programs or projects.

| <b>Revenues</b>           |                            |                     |   |
|---------------------------|----------------------------|---------------------|---|
| <b>Impact</b>             | <b>Fund Source</b>         | <b>Amount</b>       | <b>Comments</b>   |
| Plus                      | Measure Q                  | \$ 2,115,478        | Carryforward from FY 23   |
| Plus                      | Clean California Grant     | \$ 1,000,000        | New Grant   |
| Plus                      | Carryforward Measure M     | \$ 71,051           | Petaluma North Design   |
| Less                      | TIRCP                      | \$ (800,425)        | Was not included in Budget Amendment #1 for Petaluma North Station Funding Modifications                                |
| <b>Total Revenues</b>     |                            | <b>\$ 2,386,104</b> |   |
| <b>Expenditures</b>       |                            |                     |   |
| <b>Impact</b>             | <b>Category</b>            | <b>Amount</b>       | <b>Comments</b>   |
| Increase                  | Environmental              | \$ 123,396          | Carryforward  |
| Decrease                  | Planning                   | \$ (250,000)        | Moving \$250,000 of expenditures to Expansion and Pathway to match \$1 million grant                                    |
| Decrease                  | Planning                   | \$ (10,123)         | This amount was actually expended in FY 23 and needs to be reduced from FY 24   |
| Increase                  | Bridges                    | \$ 108,458          | Carryforward  |
| Increase                  | Information Technology     | \$ 211,993          | Carryforward  |
| Increase                  | Non-Revenue Vehicles       | \$ 446,965          | Carryforward  |
| Increase                  | Other Construction         | \$ 14,925           | Carryforward  |
| Decrease                  | Track, MOW, and Facilities | \$ (110,000)        | Building roof was completed in FY 23 and didn't need to be carried forward  |
| Increase                  | Expansion                  | \$ 1,177,228        | \$450,000 Real Time Signage, \$645,515 for Petaluma project, wasn't included in Amendment #1, and \$81,713 carryforward |
| Increase                  | Pathways                   | \$ 2,119,202        | \$800,000 wayfinding, \$1,319,202 carryforward  |
| <b>Total Expenditures</b> |                            | <b>\$ 3,832,044</b> |   |

**FISCAL IMPACT:** No fiscal impact. The funds being carried forward were not expended in Fiscal Year 23 and are therefore available to carryforward into FY 2024. The Clean California Transit Grant was authorized for execution following the October 2023 Board Meeting. This action programs the revenues and the expenditures for use in the FY 2024 Budget.

Sincerely,

/s/

Heather McKillop  
Chief Financial Officer

Attachment(s):

- 1) Resolution No. 2023-41
- 2) Appendix A- Sources and Uses

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, STATE OF CALIFORNIA, AMENDING RESOLUTION NO. 2023-23, THE ANNUAL BUDGET FOR FISCAL YEAR 2023-2024 TO PROVIDE FOR REVISED EXPENDITURE AUTHORITY**

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**WHEREAS**, as part of its approval of the Annual Budget for Fiscal Year 2023-2024, the Board of Directors considered the annual expenditures necessary for the Sonoma-Marín Area Rail Transit District; and

**WHEREAS**, the Board previously amended the Annual Budget with Resolution No. 2023-38 to modify expenditure authority for the Petaluma North Station project; and

**WHEREAS**, the Board desires to amend the Annual Budget Resolution No. 2023-23 to modify expenditure authority;

**NOW, THEREFORE, BE IT RESOLVED** that expenditure authority in Resolution No. 2023-23, Fiscal Year 2023-2024 Adopted Budget, Appendix A is hereby amended.

**BE IT FURTHER RESOLVED** except as specifically amended or supplemented by this Resolution, Resolution No. 2023-23, together with all supplements, amendments, and exhibits thereto is, and shall continue to be, in full force and effect as originally adopted, and otherwise contained herein shall, or shall be construed to, modify, invalidate, or otherwise affect and provision of Resolution No. 2023-23.

**PASSED AND ADOPTED** at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 15th day of November 2023, by the following vote:

**DIRECTORS:**

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Eric Lucan, Chair, Board of Directors  
Sonoma-Marín Area Rail Transit District

ATTEST:

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Leticia Rosas, Clerk of the Board of Directors  
Sonoma-Marín Area Rail Transit District

**Appendix A - Passenger Rail/Pathway**
**FISCAL YEAR 2023-2024 AMENDED BUDGET - SOURCES AND USES**

|    |   | A              | B                                      | C            | D              |
|----|---|----------------|--|--------------|----------------|
|    |   | Amendment #1   | FY 24 Board<br>Adopted<br>Carryforward | Amendment #2 | Amended Budget |
| 1  | <b>Beginning Fund Balance *</b>   | \$ 39,066,717  | \$ -                                   | \$ -         | \$ 39,066,717  |
| 2  | <b>Revenues</b>   |                |  |              |                |
| 3  | <b>SMART S&amp;U Tax</b>  |                |  |              |                |
| 4  | Measure Q   | \$ 51,103,000  | \$ -                                   | \$ -         | \$ 51,103,000  |
| 5  | Measure Q carryforward from FY 23                                       | \$ -           | \$ 2,072,753                           | \$ 2,115,478 | \$ 4,188,231   |
| 6  | <b>Federal Funds</b>  |                |  |              |                |
| 7  | 5307 - Urbanized Area Formula Funds (Preventative Maintenance)          | \$ 3,997,642   |  |              | \$ 3,997,642   |
| 8  | American Rescue Plan  | \$ -           |  |              | \$ -           |
| 9  | Discretionary Earmark   | \$ 1,800,000   |  |              | \$ 1,800,000   |
| 10 | FRA Suicide Prevention Grant  | \$ -           | \$ 78,902                              |              | \$ 78,902      |
| 11 | Quick Strike (CMAQ) (Pathway Payran to Lakeville)                       | \$ 1,857,999   |  |              | \$ 1,857,999   |
| 12 | <b>State Funds</b>  |                |  |              |                |
| 13 | AHSC - Windsor  | \$ 1,093,230   |  |              | \$ 1,093,230   |
| 14 | AHSC - Petaluma (Danco)   | \$ 645,515     |  |              | \$ 645,515     |
| 15 | ATP - SoCo Pathway - CTC/Caltrans/MTC                                   | \$ 5,210,927   | \$ 1,305,390                           |              | \$ 6,516,317   |
| 16 | Caltrans Sustainability Communities Competative Planning Grant          | \$ 400,000     |  |              | \$ 400,000     |
| 17 | Clean California Transit Grant  | \$ -           | \$ -                                   | \$ 1,000,000 | \$ 1,000,000   |
| 18 | LCTOP - Low Carbon Transit Operating                                    | \$ 520,218     |  |              | \$ 520,218     |
| 19 | LPP - Local Partnership Program   | \$ 1,857,999   |  |              | \$ 1,857,999   |
| 20 | ITIP - Windsor Systems  | \$ 2,186,460   |  |              | \$ 2,186,460   |
| 21 | SCC - Windsor   | \$ 6,559,379   |  |              | \$ 6,559,379   |
| 22 | SRA - State Rail Assistance   | \$ 5,026,754   |  |              | \$ 5,026,754   |
| 23 | STA - State Transit Assistance (Population)                             | \$ 653,792     |  |              | \$ 653,792     |
| 24 | STA - State Transit Assistance (Revenue)                                | \$ 3,170,013   |  |              | \$ 3,170,013   |
| 25 | STA - SGR (State of Good Repair)  | \$ 330,712     |  |              | \$ 330,712     |
| 26 | TIRCP - Petaluma North and McDowell Crossing                            | \$ 4,125,768   |  | \$ (800,425) | \$ 3,325,343   |
| 27 | TIRCP SH 37 Network Integration   | \$ -           |  |              | \$ -           |
| 28 | TIRCP - Windsor to Healdsburg   | \$ 3,200,000   |  |              | \$ 3,200,000   |
| 29 | <b>Other Sources</b>  |                |  |              |                |
| 30 | Advertising   | \$ 70,000      |  |              | \$ 70,000      |
| 31 | Charges for Services  | \$ 75,637      |  |              | \$ 75,637      |
| 32 | Fare Revenues   | \$ 1,803,384   |  |              | \$ 1,803,384   |
| 33 | Interest Earning  | \$ 627,926     |  |              | \$ 627,926     |
| 34 | Misc.   | \$ 5,659       |  |              | \$ 5,659       |
| 35 | Parking   | \$ 15,000      |  |              | \$ 15,000      |
| 36 | Rent - Real Estate  | \$ 423,721     |  |              | \$ 423,721     |
| 37 | Sale of Property  | \$ -           |  |              | \$ -           |
| 38 | <b>Regional Funds</b>   |                |  |              |                |
| 39 | Measure M - SCTA  | \$ 775,798     | \$ 127,405                             | \$ 71,051    | \$ 974,254     |
| 40 | Other Governments   | \$ 2,886,712   | \$ 153,855                             |              | \$ 3,040,567   |
| 41 | <b>Total Revenues</b>   | \$ 100,423,245 | \$ 3,738,305                           | \$ 2,386,104 | \$ 106,547,654 |
| 42 | <b>Total Revenues + Fund Balance+ Rollfoward</b>                        | \$ 139,489,962 | \$ 3,738,305                           | \$ 2,386,104 | \$ 145,614,371 |
| 43 |   |                |  |              |                |
| 44 |   | Amendment #1   | FY 24 Board<br>Adopted<br>Carryforward | Amendment #2 | Amended Budget |
| 45 | <b>Debt Service</b>   | \$ 16,244,444  | \$ -                                   | \$ -         | \$ 16,244,444  |
| 46 | Salaries & Benefits   | \$ 27,157,564  | \$ -                                   | \$ -         | \$ 27,157,564  |
| 47 | Reduction for Salaries Charged to Projects                              | \$ (1,467,867) | \$ -                                   | \$ -         | \$ (1,467,867) |
| 48 | Reduction for Allocation of Salaries/ Services/ Supplies to Freight     | \$ (164,036)   | \$ -                                   | \$ -         | \$ (164,036)   |
| 49 | Service & Supplies  | \$ 19,429,772  | \$ 49,875                              | \$ -         | \$ 19,479,647  |
| 50 | <b>Total Salaries, Benefits, Service, &amp; Supplies</b>                | \$ 44,955,433  | \$ 49,875                              | \$ -         | \$ 45,005,308  |
| 51 | Contribution to OPEB/ CalPERS Liability Fund                            | \$ 500,000     | \$ -                                   | \$ -         | \$ 500,000     |
| 52 | Contribution to Capital Sinking Fund                                    | \$ 1,000,000   | \$ -                                   | \$ -         | \$ 1,000,000   |
| 53 | Operating Reserve   | \$ 1,278,617   | \$ -                                   | \$ -         | \$ 1,278,617   |
| 54 | <b>Total Reserve Contributions</b>                                      | \$ 2,778,617   | \$ -                                   | \$ -         | \$ 2,778,617   |
| 55 | Environmental   | \$ 478,321     | \$ 265,426                             | \$ 123,396   | \$ 867,142     |
| 56 | Planning  | \$ 250,000     | \$ 130,000                             | \$ (260,123) | \$ 119,877     |
| 57 | <b>Total Planning &amp; Environmental</b>                               | \$ 728,321     | \$ 395,426                             | \$ (136,727) | \$ 987,019     |
| 58 | <b>Total Debt Service, Operating, Reserves, Environmental/ Planning</b> | \$ 64,706,815  | \$ 445,301                             | \$ (136,727) | \$ 65,015,389  |
| 59 | <b>Balance</b>  | \$ 74,783,147  | \$ 3,293,004                           | \$ 2,522,832 | \$ 80,598,983  |
| 60 |   |                |  |              |                |

|    |                            |               |  |                |                |
|----|----------------------------|---------------|--|----------------|----------------|
| 61 |                            |               | FY 24 Board<br>Adopted<br>Carryforward |                |                |
| 62 |                            | Amendment #1  |  | Amendment #2   | Amended Budget |
| 63 | State of Good Repair       |               |  |                |                |
| 64 | Bridges                    | \$ 8,000      | \$ 20,000                              | \$ 108,458     | \$ 136,458     |
| 65 | DMU                        | \$ 1,785,000  | \$ 161,692                             | \$ -           | \$ 1,946,692   |
| 66 | Equipment                  | \$ 69,500     | \$ -                                   | \$ -           | \$ 69,500      |
| 67 | Information Technology     | \$ 235,400    | \$ 40,530                              | \$ 211,993     | \$ 487,923     |
| 68 | Non-Revenue Vehicles       | \$ 919,000    | \$ 333,000                             | \$ 446,965     | \$ 1,698,965   |
| 69 | Other Construction         | \$ -          | \$ 162,855                             | \$ 14,925      | \$ 177,780     |
| 70 | Safety and Security        | \$ -          | \$ 78,902                              | \$ -           | \$ 78,902      |
| 71 | Track, MOW, and Facilities | \$ 487,300    | \$ 189,330                             | \$ (110,000)   | \$ 566,630     |
| 72 | Total State of Good Repair | \$ 3,504,200  | \$ 986,309                             | \$ 672,342     | \$ 5,162,851   |
| 73 |                            |               |  |                |                |
| 74 |                            | Amendment #1  | FY 24 Board<br>Adopted<br>Carryforward | Amendment #2   | Amended Budget |
| 75 |                            |               |  |                |                |
| 76 | Capital Projects           |               |  |                |                |
| 77 | Expansion                  | \$ 22,917,398 | \$ 127,405                             | \$ 1,177,228   | \$ 24,222,031  |
| 78 | Land Purchase              | \$ -          | \$ -                                   | \$ -           | \$ -           |
| 79 | Pathways                   | \$ 18,249,951 | \$ 2,179,291                           | \$ 2,119,202   | \$ 22,548,444  |
| 80 | Total Capital Expenditures | \$ 41,167,349 | \$ 2,306,696                           | \$ 3,296,430   | \$ 46,770,475  |
| 81 | Ending Fund Balance        | \$ 30,111,598 | \$ (1)                                 | \$ (1,445,940) | \$ 28,665,657  |

\* Excludes Reserves





**Eric Lucan, Chair**  
Marin County Board of Supervisors

November 15, 2023

**Melanie Bagby, Vice Chair**  
Sonoma County Mayors' and  
Councilmembers Association

Sonoma- Marin Area Rail Transit Board of Directors  
5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954

**Kate Colin**  
Transportation Authority of Marin

**Chris Coursey**  
Sonoma County Board of Supervisors

**SUBJECT:** Budget Amendment to Fund the completion of the SMART Windsor Rail and Pathway Extension Project

**Rachel Farac**  
Transportation Authority of Marin

Dear Board Members:

**Debora Fudge**  
Sonoma County Mayors' and  
Councilmembers Association

**RECOMMENDATIONS:**

**Patty Garbarino**  
Golden Gate Bridge,  
Highway/Transportation District

Approve Resolution No. 2023-42, amending Resolution No. 2023-23, the Fiscal Year 2023 Adopted Budget, to add funds for the SMART Santa Rosa Airport to Windsor Rail and Pathway Extension project in the amount of \$17,663,452.

**Barbara Pahre**  
Golden Gate Bridge,  
Highway/Transportation District

**SUMMARY/BACKGROUND:**

**Gabe Paulson**  
Marin County Council of Mayors and  
Councilmembers

In 2018 SMART initiated work to extend the passenger rail system one station to the north to the Town of Windsor. In June 2021, the SMART Board took action to suspend work on the project in June 2021 due to Regional Measure 3 bridge tolls, a significant project fund source, being contested in court. While SMART waited for the resolution of this case in the California Supreme Court, additional grant funds were sought and awarded to SMART to finish this SMART Windsor Rail and Pathway Extension project.

**David Rabbitt**  
Sonoma County Board of Supervisors

**Chris Rogers**  
Sonoma County Mayors' and  
Councilmembers Association

**Mary Sackett**  
Marin County Board of Supervisors

With SMART's securing of necessary State funds to complete the suspended Windsor Extension, the overall project was broken into three discrete components for tracking the State fund sources. The first part is all the work completed on both the Civil and Systems contracts before the June 2021 SMART Board authorized Change Order to suspend the project. The second part is the remaining Civil contract scope of work, work that was never the subject of an issuance of Notices to Proceed. The third part is the remaining Systems contract scope of work that was never the subject of issuance of Notices to Proceed.

**Eddy Cumins**  
General Manager

5401 Old Redwood Highway  
Suite 200  
Petaluma, CA 94954  
Phone: 707-794-3330  
Fax: 707-794-3037  
[www.SonomaMarinTrain.org](http://www.SonomaMarinTrain.org)

The complete funding plan for the Windsor Extension Project is:

| <b>Funding SMART Windsor Extension - Completed Work</b>   |  | <b>Amount</b>     |
|---|--|-------------------|
| Transit and Intercity Rail Capital Program                |  | 20,000,000        |
| Federal Railroad Administration                           |  | 3,250,702         |
| Affordable Housing Sustainable Communities (Grant #1)     |  | 923,678           |
| <b>Completed Subtotal</b>                                 |  | <b>24,174,380</b> |
| <b>Funding SMART Windsor Extension - New Civil Work</b>   |  |                   |
| Solutions for Congested Corridors                         |  | 30,000,000        |
| Affordable Housing Sustainable Communities (Grant #1)     |  | 4,076,322         |
| Affordable Housing Sustainable Communities (Grant #2)     |  | 1,500,000         |
| Measure Q   |  | 745,829           |
| Town of Windsor Pedestrian Grade Separation               |  | 1,500,000         |
| <b>New Civil Subtotal</b>                                 |  | <b>37,822,151</b> |
| <b>Funding SMART Windsor Extension - New Systems Work</b> |  |                   |
| Interregional Transportation Improvement Program          |  | 10,000,000        |
| Federal Railroad Administration                           |  | 1,749,298         |
| Measure Q   |  | 1,335,074         |
| <b>New Systems Subtotal</b>                               |  | <b>13,084,372</b> |
| <b>TOTAL WINDSOR RAIL AND PATHWAY EXTENSION</b>           |  | <b>75,080,903</b> |

|                     | FY 24 Budgeted | FY 24 Amendment #3 | FY 24 Amended | FY 25 Estimated | Total         |
|---------------------|----------------|--------------------|---------------|-----------------|---------------|
| <b>Civil Work</b>   |                |                    |               |                 |               |
| State - SCCP        | \$ 6,559,379   | \$ 10,099,235      | \$ 16,658,614 | \$ 13,341,386   | \$ 30,000,000 |
| AHSC (Round 5)      | \$ 1,093,230   | \$ 944,931         | \$ 2,038,161  | \$ 2,038,161    | \$ 4,076,322  |
| AHSC (Round 7)      | \$ -           | \$ 750,000         | \$ 750,000    | \$ 750,000      | \$ 1,500,000  |
| Measure Q           | \$ -           | \$ -               | \$ -          | \$ 745,829      | \$ 745,829    |
| City of Windsor     | \$ -           | \$ 1,000,000       | \$ 1,000,000  | \$ 500,000      | \$ 1,500,000  |
| Subtotal            | \$ 7,652,609   | \$ 12,794,166      | \$ 20,446,775 | \$ 17,375,376   | \$ 37,822,151 |
| <b>Systems Work</b> |                |                    |               |                 |               |
| State ITIP          | \$ 2,186,460   | \$ 4,780,217       | \$ 6,966,677  | \$ 3,033,323    | \$ 10,000,000 |
| FRA - CRISI         | \$ -           | \$ 250,000         | \$ 250,000    | \$ 1,499,298    | \$ 1,749,298  |
| Measure Q           | \$ 160,931     | \$ (160,931)       | \$ -          | \$ 1,335,074    | \$ 1,335,074  |
| Subtotal            | \$ 2,347,391   | \$ 4,869,286       | \$ 7,216,677  | \$ 5,867,695    | \$ 13,084,372 |
| Total               | \$ 10,000,000  | \$ 17,663,452      | \$ 27,663,452 | \$ 23,243,071   | \$ 50,906,523 |

This proposed budget amendment covers the new Civil work and new Systems work remaining to complete the entire project, not the completed work done prior to the SMART Board action in June 2021 to suspend the project. The proposed Fiscal Year 2024 budget amendment includes the following breakout between Fiscal Year 2024 and Fiscal Year 2025 estimated expenditures on the project. These estimated expenditures may change based on actual conditions experienced.

**FISCAL IMPACT:** All of the grant funds for the systems and civil work have been awarded and/or allocated to SMART. Though the State has been in contact with SMART and is developing the respective grant agreements for execution, no State grant agreements have been fully executed for the following sources as of today: Interregional Transportation Improvement Program, Solutions for Congested Corridors Program, or Affordable Housing Sustainable Communities (AHSC) funds. The grant agreements for the AHSC funds are based on transit improvements to be implemented along with housing projects, involve multiple parties, are more complex to execute than a traditional two-party agreement, and include conditions of ultimate successful implementation of the housing project. SMART and the Federal Railroad Administration have an executed grant agreement for the federal funds in the project.

Sincerely,

/s/

Heather McKillop  
Chief Financial Officer

Attachment(s):

- 1) Resolution No. 2023-42
- 2) Appendix A- Sources and Uses

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, STATE OF CALIFORNIA, AMENDING RESOLUTION NO. 2023-23, THE ANNUAL BUDGET FOR FISCAL YEAR 2023-2024 TO PROVIDE FOR REVISED EXPENDITURE AUTHORITY**

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**WHEREAS**, as part of its approval of the Annual Budget for Fiscal Year 2023-2024, the Board of Directors considered the annual expenditures necessary for the Sonoma-Marín Area Rail Transit District; and

**WHEREAS**, the Board previously amended the Annual Budget with Resolution No. 2023-38 to modify expenditure authority for the Petaluma North Station project; and

**WHEREAS**, the Board previously amended the Annual Budget with Resolution No. 2023-41 to modify expenditure authority for additional budget modifications and carryforward of funds from Fiscal Year 2023 to Fiscal Year 2024; and

**WHEREAS**, the Board desires to amend the Annual Budget Resolution No. 2023-23 to modify expenditure authority for modifications to the budget for Santa Rosa Airport Station to Windsor;

**NOW, THEREFORE, BE IT RESOLVED** that expenditure authority in Resolution No. 2023-23, Fiscal Year 2023-2024 Adopted Budget, Appendix A is hereby amended.

**BE IT FURTHER RESOLVED** except as specifically amended or supplemented by this Resolution, Resolution No. 2023-23, together with all supplements, amendments, and exhibits thereto is, and shall continue to be, in full force and effect as originally adopted, and otherwise contained herein shall, or shall be construed to, modify, invalidate, or otherwise affect and provision of Resolution No. 2023-23.

**PASSED AND ADOPTED** at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 15th day of November 2023, by the following vote:

**DIRECTORS:**

AYES:

NOES:

ABSENT:

ABSTAIN:

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Eric Lucan, Chair, Board of Directors  
Sonoma-Marín Area Rail Transit District

ATTEST:

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Leticia Rosas, Clerk of the Board of Directors  
Sonoma-Marín Area Rail Transit District

|   |                |               |                |
|---|----------------|---------------|----------------|
| Appendix A - Passenger Rail/Pathway                                       |                |               |                |
| <b>FISCAL YEAR 2023-2024 AMENDED BUDGET - SOURCES AND USES</b>            |                |               |                |
|   | A              | B             | C              |
|   | Amendment #2   | Amendment #3  | Amended Budget |
| 1 Beginning Fund Balance *  | \$ 39,066,717  | \$ -          | \$ 39,066,717  |
| 2 Revenues  |                |               |                |
| 3 SMART S&U Tax   |                |               |                |
| 4 Measure Q   | \$ 51,103,000  | \$ -          | \$ 51,103,000  |
| 5 Measure Q carryforward from FY 23                                       | \$ 4,188,231   |               | \$ 4,188,231   |
| 6 Federal Funds   |                |               |                |
| 7 5307 - Urbanized Area Formula Funds (Preventative Maintenance)          | \$ 3,997,642   |               | \$ 3,997,642   |
| 8 American Rescue Plan  | \$ -           |               | \$ -           |
| 9 Discretionary Earmark   | \$ 1,800,000   |               | \$ 1,800,000   |
| 10 FRA - Consolidated Rail Infrastructure and Safety Improvements (CRISI) | \$ -           | \$ 250,000    | \$ 250,000     |
| 11 FRA Suicide Prevention Grant   | \$ 78,902      |               | \$ 78,902      |
| 12 Quick Strike (CMAQ) (Pathway Payran to Lakeville)                      | \$ 1,857,999   |               | \$ 1,857,999   |
| 13 State Funds  |                |               |                |
| 14 AHSC - Roseland Village (Round5)                                       | \$ 1,093,230   | \$ 944,931    | \$ 2,038,161   |
| 15 AHSC - Kashia Tribe (Round 7)  | \$ -           | \$ 750,000    | \$ 750,000     |
| 16 AHSC - Petaluma (Danco)  | \$ 645,515     |               | \$ 645,515     |
| 17 ATP - SoCo Pathway - CTC/Caltrans/MTC                                  | \$ 6,516,317   |               | \$ 6,516,317   |
| 18 Caltrans Sustainability Communities Competative Planning Grant         | \$ 400,000     |               | \$ 400,000     |
| 19 Clean California Transit Grant   | \$ 1,000,000   |               | \$ 1,000,000   |
| 20 LCTOP - Low Carbon Transit Operating                                   | \$ 520,218     |               | \$ 520,218     |
| 21 LPP - Local Partnership Program  | \$ 1,857,999   |               | \$ 1,857,999   |
| 22 ITIP - Windsor Systems   | \$ 2,186,460   | \$ 4,780,217  | \$ 6,966,677   |
| 23 SCCP - Windsor   | \$ 6,559,379   | \$ 10,099,235 | \$ 16,658,614  |
| 24 SRA - State Rail Assistance  | \$ 5,026,754   |               | \$ 5,026,754   |
| 25 STA - State Transit Assistance (Population)                            | \$ 653,792     |               | \$ 653,792     |
| 26 STA - State Transit Assistance (Revenue)                               | \$ 3,170,013   |               | \$ 3,170,013   |
| 27 STA - SGR (State of Good Repair)                                       | \$ 330,712     |               | \$ 330,712     |
| 28 TIRCP - Petaluma North and McDowell Crossing                           | \$ 3,325,343   |               | \$ 3,325,343   |
| 29 TIRCP SH 37 Network Integration  | \$ -           |               | \$ -           |
| 30 TIRCP - Windsor to Healdsburg  | \$ 3,200,000   |               | \$ 3,200,000   |
| 31 Other Sources  |                |               |                |
| 32 Advertising  | \$ 70,000      |               | \$ 70,000      |
| 33 Charges for Services   | \$ 75,637      |               | \$ 75,637      |
| 34 Fare Revenues  | \$ 1,803,384   |               | \$ 1,803,384   |
| 35 Interest Earning   | \$ 627,926     |               | \$ 627,926     |
| 36 Misc.  | \$ 5,659       |               | \$ 5,659       |
| 37 Parking  | \$ 15,000      |               | \$ 15,000      |
| 38 Rent - Real Estate   | \$ 423,721     |               | \$ 423,721     |
| 39 Sale of Property   | \$ -           |               | \$ -           |
| 40 Regional Funds   |                |               |                |
| 41 Measure M - SCTA   | \$ 974,254     |               | \$ 974,254     |
| 42 Other Governments  | \$ 3,040,567   | \$ 1,000,000  | \$ 4,040,567   |
| 43 Total Revenues   | \$ 106,547,654 | \$ 17,824,383 | \$ 124,372,037 |
| 44 Total Revenues + Fund Balance+ Rollforward                             | \$ 145,614,371 | \$ 17,824,383 | \$ 163,438,754 |
| 45  |                |               |                |
| 46  | Amendment #2   | Amendment #3  | Amended Budget |
| 47 Debt Service   | \$ 16,244,444  | \$ -          | \$ 16,244,444  |
| 48 Salaries & Benefits  | \$ 27,157,564  | \$ -          | \$ 27,157,564  |
| 49 Reduction for Salaries Charged to Projects                             | \$ (1,467,867) | \$ -          | \$ (1,467,867) |
| 50 Reduction for Allocation of Salaries/ Services/ Supplies to Freight    | \$ (164,036)   | \$ -          | \$ (164,036)   |
| 51 Service & Supplies   | \$ 19,479,647  | \$ -          | \$ 19,479,647  |
| 52 Total Salaries, Benefits, Service, & Supplies                          | \$ 45,005,308  | \$ -          | \$ 45,005,308  |
| 53 Contribution to OPEB/ CalPERS Liability Fund                           | \$ 500,000     | \$ -          | \$ 500,000     |
| 54 Contribution to Capital Sinking Fund                                   | \$ 1,000,000   | \$ -          | \$ 1,000,000   |
| 55 Operating Reserve  | \$ 1,278,617   | \$ -          | \$ 1,278,617   |
| 56 Total Reserve Contributions  | \$ 2,778,617   | \$ -          | \$ 2,778,617   |
| 57 Environmental  | \$ 867,142     |               | \$ 867,142     |
| 58 Planning   | \$ 119,877     |               | \$ 119,877     |
| 59 Total Planning & Environmental   | \$ 987,019     | \$ -          | \$ 987,019     |
| 60 Total Debt Service, Operating, Reserves, Environmental/ Planning       | \$ 65,015,388  | \$ -          | \$ 65,015,388  |
| 61 Balance  | \$ 80,598,983  | \$ 17,824,383 | \$ 98,423,366  |
| 62  |                |               |                |
| 63  | Amendment #2   | Amendment #3  | Amended Budget |
| 64  |                |               |                |
| 65 State of Good Repair   |                |               |                |
| 66 Bridges  | \$ 136,458     |               | \$ 136,458     |
| 67 DMU  | \$ 1,946,692   |               | \$ 1,946,692   |
| 68 Equipment  | \$ 69,500      |               | \$ 69,500      |
| 69 Information Technology   | \$ 487,923     |               | \$ 487,923     |
| 70 Non-Revenue Vehicles   | \$ 1,698,965   |               | \$ 1,698,965   |
| 71 Other Construction   | \$ 177,780     |               | \$ 177,780     |
| 72 Safety and Security  | \$ 78,902      |               | \$ 78,902      |
| 73 Track, MOW, and Facilities   | \$ 566,630     |               | \$ 566,630     |
| 74 Total State of Good Repair   | \$ 5,162,850   | \$ -          | \$ 5,162,850   |
| 75  |                |               |                |
| 76  | Amendment #2   | Amendment #3  | Amended Budget |
| 77  |                |               |                |
| 78 Capital Projects   |                |               |                |
| 79 Expansion  | \$ 24,222,031  | \$ 17,663,452 | \$ 41,885,483  |
| 80 Land Purchase  | \$ -           |               | \$ -           |
| 81 Pathways   | \$ 22,548,444  |               | \$ 22,548,444  |
| 82 Total Capital Expenditures   | \$ 46,770,475  | \$ 17,663,452 | \$ 64,433,927  |
| 83 Ending Fund Balance  | \$ 28,665,658  | \$ 160,931    | \$ 28,826,589  |
| * Excludes Reserves   |                |               |                |



**Eric Lucan, Chair**  
Marin County Board of Supervisors

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Marin County Council of Mayors and  
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November 15, 2023

Sonoma-Marin Area Rail Transit Board of Directors  
5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954

**SUBJECT:** Approve a Resolution Awarding the Issuance of Notices to Proceed for project civil scope of work and Change Order 015 for Construction Contract No. CV-DB-18-001 with Stacy and Witbeck, Inc. in the amount of \$8,268,237

Dear Board Members:

**RECOMMENDATION:**

Approve Resolution No. 2023-43 awarding the issuance of Notices to Proceed for project civil scope of work and Change Order 015 to Construction Contract No. CV-DB-18-001 to Stacy and Witbeck, Inc. in the amount of \$8,268,237 for a total not-to-exceed amount of \$57,178,129 for the complete construction of the SMART Windsor Extension Civil Project, the civil engineering and construction portion of the overall SMART Windsor Rail and Pathway Extension.

**SUMMARY:**

In 2018 SMART initiated work to extend the passenger rail system one station to the north to the Town of Windsor. The three-mile extension includes a new station in downtown Windsor, a park and ride lot, and a continuous bicycle and pedestrian pathway from Airport Boulevard at the Airport Station to Windsor River Road/Windsor Road in Windsor. SMART awarded Contract CV-DB-18-001 for the completion of the design and construction of the civil/track elements of the Windsor Extension Project to Stacy and Witbeck, Inc. following a formal design-build procurement solicitation process. Limited Notice to Proceed was issued for procurement of materials and construction activities, which commenced in 2020 with the purchase of rail and ties, installation of bridge foundations and some drainage culverts. SMART Board took action to suspend work on the project in June 2021 due to regional funding being contested in court.

SMART secured the necessary remaining funding to complete the Windsor Extension Rail and Pathway civil project with a \$30 million Solutions for Congested Corridors grant and Affordable Housing Sustainable Communities grants, each from the State of California.



Staff has negotiated fair and reasonable remobilization costs to complete the necessary civil scope of the overall SMART Windsor Rail and Pathway Extension. Staff recommends awarding Change Order 015 to Stacy and Witbeck, Inc. in the amount of \$8,268,237 and authorizing notice to proceed on remaining scope of work with Contract No. CV-DB-18-001 for a total not-to-exceed contract amount of \$57,178,129 across all prior completed work and new scope.

#### **BACKGROUND:**

With SMART's securing of necessary State funds to complete the suspended Windsor Extension, the overall project was broken into three discrete components for tracking the State fund sources. The first part is all the work completed on both the Civil and Systems contracts before the June 2021 SMART Board authorized Change Order to suspend the project. The second part, the subject of this staff report and resolution, is the remaining Civil contract scope of work, work that was never the subject of an issuance of Notices to Proceed. The third part is the remaining Systems contract scope of work that was never the subject of issuance of Notices to Proceed.

SMART secured \$30M in California Solutions for Congested Corridors (SCC) funding in June 2023 for the Civil Contract (Contract No. CV-DB-18-001) and \$10M in Interregional Transportation Improvement (ITIP) funding for the Systems Contract in the Spring of 2023. This funding, in addition to the previously and concurrently secured federal and state funding, matched with Measure Q, provides a full plan to complete the project. The complete funding plan for the Windsor Extension Project is:

| <b>Funding SMART Windsor Extension - Completed Work</b>   | <b>Amount</b>     |
|---|-------------------|
| Transit and Intercity Rail Capital Program                | 20,000,000        |
| Federal Railroad Administration                           | 3,250,702         |
| Affordable Housing Sustainable Communities (Grant #1)     | 923,678           |
| <b>Completed Subtotal</b>                                 | <b>24,174,380</b> |
| <b>Funding SMART Windsor Extension - New Civil Work</b>   |                   |
| Solutions for Congested Corridors                         | 30,000,000        |
| Affordable Housing Sustainable Communities (Grant #1)     | 4,076,322         |
| Affordable Housing Sustainable Communities (Grant #2)     | 1,500,000         |
| Measure Q   | 745,829           |
| Town of Windsor Pedestrian Grade Separation               | 1,500,000         |
| <b>New Civil Subtotal</b>                                 | <b>37,822,151</b> |
| <b>Funding SMART Windsor Extension - New Systems Work</b> |                   |
| Interregional Transportation Improvement Program          | 10,000,000        |
| Federal Railroad Administration                           | 1,749,298         |
| Measure Q   | 1,335,074         |
| <b>New Systems Subtotal</b>                               | <b>13,084,372</b> |
| <b>TOTAL WINDSOR RAIL AND PATHWAY EXTENSION</b>           | <b>75,080,903</b> |

The remaining scope of work that the contractor has yet to be issued notice to proceed for consists of grading and earthwork, completion of drainage elements, installation of the bridges, installing underground duct banks, constructing the passenger boarding platform, constructing the parking lot, and completing the bicycle and pedestrian pathway.

Staff requested that Stacy and Witbeck, Inc. submit a proposal to activate Contract CV-DB-18-001 to complete the project. Stacy and Witbeck, Inc. presented a proposal that included escalation costs, remobilization expenses, and a schedule to complete the contract work. Staff carefully reviewed the escalation request and found that the period from 2018 to 2023 has seen extensive inflation in the construction industry for materials, labor, and services. The California Department of General Services maintains a construction cost index that tracks construction cost increases in construction trade labor and materials (<https://www.dgs.ca.gov/RES/RESOURCES/Page-Content/Real-Estate-Services-Division-Resources-List-Folder/DGS-California-Construction-Cost-Index-CCCI>). They reported a cumulative increase from September 2018 through October 2023 of 45%. Fortunately, SMART purchased the rail and concrete ties for the project in 2019. These large quantities of items have increased two to three-fold during this period. SMART staff negotiated an escalation increase of approximately half that amount.

Stacy and Witbeck, Inc. also requested remobilization cost of \$200,000 for personnel and equipment remobilization. This includes five people for one month and budget to bring equipment to the site. We found that one month of five salaried personnel seemed very reasonable to re-activate a complex project of this magnitude. It also seemed reasonable that they would realize actual costs to bring in equipment to restart the project.

At the time that the project was put on hold, SMART had issued several Change Notices requesting pricing for additional scope items but had not issued notices to proceed on those items. The majority of the changes pertained to the construction of the bicycle and pedestrian pathway, including the basic structure to allow for a pedestrian grade separated tunnel of the tracks near Windsor High School. The Town of Windsor has requested and is funding the installation of the initial structure elements of the pedestrian tunnel. SMART, the Town of Windsor and regional partners will need to identify additional funding to complete the pedestrian tunnel during the duration of this Windsor Extension project to ensure it can be opened to the public in a cost-effective manner. The cost estimate for that additional work is currently \$2.5 million and will be added into the project budget, if and when grant funds are secured.

As part of the re-activation of the Stacy and Witbeck, Inc.'s civil portion of the Windsor Extension, staff collected the outstanding change orders and included them in Change Order 015. Collectively they amount to \$1,434,359. In addition, the change order includes \$337,008 to replace railroad ties that were damaged in a fire earlier this year while they were stored in the SMART right-of-way in Healdsburg.

It is also necessary to adjust the schedule to complete the project, since work has been on hold for a couple years. SMART staff and Stacy and Witbeck, Inc. negotiated revised substantial completion and final acceptance dates of December 31, 2024, and June 30, 2025, respectively. The substantial completion date completes the majority of the contract work such that the Systems Contractor can have full access to the right-of-way in order to complete their work and commission the train control and communications systems. The final completion date provides some overlap time to support the systems work. These dates, in conjunction with the Systems Contract, target an opening of the Windsor Extension in the Spring of 2025.

Staff recommendation is to approve Resolution No. 2023-43 awarding the issuance of Notice to Proceed for the SMART Windsor Extension remaining Civil scope and Change Order 015 to Construction Contract No. CV-DB-18-001 to Stacy and Witbeck, Inc. in amount of \$8,268,237 for a total not-to-exceed amount of \$57,178,129 across the completed and new work on the SMART Windsor Rail and Pathway Extension Civil project. Additionally, staff recommendation is to revise the civil project substantial and final completion dates to December 31, 2024, and June 30, 2025, respectively.

**FISCAL IMPACT:** Expenditure authority and funding for this SMART Windsor Civil work are included in the Fiscal Year 2023-24 amended budget.

**REVIEWED BY:** [ x ] Finance     /s/    

[ x ] Counsel     /s/    

Very truly yours,

/s/

Bill Gamlen, P.E.  
Chief Engineer

Attachment(s): Resolution No. 2023-43

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AWARDING CHANGE ORDER 015 TO CONTRACT NO. CV-DB-18-001 FOR THE DESIGN AND CONSTRUCTION OF THE CIVIL COMPONENTS FOR THE WINDSOR EXTENSION**

---

**WHEREAS**, On November 22, 2019, the SMART District (District) awarded Contract No. CV-DB-18-001 to Stacy and Witbeck, Inc. for the design and construction of Civil and Track Construction elements for the 3-mile extension of the SMART District passenger rail system to the Town of Windsor; and

**WHEREAS**, On November 22, 2019, the District issued a Limited Notice to Proceed for the Contract; and

**WHEREAS**, On June 2, 2021, the District delayed issuing additional Notice to Proceed (s) and put the Contract on hold by approving Change Order 014 that included a Side Letter Agreement that modified certain contract provisions while the project was on hold; and

**WHEREAS**, the District has identified additional funding commitments such that the Windsor Extension Project is fully funded; and

**WHEREAS**, the District has negotiated fair and reasonable terms with Stacy and Witbeck, Inc. to enable issuance of new Notices to Proceed and complete the balance of work in Contract No. CV-DB-18-001; and

**WHEREAS**, The SMART District has prepared Change Order 015 to construct the remaining work in Contract No. CV-DB-18-001 and extinguishes the Side Letter Agreement that was part of Change Order 014.

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

1. That the foregoing recitals are true and correct.
2. That Change Order 015 to Contract No. CV-DB-18-001, a copy of which is attached hereto and incorporated herein as Exhibit “A, is hereby awarded.

**Resolution No. 2023-43**  
**Sonoma-Marin Area Real Transit District**  
**November 15, 2023**

**PASSED AND ADOPTED** at a regular meeting of the Board of Directors of the Sonoma-Marin Area Rail Transit District held on the 15<sup>th</sup> day of November 2023, by the following vote:

**DIRECTORS:**

AYES:

NOES:

ABSENT:

ABSTAIN:

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Eric Lucan, Chair, Board of Directors  
Sonoma-Marin Area Rail Transit District

ATTEST:

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Leticia Rosas, Clerk of Board of Directors  
Sonoma-Marin Area Rail Transit District

Contract No.: CV-DB-18-001  
Contract Title: Windsor Extension  
Change Order No: 015  
Title: Project Reactivation

**EXHIBIT "A"**



**Issued to:**

Stacy and Witbeck Inc.  
2800 Harbor Bay Parkway  
Alameda, California 94502

**CO Title:** Windsor Extension Project Reactivation

**Change Notice References include CN 001, 002, 003**

**The original Contract Price due to this CO will change by: \$8,268,237**

**The original Contract Performance Time due to the CO will be change by: Adjusted Project Milestones (see item 4 below)**

EXCEPT AS MODIFIED BY THIS CHANGE ORDER, ALL TERMS AND CONDITIONS OF THE CONTRACT, AS PREVIOUSLY MODIFIED, REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT. THE PARTIES AGREE THAT THIS CHANGE ORDER IS A FINAL AND EQUITABLE ADJUSTMENT OF THE CONTRACT TIME AND CONTRACT AMOUNT AND CONSTITUTES A MUTUAL ACCORD AND SATISFACTION OF ALL CLAIMS, CURRENT OR FUTURE, OF WHATEVER NATURE CAUSED BY OR ARISING OUT OF THE FACTS AND CIRCUMSTANCES SURROUNDING THIS CHANGE ORDER INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT AND CONSEQUENTIAL COSTS; ADDITIONAL TIME FOR PERFORMANCE; AND THE IMPACT OF THE CHANGE SPECIFIED IN THIS CHANGE ORDER, ALONE OR TAKEN WITH OTHER CHANGES, ON THE UNCHANGED WORK.

**Description of Change:**

This Change Order modifies the original contract to re-activate the Windsor Extension Project. It includes the following major items:

1. Adds two additional FTA and DOT contract clauses to the contract Attachment E.
2. Nullifies Temporary Side Letter Agreement in previously executed Change Order 014.
3. Replaces Attachment A Contract Price with a new Attachment A Revised.
4. Replaces GC 8.4.1(a) Project Milestones and Liquidated Damages for Windsor Extension Project Contractor Late Completion tables.
5. Provides compensation for escalation costs of \$6,296,870 that accrued while the project was on hold.
6. Provides compensation of \$200,000 for Contractor remobilization expenses.
7. Replaces burnt ties in an amount of \$337,008.
8. Adds additional scope of work to the contract in the amount of \$1,434,359.

**Concurred By:**

**Concurred By:**

Project Manager

Date

District Chief Engineer

Date

John Riley

Bill Gamlen

**The undersigned agrees to the terms and conditions described herein.**

**Contractor Acceptance**

**Sonoma-Marin Area Rail Transit**

**Title: Project Representative**

**Title: General Manager**

(Authorized Signature for Contractor)

Date

(Authorized Signature for Owner)

Date

Nick Slama

Eddy Cumins



Contract No.: CV-DB-18-001  
Contract Title: Windsor Extension  
Change Order No: 015  
Title: Project Reactivation

**EXHIBIT "A"**



**Details of Change Order Items 5-8:**

| Pay Item No. | Funding Source | Description                               | Unit | Qty. | Unit Price     | Item Total     |
|--------------|----------------|---|------|------|----------------|----------------|
| Bid Item 1   | 4001           | Site Prep (excl. Airport Blvd)            | 1    | LS   | \$252,021.98   | \$252,021.98   |
| Bid Item 2.1 | 1001           | Grading - Railroad                        | 1    | LS   | \$887,608.42   | \$887,608.42   |
| Bid Item 2.1 | 1001           | Sub Ballast Recycle                       | 1    | LS   | \$-250,000.00  | \$-250,000.00  |
| Bid Item 2.2 | 1010           | Track Construction                        | 1    | LS   | \$849,500.57   | \$849,500.57   |
| Bid Item 2.3 | 1012           | Special Trackwork                         | 1    | LS   | \$93,632.04    | \$93,632.04    |
| Bid Item 2.4 | 1009           | Grade Crossing Track                      | 1    | LS   | \$144,880.28   | \$144,880.28   |
| Bid Item 3   | 4006           | Right of Way Fencing                      | 1    | LS   | \$345,512.00   | \$345,512.00   |
| Bid Item 4   | 4005           | Culverts & Drainage (excl. Airport Blvd.) | 1    | LS   | \$445,171.49   | \$445,171.49   |
| Bid Item 5   | 1009           | Roadway & Parking Lots                    | 1    | LS   | \$612,390.20   | \$612,390.20   |
| Bid Item 5   | 1009           | Grading at Windsor Road                   | 1    | LS   | \$- 360,000.00 | \$- 360,000.00 |
| Bid Item 6.1 | 4007           | Traffic Signal & Illumination- Roadway    | 1    | LS   | \$142,970.48   | \$142,970.48   |
| Bid Item 6.1 | 4007           | Windsor Roundabout Incorporation          | 1    | LS   | \$8,622.00     | \$8,622.00     |
| Bid Item 6.1 | 4007           | Traffic Signals at Windsor Road           | 1    | LS   | \$- 81,000.00  | \$- 81,000.00  |
| Bid Item 6.2 | 2004           | Traffic Signal & Illumination-Parking Lot | 1    | LS   | \$59,571.04    | \$59,571.04    |
| Bid Item 7   | 4002           | Utilities (excl. Airport Blvd.)           | 1    | LS   | \$17,871.31    | \$17,871.31    |
| Bid Item 8   | 2001, 5001     | AC Power (excl. Airport Blvd.)            | 1    | LS   | \$71,485.24    | \$71,485.24    |
| Bid Item 9   | 4005           | Retaining Walls - Railroad                | 1    | LS   | \$42,810.60    | \$42,810.60    |

|  |   |   |
|--|---|---|
| <b>Initials:</b><br><div style="border-bottom: 1px solid black; height: 1.2em; margin-top: 5px;"></div> <p style="text-align: center; margin-top: 5px;"><b>Project Manager</b></p> | <div style="border-bottom: 1px solid black; height: 1.2em; margin-top: 5px;"></div> <p style="text-align: center; margin-top: 5px;"><b>Contractor</b></p> | <div style="border-bottom: 1px solid black; height: 1.2em; margin-top: 5px;"></div> <p style="text-align: center; margin-top: 5px;"><b>Chief Engineer</b></p> |
|--|---|---|

Contract No.: CV-DB-18-001  
Contract Title: Windsor Extension  
Change Order No: 015  
Title: Project Reactivation

**EXHIBIT "A"**



**Details of Change Order Items 5-8:**

| Pay Item No. | Funding Source | Description  | Unit | Qty. | Unit Price     | Item Total     |
|--------------|----------------|--|------|------|----------------|----------------|
| Bid Item 10  | 2001           | Windsor Station  | 1    | LS   | \$512,310.90   | \$512,310.90   |
| Bid Item 11  | 1004           | Railroad Bridges – Airport Creek, Pool Creek, unnamed Creek, East Windsor Creek, Windsor Creek | 1    | LS   | \$543,709.20   | \$543,709.20   |
| Bid Item 12  | 4004           | Env Compliance & Storm Water Pollution Prevention Plan   | 1    | LS   | \$101,270.76   | \$101,270.76   |
| Bid Item 13  | 5001           | Systems (in Civil contract)  | 1    | LS   | \$536,139.32   | \$536,139.32   |
| Bid Item 14  | 4008           | Mobilization and Demobilization  | 1    | LS   | \$164,702.00   | \$164,702.00   |
| Bid Item B20 | 3002           | Pathway South of Station 3210+00   | 1    | LS   | \$473,312.13   | \$473,312.13   |
| Bid Item 21  | 4604           | CN003 NMP Ped Undercrossing Box  | 1    | LS   | \$1,184,875.00 | \$1,184,875.00 |
| Bid Item 21  | 3004           | Furnish & Install NMP Bridges – E. Windsor & Windsor Creeks                                    | 1    | LS   | \$349,539.00   | \$349,539.00   |
| Bid Item 21  | 3004           | Furnish & Install NMP Bridge Bent Caps – E. Windsor & Windsor Creeks                           | 1    | LS   | \$181,729.00   | \$181,729.00   |
| Bid Item 21  | 3004           | Furnish & Install Keystone Wall (for NMP Bridges – E. Windsor & Windsor Creeks)                | 1    | LS   | \$92,115.00    | \$92,115.00    |
| Bid Item 21  | 3002           | Pathway Completion   | 1    | LS   | \$206,397.00   | \$206,397.00   |
| CO 015.1     | 4008           | Remobilization (Staff & Equipment)   | 1    | LS   | \$200,000.00   | \$200,000.00   |
| CO 015.2     | 1009           | CN001 Watch for Train Stencils   | 1    | LS   | \$13,830.00    | \$13,830.00    |
| CO 015.3     | 1012           | CN002 Power Derail Yard Lead   | 1    | LS   | \$62,923.00    | \$62,923.00    |
| CO 015.4     | 1009           | Shiloh Signal Change – GO88B   | 1    | LS   | \$25,329.00    | \$25,329.00    |
| CO 015.5     | 1010           | Replace Burnt Ties   |      |      | \$337,008.00   | \$337,008.00   |

|                  |                        |                   |                       |
|------------------|------------------------|-------------------|-----------------------|
| <b>Initials:</b> | _____                  | _____             | _____                 |
|                  | <b>Project Manager</b> | <b>Contractor</b> | <b>Chief Engineer</b> |



## 1. Adding New Contract Clauses to Attachment E – FTA and DOT Requirements:

### 35. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

Contractor certifies and confirms that no services provided or supplies installed or utilized under this contract constitute telecommunications services, equipment or systems prohibited under Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232), and as may be implemented by 2 C.F.R. 200.216. If Contractor later learns that prohibited telecommunications services, equipment or systems have been supplied, installed, or utilized under this Contract, Contractor shall immediately inform SMART in writing. SMART may require the Contractor to promptly replace such prohibited service, equipment and systems at the Contractor's sole cost.

### 36. Davis Bacon Act and Copeland Anti-Kickback Act

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to SMART's construction contracts and subcontracts that "at least partly are financed by a loan of grant from the Federal Government". 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. Construction for purposes of the Acts, include "actual construction, alteration, and/or repair, including painting and decorating" as defined by 29 CFR 5.5(a).

Contractors and subcontractors at any contract tier agree to comply with the Davis-Bacon Act 40 USC 3141, et seq and implementing DOL regulations "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction" 29 CFR Part 5.

In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

SMART has attached to the Agreement a copy of the current prevailing wage determination issued by the Department of Labor which must be adhered to by the Contractor and all subcontractors. Contractor shall report all suspected or reported violations to the SMART who will intern report all violations to the Federal awarding agency.

"Compliance with the Copeland "Anti-Kickback" Act.

- (1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

Initials:

\_\_\_\_\_  
Project Manager

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Chief Engineer

Contract No.: CV-DB-18-001  
 Contract Title: Windsor Extension  
 Change Order No: 015  
 Title: Project Reactivation

EXHIBIT "A"



**2. Side Letter Agreement** – this Change Order extinguishes the Side Letter Agreement executed on July 12, 2021 as part of Change Order 014 such that any Contract Provision that was modified or suspended shall be reinstated in its original form at the time the contract was executed.

**3. Contract Price** – this Change Order replaces Attachment A Contract Price with the attached Attachment A Revised

**4. Project Milestones** – this Change Order replaces the following tables in Special Conditions SC 8.4.1(a) Project Milestones and Liquidated Damages for Windsor Extension Project Contractor Late Completion:

**GCB8.4.1(a) Project Milestones**

| PROJECT MILESTONES   |  |
|--|--|
| Project or Project Element MILESTONE (see Note 1)          | MILESTONE DATE   |
| <del>Completion of Track Horizontal Alignment Design</del> | By February 1, 2020 D/B shall complete and submit to SMART the final track horizontal alignment in both CAD and PDF plan sheet track format.   |
| <del>Completion of Civil Aspects of Systems Work</del>     | By April 1, 2021, D/B shall complete civil aspects of systems work. This includes but is not limited to all CIL pads, all railroad signal conduits, grade crossing warning device foundations (and conduits); pullboxes and vaults; AC power; and installation and madrelling of all conduits, including but not limited to: railroad signal systems, communications and data systems, closed-circuit television cameras, variable message signs public address systems, emergency |
| <del>Systems Contractor Worksite Access...</del>           | By June 1, 2021, D/B shall allow the Systems Contractor full and unencumbered access to the entire worksite and, where access requirements conflict, the Systems Contractor shall have priority...   |
| Substantial Completion                                     | September 1, 2021 December 25, 2024  |
| Final Acceptance   | March 31, 2022 June 30, 2025   |

| Liquidated Damages for Windsor Extension Project Contractor Late Completion |         |                     |  |
|---|---------|---------------------|--|
| Type of Delay   | LDs     | Per Day or Per Hour | Notes  |
| <del>For Delayed Completion of Track Horizontal Alignment Design</del>      | \$4,816 | Per Day             | Complete and submit to SMART the final track horizontal alignment in both CAD and PDF plan sheet format. |

|  |   |   |
|--|---|---|
| Initials: _____<br><div style="text-align: center; margin-top: 10px;"><b>Project Manager</b></div> | _____<br><div style="text-align: center; margin-top: 10px;"><b>Contractor</b></div> | _____<br><div style="text-align: center; margin-top: 10px;"><b>Chief Engineer</b></div> |
|--|---|---|



|  |         |         |   |
|--|---------|---------|---|
| <del>For Delayed Completion of Civil Aspects of Systems Work</del> | \$4,816 | Per Day | This includes but is not limited to completion of all CIL pads; all railroad signal conduits, grade crossing warning device foundations and conduits; wayside signal foundations and conduits; pullboxes and vaults; AC power (including activation by power provider); and all conduits.                                 |
| <del>For Delayed Systems Contractor Worksite Access</del>          | \$4,816 | Per Day | D/B shall allow the Systems Contractor full and unencumbered access to the entire worksite and where access requirements conflict, the Systems Contractor shall have priority.  |
| <del>For Delayed Substantial Completion</del>                      | \$5,880 | Per Day | If the D/B fails to substantially complete its contract work by the Substantial Completion date, it will be subject to this specified amount of LDs/CD. This LD/CD amount excludes the LD/CD amount "For Delayed Systems Access" and is in addition to and cumulative with any LDs assessed "For Delayed Systems Access." |
| <del>For Delayed Final Acceptance</del>                            | \$3,248 |         | If the D/B fails to complete all contract work by the date of Final Acceptance, it will be subject to this specified amount of LDs/CD. This LD amount is in addition to and cumulative with any LD amounts assessed "For Delayed Systems Access" and "For Delayed Overall Substantial Completion."                        |

**5. Escalation Costs** – this Change Order compensates the Contractor \$6,296,870 for increased costs of labor, materials, fuel, equipment and an increase in local sales tax for the approximately 3.5 year period that the contract was dormant. The escalation has been applied to individual bid items of the remaining work in Attachment A Revised – excluding contract allowances.

**6. Remobilization** – the Change Order compensates the Contractor in an amount of \$200,000 for the cost of re-engaging key project staff, evaluating site conditions, securing field office space, transporting equipment to the project site, and related costs to re-start the Project.

**7. Replace Burnt, damaged railroad ties.** SMART accepted railroad ties for the project and had them stored on SMART property. A fire occurred at the storage site and the ties were damaged beyond use. This Change provides \$337,008 to repurchase the needed railroad ties.

**8. Additional Work Scope (\$1,434,359)** - At the time of the contract suspension, SMART had issued a number of Change Notices for additional work, which received pricing from the contractor. These were documented in Change Order 014

|  |   |   |
|--|---|---|
| <b>Initials:</b><br><div style="border-bottom: 1px solid black; height: 1.2em; margin: 5px 0;"></div> <div style="text-align: center; margin-top: 5px;"><b>Project Manager</b></div> | <div style="border-bottom: 1px solid black; height: 1.2em; margin: 5px 0;"></div> <div style="text-align: center; margin-top: 5px;"><b>Contractor</b></div> | <div style="border-bottom: 1px solid black; height: 1.2em; margin: 5px 0;"></div> <div style="text-align: center; margin-top: 5px;"><b>Chief Engineer</b></div> |
|--|---|---|

Contract No.: CV-DB-18-001  
Contract Title: Windsor Extension  
Change Order No: 015  
Title: Project Reactivation

**EXHIBIT "A"**



Project Mothball Summary. They primarily relate to the construction of the bicycle and pedestrian pathway. They are summarized as:

- Furnish and Install pedestrian bridges (2) for East Windsor Creek & Windsor Creek (\$349,539)
- Furnish and Install pedestrian bridge bent caps for East Windsor Creek & Windsor Creek (\$181,729)
- Furnish and install Keystone wall at the pedestrian bridge abutments (\$92,115)
- Furnish and install pedestrian undercrossing box and retaining wall along the track, Scenario 2 (\$1,184,875) (originally priced in SWI letter SWI-SMART-019, October 9, 2020 and updated in SWI-SMART-019r1, Feb 4, 2021)
- Install "Watch for Train" stencils at grade crossings (\$13,830)
- Furnish and install a power derail at the Rail Operation Center yard lead (\$62,923)
- Incorporate the Windsor River Road Roundabout into the existing design (\$8,622)
- Pathway Completion (\$206, 397)
- Shiloh Signal Change- GO88B (\$25,329)
- Replace virgin sub ballast with recycled sub ballast material - credit: (\$-250,000)
- Credit for the grading at Windsor Road that was performed in another contract: (\$-360,000)
- Credit for eliminating the traffic signals at Windsor Road (\$-81,000)

Details of these are included in supporting documentation in the attachments of this Change Order.

**Initials:**

\_\_\_\_\_  
**Project Manager**

\_\_\_\_\_  
**Contractor**

\_\_\_\_\_  
**Chief Engineer**



Contract No.: CV-DB-18-001  
Contract Title: Windsor Extension  
Change Order No: 015  
Title: Project Reactivation

**EXHIBIT "A"**





**Eric Lucan, Chair**  
Marin County Board of Supervisors

**Melanie Bagby, Vice Chair**  
Sonoma County Mayors' and  
Councilmembers Association

**Kate Colin**  
Transportation Authority of Marin

**Chris Coursey**  
Sonoma County Board of Supervisors

**Rachel Farac**  
Transportation Authority of Marin

**Debora Fudge**  
Sonoma County Mayors' and  
Councilmembers Association

**Patty Garbarino**  
Golden Gate Bridge,  
Highway/Transportation District

**Barbara Pahre**  
Golden Gate Bridge,  
Highway/Transportation District

**Gabe Paulson**  
Marin County Council of Mayors and  
Councilmembers

**David Rabbitt**  
Sonoma County Board of Supervisors

**Chris Rogers**  
Sonoma County Mayors' and  
Councilmembers Association

**Mary Sackett**  
Marin County Board of Supervisors

**Eddy Cumins**  
General Manager

5401 Old Redwood Highway  
Suite 200  
Petaluma, CA 94954  
Phone: 707-794-3330  
Fax: 707-794-3037  
[www.SonomaMarinTrain.org](http://www.SonomaMarinTrain.org)

November 15, 2023

Sonoma-Marin Area Rail Transit Board of Directors  
5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954

**SUBJECT:** Approve a Resolution Awarding the issuance of Notices to Proceed for project systems scope of work and Change Order 004 for Construction Contract No. SYS-DB-18-001 with Modern Railway Systems, Inc. in the amount of \$2,415,741

Dear Board Members:

**RECOMMENDATION:**

Approve Resolution No. 2023-44 awarding the issuance of Notices to Proceed for project systems scope of work and Change Order 004 to Construction Contract No. SYS-DB-18-001 to Modern Railway Systems, Inc. in the amount of \$2,415,741 for a total not-to-exceed amount of \$17,338,233 for the complete construction of the SMART Windsor Rail Systems Project, the systems portion of the overall SMART Windsor Rail and Pathway Extension.

**SUMMARY:**

In 2018 SMART initiated work to extend the passenger rail system one station to the north to the Town of Windsor. The three-mile extension includes a new station in downtown Windsor, a park and ride lot, and a continuous bicycle and pedestrian pathway from Airport Boulevard at the Airport Station to Windsor River Road/Windsor Road in Windsor. SMART awarded Contract No. SYS-DB-18-001 to Modern Railway Systems, Inc. through a design-build sole-source procurement to complete the design and furnish, install and commission the rail and communications systems elements of the project. Limited Notice to Proceed was issued for procurement, construction, installation and testing activities, which commenced in 2020 with the purchase of power switch machines, various rail and communications systems equipment, and phased rail systems installation and testing at the Sonoma County Airport Station. The SMART Board took action to suspend work on the project in June 2021 due to regional funding being contested in court.

SMART secured the needed remaining funds to complete the Windsor Extension Rail Systems work with a \$10 million grant from the State of California's Interregional Transportation Improvement Program (ITIP).

Staff have negotiated fair and reasonable remobilization costs to complete the necessary systems scope. Thus, staff is recommending awarding Change Order 004 to Modern Railway Systems, Inc. in the amount of \$2,415,741 and authorize notice to proceed on remaining scope with Contract No. SYS-DB-18-001 for a total not-to-exceed contract amount of \$17,338,233 across all prior completed work and new scope. Without the prior completed work, the contract value of the new notices to proceed and Change Order 004 is \$12,320,463.

**BACKGROUND:**

With SMART's securing of necessary State funds to complete the suspended Windsor Extension, the overall project was broken into three discrete components for tracking the State fund sources. The first part is all the work completed on both the Civil and Systems contracts before the June 2021 SMART Board authorized Change Order to suspend the project. The second part is the remaining Civil contract scope of work, work that was never the subject of an issuance of Notices to Proceed. The third part, the subject of this staff report and resolution, is the remaining Systems contract scope of work that was never the subject of issuance of Notices to Proceed.

SMART secured \$10M in ITIP funding for the Systems Contract (SYS-DB-18-001) in the Spring of 2023. This funding will be matched with \$1.75 million in Federal Railroad Administration Funds and Measure Q to complete this remaining Systems scope of work within this contract action, plus contingency and construction management, for a total new remaining systems scope budget of \$13,084,372. The funding plan for the systems contract new work, the civil contract new work (described in the previous agenda item) and the full Windsor Extension Project to date, including work completed prior to June 2021, are shown below:

| <b>Funding SMART Windsor Extension - Completed Work</b>   | <b>Amount</b>     |
|---|-------------------|
| Transit and Intercity Rail Capital Program                | 20,000,000        |
| Federal Railroad Administration                           | 3,250,702         |
| Affordable Housing Sustainable Communities (Grant #1)     | 923,678           |
| <b>Completed Subtotal</b>                                 | <b>24,174,380</b> |
| <b>Funding SMART Windsor Extension - New Civil Work</b>   |                   |
| Solutions for Congested Corridors                         | 30,000,000        |
| Affordable Housing Sustainable Communities (Grant #1)     | 4,076,322         |
| Affordable Housing Sustainable Communities (Grant #2)     | 1,500,000         |
| Measure Q   | 745,829           |
| Town of Windsor Pedestrian Grade Separation               | 1,500,000         |
| <b>New Civil Subtotal</b>                                 | <b>37,822,151</b> |
| <b>Funding SMART Windsor Extension - New Systems Work</b> |                   |
| Interregional Transportation Improvement Program          | 10,000,000        |
| Federal Railroad Administration                           | 1,749,298         |
| Measure Q   | 1,335,074         |
| <b>New Systems Subtotal</b>                               | <b>13,084,372</b> |
| <b>TOTAL WINDSOR RAIL AND PATHWAY EXTENSION</b>           | <b>75,080,903</b> |

The remaining scope of work that the contractor has yet to be issued notice to proceed for consists of rail and communication systems equipment procurement, factory wiring and testing, site installation, and final rail and communication systems testing and commissioning along the 3-mile Windsor Extension.

Staff requested that Modern Railway Systems, Inc. submit a proposal to reactivate Contract SYS-DB-18-001 to complete the project. Modern Railway Systems, Inc. presented a proposal that included escalation costs, remobilization expenses, and a schedule to complete the new contract work. Staff carefully reviewed the escalation request and found that the period from 2018 to 2023 has seen extensive inflation in the construction industry for materials, labor, and services. The California Department of General Services maintains a construction cost index that tracks construction cost increases in construction trade labor and materials (<https://www.dgs.ca.gov/RES/RESOURCES/Page-Content/Real-Estate-Services-Division-Resources-List-Folder/DGS-California-Construction-Cost-Index-CCCI>). They reported a cumulative increase from September 2018 through October 2023 of 45%. SMART staff negotiated an escalation increase of approximately half that amount.

Modern Railway Systems, Inc. also requested remobilization cost of \$30,000 for personnel remobilization. This cost covers five staff members for one month to restart project activities. We found that one month of five salaried personnel seemed very reasonable to reactivate a complex project of this magnitude.

At the time that the project was put on hold, SMART had issued several Change Notices requesting pricing for additional scope items but had not issued notices to proceed on the additional scope. The majority of the changes pertained to enhancements to the Airport Boulevard at-grade crossing, and additional systems integration work associated with the new yard track access gate at SMART's Rail Operations Center. As part of the reactivation of the project, staff collected the outstanding change orders and included them in Change Order 04. Collectively they amount to \$288,111.

It is also necessary to adjust the schedule to complete the project, since work has been on hold for a couple of years. SMART staff and Modern Railway Systems, Inc. negotiated revised substantial completion and final acceptance dates of April 26th, 2025, and June 30, 2025, respectively. The substantial completion date sets the milestone for the completion of systemwide rail and communications testing and startup, which will render the project ready for SMART to begin a period of pre-revenue operations on the Windsor Extension. The final completion date provides time for pre-revenue and revenue operation support, and contract closeout activities. These dates target the opening of the Windsor Extension for passenger service in the Spring of 2025.

Staff recommendation is to approve Resolution No. 2023-44 awarding the issuance of Notice to Proceed for the SMART Windsor Extension remaining Systems scope and Change Order 004 to Construction Contract No. SYS-DB-18-001 to Modern Railway Systems, Inc. in amount of \$2,415,741 for a total not-to-exceed amount of \$17,338,233 across the completed and new work on the SMART Windsor Rail and Pathway Extension Systems project. Additionally, staff recommendation is to revise the project substantial and final completion dates to April 16, 2025, and June 30, 2025, respectively.

**FISCAL IMPACT:** Expenditure authority and funding for this SMART Windsor Extension Systems work are included in the Fiscal Year 2023-24 amended budget.

**REVIEWED BY:** [ x ] Finance \_\_\_\_\_/s/\_\_\_\_\_ [ x ] Counsel \_\_\_\_\_/s/\_\_\_\_\_

Very truly yours,

/s/  
Bill Gamlen, P.E.  
Chief Engineer

Attachment(s): Resolution No. 2023-44

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AWARDING CHANGE ORDER 004 TO CONTRACT NO. SYS-DB-18-001 FOR THE DESIGN AND CONSTRUCTION OF THE RAIL AND COMMUNICATION SYSTEM COMPONENTS FOR THE WINDSOR EXTENSION**

---

**WHEREAS,** On September 19, 2018, the SMART District (District) awarded Contract No. SYS-DB-18-001 to Modern Railway Systems, Inc. for the design and construction of Rail and Communication Systems elements of the 3-mile extension of the SMART District passenger rail system to the Town of Windsor; and

**WHEREAS,** On March 16, 2020, the District issued a Limited Notice to Proceed for the Contract; and

**WHEREAS,** On October 14, 2020, the District issued a Revised Limited Notice to Proceed for the Contract; and

**WHEREAS,** On June 2, 2021, the District delayed issuing additional Notice to Proceed (s) and put the Contract on hold by approving Change Order 003 that included a Side Letter Agreement that modified certain contract provisions while the project was on hold; and

**WHEREAS,** the District has identified additional funding commitments such that the Windsor Extension Project is fully funded; and

**WHEREAS,** the District has negotiated fair and reasonable terms with Modern Railway Systems Inc. to enable issuance of new Notices to Proceed and complete the balance of work in Contract No. SYS-DB-18-001; and

**WHEREAS,** The SMART District has prepared Change Order 004 to complete the remaining work in Contract No. SYS-DB-18-001 and extinguishes the Side Letter Agreement that was part of Change Order 004.

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

1. That the foregoing recitals are true and correct.
2. That Change Order 004 to Contract No. SYS-DB-18-001, a copy of which is attached hereto and incorporated herein as Exhibit "A, is hereby awarded.

**Resolution No. 2023-44**  
**Sonoma-Marín Area Real Transit District**  
**November 15, 2023**

**PASSED AND ADOPTED** at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 15<sup>th</sup> day of November 2023, by the following vote:

**DIRECTORS:**

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Eric Lucan, Chair, Board of Directors  
Sonoma-Marín Area Rail Transit District

ATTEST:

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Leticia Rosas, Clerk of Board of Directors  
Sonoma-Marín Area Rail Transit District



Contract No.: SYS-DB-18-001  
Contract Title: Windsor Extension  
Change Order No: 004  
Title: Project Reactivation

**EXHIBIT "A"**



**Issued to:**

Modern Railway Systems  
8201 SouthPark Lane, Ste.200  
Littleton, CO 80120

**CO Title:** Project Reactivation

**Change Notice Reference:** 001 and 002

**The original Contract Price due to this CO will change by: \$2,415,741**

**The original Contract Performance Time due to the CO will be change by: Adjusted Project Milestones (see item 5 below)**

EXCEPT AS MODIFIED BY THIS CHANGE ORDER, ALL TERMS AND CONDITIONS OF THE CONTRACT, AS PREVIOUSLY MODIFIED, REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT. THE PARTIES AGREE THAT THIS CHANGE ORDER IS A FINAL AND EQUITABLE ADJUSTMENT OF THE CONTRACT TIME AND CONTRACT AMOUNT AND CONSTITUTES A MUTUAL ACCORD AND SATISFACTION OF ALL CLAIMS, CURRENT OR FUTURE, OF WHATEVER NATURE CAUSED BY OR ARISING OUT OF THE FACTS AND CIRCUMSTANCES SURROUNDING THIS CHANGE ORDER INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT AND CONSEQUENTIAL COSTS; ADDITIONAL TIME FOR PERFORMANCE; AND THE IMPACT OF THE CHANGE SPECIFIED IN THIS CHANGE ORDER, ALONE OR TAKEN WITH OTHER CHANGES, ON THE UNCHANGED WORK.

**Description of change:**

This Change Order modifies the original contract to re-activate the Windsor Extension Project including major items:

1. Adds two additional FTA and DOT contract clauses to the contract Attachment E.
2. Nullifies Temporary Side Letter Agreement included in previously executed Change Order 003.
3. Adds the following additional scope of work in the amount of \$288,111 to CD-4 Windsor-System Description Document:
  - a. 5.1.1A-CO 004 - Y1 Derail and Rolling Gate Control
  - b. 5.1.1B-CO 004 - Airport Boulevard Pedestrian Gates
  - c. 5.1.5-CO 004 - Windsor/River Roundabout Changes
  - d. 5.2.1.3-CO 004 - Platform Speaker
4. Replaces Attachment A Contract Price with a new Attachment A Revision 2.
5. Revises the "Project Milestones" in the Supplemental Conditions, Section 8.4.1 Liquidated Damages.
6. Provides compensation for escalation costs of \$2,097,630 that accrued while the project was on hold.
7. Provides compensation of \$30,000 for Contractor remobilization expenses.

**Concurred By:**

**Concurred By:**

Project Manager

Date

**Aaron Parkes**

District Chief Engineer

Date

**Bill Gamlen**

**The undersigned agrees to the terms and conditions described herein.**

**Contractor Acceptance**

**Sonoma-Marin Area Rail Transit**

**Title: Project Representative**

**Title: General Manager**

(Authorized Signature for Contractor)

Date

**Paul Rieger**

(Authorized Signature for Owner)

Date

**Eddy Cumins**

**EXHIBIT "A"**



**Concurred By:**

Project Manager

Date \_\_\_\_\_

**Aaron Parkes**

**Concurred By:**

District Chief Engineer

Date \_\_\_\_\_

**Bill Gamlen**

**The undersigned agrees to the terms and conditions described herein.**

### Contractor Acceptance

## Sonoma-Marin Area Rail Transit

**Title:** Project Representative

**Title: General Manager**

(Authorized Signature for Contractor)

Date \_\_\_\_\_

## Paul Rieger

(Authorized Signature for Owner)

Date \_\_\_\_\_

## Eddy Cumins

Contract No.: SYS-DB-18-001  
 Contract Title: Windsor Extension  
 Change Order No: 004  
 Title: Project Reactivation

**EXHIBIT "A"**



**Details of Change Order Items 6 & 7:**

| Pay Item No. | Funding Source | Description  | Unit | Qty. | Unit Price   | Item Total   |
|--------------|----------------|--|------|------|--------------|--------------|
| Bid Item 01  | 4008           | Mobilization and Demobilization                    | 1    | LS   | \$90,827.89  | \$90,827.89  |
| Bid Item 01  | 4008           | Remobilization                                     | 1    | LS   | \$30,000.00  | \$30,000.00  |
| Bid Item 02  | 4008           | Project Management                                 | 1    | LS   | \$177,576.62 | \$177,576.62 |
| Bid Item 03  | 5002           | 10x14 CP 59.93 / Airport Blvd.                     | 1    | LS   | \$223,755.72 | \$223,755.72 |
| Bid Item 03  | 5002           | Airport Blvd. Pedestrian Gates                     | 1    | LS   | \$106,640.00 | \$106,640.00 |
| Bid Item 03  | 5002           | ROC Gate/Derail                                    | 1    | LS   | \$155,774.00 | \$155,774.00 |
| Bid Item 04  | 5002           | 10x10 Aviation Blvd                                | 1    | LS   | \$152,594.27 | \$152,594.27 |
| Bid Item 05  | 5002           | 10x14 CP 60.98 / Shiloh Rd                         | 1    | LS   | \$203,026.10 | \$203,026.10 |
| Bid Item 06  | 5002           | 10x14 CP 61.74 Mitchell Rd/Cut Section             | 1    | LS   | \$208,008.36 | \$208,008.36 |
| Bid Item 07  | 5001           | 10x14 CP 62.96 / Windsor South                     | 1    | LS   | \$249,825.84 | \$249,825.84 |
| Bid Item 08  | 5001           | 10x14 CP 63.15 / Windsor North                     | 1    | LS   | \$256,162.35 | \$256,162.35 |
| Bid Item 09  | 5001           | Existing Operative Approach 63.80                  | 1    | LS   | \$5,463.15   | \$5,463.15   |
| Bid Item 10  | 5001           | Existing D Signal 64.50                            | 1    | LS   | \$5,283.71   | \$5,283.71   |
| Bid Item 11  | 5005           | Windsor Station Communications                     | 1    | LS   | \$80,099.52  | \$80,099.52  |
| Bid Item 11  | 5005           | Station Speaker                                    | 1    | LS   | \$5,680.00   | \$5,680.00   |
| Bid Item 11  | 5005           | Communication Batteries                            | 1    | LS   | \$20,017.00  | \$20,017.00  |
| Bid Item 12  | 5005           | Park and Ride Communications                       | 1    | LS   | \$44,499.73  | \$44,499.73  |
| Bid Item 13  | 5007           | Central Control Upgrades                           | 1    | LS   | \$41,051.21  | \$41,051.21  |
| Bid Item 14  | 5005           | Radio System Upgrades                              | 1    | LS   | \$27,384.09  | \$27,384.09  |
| Bid Item 15  | 5005           | Network Additions: Train Control, Admin., Security | 1    | LS   | \$140,456.39 | \$140,456.39 |
| Bid Item 16  | 5002           | Cameras: Station, Park/Ride, Grade Crossings       | 1    | LS   | \$23,733.19  | \$23,733.19  |
| Bid Item 17  | 5001           | Integrated Testing                                 | 1    | LS   | \$167,881.85 | \$167,881.85 |

**Initials:**

\_\_\_\_\_  
**Project Manager**

\_\_\_\_\_  
**Contractor**

\_\_\_\_\_  
**Chief Engineer**



## 1. Adding New Contract Clauses to Attachment E– FTA and DOT Requirements:

### 32. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

Contractor certifies and confirms that no services provided or supplies installed or utilized under this contract constitute telecommunications services, equipment or systems prohibited under Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232), and as may be implemented by 2 C.F.R. 200.216. If Contractor later learns that prohibited telecommunications services, equipment or systems have been supplied, installed, or utilized under this Contract, Contractor shall immediately inform SMART in writing. SMART may require the Contractor to promptly replace such prohibited service, equipment and systems at the Contractor's sole cost.

### 33. Davis Bacon Act and Copeland Anti-Kickback Act

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to SMART's construction contracts and subcontracts that "at least partly are financed by a loan of grant from the Federal Government". 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. Construction for purposes of the Acts, include "actual construction, alteration, and/or repair, including painting and decorating" as defined by 29 CFR 5.5(a).

Contractors and subcontractors at any contract tier agree to comply with the Davis-Bacon Act 40 USC 3141, et seq and implementing DOL regulations "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction" 29 CFR Part 5.

In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

SMART has attached to the Agreement a copy of the current prevailing wage determination issued by the Department of Labor which must be adhered to by the Contractor and all subcontractors. Contractor shall report all suspected or reported violations to the SMART who will intern report all violations to the Federal awarding agency.

"Compliance with the Copeland "Anti-Kickback" Act.

- (1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

Initials:

\_\_\_\_\_  
Project Manager

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Chief Engineer

3) Adds the following paragraphs to CD-4 Windsor-System Description Document:

Table 5-1: House Location, Size and Configuration.

| House location | LOCATION DESCRIPTION  | SIZE (ft. x ft.) | Load Center Rating | Comm. Node | Reference |
|----------------|---|------------------|--------------------|------------|-----------|
| 59.94          | Airport Blvd CP/Crossing  | 8'x14'           | 200                |            | 5.1.1     |
| 60.18          | Aviation Boulevard Crossing                                       | 10'x10'          | 100                |            | 5.1.2     |
| 61.11          | CP Airport North/Shiloh Road Crossing                             | 10'x14'          | 100                |            | 5.1.3     |
| 61.74          | Mitchell Lane Crossing/Cut Section                                | 10'x14'          | 100                |            | 5.1.4     |
| 62.96          | CP Windsor South/Station Ped Crossing/Windsor River Road Crossing | 10'x14'          | 100                |            | 5.1.5     |
| 63.15          | CP Windsor North/Comm Node  | 10'x16'          | 200                | x          | 5.1.6     |
| 63.80          | Operative Approach Signal   | 8'x8'            | 100                |            | 5.1.7     |
| 64.50          | Fixed Distant Signal  | 8'x8'            | 100                |            | 5.1.8     |

All houses are aluminum, equipped with grey anti-graffiti coating, vandal-proof entry hardware, intrusion alarm panel, heaters and a thermostat-controlled ventilation fan. Communications nodes and cabinets with non-hardened equipment require cooling as described below.

All houses will be equipped with fiber drops, communications servers, vital processor and a LCP to provide the functions described in Chapters Two and Three of this document.

**Comm. Node.** Indicates that a communications node is located in the house.

## 5.1 Signal Scope

Design, Furnish, Install, Test, Commission, Warranty for the signal system as shown in Appendix 4, Windsor Extension Preliminary Single Line dated 1/6/2020 and described herein.

### 5.1.1 MP 59.94 Airport Boulevard CP/Crossing

Single crossover control point, including, but not limited to:

Vital interlocking processor, power switch machine with layout (2), three aspect signal (qty. 4), track circuits. Double track vehicular/pedestrian at-grade crossing warning system, including, but not limited to: redundant crossing predictors, track circuits, active warning devices.

#### 5.1.1A-CO 004

#### Y1 Derail and Rolling Gate Control

Page 64 of 71

Windsor Extension Project - System Description Document ~~Conformed~~ CO 004: January 27 November 15, 2023  
Contract No. SYS-DB-18-001

Initials:

Project Manager

Contractor

Chief Engineer



- a. Design, furnish, install, test and commission a control and indication interface for one electrically operated sliding derail and electric rolling gate located on Y1 track on north end of SMART's Rail Operations Center.
- b. Remote control of the derail and rolling gate shall originate from TDX dispatch system.
- c. Control interface with the derail and gate shall be provided via the vital microprocessor system at CP Vineyard South.
- d. Control of gate and derail shall be in parallel, such that when the gate is requested to the closed position, the derail shall be requested to the derailing position. Conversely, when the gate is requested to the open position, the derail shall be requested to the rail running position.
- e. The dispatcher's display shall provide discrete graphical indications depicting the open/closed position of the gate relative to the Y1 track, and the position of the derail, derailing/rail running.
- f. The displayed position of the gate and derail shall be based on the requested position, and the detected position of both the gate and derail. Any mismatch of position between the gate, derail and requested position shall be reported as an alarm state on the dispatcher's display, and result in a flashing "out of correspondence" icon for the device that is detected out of correspondence with the control state.
- g. Control of the gate and derail shall be interlocked with the train control system such that:
- h. Routes cannot be cleared through the gate or derail if they are not detected in the open/rail running position.
- i. The position of gate and derail cannot be changed if 5N or 3S signals are cleared through gate/derail, or are at stop, running ASR time from previously cleared routes that had been set to stop.
- j. The position of gate and derail cannot be changed if the track circuit over the gate/derail is occupied.
- k. Submit all required design submittals for SMART's review and approval.

5.1.1B-CO 004

Airport Boulevard Pedestrian Gates

- a. Submit all required design submittals for SMART's review and approval.
- b. Northwest Quadrant: Add a gate mechanism and pedestrian gate arm with tip light to the flasher assembly. Install an emergency swing gate for egress.
- c. Northeast Quadrant: Adjust vehicular gate lengths in coordination with civil design. Install an emergency swing gate for egress.
- d. Southeast Quadrant: Add a gate mechanism and pedestrian gate arm with tip light to the flasher assembly. Install an emergency swing gate for egress.

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Windsor Extension Project - System Description Document ~~Conformed CO 004: January 27~~ November 15, 2023  
Contract No. SYS-DB-18-001

Initials:

Project Manager

Contractor

Chief Engineer





e. Southwest Quadrant: Route primary pedestrian path of travel through the vehicular gate. Install an emergency swing gate for egress.

f. For all locations: Ensure that CPUC clearances are maintained.

#### 5.1.2 MP 60.18 Aviation Boulevard Crossing

Double track vehicular/pedestrian at-grade crossing warning system, including, but not limited to: redundant crossing predictors, track circuits, active warning devices.

#### 5.1.3 MP 61.1 CP Airport North/Shiloh Road

End-of-siding type Control Point, including, but not limited to:

Vital interlocking processor, power switch machine with layout, three aspect signal (qty. 3) track circuits, redundant crossing predictors. Single track vehicular and pedestrian at-grade crossing warning system, including, but not limited to: redundant crossing predictors, track circuits. Reuse existing vehicular warning devices.

#### 5.1.4 MP 61.74 Mitchell Lane Crossing/Cut Section

Single track vehicular/pedestrian at-grade crossing warning system, including, but not limited to: redundant crossing predictors, track circuits, active warning devices. Reuse existing vehicular warning devices.

#### 5.1.5 MP 62.96 CP Windsor South/Station Ped Crossing/Windsor River Road Crossing

End of siding/gauntlet control point, including, but not limited to:

Vital interlocking processor, power switch machine with layout (2), three aspect signal (qty. 4), track circuits. Single track vehicular/pedestrian at-grade crossing warning system, including, but not limited to: redundant crossing predictors, track circuits, active warning devices. Reuse existing vehicular warning devices.

#### 5.1.5-CO 004

#### Windsor/River Roundabout Changes

a. Revise and implement design changes as described below:

i. Revise design of CIL 62.96 to reflect the new roundabout configuration of the at-grade crossing at Windsor/Windsor River Road.

1. Refer to attached plan sheets for gate layout. Use SMART-standard nomenclature for gate identification.

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Windsor Extension Project - System Description Document ~~Conformed~~ CO 004: January 27/November 15, 2023  
Contract No. SYS-DB-18-001

Initials:

\_\_\_\_\_  
Project Manager

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Chief Engineer



- ii. Revise design of 62.96 to reflect the use of existing WCH 3597 mechanisms for the vehicular gates, instead of the S-40 mechanisms that are currently depicted in the plans.
- iii. Eliminate advance preemption from design for 62.96.
- iv. Eliminate HEALTHR and GDR relays and circuitry.
- v. Change PER to XR and drive XR using XR output, and double-break XR input to VIO module.

#### 5.1.6 MP 63.15 CP Windsor North/Comm Node

End of siding/gauntlet control point and Communications Node, including, but not limited to:

Vital interlocking processor, power switch machine with layout(2), three aspect signal (qty. 4) track circuits, redundant crossing predictors.

#### 5.1.7 MP 63.80 Operative Approach Signal

Operative approach signal. Reuse existing operative approach signal house and signal from MP 60.48.

#### 5.1.8 MP 64.50 Fixed Distant Signal

Fixed distant signal. Operative approach signal. Reuse existing operative approach signal house and signal from MP 61.11

Initials:

\_\_\_\_\_  
Project Manager

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Chief Engineer



- 5.2.1.3-CO 004
- Platform Speaker
  - Configure, install, commission, and test one C1310-e network horn speaker at the Windsor Station (1 speaker total) that is connected to the Station COMM case with a Cat 6 plenum cable.
  - Once the speaker is connected to SMART's System, Contractor shall coordinate with SMART for testing of the speaker.
- Specific direction on placement and orientation at the platform will be provided by SMART's Information Systems Manager.
- The speaker shall be configured to interface with SMART's Station network and shall be able to be activated through the Avigilon CCTV System.

#### 5.2.1.4 Signal CILs

- Major work at the non-communication node CILs include providing fiber distribution panel for the 12-strand fiber signal cable and integrating necessary SCADA indications and controls from subsystems within the CIL.
  - Each crossing CIL will include a separate hardened managed ethernet switch and associated power supply dedicated to a providing network connectivity and power to a pole or cantilever-mounted multi-lens camera. Each crossing camera switch is connected to the station network ABR via 2 strands of local vital fiber.

### 5.3 Signal and Communications Locks/Keys

#### 5.3.1 High-Security Locks

All access points on contractor-supplied equipment listed below are locked with contractor-supplied Abloy PL340 high security locks, labeled Sig/Comm, and keyed alike as SMART Sig/Comm locks:

- Central Instrument Locations
- Communication cases
- Junction Boxes
- Above-Ground Shunt Enclosures
- Crossing Gate Mechanisms
- Ladder Guards
- Signal Head Assemblies (each Aspect)
- Power Switch Machines
- Electrical Service Pedestals and Meter Panels

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Windsor Extension Project - System Description Document ~~Conformed CO 004: January 27~~ November 15, 2023  
Contract No. SYS-DB-18-001

Initials:

Project Manager

Contractor

Chief Engineer



4) Revised Systems Bid Item Table.

| Pay Item No.   | Description  | Unit | Qty. | Unit Price  | Item Total  |
|----------------|--|------|------|-------------|-------------|
| Bid Item 01    | Mobilization and Demobilization                    | 1    | LS   | \$1,161,456 | \$1,161,456 |
| Bid Item 02    | Project Management                                 | 1    | LS   | \$1,764,504 | \$1,764,504 |
| Bid Item 03    | 10x14 CP 59.93 / Airport Blvd.                     | 1    | LS   | \$1,954,603 | \$1,954,603 |
| Bid Item 04    | 10x10 Aviation Blvd                                | 1    | LS   | \$1,329,429 | \$1,329,429 |
| Bid Item 05    | 10x14 CP 60.98 / Shiloh Rd                         | 1    | LS   | \$1,504,901 | \$1,504,901 |
| Bid Item 06    | 10x14 61.74 Mitchell Rd/Cut Section                | 1    | LS   | \$1,509,884 | \$1,509,884 |
| Bid Item 07    | 10x14 CP 62.96 / Windsor South                     | 1    | LS   | \$1,851,797 | \$1,851,797 |
| Bid Item 08    | 10x14 CP 63.15 / Windsor North                     | 1    | LS   | \$1,898,766 | \$1,898,766 |
| Bid Item 09    | Existing Operative Approach 63.80                  | 1    | LS   | \$42,975    | \$42,975    |
| Bid Item 10    | Existing D Signal 64.50                            | 1    | LS   | \$42,796    | \$42,796    |
| Bid Item 11    | Windsor Station Communications                     | 1    | LS   | \$772,602   | \$772,602   |
| Bid Item 12    | Park and Ride Communications                       | 1    | LS   | \$414,947   | \$414,947   |
| Bid Item 13    | Central Control Upgrades                           | 1    | LS   | \$322,924   | \$322,924   |
| Bid Item 14    | Radio System Upgrades                              | 1    | LS   | \$156,184   | \$156,184   |
| Bid Item 15    | Network Additions: Train Control, Admin., Security | 1    | LS   | \$1,375,281 | \$1,375,281 |
| Bid Item 16    | Cameras: Station, Park/Ride, Grade Crossings       | 1    | LS   | \$221,305   | \$221,305   |
| Bid Item 17    | Integrated Testing                                 | 1    | LS   | \$957,508   | \$957,508   |
| CO-002         | Switch Layout                                      | 1    | LS   | \$17,770    | \$17,770    |
| CO-SON-SYS-001 | RRFB at Aviation Blvd                              | 1    | LS   | \$38,601    | \$38,601    |

**Total Amount Windsor Systems Contract: \$17,338,233.00**

Contract No.: SYS-DB-18-001  
Contract Title: Windsor Extension  
Change Order No: 004  
Title: Project Reactivation

EXHIBIT "A"



5) Revised Project Milestones

| MILESTONE   | SUBSTANTIAL COMPLETION  | NOTES   |
|---|-------------------------|---|
| <del>Complete Design</del>                                      | <del>July 1, 2020</del> |   |
| Complete System Installation                                    | December 31, 2024       |   |
| Complete Testing and Startup Activities- Substantial Completion | April 16, 2025          | Coordinate construction with civil contractor |
| Contract Closeout   | June 30, 2025           |   |



**Eric Lucan, Chair**  
Marin County Board of Supervisors

**Melanie Bagby, Vice Chair**  
Sonoma County Mayors' and  
Councilmembers Association

**Kate Colin**  
Transportation Authority of Marin

**Chris Coursey**  
Sonoma County Board of Supervisors

**Rachel Farac**  
Transportation Authority of Marin

**Debora Fudge**  
Sonoma County Mayors' and  
Councilmembers Association

**Patty Garbarino**  
Golden Gate Bridge,  
Highway/Transportation District

**Barbara Pahre**  
Golden Gate Bridge,  
Highway/Transportation District

**Gabe Paulson**  
Marin County Council of Mayors and  
Councilmembers

**David Rabbitt**  
Sonoma County Board of Supervisors

**Chris Rogers**  
Sonoma County Mayors' and  
Councilmembers Association

**Mary Sackett**  
Marin County Board of Supervisors

**Eddy Cumins**  
General Manager

5401 Old Redwood Highway  
Suite 200  
Petaluma, CA 94954  
Phone: 707-794-3330  
Fax: 707-794-3037  
[www.SonomaMarinTrain.org](http://www.SonomaMarinTrain.org)

November 15, 2023

Sonoma-Marin Area Rail Transit Board of Directors  
5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954

**SUBJECT: SMART Freight Storage**

Dear Board Members:

**RECOMMENDATIONS:**

Discuss freight storage and provide direction to staff regarding storage limitations.

**SUMMARY:**

On November 17, 2021, the Board approved the removal of LPG tanker cars from the Schellville storage area. At the time, the railroad was earning approximately \$500,000 annually in storage fees plus revenue associated with switching cars in and out of the area. Although SMART Freight continues to have significant storage capacity, only \$7,488 was earned in FY23 for storage services. Through conversations with rail storage brokers, tanker cars are the best option to monetize SMART Freight's storage track.

In an effort to increase freight revenue, staff seeks to create clear storage guidelines to share with rail storage brokers. These guidelines will include acceptable car types, contents, and hazardous designation limitations.

In July 2023, staff presented on this topic and the Board requested rail tank car clarification regarding risk, responsibilities, and lessons learned from other railroads. In this presentation, staff will provide additional information to answer those questions. After receiving direction from the Board, staff will develop freight storage guidelines and present them to the Board for approval at a future Board meeting.

Very truly yours,

/s/  
Eddy Cumins  
General Manager