



**BOARD OF DIRECTORS
MEETING AGENDA
July 21, 2021 – 1:30 PM**

**IN ACCORDANCE WITH GOVERNOR’S EXECUTIVE ORDERS N-25-20 AND N-29-20
THE SMART BOARD OF DIRECTORS MEETING WILL BE HELD VIRTUALLY**

MEMBERS OF THE PUBLIC MAY NOT ATTEND THIS MEETING IN PERSON

ZOOM TELECONFERENCE INSTRUCTIONS

PUBLIC COMMENT PRIOR TO MEETING:

If you wish to make a comment you are strongly encouraged to please submit your comment by 5:00 p.m. on Tuesday, July 20, 2021 at <https://www.surveymonkey.com/r/SMARTBoardComments>

PUBLIC COMMENT DURING THE MEETING:

The SMART Board Chair will open the floor for public comment during the Public Comment periods 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.

1. Call to Order
2. Approval of the July 7, 2021 Board Minutes
3. Board Member Announcements
4. General Manager’s Report
5. Public Comment on Non-Agenda Items
6. Consent Calendar
 - a. Accept Monthly Ridership Report – June 2021
 - b. Approve a Resolution and Authorize the Board Chair to Execute the Agreement with International Brotherhood of Teamster, Local Union Number 665 for the period of July 8, 2021 to June 30, 2022

Consent Calendar Con't

- c. Approve a Resolution Implementing Cost-of-Living Increase for Unrepresented Employees for Fiscal Year 2021-22
- d. Approve a Resolution Authorizing the General Manager to execute Contract Amendment No. 4 to Contract No. CV-PS-19-001 with GHD, inc. for Engineering Design and Support Services - Additional Vehicular Traffic Signal Design at the At-Grade Crossings for an amount of \$65,801 and increasing the overall total contract amount to \$1,306,143

Regular Calendar

- 7. Authorize the General Manager to Award contract FN-PS-21-002 to Sierra-Cedar, LLC for as-needed Oracle ERP Software consultation and support services with a not-to-exceed amount of \$75,000 for FY 2022, \$100,000 for FY2023, and \$100,000 for each option year
- 8. Status Report on Freight and Related Activities (*Information*)
- 9. Next Regular Meeting of the Board of Directors, September 1, 2021 – 1:30 PM
- 10. Adjournment

DISABLED ACCOMODATIONS:

Upon request, SMART will provide for written agenda materials in appropriate alternative formats, or disability-related modification or accommodation, to enable individuals with disabilities to participate in and provide comments at/related to public meetings. Please submit a request, including your name, phone number and/or email address, and a description of the modification, accommodation, service or alternative format requested at least two (2) days before the meeting. Requests should be emailed to Leticia Rosas-Mendoza, Clerk of the Board at lrosas-mendoza@sonomamarintrain.org or submitted by phone at (707) 794-3072. Requests made by mail SMART's, 5401 Old Redwood Highway, Suite 200, Petaluma, CA 94954 must be received at least two days before the meeting. Requests will be granted whenever possible and resolved in favor of accessibility.



**BOARD OF DIRECTORS
REGULAR MEETING MINUTES
July 7, 2021 - 1:30 PM**

**IN ACCORDANCE WITH GOVERNOR'S EXECUTIVE ORDERS N-25-20 AND N-29-20
THE SMART BOARD OF DIRECTORS MEETING WILL BE HELD VIRTUALLY**

MEMBERS OF THE PUBLIC MAY NOT ATTEND THIS MEETING IN PERSON

1. Call to Order

Chair Rabbitt called the meeting to order at 1:32pm. Directors Bagby, Colin, Connolly, Fudge, Garbarino, Hillmer, Lucan and Pahre were present; Directors Arnold and Rogers absent; Director Gorin joined later.

2. Approval of the June 16, 2021 Board Minutes

MOTION: Director Garbarino moved approval of June 16, 2021 Board Minutes as presented. Director Colin second. The motion carried 9-0 (Directors Arnold and Rogers absent; Director Gorin joined later).

3. Board Members Announcements

Chair Rabbitt announced that the Board will try to meet in person starting in September depending on what comes up with the Health Officers and/or OSHA, however it seems like we are on the right path to get back together.

Director Gorin joined 1:35pm

He stated that, on the consent calendar today is the approval of the extension the current General Manager's contract; he thanked Mr. Mansourian for being flexible and available as the Board goes through the General Manager's search and timeframes to make sure that the search announcement is out in the public long enough, so that we make sure that we have continuity in leadership.

Director Connolly stated that SMART along with our partners Transportation Authority of Marin, Bicycle Coalitions as well as Metropolitan Transportation Commission ultimately

came through and awarded a Quick Strike to SMART for the SMART pathway project between San Rafael McInnis Parkway to Smith Ranch Road in the amount of \$1.9M.

The project would extend from the existing Bay Trail on McInnis Parkway over approximately .85 miles along the SMART Railroad right-of-way to Smith Ranch Road for what has been identified as a key part of the pathway system for SMART and the Community as it would close a significant gap in the system. He thanked everyone who made this happen.

Chair Rabbitt thanked everyone that worked on the project and most notably SMART's Grant Manager, Joanne Parker, for getting those grant awards.

4. General Manager's Report

General Manager Mansourian thanked the Metropolitan Transportation Commission for awarding the grant. He also thanked the Board for their concept of starting to design and set aside matching funds for projects; "it is how it makes SMART very successful", he added. SMART set aside \$200k for the Payran Pathway and \$540k for the McInnis Parkway to Smith Ranch Road pathway projects. The McInnis Pathway project is 90% designed with environmental clearance at the federal level. This is the concept that the Board endorsed in April 2021 to have projects shovel ready, especially going North, as well as their bicycle pedestrian pathway connecting our stations. He thanked the Transportation Authority of Marin who partners with SMART and MTC for funding the project.

General Manager Mansourian reported that since the start of passenger service in August 2017, SMART has carried 2,006,000 passengers, 211,000 bicycles, and over 7,600 wheelchairs. Many Board members and staff were riding the train and continue to give out free passes to thank our passengers.

He mentioned that the Board typically does not meet in August; the meetings have been cancelled. The next Board meeting will be July 21st, followed by an in-person meeting on September 1st.

General Manager Mansourian introduced District Counsel, Tom Lyons, who provided an update regarding the Freight Service. NWPCo. The freight operator applied for discontinue services on rail line in February. On Friday, June 11th the Surface Transportation Board approved the final component of this complex transaction, which is the authorization for NWPCo. to discontinue services on the rail line effective July 11th. The appeal process has expired and there has been no further appeals.

Mr. Mansourian stated that staff is negotiating with NWPCo as your Board directed and authorized him to do so and for the existing services to continue without any interruption. Until we get set up and your Board approves, whether SMART wants to provide freight service in house or contract out, I will continue to work with Mr. Bosco and will keep the Board informed.

Comments

Vice Chair Pahre asked for clarification on the timeline for making decisions about how SMART will be conducting freight. Mr. Mansourian responded that it will take several months; that is why we want to have an interim contract with Mr. Bosco and NWPCo. and we can do a thorough economic analysis as well as the practical aspects of the freight service. In the fall you will have that information and staff will provide your Board with policy options, once it is approved staff can implement it.

Chair Rabbitt thanked General Manager Mansourian for making sure that the service continues, as there are a lot of operators around Petaluma that do rely on the freight.

5. Public Comment on Non-Agenda Items

Eris Weaver stated that she expressed her concerns regarding the Nixle alerts at the last Board meeting. She has been in contact with SMART's Communication department to discuss the issues regarding the Nixle alerts being delayed to passengers. They have continued to have some conversation to fix the problem. Mr. Mansourian responded that staff continues to work with the third-party to provide more accurate Nixle alerts. He appreciates Ms. Weaver bringing this to staff.

Rick Coates stated that the Environmental Impact Report (EIR) for Bay Area Plan 2050 is available for public comment. He asked if SMART's staff has provided any comments to the Plan regarding Highway 37 corridor. Mr. Mansourian responded that staff is reviewing the EIR and will provide responses to MTC. Once the letter is available, he will distribute it.

Lastly, Chair Rabbitt thanked Director Connolly and colleagues at MTC for working on strategies of inclusion of SMART rail extension projects withing the Bay Area Plan 2050.

6. Consent

- a. Approval of Monthly Financial Reports
- b. Extension of Current General Manager Contract until December 31, 2021

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

MOTION: Director Lucan moved approval of the Consent Agenda as presented. Director Garbarino second. The motion carried 10-0 (Directors Arnold and Rogers absent)

7. Authorize the General Manager to Award Two (2) Contracts to Provide as-needed temporary staffing services to BOLT Staffing Service, Inc. and Gary D. Nelson Associates, Inc. each with a not-to-exceed amount of \$300,000 for the initial three-year term and \$100,000 for each option year 1 and 2

Procurement Manager, Ken Hendricks, stated that during SMART's day-to-day business, we find the need for temporary staffing services. These temporary staffing services cover leave of absences or other immediate staffing needs that can be handled in this manner. SMART historically had two firms on contract that allows us to provide placement needs quickly.

SMART's two existing contracts for temporary staffing services expired on June 30, 2021. In anticipation of the contract expirations, SMART issued a Request for Proposal and received 25 proposals. SMART's evaluation committee reviewed the twenty-five proposals and is recommending the award of two contracts. The Selection Committee is recommending BOLT Staffing Service, Inc. and Gary D. Nelson Associates, Inc. as the two firms providing the best overall value in terms of qualifications and price to the District, both firms are local to Sonoma County specializing in providing agencies with local staffing resources.

Staff is recommending that the Board authorize the General Manager to award two contracts to provide as-needed temporary staffing services to BOLT Staffing Service, Inc. and Gary D. Nelson Associates, Inc. each with a not-to-exceed amount of \$300,000 for the initial three-year term and \$100,000 for each option year 1 and 2.

MOTION: Director Bagby moved to Authorize the General Manager to Award Two (2) Contracts to Provide as-needed temporary staffing services to BOLT Staffing Service, Inc. and Gary D. Nelson Associates, Inc. each with a not-to-exceed amount of \$300,000 for the initial three-year term and \$100,000 for each option year 1 and 2 as presented. Director Garbarino second. The motion carried 10-0 (Director Arnold and Rogers absent).

Chair Rabbitt adjourned the Board to Closes Session at 1:52pm on the following:

8. Closed Session
 - a. Conference with Labor Negotiator General Manager, Farhad Mansourian pursuant to California Government Code Section 54957.6
 - b. Conference with Legal Counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a); Filemon Hernandez et al v. Sonoma-Marin Area Rail Transit; United States District Court for the Northern District of California Case No. CIV No. 4:21-cv-01782; Number of cases: 1
 - c. Conference with Legal Counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a); 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; Number of cases: 2
9. Report out Close Session

District Counsel, Tom Lyons reported out of Closed Session at 3:20pm on the following:

- a. Conference with Labor Negotiator General Manager, Farhad Mansourian pursuant to California Government Code Section 54957.6
Report Out: Direction given to Negotiator.
- b. Conference with Legal Counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a); Filemon Hernandez et al v. Sonoma-Marin

Area Rail Transit; United States District Court for the Northern District of California
Case No. CIV No. 4:21-cv-01782; Number of cases: 1

Report Out: Direction given to staff, no further action.

- c. Conference with Legal Counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a); 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; Number of cases: 2
Report Out: Report Out: Direction given to staff, no further action.

10. Next Regular Meeting of the Board of Directors, July 21, 2021 – 1:30 PM

11. Adjournment - Meeting adjourned at 3:22pm

Respectfully submitted,

Leticia Rosas-Mendoza
Clerk of the Board

Approved on: _____



David Rabbitt, Chair
Sonoma County Board of Supervisors

Barbara Pahre, Vice Chair
Golden Gate Bridge,
Highway/Transportation District

Judy Arnold
Marin County Board of Supervisors

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Susan Gorin
Sonoma County Board of Supervisors

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Farhad Mansourian
General Manager

5401 Old Redwood Highway
Suite 200
Petaluma, CA 94954
Phone: 707-794-3330
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www.sonomamarintrain.org

July 21, 2021

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

SUBJECT: Monthly Ridership Report – June 2021

Dear Board Members:

RECOMMENDATIONS: Information Item

SUMMARY:

We are presenting the monthly ridership report for activity for the month of June 2021. This report shows trends in ridership for SMART by tracking Totals, Average Weekday riders, and Average Weekend/Holiday riders via the two methods we employ to track riders on a daily basis: Onboard Counts and Clipper + Mobile App paid fares. The report details bicycles and wheelchairs counted as well. We have added charts and graphs of the information to further illustrate system trends.

As discussed in prior presentations to Your Board, using both Onboard Counts and Fare collection counts of riders is necessary to track progress. Onboard Counts capture all riders, including the riders who are riding during the Free Fare Days or Free Fare Programs offered by Your Board, riders with passes who neglect to tag on or off, as well as categories of riders such as children under five years old. Therefore, Clipper + Mobile App paid fare reports do not capture all riders.

This and future reports will compare the most recent month to the same month during the prior year, as is standard industry practice for tracking trends over time. The report also shows progress so far in the Fiscal Year compared to the same time in the last Fiscal Year, to enable tracking of riders relative to budget expectations. These reports also note relevant details associated with fare program discount usage and trends in riders bringing bicycles onboard. As this data collection and reporting process evolves, we will continue to revise data discussion and presentation in the reports.

SMART's rider data for May 2021 was posted on the SMART Ridership website (<http://sonomamarintrain.org/RidershipReports>) and SMART's detailed June 2021 data will be posted once validated.

The report covers the ongoing increase of riders returning to SMART as Bay Area Counties lift their Shelter-In-Place restrictions and phase the opening of schools, restaurants, retail shops, offices, and other places of work.

FISCAL IMPACT: None

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

Very truly yours,

/s/

Joanne Parker

Programming and Grants Manager

Attachment(s): June 2021 Monthly Ridership Report

JUNE 2021 (COVID-19) SMART RIDERSHIP

SMART Ridership Report
Board of Directors,
July 21, 2021

SMART's June 2021 ridership was up 144% over June 2020, which was heavily impacted by the COVID-19 shutdown. Average weekday ridership had been rising steadily from April until October 2020, as COVID rates improved, and then took a dip in the winter months as pandemic conditions worsened and the stay-at-home orders were renewed; however, ridership has risen steadily since February 2021, with May 2021 average weekday ridership increasing 21% over April 2021, and June 2021 increasing 27% over May 2021.

As a reminder, SMART modified services in March 2020 due to the COVID-19 pandemic, with weekend service annulled starting March 21 & 22, 2020, and weekday service reduced first by 4 trips (down to 34) on March 23, 2020, then by another 18 trips, (down to 16), on April 6, 2020. Beginning on Monday, May 24, 2021, SMART added service to the weekday schedule with two new morning trips and three new afternoon trips, resulting in 26 weekday trips. Saturday service was also restored the last two weekends in May, with 3 morning and 3 afternoon round trips. Ridership has responded positively to these service increases, with average weekday ridership increasing over 30% since the service change.

COVID-19 related public health orders have varied slightly between Sonoma and Marin Counties, as well as across the Bay Area and State. While Marin County had seen some school openings earlier in the 2020-21 school year, Sonoma County schools did not open in person until mid-April 2021 or later. During June, most schools were on summer break, though many have been running summer school programs to make up work lost to COVID. Throughout the region, automobile traffic levels have returned to pre-pandemic levels in some areas and transit agencies are seeing the first signs of ridership recovery.

FISCAL YEAR-TO-DATE (JUL - JUNE)	Fiscal Year 2020	Fiscal Year 2021	% Change*
Total Ridership (Onboard Counts)	567,103	122,814	-78%
Total Paid Ridership (Clipper + App Only)	464,967	114,544	-75%
Average Weekday Ridership (Onboard Counts)	1,955	470	-76%
Average Weekday Paid Ridership (Clipper + App Only)	1,757	438	-75%
Total Bikes Onboard	64,869	24,203	-63%
Total Wheelchairs Onboard	2,128	558	-74%

The initial draft total ridership figures for FY21 show total ridership down 78% from FY20. Fare payments through June through the Clipper and SMART App systems were down 75% from the previous year. The total number of bicycles onboard was down 63%. However, the share of riders bringing bikes on board since April 2020 has averaged 20%, which is twice the share bringing bikes on board pre-pandemic.

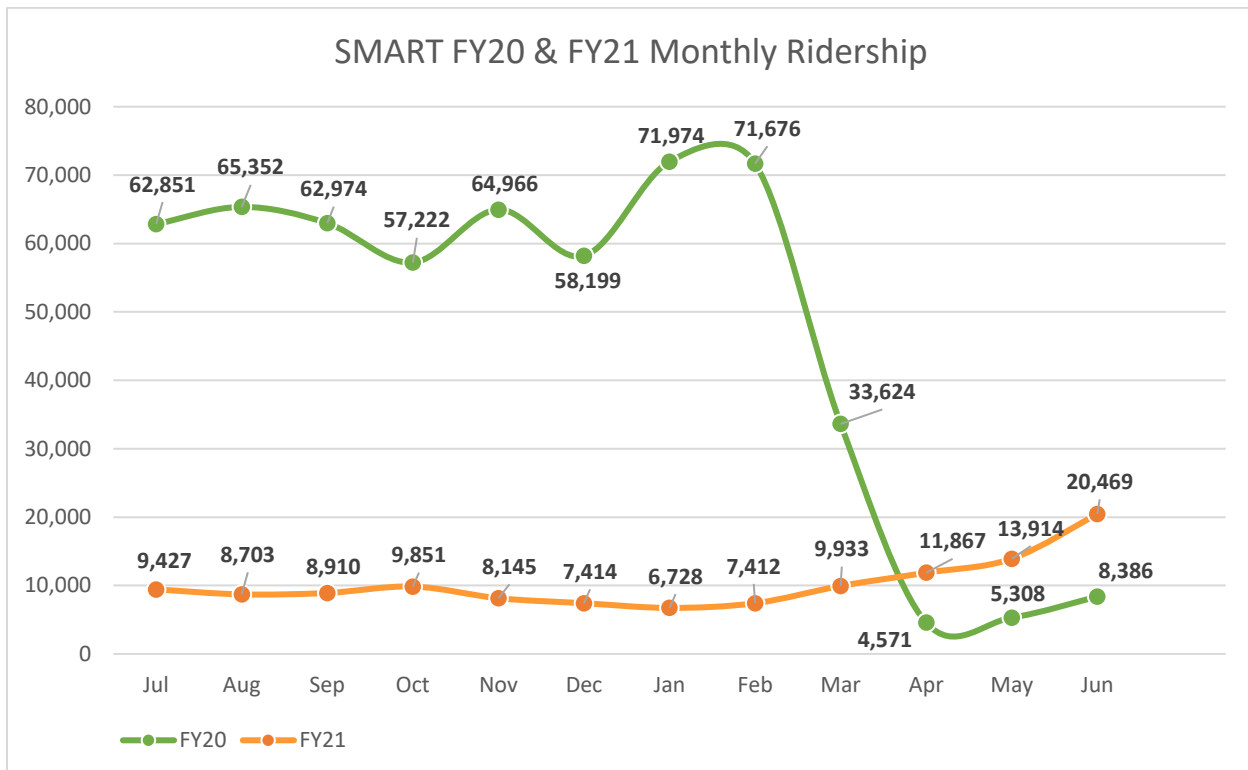
Total ridership for June 2021 was 47% higher than May 2021, with a 65% increase in Senior fare boardings, making up 13% of total ridership in June. Clipper START participation remains at less than 1% of boardings.

The following charts compare the monthly totals and average weekday ridership for June and illustrate monthly and average weekday ridership trends.

JUNE 2021 (COVID-19) SMART RIDERSHIP

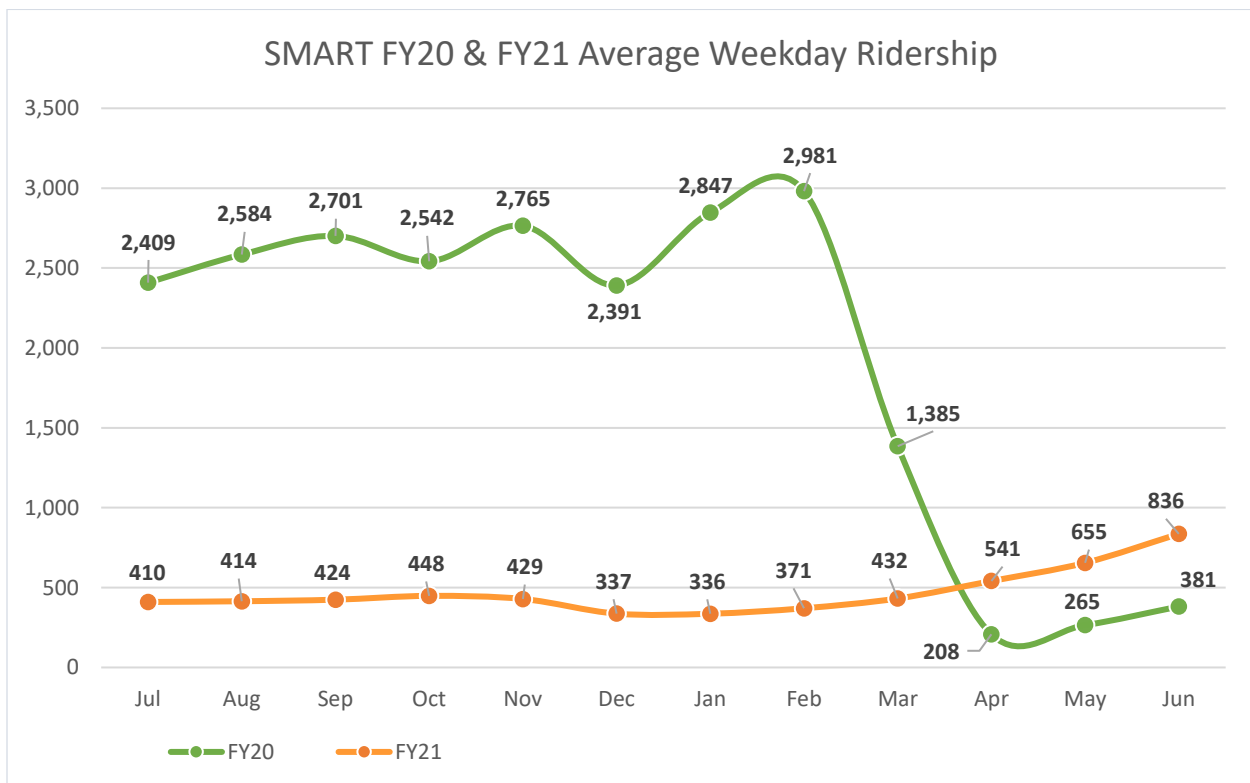
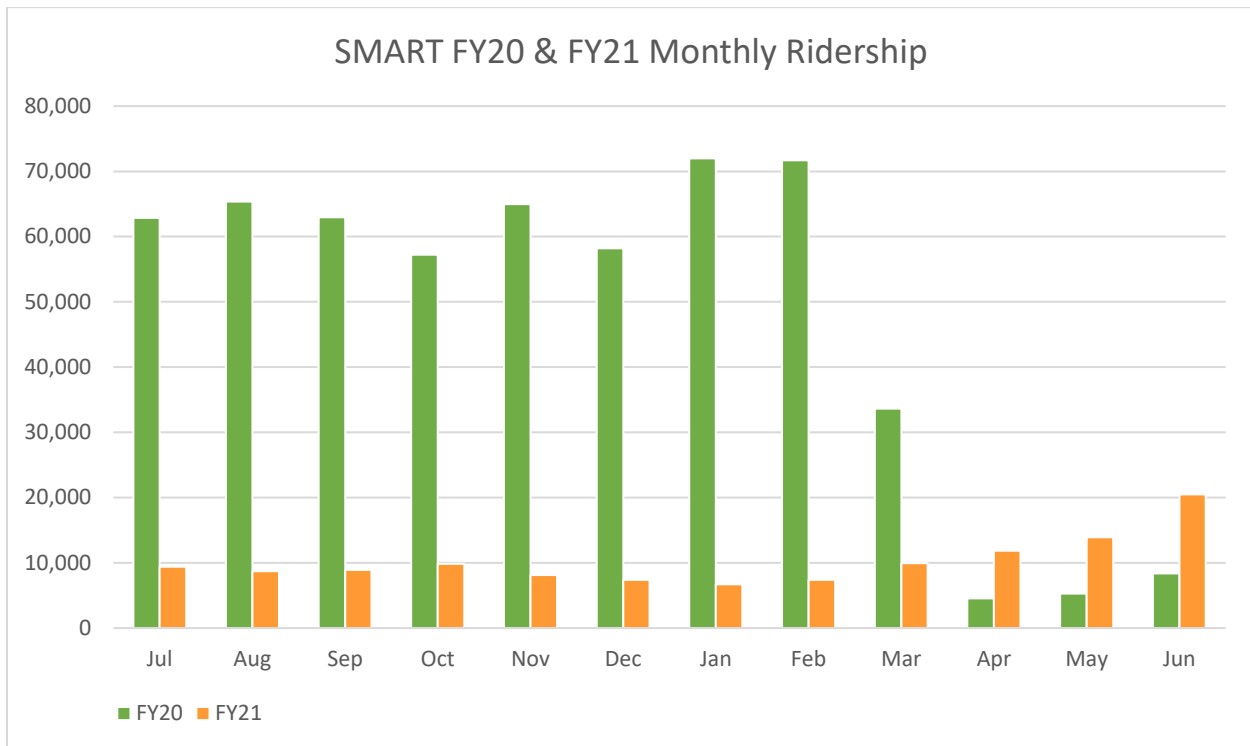
SMART Ridership Report
Board of Directors,
July 21, 2021

MONTHLY TOTALS YEAR-OVER-YEAR	JUNE 2020	JUNE 2021	% Change
Total Ridership (Onboard Counts)	8,386	20,469	144%
Total Paid Ridership (Clipper + App Only)	7,897	18,598	136%
Average Weekday Ridership (Onboard Counts)	381	836	119%
Average Weekday Paid Ridership (Clipper + App Only)	358	517	44%
Average Weekend/Holiday Ridership (Onboard Counts)	0	517	N/A
Average Weekend/Holiday Paid Ridership (Clipper + App Only)	0	431	N/A
Total Bikes Onboard	2,031	3,580	76%
Total Wheelchairs Onboard	28	164	486%



JUNE 2021 (COVID-19) SMART RIDERSHIP

SMART Ridership Report
Board of Directors,
July 21, 2021





July 21, 2021

David Rabbitt, Chair
Sonoma County Board of Supervisors

Barbara Pahre, Vice Chair
Golden Gate Bridge,
Highway/Transportation District

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
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Sonoma-Marin Area Rail Transit Board of Directors
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

SUBJECT: Approve a Resolution and Authorize the Board Chair to Execute an Agreement with the International Brotherhood of Teamsters, Local Union Number 665; and authorization of Fiscal Year 2021-22 budget amendment.

Dear Board Members:

RECOMMENDATION:

Approve Resolution No. 2021-18 and Authorize the Board Chair to Execute the one-year Collective Bargaining Agreement with the International Brotherhood of Teamsters, Local Union Number 665, and approve the new salaries and increasing Fiscal Year 2021-22 appropriations.

SUMMARY:

This agreement would be the second collective bargaining agreement between SMART and the Teamster's Union which represents the District's Track Maintenance Supervisors (2 Full Time Employees or FTE). The Board previously approved Resolution No. 2019-01 on February 6, 2019, authorizing the first collective bargaining agreement with this unit. The Teamsters Union also represents District employees in the Track Maintainer, Signal Technician and Bridge Tender job classes under a separate collective bargaining agreement.

The agreement retains the District's current policies with modifications to salaries as indicated below. The agreed upon terms include:

Term: July 8, 2021 – June 30, 2022

Salaries:

- Per the agreement, effective July 12, 2021 the rate of pay for all represented employees will be as shown in the table below.

Job Class	Step 1	Step 2	Step 3	Step 4	Step 5
Track Supervisor	\$48.21	\$50.62	\$53.16	\$55.82	\$58.62

- This wage represents a three percent (3%) increase above the current top hourly rate for the Track Maintenance Supervisor job class.
- Consistent with current District policy, wage increases will be effective at the beginning of the next period following the eligibility date.
- There will be no additional salary increases, such as Cost of Living Adjustments, for the life of the agreement, which expires on June 30, 2022.

FISCAL IMPACT: The agreement will require a Fiscal Year 2021-22 budget amendment of \$9,532. This represents a budget increase of .1% over the Operations Salaries and Benefits budget.

The detailed cost of the agreement is as follows:

Annual number of FTE impacted:	2
Annual Baseline Cost of Employees (current):	\$317,240
Increased Annual Cost of Agreement (salaries+ benefits):	\$326,772
Supplemental Budget Needed FY 2021-22	\$9,532

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

Very truly yours,

/s/

Lisa Hansley
Human Resources Manager

Attachment(s): 1) Resolution No. 2021-18
2) Teamsters Collective Bargaining Agreement

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, STATE OF CALIFORNIA, AMENDING RESOLUTION NO. 2021-11 TO REVISE THE ANNUAL BUDGET FOR FISCAL YEAR 2021-2022 TO PROVIDE FOR REVISED POSITION AUTHORITY

WHEREAS, as part of its approval of the Annual Budget for Fiscal Year 2021-2022, the Board duly considered the annual expenditures necessary for the Sonoma-Marín Area Rail Transit District; and

WHEREAS, on June 2, 2021, the Board adopted Resolution No. 2021-11 approving the Annual Budget for Fiscal Year 2021-2022; and

WHEREAS, Resolution No. 2021-11 considered the creation of employee positions and fixed the compensation and salary for those positions; and

WHEREAS, the Board desires to Amend the Annual Budget to provide the revised position authority for increased salary and benefit expenditures.

NOW THEREFORE, BE IT RESOLVED THAT THE Appendix B of the Fiscal Year 2021-2022 Budget for the Sonoma-Marín Area Rail Transit District is hereby amended to reflect position revisions as shown below.

Position	FTE	Salary Range Annual		Salary Range Hourly	
		Low	High	Low	High
Track Maintenance Supervisor	2	\$97,365 \$100,277	\$118,373 \$121,930	\$46.81 \$48.21	\$56.91 \$58.62

BE IT FURTHER RESOLVED the additional cost of this change is \$9,532 and the funding source is the unrestricted fund balance.

BE IT FURTHER RESOLVED except as specifically amended or supplemented by this Resolution, together with all supplements, amendments and exhibits thereto is, and shall continue to be, in full force and effect as originally adopted, and nothing contained herein shall, or shall be construed to, modify, invalidate or otherwise affect any provision of Resolution No. 2021-11.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 21st day of July, 2021, by the following vote:

Resolution No. 2021-18
Sonoma-Marín Area Real Transit District
July 21, 2021

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

David Rabbitt, Chair, Board of Directors
Sonoma-Marín Area Rail Transit District

ATTEST:

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

MEMORANDUM OF UNDERSTANDING
BETWEEN
INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL NO. 665
AND
SONOMA MARIN AREA RAIL TRANSIT
SUPERVISORS UNIT

July 8, 2021 – JUNE 30, 2022

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ARTICLE 1 - RECOGNITION

1.1 The SONOMA MARIN AREA RAIL TRANSIT herein after referred to as (SMART) recognizes the INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL UNION NO. 665 herein after referred to as (UNION) as the formally recognized employee organization for the following job classes:

1.1.1 Track Maintenance Supervisors

1.2 SCOPE AND DEFINITIONS

1.2.1 This Memorandum of Understanding (MOU) will apply to the work performed by the employees specified herein and governs the rates of pay, hours of service, and working conditions of all such employees engaged in the duties of the job classes specified above in section 1.1.1.

1.2.2 SMART may not contract out work normally performed by an employee in a bargaining unit covered by this MOU without the agreement of the Union.

1.2.3 It is understood that the duties and responsibilities of employees in a bargaining unit covered by this MOU between the UNION and SMART will not be assigned to others except in emergencies and when required by temporary operational needs.

ARTICLE 2 - UNION MEMBERSHIP

2.1 All employees covered by this Memorandum of Understanding who have been so employed for at least thirty (30) days prior to the ratification of this Memorandum of Understanding shall have the right to become members of the Union and shall remain members in good standing until such time as they notify the Union that they no longer wish to be dues paying members. Employees hired after the effective dates of this Memorandum of Understanding or who were hired prior to the effective date of this Memorandum of Understanding but had less than thirty (30) days of service with SMART on the effective date shall within thirty (30) days after employment have the right to become members of the Union and shall remain members in good standing, until such time as they notify the Union that they no longer wish to be dues paying members. Pursuant to SB 866, it is the Union's responsibility to provide timely notice of dues deduction authorizations to the District. The District requires ten (10) working days' notice of dues deduction authorization for an employee prior to the date the first deduction is to take effect.

2.2 Employees wishing to discontinue membership for reasons other than separation from employment shall give notice to the Union that they wish to discontinue dues

deductions. Pursuant to SB 866, it is the Union's responsibility to provide timely notice of dues deduction revocations to the District. Once notification has been received by the District to stop dues deductions for an employee, the change will be implemented at the beginning of the first pay period following the date that the District received notice.

2.2.1 If the employee authorizes dues payment by payroll deduction, the appropriate sum shall be deducted by SMART and paid to the Union on a monthly basis after collection of dues. The amount of dues deductions are determined by the Union and shall be provided in writing to the District on a quarterly basis at minimum or more frequently if changes in membership occur. The District will continue to honor deduction authorizations as specified by the Union until new authorization lists or revocations are provided by the Union.

2.2.2 If the employee joins the Union but chooses not to authorize payroll deductions, payments of dues shall be received by the Union not later than the following:

- (a) For employees who have been employed by SMART for more than thirty (30) days upon the effective date of this Memorandum of Understanding, an appropriate initiation fee shall be paid to the Union no later than ten (10) days after notification of this provision by the Union. For employees with less than thirty (30) days of employment with SMART upon the effective date of this Memorandum of Understanding, an appropriate initiation fee shall be paid to the Union by the thirtieth (30th) day following the commencement of employment;
- (b) Thereafter, dues shall be paid to the Union in full on or before the first day of each calendar month; and General assessments (relating to costs associated with negotiating collective bargaining agreements, administering same and adjusting grievances. Pursuant to said collective bargaining agreement(s) with SMART shall be paid to the Union in full on or before the date set by the Union at the time of Assessment, or if no date is set, within ten (10) days of the call of the assessment by the Union. The Union shall be responsible for promptly notifying Union members of such assessments.

2.2.3 The Union and SMART acknowledge the provisions of §3502.5 of the California Government Code and agree that nothing contained in this section shall act to supersede or waive any of the employee's rights contained herein.

2.2.4 The Union agrees to indemnify and hold harmless SMART for any loss or damage sustained which arises from the operation of this section.

2.2.5 In the event there is a change in the law whereby any provision hereof becomes invalid or if for any reason any provision of this Agreement is rendered unlawful by decision of a court of competent jurisdiction, this Agreement shall be either forthwith deemed amended to comply with the change or decision in question and those provisions not affected by the change in law shall remain in full force and effect. If this occurs, at the election of either party this provision may be reopened for further negotiations.

ARTICLE 3 - DUES CHECKOFF

- 3.1 The Union will be granted permission by SMART to have regular dues of its member employees deducted from their paychecks, in accordance with the procedures prescribed by SMART.
- 3.2 Dues deductions shall be for a specified amount and shall be made only upon the voluntary written authorization of the Union member, which authorization meets all of the requirements for the assignment of wages as set forth in §300 of the California Labor Code. Dues deduction authorization may be revoked and the dues check-off payroll discontinued at any time by the Union member upon voluntary written notice to the Union. The Union will inform the District within seven (7) calendar days of the revocation.
- 3.3 The member employee's earnings must be regularly sufficient after legal and required deductions are made, to cover the amounts of the dues check off authorized. In the case of a member employee who is in a non-pay status during any part of the pay period and the salary is not sufficient to cover the whole withholding, no deductions shall be made. In this connection, all other legal and required deductions have priority over Union dues.
- 3.4 Neither the Union nor the member employees shall be charged a service fee for the deduction of regular Union dues as hereinabove provided for.

- 3.5 Dues withheld by SMART shall be transmitted to the officer designated in writing by the Union as the person authorized to receive such funds at the address specified. Funds may also be transmitted by Automatic Clearing House (ACH) or other accepted electronic banking process.
- 3.6 The Union shall indemnify, defend and hold SMART harmless against any claim made and against any suit instituted against SMART on account of check-off of Union dues. In addition, the Union shall refund to SMART any amount paid to it in error upon presentation of supporting evidence.

ARTICLE 4 - NON-DISCRIMINATION

- 4.1 SMART is an equal opportunity employer and makes employment decisions on the basis of merit. In accordance with applicable law, the District prohibits discrimination based on race, color, religion, creed, sex, marital status, age, national origin or ancestry, physical or mental disability, medical condition, genetic information, military or veteran status, sexual orientation, gender, gender identity, gender expression, or any other consideration protected by federal, state or local laws. All such discrimination is unlawful. The District's commitment to equal opportunity employment applies to all persons involved in the operations of the District and prohibits unlawful discrimination by any employee of the District, including Supervisors and co-workers.

ARTICLE 5 - MANAGEMENT RIGHTS

- 5.1 The exclusive rights of the District shall include, but not be limited to, the right to determine the organization of District, as well as its purpose and mission; to set standards of service to be offered to the public; and, through its management officials, to exercise control and discretion over its organization and operations; to establish and effect administrative regulations which are consistent with law and the specific provisions of any collective bargaining agreements that may exist; to direct its employees; to take disciplinary action; to lay off its employees; to determine whether District goods and services shall be made, purchased, or contracted for; to determine the methods, means, and personnel by which the District's services are to be provided, purchased, or contracted; to determine qualifications for employment; to schedule and assign work and overtime; and to otherwise act in the interest of efficient service to the public.
- 5.2 All matters pertaining to the management of operations, such as the type

and kind of service rendered to the public, the equipment used, workload, the administration of discipline and efficiency, the standards of hire, promotion and transfer of employees, and their discipline and discharge for cause are within the discretion of SMART. SMART's rules, policies and procedures, as may be amended from time to time, are necessary for efficient operations and infraction of these rules shall constitute cause for disciplinary action, up to and including discharge. Depending on the facts and circumstances involved in each situation, SMART may choose to begin disciplinary action at any step up to and including termination.

ARTICLE 6 - UNION STEWARDS

- 6.1 SMART agrees to recognize one (1) steward to represent employees in the bargaining unit covered by this MOU. The Union must inform SMART, in writing, of an employee's designation as a shop steward.
- 6.2 The shop steward, as much as possible, shall perform their duties as a shop steward when not scheduled to work. If the shop steward must perform any duties during regularly scheduled work hours, it shall be kept to a minimum and shall not interfere with normal operations. The shop steward must request time off in advance to perform his/her duties during regularly scheduled work hours. Absent an emergency, the request must be in writing and submitted at least forty-eight (48) hours in advance. The release of shop stewards from work to perform their duties will depend on SMART'S operational needs as determined by SMART.
- 6.3 SMART will not compensate the shop steward for performing any duties as a shop steward, except as otherwise provided for in this Memorandum of Understanding. The shop steward shall be allowed time off during their normal working hours to handle grievances or meet with SMART representatives concerning matters affecting employees' working conditions without loss of pay, provided that such meetings shall not exceed one (1) hour unless mutually agreed upon by the parties.
- 6.4 A maximum of two (2) employees shall serve on the Union bargaining team. A maximum of one (1) employee shall be released from work by SMART to attend negotiations between the Union and SMART. However, the employee released by SMART will be paid their regular rate of pay for negotiations held during their regularly scheduled work hours.

ARTICLE 7 - BULLETIN BOARDS

- 7.1 SMART agrees to supply and provide suitable space for the Union bulletin board at each work location where bargaining unit members are employed. Postings by the Union on such boards are to be confined to official business of the Union and on the Union's official letterhead. In each location, there shall be a covered bulletin board. Union stewards shall have a key for the Union bulletin boards. SMART shall not remove, tamper with, or alter any notice posted by the Union unless such notice is harmful to SMART. Any such notice removed by SMART shall be re-posted if the Union's position is sustained through the grievance procedure.

ARTICLE 8 - UNION ACCESS TO WORK LOCATIONS

- 8.1 Within reasonable circumstances, a Union business representative shall have access to SMART premises at a mutually agreeable time to investigate or adjust grievances or conduct other necessary Union business. Except for emergency circumstances, requests for access to the Rail Operations Center (ROC) and other SMART Operations facilities will be made 48 hours in advance.

ARTICLE 9 - SENIORITY

- 9.1 SMART shall maintain a departmental seniority list for the employees in each bargaining unit covered by this agreement. Departmental seniority means the length of time an employee has been employed by SMART in their respective job class within a bargaining unit covered by this agreement. When more than one (1) employee has the same employment date, the employees' relative positions on the seniority list shall be determined by birth date.

- 9.2 An employee's seniority shall be terminated for the following reasons:

- 9.2.1 Resignation or termination of employment;
- 9.2.2 Layoff for a period of more than twelve (12) months;
- 9.2.3 Failure to respond within ten (10) days to a notice of recall during layoff or failure to return to work within fourteen (14) days after a recall notice;
- 9.2.4 Failure to return to work following an approved leave of absence.

ARTICLE 10 - PERFORMANCE EVALUATIONS

- 10.1 An annual employee evaluation system shall be used for all probationary and regular employees.
- 10.2 SMART shall determine the use and significance, if any, of job performance evaluations in determinations regarding, but not limited, examinations, promotions, demotions, transfers, dismissals and suspensions.
- 10.3 Employees shall have access to their evaluations on file in Human Resources.
- 10.4 All employees will sign the evaluation indicating their receipt of the evaluation within ten (10) calendar days of receipt. An employee who is dissatisfied with his/her review may prepare and submit a written response within thirty (30) calendar days following receipt of the evaluation. The response will be submitted to the General Manager with a copy to the Human Resources Manager. The response will be placed with the evaluation in the employee's personnel file. The employee has no further means of challenging or appealing a performance evaluation. Performance evaluations are not grievable.

ARTICLE 11 - PROBATIONARY PERIOD

- 11.1 The probationary period shall be a trial period during which SMART evaluates the employee's ability, competency, fitness and other qualifications to do the work for which they are employed.
- 11.2 All new employees shall be on probation for twelve (12) months immediately following their date of hire. If an employee is absent from work for good cause during the probationary period, probation may, be extended day for day by SMART to allow the employee to complete the full twelve (12) months. New probationary employees may be disciplined or discharged at the total discretion of SMART and such actions shall not be subject to review under any provision of this Memorandum of Understanding.

ARTICLE 12 – PROMOTIONS, VACANCIES AND TRANSFERS

- 12.1 Employees who are transferred or promoted out of the bargaining unit, and who fail to successfully complete the probationary period of the new position

(for a reason that does not disqualify them from employment in any classification), may elect to return to their original position, if available, in their previous classification within the bargaining unit. Employees shall have a maximum of six (6) months during which they can return to their previous position. Employees shall have no right to return to the bargaining unit after six (6) months. An employee who returns to an available position within the six- (6) month period shall retain his/her departmental seniority.

- 12.2 SMART shall notify the Union of all job openings within the bargaining units covered by this Memorandum of Understanding. The Union may refer qualified applicants for such openings. In interviewing and hiring of such job openings, SMART will not discriminate against any applicant referred by the Union. Applicants referred by the Union will participate in the competitive process as would any other applicant.
- 12.3 Applicants who meet the qualifications of the position descriptions will undergo a selection process as determined by SMART. This process may include, but is not limited to, screening of the most qualified applicant for job suitability and skills assessment, such as written, hands on, video or interview.

ARTICLE 13 - TRAINING

- 13.1 SMART encourages employees to keep their job-related skills current and to look for opportunities to enhance those skills. The Division Superintendent or designee will meet with each employee in a bargaining unit covered by this agreement once a year through the performance evaluation process to assess individual training and career development needs.
- 13.2 When appropriate, SMART will provide employees the opportunity to attend job-related training, including, but not limited to, conferences and seminars. Voluntary training sessions attended after an employee's work hours are unpaid.
- 13.3 Upon approval by SMART, the employee will be reimbursed for expenses related to attending job-related, pre-approved training as allowed per SMART's travel policy, vehicle use guidelines and applicable state and federal law.
- 13.4 Employees in a bargaining unit covered by this agreement will be required to attend training classes and take examinations connected with their duties as required by Federal, State, Local and Agency regulations. Examinations may

be written or oral and include physical examinations, geographical qualification examinations and service examinations as required by state and Federal Railroad Administration regulations.

ARTICLE 14-SAFETY

- 14.1 When an employee is injured at work so as to require that he/she be excused from work by an authorized representative of Management, he/she shall be paid for the balance of the shift (regular pay) on which the injury occurred. Subsequent physician's visits, if necessary, will be charged to sick leave if not scheduled outside of the employee's regular working hours. A copy of the accident report shall be given to the employee. Sick leave pay will not commence until the following day after the injury/illness.
- 14.2 In those cases where an employee receives worker's compensation benefits under the District's plan and is granted sick leave during a disability resulting from an on-the-job injury, DISTRICT shall receive credit against any Workers' Compensation Insurance granted to him, until such leave is exhausted. Payments to the employee will not exceed 100% of regular base pay.
- 14.3 When, after the employee returns to work, there is a bona fide re-injury of the original injury on the job and an authorized representative of Management acting on the recommendation of a doctor excuses the employee from work, he/she shall be paid for the balance of the shift.
- 14.4 The employer and employee are required to comply with Cal-OSHA standards and Federal Railroad Administration Regulations.
- 14.5 SMART will hold regular division specific meetings in which Supervisors will have the opportunity to discuss safety matters as well as other operational issues. Safety matters that are of an urgent nature should be directed in writing to the division Superintendent.

ARTICLE 15 – GRIEVANCE PROCEDURE

- 15.1 A grievance must be in writing and is defined as a complaint that there has been noncompliance with or a misinterpretation or misapplication of this Memorandum of Understanding or a work rule or resolution of SMART.

Grievances will be processed in accordance with SMART policy HRM-0011 Grievance Procedure as modified herein.

15.1.2. Selection appeals, disciplinary action, examination appeals, release from Probationary period, complaints of discrimination, the content of performance evaluations and reviews are not grievable hereunder.

15.1. 3. A grievance may be filed by an employee on his/her own behalf or by the Union.

15.1. 4. If it is asserted that the grievance is outside of the scope of procedures or definitions contained herein, such assertion will be evaluated and ruled upon at each step. Such claim will not halt the further processing of the grievance until Step 4 of the resolution process is reached, as defined below. At Step 4, the General Manager will evaluate the assertion, and make a ruling prior to hearing the grievance on its merits. If the General Manager rules that the matter is not grievable hereunder, the grievance will be dismissed and cannot be processed further.

15.1.5 Disputes concerning the applicability of the Grievance Procedure that persist beyond step 4 may be submitted to step 5, Arbitration, for determination. The Arbitrator will decide the grievability of the issue before taking evidence concerning the merits of the dismissed grievance. If the Arbitrator decides that the dispute is Grievable, the matter will be referred back to Step 4 for consideration of the merits.

15.1.6. For the purposes of this grievance procedure, "Working Days" shall be defined as those in a normal, five-day work week, Monday through Friday.

15.2 GRIEVANCE TIME LIMITS

15.2. 1. Time limits specified in each step of the procedure shall be strictly observed and may only be extended by mutual agreement of the parties in writing.

15.2. 2. Failure of a grievant to observe a time limit shall terminate the grievance. Failure of the party to whom the grievance is submitted to observe the time limits shall give the Union the right to move the grievance to the next level.

15.3 PROCEDURE

15.3. 1. The District recognizes that disputes should be resolved at the lowest possible administrative level. The grievance procedure shall be followed in its entirety before further actions are taken to seek resolution to the dispute. When the grievance is filed by a bargaining

unit employee, the grievant may be represented by the Union or a Union Steward throughout the grievance process.

15.4 INFORMAL GRIEVANCE - STEP 1

15.4. 1. The employee will discuss the grievance with his/her immediate supervisor within ten (10) working days of the event giving rise to the grievance, or within ten (10) working days of when the employee knew of or could have reasonably discovered such action or occurrence. The supervisor shall give his/her decision to the employee within ten (10) working days following the discussion.

15.4. 2. Presentation of an informal grievance will be a prerequisite to the institution of a formal grievance.

15.5 FORMAL GRIEVANCE

15.5. 1. STEP 2 - GRIEVANCE FORM: Within fifteen (15) working days, if the grievant is not satisfied with the informal response, or he/she has not received a response from the supervisor within the ten (10) working day limit specified above, the employee or the Union may initiate a formal grievance. A formal grievance shall be initiated by completing and filing a Grievance Form with the Human Resources Department with a copy to the supervisor and the Union. The form must contain:

- i. Name(s) of grievant;
- ii. Position title(s);
- iii. Department(s);
- iv. Mailing Address(es);
- v. A clear statement of the nature of the grievance, citing applicable rule, regulation, policy or contract language;
- vi. The date upon which the event giving rise to the alleged grievance occurred;
- vii. The date upon which the informal discussion with the supervisor took place;
- viii. A proposed solution to the grievance;
- ix. The date of execution of the Grievance Form

15.5. 2. RESOLUTION PROCESS: After filing the Grievance Form with Human Resources, the process for resolving the grievance is as follows:

- i. STEP 3: Within twenty (20) working days after a formal grievance is filed, the Department Manager will investigate the grievance, confer with the Union in an attempt to resolve the grievance and make a decision in writing.
- ii. STEP 4: If the grievance is not resolved in Step 3 to the satisfaction of the Union, within ten (10) working days of receipt of the Department Manager's decision, the Union may request consideration of the grievance by the General Manager, by notifying the Human Resources Department in writing.
 - 1) Within twenty (20) working days after such notification, the General Manager will investigate the grievance, conferring with person(s) affected to the extent he or she deems necessary, and will render a decision in writing.
 - 2) If the written decision of the General Manager resolves the grievance to the satisfaction of the Union, it will bind the Parties.
 - 3) If the Union is not satisfied with the decision of the General Manager or has not received a response within the time limits specified in Step 4, the Union may proceed to Step 5.
- iii. STEP 5 ARBITRATION: Should the matter remain unresolved in Step 4 above, a final consideration of the grievance to Step 5, arbitration, may be filed in writing with the Human Resources Department not more than fifteen (15) working days from receipt of the General Manager's decision.
 - 1) The grievance will be determined by an arbitrator, provided that the District and the grievant agree on the issues to be arbitrated.
 - 2) As soon as possible, but no later than twenty (20) working days, after receipt of the Step 4 request for arbitration, the District and the Union shall select an arbitrator. If the parties are unable to agree upon an arbitrator, they shall request a list of five (5) names from the State Conciliation and Mediation Services and shall strike names until an arbitrator is selected.
 - 3) Both parties will endeavor to submit the grievance to the arbitrator within twenty (20) working days after selection.

- 4) The Arbitrator(s) will neither add to, detract from, nor modify or ignore the existing language of any District rules, policies or regulations in considering any issue properly before them. If the arbitrator sustains the grievance, he/she shall fashion an appropriate remedy that does not conflict with any provisions contained in any District rule, policy or regulation.
- 5) The Arbitrator(s) will expressly confine themselves to the precise issues being raised by the grievance and submitted to them and will have no authority to consider any other issue not so submitted.
- 6) Any monetary award in favor of the grievant is limited to lost wages or benefits suffered measured from the date of the grievance forward. In no event will the Arbitrator(s) award any other type of monetary award, including, but not limited to, attorney's fees.
- 7) The decision will be final and binding on all parties.

15.5.3. GENERAL CONSIDERATIONS

- i. The Human Resources Department will act as the central repository for all grievance records.
- ii. All expenses of arbitration will be shared equally by the District and the Union.
- iii. Failure on the part of the District or the grievant to appear in any case before an arbitrator, without good cause, will result in forfeiture of the case and responsibility for payment of all costs of arbitration.
- iv. The grievant's or Union designee's signature is required at each step of the grievance procedure.
- v. A copy of the grievance will be provided to the General Manager at each step of the grievance process.
- vi. There will be no amendments of a grievance without the approval of both parties in writing.
- vii. Mediation may be used by both parties to assist them in resolving grievances. The decision to utilize mediation will be voluntary. Mediation may be held at any step prior to submission of the final appeal under Step 5 of the grievance procedure.

ARTICLE 16 – DISCIPLINE

- 16.1 SMART has the right to discipline or discharge regular employees for just cause. SMART employs a progressive disciplinary program, which program may include, but is not limited to, , written warning, suspension, and discharge. Disciplinary action may begin at any step in the program depending upon the seriousness of the infraction. The District will notify the employee and the Union in writing of the commencement of a disciplinary investigation within ten (10) working days of the District's knowledge that the employee may have engaged in misconduct. The District will notify the employee and the union by email or in-person delivery to arrange an investigatory interview with the employee and his/her Union Representative/Shop Steward, if requested.
- 16.2 The causes for which an employee may be disciplined or discharged shall include, but not be limited to, the following:
- 16.2.1 Dishonesty
 - 16.2.2 Insubordination
 - 16.2.3 Intoxication or use of alcoholic beverages or illegal drugs while on duty or on SMART property.
 - 16.2.4 Sexual harassment or other harassment of fellow employees.
 - 16.2.5 Violation of SMART rules or policies.
 - 16.2.6 Violation or non-compliance with federal and state operating rules and regulations, including Federal Railroad Administration rules and regulations.
 - 16.2.7 Violence and/or threats of violence in the workplace.
- 16.3 SMART will inform regular employees in writing as to the reasons for a discharge or suspension.
- 16.4 Regular employees (those who have completed the Probation Period) claiming that they were unjustly disciplined or discharged may challenge the discipline or discharge through the Discipline policy and procedures set forth in SMART's Discipline Policy, HRM-0018. HRM-0018 and any modifications thereto are incorporated into this Agreement and are binding on all parties. The Regular employee may be represented by the Union throughout the disciplinary process. Except as provided in paragraph 16.5, no employee in a bargaining unit covered by this agreement will be disciplined, suspended or dismissed from the service until a fair and impartial formal investigation has been conducted by an authorized Department Manager.

- 16.5 Except when a serious act or occurrence is involved, or as required by Federal Railroad Administration regulations, an employee in a bargaining unit covered by this agreement will not be held out of service in disciplinary matters before a formal investigation is conducted. A serious act or occurrence is defined in section 16.2 above.
- 16.5.1 If an employee in a bargaining unit covered by this agreement is held out of service before a formal investigation, the District may elect to put the employee on Administrative Leave of Absence with pay during the disciplinary process. Holding an employee out of service before a formal investigation or paying the employee for being out of service for less than a serious act or occurrence is not prejudging the employee.
- 16.6 The General Manager's or designee's decision shall only be appealed by the employee or by the Union on the employee's behalf to an Arbitrator selected by the Parties.
- 16.6.1 The request for arbitration may be filed in writing with the Human Resources Department not more than fifteen (15) working days from receipt of the General Manager's decision, or the right to appeal the decision is forfeited.
- 16.6.2 The decision will be resolved by an arbitrator, provided that the District and the Union agree on the issues to be arbitrated.
- 16.6.3 As soon as possible, but no later than twenty (20) working days, after receipt of the request for arbitration, the District and the Union shall select an arbitrator. If the parties are unable to agree upon an arbitrator, they shall request a list of five (5) names from the State Conciliation and Mediation Services and shall strike names until an arbitrator is selected.
- 16.6.4 Both parties will endeavor to submit the appeal to the arbitrator within twenty (20) working days after selection.
- 16.6.5 The decision of the arbitrator will be final and binding on all parties.
- 16.6.6 The Arbitrator(s) will neither add to, detract from nor modify or ignore the existing language of any District rules, policies or regulations in considering any issue properly before them. If the arbitrator sustains the decision, he/she shall fashion an appropriate remedy that does not conflict with any provisions contained in any District rule, policy or regulation.

- 16.6.7 The Arbitrator(s) will expressly confine themselves to the precise issues being raised by the appeal and submitted to them and will have no authority to consider any other issue not so submitted.
- 16.6.8 Any monetary award in favor of the employee is limited to lost wages and benefits suffered measured from the date of the imposed discipline forward. In no event will the Arbitrator(s) award any other type of monetary award, including, but not limited to, attorney's fees.
- 16.6.9 All expenses of arbitration will be shared equally by the District and the employee.
- 16.6.10 Failure on the part of the District or the employee to appear in any matter before an arbitrator, without good cause, will result in forfeiture of the matter and responsibility for payment of all costs of arbitration.
- 16.6.11 Mediation may be used by both parties to assist them in resolving the disciplinary matter. The decision to utilize mediation will be voluntary. Mediation may be held at any step prior to submission of the final appeal to arbitration.

ARTICLE 17 - LEAVES OF ABSENCE

- 17.1. All leave time, including Holiday, Sick and Vacation leave will be processed in accordance with District policy HRM-0022. Leaves, except as modified herein. From time to time, it may be necessary to modify District leave policy as required by Local, State or Federal law. Should the District be required by law to modify a leave policy, the District will notify the UNION in writing of the required change. Any other proposed changes not required by law will be subject to the provisions of the Meyers-Milias Brown Act.

17.2. HOLIDAYS

- 17.2.1. The DISTRICT observes various District designated holidays each year. Regular full-time and part-time employees are eligible for paid District designated holidays. To be eligible for Holiday pay, employees must work or be on a pre-approved paid absence on the employee's regularly scheduled workdays the day before and the day after the holiday.
- 17.2.2. Paid holidays are as follows:
 - 1. New Year's Day - January 1st

2. Martin Luther King, Jr.'s Birthday, third Monday in January.
3. President's Day, the third Monday in February
4. Memorial Day, the last Monday in May.
5. Independence Day, July 4th.
6. Labor Day, the first Monday in September.
7. Veteran's Day, November 11th.
8. Thanksgiving Day
9. The day following Thanksgiving Day
10. Christmas Day, December 25th.
11. Two (2) Floating Holidays
12. Each day appointed by the Governor of the State of California and formally recognized by the Board of Directors as a day of mourning or other special observance.

17.2.3. Floating Holidays. Effective January 1, 2018, two eight (8) hour days per year will be deemed as floating holidays, which may be taken at any time during the calendar year in which it is accrued provided a written request is made in advance and the supervisor approves such request in writing. Floating holiday pay will be pro-rated for part-time employees. Employees eligible for floating holidays are regular, Probationary, and at-will. Temporary and contracted employees are not eligible for floating holiday pay. Floating holiday pay must be taken in increments of eight (8) hours. Floating holiday hours must be used in the year that they are accrued and will not carry over from one calendar year to the next. If an eligible employee does not use their floating holiday hours during the calendar year, one eight (8) hour day may be paid out as cash. Floating holiday hours are not eligible to be paid out upon separation of employment from the District. New hires hired prior to June 1st of each year will receive two floating holidays. New hires hired between June 1st and August 31st of each year will receive one (1) floating holiday. New hires on or after September 1st will not receive the floating holidays for that year. Supervisor approval is needed prior to scheduling a floating holiday.

17.3. VACATION ACCRUAL AND PAY

17.3.1 All regular full-time employees are eligible to accrue vacation leave based on hours worked on a maximum forty (40) hour workweek. Part-time employees who work a minimum of 20 hours per week shall accrue vacation on a pro-rata basis. Usage and accrual shall be governed by the same rules and regulations applicable to full time employees. Vacation accrual schedules can be found in District policy HRM-0022 – Leaves.

- 17.3.2 Vacation Buyback. Each represented employee may request once a calendar year to receive payment for up to eighty (80) hours of accrued vacation hours, provided that there is a minimum remaining balance of eighty (80) hours following payment. Such requests may be made bi-weekly during any pay period.
- 17.3.3 Vacation Bid - Employees shall bid for vacation leave once every 12 months according to seniority order in each respective job class. Employees will be given confirmation for bids submitted.
- 17.3.4 Additional Vacation Time – To allow for flexibility throughout the year, after the annual bid process been has completed, employees may request additional vacation or compensatory time off as needed. All such requests must be scheduled in advance and receive Supervisor approval. The District reserves the right to deny additional time off requests due to Operational needs.

17.4. SICK LEAVE ACCRUAL AND PAY

- 17.4.1 Regular full-time and part-time employees are eligible to receive sick pay. Each DISTRICT full-time employee will accrue up to 12 sick days (96 hours) per year, with no limit on accumulation. Regular part-time employees who work at least 20 hours per week are eligible to accrue paid sick leave on a pro-rata basis. In accordance with AB 1522, Article 1.5. Section 246 (b)(1), the minimum sick leave accrual rate for regular part-time employees who work at least 20 hours per week will be one hour per every 30 hours worked. Usage and accrual of said benefits shall be governed by the same rules and regulations applicable to full-time employees. Use of sick leave will be consistent with District policy HRM-0022 Leaves, Section 3, Sick Time Accrual and Pay.

17.5. MEDICAL AND OTHER LEGALLY REQUIRED LEAVES OF ABSENCE

- 17.5.1 Leaves of Absence are periods of time in which an employee is permitted to be away from work without being terminated or considered to have voluntarily resigned. Completion of the Probationary Period is required, except where state or federal laws require otherwise. Examples of circumstances where a leave of absence is appropriate are work-related disabilities, military duty and medical disabilities, (including pregnancy). In instances where the leave occurs during the Probationary Period, the Probationary period is extended by the time an employee is out on a leave. Leaves are generally unpaid time off, unless the employee is eligible for and has accrued time under the sick or vacation

plans.

17.5.2 The General Manager or designee, on a case-by-case basis, may grant a leave of absence (LOA), depending on the nature of the leave and the business needs at that time. It is the employee's responsibility to maintain contact by phone or in writing, with their supervisor and/or the Human Resources Department while he/she is on a LOA. The employee must provide documentation supporting the need for the leave (e.g., physician's visit certification) and keep it up-to-date. Any holidays that occur while an employee is on a LOA are not paid unless the use of accrued sick, compensatory and/or vacation time on the day prior to and after the District holiday is used. Vacation and sick time do not accrue during a leave if an employee is in unpaid leave status.

17.5.3 All legally required leaves will be administered according to SMART policy HRM-0022 – Leaves. SMART reserves the right to update this policy as required to comply with changes in State, Federal or local laws.

ARTICLE 18 - HEALTH AND LIFE INSURANCE

18.1 SMART provides each employee with a comprehensive group insurance plan as outlined in District Policy HRM-0019 Employee Benefits.

18.2 New employees who work a minimum of 20 hours per week are eligible to participate in District health and welfare benefits on the first day of the month following their date of hire. Employer contributions toward benefit premiums for part-time employees will be pro-rated.

18.3 At appropriate normal open enrollment periods or other enrollment periods as arranged by the District for initial enrollment, the District's group insurance plans shall be made available to employees covered by this Agreement.

18.4 Coordination of Benefits. If an employee and their spouse or other qualified dependent both work for the District, benefits received under group policies will be coordinated with any other Employer-provided benefits an employee or dependent may have. This means an employee and their dependent(s) may not receive double coverage under any plan offered by the District.

ARTICLE 19 - PENSION PLAN

19.1 CalPERS Retirement Plan

19.1.1 SMART and each employee, who is scheduled to work twenty (20) hours per week or who actually works one thousand (1,000) hours or more in a fiscal year, shall continue to contribute to the Public Employees' Retirement System in accordance with the applicable rules and regulations.

19.1.2 Employees hired after January 1, 2013, shall be covered by the terms of 2%@Age 62 retirement plan.

19.2 457 B Deferred Compensation

19.2.1 The DISTRICT has available to all employees a 457 b Deferred Compensation Plan. This plan allows employees to make voluntary contributions, on a pre-tax basis, for their own retirement savings. For employees hired after June 1, 2012, the DISTRICT will match employee voluntary contributions up to a maximum of 2% of annual base salary.

ARTICLE 20 - WAGES

Wages for this Unit of employees will be as shown below:

Job Class	Step 1	Step 2	Step 3	Step 4	Step 5
Track Supervisor	\$48.21	\$50.62	\$53.16	\$55.82	\$58.62

20.1 A three percent (3%) wage increase, (as shown in the chart above) upon ratification of the agreement. Wage increases will be effective at the beginning of the next pay period following the eligibility date.¹

ARTICLE 21 – TEMPORARY PROMOTION

21.1 When an incumbent in a position is on an extended leave or a position becomes vacant, the General Manager may choose to fill a position by temporarily promoting an existing SMART employee. In order to be considered for temporary promotion, the candidate must meet the minimum qualifications of the higher job class. Only such vacancies expected to last for thirty (30) days or longer may be filled by temporary promotion.

¹ Wage increase date will be effective July 12, 2021 based upon Union ratification date of July 8, 2021.

- 21.2 When a regular employee is temporarily assigned to substantially fulfill the duties of a higher position for thirty (30) or more working days, the employee will be temporarily promoted, in writing, and given a temporary merit increase of *up to* 5% above the employee's current pay level in his/her regular position.
- 21.3 A single assignment performed in a higher classification does not qualify an employee for temporary promotion pay consideration. Further, when the work associated with a vacant position is redistributed to several employees, rather than given to one individual on an interim basis, no single individual will be deemed to be working in a higher class and eligible for temporary promotion.
- 21.4 When an employee is promoted to a position in which he or she has, immediately preceding the appointment, served in a temporary promotion capacity, the employee will be given time credit for the acting service. Credit shall begin on the effective date of the temporary appointment and will count toward the completion of the Probationary period in the new position.
- 21.5 When the incumbent of the higher-level class returns to work or is replaced on a permanent basis by another individual from an employment list, the individual promoted on a temporary basis will be returned to his/her former job class and rate of pay.

ARTICLE 22 - UNIFORMS

- 22.1 SMART will provide uniforms and laundering service for employees covered by this agreement. Uniforms are only to be worn at work or while going to and from the work site.
- 22.2 Uniforms should be clean, pressed, and in good repair and with attention to appropriate personal grooming and hygiene. Visible tattoos will be covered on employees whose jobs require them to interact directly with the public.
- 22.3 All employees will wear a SMART provided identification card on the outer most clothing item at all times during working hours.
- 22.4 Employees may be required to wear safety equipment or clothing at certain times while performing specific job functions.

ARTICLE 23 - TRANSIT VEHICLES

- 23.1 SMART will provide pool vehicles that will be available for use by employees as needed for the performance of their job functions.

23.2 Employees will be responsible for keeping the vehicles reasonably clean and inspected, per the District's Vehicle Use Guidelines but in no case are they responsible for normal wear and tear.

23.3 All vehicles will be equipped with an emergency kit.

23.4 It is each employee's responsibility to inform SMART if any emergency items are missing.

ARTICLE 24 - CIVIC DUTY TIME OFF

24.1 SMART encourages employees to serve as jurors or witnesses when called. Full-time and part-time regular employees will receive full pay while serving on jury or witness duty. An employee must notify his/her Supervisor of the need for time off for jury or witness duty as soon as a notice or summons from the court or a subpoena is received. Proof of attendance shall be required when the employee returns to work.

24.2 An employee may retain such payment as may be allowed for travel but shall make payable to SMART any and all fees which the employee may receive in payment for service as a juror. Employees are required to provide written verification of having served from the court clerk. If work time remains after any day of jury or witness duty, the employee will be expected to return to work for the remainder of their work schedule.

24.3 For positions covered under the FRA Hours of Service law, the employee will not be required to perform any work during the 24-hour period in which the jury duty is served.

ARTICLE 25 - OVERTIME AND WORK SCHEDULES

25.1 Overtime

25.1.1 Overtime compensation for non-exempt employees will be paid at the rate of one and one-half (1 ½) times the regular rate for all hours worked in excess of eight hours worked in a day or forty (40) hours worked in a workweek.

25.1.2 Hours spent attending Jury Duty, compensatory time off, sick leave, holiday pay and vacation leave do not count toward the number of hours needed before an employee is eligible for overtime compensation.

25.1.3 Any non-exempt employee in a bargaining unit covered by this agreement who works six (6) consecutive days in a workweek will be paid for work on the seventh (7th) consecutive day at the overtime rate of one and one-half times the regular rate of pay for the first eight hours worked and double the employee's regular rate for all hours worked in excess of eight (8) hours. Work week is defined as Monday through Sunday.

25.2 Compensatory Time

25.2.1 Non-exempt employees may elect compensatory time off for any overtime work performed. Compensatory time off is earned at time and one half. Employees may accumulate a maximum of eighty (80) hours of compensatory time off. Once the maximum number of hours has been accrued, the employee shall receive overtime pay as described in Paragraph 25.1. Employees may not elect additional compensatory time off in lieu of overtime until they fall below the maximum eighty (80) hour accumulation.

25.2.2 No employee shall take compensatory time off without the prior approval of the employee's supervisor.

25.2.3 Each employee who is separated from District service shall be entitled to payment for accrued compensatory time at the employee's base hourly rate of pay at the time of the employee's separation or as otherwise required by law.

25.3 All employees must submit a timesheet indicating hours worked.

25.4 Standby Pay

25.4.1 An employee on standby status will be paid the equivalent of four (4) hours pay at the employee's straight time rate for each twenty-four (24) hour period the employee is on standby status, or for a period from the end of the employee's work shift and the beginning of the employee's next shift, if the standby assignment is less than 24 hours. Standby pay does not count toward the calculation of overtime. Standby pay will be offset by any actual hours worked if called out to work. While on standby, the employee must be fit for duty.

25.4.2 Any employee who is on standby until the next shift or for a twenty-four (24) hour period and is called out for work shall be paid at the applicable rate of pay for all actual hours worked. Overtime rates will apply to all hours actually worked in excess of eight (8) hours per day or forty (40) hours per week.

25.5 Rest and Meal Periods

25.5.1 Two (2) paid breaks are to be allowed during the regular shift, each of which shall be no more than ten (10) minutes. One off duty thirty (30) minutes meal period shall be allowed and shall be unpaid time.

25.5.2 Rest and Meal periods may not be combined.

ARTICLE 26- SHIFT BIDDING AND EXTRA WORK

- 26.1 Employees shall bid shifts according to the seniority order in each respective job class. Assignments will be made to employees in seniority order from bids submitted prior to the close of the bid period every twelve (12) months. Employees will be given confirmation for bids submitted. SMART reserves the right to deny a bid if an employee does not have the required skills or training for the position. SMART will distribute shift schedules to be bid upon at least seven (7) days prior to the day on which the bid process will be held. Actual bidding will take place at least fourteen (14) calendar days prior to the day on which the bid will take effect.
- 26.2 Each employee will submit their bid on the date designated. If an employee is absent for their assigned bid day, the employee may bid by phone or give a proxy bid in writing to a shop steward to bid for the employee. If an employee does not bid on the assigned bid day or fails to submit a proxy bid, the employee will fall to the bottom of the list and bid in the last position. Final results will be posted within 24 hours of the close of the bid in each District facility where bargaining unit members are employed.
- 26.3 Employees on a leave of absence who will not be able to work at least two (2) months of the bid period will not be permitted to bid, unless SMART and the Union mutually agree to permit the employee to bid. If the employee returns to work during the bid period, SMART will assign the employee to an open shift.
- 26.4 SMART reserves the right to determine staffing levels of daily assignments. If a shift becomes open between bidding cycles and SMART determines to cover all or part of that shift, the coverage of that shift will be filled based on:
- (a) Availability within the Hours of Service regulations. Extra work will be offered to available staff in seniority order; and
 - (b) By reverse seniority order if there are no available staff who

volunteer for the extra work.

- 26.5 An employee returning to duty after being absent less than 60 days by reason of sickness, temporary disability, suspension, leave of absence or vacation, will be returned to their current assignment.
- 26.6 The Union shop steward will work with a SMART representative in processing the shift bids. All bids will be submitted in writing to the Division Superintendent or designee. The Superintendent will post copies of all bids submitted.

ARTICLE 27 – FURLOUGH

- 27.1 For the purposes of this section, furlough or layoff, is defined as a reduction in force whereby the total number of budgeted position allocations in a job classification is reduced. A furlough may also include establishing unpaid days off to avoid the reduction of budgeted positions. When SMART determines it necessary to reduce the workforce, employees shall be furloughed in inverse seniority order within classification. A furlough is an involuntary separation and is not subject to the grievance and arbitration procedure.
- 27.2 SMART shall give fourteen (14) days' notice to employees that they will be furloughed. If SMART elects not to give fourteen (14) days' notice, SMART shall pay the employee their regular rate of pay for each day that notice was not given, up to a maximum of two (2) weeks' pay. The provisions for notice shall not apply if notice of furlough is prevented due to fire, storm, major breakdown, labor dispute or other cause beyond the control of SMART.
- 27.3 The DISTRICT will pay for two months of the employee's COBRA medical coverage provided the employee has completed one or more years of service. Note: Under CALPERS medical, the employee is eligible to receive an additional month of medical insurance coverage after separation from employment if the employee is able to pay their portion of the premium (15%) prior to the start of COBRA eligibility.
- 27.4 Employees on furlough will be recalled to work in seniority order within classification. Employees on furlough shall remain on the seniority list for purpose of recall for a period not to exceed twelve (12) months following furlough. Employees who are recalled within twelve (12) months will retain all seniority accrued in prior service. Benefits do not accrue during a furlough period. Employees will have vacation, compensatory and sick leave cashed out per District policies.
- 27.5 Any employee who rejects a recall offer, fails to respond to the notice of recall

within ten (10) days of receipt of certified mail, or fails to return to work within fourteen (14) days after a recall notice shall be removed from the seniority list.

- 27.6 In a case of a reduction in force, SMART will meet and confer with the Union over the effects of the furlough.
- 27.7 As required per AB 2224, Section 150143, the District agrees that it will not contract out the performance of services performed by or fairly claimable by the employees of the bargaining unit without the agreement of the accredited representative of that bargaining unit's employees.

ARTICLE 28 - EMPLOYEE ASSISTANCE PROGRAMS

- 28.1 The DISTRICT and UNION are committed to protecting the safety, health and well-being of all employees, the public and other individuals in the workplace. The District provides an Employee Assistance Program (EAP) to all Employees as part of its benefits program.
- 28.2 Substance Abuse: As required by District policy and Federal Railroad Administration Regulations, the District has developed a Drug and Alcohol Free Workplace Policy and 49 CFR Part 219 Compliance Plan (APPENDIX A). All Employees in the bargaining unit are covered under the provisions of this plan.
- 28.3 Employees in the bargaining unit are also eligible to seek help for substance abuse or mental health issues with the Teamsters Assistance Program (TAP). Employees are encouraged to seek assistance through the District's EAP or the TAP when needed.

ARTICLE 29 - NO STRIKES, WORK STOPPAGES OR LOCKOUTS

- 29.1 The Union agrees that during the life of this Memorandum of Understanding there shall be no strikes, slowdowns, or any other form of work stoppage, including sympathy strikes and SMART agrees that there shall be no lockouts.

ARTICLE 30 – ACCESS TO NEW HIRE INFORMATION

- 30.1 The DISTRICT will notify the UNION of all new hires at least one week prior to the new employee's start date. All new hires will receive a new employee orientation on their first day of employment. The DISTRICT agrees to allocate a thirty (30) minute timeframe during the new hire orientation schedule for UNION representatives to meet with the new employee(s). A UNION representative will contact a representative of the District's human resources department at least twenty-four hours in

advance of the new hire orientation date to arrange a time to meet with the new employee during the orientation process. If UNION does not wish to send a representative to the new hire orientation, they may provide written materials to the DISTRICT Human Resources Department which will be provided to the new employee.

- 30.2 The DISTRICT will provide the UNION with EMPLOYEE contact information within 30 days of the date of hire pursuant to AB 119, Section 3558 of the government code.

ARTICLE 31 - TERM OF AGREEMENT

- 31.1 This Memorandum of Understanding shall become effective July 8, 2021 and remain in effect to and including June 30, 2022, and thereafter shall automatically be renewed from year to year unless either party shall give notice in writing to the other party at least sixty (60) days prior to the end of the initial term of a desire to amend, modify, or terminate this Memorandum of Understanding. If such notice or notices are not given, the Memorandum of Understanding shall be deemed to be renewed for the succeeding year.

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto, having met and conferred in good faith, have caused their names to be subscribed this _____ day of _____, 2021.

FOR SMART

FORTHE UNION

APPROVED

RATIFIED

Farhad Mansourian
General Manager

Tom Woods
Business Representative

Attest

SMART NEGOTIATORS

TEAMSTERS NEGOTIATORS

Diane O'Malley
Chief Negotiator

John Sousa
Employee Representative

Lisa Hansley
SMART Human Resources

APPENDIX A

EXHIBIT A – FEDERAL RAILROAD ADMINISTRATION CONTROL OF ALCOHOL AND DRUG USE

49 CFR PART 219 RAILROAD COMPLIANCE PLAN

**In all cases where there is a difference between this plan and 49 CFR Part 219 or 49
CFR Part 40, the CFR takes precedence.**

Plan Amended: January 1, 2021

Date of FRA Amended Plan Approval: January 28, 2021

MODEL PART 219 RAILROAD COMPLIANCE PLAN

FRA's Model Part 219 Railroad Compliance Plan has been developed by FRA as a tool to assist railroads in complying with the requirements of Title 49, Code of Federal Regulations Part 219 with respect to submission and approval of random alcohol and drug testing and the required programs. This plan, although initially developed for the smaller railroads, may be used by all railroads regardless of class.

Only railroads that are required to comply with Part 219 are authorized to use Federal authority. Therefore, entities having less than 16 covered service employees (unless they operate on tracks of another railroad or otherwise engage in joint operations with another railroad except as necessary for purposes of interchange) are not authorized to utilize Federal authority to conduct Federal random or reasonable cause testing. In those instances, a railroad should use "Company Policy Testing" as their authority. All railroads subject to Part 219.3 would still be responsible for complying with Subpart C – Post-Accident testing requirements.

Simply signing and adopting this plan does not constitute compliance. The actions required by the regulation must be in accordance with regulatory requirements to achieve compliance. **In all cases where there is a difference between this plan and 49 CFR Part 219 or 49 CFR Part 40, the CFR takes precedence.**

NOTE: Title 49, CFR Part 40 requires employers to have a Designated Employer Representative (DER), defined in 40.3 as "An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of Part 40. Service agents cannot act as DERs." In the past, this person may have been referred to as the Program Administrator.

NOTE: Please make all entries, changes, or additions to this model plan in bold, italics, color, or other distinguishing manner in order to expedite review by the FRA Drug & Alcohol Program Specialist.

I. Policy Statement

Sonoma-Marín Area Rail Transit - SMART recognizes the problem of substance abuse in today's society. This problem poses particular concerns to an employer who is subject to governmental regulations and seeks to promote the safety of the general public. This railroad has a concern for the safety, health and well being of its employees as well as an obligation to comply with the United States Department of Transportation (DOT) and Federal Railroad Administration (FRA) regulations. This railroad will comply with all statutes and regulations administered by the FRA in implementing the required Part 219 Drug and Alcohol Program.

Programs have been established on this railroad which requires regulated employees to demonstrate their safety posture through complying with:

1. Urine screens to detect the presence of marijuana, cocaine, opioids, phencyclidine and amphetamines (See 49 CFR § 40.85 and 49 CFR § 40.87);
2. Breath alcohol tests to detect the unauthorized use of alcohol; and
3. Breath, urine, blood and tissue (fatality) testing after qualifying FRA post- accident events.

In accordance with the applicable Federal regulations, this railroad prohibits persons who perform work regulated by the Federal Hours of Service Laws (see 49 U.S.C. §§ 21101-21108) and/or performing duties as Maintenance-of-Way (MOW) workers as described in the definition of "Roadway Worker" in § 214.7 from being under the influence and/or possession of illegal substances and/or under the influence of alcohol while on duty or within four hours of reporting for regulated service. Additionally, illegal substance use is prohibited on or off duty, except as allowed in 49 CFR § 219.103.

II. Identifying Information.

Railroad:

Name: Sonoma-Marín Area Rail Transit

Address: 5401 Old Redwood Highway, Suite
200 Petaluma, CA 94954

Phone: 707-794-3330

E-Mail: cday-flynn@sonomamarintrain.org

Designated Employer Representative:

Name: Colleen Day-Flynn Address:

Same Phone: 415-794-3330

E-Mail: cday-flynn@sonomamarintrain.org

Assistant Designated Employer Representative:

Name: Yasamin Mora Serrano Address: Same

Phone: 707-794-3080

E-Mail: ymserrano@sonomamarintrain.org

Medical Review Officer:

Name: Dr. David R. Nahin, Nationwide Medical Review

Address: 7160 Graham Road

Indianapolis, IN 46250

Phone: 888-265-6362

Testing Laboratory (must be on HHS list of certified labs):

Name: Clinical Reference Laboratory

Address: 8433 Quivira Road

Lenexa, KS 66215

Phone: 913-492-3652

Substance Abuse Professional (SAP):

Name: Lisa Wolper, SAP

Address: 825 College Ave

Santa Rosa, CA 95404 Phone:

707-524-8864

III. Scope

This policy applies to all railroad personnel (including contractors and volunteers) who perform regulated duties subject to either the Federal Hours of Service Laws “Covered Service” and/or performing Maintenance-of-Way (MOW) duties covered by the definition of “Roadway Worker” in § 214.7.

This railroad has a total of 51 regulated service employees (including volunteers and contractors) who perform “**Hours of Service**” functions.

This railroad has a total of 9 regulated service employees (including volunteers and contractors) who perform “**Roadway Worker**” functions.

The total number of all regulated employees (**include both covered service and roadway workers**) at the time of this submission is: 60.

(Include any contracted employees in the above counts.)

If applicable, identify the following for the contractor (***if you have multiple regulated service contractors please add appendix at the end of this document with the following information***):

Name of contractor: _____

Regulated Service performed for your railroad: ____

Address: _____

Contact Person: _____

Email address: _____

Phone: _____

Identify whether you operate on tracks of another railroad (or otherwise engage in joint operations with another railroad, except as necessary for purposes of interchange). If so, which railroad (s) and mileage: _____

Previous Employer Checks: This railroad is required to check on the drug and alcohol testing record of employees it is intending to use to perform regulated duties. This railroad will, after obtaining an employee’s written consent, request information from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee’s application or transfer into regulated service. **See 49 CFR 40.25.**

An employee must also be asked whether he or she tested positive (or refused to test) on any Federal pre-employment drug or alcohol test administered by a DOT employer to which the employee applied for, but did not obtain regulated service work during the past two years. With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including Federal follow-up tests) must be provided to this railroad.

IV. Testing Programs

There are numerous situations when Federal **drug and/or alcohol tests** must be administered for the railroad to be in compliance with 49 CFR Part 219. Personnel performing functions listed in Section III of this policy will be required to submit to a drug and/or alcohol test in the instances set forth, as follows:

- 1) **Pre-Employment Drug Testing** – (49 CFR 219.501) Applicants will be informed that all individuals this company will use for regulated service must be drug-free. Passing a Federal pre-employment drug test is a condition prior to performing regulated service duties. If an applicant refuses to submit to the drug test, or tests positive on the drug test, the applicant will not be considered qualified to perform regulated service and will not be offered a position in regulated service.

Federal Pre-Employment Alcohol Testing (Optional) – (49 CFR 219.502)

Authorized but not required. This railroad chooses to conduct Federal alcohol pre-employment testing? Place an "X" in one of the following boxes:

Yes ☒ No ☐

2) Federal Reasonable Suspicion Testing – (49 CFR 219.301)

Regulated service personnel will be required to submit to a Federal drug and/or alcohol test whenever a properly trained supervisory employee of this railroad has reasonable suspicion that a regulated employee is currently under the influence of or impaired by a controlled substance or alcohol. Reasonable suspicion must be based on specific, contemporaneous personal observations the supervisor can articulate concerning the employee's appearance, behavior, speech, body odor, chronic effects or withdrawal effects.

Part 219.11(g) requires supervisory employees to have education and training on alcohol misuse and controlled substance use. The training will cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances. It will also prepare the supervisors to make the decisions necessary in reasonable suspicion and FRA post-accident situations (i.e., what is a qualifying event and who is to be tested).

The observation for alcohol must be made by at least one qualified supervisory employee who has received proper training in the signs and symptoms of alcohol use per 219.11(g). Documentation of this decision must be maintained, as required by Part 219 Subpart J. The observation for drugs must be made by at least two qualified supervisory employees, one of which has received proper training in the signs and symptoms of drug use/misuse per 219.11(g). One qualified supervisor must be on-site, but the supervisor trained per 219.11(g), although preferred does not have to be the supervisor on-site. Documentation of this decision must be maintained, as required by Part 219 Subpart J.

If operating on tracks of another railroad, this railroad will coordinate with the host railroad and decide how the supervisor on the site will immediately communicate and coordinate decisions to test and who will administer the necessary testing. In all reasonable suspicion cases, the supervisor will ensure that the regulated service person is transported immediately to a collection site for a timely collection of a urine and/or breath specimen. If the regulated service person is deemed not fit to return to work, the supervisor will arrange transportation for the person. This is not a Federal requirement, but safety will be better assured if accomplished.

Supervisors must document their observations that led them to decide there was a “reasonable suspicion” to have the regulated service person subjected to Federal drug and/or alcohol testing.

3) Federal Reasonable Cause Testing – (49 CFR 219.401) Authorized but not required. A railroad must choose whether or not to conduct Federal drug and alcohol Reasonable Cause testing. If a railroad selects to conduct Federal (DOT) Reasonable Cause testing, then the railroad cannot perform company (non-DOT) testing for any event described in 219.403. If a railroad selects to conduct company (non-DOT) Reasonable Cause testing, then the railroad cannot perform DOT testing for any event described in 219.403.

This railroad chooses to conduct Federal Reasonable Cause drug and alcohol testing for all train accident/incidents and rule violations that meet the criteria of 49 CFR 219.403. Please check the appropriate box:

Place an “X” in one of the following boxes: Yes

<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
-------------------------------------	----	--------------------------

A Federal reasonable cause drug and/or alcohol test may be required (employer’s decision) when a regulated service employee:

- a. Was involved in a qualifying Train accident/incident per 219.403 (a) and a supervisor has a reasonable belief based on specific and articulable facts

that the regulated service person's acts or omissions contributed to the occurrence or severity of the accident/incident; or

- b. Committed a rule violation described in 219.403 (b).

If operating on tracks of another railroad, this railroad will coordinate with the host railroad and decide how the supervisor on the site will immediately communicate and coordinate decisions to test and who will administer the necessary testing. In all reasonable cause cases, the supervisor will ensure that the regulated service person is transported immediately to a collection site for a timely collection of a urine and/or breath specimen. If the regulated service person is deemed not fit to return to work, the supervisor will arrange transportation for the person. This is not a Federal requirement, but safety will be better assured if accomplished.

Supervisors must document their observations that led them to decide there was a "reasonable cause" to have the regulated service person subjected to Federal drug and/or alcohol testing.

4) FRA Post-Accident Drug/Alcohol Testing – (49 CFR 219.201)

FRA regulations require blood and urine specimens from all surviving **regulated service personnel** when they are directly involved in a qualifying accident or incident. Tissues are also collected, in addition to urine and blood from any fatality involving an on-duty railroad employee (**direct or "regulated service" contractual employee**). Events requiring FRA post-accident testing include (note regulatory exceptions will be followed):

1. **Major Train Accident** involving any rail equipment accident with reportable damages in excess of the current calendar year reporting threshold under 49 CFR Part 225 and one or more of the following:
 - a. A fatality (any fatality).
 - b. A release of hazardous materials from railroad "lading" that results in an evacuation or reportable injury caused by the hazmat release.
 - c. Damage to railroad property of **\$1.5 Million** or more.
2. **Impact Accident** involving reportable damage in excess of the current reporting threshold that results in:
 - a. A reportable injury; or
 - b. Damage to railroad property of \$150,000 or more.

3. **Fatal Train Incident** involving any on-duty railroad employee or regulated contractor employee where damages do not exceed the current reporting threshold.
4. **Passenger Train Accident** with a reportable injury to any person in a train accident involving damage in excess of the current reporting threshold that involves a passenger train.

5. **Human-Factor Highway-Rail Grade Crossing Accident/Incident** meeting one of the following criteria:

- i. Regulated employee interfered with the normal functioning of a grade crossing signal system, in testing or otherwise, without first providing for the safety of highway traffic that depends on the normal functioning of such a system, as prohibited by § 234.209, is subject to testing.
- ii. Train crewmember who was, or who should have been, flagging highway traffic to stop due to an activation failure of a grade crossing system, as provided § 234.105 (c)(3), is subject to testing.
- iii. Regulated employee who was performing, or should have been performing, the duties of an appropriately equipped flagger (as defined in § 234.5), but who failed to do so, due to an activation failure, partial activation, or false activation of the grade crossing signal system, as provided by § 234.105 (c)(1) and (2), 234.106, or 234.107 (c)(1)(i), is subject to testing.
- iv. If there is a fatality of any regulated service employee regardless of fault. (fatally injured regulated employee must be tested)
- v. If regulated employee violates an FRA regulation or railroad operating rules and whose actions may have played a role in the cause or severity of the accident/incident, is subject to testing.

Testing Decision: For an accident that meets the criteria for a Major Train Accident, all assigned **crew members of all involved trains and on-track equipment must be tested.** Test any other regulated service employees that had a possible role in the cause or severity of the accident.

For an Impact Accident, Fatal Train Incident, Passenger Train Accident or Human- Factor Highway-Rail Grade Crossing Accident/Incident, Test any other regulated service employees that had a possible role in the cause or severity of the accident. The railroad must exclude other regulated service employee if the responding railroad representative

can immediately determine, on the basis of specific information, that the employee had no role in the cause(s) or severity of the accident/incident (considering any such information immediately available at the time).

For a fatal train incident, the fatally injured employee cannot be excluded from being tested.

If there is a fatality of any regulated service employee as result of a Highway-Rail Grade Crossing Accident/Incident, the fatally injured regulated employee must be tested regardless of fault.

Exceptions from Testing: No test may be required in the case of a collision between railroad rolling stock (including any on-track equipment) and a motor vehicle or other highway conveyance at a rail/highway grade crossing, unless it meets the criteria set forth above in Item 5 (i-v).

No test may be required in the case of an accident/incident the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado, or other natural disaster) or to vandalism or trespasser(s), as determined on the basis of objective and documented facts by the railroad representative responding to the scene.

The railroad supervisor(s) on the scene will make timely determinations as to the event being a qualifying event and which regulated service employees (if any) are required to be tested according to the rule.

This railroad will identify the appropriate personnel who must be tested and then ensure that specimens are collected and shipped.

Collection of Urine and Blood Specimens: Employee specimens will be collected at a medical facility, i.e., hospital, clinic, physician's office, or laboratory where toxicological specimens can be collected according to recognized professional standards. Specimen collections will be accomplished using the FRA Post-Accident Toxicological Testing Kit. Specimens will be collected, packaged, and shipped via express courier service by the railroad. The shipping address is as follows:

Quest Diagnostics 1777
Montreal Circle
Tucker, GA 30084
1-800-729-6432
Fax: 678-406-1037

A. Random Drug and Alcohol Testing – (49 CFR 219.601)

The railroad is responsible for ensuring that the random program meets regulatory requirements and is approved by FRA (see Appendix A). The principles which are required in the FRA regulation for the plan to be in compliance are attached (see Appendix B). The selection process will ensure that each regulated service person has an equal chance of being selected at every random selection. The random plan shall ensure that testing is accomplished at the beginning and at the end of the duty period for alcohol. The minimum annual random percentage of alcohol testing at either end of the duty period is 10 percent over the course of the year.

Regulated Service (Covered Service)

Current employers must test at a minimum of **25 percent annual rate for drugs and 10 percent annual rate for alcohol** for employees who perform regulated duties subject to the Federal Hours of Service Laws “**Covered Service**”. A railroad is permitted to test at a higher rate than the minimum. A railroad is permitted to test at a higher rate than the minimum. You must identify if you are testing at a higher rate and if so, the rate(s): SMART has elected to test Covered Service Personnel at 25% for drugs and 10% for alcohol.

Regulated Service (Roadway Worker)

Beginning June 12, 2017, Current employers must test at a minimum **50 percent annual rate for drugs and 25 percent annual rate for alcohol** for employees who perform regulated duties defined as “**Roadway Worker**” in 49CFR § 214.7. A railroad is permitted to test at a higher rate than the minimum. You must identify if you are testing at a higher rate and if so, the rate(s): SMART has elected to test Roadway Workers at 50% for drugs and 25% for alcohol.

Random Testing Pools:

- a) Identify and maintain an up-to-date database or list of all personnel working in regulated service (at least once per quarter) and ensure they are all in the random pool(s). Identify how many random testing pools you have. For example, most short line railroads will have only one random pool, but larger railroads may have multiple pools (**FRA recommends Roadway Workers be placed in separate and stand-alone random pools. Railroads not normally required to submit MIS reports as required by 49 CFR Part 219.800 should contact Sam Noe to discuss the combining of random pools**):

SMART and ADTS will maintain the following pools:(1) DOT/FRA Hours of Service Pool (Stand-alone pool) ; and (1) MOW/Roadway worker Pool (To be included in a ADTS consortium pool)

- b) Identify what regulated service employee crafts/functions are in each of the railroad's random testing pool(s). For example, engineers, conductors, brakemen, switchmen, utility employees, hostlers, mechanical employees performing hostling duties, train dispatchers, signal maintainers, roadway workers, etc.

Covered Service Pool will include: Engineer, Conductor, Engineer- Conductor, Controller/Supervisor, Vehicle Maintenance Technician, Vehicle Maintenance Supervisor, Signal Technician, Signal Technician Supervisor, Bridge Tenders; MOW/Roadway Worker Pool Will include: Track Maintainers, Track Maintenance Supervisor

Random Selection and Testing Procedures:

1. There is only one preferred method of selection: A computer program. The lottery style, e.g., drawing names out of a hat is no longer an acceptable method of selection. Identify your company's name of the Computer Program being utilized and provide a description by attaching an Appendix C at the end of this document: Random Ware.
2. Identify whether your railroad is making selections by name, ID number, train number, job number, etc. ID Number
3. Random Pool for MOW are in a consortium and HOS is a stand-alone pool managed by a Third Party Administrator (TPA): Yes ☒ No ☐
4. If using C/TPA pools, please provide name of the C/TPA pool: SMART's MOW pool will be in the ADTS DOT-MOW/Roadway Worker Consortium.
5. If your railroad is using a consortium/third party administrator (C/TPA) to assist in random testing, identify the following information for the C/TPA:
Name of C/TPA: ADTS, LLC
Address: 201 Hobson Ave, Suite B
Hot Springs, AR 71913

Contact Person: Deanna Shannon_

Phone: 501-574-9711

Please mark the following services the C/TPA are performing for your railroad:

_____ None

X Random Pool Maintenance

X Random Pool Selections

X Collection Services - Drug

X Collection Services - Alcohol

X HHS Laboratory

X Medical Review Officer (MRO)

_____ Substance Abuse Professional (SAP)

_____ Employee Assistance Professional (EAP)

_____ Drug and Alcohol Counselor (DAC)

X Other: MOW Consortium Management

6. Identify how often your railroad is making selections, e.g., monthly or quarterly:

Both pools are Monthly

Note: If selecting quarterly in order to maintain the deterrent effect of random testing for very small railroads and contractors, FRA is requiring each individual random testing pool established under subpart G to select and randomly test at least one entry per quarter, even if fewer tests are needed to meet FRA's minimum random testing rates.

Objective Procedure, if making quarterly selections:

7. Identify how you determine whether a selection is to be tested for drugs, for alcohol, or both:

Based TPA Random Selection Results.

8. Identify your testing "window," e.g., 30 days.

30 Days Testing Window, not to exceed the end of the month.

Note that if you're making monthly selections, the testing windows may not exceed 30 days and not past the end of the month. If you're making quarterly selections, the testing window is 90 days but not past the end of the quarter.

9. Provide additional descriptions of your random testing selection procedure, as applicable: See Appendix C _____
-
-
10. This railroad will safeguard these selection records to ensure that information concerning collection dates and selections are not disclosed until necessary to arrange for collection or provide notifications.
11. These random testing records are required to be maintained for 2 years. This includes an electronic or hard copy “snapshot” of the random testing pool each time selections are made, a copy of the list of selected employees, a copy of the drug chain of custody form and/or alcohol testing form, and the reason for not testing any of the selected employees.
12. In the event that all or a clearly defined portion of the railroad is subject to an emergency such as a flood or severe ice storm, the ranking operations officer on duty is authorized to declare an emergency by completing a memorandum setting forth the facts necessitating this action. If such an emergency determination is made, the date/time of the emergency and random drug/alcohol tests that were suspended must be entered into the DER’s files. Random selections not administered because of the emergency are deemed void, and the selection numbers will be adjusted later to make the required percentage.
13. Only a substantiated medical emergency involving the selected person or an emergency involving an immediate family member (e.g., birth, death, or a medical emergency) provides the basis for excusing a regulated employee/person from being tested once notified. A medical emergency is defined as an acute medical condition requiring immediate emergency care. A person excluded under these criteria must provide substantiation from a credible outside professional (e.g., doctor, hospital, law enforcement officer, school authority, court official) which can be furnished prior to this release or within a reasonable period of time after the emergency has been resolved. Such excluded (excused) persons will not be tested based on this selection.
14. Once the regulated service person selection is made, the DER will arrange notification. No prior notification will be given. A selected person will only be tested during his/her tour of duty, extended only long enough to complete testing but not to exceed Federal hours of service law requirements. The person, once notified, must proceed to the selected testing facility IMMEDIATELY. Identify how your railroad will notify selected employees: SMART will provide with employee’s supervisor (or designee) with a written form notification that the supervisor will deliver to the employee immediately

prior to the scheduled test.

15. The collection date and time during the selection period (testing window) will be varied by the DER to ensure that it cannot be anticipated. It is not necessary for the railroad to randomly select the “testing date.”

V. Drug Testing Procedures

The designated collection agents will be qualified and follow the proper collection procedures as described in 49 CFR Part 40.

- a. The Medical Review Officer (MRO) will review drug test results as required in 49 CFR Part 40. All test results will be reported exclusively through the MRO.
- b. A laboratory certified by the Department of Health and Human Services/ Substance Abuse and Mental Health Service Administration (DHHS/ SAMHSA), under the Mandatory Guidelines for Federal Workplace Drug Testing Programs, will perform all drug testing.
- c. Test results will be reported from the laboratory only to the MRO for review and action consistent with 49 CFR Part 40. The name of the individual providing the specimen will remain confidential and will not be provided to the laboratory performing the test. The testing laboratory is only able to identify the specimen by the specimen ID number printed on the chain-of-custody form. The laboratory will only use a urine custody and control form consistent with the requirements of 49 CFR Part 40.
- d. The designated laboratory will only test for the drugs listed in 49 CFR 40.85.
- e. The MRO will verify the results and report (using procedures in 49 CFR Part 40) to the DER whether the test was positive or negative and the drugs for which there was a positive result.

VI. Alcohol Testing Procedures

Breath alcohol testing will be performed by fully trained and certified Breath Alcohol Technicians (BAT) using the National Highway Traffic Safety Administration (NHTSA) approved testing devices. The results will be documented on an approved Federal Breath Alcohol Testing Form and will be signed by the employee and the BAT. At the time of the alcohol test, the employee will receive a copy of the test result, with an identical copy

being sent to the railroad's DER.

- a. Negative results. The DER will be mailed a copy of the negative test results.
- b. Positive results. The BAT will immediately and directly notify the railroad's DER if the test results are positive (0.02 percent or higher) who will take appropriate action to remove or restrict the employee from regulated service as required by Part 219.

VII. Drug Test Results

For any FRA testing, the railroad should as a "best practice" notify the employee in writing of test results.

Positive or Otherwise Non-Negative Results. If the laboratory reports the drug test result as POSITIVE or otherwise non-negative, the following procedures will be followed:

- a. The MRO will immediately inform the regulated service person of the result and offer the person the opportunity for an interview to discuss the test result. If the MRO has difficulty reaching the employee, the procedures set forth in 49 CFR 40.131 will be followed.
- b. The MRO will complete and document the review as required by 49 CFR Part 40 Subpart G, determining if the external chain of custody was intact, if the person has a legitimate medical explanation for the presence of any controlled substance, and whether there is any basis to question the scientific sufficiency of the test results. In the case of an opiate positive, the MRO will also make the special determinations required by the regulation.
 - c. If the MRO verifies the test result as positive, the MRO will report the result to the railroad's DER. If the MRO determines that the result is non-negative and the non-negative result cannot be explained, the appropriate regulatory action will be pursued. The MRO will report the verified test result in accordance with 49 CFR § 40.163. The MRO will not provide the DER with the quantitative test results unless the employee, as stipulated in the regulation, disputes the test.

Negative results. If the MRO has determined that the drug test is NEGATIVE, the MRO will accomplish the required administrative review and report the negative results to the railroad's DER in accordance with 49 CFR § 40.163.

Negative-dilute results. Unless the MRO directs a railroad to conduct a recollection under direct observation (for a result with creatinine from 2 to 5 mg/dL), per 40.197, a negative-

dilute is considered a negative test, although a railroad may, but is not required to direct the employee to immediately take another test. Such recollections must not be collected under direct observation unless there is another basis to do so. A railroad must treat all regulated employees the same. For example, it must not retest some employees and not others. A railroad may establish different policies for different types of tests (e.g., conduct retests in pre-employment situations, but not in random test situations). **This railroad's policy for negative-dilutes is as follows:** SMART will conduct recollection for negative-dilutes for pre-employment tests only.

VIII. Confidentiality

- a. Medical information a regulated person provides to the MRO during the verification process is treated as confidential by the MRO and is not communicated to the railroad except as provided in Part 40.
- b. Confidentiality of Federal drug or alcohol testing results will be maintained as required by the regulations. For example:
 1. The laboratory observes confidentiality requirements as provided in the regulations. This railroad does not advise the laboratory of the identity of persons submitting specimens. The laboratory performing the testing must keep all records pertaining to the drug test for a period of two years.
 2. All test results will remain exclusively in the secure files of the MRO. The MRO will observe strict confidentiality in accordance with the regulations and professional standards. The MRO will retain the reports of individual test results as required in Part 219 Subpart J.

- IX.** The DER will maintain all test results reported by the MRO, both positive and negative, in secure storage. The results will be retained as required in Part 219 Subpart J. Other personnel will be informed of individual test results only in the case of positive tests and authorized only on a need-to-know basis Regulated Service Personnel Training Program (49 CFR 219.11)

Each regulated service person will receive a copy of this policy and the other information requirements in 49 CFR Part 219.23 (e) which clearly states the prohibitions required by the regulation. In addition, each regulated person will be given information concerning the problems caused by alcohol or controlled substances and available methods of intervening when an alcohol or controlled substance problem is suspected, including confrontation, referral to an employee assistance program and/or referral to management.

X. Prescription Drugs (40 CFR 219.103)

The use of controlled substances (on Schedules II through V of the controlled substance list) is not prohibited as long as they are prescribed or authorized by a medical practitioner and used at the dosage prescribed or authorized. Either one treating medical professional or a railroad-designated physician should determine that use of the prescription(s) at the

prescribed or authorized dosage is consistent with the safe performance of the employee's duties. Regulated service employees should also seek the advice of a medical professional whenever they are taking any over-the-counter drug that may adversely affect the safe performance of duties.

XI. Compliance with Testing Procedures

- a. All regulated service personnel/applicants requested to undergo a Federal drug and/or alcohol test are required to promptly comply with this request. This railroad expects all prospective and current regulated service personnel to exercise good faith and cooperation in complying with any procedures required under this policy. Refusal to submit to a Federal drug or alcohol test required under FRA rules, engaging in any conduct which jeopardizes the integrity of the specimen or the reliability of the test result, or any other violations of the prohibited conduct in 49 CFR 219.101 or 219.102 could subject the person to disciplinary action (up to and including termination), independent and regardless of any test result. This includes failure to show up on time for a drug/alcohol test, failing to remain at the testing site until the testing process is complete, etc. (see 40.191).
- b. All DOT Federal return-to-duty and follow-up urine specimens must be collected under direct observation (using the direct observation procedures in 40.67 (i)). Note that a SAP may also require return-to-duty and follow-up "drug" tests in addition to alcohol tests following an alcohol positive of 0.04 percent or greater.
- c. Direct Observation Urine Collection Procedures: The collector (or observer) must be the same gender as the employee. If the collector is not the observer, the collector must instruct the observer about the procedures for checking the employee for prosthetic or other devices designed to carry "clean" urine and urine substitutes AND for watching the employee urinate into the collection container. The observer will request the employee to raise his or her shirt, blouse or dress/skirt, as appropriate, above the waist, just above the navel; and lower clothing and underpants to mid-thigh and show the observer, by turning around, that the employee does not have such a device.
 - 1) If the employee has a device, the observer immediately notifies the collector; the collector stops the collection; and the collector thoroughly documents the circumstances surrounding the event in the remarks section of the testing form. The collector notifies the DER. This is a refusal to test.
 - 2) If the employee does not have a device, the employee is permitted to return his/her clothing to its proper position for the observed collection. The observer must watch the urine go from the employee's body into the collection container. The observer must watch as the employee takes the specimen to the collector. The collector then completes the collection process.

- 3) Failure of the employee to permit any part of the direct observation procedure is a refusal to test.
- d. As a minimum, a regulated service person will be removed from FRA regulated service for a minimum of nine months if there is a finding of “refusal to test.”

XII. Positive Test Results

- a. **Alcohol positive of 0.02 to 0.039:** Regulated service personnel should receive written notification of test results which are other than negative. A Federal positive drug test or a Federal alcohol test result of 0.02 percent or greater or a refusal to test will result in immediate removal from regulated service under FRA regulations. A positive alcohol test of at least 0.02 percent but less than 0.04 percent will result in the removal of the person from regulated service for at least eight hours. The railroad is not prohibited from taking further action under its own company policy.
- b. **Federal violation:** A regulated service person with an MRO verified positive drug test or a breath alcohol test result of 0.04 percent or greater (or a refusal) has violated Federal regulations and must be immediately removed from regulated service. Prior to or upon withdrawing the employee from regulated service, the railroad must provide notice to the employee of the reason for this action. If the employee denies that the test result is valid evidence of alcohol or drug use prohibited by 219.101 or 219.102, the employee may demand and must be provided an opportunity for a prompt post-suspension hearing. **See 219.104 (c) for the hearing provisions.**

Even if the railroad does not wish to keep the employee in its employment, it must provide the above hearing (if requested) and at a minimum provide the employee with a list of qualified Substance Abuse Professionals. Prior to returning to regulated service the employee will be required to undergo an evaluation by a

qualified Substance Abuse Professional (SAP) that is railroad approved, to determine the need for treatment and/or education. The employee will be required to participate and comply with the SAP-recommended treatment and any after-care or follow-up treatment that may be recommended or required.

After successful treatment, for a Federal positive drug test (or alcohol test result of 0.04 percent or greater), per the SAP’s requirements, the person must provide a Federal return-to-duty urine specimen and/or breath specimen for testing (which is negative) prior to being allowed to return to regulated service. In addition, the person will be subject to additional unannounced Federal follow-up testing, as determined by the SAP, for a maximum period of 60 months, with a minimum of six tests being performed in the first

twelve months (**engineers and conductors – SAP with require a minimum of 6 drug tests and 6 alcohol tests in the first 12 months**). Failure to comply with these provisions and remain alcohol and/or drug-free will result in subsequent removal from regulated service and could result in disciplinary action, up to and including termination. Note: Federal regulation does not guarantee the employee will maintain an employment relationship. This is determined via employer and employee negotiation. These Federal return-to-duty and follow-up drug tests must be collected under direct observation.

- c. Identify other employer sanctions (if applicable) for a Federal alcohol test result of at least 0.02 percent but less than 0.04 percent:

SMART employees will be removed from covered service until their next regularly scheduled duty, but for not less than 8 hours. They need not be evaluated by a SAP, nor are they required to comply with any other FRA requirements before returning to duty.

Identify other employer sanctions (if applicable) for a Federal alcohol test result of 0.04 percent or greater:

SMART will follow the FRA regulations in this instance. Employees who violate the drug and alcohol policy with a 0.04 percent or greater alcohol test result positive drug test result will be removed from the workplace immediately. An employee will be required to enter a DOT SAP process. Any employee who fails to successfully complete the program will be terminated from employment.

Identify other employer sanctions (if applicable) for a Federal positive drug test: SMART will follow the FRA regulations in this instance. Employees who violate the drug and alcohol policy with a positive drug test result will be removed from the workplace immediately. An employee will be required to enter a DOT SAP process. Any employee who fails to successfully complete the program will be terminated from employment.

XIII. Self-referral, Co-worker referral, and Non-peer referral (optional) Policies

This railroad's policy to comply with 49 CFR Part 219.1001 and 49 CFR Part 219.1003 is as follows:

Employment Relationship. As per 219.1003(b), a regulated employee who enters and follows the tenants of this program as discussed below, will maintain his or her position upon successful completion of an education, counseling, and treatment program as specified by a Drug and Alcohol Counselor (DAC). Before the employee is charged with conduct sufficient to warrant dismissal, the employee must seek assistance through the railroad for his or her alcohol or drug use problem or be referred for such assistance by another employee or by a representative of the employee's collective bargaining unit.

Imminent Detection. An employee may not use the referral program for the purpose of avoiding the imminent and probable detection of a rule violation by a supervising employee. No employee may take advantage of self-referral after being notified of a testing event or while in imminent risk of being detected for possession of alcohol or controlled substances.

Reasonable Suspicion. In the case of a Co-worker referral or a Non-peer referral (optional), if the employee accepts the referral and has agreed to a Rule G waiver, there is no need for the railroad to perform a Federal reasonable suspicion test. If the Federal reasonable suspicion test occurs, the referral takes precedence and a written request shall be submitted to the FRA Drug and Alcohol Program Manager for permission for reclassification to non-DOT status. This will allow the employer to vacate the return-to-duty and follow-up (RTD/FU) requirements of the reasonable suspicion test violation.

Thus, the co-worker referral will take precedence and all subsequent RTD/FU testing will be appropriately conducted under non- DOT/company authority as per Part 219 Subpart K. In this scenario, the reasonable suspicion positive test result(s) are not subject to 49 CFR Part 40.25 requests from any subsequent DOT-regulated employers.

In the case of a Co-worker referral or a Non-peer referral (optional), when the employee does not accept the referral and does not agree to a Rule G waiver, the railroad must properly observe the employee for signs and symptoms of alcohol and/or drug use/misuse. If signs and symptoms are observed, the railroad must perform a Federal reasonable suspicion testing. In this scenario, the reasonable suspicion positive test result(s) are subject to DOT-regulated RTD/FU testing and 49 CFR Part 40.25 requests from any subsequent DOT-regulated employers.

Referral Sources. The railroad must specify whether, and under what circumstances, its policy provides for the acceptance of referrals from other sources, including (at the option of the railroad) supervisory employees. Identify acceptable referral sources besides the affected regulated service employee:

Coworkers only.

This company accepts referrals from non-peer sources? Yes

☐ No ☒

Examples of non-peer sources include friends and family, etc. that contact the railroad. A railroad representative will meet with the employee in person regarding the information

and determine whether the employee is unsafe to work with or in violation of 49 CFR Part 219. If the railroad representative determines that employee is unsafe, the employee may either accept or reject the referral.

If rejected, a railroad representative trained in signs and symptoms would perform a Rule G observation on the employee in question. If signs and symptoms are present, then the railroad representative would order reasonable suspicion testing of the on-duty employee.

General Conditions. If the employee accepts the referral they must contact the DAC within 3 days.

The employee must cooperate with the DAC in the recommended course of counseling or treatment. Locomotive engineers and conductors that do not cooperate with the DAC will be considered to have active substance abuse disorders as per 49 CFR Part 240.119 and 49 CFR Part 242.115 and would have their confidentiality waived.

Once an employee has contacted the DAC, the DAC's evaluation shall be completed within 10 working days. If more than one evaluation is required, the evaluations must be completed within 20 working days.

No follow-up treatment, care, or testing shall exceed 24 months unless it involved a Part 219 violation.

Confidentiality. The railroad treats the referral and subsequent handling, including counseling and treatment, as confidential. With respect to a certified locomotive engineer, conductor or a candidate for certification, the policy of confidentiality is waived (to the extent that the railroad shall receive from the Employee Assistance Professional (EAP) or DAC, official notice of the substance abuse disorder and shall suspend or revoke the certification, as appropriate) if the person at any time refuses to cooperate in a recommended course of counseling or treatment. Any drug and/or alcohol testing conducted pursuant to this railroad's referral policy is non-Federal testing because a violation of Federal regulations has not occurred.

Leave of Absence. The railroad will grant a minimum leave of absence that the DAC recommends to complete a primary education, counseling, or treatment program and to establish control over the employee's drug or alcohol abuse problem. An employee with an active substance abuse disorder may not perform regulated service until the DAC reports that safety is no longer effected.

Return to Service. The employee will be returned to service on the recommendation

of the DAC. The employee must be returned to service within five working days of the DAC's notification to the railroad that the employee is fit to return to regulated service and the receipt of a follow-up testing plan as per Part 219.1003(h)(2). The railroad may condition the employee's return on a return-to-duty medical evaluation.

This railroad requires a return-to-duty medical evaluation? Yes

☐ No ☒

Compensation. 49 CFR Part 219.1001(d)(1) does not require the railroad to compensate the employee for any period that the regulated employee is restricted from performing regulated service under the referral program. However, compensation at a nominal rate has been seen to markedly increase participation in the referral program to enhance safety at the railroad.

This railroad compensates employees while engaged in a referral program of education, counseling, and treatment? Yes

☐ No ☒

Compensation is at _____% of regular pay while participating in a referral program.

Self-referral: Regulated employees may contact the DAC at the following telephone and/or email address and contact hours:

<u>Drug and Alcohol Counselor (DAC):</u>	
Contact:	Lisa Wolper
Address:	825 College Ave Santa Rosa, CA 95404
Phone:	707-524- 8864

Optional Provisions.

1. The policy may provide that it does not apply to an employee who has previously been assisted by the railroad under a policy or program substantially consistent with 49 CFR Part 219.1005(c) or who has previously elected to waive investigation under 49 CFR Part 219.1005 (co-worker report policy).

Adopts this option: Yes

☒ No ☐

If you checked the above option "No", please identify how many times and/or at what intervals an employee may use the referral programs: An employee may only utilize this option once over the course of their employment with SMART.

2. A referral policy may provide that the rule of confidentiality is waived if the employee at any time refuses to cooperate in a DAC's recommended course of counseling or treatment; and/or the employee is later determined, after investigation, to have been involved in an alcohol or drug related disciplinary offense growing out of subsequent conduct. Identify whether you adopt the first, second or both options.

Adopts First Option: Yes ☒ No ☐

Adopts Second Option: Yes ☐ No ☐

Adopts Both Options: Yes ☐ No ☐

3. The policy may provide that, in order to invoke its benefits, the employee must report to the contact designated by the railroad either during non-duty hours (i.e., at a time when the employee is off duty); or while unimpaired and otherwise in compliance with the railroad's alcohol and drug rules consistent with 219.1005(d). Identify whether you adopt this optional provision:

Adopts this option: Yes ☒ No ☐

4. The policy may require successful completion of a return-to-service medical examination as a further condition on reinstatement in regulated service. Identify whether you adopt this optional provision:

Adopts this option: Yes ☐ No ☒

5. Other Optional Provisions: _____

Co-worker referral General Conditions and Procedures.

1. The alleged violation must come to the attention of the railroad as a result of a report by a co-worker that the employee was apparently unsafe to work with or was, or appeared to be, in violation of Part 219 or the railroad's alcohol and drug rules.
2. If the railroad representative determines that the employee is in violation, the railroad will immediately remove the employee from service in accordance with its existing policies and procedures. The railroad must allow the employee the opportunity to accept the co-worker referral. If rejected, the railroad may proceed to reasonable suspicion testing based on signs and symptoms of prohibited alcohol or drug use as determined by a trained supervisor.

Alternate Programs.

The railroad may request FRA to consider the following alternate program to fulfill the requirements under 49 CFR Part 219.1001 with more favorable conditions to regulated employees troubled by drug or alcohol abuse problems. The alternate program must have the concurrence of the recognized representatives of the railroad employees as per 49 CFR Part 219.1007(b):

If applicable enter alternate program in this box.

This company requests FRA to consider an alternate program for consideration? Yes ☐ No ☒

Submit to the FRA Drug and Alcohol Program Manager at:

U.S. Department of Transportation
Federal Railroad Administration, Office of Railroad Safety - RRS-19
1200 New Jersey Avenue SE
Washington DC 20590

##

APPENDIX A

Once the FRA has approved a Random drug and alcohol testing plan, the railroad will receive an approval letter, which includes these conditions.

STANDARD APPROVAL CONDITIONS FOR RANDOM TESTING PROGRAMS

1. This approval is effective upon receipt with respect to all matters within its scope. FRA reserves administration jurisdiction over all approvals and may reopen review based upon experience gained during implementation (audits).
2. Approval of the subject random testing program does not constitute or imply the granting of a waiver or exemption from any provision of Federal law or regulation. Compliance with all applicable provisions of 49 CFR Parts 219 and 40 is required. All random program plans must be applied in accordance with the criteria listed in this Appendix A and Appendix B.
3. Approval is contingent upon the railroad making appropriate amendments to the program to conform to any pertinent regulatory amendments that may be issued hereafter. Any such program amendments that may be required shall be submitted to the Associate Administrator for Safety at FRA by the effective date of the subject regulatory amendments, or by the expiration of 30 days from publication of the regulatory amendments in the *Federal Register*, whichever is later.
4. Amendments to the program shall be submitted as required by 49 CFR 219.605 and 49 CFR 219.607 and 49 CFR 219.609 and shall not be implemented prior to approval. The following guidance is provided with respect to when a program is deemed to have been amended.
 - A. Any change in the selection methodology, the criteria for scheduling collections, non-availability criteria, or other structural element is a program amendment. Any change in the organizational level at which a function is carried out is a program amendment.
 - B. Substitution of incumbents performing the same function at the same organizational level (persons or contractors/volunteers) is not deemed to amend the program. Notification of these changes would be appreciated to assist FRA in maintaining liaison but is not required.
 - C. Any change in a program that is occasioned by an amendment of an applicable DOT/FRA regulation and that involves the exercise of discretion to choose between or among one or more courses of action is a program amendment required to be filed under item 3 above. Any non-discretionary change in a program that is required by amendment of an applicable DOT/FRA regulation is not considered a program amendment requiring approval; however, the Office of Safety, FRA, would appreciate receipt of an informational copy of the revised program document showing current compliance.

- D. Any case not addressed above may be resolved by contacting the Office of Safety, Administrator for Safety or that individual's delegate.

APPENDIX B

CRITERIA FOR ASSESSING DEPARTMENT OF TRANSPORTATION (DOT) RANDOM DRUG AND ALCOHOL TESTING PROGRAMS

Section I. Random Testing Pools

- A. Random pool(s) must accurately and completely include all regulated service personnel. Whoever is performing the safety-sensitive “regulated service”, regardless of job title or status, is subject to 49 CFR Part 219 requirements (supervisors, volunteers, contractors, etc.). Pool lists must be retained for a minimum of two years.
- B. An employer may not mix regulated service and non-regulated service personnel in the same pool.
- C. Multiple pools for an employer are acceptable.
- D. Employees do not need to be placed in separate pools for drug and alcohol testing selection.
- E. Employees from different DOT operating administrations can be included in the same pool. It is strongly recommended, however, that employers not mix groups of personnel subject to different drug or different alcohol testing rates (i.e., having some employees subject to a 50% rate for drugs and other employees subject to a 25% rate in the same pool). If they do, they must test the entire pool at the highest selection rate for any of the groups with personnel in the pool.
- F. Pools may not be diluted with regulated service personnel who rarely perform regulated service duties (i.e., less than once per quarter).
- G. Pools must be routinely updated (i.e., at least monthly for employers with either a changing workforce or seasonal employees; and quarterly for employers with a generally stable workforce).
- H. Besides individual employees, specific jobs (i.e., third shift main dispatcher at XYZ location) or operational units (i.e., trains) may also be pool entries. However, there may not be a significant difference in the size of the entries in the pool.
- I. Pool entries may not be constructed in a way which could result in a manager/supervisor having discretion as to who would be actually provide a sample (e.g., a specific job cannot be selected with multiple people working in it at the same time, but with only one to be tested).

Section II. Random Selections

- A. Everyone in a pool must have an equal chance of selection in each selection period.
 - 1. No individual, job, or operational unit may be removed from the pool if it

is still actively performing regulated service. However, employees doing de minimus regulated service may be eliminated from the pool (see Section I.-F). There may be no selections without replacement (i.e., an individual cannot be removed from the pool because he or she was previously tested).

2. No selection weightings are allowed which would increase or decrease the chance of any individual being selected.
- B. The following selection options are acceptable. Note that manual selection using names or social security numbers drawn out of a hat (or equivalent) is no longer an acceptable practice:
1. Computer programs which randomly select entries from an employee list without apparent bias. The specific selection criteria used by the computer must be extensively detailed in writing, and each computer draw must be retained as a record for a minimum of two years; or
 2. Manual selection from a list of employees using a random-number table. The specific criteria used to select from the table must be documented in writing, including detail on how the initial starting point in the table was determined. Each draw, as well as a copy of the table portion used, must be retained as a record for a minimum of two years.
- C. If the employee testing pool is so small that it does not allow testing each selection period, then the employer must have in place a mechanism to randomly determine which selection periods will have selections and which will not. The specific criteria used to make this determination must be detailed in writing and the determination itself must be retained as a record for a minimum of two years.
- D. If required drug and alcohol testing rates are different (i.e., 25% for drugs and 10% for alcohol) and a single pool is being used, it is permissible to select one list of employees and designate a proportion for both drug and alcohol testing and a proportion for drug testing only. The specific criteria used to make this determination must be detailed in writing, and the master selection list with both sub-groups clearly identified must be retained as a record for a minimum of two years.
- E. Employers should carefully monitor significant changes in its workforce in order to ensure that an appropriate number of tests will be conducted each year. Unless otherwise directed by the DOT Operating Administration, changes in the employee base of greater than 10% in a quarter should result in a recalculation of total tests required.

Section III. Implementation of Random Collections

- A. Collections must be distributed unpredictably throughout the designated testing period, covering all operating days (including holidays) and shifts (24- hour clock). There is no expectation that day/night or shift collection

distributions be equal but there has to be sufficient testing to establish deterrence by generally mirroring employer operations.

- B. Collections must be unpredictable within a work shift (some collections must be conducted at the beginning, middle, and end). There is no expectation that “within-shift” collection distributions be equal. Sufficient testing must be conducted at the start, middle and end of shifts to provide deterrence. Both beginning of and ending of shift collections are particularly important. For alcohol testing, at least 10% of successful collections must fall within each period of the shift.
- C. No discretion is allowed with collection dates or collection times which would result in a subjective choice by a field manager/supervisor as to who was actually collected. That is, if a test time frame is permitted in the employer’s program, a manager/supervisor with knowledge of specific personnel assignments may not have discretion in the selection of who will be tested.
- D. Specific reasons for “no-tests” must be documented in writing by the employer, with records maintained for two years. Acceptable reasons for no-tests should relate to critical safety concerns, unforeseen or unpredictable significant adverse impact to operations, or employee illness or vacation.

Section IV. Record

All records which support the random testing program, including notes, memoranda, pool makeups, number tables, etc., must be retained for a minimum of two years.

APPENDIX C

Random Selection and Uniform Distribution: How Fairness is Guaranteed.

Drug and alcohol testing is a controversial practice and the issue of "fairness" looms at the heart of the random testing procedure. The individual who is "randomly" selected always questions the fairness of the practice and will likely consider it biased at best. In the event someone is randomly selected on a subsequent occasion, fairness becomes an even greater issue. The drug test program administrator who understands the mechanics of computer-generated random selections can help avoid the negative mindset fostered by misconceptions of discrimination and fairness.

The U.S. Department of Transportation (DOT) regards computer generated random selection compliant with their regulations as noted: CITE 49CFR382.3or; Subpart (i) (Department of Transportation TITLE

49) (i) The selection of drivers for random alcohol and controlled substances testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each driver shall have an equal chance of being tested each time selections are made. The single point defining the requirement is the hardest to adequately defend with a short explanation but is really quite simple: "...each driver shall have an equal chance of being tested each time selections are made...". The guarantee of "equal chance" is the provision for a fair and unbiased selection. The mathematical property of "uniform distribution" is the guarantee of "equal chance." If a random selection process provides everyone an equal chance of selection, then it must generate random numbers with uniform distribution.

The flip of a coin provides the simplest example. The procedure must first be well defined: Flip a coin adequately high into the air and allow it to land on a hard surface from which it will bounce with reasonable energy. If you flip the coin twice, it can very likely land "heads" both times. In fact, if you flip it three or four times it's possible it may land "heads" each time. If, however, you were to flip the coin 1000 times, the difference between the number of heads and tails is likely to be small. As you significantly increase the number of coin tosses, the difference will tend to zero. In a simple, yet straightforward way, this procedure demonstrates the uniform distribution of the possible outcomes and the equal chance the coin will land heads or tails.

How does this relate to random selection for drug and alcohol testing? Consider the fairly routine procedure to randomly select 10 individuals from a list of 100. If you conduct the procedure only a few times, uniform distribution can't be adequately demonstrated. If you conduct the selection 1000 times, and the routine generates outcome with uniform distribution, each of the 100 individuals will be selected in relatively equal numbers, each person will be picked approximately 10 times. This demonstrates uniform distribution.

Computer driven random number generators reliably produce results with uniform distribution. If you're using software to randomly select drug and alcohol testing participants, you can easily put the system to a simple test.

The following procedure will provide reasonable evidence: Ask the system to randomly pick 10 numbers between 1 and 100, and ask it to do it 1000 times, consecutively. The resulting list will contain ten thousand (10,000) numbers, each between 1 and 100. If you sort the list it's easy to determine the relative frequency of each number. Simply ask the software to count the occurrence of each number generated if it has the capability. If the randomization algorithm generates numbers with uniform distribution, each number, 1,2,3,4,... 100, will appear in the list with approximately equal frequency, i.e., each number, 1,2,3, ... 100 will occur roughly about 100 times. If your system can produce this kind of evidence, you can provide the proof required to demonstrate that every individual in the list has the exact same chance of selection.

The random selection procedure need never concern itself with a name or an individual's personal identification number, whether it's a social security number or other proprietary identifier. Once again, consider the list of 100 individuals. The most natural identifier to assign each entry in the list is simply the number that represents their order in the list. Sort the list and everyone's identifier changes. Randomly sort the list and everyone is randomly assigned an identifier. Randomly generate 10 numbers between 1 and 100 and select the entries in the list that correspond to the numbers. Nothing could be more fair and unbiased. This is the heart of the random selection process. Simple, straightforward, fair



July 21, 2021

David Rabbitt, Chair
Sonoma County Board of Supervisors

Barbara Pahre, Vice Chair
Golden Gate Bridge,
Highway/Transportation District

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
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General Manager

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www.sonomamarintrain.org

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

SUBJECT: Approval of Resolution Implementing Cost-of-Living Increase for Unrepresented Employees

Dear Board Members:

RECOMMENDATION:

Approve Resolution Number 2021-17 to implement a Cost-of-Living Adjustment (COLA) in the Fiscal Year 2021-2022 budget to reflect unrepresented employee salary schedule increases effective July 12, 2021.

SUMMARY:

SMART currently has 50 job classes that are not represented as part of any collective bargaining unit. There are 68 authorized Full Time Equivalent Employees (FTE) associated with those job classes. In the prior Fiscal Year, 49 of these 68 employees voluntarily gave up a COLA increase during the uncertainty of the COVID-19 pandemic. However, represented employees received a 3% Cost-of-Living increase in July of FY 20/21 and July of FY 21/22 based on pre-existing contracts.

In addition, we have reviewed the Bureau of Labor Statistics (BLS) Consumer Price Index (CPI) as well as cost of living adjustments made by other public agencies in the North Bay with similar job classes. The CPI for the Western Region, which includes Sonoma County, was 4.7% for the twelve months ending in May 2021. The CPI for the San Francisco-Oakland-Hayward region, of which Marin County is a part, was 3.8% for the 12 months ending in April 2021. At this time, we are recommending a 3% increase for our non-represented employees, the majority of whom have not had a cost-of-living adjustment since 2019.

In order to implement this COLA, we request your Board approve Resolution Number 2021-17 to authorize this 3% increase effective July 12, 2021. The proposed Position Authorizations (Appendix B) included in the Fiscal Year 21/22 budget approved by the Board on June 2, 2021, reflects these increased salary rates.

FISCAL IMPACT: The Fiscal Year 2021-22 cost of the proposed salary increase is \$303,871, which is included in SMART's FY 2021-22 budgeted salary and benefits.

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

Very truly yours,

 /s/
Lisa Hansley
Human Resources Manager

Attachment(s): Resolution No. 2021-17

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT,
STATE OF CALIFORNIA, IMPLEMENTING A COST-OF-LIVING ADJUSTMENT FOR UNREPRESENTED STAFF
AS APPROVED IN RESOLUTION NO. 2021-11 EFFECTIVE JULY 12, 2021**

WHEREAS, as part of its approval of the Annual Budget for Fiscal Year 2021-2022, the Board duly considered the annual expenditures necessary for the Sonoma-Marín Area Rail Transit District; and

WHEREAS, on June 2, 2021, the Board adopted Resolution No. 2021-11 approving the Annual Budget for Fiscal Year 2021-2022; and

WHEREAS, Resolution No. 2021-11 considered the creation of employee positions and fixed the compensation and salary for those positions; and

WHEREAS, Table 5, Proposed Position Authorizations in the Annual Budget for Fiscal Year 2021-22 included a Cost-of-Living Adjustment of 3% for unrepresented positions.

NOW THEREFORE, BE IT RESOLVED by the Board of Directors of the Sonoma-Marín Area Rail Transit District that the previously budgeted and approved Cost of Living Adjustment of 3% be awarded to unrepresented staff effective July 12, 2021 as shown in Appendix B Proposed Position Authorizations attached as Exhibit A to Resolution 2021-11.

BE IT FURTHER RESOLVED except as specifically amended or supplemented by this Resolution, Resolution No. 2021-11, together with all supplements, amendments and exhibits thereto is, and shall continue to be, in full force and effect as originally adopted, and nothing contained herein shall, or shall be construed to, modify, invalidate or otherwise affect any provision of Resolution No. 2021-11.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 21st day of July, 2021, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

David Rabbitt Chair, Board of Directors
Sonoma-Marín Area Rail Transit District

ATTEST:

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



David Rabbitt, Chair
Sonoma County Board of Supervisors

July 21, 2021

Barbara Pahre, Vice Chair
Golden Gate Bridge,
Highway/Transportation District

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5401 Old Redwood Highway, Suite 200
Santa Rosa, CA 94954

SUBJECT: Approve a Resolution Authorizing the General Manager to Execute Contract Amendment No. 4 to Contract No. CV-PS-19-001 in an amount of \$65,801 for a total not to exceed contract amount of \$1,306,143

Dear Board Members:

RECOMMENDATION:

Approve Resolution No. 2021-19 authorizing the General Manager to execute Contract Amendment No. 4 to Contract No. CV-PS-19-001 with GHD, inc. for Engineering Design and Support Services - Petaluma, Penngrove, and Santa Rosa Various Non-Motorized Pathway Segments. to TASK 12 – EXTRA WORK II -Additional Vehicular Traffic Signal Design at the At-Grade Crossings for an amount of \$65,801 and increasing the overall total contract amount to \$1,306,143.

SUMMARY:

On June 8, 2020, GHD, Inc. was awarded Contract No. CV-PS-19-001 to prepare construction documents for three sections of Non-Motorized Pathway (NMP) in Sonoma County starting from Lakeville Street to Payran Street in Petaluma, Southpoint Blvd to Main Street in Penngrove, and Golf Course Drive to Bellevue Avenue in Santa Rosa.

During the NMP design, the SMART team along with the California Public Utilities Commission (CPUC) and the local jurisdictions conducted a field diagnostic meeting at each at-grade crossings to discuss and determine the safest path of travel across each road and around the SMART rail equipment. The CPUC recommended adding vehicular traffic signals at the following locations:

- a) Corona Road (City of Petaluma)
- b) Ely Road (County of Sonoma)
- c) Scenic Avenue (County of Sonoma)
- d) West Robles Avenue (County of Sonoma)
- e) Bellevue Avenue (City of Santa Rosa)

The contract scope of work did not include vehicular traffic signals at the above locations. The negotiation between SMART and GHD, Inc. resulted on an agreed upon fair amount of \$65,801 for the additional scope of work of design the traffic signals at the locations indicated above.

Staff recommends approving Resolution No. 2021-19 authorizing the General Manager to execute Contract Amendment No. 4 to Contract No. CV-PS-19-001 with GHD, Inc for Additional Vehicular Traffic Signal Design at the At-Grade Crossings for an amount of \$65,801 and increasing the overall total contract amount to \$1,306,143.

FISCAL IMPACT: Costs are included in the project budget.

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

Very truly yours,

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

Attachment(s): 1) Resolution No. 2021-19
2) GHD, Contract Amendment No. 4

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
APPROVING CONTRACT AMENDMENT NO. 4 TO CONTRACT NO. CV-PS-19-001 WITH GHD, INC. FOR
ENGINEERING DESIGN SERVICES**

WHEREAS, the Sonoma-Marín Area Rail Transit District (SMART) is developing segments of non-motorized pathway between 1) Lakeville Street to Payran Street in Petaluma; 2) Southpoint Blvd to Main Street in Penngrove; and 3) Golf Course Drive to Bellevue Avenue in Santa Rosa; and

WHEREAS, the District entered into Contract No. CV-PS-19-001 with GHD, Inc. for professional engineering design services; and

WHEREAS, SMART and GHD previously amended the Agreement to add Task 8 for the optional Environmental and Permitting Support scope of work, to incorporate Task 11 EXTRA WORK I, and to extend the term of the Agreement through June 30, 2022, and to incorporate Task 12 EXTRA WORK II; and

WHEREAS, the California Public Utilities Commission has determined that the pathway grade crossing will require vehicular traffic signals and SMART has negotiated a fair and equitable price with GHD to add this work to the Contract; and

WHEREAS, Amendment No. 4 to Contract No. CV-PS-19-001 to incorporate Task 12 EXTRA WORK II for the design of vehicular traffic signals at the grade crossings; and

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

1. The forgoing Recitals are true and correct and are incorporated herein and form a part of this Resolution.
2. Authorize the General Manager to execute Amendment No. 4 to CV-PS-19-001 with GHD, Inc., for a total contract amount of \$1,306,143.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 21st day of July, 2021, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

David Rabbitt, Chair, Board of Directors
Sonoma-Marín Area Rail Transit District

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

**FOURTH AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES
BETWEEN THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
AND GHD, INC.**

This Fourth Amendment dated as of _____, 2021 (the "Fourth Amendment") to the Agreement for Consultant Services by and between the Sonoma-Marín Area Rail Transit District ("SMART") and GHD, Inc. ("Consultant"), dated as of June 23, 2020 (the "Original Agreement," and as amended by the First, Second, Third Amendments and now this Fourth Amendment, the "Agreement").

RECITALS

WHEREAS, SMART and Consultant entered into the Original Agreement to provide design and engineering services to prepare construction documents for sections of Non-Motorized Pathway (NMP) in Sonoma County; and

WHEREAS, SMART and Consultant previously amended the Agreement to add Task 8 for the optional Environmental and Permitting Support scope of work and increase the not-to-exceed amount, to incorporate Task 11 EXTRA WORK I, to extend the term of the Agreement through June 30, 2022; and

WHEREAS, SMART desires to incorporate Task 12 EXTRA WORK II to increase the not-to-exceed amount by \$65,801 for a total not-to-exceed amount of \$1,306,143.

NOW, THEREFORE, in consideration of the recitals set forth above and the covenants contained herein, it is mutually agreed by and between the parties that:

AGREEMENT

1. **"ARTICLE III. STATEMENT OF WORK."** Article III is amended to incorporate Task 12 - Extra Work II into Section A. Consultant Tasks and Services.
 12. Extra Work II — Consultant shall provide additional design service to incorporate vehicular traffic signals for the at-grade crossing improvements.
2. **"ARTICLE V. ALLOWABLE COSTS AND PAYMENTS"**
Article V, Section E is hereby removed and replaced with the following:
 - E. The total payment amount payable by LOCAL AGENCY shall not exceed \$1,306,143.

3. "ATTACHMENT A —TASK 12 – EXTRA WORK II Additional Vehicular Traffic Signal Design at the At-Grade Crossings"

The attached ATTACHMENT A —EXTRA WORK II is to be included in the Agreement and shall be in addition to the previous attachments from the Original Agreement and Second Amendment. This cost proposal increases the not-to-exceed amount by \$65,801 for a total not-to-exceed amount of \$1,306,143.

4. Except to the extent the Agreement is specifically amended or supplemented hereby, the Agreement, together with all supplements, amendments and exhibits thereto is, and shall continue to be, in full force and effect as originally executed, and nothing contained herein shall, or shall be construed to, modify, invalidate, or otherwise affect any provision of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment as set forth below.

**SONOMA-MARIN AREA RAIL TRANSIT
DISTRICT**

Dated: _____

By _____
Farhad Mansourian, General Manager

GHD, INC.

Dated: _____

By _____

Its _____

APPROVED AS TO FORM:

Dated: _____

By _____
District Counsel

Attachment A – TASK 12 – EXTRA WORK II Additional Vehicular Traffic Signal Design at the At-Grade Crossings

Scope of work:

The consultant shall design a vehicular traffic signal system to each of the at grade crossing listed below per the CPUC direction and recommendations.

- A- Corona Road (City of Petaluma)
- B- Ely Road (County of Sonoma)
- C- Scenic Avenue (County of Sonoma)
- D- West Robles Avenue (County of Sonoma)
- E- Bellevue Avenue (City of Santa Rosa)

The consultant shall design and adhere to the following:

- Design for traffic signal poles, foundations, conduits, traffic cabinet and power source.
- Design a conduit system for a preemption connection to the adjacent signal system.
- Design of the traffic signal shall meet the the local jurisdictions standards.
- Provide poles and material schedule, conduits and conductors schedule, and phasing diagram.
- A careful examination of existing utilities shall be taken into consideration before placing foundation, conduits run to and from the power source and to and from the traffic cabinet. Any unavoidable utility conflicts will be added to the utility relocation coordination. No potholing is included.
- All equipment shall be located on SMART or the local jurisdictions ROW. No design shall be in private properties.
- Line of sight shall be examined at each location for safe clear visibility of the traffic signal light to motor vehicles.
- Traffic signal pole shall be placed at a safe distance from the rail and or rail equipment's.
- The designer shall consider maintenance work in the future to be executed by local jurisdictions shall not impact, hinder, or slow down any aspect of rail operation including trains and gates.
- The consultant shall produce GO88B's forms for each location that are satisfactory to the CPUC and shall obtain approval for the mentioned above at grade crossings. If the CPUC made comments during their review time, the consultant shall address the comments promptly. The GO88B's will be submitted to SMART to submit to the CPUC. SMART will continue to coordinate with CPUC.
- The consultant shall coordinate with the local jurisdictions if any information is needed.

- The consultant shall update the cost estimates for Segment 2 and Segment 3 to reflect the additional traffic signal design work.

Deliverables:

An approved GO88B's by the CPUC for the following at-grade crossings:

1. Corona Road (City of Petaluma)
2. Ely Road (County of Sonoma)
3. Scenic Avenue (County of Sonoma)
4. West Robles Avenue (County of Sonoma)
5. Bellevue Avenue (City of Santa Rosa)



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July 21, 2021

Sonoma-Marin Area Rail Transit Board of Directors
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Petaluma, CA 94954

SUBJECT: Authorize the General Manager to Award Contract No. FN-PS-21-002 to Sierra-Cedar, LLC for as-needed Oracle Software Consultation and Support Services.

Dear Board Members:

RECOMMENDATION:

Authorize the General Manager to Award Contract No. FN-PS-21-002 to Sierra-Cedar, LLC for as-needed Oracle ERP Software consultation and support services with a not-to-exceed amount of \$75,000 for FY2022, \$100,000 for FY2023, and \$100,000 for each option year (FY2024-FY2026).

SUMMARY:

SMART utilizes Oracle's cloud-based Enterprise Resource Planning (ERP) Software to perform several critical financial functions for the District, including; general ledger management, accounts payable services, accounts receivable management, cash management, purchasing and vendor management, project costing, and project controls. SMART contracts with a third-party consultant to provide as-needed technical support and problem resolution, to perform process and procedure reviews, to develop financial reports in preparation for audits, and to facilitate integration of other third-party software programs SMART works with.

SMART's existing contract for as-needed Oracle ERP software consultation and support services expired on June 30, 2021. In anticipation of the contract expiration, SMART issued a Request for Proposal to procure the next consultant and contract.

SMART received proposals from the 11 firms listed below:

Advance Digital Systems, Inc.	Highstreet IT Solutions, LLC
Applications Software Technology, LLC	Jade Global, Inc.
California Creative Solutions, Inc.	Kastech Solutions, LLC
CherryRoad Technologies, Inc.	Sierra-Cedar, LLC
Creoal Consulting, LLC	XTGlobal, Inc.
Executive Option, LLC	

SMART's evaluation committee reviewed the 11 proposals using the technical evaluation criteria identified in the Request for Proposal. Following the technical evaluation of all proposals received, the evaluation committee shortlisted 5 firms to proceed to the next step. SMART reviewed the cost proposals submitted by the shortlisted firms. Following the cost review, SMART conducted reference checks and held interviews with the top three ranked firms. The Selection Committee is recommending Sierra-Cedar, LLC as the firm providing the best overall value in terms of qualifications and price to the District.

In conclusion, staff is recommending that the Board authorize the General Manager to Award Contract No. FN-PS-21-002 to Sierra-Cedar, LLC for as-needed Oracle ERP Software consultation and support services with a not-to-exceed amount of \$75,000 for FY2022, \$100,000 for FY2023, and \$100,000 for each option year (FY2024-FY2026).

FISCAL IMPACT: Funding is included in the Fiscal Year 2021-2022 budget and assumed in subsequent years.

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

Very truly yours,

/s/
Ken Hendricks
Procurement Manager

Attachment(s): Sierra-Cedar, LLC Contract Agreement No. FN-PS-21-002

AGREEMENT FOR CONSULTANT SERVICES

This agreement (“Agreement”), dated as of August 1, 2021 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and Sierra-Cedar, LLC (hereinafter “Consultant”).

RECITALS

WHEREAS, Consultant represents that it is duly qualified and experienced in the areas of Oracle Enterprise Resources Planning (“ERP”) software consultation, support, and related services; and

WHEREAS, in the judgment of the Board of Directors of SMART or District, it is necessary and desirable to employ the services of Consultant to provide on-call support for SMART’s Oracle Enterprise Resource Planning Software (“ERP”).

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

ARTICLE 1. RECITALS.

Section 1.01 The above Recitals are true and correct.

ARTICLE 2. LIST OF EXHIBITS.

Section 2.01 The following exhibits are attached hereto and incorporated herein:

- (a) Exhibit A: Scope of Work & Timeline
- (b) Exhibit B: Schedule of Rates
- (c) Exhibit C: FTA & DOT Requirements

ARTICLE 3. REQUEST FOR SERVICES.

Section 3.01 Initiation Conference. SMART’s Fiscal Manager, or assigned designee, will initiate all requests for services through an Initiation Conference, which may be in person, by telephone, or by email.

Section 3.02 Amount of Work. SMART does not guarantee a minimum or maximum amount of work under this Agreement.

ARTICLE 4. SCOPE OF SERVICES.

Section 4.01 Scope of Work. Consultant shall perform services within the timeframe outlined in **Exhibit A** (cumulatively referred to as the “Scope of Work”).

Section 4.02 Cooperation With SMART. Consultant shall cooperate with the Fiscal Manager or assigned designee in the performance of all work hereunder.

Section 4.03 Performance Standard. Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant’s profession. If SMART determines that any of Consultant’s work is not in accordance with such level of competency and standard of care, SMART, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with SMART to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 7; or (d) pursue any and all other remedies at law or in equity.

Section 4.04 Assigned Personnel.

- (a) Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time SMART, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from SMART.
- (b) Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder on behalf of the Consultant are deemed by SMART to be key personnel whose services were a material inducement to SMART to enter into this Agreement, and without whose services SMART would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of SMART.
- (c) In the event that any of Consultant’s personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant’s control, Consultant shall be responsible for timely provision of adequately qualified replacements.
- (d) Consultant shall assign a pool of resources to provide services to SMART that includes, but is not limited to the following key personnel for the term of this Agreement:

Samira L’Esperance, Service Delivery Manager (SDM)
Andy Pang, Financials Lead
Eric Bender, Financials Lead
Michael Rath, Financials Lead
Gary Piazza, Inventory Lead
Michael Blackmore, Technical Lead / Developer

Naveen Yeturu, Technical Lead / Developer
Mark Lindsay, Technical Lead / Developer

ARTICLE 5. PAYMENT.

For all services required hereunder, Consultant shall be paid in accordance with the following terms:

Section 5.01 Consultant shall invoice SMART twice per month, detailing the tasks performed pursuant to the Scope of Work requested by the SMART Fiscal Manager or assigned designee and the hours worked. SMART shall pay Consultant within 30 days after submission of the invoices.

Section 5.02 Consultant shall be paid on either a time and materials basis or task order basis in accordance with the rates established in **Exhibit B**; provided, however, that total payments to Consultant shall not exceed \$75,000 for Fiscal Year 2022, and \$100,000 for Fiscal Year 2023, without the prior written approval of SMART. Consultant shall submit its invoices in arrears twice per month in a form approved by the Chief Financial Officer. The invoices shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. All reimbursable expenses must comply with SMART's Travel Guidelines and must receive prior approval. Consultant's reimbursement for materials/expenses shall not include items already included in Consultant's overhead as may be billed as a part of its labor rates set forth in **Exhibit B**. SMART does not reimburse Consultant for travel time.

Section 5.03 Consultant must submit all invoices on a timely basis, but no later than thirty (30) days from the date the services/charges were incurred. District shall not accept invoices submitted by Consultant after the end of such thirty (30) day period without District pre-approval. Time is of the essence with respect to submission of invoices and failure by Consultant to abide by these requirements may delay or prevent payment of invoices or cause such invoices to be returned to the Consultant unpaid.

ARTICLE 6. TERM OF AGREEMENT.

Section 6.01 The term of this Agreement shall remain in effect until June 30, 2023, with three (3) one-year options to extend thereafter unless terminated earlier in accordance with the provisions of **Article 7** below.

ARTICLE 7. TERMINATION.

Section 7.01 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, both parties shall have the right, at their sole discretion, to terminate this Agreement by giving 30 days written notice to the other party.

Section 7.02 Termination for Cause. Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the

time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, SMART may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

Section 7.03 Delivery of Work Product and Final Payment Upon Termination.

In the event of termination by either party, Consultant, within 14 days following the date of termination, shall deliver to SMART all materials and work product subject to **Section 12.08** and shall submit to SMART an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

Section 7.04 Payment Upon Termination. Upon termination of this Agreement by SMART, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services are to be paid on an hourly or daily basis, then Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to termination times the applicable hourly or daily rate; provided further that if SMART terminates the Agreement for cause pursuant to **Section 7.02**, SMART shall deduct from such amount the amount of damage, if any, sustained by SMART by virtue of the breach of the Agreement by Consultant.

Section 7.05 Authority to Terminate. The Board of Directors has the authority to terminate this Agreement on behalf of SMART. In addition, the General Manager, in consultation with SMART Counsel, shall have the authority to terminate this Agreement on behalf of SMART.

ARTICLE 8. INDEMNIFICATION

Consultant agrees to indemnify, defend and save harmless the District, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of the Consultant or any of its affiliates, agents, subcontractors, employees, suppliers, or laborers furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:

a) The District will notify the Consultant of any such claim in writing and tender the defense thereof within a reasonable time; and b) The Consultant will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future District operations or liability, or when involvement of the District is otherwise mandated by law, the District may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the District, affect principles of California government or public law, or impact the authority of the District, the District will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and

(iii) the District will reasonably cooperate in the defense and in any related settlement negotiations.

ARTICLE 9. LIMITATION OF LIABILITY

a) Consultant's liability for damages to the District for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Consultant's Insurance Coverage required under contract or \$2,000,000, whichever is greater.

b) The foregoing limitation of liability shall not apply (i) to any liability under the Indemnification provisions set forth in Section 8 above related to third-party claims against the District for death, bodily injury to persons or damage to real or tangible personal property (ii) to liability related to Patent, Copyright, and Trade Secret claims or to any other liability for infringement of third party intellectual property rights.

c) In no event will either the Consultant or the District be liable for consequential, incidental, indirect, special, or punitive damages, to any third party even if notification has been given as to the possibility of such damages, except (i) to the extent that the Consultant's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that the Consultant's liability for such damages arises out of sub- section b)(i), b)(ii), or b)(iv) above

ARTICLE 10. LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY

The Consultant shall be liable for damages arising out of injury to the person and/or damage to the property of the District, employees of the District, persons designated by the District for training, or any other person(s) other than agents or employees of the Consultant, designated by the District for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the deliverables either at the Consultant's site or at the District's place of business, provided that the injury or damage was caused by the fault or negligence of the Consultant.

The Consultant shall not be liable for damages arising out of or caused by an alteration or an Attachment not made or installed by the Consultant, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the deliverables provided by the Consultant during the Contract.

ARTICLE 11. WARRANTY AND WARRANTY EXCLUSIONS

Consultant warrants that (a) it will perform the Services in a professional and workmanlike manner in accordance with industry standards; (b) it has the authority to enter into this Agreement; (c) it will perform the Services in a manner that complies with all applicable laws and regulations. SMART agrees that all development and integration tools shall be subject to the limitations, if any, of SMART's license agreements with such third-party software vendors. Consultant makes no warranties of any sort relative to third party software.

ARTICLE 12. EXCUSED PERFORMANCE

Consultant's nonperformance of its obligations as to any specific deliverable or other obligation under this Agreement shall be excused to the extent such nonperformance is due to: (a) the acts or omissions of SMART or any third-party authorized to act on SMART's behalf which hinder or delay Consultant's ability to perform its obligations under this Agreement; or (b) unanticipated substantive changes to applicable laws and regulations that interrupt, delay, or fundamentally alter the scope of the engagement.

ARTICLE 13. INSURANCE.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its Subcontractors, Consultants, and other agents to maintain, insurance as described below.

Section 13.01 Workers' Compensation Insurance. Workers' Compensation as required by the State of California, with Statutory Limits, and Employer's Liability insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

Section 13.02 General Liability Insurance. Commercial General Liability insurance covering products-completed and ongoing operations, property damage, bodily injury and personal injury using an occurrence policy form, in an amount no less than \$1,000,000 per occurrence, and \$2,000,000 aggregate.

Section 13.03 Automobile Insurance. Automobile Liability insurance covering bodily injury and property damage in an amount no less than \$1,000,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles.

Section 13.04 Endorsements. Prior to commencing work, Consultant shall file Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Said endorsements and Certificate(s) of Insurance shall stipulate:

- (a) SMART, its officers, and employees shall be named as additional insured on all policies listed above, with the exception of Worker's Compensation and Professional Liability.
- (b) That the policy(ies) is Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which Consultant is liable, up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be effected by the Insureds.
- (c) Inclusion of the Insureds as additional insureds shall not in any way affect its rights either as respects any claim, demand, suit or judgment made, brought or recovered against Consultant. Said policy shall protect Consultant and the Insureds in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate

to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

- (d) Consultant hereby grants to SMART a waiver of any right to subrogation which any insurer of said Consultant may acquire against SMART by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not SMART has received a waiver of subrogation endorsement from the insurer.
- (e) The insurance policy(ies) shall be written by an insurance company or companies acceptable to SMART. Such insurance company shall be authorized to transact business in the state of California.

SMART reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

Section 13.05 Deductibles and Retentions. Consultant shall be responsible for payment of any deductible or retention on Consultant's policies without right of contribution from SMART. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the name insured is not acceptable.

Section 13.06 Claims Made Coverage. If any insurance specified above is written on a claims-made coverage form, Consultant shall:

- (a) Ensure that the retroactive date is shown on the policy, and such date must be before the date of this Agreement or beginning of any work under this Agreement;
- (b) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- (c) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to Agreement effective date, Consultant shall purchase "extending reporting" coverage for a minimum of three (3) years after completion of the work.

Section 13.07 Documentation. The following documentation shall be submitted to SMART:

- (a) Properly executed Certificates of Insurance clearly evidencing all coverages and limits required above. Said Certificates shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Certificates of Insurance evidencing

the above-required coverages and limits on file with SMART for the duration of this Agreement.

- (b) Copies of properly executed endorsements required above for each policy. Said endorsement copies shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current endorsements evidencing the above-specified requirements on file with SMART for the duration of this Agreement.
- (c) Upon SMART's written request, Consultant shall provide certified copies of the insurance policies to SMART. Said policy copies shall be submitted within thirty (30) days of SMART's request. After the Agreement has been signed, signed Certificates of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.

Section 13.08 Policy Obligations. Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 13.09 Material Breach. If Consultant, for any reason, fails to maintain insurance coverage, which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. SMART, in its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, SMART may purchase such required insurance coverage, and without further notice to Consultant, SMART may deduct from sums due to Consultant any premium costs advanced by SMART for such insurance. These remedies shall be in addition to any other remedies available to SMART.

ARTICLE 14. PROSECUTION OF WORK.

When work is requested of Consultant by SMART, all due diligence shall be exercised and the work accomplished without undue delay, within the performance time specified in the Task Order. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

ARTICLE 15. EXTRA OR CHANGED WORK.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Fiscal Manager in a form approved by SMART Counsel. The Board of Directors or General Manager must authorize all other extra or changed work. The parties expressly recognize that SMART personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy

by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of SMART.

ARTICLE 16. REPRESENTATIONS OF CONSULTANT.

Section 16.01 Standard of Care. SMART has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable Federal, State and Local laws and regulations, it being understood that acceptance of Consultant's work by SMART shall not operate as a waiver or release.

Section 16.02 Status of Consultant. The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant 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 pursuant to **Article 7**, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

Section 16.03 Taxes. Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including but not limited to state and federal income and FICA taxes. Consultant agrees to indemnify and hold SMART harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case SMART is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish SMART with proof of payment of taxes on these earnings.

Section 16.04 Records Maintenance. Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to SMART for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder. Consultant and Subconsultants shall permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by the State, for the purpose of any investigation to ascertain compliance with this document.

Section 16.05 Conflict of Interest. Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by SMART, Consultant shall complete and file and shall require any other

person doing work under this Agreement to complete and file a “Statement of Economic Interest” with SMART disclosing Consultant’s or such other person’s financial interests.

Section 16.06 Nondiscrimination. Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, SMART’s Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference

Section 16.07 Assignment of Rights. Consultant assigns to SMART all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to SMART in this Agreement, and to refrain from taking any action which would impair those rights. Consultant’s responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as SMART may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of SMART. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of SMART.

Section 16.08 Ownership And Disclosure Of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents (“documents”), in whatever form or format, assembled or prepared by Consultant and other agents in connection with this Agreement shall be the property of SMART. SMART shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to SMART all such documents, which have not already been provided to SMART in such form or format, as SMART deems appropriate. Such documents shall be and will remain the property of SMART without restriction or limitation. Consultant may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of SMART.

ARTICLE 17. DEMAND FOR ASSURANCE.

Each party to this Agreement undertakes the obligation that the other’s expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. “Commercially reasonable” includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under

the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this **Article 13** limits SMART's right to terminate this Agreement pursuant to **Article 7**.

ARTICLE 18. ASSIGNMENT AND DELEGATION.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

ARTICLE 19. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING INVOICES AND MAKING PAYMENTS.

All notices, invoices, and payments shall be made in writing and shall be given by personal delivery, U.S. Mail or email. Notices, invoices, and payments shall be addressed as follows:

If to SMART Project Manager:	Sonoma-Marín Area Rail Transit District Attn: Katye Roa 5401 Old Redwood Highway, Suite 200 Petaluma, CA 94954 kroa@sonomamarintrain.org 707-794-3321
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If to SMART Billing:	Sonoma-Marín Area Rail Transit District Attn: Accounts Payable 5401 Old Redwood Highway, Suite 200 Petaluma, CA 94954 billing@sonomamarintrain.org 707-794-3330
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If to Consultant:	Sierra-Cedar, LLC Attn: Samira L'Esperance 1255 Alderman Drive Alpharetta, GA 3000 Samira.lesperance@sierra-cedar.com 678-249-3572
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Remittance to Consultant:	Sierra-Cedar, LLC PO Box 402521 Atlanta, GA 30384-2521
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When a notice, invoice or payment 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 copy of a notice, invoice or payment is sent by facsimile or email, the notice, invoice or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, invoice or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, invoices 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.

ARTICLE 20. MISCELLANEOUS PROVISIONS.

Section 20.01 No Waiver of Breach. The waiver by SMART of any breach of any term or promise contained in this Agreement 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 Agreement.

Section 20.02 Construction. To the fullest extent allowed by law, the provisions of this Agreement 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 Agreement 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. Consultant and SMART acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and SMART acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

Section 20.03 Consent. Wherever in this Agreement 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.

Section 20.04 No Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

Section 20.05 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Venue for any action to enforce the terms of this Agreement or for the breach thereof shall be in the Superior Court of the State of California in the County of Marin.

Section 20.06 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

Section 20.07 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

Section 20.08 Acceptance of Electronic Signatures and Counterparts. The parties agree that this Contract, Agreements ancillary to this Contract, and related documents to be entered into this Contract will be considered executed when all parties have signed this Agreement. 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.

Section 20.09 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CONSULTANT: SIERRA-CEDAR, LLC

By: _____
Kevin Bryant, General Manager

Date: _____

SONOMA-MARIN AREA RAIL TRANSIT (SMART)

By: _____
Farhad Mansourian, General Manager

Date: _____

**CERTIFICATES OF INSURANCE ON FILE WITH AND
APPROVED AS TO SUBSTANCE FOR SMART:**

By: _____
Ken Hendricks, Procurement Manager

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

EXHIBIT A

SCOPE OF WORK & TIMELINE

I. Overview

Sierra-Cedar, LLC is being contracted with to provide as-needed consultation and support services for SMART's Oracle Enterprise Resource Planning ("ERP") software. Services will be performed on either a time and materials or task order basis depending on the nature of the services being requested.

II. Definitions

- A. **"OCSA"** means Oracle Cloud Services Agreement.
- B. **"Base Oracle Code"** refers broadly to the native table structure and programs delivered by Oracle, Inc., a vendor of enterprise of management software in Oracle Cloud SaaS products subscribed to by SMART.
- C. **"Oracle Cloud"** refers broadly to Oracle, Inc., a vendor of enterprise management software and to Oracle Cloud SaaS products subscribed to by SMART.
- D. **"Oracle ERP Cloud"** refers broadly to a SaaS solution subscribed to by SMART from Oracle to assist in the management of Financial systems including general ledger, purchasing, payables, receivables, cash management, fixed assets, and projects related functionality.
- E. **"Sierra-Cedar Holidays"** refers to the following: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, the day after Thanksgiving, and Christmas.

III. Project Management

All work shall be initiated, scheduled, and reviewed by SMART's Fiscal Manager or designee. Work may be initiated by completing an incident notification form directly at the Sierra-Cedar Service Desk website, or, via the Service Desk telephone number.

IV. Scope of Work

SMART is contracting with Sierra-Cedar, LLC to provide as-needed consultation services and support for SMART's Oracle Fusion Enterprise Resource Planning Software ("ERP"). Services will be requested on either a time and materials basis or task order basis depending on the scope of work requested. At SMART's sole discretion, Consultant shall be required to sign a Confidentiality and Non-Disclosure Agreement prior to performing any work.

Consultant Responsibilities

- A. Consultant shall perform the work using either on-shore or off-shore personnel, depending on which is most cost effective and most efficient for the task. The majority of the work is expected to be conducted remotely and off-site.
- B. Sierra-Cedar, LLC will provide Oracle Cloud optimization support during the Primary Hours of Operation (PHO), Monday through Friday, from 7:00 AM to 5:00 PM Pacific Standard Time (PST). Sierra-Cedar, LLC will respond during PHO and provide issue resolution based upon issue priority as assigned at the point of ticket entry. Sierra-Cedar, LLC will schedule coverage for SMART should support outside PHO be required to assist with Oracle Severity-1 24x7 Service Requests or critical Service Requests.
- C. Consultant services requested while under contract may include, but are not limited to, the following:
 - a. Support of Base Oracle Code and SMART customizations in both SMART's production and test environments.
 - b. Support of the following Products/Modules
 - i. Oracle Fusion Financials
 - ii. General Ledger
 - iii. Accounts Payable
 - iv. Accounts Receivable
 - v. Cash Management
 - vi. Fixed Assets
 - vii. Purchasing/Procurement
 - viii. Supplier/Vendor Management
 - ix. Project Costing
 - x. Project Controls
 - c. Incident Management
 - i. Report Errors
 - ii. Stuck Transactions (Workflow Troubleshooting / Fixes)
 - iii. Missing Data
 - iv. Interface Issues
 - v. Period Close Issues

- vi. Form Errors
- vii. Oracle Support SR Management
- viii. Any other issues resulting in an interruption during normal business operations
- d. Planned Support
 - i. Preparing proper scripts for migration
 - ii. Providing a testing plan, where applicable
 - iii. Assistance with any requested training
 - iv. Any other planned support services
- e. Root Cause/Problem Management
 - i. Determining the “root cause” of a recurring issue or incident
 - ii. Any other one-time activity associated with the long-term, permanent resolution of a recurring and/or critical incident or outage.
- f. Non-Incident Service Requests
 - i. Enhancements and Customizations
 - ii. Upgrade Support
 - iii. Missing Data
 - iv. Data Fixes
 - v. Process Issues
 - vi. How-To Questions
 - vii. Data Extracts, Data Imports, and Batch Programs
 - viii. Oracle Transactional Business Intelligence (OTBI), Financial Reporting Studio, and BI Publisher Reporting Assistance (creating, fixing, updating, automation, etc.)
 - ix. Any other non-incident request service which requires support effort and/or time to resolve.
- g. Third-Party Application Integrations
 - i. Planning Consultation, Implementation, and Testing
 - ii. Future Integrations - SMART may have interest in integration the following programs into workflow automation process with the

Oracle ERP system:

1. IBM Maximo
2. DocuSign
3. Microsoft Office 365 Suite
4. Microsoft SharePoint Online

h. Miscellaneous

- i. Sierra-Cedar shall perform a complimentary initial review of SMART's processes and workflows to identify potential efficiencies. This will be scheduled on a date(s) mutually approved by both parties and will take place shortly after contract execution. This service shall be provided to SMART at no cost.
 - ii. Review of processes and workflows as requested to identify potential efficiencies.
 - iii. Any other service mutually agreed upon.
- i. Quarterly Release Update Management
- i. Configuration Enhancements (Release Readiness) Evaluation for Oracle Cloud - Sierra-Cedar will review Oracle ERP Cloud Applications release readiness notes and provide a Release Readiness Report in Microsoft Word format that includes the contents of each update, recommended testing levels, and how those updates may impact the SMART's applications.
 - ii. Oracle Update Support – Sierra-Cedar, at the request of SMART, will complete testing of the applications after quarterly updates are applied. Update Support includes executing test scripts from existing test script libraries provided by SMART, identifying issues, and basic troubleshooting for identified issues.

SMART Responsibilities:

- A. SMART will provide a SMART Project Manager throughout the contract, responsible for the timely setting of priorities for Sierra-Cedar support staff. Additional responsibilities of this resource include:
 - i. Provide governance and oversight
 - ii. Prioritize tasks for the Sierra-Cedar Oracle Cloud Support team
 - iii. Provide Sierra-Cedar Oracle Cloud Support team with access and tools needed for requested work activities
- B. SMART will maintain responsibility for day-to-day management of the Oracle Cloud applications and underlying infrastructure, including non-production,

production, and disaster recovery environments, accessing support from Sierra-Cedar as needs arise. Day-to-day management includes:

- i. Cloud Administration - Monitoring and managing day-to-day operations including, but not limited to, transaction processing, user access, and Oracle Cloud security.
 - ii. Service Management and Governance - Monitoring and measuring end-user experience and satisfaction, continuous service improvement, and coordination with internal and/or external parties.
- C. SMART is responsible for scheduling any release update directly with Oracle. Sierra-Cedar services do not include applying any release update to any of the environments.
- D. SMART must provide Sierra-Cedar with its Oracle quarterly update release schedule for Non-Production and Production environments, including the schedule of Production to Test and Test to Test instance refreshes.
- E. SMART is responsible for overseeing the application testing processes and validating and approving any remediation or user acceptance testing results prior to production deployment.
- F. SMART will maintain responsibility for final testing, approval, and authorization of all release updates to its Oracle Cloud production systems for all work completed by Sierra-Cedar at the request of the SMART.
- G. SMART's internal Oracle Cloud application support personnel will be responsible for escalating application issues to Sierra-Cedar for analysis and resolution.
- H. SMART shall review and comment on draft materials presented as deliverables prior to general publication in a timely manner.
- I. SMART acknowledges that Sierra-Cedar offers the Services only on the condition that SMART has a valid OCSA or equivalent agreement for SMART's Oracle Cloud applications. SMART agrees to notify Sierra-Cedar prior to any termination of its OCSA or equivalent agreement, but in no case longer than 30 days thereafter, as the services and pricing would need to be modified to comply with Oracle/Oracle Cloud subscription and access restrictions. SMART agrees to indemnify Sierra-Cedar for any liability Sierra-Cedar may incur as a result of the SMART's failure to notify Sierra-Cedar that SMART does not have a valid OCSA or equivalent agreement.
 - a. If SMART terminates its OCSA or equivalent agreement, Sierra-Cedar will continue to provide Oracle Cloud support services on a commercially reasonable basis, provided SMART acknowledges that the scope of such Oracle Cloud support may be limited or modified to comply with applicable Oracle/Oracle Cloud subscription and access restrictions.
- J. Sierra-Cedar agrees to abide by the same obligations of non-disclosure to which SMART is bound under SMART's OCSA or equivalent. SMART agrees to provide Sierra-Cedar with a copy of any portion of its OCSA containing non-standard nondisclosure provisions. Sierra-Cedar will be required to sign SMART's Non-Disclosure Agreement.

- K. SMART will provide Sierra-Cedar access to its Oracle Customer Support ID number (CSI number) so that Sierra-Cedar can enter the SRs related to SMART's environment.
- L. Sierra-Cedar and SMART agree that Sierra-Cedar is being engaged as an authorized contractor and / or outsourcer as permitted by SMART's subscription agreement with Oracle, and that Sierra-Cedar is therefore responsible for compliance with all aspects of that agreement, including restrictions from: (a) removing or modifying Oracle program markings; (b) reverse engineering, disassembly or decompilation; or (c) utilizing any program or code updates to which SMART is not entitled.
- M. SMART will provide access to the Oracle Cloud security console for enabling access to SMART's Non-Production Oracle Cloud environments. This access is exclusively for providing Sierra-Cedar Support Services and will not be used by Sierra-Cedar for any other purpose.
- N. Should it be mutually determined that any portions of this engagement need to be performed at SMART site, SMART will provide reasonable access to SMART facilities during normal business hours and otherwise as reasonably requested by Sierra-Cedar in order to facilitate Sierra-Cedar's performance of the Services. Further, SMART will provide Sierra-Cedar with such reasonable working space, equipment, office support (including but not limited to internet access of the same speed and quality as is provided to SMART employees, photocopying equipment, and the like), and sufficient space for Sierra-Cedar to conduct efficient analytical work and hold meetings with SMART personnel and/or other Sierra-Cedar personnel; and reasonably cooperate with Sierra-Cedar as may be set forth in the applicable request for services to facilitate Sierra-Cedar's performance of the services.

V. Service Desk Support:

Sierra-Cedar will provide Oracle Cloud support during the Primary Hours of Operation ("PHO") as defined below. This service is included as part of the fees set forth in Exhibit B.

- A. PHO is Monday through Friday from 7:00am to 5:00pm Pacific Standard Time (PST). Sierra-Cedar will respond during PHO and provide issue resolution based upon issue priority as assigned at the point of ticket entry. Sierra-Cedar will schedule coverage for SMART should support outside PHO be required to assist with Oracle Severity-1 24x7 Service Requests or critical Service Requests.
- B. SMART Users must first notify a designated service contact within SMART's organization of any problems related to aspects of Oracle Cloud Sierra-Cedar is supporting for the SMART. SMART's designated service contact will determine if the SMART User's issue is procedural or system/operations related. If SMART determines that the issue is system/operations related, SMART's designated service contact will complete an incident notification form directly at the Sierra-Cedar Service Desk website or via the Service Desk telephone number. Sierra-Cedar will provide SMART's designated service contact with a tracking number to track the incident until incident is closed. Incidents are characterized, tracked, and responded to as follows:

ENVIRONMENT	PRIORITY	TECH RESPONSE TIME	TARGETED RESOLUTION TIME
Production	Critical	15 minutes	8 hours
Production	High	15 minutes	16 hours
Production	Medium	15 minutes	24 hours
Production	Low	15 minutes	72 hours
Non-Production	Critical	15 minutes	16 hours
Non-Production	High	15 minutes	32 hours
Non-Production	Medium	15 minutes	48 hours
Non-Production	Low	15 minutes	96 hours

Sierra-Cedar will make commercially reasonable efforts to respond to and resolve Critical issues reported by SMART to Sierra-Cedar’s Service Desk outside of PHO. Support Services that must be scheduled and/or are reliant on third parties to resolve are excluded from the targeted resolution time metric.

i. Priority

1. A “Critical” priority issue is one that has stopped an essential operation of the software without a workaround
2. A “High” priority issue is one that severely impacts operation of a major function of the software with a manually intensive workaround
3. A “Medium” priority issue is one that impairs the operation of a major function of the software with a workaround acceptable to SMART.
4. A “Low” priority issue is one that impacts a minor, yet desired, specified function or feature of the software

- ii. SMART may contact Sierra-Cedar for Service Desk Support using two different mechanisms: By entering a Service Desk ticket directly into our web-based Issue Tracking system at <https://servicedesk.Sierra-Cedar.com>, or by calling the Support Group toll free at **(888) 268-0715**.
- iii. Sierra-Cedar will maintain and circulate a log of all the issues accepted and delivered along with the efforts spent to the SMART Project Manager on a mutually agreed frequency.
- iv. Sierra-Cedar’s U.S. remote resources will observe Sierra-Cedar Holidays. For Sierra-Cedar’s remote - Offshore resources, Sierra-Cedar’s remote offshore resources observe different holidays than SMART. Offshore and U.S. holiday schedules are published at the beginning of each calendar year and will be provided to SMART’s Manager in writing.

VI. Deliverables and Timelines

Any and all deliverables and timelines related to each service request or task order (that will exceed 8 hours of effort) will be provided to Consultant in writing and requires mutual agreement by both parties.

VII. Acceptance Criteria

Prior to production migration, each service request or task order will be reviewed and approved by SMART's Fiscal Manager or designee. Review includes validation and confirmation that service request or task order achieves stated SMART requirements.

EXHIBIT B
SCHEDULE OF RATES

I. Fee Structure:

This Section specifies the fees and payment terms for the following Oracle Cloud application support services:

A. Functional and Technical Application Support for Oracle Cloud as described in Exhibit A.

1. Sierra-Cedar shall provide SMART with the project manager, functional, and technical application support services on a time and expense basis at the hourly bill rates set forth in Exhibit B of this SOW.

Sierra-Cedar Role	SMART FY2022 Hourly Rates*	SMART FY2023 Hourly Rates*
Project Manager	\$160	\$165
Oracle Cloud ERP Functional Consultant	\$150	\$155
Oracle Cloud Technical Lead	\$150	\$155
Oracle Cloud Technical Consultant (US Based)	\$145	\$150
Oracle Cloud Technical Consultant (Offshore Based)	\$45	\$50
Organizational Readiness Consultant	\$155	\$160

*Hourly rates do not include any travel related expenses

B. Quarterly Release Update Management as described in Exhibit A (Optional):

1. If SMART elects to use this optional service, Sierra-Cedar will deliver Quarterly Release Update Management services on a fixed-fee basis of \$8,000 per update. Updates are expected to be released four times per year in February, May, August, and November.
2. SMART will provide Sierra-Cedar with a minimum of 30-day advance notice to exercise this option for Quarterly Release Update Management support.

C. Payment of Fees

1. All services are expected to be delivered remotely. Should it be mutually determined that any portions of this engagement need to be performed at SMART site, travel and expenses will be billed in accordance with SMART's Travel Guidelines.
2. Sierra-Cedar does not accept payment by credit card or purchasing card.

EXHIBIT C FTA & DOT REQUIREMENTS

UNITED STATES DEPARTMENT OF TRANSPORTATION (DOT), FEDERAL TRANSIT ADMINISTRATION (FTA) and CALIFORNIA DEPARTMENT OF TRANSPORTATION REQUIREMENTS

1. General.

In performance of its obligations pursuant to this Agreement or Purchase Order [Hereinafter “Agreement”], the Contractor, Seller, or Consultant [Hereinafter “Contractor”] agrees to comply with all applicable provisions of federal, state and local law, regulations, and FTA directives. The terms of the most recent amendment to any federal, state or local laws, regulations, FTA directives, and amendments to the grant or cooperative agreement providing funding for this Agreement that may be subsequently adopted, are applicable to the Agreement to the maximum extent feasible, unless the FTA provides otherwise in writing. The Federal or State regulations set forth in this Agreement to be observed in the performance of the Agreement are subject to change, and such changed requirements will apply to this Agreement as required. Contractor shall include in its subcontracts, and require its subcontractors of every tier to include in their respective subcontracts, provisions incorporating the requirements of this Attachment. Contractor’s failure to comply with these requirements shall constitute a material breach of this Agreement and may result in the withholding of progress payments to the Contractor, in addition to other remedies.

2. Fly America.

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the U.S. General Services Administration’s regulations at 41 CFR §§301-10.131 – 301-10.143, which provide that recipients and subrecipients of Federal funds and their Contractors are required to use U.S. flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. If a foreign air carrier is used, the Contractor shall submit an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

3. Cargo Preference - Use of United States Flag Vessels.

The Contractor agrees to comply with the requirements of 46 U.S.C. §55305, and U.S. Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” 46 C.F.R Part 381.

(a) to use privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities

pursuant to the underlying Agreement to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels;

(b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a subcontractor’s bill-of-lading); and

(c) to include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

4. Energy Conservation.

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §6321 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, “Requirements for Energy Assessments,” 49 C.F.R. Part 622, subpart C.

5. Clean Water.

The Contractor agrees:

(a) to comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 - 1388, *et seq.* The Contractor agrees to report each violation to SMART and understands and agrees that SMART will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office; and

(b) to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

6. Byrd Anti-Lobbying Amendment, as amended by the Lobbying Disclosure Act of 1995.

Contractors that apply or bid for an award must file the certification required by 49 CFR Part 20, “New Restrictions on Lobbying.” Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352.

Such disclosures are forwarded from tier to tier up to the recipient.

Byrd Anti-Lobbying Certificate - Certification for Contracts, Grants, Loans, and Cooperative Agreements (to be submitted with each bid or offer exceeding \$100,000)

The undersigned Contractor certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure.

Date: _____

Company Name: _____

Print Name: _____

Title: _____

Signature: _____

7. Federal Changes.

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. Contractor's failure to so comply shall constitute a material breach of this Agreement.

8. Clean Air.

The Contractor agrees to:

(a) comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7671q, *et seq.* The Contractor agrees to report each violation to SMART and understands and agrees that SMART will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office; and

(b) include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

9. Recovered Materials and Solid Wastes.

The Contractor agrees to comply with all the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Furthermore, Contractor will comply with Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

10. No Obligation by the Federal Government.

(a) SMART and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Agreement, absent the express written consent by the Federal Government, the Federal

Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to SMART, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the Agreement.

(b) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

11. Program Fraud and False or Fraudulent Statements or Related Acts.

(a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(c) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

12. Special Termination Provisions. In addition to the Termination provisions contained in the Agreement, the following Termination provisions apply.

(a) Termination for Convenience. SMART may terminate this Agreement, in whole or in part, at any time by written notice to the Contractor when it is in the Government’s best interest. The Contractor shall be paid its costs, including Agreement close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to SMART to be paid the Contractor. If the Contractor has any property in its possession belonging to SMART, the Contractor will account for the same, and dispose of it in the manner SMART directs.

(b) Termination for Default. If the Contractor does not deliver supplies in accordance with the Agreement delivery schedule, or, if the Agreement is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to

comply with any other provisions of the contract, SMART may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the Agreement price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by SMART that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, then SMART, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

(c) Opportunity to Cure. SMART in its sole discretion may, in the case of a termination for breach or default, allow the Contractor up to ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to SMART's satisfaction the breach or default of any of the terms, covenants, or conditions of this Agreement within ten (10) days after receipt by Contractor of written notice from SMART setting forth the nature of said breach or default, SMART shall have the right to terminate the Agreement without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude SMART from also pursuing all available remedies against Contractor and its sureties for said breach or default.

(d) Waiver of Remedies for any Breach. In the event that SMART elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Agreement, such waiver by SMART shall not limit SMART's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.

(e) Termination for Convenience or Default (Architect and Engineering Contracts). SMART may terminate this Agreement in whole or in part, for SMART's convenience or because of the failure of the Contractor to fulfill the Agreement obligations. SMART shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to SMART all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement, whether completed or in process.

If the termination is for the convenience of SMART, SMART shall make an equitable adjustment in the Agreement price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the Agreement obligations, SMART may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by SMART.

If, after termination for failure to fulfill Agreement obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of SMART.

13. Suspension and Debarment.

This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractors, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows.

Suspension and Debarment Certificate

The Contractor hereby certifies that neither the Contractor, nor its principals, as defined at 49 CFR 29.995, nor its affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

This certification is a material representation of fact relied upon by SMART. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to SMART, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a similar provision requiring such compliance in its lower tier covered transaction.

Name of Contractor: _____

By: _____

Print Name: _____

Title: _____

Date: _____

14. Civil Rights.

The following requirements apply to the Agreement:

(a) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(b) Equal Employment Opportunity The following equal employment opportunity requirements apply to the Agreement:

(1) Race, Color, Creed, National Origin, Sex In accordance with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60, *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, national origin, sex, sexual orientation, gender identity, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(2) Age In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to

comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

15. Disputes.

Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by SMART's General Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the General Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the General Manager shall be binding upon the Contractor and the Contractor shall abide by the decision. Nothing in this section is intended to limit the available rights and remedies otherwise imposed or available by law.

16. Performance During Dispute.

Unless otherwise directed by SMART, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.

17. Claims for Damages.

Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

18. Remedies.

Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between SMART and the Contractor arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within California.

19. Rights and Remedies.

The duties and obligations imposed by the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by SMART or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

20. Disadvantaged Business Enterprises.

In addition to the requirements set forth in the Notice to Proposers or Bidders regarding Disadvantaged Business Enterprise (DBE) Information the following requirements apply

to this Agreement.

(a) This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 0.03%.

(b) The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

(c) The successful bidder/offer or will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

(d) The contractor shall promptly pay any and all subcontractors by an instrument that guarantees availability of funds immediately upon deposit of said instrument. The contractor shall include, in its monthly invoice submission to SMART, amounts to pay for all subcontractors' acceptable invoices, no later than 30 days after receipt of such invoices. Unless otherwise approved in writing by SMART, the contractor shall, within ten (10) days after receipt of the payment made by SMART, pay to each of its immediate subcontractors for satisfactory performance of its contract, the amounts to which they are entitled, after deducting any prior payments and any amount due and payable to the contractor by those subcontractors. Any delay or postponement of such payment may take place only for good cause and with SMART's prior written approval. If the contractor determines the work of the subcontractors to be unsatisfactory, the contractor must immediately notify in writing SMART (with a separate notice to the Liaison Officer if the subcontractor is a DBE) and state the reasons. Failure by the contractor to comply with this requirement will be construed to be breach of contract and may be subject to sanctions as specified in the contract.

(e) Should SMART make incremental inspections and, upon approval of the contractor's work at various stages of the contract, pay a portion of the retainage, the contractor shall promptly, within 30 days after SMART has made such payment, pay to the subcontractor who has satisfactorily completed all of its work and whose work is covered by SMART's inspection and approval, all retainage owed to the subcontractor. SMART's incremental inspections, approval or release of a portion of the retainage under this section shall not constitute acceptance.

(f) The Contractor must promptly notify SMART whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of SMART. In this situation, the prime contractor shall provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time period specified, SMART will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, SMART may issue a termination for default proceeding.

21. Exclusionary or Discriminatory Specifications.

Apart from inconsistent requirements imposed by Federal statute or regulations, Contractors shall comply with the requirements of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

22. No Federal Government Obligations to Contractor and Third Parties.

Absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to Contractor, or any other third party in connection with the performance of the Agreement. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, contract, or subagreement, the Federal Government continues to have no obligations or liabilities to any party, including the Contractor.

23. Geographic Restrictions.

Contractor shall refrain from using state or local geographic preferences, except those expressly mandated or encouraged by Federal statute, and as permitted by SMART.

24. Access To Records and Reports.

Contractor shall comply with the following requirements:

(a) **Record Retention.** Contractor shall, during the course of the Agreement and for three years after final payment, retain and maintain complete readily accessible records, documents, reports, contracts, and supporting materials relating to the Agreement as SMART may require.

(b) **Access to Records.** Contractor shall permit SMART, the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all project work, materials, payrolls, and other data, and to audit the books, records, and accounts of Contractor and its subcontractors pertaining to the Agreement. In accordance with 49 U.S.C. § 5325(g), Contractor shall require each subcontractor to permit SMART, the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that subcontractor agreement and to audit the books, records, and accounts involving that subcontractor agreement as it affects the Agreement.

(c) **State Audit, Inspection, Access to Records and Retention of Records Requirements.** Contractor and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred costs by line item for the project. Contractor and its subcontractors' accounting systems shall conform to generally accepted accounting principles (GAAP) and all records shall

provide a breakdown of total costs charged to the project, including properly executed payrolls, time records, invoices and vouchers as well as all accounting generated reports. Contractor and its subcontractors shall permit representatives of the State and State Auditor to inspect, examine, make excerpts or transcribe Contractor and its subcontractors' work, documents, papers, materials, payrolls, books, records, accounts, any and all data relevant to this Agreement at any reasonable time and to audit and verify statements, invoices or bills submitted by Contractor and its subcontractors pursuant to this Agreement, and shall provide copies thereof upon request and shall provide such assistance as may be reasonably required in the course of such audit or inspection.

The State, its representatives and the State Auditor further reserve the right to examine, inspect, make copies, or excerpts of all work, documents, papers, materials, payrolls, books and accounts, and data pertaining to this Agreement and to inspect and re-examine said work, documents, papers, materials, payrolls, books, records, accounts and data during the life of the Agreement and for the three (3) year period following the final payment under this Agreement, and Contractor and its subcontractors shall in no event dispose of, destroy, alter or mutilate said work, documents, papers, materials, payrolls, books, records, accounts and data in any manner whatsoever for three (3) years after final payment under this Agreement and all pending matters are closed.

Any costs for which Contractors and its subcontractors have received payment that are determined by subsequent audit to be unallowable under the terms of this agreement may be required to be repaid to SMART by the Contractors and its subcontractors. Should Contractor and its subcontractors fail to reimburse money due SMART within 30 days of demand, or within such other period as may be agreed between the parties hereto, SMART is authorized to withhold future payments due Contractor and its subcontractors from any source.

The Contractor agrees that the Contract Cost Principles and Procedures at least as restrictive as 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 *et seq.*, shall be used to determine the allowability of individual items of costs.

The Contractor agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Any costs for which payments have been made to the Contractor, which are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 *et seq.*, or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, are subject to repayment by Contractor to SMART.

Any subcontract entered into as a result of this Agreement shall contain all the provisions of this section.

25. ADA Access.

Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 *et seq.*; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49, U.S.C. § 5301(d); and the following Federal regulations including any amendments thereto:

- (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37;
- (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. Part 27;
- (c) U.S. DOT regulations “Americans with Disabilities (DA) Accessibility Specifications for Transportation Vehicles,” 49 C.F.R. Part 38;
- (d) U.S. DOT regulations, “Nondiscrimination on the basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35;
- (e) U.S. Department of Justice (DOJ) regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. Part 36;
- (f) U.S. General Services Administration (GSA) regulations, “Accommodations for the Physically Handicapped,” 41 C.F.R. Subpart 101-19;
- (g) U.S. Equal Employment Opportunity Commission, “Regulations to implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630;
- (h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 C.F.R. Part 64, Subpart F;
- (i) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609; and
- (j) Any implementing requirements FTA may issue.

26. Fair Labor Standards Requirements.

Contractor shall comply with the minimum wage and overtime provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 206 and 207, which apply to employees performing work under the Agreement.

27. Contract Work Hours and Safety Standards Act.

(40 U.S.C. §§ 3701 – 3708) Contractor shall comply with 40 U.S.C. § 3702 and § 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

Contractor shall comply with the determinations pertaining to these requirements that may be made in accordance with applicable U.S. Department of Labor (DOL) regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5.

Contractor shall comply with U.S. DOL regulations, “Recording and Reporting Occupational Injuries and Illnesses,” 29 C.F.R. Part 1904; “Occupational Safety and Health Standards,” 29 C.F.R. Part 1910, and “Safety and Health Regulations for Construction,” 29 C.F.R. Part 1926.

28. State Fair Employment Practices.

In the performance of work under this Agreement, Contractor and its subcontractors will not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (including cancer), age (over 40), marital status and denial of family care leave. Contractor and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900 (a-f), set forth in chapters of Division 4 of Title 2 of the California Code of Regulations are incorporated into this agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Contractor and its subcontractors shall include the nondiscrimination and compliance provisions of this clause in all subcontractor agreements to perform work under this agreement.

Contractor and its subcontractors will permit access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by SMART for the purpose of investigation to ascertain compliance with this Fair Employment Practices Section.

29. Metric System.

To the extent required by U.S. DOT or FTA, Contractor shall use the metric system of measurement, as may be required by 49 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, “Metric Usage In Federal Government Programs,” 15 U.S.C. § 205a note; and other regulations, guidelines, and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, Contractors shall accept products and services with dimensions expressed in the metric system of measurement.

30. Environmental Protection.

Contractor shall comply with the following requirements:

(a) Contractor shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.* consistent with Executive Order. No. 11514, as amended, “Protection and Enhancement of Environmental Quality,” 42 U.S.C. § 4321 note; PTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality

regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 *et seq.*; and joint FHWA/FTA regulations, “Environmental impact and Related Procedures,” 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

(b) Contractor shall comply with all Federal transit laws, such as 49 U.S.C. §5323(c)(2) and 23 U.S.C. §139, as applicable.

(c) Contractor shall report and require each subcontractor at any tier to report any violation of these requirements resulting from any Contract activity of Contractor or subcontractor to FTA and the appropriate U.S. EPA Regional Office.

31. Privacy Act.

Contractor agrees to comply with, and assures the compliance of its employees with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C § 552. Contractor understands that the requirements of the Privacy Act, including civil and criminal penalties for violation of the Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

32. Rights to Inventions Made Under a Contract or Agreement.

Contractor agrees to comply with the requirements of 37 C.F.R. §401.2(a), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements” and any implementing regulations issued by SMART.

33. Rights in Data and Copyrights.

(a) The Contractor agrees to provide a license to its subject data to SMART and the Federal Government that is royalty-free, non-exclusive, and irrevocable. The license must permit SMART or the Federal Government to reproduce, publish, or otherwise use the subject data or permit other entities or individuals to use the subject data provided those actions are taken for SMART or the Federal Government purposes.

(b) Definition of “Subject Data.” As used in this section, “subject data” means recorded information, whether or not copyrighted, that is delivered or specified to be delivered as required by the Agreement. Examples of subject data include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Agreement.

(c) Contractor grants to SMART and U.S. DOT a worldwide, non-exclusive, non-transferable, paid-up, royalty-free copyright license, including all rights under copyright, to any and all Publications and Digital Data Sets as such terms are defined in the U.S. DOT Public Access plan, resulting from scientific research funded either fully or partially by this Agreement. Contractor herein acknowledges that the above copyright license grant is first in time to any and all other grants of copyright license to such Publications and/or Digital Data Sets, and that SMART and the U.S. DOT shall have priority over any other claim of exclusive copyright to the same.

34. Patent Rights.

Contractor agrees that:

- (a) Depending on the nature of the Agreement, SMART and the Federal Government may acquire patent rights when the Contractor produces a patented or patentable invention, improvement, or discovery;
- (b) SMART's and the Federal Government's rights arise when the patent or patentable information is conceived or reduced to practice with federal assistance provided through the Agreement; or
- (c) When a patent is issued or patented information becomes available, the contractor shall notify SMART immediately and provide a detailed report satisfactory to SMART who will then notify the FTA as required.
- (d) Its rights and responsibilities in that federally assisted invention, improvement, or discovery will be determined as provided in applicable federal laws, regulations, requirements, and guidance, including any waiver thereof; and
- (e) Unless SMART or the Federal Government determines otherwise in writing, irrespective of its status or the status of any Contractor as a large business, small business, state government, state instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual, the Contractor will transmit the Federal Government's patent rights to the FTA, as specified in 35 U.S.C. §200 et seq., and the U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

35. Veterans Preference.

As provided in 49 U.S.C. §5325(k), the Contractor, to the extent practicable, agrees and assures that each subcontractor:

- 1. Will give a hiring preference to veterans, as defined in 5 U.S.C. §2108, who have the skills and abilities required to perform construction work required under Agreement in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53; and
- 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

36. Safe Operation of Motor Vehicles.

- (a) **Seat Belt Use.** Contractor agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. §402 note, (62 Fed Reg. 19217), by:

Adopting and promoting on-the-job seat belt use policies and programs for its

employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles.

- (b) **Distracted Driving, Including Text Messaging While Driving.** Contractor agrees to comply with Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” 23 U.S.C. §402, U.S. DOT Order 3902.10, “Text Messaging While Driving”, and U.S. DOT Special Provision pertaining to Distracted Driving:
- a. **Safety.** The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle the company owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Agreement, or when performing any work for or on behalf of SMART.
 - b. Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

37. Alcohol Misuse and Prohibited Drug Use.

Contractor and all Subcontractors shall comply with:

- a. Federal Transit Laws, specifically 49 U.S.C. §5331
- b. FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 C.F.R. Part 655
- c. Applicable provisions of U.S. DOT regulations, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” 49 C.F.R. Part 40

38. Incorporation of Federal Transit Administration (FTA) Terms.

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any SMART requests which would cause SMART to be in violation of the FTA terms and conditions.



David Rabbitt, Chair
Sonoma County Board of Supervisors

Barbara Pahre, Vice Chair
Golden Gate Bridge,
Highway/Transportation District

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Susan Gorin
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July 21, 2021

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

SUBJECT: Status Report on Freight and Related Activities

Dear Board Members:

RECOMMENDATION: Information Item

SUMMARY:

At your May 20, 2020 Board meeting, you authorized a number of activities as part of the Policy determination to become a freight service provider (attached staff report and minutes). At your September 2, 2020 board meeting, you received an update.

Since then, in cooperation with Senator McGuire's office, State of California, North Coast Railroad Authority (NCRA) and Northwestern Pacific Company (NWPCo), the following activities have taken place and are ongoing:

1. Funding:
 - a) \$4 million for the purchase of NWPCo from the State of California has been funded and received by SMART and it is held in a special account.
 - b) \$2 million for SMART for freight related activities has been funded by the State of California and has been received by SMART and it is held in a special account.
 - c) On July 13, 2021; Governor signed the budget bill that provides \$4M additional state funding for freight related activities.
 - d) Purchase Agreement: The Asset Transfer Purchase Agreement between SMART and NWPCo has been finalized and executed by both parties.
2. Baseline Agreement: The Baseline Agreement between the State of California and SMART has been finalized and executed by both parties

3. A Request for Proposal (RFP) was released for a consultant to conduct a Freight Rail Operations, Maintenance, Capital Costs, and Opportunities Analysis. A Consultant was selected, and an Executive Summary will be ready by your next Board meeting.
4. On or after March 4, 2021, SMART was authorized by the Surface Transportation Board (STB) to acquire the right-of-way and freight rail easement from North Coast Railroad Authority (NCRA).
5. On February 22, 2021, the freight operator, Northwestern Pacific Railroad Company (NWPCo), Petitioned the Surface Transportation Board (STB) for Discontinuance of Service Exemption (requesting authority to ceases being the freight operator).
6. On June 11, 2021, the STB approved NWPCo's petition for discontinuance of service and authorized SMART to assume freight operations and common carrier duties over the rail line which became final on July 11, 2021.
7. We are reviewing our existing spur and crossing Policies that need to be amended to reflect our responsibility and ability to allow for or modify existing spur/crossing for freight operations. These Policies are subject to your Board approval, and we anticipate presenting them for your considerations by the end of 2021.
8. We are studying and analyzing the best option to provide freight service to the current and future customers. We will present our analysis for Your Board for your approval before the end of 2021.
9. We are negotiating with the current freight operator to continue providing service for the existing customers while we continue completing our analysis.

We will continue to provide updates as we move forward.

Very truly yours,

/s/

Farhad Mansourian

General Manager

Attachment(s): 1) May 20, 2020 Board Report
2) Approved May 20, 2020 Board Minutes



May 20, 2020

Eric Lucan, Chair
Transportation Authority of Marin

Barbara Pahre, Vice Chair
Golden Gate Bridge,
Highway/Transportation District

Judy Arnold
Marin County Board of Supervisors

Damon Connolly
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Sonoma County Mayors' and
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Gary Phillips
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David Rabbitt
Sonoma County Board of Supervisors

Chris Rogers
Sonoma County Mayors' and
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Shirlee Zane
Sonoma County Board of Supervisors

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Sonoma-Marin Area Rail Transit Board of Directors
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Petaluma, CA 94954

SUBJECT: Expansion of SMART Right-of-Way and Scope of Operations by adding Freight Service Responsibility and Executing Related Agreements

Dear Board Members:

RECOMMENDATIONS:

As provided in SB 1029 (McGuire), Consideration of SMART becoming a Common Carrier and Freight service provider (directly or through a contract) with the understanding of all of its privileges, opportunities and obligations from Sonoma-Mendocino County line south to Corte Madera and east to Napa River. Upon affirmative confirmation of the policy before your Board, in order for us to move forward, the following actions are required by your Board:

1. Approve the concept of SMART becoming a Common Carrier and Freight service provider (directly or through a contract) with the understanding of all of its privileges, opportunities and obligations from Sonoma-Mendocino County line south and east to Napa River.
2. Accept the additional right-of-way from Downtown Healdsburg to Sonoma-Mendocino County Line (20.8 miles).
3. Authorize the General Manager to execute the "Asset Transfer Agreement" between SMART and NWPCo in substantially the form attached hereto as (Attachment 2).
4. Authorize the General Manager to execute the Baseline Agreement between State of California and SMART in substantially the form attached hereto as (Attachment 3).
5. Direct the Chair of the Board and General Manager to work with Senator McGuire, other State Legislators, Governor and his/her administration to secure the funding needed for the ongoing maintenance and capital project of the freight area.
6. Authorize General Manager to file required documents with the Surface Transportation Board authorizing SMART to acquire railroad right-of-way and transferring common freight carrier rail operations authority to SMART for all freight services south of Mile Post 89.
7. Authorize General Manager to issue a Request for Proposal to seek a freight consultant who would perform Economic Feasibility Study of the entire SMART owned area and analysis for the options to provide freight services in the future.

8. Authorize General Manager to negotiate and execute an agreement with NWPCo. to provide interim service to the existing freight customers until the Board has made a permanent decision.
9. Request the Chair of the Board to assign a number of Board members and the General Manager to meet with officials from County of Sonoma, Town of Sonoma, First Responders and the affected Community regarding the future of the existing practice of storage of Liquidated Petroleum Gasoline (LPG) and report back to the Board in a future public meeting.

SUMMARY:

The State of California is dissolving the North Coast Railroad Authority (NCRA), which currently owns the right-of-way north of Healdsburg and has freight easements on most of SMART's property and is responsible for freight service along our right-of-way. The State is planning to distribute certain portions of the Railroad right-of-way and assets to SMART and to a new planned Great Redwood Trail Agency that will oversee the implementation of a trail system on northern portions of the NCRA right-of-way. SMART is slated to receive the southern portion of the NCRA right-of-way from Downtown Healdsburg (MP 68.2) to the Sonoma-Mendocino County line (MP 89.0) as well as \$2 million dollars to address the cost of deferred maintenance and needed repairs. SMART's additional \$8 million of estimated capital and maintenance needs are yet to be funded. Senate Bill Nos. 1029 and 356 direct the dissolution of NCRA and modifies the Public Utilities Code as necessary, including making the necessary provisions for SMART to operate freight.

HISTORY:

The history of the Northwestern Pacific Railroad line is extensive. We will not attempt to tell it all here, but simply provide a high-level summary. Freight and passenger rail service has existed in various forms through Marin and Sonoma counties since the late 1800s. There were ferry connections in Tiburon and Larkspur that moved freight cars as well as passengers to San Francisco. In fact, mile post zero of the railroad is the Ferry Building in San Francisco. Lines spanned to Sonoma, Pt. Reyes, Eureka and other destinations. In addition to transporting people, the railroad shipped lumber, eggs from Petaluma, wine and other goods. Passenger service was discontinued south of Willits in 1958. There was a succession of bankruptcies and rail companies closing as Highway 101 was improved, trucking became cheaper, natural resources became scarcer and maintaining the railroad became significantly more expensive.

Portions of the right-of-way began to enter public ownership in 1989 when the North Coast Railroad Authority (NCRA) was established by the California Legislature under the North Coast Railroad Authority Act.

In 1986, Congressman Bosco introduced and succeeded in passing HR2 which purchased Southern Pacific right-of-way for \$24M for a future railroad use by public. As additional portions of the right-of-way began to enter public ownership in 1989 when the North Coast Railroad Authority (NCRA) was established by the California Legislature under the North Coast Railroad Authority Act.

In 2006, NCRA selected Northwestern Pacific Company (NWPCo) as their freight operator. Around the same time, the Golden Gate Bridge, Highway and Transportation District in conjunction with Marin and Sonoma Counties began purchasing southern portions of the railroad from the Southern Pacific Railroad. For two decades before NCRA was created, railroads had fallen on hard times around the country and

certainly here in Northern California. In 2006, NCRA selected Northwestern Pacific Company (NWPCo) as their freight operator who continues to provide freight today.

Around the same time, the Golden Gate Bridge, Highway and Transportation District in conjunction with Marin and Sonoma Counties began purchasing southern portions of the railroad from the Southern Pacific Railroad. The Sonoma-Marin Area Rail Transit Commission (SMART Commission) was a transitional body made up of Marin and Sonoma County supervisors and City Representatives that provided governance during the early planning phase of SMART. SMART Commission was staffed by Suzanne Wilford (now Smith) and Farhad Mansourian, the two Executive Directors of Sonoma and Marin Congestion Management Agencies.

Assembly Bill No. 2224, approved on August 31, 2002, created the Sonoma-Marin Area Rail Transit District we have today that was designed to operate in harmony with existing freight service that operates upon the same rail line.

Senate Bill 1029 (McGuire)

Senator Mike McGuire introduced SB 1029 in February of 2018 and it was signed into law by Governor Jerry Brown on September 29, 2018.

The overriding vision of the bill was to create a single trail system that would stretch over 300 miles from San Francisco Bay to Humboldt Bay, adjacent to, or on, the railbed. This was no small feat. With SMART as a successful passenger rail owning many miles of the tracks, the North Coast Railroad Authority owning the rest and the NCRA freight contractor NWPCo with an exclusive and extensive freight lease, there were many facets to making this all happen.

The Senator and his staff worked closely with SMART on the bill right from the start and throughout the process as the bill went through the legislative process and on to the Governor's desk.

One of the biggest hurdles was what to do with NCRA and the debt they had incurred over the many years since their inception?

With no train north of Cloverdale possible given the 200+ miles of dilapidated rail infrastructure and a significant debt, Senator McGuire decided to eliminate NCRA. To build the Great Redwood Trail, NCRA would be replaced with a Trail agency north of the Sonoma/Mendocino County line, and everything south of that County line would go to SMART. Under current state law (per SB 1029), NCRA is no longer a freight rail agency and their new mission is to "Transition to Trails" – in other words, their job is to work with SMART and Trail organizations on the Great Redwood Trail, and establish a plan to transfer their right-of-way to an authority that builds trails, and then close down forever.

After months of conversation and negotiation with SMART Board members, staff and others, Senator McGuire's SB 1029 was amended to put this agreement in place. As signed, the bill had these priorities, according to Senator McGuire:

- Preserve and protect this 300-mile jewel of a public transportation right-of-way.
- Transition the NCRA's priorities from rail to trail.

- Complete a financial study of NCRA so the right of way can go to responsible agencies and NCRA can be shuttered.
- Start the process of re-opening this stunning North Coast transportation corridor as a world class Trail.
- Enable SMART to acquire and take over the freight contract from Northwestern Pacific Company in order to put it back into the public's hands and help improve the safety and reliability of the entire corridor.

Section 17 of SB 1029 specifically involved SMART and NCRA's freight contractor, NWPCo. This section (excerpt below) appropriates \$4 million for the public acquisition of the privately held freight contract on the SMART/NCRA rail line.

SB 1029 (2018) SEC. 17. The sum of four million dollars (\$4,000,000) is hereby appropriated to the State Transportation Agency from the Public Transportation Account for rail improvements on the corridor owned by the Sonoma-Marín Area Rail Transit District and the North Coast Railroad Authority. These moneys shall be allocated to the Sonoma-Marín Area Rail Transit District for the acquisition of freight rights and equipment from the Northwestern Pacific Railroad Company to ensure efficient provision of goods movement requirements in the corridor in the context of growing passenger service. Following a signed Baseline Agreement between the State Transportation Agency and the Sonoma-Marín Area Rail Transit District that articulates deliverables, the anticipated expenditure schedule, and reporting requirements, the Secretary of Transportation may transfer these moneys to the Sonoma-Marín Area Rail Transit District pursuant to the provisions of the baseline agreement. These moneys shall not be transferred to the Sonoma-Marín Area Rail Transit District for the acquisition of freight rights and equipment from the Northwestern Pacific Railroad Company unless the terms and conditions of the baseline agreement have been approved by both the Secretary of Transportation and the Director of Finance. If these moneys are not transferred to the Sonoma-Marín Area Rail Transit District within two years of the chaptering of this act, these moneys shall be returned to the Public Transportation Account.

The Process is summarized here:

To implement the requirements of SB 1029, the following agreements are to be reached before the designated \$4M funding is to expire at the end of June 2020:

- NWPCO and SMART must reach an agreement for the sale of the freight contract, equipment, easements, etc. for a State funded \$4 million (see attachment 1)(subject to approval by the NCRA and SMART Board of Directors)
- SMART and the California State Transportation Agency must execute a Baseline Agreement that will provide State funding and will stipulate timetable and deliverables. (see attachment 2). This is subject to the approval of SMART Board of Directors and Approval by State Secretary of Transportation and State Director of the Department of Finance.
- Approval by the Federal Surface Transportation Board who has jurisdiction over freight in the United States.

The State of California's interest in this transaction is based upon the 2018 State Rail Plan and connectivity between SMART passenger and freight with national and regional rail service (AMTRAK and Capital Corridor). In the State's view, as SMART builds out additional miles of service territory and carries more

people, it is important that SMART has complete control over their rail line. Having the freight contract in SMART's hands will make the potential for an East-West train from Novato to Suisun City substantially easier. In 2019, the State funded an east-west passenger rail feasibility study that has the support of Counties of Marin, Sonoma, Transportation Authorities of Napa and Solano as well a number of business advocacy groups. But while the acquisition of the freight rail contract comes with significant advantages, it also has some expensive responsibilities.

After extensive review of the line from the Napa River to Novato and from Healdsburg to the Sonoma/Mendocino County line, it is clear there are necessary infrastructure and safety fixes to bring the line up to a reasonable and safe requirement. The maintenance and upkeep of the rail line from Novato to Schellville has been in the hands of a private freight rail contractor for over 12 years now, and with an underfunded NCRA before that, and is in need of an upgrade all around.

These upgrades are not overly expensive by rail standards, but will take some one-time and ongoing dollars. Senator McGuire was already able to secure \$2 million for SMART in the FY 19/20 budget to help defray these costs, but recognizes that it will take an additional \$8 million over the next few years.

Senator McGuire is in a good position to secure additional dollars. The Senator represents nearly the entire 300 mile plus rail line, and is on the Transportation Committee, the Senate Budget Committee and the Budget Subcommittee on Transportation. Senator McGuire helped secure \$3 million in state funding to carry out the audit and assessment of NCRA and the trail master planning. He was also able to secure an additional \$8.8 million dollars to help run NCRA and pay off their debts and the Senator helped secure over \$30 million from California Transportation Commission (CTC) and other sources for trails along the corridor in the last couple of years. The Senator has requested an additional budget item for SMART already for FY 20/21.

Current Actions and Pending Legislations:

Senate Bill No. 356 (McGuire), that was passed by California Senate, in its current form and intent will provide for the following:

NCRA:

- Property transfer from NCRA to SMART and all rights title and interest in the rail corridor and assignment of all contracts, equipment, leases, agreements and licenses south of Mendocino/Sonoma County line to Healdsburg. This will preserve the right-of-way and property for future freight and passenger rail service.
- NCRA to relinquish all Freight and Excursion Easement rights over SMART's right-of-way (Healdsburg South).
- A Transfer of all rail related personal property and equipment owned by NCRA and/or leased by NWPCo (South of MP 89).
- Execute any Surface Transportation Board (STB) approvals needed, for a similar and concurrent transfer (to be executed by NWPCo) for all fee title, easement, use and licenses common carrier responsibilities for all assets south of Mile Post 89 line immediately, subject to/or upon STB approval

NWPCo:

- Relinquishment and the transfer of all NWPCo's rights and privileges (long term lease) to use or operate rail service/common carrier authority responsibilities to SMART (South of MP 89).
- A Bill of Sale for all rail related personal property and equipment owned by NWPCo.
- An Assignment and Assumption Agreement for all contracts, equipment leases/licenses.
- Quit Claim Deed for all rights, title and interest in any improvements and all rights, title and interest in any easements, leases, licenses and right of way south of MP 89 to SMART.
- Apply and execute any Surface Transportation Board (STB) approvals needed, for a similar and concurrent transfer (To be executed by NCRA) for all fee title, easement, use and licenses for all assets south of the Mile Post 89 line immediately but subject to/or upon STB approval.

SMART: SUMMARY OF OBLIGATIONS

- Assumes maintenance responsibility for an additional 45 miles of right-of-way, including Bridges/crossings etc. Currently SMART maintains only the portion of the right-of-way ("shared" track) where SMART operates passenger service.

SMART assumes freight duties over the rail line south of the Sonoma/Mendocino county line (Mile Post 89). As the new exclusive freight operator, SMART will assume all "common carrier" duties over the rail line south of Mile Post 89. As the common carrier, SMART will need to continue to provide freight transportation to all existing local customers and to all parties on the rail line upon reasonable request, including requests for the transportation of hazardous materials. In addition, as the common carrier for freight SMART must now also comply with the all the requirements and regulations of the Surface Transportation Board.

The **Surface Transportation Board (STB)** of the United States is a federal, bipartisan, independent adjudicatory board. The STB was established in 1996 and has broad economic regulatory oversight of railroads, including rates, service, the construction, acquisition and abandonment of rail lines, carrier mergers and interchange of traffic among carriers. The Board has wide discretion, through its exemption authority from federal, state and local laws, to tailor its regulatory activities to meet the nation's changing transportation needs.

As a freight "common carrier", the STB will require SMART to bear the obligations to serve any customer upon reasonable request (reasonable business/economic sense); without unreasonable discrimination; at just and reasonable rates; and with higher duty of care. These requirements mean that during the transfer of property and responsibilities SMART must continue to serve NWPCo's current customers to comply with the requirements of STB, we are proposing to retain the existing freight operator to continue serving the existing customers on an interim basis until the feasibility study is completed and approved by your Board.

Environment/Operational Benefits:

In acquiring the freight operation responsibilities SMART will gain complete control over its right-of-way, allowing for much closer coordination of use of the rail line, improving dispatching and scheduling options and allowing SMART to have the ability to provide increased freight services to local freight customers in a more efficient and environmentally friendly way. As we build future stations and extensions, this will benefit SMART's ability to grow service.

FUNDING:

SB 1029 and SB 356 thus far provides \$2 million to SMART, to address the identified deferred maintenance items such as repair of the Black Point Bridge, and in cooperation and collaboration with California Department of Transportation (CALTRANS) as a joint safety project, repairing the Schellville and Highway 37 at grade crossings, fortifying railroad embankments and mainly general maintenance of the railroad right-of-way. These unfunded needs for SMART have been identified as \$8 million for track, signal and infrastructure repairs and maintenance of the Brazos branch and the new property north of Downtown Healdsburg.

POLICY DECISION:

Your Board previously discussed the issues involving NCRA, NWPCo., SB 1029 and SB 356 and the related real estate transactions and at numerous times have taken position of support for SB 1029. Additionally, SMART supported Senator McGuire's efforts in getting the required funding to implement the goals of SB 1029 and SB 356 and communicated SMART's support to Governor Newsom and various State Legislators.

In the past 2 years, as outlined by SB 1029, we have been negotiating with NWPCo. for the acquisition of the rail line and freight easement and in the last 12 months with State of California's Task Force on SB 1029. Upon affirmative confirmation of the policy before your board, in order for us to move forward, the following actions are required by your board:

1. Approve the Concept of SMART becoming a Common Carrier and Freight service provider (directly or through a contract) with the understanding of all of its privileges, opportunities and obligations from Sonoma-Mendocino County line south and east to Napa River.
2. Accept the additional Right-of-way from Downtown Healdsburg to Sonoma-Mendocino County Line (20.8 miles).
3. Authorize the General Manager to execute the "Asset Transfer Agreement" between SMART and NWPCo in substantially the from attached hereto as (Attachment 2).
4. Authorize the General Manager to execute the Baseline Agreement between State of California and SMART in substantially the from attached hereto as (Attachment 3).
5. Direct the Chair of the Board and General Manager to work with Senator McGuire, other State Legislators, Governor and his/her administration to secure the funding needed for the ongoing maintenance and capital project of the freight area.
6. Authorize General Manager to file required documents with the Surface Transportation Board authorizing SMART to acquire railroad right-of-way and transferring common freight carrier rail operations authority to SMART for all freight services south of MP 89.
7. Authorize General Manager to issue a Request for Proposal to seek a freight consultant who would perform Economic Feasibility Study of the entire SMART owned area and analysis for the options to provide freight services in the future.
8. Authorize General Manager to negotiate and execute an agreement with NWPCo to provide interim service to the existing freight customers until the Board has made a permanent decision.

9. Request the Chair of the Board to assign a number of Board members and the General Manager to meet with officials from County of Sonoma, Town of Sonoma, First Responders and the affected Community regarding the future of the existing practice of storage of Liquidated Petroleum Gasoline (LPG) and report back to the Board in a future public meeting.

If your board approves these steps, we will move forward with completing the required agreement but will not execute any documents until NCRA Board and State of California have all approved the aforementioned documents.

Very truly yours,

/s/

Farhad Mansourian
General Manager

Cc: Senator McGuire

Jason Liles
State of California Task Force
Chad Edison
Doug Bosco
Mitch Stogner

Attachment(s):

- 1) Senator McGuire Letter, dated May 15, 2020
- 2) California State Transportation and SMART Baseline Agreement
- 3) Asset Transfer Agreement
- 4) Senate Bill 1029
- 5) Senate Bill 356
- 6) Exhibition Map



May 15, 2020

Mr. Eric Lucan, Chair
SMART Board of Directors
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

Dear Chair Lucan:

I hope this letter finds you and your family safe and healthy.

I am writing today in support of your agenda item on the NWPCo freight contract acquisition. I know how much work your Board and staff have put into this over the last couple of years and I am impressed with the progress that has been made.

There is no doubt in my mind that having the freight contract as part of the SMART portfolio is not only good public policy but also good business. And it's something the District has needed – complete control over your own right of way. Consolidating all rail operations on this line into one public entity is in the best interest of our communities and having a public board with local officials making the decisions is good for everyone.

And, according to NWPCo financials, the freight operations are currently profitable and will give SMART an alternative revenue source for operations and maintenance, even in this down economy.

Looking at the bigger picture, the state is seeking ways to fund the SMART extension to Cloverdale and has already underwritten a study to look at the feasibility of running SMART west to east, from Novato to Suisun City. Extending your right of way ownership to the north and obtaining the freight contract can only make these projects easier to achieve in the long run.

Mr. Eric Lucan, Chair
May 15, 2020
Page 2

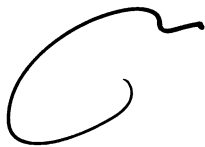
We have worked hard in the Senate over the years to bring state dollars to SMART and will continue to do so to ensure you are made whole on this added obligation. We have been quite successful over the last couple of years in acquiring funding for the whole SB 1029 process, and that includes \$2 million up front to SMART to make infrastructure improvements related to this project. As a member of both the Senate Transportation Committee and the Senate Budget Committee, I will continue to fight to ensure SMART has the funds it needs to take care of these new assets and to continue to expand and serve our remarkable communities such as the \$20 million in state funds that were recently secured to move SMART into Windsor.

Auditors from the Department of Finance and the experts at the State Transportation Agency have gone over this deal with a fine-tooth comb and I trust them when they say the deal is worth the investment.

This contract belongs in public hands. It is an innovative and logical solution and opens alternative revenue sources for the rail district. I am grateful for the proactive leadership your board has shown through this entire process.

Thank you for your hard work and please let me know if I can answer any questions.

Warmest Regards,

A handwritten signature in black ink, appearing to read 'MIKE MCGUIRE', with a stylized, looping flourish at the end.

MIKE MCGUIRE
Senator

California State Transportation Agency

Sonoma-Marín Area Rail Transit District

Baseline Agreement

DRAFT

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**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

Effective Date of this Agreement: April 30, 2020 or upon signature by all parties,
whichever is later

Termination Date of this Agreement: April 30, 2025

SMART: Sonoma Marin Area Rail Transit ("SMART")

Present Funding Sources: Statutes of 2018, Ch. 934 S.B. 1029 (McGuire, 2018),
section 17; Assembly Bill 74 Budget Act 2019-2020 – FY
2019-20 Item 0521-101-0001.

RECITALS

1. WHEREAS, Section Seventeen of Senate Bill 1029 (McGuire, 2018) appropriated \$4,000,000.00 (four million dollars) for the Sonoma Marin Area Rail Transit ("SMART") to acquire freight rights and equipment from the Northwestern Pacific Railroad Company ("NWP Co."), subject to specified conditions;
2. WHEREAS, SMART and NWP Co. have negotiated in good faith and come to tentative agreement to transfer NWP Co.'s freight rights and assets to SMART;
3. WHEREAS, the \$4,000,000.00 will revert to the Public Transportation Account if CalSTA has not transferred the funds to SMART by September 28, 2020;
2. WHEREAS, Item 0521-101-0001 of the Budget Act 2019-2020 Assembly Bill 74 (Ting, 2019) includes \$2,000,000.00 (two million dollars) for SMART for safety upgrades and maintenance upon acquisition of a freight contract as specified in Chapter 934 of the Statutes of 2018;
3. WHEREAS, the Surface Transportation Board ("STB") requires that existing freight customers continue to be served after a transfer of freight rights;
4. NOW THEREFORE, in consideration of the recitals and the rights, duties and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to the following:
5. This Agreement, entered into effective as of the date set forth above, or upon signature by all parties, whichever is later, is between SMART and the STATE OF CALIFORNIA, acting by and through the California State Transportation Agency ("CalSTA") as may be amended from time to time.

ARTICLE I - DEFINITIONS

The terms defined in this Article I shall for all purposes of this Agreement have the meanings specified herein.

1.1 “Act” refers to SB 1029 (McGuire, 2018), North Coast Railroad Authority Closure and Transition to Trails Act, Chaptered September 29, 2018, which, among other things, appropriated \$4 million for the acquisition of freight rights and equipment from the Northwestern Pacific Railroad Company to ensure efficient provision of goods movement requirements in the context of passenger service.

1.2 “Agreement” shall mean this Baseline Agreement, inclusive of all appendices and Program Supplements.

1.3 “Award Agreement” shall mean a project-specific subcontract to this agreement executed following Project award and may include Project specific information, expected outcomes, and deliverables.

1.4 “California Department of Transportation” or “Caltrans” or “Department” means the State of California, acting by and through its Department of Transportation of the State of the State of California, and any entity succeeding to the powers, authorities and responsibilities of the Department invoked by or under this Agreement or the Program Supplements.

1.5 “California Transportation Commission” or “CTC” shall refer to the commission established in 1978 by Assembly Bill 402 (Chapter 1106, Statutes of 1977).

1.9 “Overall Funding Plan” has the meaning set forth in Article II, Section 2(A)(5)(c).

1.11 “Program Supplement” shall mean a project-specific amendment to this Agreement that is pursuant to the SB 1029 or 2019-2020 Budget Act funding or following any additional appropriations or allocations and shall include all Project specific information needed to encumber funding and shall include expected outcomes and deliverables.

1.12 “Program Supplement Last Expenditure Date” refers to the last date for SMART to incur valid Project costs or credits.

1.13 “Program Supplement Termination” shall occur when after SMART’s obligations have been fully performed as set forth in Article II, Section 2D and Article III, Section 3(C)(2) or when terminated by convenience as set forth in Article III, Section 3(C)(1).

1.14 “Project” shall mean the project identified in the scope of work of a program supplement executed by SMART and State.

1.15 “Project Closeout Report” shall have the meaning set forth in Article II, Section 3(B).

1.16 “Project Financial Plan” shall have the meaning set forth in Article II, Section 2(A)(5)(d).

1.17 “Progress Payment Invoice” shall have the meaning set forth in Article II, Section 3A.

1.18 “Project Schedule” has the meaning set forth in Article II, Section 2(A)(5)(b).

1.19 “Scope of Work” has the meaning set forth in Article II, Section 2(A)(5)(a).

1.20 “Secretary” shall mean the Secretary of the California State Transportation Agency (CalSTA). Unless the context otherwise requires, any reference to the Secretary includes CalSTA and its officers and employees.

1.21 “State” shall mean the State of California, including its agencies and departments, and their officers and directors.

ARTICLE II –PROJECT AND ADMINISTRATION

Section 1. Project and Project Management

1. The acquisition of freight rights and equipment and projects to support freight and passenger rail on the corridor, pursuant to the Act and the Budget Act, are implemented by CalSTA in accordance with the legislation. Under delegation from CalSTA, the Department may administer any program supplements in accordance with the best management practices identified in the administration of similar Department grant programs.

2. SMART will cause each specific track project Board Resolution to be attached as part of any Program Supplement as a condition precedent to the acceptance of Budget Act or other appropriations and allocations (upon availability and allocation), for each such project.

3. All inquiries during the term of this Agreement and any applicable Program Supplement will be directed to the project representatives identified below:

State’s Project Administrator:	SMART’s Project Administrator:
California State Transportation Agency	Agency Name
Chad Edison	Agency Contact Name
Chief Deputy Secretary for Rail and Transit	Title
Phone: [Enter Phone #]	(XXX) XXX-XXXX
Email: [firstname.lastname@ gov]	Contact email

Section 2. Program Supplement

A. General

1. This Agreement shall have no force and effect with respect to the Project unless and until a separate Project specific program supplement hereinafter referred to as “Program Supplement,” adopting all of the terms and conditions of this Agreement has been fully executed

by both State and SMART. The effective date of this Agreement shall be upon signature by all parties.

2. SMART agrees to complete the defined scope of work for the Project, described in the Program Supplement adopting all of the terms and conditions of this Agreement.

3. A financial commitment of actual funds will only occur in each detailed and separate Program Supplement. No funds are obligated by the prior execution of this Agreement alone.

4. SMART further agrees, as a condition to the release and payment of the funds encumbered for the scope of work described in each Program Supplement, to comply with all of the terms and conditions of this Agreement and all the agreed-upon special covenants and conditions attached to or made a part of the Program Supplement provided the nature of that specific scope of work is identified and defined in the special covenants and conditions.

5. The Program Supplement shall include a detailed scope of work, which shall include but not be limited to, a Project Description, Project deliverables, requirements for each Project deliverable, a Project Schedule, an Overall Funding Plan with anticipated expenditures, a Project Financial Plan and reporting requirements.

a. The Scope of Work shall include a detailed description of the Project and will itemize the major tasks and their estimated costs, as well as the Project deliverables and the requirements for each Project deliverable.

b. The Project Schedule shall include major tasks and/or milestones and their associated beginning and ending dates and duration.

c. The Overall Funding Plan shall itemize the various Project Components, the committed funding program(s) or source(s), and the matching funds to be provided by SMART and/or other funding sources, if any [these Components include Environmental and Permits; Plans, Specifications and Estimates (PS&E); Right-of-Way (ROW); and Construction (including transit vehicle acquisition)] and an anticipated expenditure schedule.

d. The Project Financial Plan shall identify estimated expenditures for the Project Component by funding source, provided that for the purposes of this Agreement the State is only monitoring compliance for expenditures of State funds.

6. Adoption and execution of the Program Supplement by SMART and State, incorporating the terms and conditions of this Agreement into the Program Supplement as though fully set forth therein, shall be sufficient to bind SMART to these terms and conditions when performing the Project and the Program Supplement shall incorporate the terms and conditions of this Agreement by reference. Unless otherwise expressly delegated to a third-party in a resolution by SMART's governing body, which delegation must be expressly assented to and concurred in by State, the work performed pursuant to the Program Supplement shall be managed by SMART.

7. The estimated cost and scope of the Project will be as described in the applicable Program Supplement. The State shall not participate in any funding for the Project beyond those amounts actually encumbered by the State as evidenced in the applicable Program Supplement.

8. Upon the stated expiration date of this Agreement, any Program Supplement executed under this Agreement for the Project with obligations that are not fully completed pursuant to the approved Project Schedule shall be deemed to extend the term of this Agreement only to conform to the specific Project termination or completion date, including completion of deliverables and reporting requirements contemplated by the applicable Program Supplement, in order to allow that uncompleted Project to be administered under the extended terms and conditions of this Agreement. No new program supplements may be authorized during an extended term.

B. *Project Overrun*

1. If SMART or the State determine, at any time during the performance of the Project, that the Project budget may be exceeded, SMART shall take the following steps:

a. Notify the designated State representative of the nature and projected extent of the overrun and, within a reasonable period thereafter, identify and quantify potential cost savings or other measures which SMART will institute to bring the Project Budget into balance; and

b. Identify the source of additional SMART or other third-party funds that can be made available to complete Project. SMART agrees that the allocation of additional funds is subject to appropriation and allocation; and SMART understands and agrees that CalSTA cannot guarantee additional funding.

C. *Cost Savings and Project Completion*

1. SMART is encouraged to evaluate design and construction alternatives that would mitigate the costs of delivering the commitments for the Project. SMART shall take all commercially reasonable steps that are necessary in accordance with best management practices in order to rehabilitate segments of the alignment for freight and passenger rail operations. In determining cost savings, the Parties shall take into account all avoided costs, including avoided design, material, equipment, labor, construction, testing, acceptance and overhead costs, and avoided costs due to time savings, and all the savings in financing costs associated with such avoided costs.

2. If there is an identification and implementation of any CalSTA-approved alternative resulting in reduction of the Project costs, the parties agree that SMART shall provide a prorated share of Project or Project component cost savings based on the overall project match to the State no later than 30 days after the submission of the final invoice. Subject to CalSTA's written approval, savings may be used towards another project component or towards increasing project

benefits that are consistent with the original project purpose while maintaining the overall project match, if any, referenced in the project award and program supplements.

3. Program supplements will indicate the Project or Component proration of funding match, if any.
4. SMART agrees to complete the Project and accepts sole responsibility for the payment of any cost increases.

D. Scope of Work

1. SMART shall be responsible for complete performance of the work described in the approved Program Supplement for the Project related to the commitment of encumbered funds. All work shall be accomplished in accordance with the applicable provisions of the Act, the Public Utilities Code, the Government Code, annual Budget Acts and other applicable statutes and regulations.
2. SMART acknowledges and agrees that SMART is the sole controlling entity and manager of the Project, and it is solely responsible for the Project's subsequent employment, operation, repair and maintenance for the benefit of the public and for passenger and freight goods movement. SMART shall be solely responsible for complying with the funding and use restrictions established by (a) the Act, the Budget Act or subsequent legislation, (b) the State Treasurer, (c) the Internal Revenue Service, (d) the applicable Program Supplement and (e) this Agreement.
3. SMART acknowledges and agrees that SMART is responsible for complying with all reporting requirements established by the Act and Budget Act according to the Program Supplements.

E. Program Supplement Amendments

Program Supplement amendments will be required whenever there are CalSTA actions, including but not limited to, Financial Allocations, Financial Allocation Amendments, Time Extensions and Technical Corrections. These changes shall be mutually binding upon the Parties only following the execution of a Program Supplement amendment.

Section 3. Allowable Costs and Payments

A. Allowable Costs and Progress Payment Invoice

1. Not more frequently than once a month, SMART will prepare and submit to State a signed Progress Payment Invoice for actual Project costs incurred and paid for by SMART consistent with the allocation and Scope of Work document in the Program Supplement and State shall pay those uncontested allowable costs. If no costs were incurred during any given quarter, SMART is exempt from submitting a signed Progress Payment Invoice.

2. State shall not be required to reimburse more funds, cumulatively, per quarter of any fiscal year greater than the sums identified and included in the Project Financial Plan. The State shall hold the right to determine reimbursement availability based on an approved expenditure plan and actual funding capacity. Each such invoice will report the total of Project expenditures (including those of SMART and third parties) and will specify the percent of State reimbursement requested

B. *Final Invoice*

The Program Supplement Last Expenditure Dates(s) refer to the last date that SMART can incur valid Project costs or credits. SMART has one hundred and eighty (180) days after that Last Expenditure Date to make already incurred final allowable payments to Project contractors or vendors, prepare the Project Closeout Report, and submit the final invoice to State for reimbursement of allowable Project costs before those remaining State funds are unencumbered and those funds are reverted as no longer available to pay any Project costs. SMART expressly waives and releases any and all rights to allowable reimbursements from State pursuant to this Agreement for costs incurred after that termination date and for costs invoiced to SMART for payment after that one hundred and eightieth (180th) day following the Project Last Expenditure Date.

ARTICLE III – GENERAL PROVISIONS

Section 1. Funding

1. SMART agrees to contribute at least the statutorily required or other required local contribution of matching funds (other than State or federal funds), if any is specified within the Program Supplement or any appendices thereto, toward the actual cost of the Project or the amount specified, if any, whichever is greater. Notwithstanding the foregoing, SMART shall contribute not less than its required match amount toward the Project cost in accordance with a schedule of payments as shown in the Project Financial Plan prepared by SMART and approved by State as part of a Program Supplement.

Section 2. Audits and Reports

A. *Cost Principles*

1. SMART agrees to comply with Title 2 Code of Federal Regulations 200 (2 CFR 200) Uniform Administrative Requirements, Cost Principles for State and Local Government, and Audit Requirements for Federal Awards.

2. SMART agrees, and will assure that, its contractors and subcontractors will be obligated to agree to follow 2 CFR 200 and it shall be used to determine the allowability of individual Project cost items. Every sub-recipient receiving Project funds as a contractor or sub-contractor under this Agreement shall comply with 2 CFR 200.

3. Any Project costs for which SMART has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR 200, are subject to repayment by SMART to State. Should SMART fail to reimburse moneys due State within thirty (30) days of demand, or within such other period as may be agreed in writing between the Parties hereto, State is authorized to intercept and withhold future payments due SMART from State or any third-party source whose funding passes through the State, including but not limited to, the State Treasurer, the State Controller and the CTC.

4. The State may terminate a grant for any reason at any time if it is determined by the State, based on an audit under this section, that there has been a violation of any State or federal law or policy by SMART during performance under this or any other grant agreement or contract entered into with the State. If the grant is terminated under this section, SMART may be required to fully or partially repay funds.

B. *Record Retention*

1. SMART agrees, and will assure that, its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs and matching funds by line item for the Project. The accounting system of SMART, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of SMART, its contractors and subcontractors connected with Project performance under this Agreement and each Program Supplement shall be maintained for a minimum of three (3) years from the date of final payment to SMART under a Program Supplement and shall be held open to inspection, copying, and audit by representatives of State, the California State Auditor, and auditors representing the federal government. Copies thereof will be furnished by SMART, its contractors, and subcontractors upon receipt of any request made by State or its agents. In conducting an audit of the costs and match credits claimed under this Agreement, State will rely to the maximum extent possible on any prior audit of SMART pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work performed by SMART's external and internal auditors may be relied upon and used by State when planning and conducting additional audits.

2. For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with the performance of SMART's contracts with third parties pursuant to Government Code section 8546.7, SMART, SMART's contractors and subcontractors, and State, shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such Agreement and Program Supplement materials available at their respective offices at all reasonable times during the entire Project period and for three (3) years from the date of final payment to SMART under any Program Supplement. State, the California State Auditor, or any duly authorized representative

of State or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to the Project for audits, examinations, excerpts, and transactions, and SMART shall furnish copies thereof if requested.

3. SMART, its contractors and subcontractors will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by State, for the purpose of any investigation to ascertain compliance with this Agreement and the Act.

C. Reporting Requirements

1. Reporting requirements of SMART will include whether reported implementation activities are within the scope of the Project Program Supplement and in compliance with State laws, regulations, and administrative requirements.

2. Progress Reporting shall be no more frequently than monthly and no less frequently than semi-annually at the discretion of the State and shall generally include the following information:

- a. Activities and progress made towards implementation of the project during the reporting period and activities anticipated to take place in the next reporting period;
- b. Identification of whether the Project is proceeding on schedule and within budget;
- c. Identification of whether the Project Deliverables are proceeding on schedule.
- d. Identification of changes to the Project funding plan, milestone schedule, or deliverables completion date; and
- e. Any actual or anticipated problems which could lead to delays in schedule, increased costs or other difficulties for either the Project or other State funded projects impacted by the Projects scope of work and the efforts or activities being undertaken to minimize impacts to schedule, cost, or deliverables;

3. Within one year of the Project or reportable Project components becoming operable, the implementing agency must provide a final delivery report including at a minimum:

- a. Scope of completed Project as compared to Programmed Project;
- b. Performance outcomes derived from the project shall include but not be limited to before and after measurements and estimates for ridership, service levels, benefits to disadvantaged communities, low income communities, and/or low income households, and project co-benefits as well as an explanation of the methodology used to quantify the benefits.
- c. Before and after photos documenting the project

d. The final costs as compared to the approved project budget by component and fund type, and

e. The project duration as compared to the project schedule in the project application.

Section 3. Special Requirements

A. *California Transportation Commission Resolutions*

1. SMART shall adhere to applicable CTC policies on “Timely Use of Funds” and/or successor resolutions in place at the time a Program Supplement is executed.

2. SMART shall be bound to the terms and conditions of this Agreement and CTC Resolutions in place at the time the Program Supplement is signed (as applicable) and all restrictions, rights, duties and obligations established therein on behalf of State and CTC shall accrue to the benefit of the CalSTA and shall thereafter be subject to any necessary enforcement action by CalSTA or State. All terms and conditions stated in the aforesaid CTC Resolutions in place at the time the Program Supplement is signed (if applicable) shall also be considered to be binding provisions of this Agreement.

3. SMART shall conform to any and all permit and mitigation duties associated with Project as well as all environmental obligations established by law or regulation at the time a Program Supplement is signed, as applicable, at the expense of SMART and/or the responsible party and without any further financial contributions or obligations on the part of State unless a separate Program Supplement expressly provides funding for the specific purpose of hazardous materials remediation.

B. *SMART Resolution*

1. SMART has executed this Agreement pursuant to the authorizing SMART resolution, attached as Appendix B to this Agreement, which empowers SMART to enter into this Agreement and which may also empower SMART to enter into all subsequent Program Supplements adopting the provisions of this Agreement.

2. If SMART or State determines that a separate Resolution is needed for each Program Supplement, SMART will provide information as to who the authorized designee is to act on behalf of SMART to bind SMART with regard to the terms and conditions of any said Program Supplement or amendment and will provide a copy of that additional Resolution to State with the Program Supplement or any amendment to that document.

C. *Termination*

1. Termination Convenience by State

a. CalSTA reserves the right to terminate funding for any Program Supplement, upon written notice to SMART in the event that SMART fails to proceed with Project work in accordance with the Program Supplement, or otherwise violates the conditions of this Agreement and/or the Program Supplement or the funding allocation such that substantial performance is significantly endangered.

b. No such termination shall become effective if, within thirty (30) days after receipt of a notice of termination, SMART either cures the default involved or, if not reasonably susceptible of cure within said thirty (30)-day period, SMART proceeds thereafter to complete the cure in a manner and time line acceptable to CalSTA set in advance and in writing by CalSTA. Any such termination shall be accomplished by delivery to SMART of a notice of termination, which notice shall become effective not less than thirty (30) days after receipt, specifying the reason for the termination, the extent to which funding of work under this Agreement is terminated and the date upon which such termination becomes effective, if beyond thirty (30) days after receipt. During the period before the effective termination date, SMART and State shall meet to attempt to resolve any dispute.

c. Following a fund encumbrance made pursuant to a Program Supplement, if SMART fails to expend monies within the time allowed specified in the Program Supplement, those funds shall revert, and be deemed withdrawn and will no longer be available to reimburse Project work unless those funds are specifically made available beyond the end of that Fiscal Year through re-appropriation or other equivalent action of the Legislature and written notice of that action is provided to SMART by State.

d. In the event CalSTA terminates a Program Supplement for convenience and not for a default on the part of SMART as is contemplated in this section, SMART shall be reimbursed its authorized costs up to State's proportionate and maximum share of allowable Project costs incurred to the date of SMART's receipt of that notice of termination, including any unavoidable costs reasonably and necessarily incurred up to and following that termination date by SMART to effect such termination following receipt of that termination notice.

2. Termination After SMART's Obligations Fully Performed

Following project completion, and all obligations as defined in the Program Supplement are fully performed, including Project completion of all deliverables and reporting, the Program Supplement shall be terminated. If the Project obligations are not fully performed, as defined under this section, SMART may be required to fully or partially repay funds.

D. *Third Party Contracting*

1. SMART shall not award a construction contract over \$10,000 or other contracts over \$25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code Sections 4525 (d), (e) and (f)] on the basis of a non-competitive negotiation for work to be performed under this Agreement without the prior

written approval of State. Contracts awarded by SMART, if intended as local match credit, must meet the requirements set forth in this Agreement regarding local match funds.

2. Any subcontract entered into by SMART as a result of this Agreement shall contain the provisions of ARTICLE III – GENERAL PROVISIONS, Section 2. Audits and Reports and shall mandate that travel and per diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as Project costs only after those costs are incurred and paid for by the subcontractors.

3. In addition to the above, the pre-award requirements of third party contractor/consultants with local transit agencies should be consistent with Local Program Procedures (LPP-00-05).

4. SMART agrees to pay and to require its contractors to pay employees in accordance with federal and state labor laws.

E. Change in Funds and Terms/Amendments

This Agreement and the resultant Program Supplements may be modified, altered, or revised only by a written amendment that is executed by all of the parties in accordance with Article IV, section 1.D.

F. Project Ownership

1. Unless expressly provided to the contrary in a Program Supplement, subject to the terms and provisions of this Agreement, SMART, or a designated subrecipient acceptable to State, as applicable, shall be the sole owner of all improvements and property included in the Project constructed, installed or acquired by SMART or subrecipient with funding provided to SMART under this Agreement. SMART, or subrecipient, as applicable, is obligated to continue operation and maintenance of the physical aspects of the Project dedicated to the public transportation purposes for which Project was initially approved unless SMART, or subrecipient, as applicable, ceases ownership of such Project property; ceases to utilize the Project property for the intended public transportation purposes; or sells or transfers title to or control over Project and State is refunded the Credits due State as provided in paragraph (2) herein below.

2. Project right-of-way, Project facilities constructed or reconstructed on the Project site and/or Project property (including vehicles and rolling stock) purchased by SMART (excluding temporary construction easements and excess property whose proportionate resale proceeds are distributed pursuant to this Agreement) shall remain permanently dedicated to the described public transit and freight uses in the same proportion and scope, and to the same extent as mandated in the Program Supplement, unless State agrees otherwise in writing. Vehicles acquired as part of Project, including, but not limited to, buses, vans, rail equipment, shall be dedicated to that rail transportation use for their full economic life cycle, which, for the purpose of this Agreement, will be determined in accordance with standard national transit practices and applicable rules and guidelines, including any extensions of that life cycle achievable by

reconstruction, rehabilitation or enhancements. The exceptions to this section are outlined below:

a. Except as otherwise set forth in this Section 3, State, or any other State-assignee public body acting on behalf of CalSTA, shall be entitled to a refund or credit (collectively the Credit), at State's sole option, equivalent to the proportionate Project funding participation received by SMART from State if SMART, or a sub-recipient, as applicable, (i) ceases to utilize Project for the original intended transportation purposes or (ii) sells or transfers title to or control over Project. If federal funds (meaning only those federal funds received directly by SMART and not federal funds derived through or from the State) have contributed to the Project, SMART shall notify both State and the original federal source of those funds of the disposition of the Project assets or the intended use of those sale or transfer receipts.

b. State shall also be entitled to an acquisition credit for any future purchase or condemnation of all or portions of Project by State or a designated representative or agent of State.

c. The Credit due State will be determined by the ratio of State's funding when measured against the SMART's funding participation (the Ratio). For purposes of this Section 4, the State's funding participation includes federal funds derived through or from State. That Ratio is to be applied to the then present fair market value of Project property acquired or constructed as provided in (d) and (e) below.

d. For Rail vehicles, rolling stock or other freight equipment this Credit [to be deducted from the then remaining equipment value] shall be equivalent to the percentage of the full extendable vehicle economic life cycle remaining, multiplied by the Ratio of funds provided for that equipment acquisition. For real property, this same funding Ratio shall be applied to the then present fair market value, as determined by State, of the Project property acquired or improved under this Agreement.

e. The Credit due State as a refund shall not be required if SMART dedicates the proceeds of such sale or transfer exclusively to a new or replacement State approved public transit or freight rail purpose, which replacement facility or vehicles will then also be subject to the identical use restrictions for that new public purpose and the Credit ratio due State should that replacement project or those replacement vehicles cease to be used for that intended described pre-approved public transit purpose.

i. In determining the present fair market value of property for purposes of calculating State's Credit under this Agreement, any real property portions of the Project site contributed by SMART shall not be included. In determining State's proportionate funding participation, State's contributions to third parties (other than SMART) shall be included if those contributions are incorporated into the Project.

ii. Once State has received the Credit as provided for above because SMART, or a sub-recipient, as applicable, has (a) ceased to utilize the Project for the described intended

transportation purpose(s) for which State funding was provided and State has not consented to that cessation of services or (b) sold or transferred title to or control over Project to another party (absent State approval for the continued transit operation of the Project by that successor party under an assignment of SMART's duties and obligations), neither SMART, subrecipient, nor any party to whom SMART or subrecipient, as applicable, has transferred said title or control shall have any further obligation under this Agreement to continue operation of Project and/or Project facilities for those described public transportation purposes, but may then use Project and/or any of its facilities for any lawful purpose.

iii. To the extent that SMART operates and maintains Intermodal Transfer Stations as any integral part of Project, SMART shall maintain each station and all its appurtenances, including, but not limited to, restroom facilities, in good condition and repair in accordance with high standards of cleanliness (Public Utilities Code section 99317.8). Upon request of State, SMART shall also authorize State-funded bus services to use those stations and appurtenances without any charge to State or the bus operator. This permitted use will include the placement of signs and informational material designed to alert the public to the availability of the State-funded bus service (for the purpose of this paragraph, "State-funded bus service" means any bus service funded pursuant to Public Utilities Code section 99316).

G. *Disputes*

Parties shall develop a mutually agreed upon issue resolution process, as described below, and issues between the Parties are to be resolved in a timely manner. The Parties agree to the following:

1. If the Parties are unable to reach agreement on any particular issue relating to either Parties' obligations pursuant to this Agreement, the Parties agree to promptly follow the issue resolution process as outlined below:

a. CalSTA's project manager and the SMART's equivalent may initiate the process of informal dispute resolution by providing the other Party with written notice of a dispute. The written notice shall provide a clear statement of the dispute, and shall refer to the specific provisions of this Agreement or Program Supplement that pertain to the dispute. CalSTA's project manager and the SMART's equivalent shall meet and attempt to resolve the dispute within five days from the written notice. If the dispute is resolved, the Parties shall create and sign a short description of the facts and the resolution that was agreed upon by the Parties.

b. If the dispute is not resolved by the fifth day from the written notice, CalSTA's chief deputy for rail and transit and the SMART's equivalent shall meet and review the dispute within five days. CalSTA's deputy and the SMART's equivalent manager shall attempt to resolve the dispute within ten days of their initial meeting. If the dispute is resolved, the Parties shall create and sign a short description of the facts and the resolution that was agreed upon by the Parties.

c. If the dispute is not resolved by the tenth day, CalSTA's Secretary or designee and the SMART's equivalent manager shall meet and review the dispute within five days. CalSTA's

Secretary or designee and the SMART's equivalent manager shall attempt to resolve the dispute within ten days of the initial meeting. If the dispute is resolved, the Parties shall create and sign a short description of the facts and the resolution that was agreed upon by the Parties.

H. *Hold Harmless and Indemnification*

1. Neither State nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by SMART, its agents and contractors under or in connection with any work, authority, or jurisdiction delegated to SMART under this Agreement or any Program Supplement or as respects environmental clean-up obligations or duties of SMART relative to Project. It is also understood and agreed that, SMART shall fully defend, indemnify and the State and their officers and employees harmless from any liability imposed for injury and damages or environmental obligations or duties arising or created by reason of anything done or imposed by operation of law or assumed by, or omitted to be done by SMART under or in connection with any work, authority, or jurisdiction delegated to SMART under this Agreement and all Program Supplements.

2. SMART shall indemnify, defend and hold harmless State, the CTC and the State Treasurer relative to any misuse by SMART of State funds, Project property, Project generated income or other fiscal acts or omissions of SMART.

I. *Labor Code Compliance*

SMART shall include in all subcontracts awarded using Project funds, when applicable, a clause that requires each subcontractor to comply with California Labor Code requirements that all workers employed on public works aspects of any project (as defined in California Labor Code §§ 1720-1815) be paid not less than the general prevailing wage rates predetermined by the Department of Industrial Relations as effective the date of Contract award by the SMART.

J. *Non-Discrimination Clause*

1. In the performance of work under this Agreement, SMART, its contractor(s) and all subcontractors, shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability, mental disability, medical condition, age, marital status, family and medical care leave, pregnancy leave, and disability leave. SMART, its contractor(s) and all subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. SMART, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Each of SMART's contractors and all subcontractors shall give written notice of their

obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

2. Each of the SMART's contractors, subcontractors, and/or subrecipients shall give written notice of their obligations under this clause to labor organizations with which they have collective bargaining or other labor agreements. The SMART shall include the non-discrimination and compliance provisions hereof in all contracts and subcontracts to perform work under this Agreement.

3. Should federal funds be constituted as part of Project funding or compensation received by SMART under a separate Contract during the performance of this Agreement, SMART shall comply with this Agreement and with all federal mandated contract provisions as set forth in that applicable federal funding agreement.

4. SMART shall include the non-discrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this Agreement.

5. The SMART shall comply with the nondiscrimination program requirements of Title VI of the Civil Rights Act of 1964. Accordingly, 49 CFR 21 (Nondiscrimination in Federally-Assisted Programs of The Department Of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964) and 23 CFR Part 200 (Title VI Program and Related Statutes—Implementation and Review Procedures) are made applicable to this Agreement by this reference. Wherever the term "Contractor" appears therein, it shall mean the SMART.

6. The SMART shall permit, and shall require that its contractors, subcontractors, and subrecipients will permit, access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission or any other agency of the State of California designated by Department to investigate compliance with this Section J.

K. *State Fire Marshal Building Standards Code*

The State Fire Marshal adopts building standards for fire safety and panic prevention. Such regulations pertain to fire protection design and construction, means of egress and adequacy of exits, installation of fire alarms, and fire extinguishment systems for any State-owned or State-occupied buildings per section 13108 of the Health and Safety Code. When applicable, SMART shall request that the State Fire Marshal review Project PS&E to ensure Project consistency with State fire protection standards.

L. *Americans with Disabilities Act*

By signing this Master Agreement, SMART assures State that SMART shall comply with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA (42 U.S.C. 12101 et seq.).

M. *Access for Persons with Disabilities*

Disabled access review by the Department of General Services (Division of the State Architect) is required for all publicly funded construction of buildings, structures, sidewalks, curbs and related facilities. SMART will award no construction contract unless SMART's plans and specifications for such facilities conform to the provisions of sections 4450 and 4454 of the California Government Code, if applicable. Further requirements and guidance are provided in Title 24 of the California Code of Regulations.

N. *Disabled Veterans Program Requirements*

1. Should Military and Veterans Code sections 999 et seq. be applicable to SMART, SMART will meet, or make good faith efforts to meet, the 3% Disabled Veterans Business Enterprises goals (or SMART's applicable higher goals) in the award of every contract for Project work to be performed under these this Agreement.

2. SMART shall have the sole duty and authority under this Agreement and each Program Supplement to determine whether these referenced code sections are applicable to SMART and, if so, whether good faith efforts asserted by those contractors of SMART were sufficient as outlined in Military and Veterans Code sections 999 et seq.

O. *Environmental Process*

Completion of the Project environmental process ("clearance") by SMART (and/or State if it affects a State facility within the meaning of the applicable statutes) is required prior to requesting Project funds for right-of-way purchase or construction. No State agency may request funds nor shall any State agency, board or commission authorize expenditures of funds for any Project effort, except for feasibility or planning studies, which may have a significant effect on the environment unless such a request is accompanied with all appropriate documentation of compliance with or exemption from the California Environmental Quality Act (CEQA) (including, if as appropriate, an environmental impact report, negative declaration, or notice of exemption) under California Public Resources Code section 21080(b) (10), (11), and (12) provides an exemption for a passenger rail project that institutes or increases passenger or commuter services on rail or highway rights-of-way already in use.

P. *Force Majeure*

Each party will be excused from performance of its obligations where such non-performance is caused by any event beyond its reasonable control, such as any non-appealable order, rule or regulation of any federal or state governmental body, fire, flood, earthquake, storm, hurricane or other natural disaster, epidemic, pandemic, war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption, provided that the party excused

hereunder shall use all reasonable efforts to minimize its non-performance and to overcome, remedy or remove such event in the shortest practical time.

Should a *force majeure* event occur which renders it impossible for a period of forty-five (45) or more consecutive days for either party to perform its obligations hereunder, the Parties agree to negotiate in good faith to amend the existing Master Agreement or Supplemental Agreement to deal with such event and to seek additional sources of funding to continue the delivery of the project and/or operation of the Service.

ARTICLE IV – MISCELLANEOUS PROVISIONS

Section 1. Miscellaneous Provisions

A. *Successor Acts*

All statutes cited herein shall be deemed to include amendments to and successor statutes to the cited statutes as they presently exist.

B. *Successor and Assigns to the Parties*

Neither this Agreement nor any right, duty or obligation hereunder may be assigned, transferred, hypothecated or pledged by any party without the express written consent of the other party; provided, that unless otherwise expressly required herein, a party shall not be obligated to obtain the written consent of the other party with respect to any contract related to the Service for the provision of goods and/or services to the contracting party in the ordinary course of business.

C. *Notice*

Any notice which may be required under this Agreement shall be in writing, shall be effective when received, and shall be given by personal service, or by certified or registered mail, return receipt requested, to the addresses set forth below, or to such other addresses as may be specified in writing and given to the other party in accordance herewith.

If given to CalSTA:

California State Transportation Agency

915 Capitol Mall, Suite 350B

Sacramento, CA 95814

Attention: Chief Deputy Secretary for Rail and Transit

with a copy to:

California Department of Transportation

Division of Rail and Mass Transportation

P.O. Box _____

Sacramento, CA 95812-

Attention: Division Chief for Rail and Mass Transportation

If given to the SMART:

Agency Name

Address.

City, XXXXX-XXXX

Attention: Contact Name

D. *Amendment*

This Agreement may not be changed, modified, or amended except in writing, signed by the parties hereto, and approved in advance in writing by the Secretary, and any attempt at oral modification of this Agreement shall be void and of no effect.

E. *Representation and Warranties of the Parties*

1. SMART hereby represents and warrants to the Department that:

a. SMART is in good standing under applicable law, with all requisite power and authority to carry on the activities for which it has been organized and proposed to be conducted pursuant to this Agreement.

b. SMART has the requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement by such entity, the performance by it of its obligations thereunder and the consummation of the transactions contemplated thereby have been duly authorized by the governing board of such entity and no other proceedings are necessary to authorize this Agreement or to consummate the transactions contemplated thereby. The Agreements have been duly and validly executed and delivered by such entity and constitute valid and binding obligations of such entity, enforceable against it in accordance with their terms, except to the extent that such enforceability may be subject to bankruptcy, insolvency, reorganization, moratorium or other laws now or hereinafter in effect relating to the creditor's rights and the remedy of specific enforcement and injunctive and other forms of equitable relief, and may be subject to equitable defenses and to the discretion of the court before which any proceeding therefore may be brought.

c. Neither the execution and delivery of this Agreement and the performance of its obligations thereunder nor the consummation of the transactions contemplated thereby will (i) conflict with or result in a breach of any provision of any agreement to which SMART is a party; (ii) violate any writ, order, judgment, injunction, decrees, statute, rule or regulation of any court or governmental authority applicable to such entity or its property or assets.

2. CalSTA does hereby represent and warrant with respect to each of this Agreement to SMART that:

a. It validly exists with all requisite power and authority to carry on the activities proposed to be conducted pursuant to this Agreement.

b. It has the requisite power and authority to execute and deliver this Agreement and to carry out its obligations thereunder. The execution and delivery of this Agreement, the performance by it of its obligations thereunder and the consummation of the transactions contemplated thereby have been duly authorized and no other proceedings are necessary to authorize this Agreement or to consummate the transactions contemplated thereby. The agreements have been duly and validly executed and delivered by it and constitute valid and binding obligations, enforceable against it in accordance with their terms, except to the extent that such enforceability may be subject to bankruptcy, insolvency, reorganization, moratorium or other laws now or hereinafter in effect relating to creditor's rights and other forms of equitable relief, and may be subject to equitable defenses and to the discretion of the court before which any proceeding therefore may be brought.

c. Neither the execution and delivery of this Agreement and the performance of its obligations thereunder nor the consummation of the transactions contemplated thereby will (i) conflict with or result in a breach of any provision of any agreement to which SMART is a party; (ii) violate any writ, order, judgment, injunction, decree, statute, rule or regulation of any court or governmental authority applicable to such entity or its property or assets.

F. *Construction, Number, Gender and Captions*

The Agreements have been executed in the State of California and shall be construed according to the law of said State. Numbers and gender as used therein shall be construed to include that number and/or gender which is appropriate in the context of the text in which either is included. Captions are included therein for the purposes of ease of reading and identification. Neither gender, number nor captions used therein shall be construed to alter the plain meaning of the text in which any or all of them appear.

G. *Complete Agreement*

This Agreement, including Appendices, constitutes the full and complete agreement of the parties, superseding and incorporating all prior oral and written agreements relating to the subject matter of this Agreement. All attached Appendices A and B are hereby incorporated and made an integral part of this Agreement by this reference.

H. *Partial Invalidity*

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this

Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

I. *Conflicts*

To the extent that any provision of or requirement of this Agreement may conflict with a provision or requirement of any other agreement between the parties hereto, or between a party hereto and any other party, which is attached to this Agreement as an appendix, the following priority of agreements shall be employed to resolve such conflict. In the event of a conflict, the Master Agreement controls the Program Supplement and any further Amendments.

J. *Counterparts*

This Agreement may be executed in one or more counterparts and may include multiple signature pages, all of which shall be deemed to be one instrument. Copies of this Agreement may be used in lieu of the original.

K. *Governing Law*

The Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers.

[SIGNATURES TO FOLLOW]

**CALIFORNIA STATE
TRANSPORTATION AGENCY**

Sonoma-Marín Area Rail Transit

BY: _____
DAVID S. KIM
Secretary

BY: _____
Farhad Mansourian
General Manager

DATE: _____

DATE: _____

APPROVED AS TO FORM AND PROCEDURE

CALIFORNIA STATE TRANSPORTATION AGENCY

BY: _____
Attorney

DATE: _____

APPENDIX A
[DEPARTMENT DELEGATION]

DRAFT

**APPENDIX B
RECIPIENT'S RESOLUTION
(INSERT AGENCY BOARD RESOLUTION)**

DRAFT

ASSET TRANSFER AGREEMENT

This Asset Transfer Agreement (the "Agreement"), entered into and effective this ___ day of _____, 2019 (the "Effective Date"), is made and entered into by and between Sonoma-Marín Area Rail Transit District, a public transit district established under California law ("SMART"), and the Northwestern Pacific Railroad Company ("NWPCO"), a California Corporation established under California law). SMART and NWPCO are sometimes herein referred to individually as a "Party" and collectively as the "Parties" to this Agreement.

WHEREAS, Senate Bill No. 1029 enacted into law on August 24, 2018, appropriates the sum of four million dollars to the State Transportation Agency to be allocated to the Sonoma-Marín Area Rail Transit District under certain conditions for the acquisition of freight rights and equipment from NWPCO;

WHEREAS, SMART is authorized to acquire such freight rights and related equipment from NWPCO in order to carry out the purposes of Senate Bill No. 1029;

WHEREAS, in order to effectuate the intent of Senate Bill No. 1029, NWPCO and SMART hereby agree to enter in a baseline agreement for the transfer and conveyance of NWPCO's freight rights and equipment to SMART pursuant to the terms and conditions necessary to receive approval from the State Secretary of Transportation and Director of Finance;

WHEREAS, the transfer and conveyance of NWPCO's freight interest, rights and equipment is not considered to be a Project subject to environmental review;

WHEREAS, in order to effectuate the intent of Senate Bill No. 1029, NWPCO shall consummate an Agreement with the North Coast Rail Authority, ("NCRA") to discontinue NWPCO operations South of milepost 89.0 (Sonoma/Mendocino County line) and to assign, transfer and convey its freight rights and equipment related thereto to SMART;

WHEREAS, in order to effectuate the intent of Senate Bill No. 1029, the NCRA-SMART 2011 Operating and Coordination Agreement dated June 20th, 2011, and as thereafter amended dated December 13, 2017, shall continue to be in full force and effect for operations north of milepost 89.0 only.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties intending to be legally bound hereby agree as follows:

I. DEFINITIONS

1.1 **Defined Terms.** As used herein, the following terms shall have the meanings specified in this Section 1. 1 (such definitions to be equally applicable to the singular and plural forms of the term defined) as follows:

“Acquired Assets” - Shall have the meaning set forth in Section 2.1(b) hereof.

“Action” – Shall mean any suit, claim, action, arbitration, audit or proceeding before any court, tribunal, arbitral body or other Governmental Entity.

“Administration and Proration Agreement” - Shall have the meaning set forth in Section 2.6 hereof.

“Agreement” – Shall have the meaning set forth in the preamble hereto.

“Ancillary Agreements” – Shall have the meaning set forth in Section 7.1 hereof.

“Assignment and Assumption Agreement” – Shall have the meaning set forth in Section 2.1(a)(iv) hereof.

“Assumed Liabilities” – Shall have the meaning set forth in Section 2.3 hereof.

“Bill of Sale” – Shall have the meaning set forth in Section 2.1(a)(iii) hereof.

“Closing” – Shall have the meaning set forth in Section 3.1 hereof.

“Closing Date” – Shall have the meaning set forth in Section 3.1 hereof.

“Contracts” – Shall have the meaning set forth in Section 2.1(a)(iv) hereof.

“Environmental Claim” - Shall mean any claim, action, demand, or notice by or on behalf of any Governmental Entity, person or entity alleging potential liability under, or a violation of, any Environmental Law.

“Environmental Laws” - Shall mean federal, state or local laws or any applicable regulation, rule, order or decree relating to pollution or protection of the environment, including but not limited to laws relating to emissions, discharges, releases or threatened releases of pollutants, contaminants or hazardous or toxic material or wastes, including petroleum, into ambient air, surface water, ground water or land or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants or hazardous or toxic materials or wastes, including but not limited to petroleum.

“Environmental Permits” - Shall mean any and all permits, licenses, approvals, registrations, notifications, exemptions and any other authorization pursuant to or required under any Environmental Law.

“Environmental Remedial Action” - Shall mean any and all actions required to (i) clean up, remove, treat, contain or in any other way take remedial action or response action of or with respect to any Material of Environmental Concern in the environment; (ii) prevent the Release or threat of Release or minimize the further Release of Materials of Environmental Concern so they do not migrate or endanger public health or welfare or the indoor or outdoor environment; or (iii) perform pre-remedial studies and investigations and post-remedial monitoring and care. The term “Environmental Remedial Action” includes without limitation any action which constitutes a “removal”, “remedial action” or “response” as

defined by Section 101 of CERCLA, 42 U.S.C. § 9601(23), (24), and (25), as amended, and the same or similar words as used and defined under counterpart laws of applicable states or other jurisdictions.

“Environmental Report” - Shall mean any report, study, assessment, audit or other similar document prepared by or on behalf of NCRA or NWPCO, which addresses any issue of actual or potential noncompliance with, or actual or potential liability under, any Environmental Law.

“Excluded Assets” – Shall have the meaning set forth in Section 2.2 hereof.

“Excluded Liabilities” – Shall have the meaning set forth in Section 2.4 hereof.

“Governmental Entity” - Any agency, authority, entity, board, bureau, court, commission, department, instrumentality or administration of the United States government, any state government or any local or other governmental body in a state, territory or possession of the United States or the District of Columbia, with jurisdiction over the applicable subject matter.

“Liens” – Shall mean any lien, security interest, option, mortgage, pledge, restriction or encumbrance, except if created as a result of applicable federal and state securities law restrictions.

“Material Adverse Effect” - Shall mean a change or effect that (i) has or is reasonably likely to have an adverse effect on the business, assets, condition (financial or otherwise) or results of operation of an entity, or (ii) impairs or is reasonably likely to impair an entity’s ability to perform any of its obligations under this Agreement, which, in each case, results or is reasonably likely to result in an out of pocket expenditure of more than –\$50,000__ (the “Dollar Threshold”) over and above available insurance coverage, but shall not mean a change or effect (i) that relates to the economy and financial markets generally and not specifically to such entity, (ii) that relates to the industry in which such entity operates generally and not specifically to such entity, (iii) that results from natural disasters, calamities and other force majeure events, or (iv) that results from any outbreak or escalation of armed hostilities, any acts of war or terrorism.

“Materials of Environmental Concern” - Shall mean any material or substance that is defined or classified as a “hazardous substance”, “hazardous material”, “hazardous waste”, “pollutant”, “contaminant”, or any other substance regulated pursuant to or that could give rise to liability under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601(14)), as amended; the Federal Water Pollution Control Act (33 U.S.C. § 1321), as amended; the Resource Conservation and Recovery Act (42 U.S.C. §§ 6903, 6921), as amended; the Federal Water Pollution Control Act (33 U.S.C. § 1317(a)(1)), as amended; the Clean Air Act (42 U.S.C. § 7412), as amended; the Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. App. § 1802(4)), as amended; the Federal Insecticide and Rodenticide Act (7 U.S.C. § 136), as amended; analogous state and local laws; and any other Environmental Laws.

“NCRA” – Shall mean the North Coast Railroad Authority or any successor agency designated by law which may be responsible for NCRA’s debts, liabilities or obligations following the Closing.

“Notice” – Shall have the meaning set forth in Section 12.7 hereof.

“Party” or “Parties” – Shall have the meaning set forth in the preamble hereto.

“Quitclaim Deed” – Shall have the meaning set forth in Section 2.1(a)(i) hereof.

“Rail Line” – Shall have the meaning set forth in Section 2.1(a)(i) hereof.

“Release” – Shall mean any release, emission or discharge of any Material of Environmental Concern, in, into or onto the environment, including any release, as defined in CERCLA or any other Environmental Law, of any Material of Environmental Concern.

“SMART” – Shall mean the Sonoma-Marín Area Rail Transit District.

“STB” – Shall mean the Surface Transportation Board of the Department of Transportation or any successor federal agency with primary jurisdiction over the Rail Line conveyance transaction that is the subject of this Agreement.

“Taxes” – Shall mean all ad valorem and real property taxes, personal property taxes, sales and use and similar taxes, assessments and charges (if any) relating to the Acquired Assets.

1.2 Other Definitional Provisions. (a) Unless otherwise stated, terms, phrases and expressions used in this Agreement (whether or not capitalized) which pertain to railroad assets shall have the meaning commonly given such terms under common usage and practice of the railroad industry.

(b) All references to the real and personal property and other assets, rights, benefits, privileges and interests transferred by NWPCO under the terms of this Agreement shall mean any and all ownership or leasehold interests of NWPCO in and to such real and personal property and other assets, rights, benefits, privileges and interests, to the extent applicable, as such real and personal property and other assets, rights, benefits, privileges and interests are owned, leased, used or held for use by NWPCO.

(c) The Article and Section headings contained in this Agreement are for reference purposes only and shall not ~~effect~~ affect in any way the meaning or interpretation of this Agreement. The Exhibits and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof. Unless the context of this Agreement otherwise requires: (i) words of any gender include the other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms “hereof,” “herein,” “hereby” and derivative or similar words refer to this entire Agreement; and (iv) the terms “Article” or “Section” refer to the specified Article or Section of this Agreement. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless otherwise specified. Whenever the words “included,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

II. TRANSFER OF NWPCO ASSETS

2.1 Transfer of NWPCO’s Assets.

(a) Pursuant to the terms and subject to the conditions of this Agreement, NWPCO hereby agrees to transfer and convey to SMART at Closing all of its right, title and interest in and to the

following assets that are either owned by NWPCO or leased by it, (subject to provisions of Section 2.2 regarding Excluded Assets):

(i) any and all real property interests owned or leased by NWPCO (including any fee interest, leasehold interest, deed of trust or easement rights) in the railroad right of way and associated real property (including any spur or branch lines, depot property or other real property interests along or adjacent to the pertinent rail corridor) That constitute part of the line of railroad and rail corridor extending from approximately milepost 89.0 at the Sonoma/Mendocino County line south to approximately milepost 14 and east to the City of American Canyon approximately at milepost 49.80 (Brazos Junction the "Rail Line"), which real property is more particularly described in the Quitclaim Deed attached hereto as **Exhibit A (the "Quitclaim Deed")**.

(ii) any and all fixtures, appurtenances and articles of personal property that constitute part of the Rail Line (including without limitation rail, ties, spikes, tie plates, ballast, rail anchors, bridges, culverts, materials, supplies and other supporting structures) as well as signals and road crossing protection equipment, which personal property is more particularly described in the Quitclaim Deed;

(iii) any and all personal property which is reasonably related to the operation and maintenance of the Rail Line, including but not limited to any locomotives, railcars and other railroad equipment, maintenance machinery, roadway equipment parts and supplies and rail inventories as more particularly described in the Bill of Sale attached hereto as **Exhibit B (the "Bill of Sale")**;

(iv) any and all contractual rights, privileges and authorizations relating to the Rail Line, (the "Contracts") as more particularly described in the Assignment and Assumption Agreement attached hereto as **Exhibit C ("the Assignment and Assumption Agreement")** and **Schedule 1** thereto (which lists the Contracts to be assigned from NWPCO to SMART at Closing);

(v) any and all licenses, certificates of public convenience and necessity, common carrier rights, freight restart rights, or other rights or authorizations relating to rail operations on the Rail Line; and

(vi) any and all other rights, privileges and assets relating to the Rail Line which may be identified by the Parties hereto prior to or subsequent to Closing.

(b) The assets described above shall be referred to in this Agreement as the "Acquired Assets."

2.2 Excluded Assets. The following real property, personal property, fixtures, and other assets shall be excluded from the assets that will be transferred and conveyed from NWPCO to SMART pursuant to this Agreement (the "Excluded Assets"):

(a) the real property interests which constitute part of the right-of-way and rail corridor north of approximately milepost 89.0 at the Sonoma/Mendocino County Line;

(b) the portions of any and all contractual rights, privileges and authorizations that do not apply or relate to the Acquired Assets (including without limitation those contractual rights,

privileges and authorizations relating or applying to the northern portion of the right-of-way and rail corridor north of approximately milepost 89.0 at the Sonoma/Mendocino County Line;

(c) any and all contractual rights, privileges and authorizations that would otherwise be transferred to SMART but that SMART instructs NWPCO to terminate prior to the Closing (including, without limitation, any contractual agreements between NCRA and NWPCO), provided NWPCO can lawfully effectuate such termination pursuant to such contractual agreements

(d)-any and all contractual rights, privileges and authorizations that entitle NWPCO to the repayment of amounts owed to it by NCRA, (except for any interest in real property owned by NCRA south of milepost 89.0)

(e) any interest in real property heretofore specifically pledged by NCRA to NWPCO for the repayment of debt (including the Ukiah Railroad Depot Property and the Mason Street Property pledged in that certain Remediation Agreement referenced hereto entered into by and between NCRA and NWPCO) or such interest in real property owned by NCRA north of milepost 89.0 as might be lawfully claimed by NWPCO in the future to secure or effectuate such repayment

(f) Other assets not included in the Acquired Assets, including accounts receivable for goods or services already provided and cash related to the period prior to 12:01 a.m. Pacific Time on the day immediately following the Closing Date.

2.3 Assumed Obligations. At the Closing, SMART shall assume the following obligations of NWPCO relating to the Acquired Assets (subject to the provisions of Section 2.4 regarding Excluded Liabilities) (the "Assumed Liabilities"):

(a) All obligations attributable to the period commencing on and after 12:01 a.m. Pacific Time on the day immediately following the Closing Date (as defined in Section 3.1 of this Agreement) that arise under the Contracts assigned by NWPCO to SMART pursuant to Section 2.1, as more particularly set forth in the Assignment and Assumption Agreement; and

(b) All obligations and liabilities attributable only to the period commencing on and after 12:01 a.m. Pacific Time on the day immediately following the Closing Date relating solely to SMART's, operation or use of the Acquired Assets.

2.4 Limitation on Assumption of Liabilities. Except as expressly stated above with respect to the Assumed Liabilities, SMART shall not assume or be responsible for any and all of NWPCO, NCRA, the State of California and/or any other parties' obligations and liabilities, including but not limited to the following (the "Excluded Liabilities")

(a) All obligations and liabilities attributable to the period prior to 12:01 a.m. Pacific Time on the day immediately following the Closing Date that arose under the Contracts assigned to SMART pursuant to Section 2.1, as more particularly set forth in the Assignment and Assumption Agreement;

(b) All obligations and liabilities attributable to the period prior to 12:01 a.m. Pacific

Time on the day immediately following the Closing Date relating to NWPCO's ownership/leasehold, operation, use and/or possession of the Acquired Assets;

(c) All obligations and liabilities of NWPCO for the payment of Taxes, damages, lawsuits, causes of action, fines or fees (if any) applicable to the Acquired Assets or otherwise that occurred or arose prior to 12:01 Pacific Time on the day immediately following the Closing Date, except to the extent expressly allocated to SMART under this Agreement;

(d) All obligations and liabilities of NWPCO under that portion of any Contract that does not relate to the Acquired Assets; and

(e) All obligations and liabilities of NWPCO relating to the Excluded Assets.

2.5 Purchase Price; Consideration. As consideration for the sale to Buyer of the Purchased Assets, at the Closing Buyer shall pay to Seller the sum of Four Million Dollars (\$4,000,000), (the "Purchase Price"). The parties acknowledge and agree that no other payments or other transfers of value from SMART to NWPCO or any other party will be required at Closing in order to consummate the transfer and conveyance transaction specified herein--nor is any part of the consideration intended to pay or offset any indebtedness owed by NCRA to NWPCO.

2.6 Adjustments and Prorations. To the extent that any adjustment or proration of revenue received after Closing pertaining to the Contracts to be assigned to and assumed by SMART is determined by the Parties to be necessary, or other post-Closing adjustments and prorations relating to Taxes or otherwise are required, the Parties shall enter into an Administration and Proration Agreement in the form attached hereto as **Exhibit D**.

III. CLOSING:

3.1 Closing Date and Place. The closing of the transactions contemplated herein (the "Closing") shall take place at the offices of SMART prior to December 31, 2020 on such specific date mutually agreeable to the Parties, which shall be no later than the third (3rd) business day after satisfaction or waiver of the conditions set forth in Article VIII and IX ("Closing Date").

3.2 Deliveries by NWPCO. At or prior to the Closing, NWPCO shall deliver to SMART the following:

- (a) an executed Quitclaim Deed;
- (b) an executed Bill of Sale;
- (c) an executed Assignment and Assumption Agreement;
- (d) an executed Administration and Proration Agreement (if necessary);
- (e) an executed Agreement between NCRA and NWPCO (1) consenting to NWPCO's discontinuation of operations and partial termination of Lease with NCRA south of the Sonoma/Mendocino County line (MP 89), and (2) the assignment transfer and conveyance of its

railroad assets and associated rights to SMART, and (3) termination of the NCRA-SMART 2011 Operating and Coordination Agreement as amended, dated December 13, 2017 as such agreement is applicable to sections south of milepost 89.0

(f) such certificates, resolutions, instruments and documents as SMART may reasonably require to evidence NWPCO's transfer of the Acquired Assets to SMART in accordance with the legislative intent of [S.B. No. 1029].

(g) such certificates, resolutions, instruments and documents as SMART, STB or FRA may require to terminate NCRA and NWPCO freight operations and authorize SMART freight operation south of milepost 89.0.

3.3 Deliveries by SMART. At or prior to the Closing, SMART shall deliver to NWPCO the following:

- (a) an executed Assignment and Assumption Agreement; and
- (b) an executed Administration and Proration Agreement (if necessary); and
- (c) the Purchase Price, which shall be payable by wire transfer of immediately available funds to the account designated by NWPCO; and
- (d) SMART shall use its reasonable efforts to take all necessary actions or resolutions and execute any required instruments and documents to acquire the regulatory approval contemplated under this and Section 12.1(a)

IV. ADDITIONAL UNDERTAKINGS AND AGREEMENTS

4.1 Timing. The parties agree that in the event that any date on which performance is to occur falls on a Saturday, Sunday or state or national holiday, then the time for such performance shall be extended until the next business day thereafter occurring.

V. NWPCO'S REPRESENTATIONS AND WARRANTIES

NWPCO represents, warrants, and/or covenants, as applicable, as of the date hereof and as of Closing that:

5.1 Organization and Power and Authority. NWPCO is a California Corporation duly organized and validly existing under California law, and has all requisite power and authority and full legal capacity to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement by NWPCO have been duly authorized by all necessary action on the part of NWPCO. This Agreement has been duly executed and delivered by NWPCO, and assuming that this Agreement is a valid and binding obligation to SMART, this Agreement constitutes a valid and binding obligation of NWPCO, enforceable against NWPCO in accordance with its terms.

5.2 Noncontravention. Except as set forth on **Schedule 5.2**, and except for filings, permits,

authorizations, consents and approvals as may be required by, and other applicable requirements of, the Surface Transportation Board ("STB"), the execution, delivery and performance of this Agreement NWPCO will not (i) conflict with or result in a breach of any provision of NWPCO's contracts or NCRA's authorizing legislation (as amended by [S.B. No. 1029]); (ii) require any filing with, or permit, authorization, consent or approval of, any Governmental Entity; (iii) result in a violation or breach of any of the terms, conditions or provisions of any note, bond, or mortgage to which NWPCO is a party or by which it or any of its properties or assets may be bound; (iv) violate any order, writ, injunction, judgment, decree, statute, rule or regulation applicable to NWPCO (v) result in the creation or imposition of any Lien on any of the Acquired Assets. To achieve the assurances hereunder as to NCRA, prior to closing, NWPCO shall confirm and provide SMART with the same verifications and noncontravention assurances from NCRA related to their ability to approve this agreement and the assignment, transfer and conveyance of the freight rights and interest to SMART.

5.3 Licenses and Permits. NWPCO has not received written notice from any Governmental Entity, and to NWPCO's knowledge no notice has been threatened in writing by any Governmental Entity, asserting that NWPCO does not have a license, permit, variance, certification, exemption, franchise, authorization or approval necessary to own, lease, use and/or operate, as applicable, the Acquired Assets as such assets are currently operated.

5.4 Litigation. Except as disclosed in **Schedule 5.4** attached hereto, there is no Action pending before any Governmental Entity or arbitrator, or to NWPCO's knowledge threatened in writing before any Court, Governmental Entity or arbitrator, in either case against or affecting or involving: (i) the Acquired Assets, or the business, operations, value or use thereof or related thereto; or (ii) NWPCO, as to which an adverse determination would materially impair the ability of NWPCO to perform its obligations under this Agreement. Neither NWPCO nor the Acquired Assets is subject to any outstanding order, writ, judgment, award, injunction or decree that, individually or in the aggregate, could reasonably be expected to prevent or materially delay the consummation of the transactions contemplated by the Agreement.

5.5 Title to Assets.

(a) The real property leasehold interest held by NWPCO and personal property owned by NWPCO (including any locomotives, maintenance and construction equipment) to be conveyed by NWPCO to SMART pursuant to this Agreement will be free and clear of all Liens as of the Closing.

(b) NWPCO has good and valid title to the personal property that will be conveyed to SMART.

(c) For Assets owned by NCRA that NWPCO has a long-term lease, NWPCO will convey the long-term lease and transfer the exclusive right to use such Assets, under a long-term lease to SMART.

5.6 Status of Agreements.

(a) NWPCO represents and warrants that, to its knowledge, no party to any of the Contracts is in breach or default thereof and each of the assigned Contracts is in full force and effect.

(b) NWPCO represents and warrants that it has no knowledge of any ~~other~~ written

contracts and agreements, except for those contracts covered by the Assignment and Assumption Agreement or the Agreement for the Resurrection of Operations Upon the Northwestern Pacific Railroad line and Lease Agreement dated September 2006, that give third parties the right to use, access, enter or operate over the Rail Line.

5.7. Environmental Matters. Except as set forth in **Schedule 5.7** hereto, (i) NWPCO has not received written notice from any Governmental Entity alleging a violation by NWPCO of any applicable Environmental Laws, there are no pending Environmental Claims against NWPCO, and NWPCO has no knowledge of any Environmental Claim threatened in writing against the NWPCO, (ii) NWPCO is not subject to any judgment, decree, order, injunction or similar requirement relating to compliance with any Environmental Law or to Materials of Environmental Concern; and (iii) to the knowledge of NWPCO, it has provided to SMART true and complete copies of all Environmental Reports prepared on or after 2006, each of which is identified in **Schedule 5.7**.

5.8 Taxes. Except as set forth on **Schedule 5.8**, (i) NWPCO has timely filed all tax returns that it was required to file with respect to the Acquired Assets, (ii) all such tax returns were correct and complete in all material respects and were prepared in substantial compliance with all applicable laws and regulations, and (iii) all taxes due and owing by or with respect to NWPCO, to the extent applicable to the Acquired Assets, have been paid. There are no Liens on any of the Acquired Assets that arose in connection with any Tax or otherwise.

VI. SMART'S REPRESENTATIONS AND WARRANTIES

SMART represents, warrants and/or covenants, as applicable, as of the date hereof and as of Closing, that:

6.1 Organization and Power and Authority. SMART is a public agency duly organized and validly existing under California law and has all requisite power and authority and full legal capacity to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement by SMART have been duly authorized by all necessary action on the part of SMART. This Agreement has been duly executed and delivered by SMART, and assuming that this Agreement is the valid and binding obligation of SMART, this Agreement constitutes a valid and binding obligation of SMART, enforceable against SMART in accordance with its terms.

6.2 Noncontravention. Except for filings, permits, authorizations, consents and approvals as may be required under, and other applicable requirements of, the STB, the execution, delivery and performance of this Agreement by SMART will not (i) conflict with or result in any breach of its authorizing statute (as amended by [S.B. No. 1029]), (ii) require any filing with, or permit, authorization, consent or approval of, any Governmental Entity, or (iii) violate any order, writ, injunction, judgment, decree, statute, rule or regulation applicable to SMART.

6.3 Litigation. SMART is not subject to any outstanding order, writ, injunction or decree that, individually or in the aggregate, could reasonably be expected to prevent or materially delay the consummation of the transactions contemplated by the Agreement. There is no Action pending, or to

SMART's knowledge threatened in writing, before any Governmental Entity or arbitrator against or affecting or involving SMART as to which an adverse determination would materially impair the ability of SMART to perform its obligations under this Agreement.

VII. COVENANTS AND AGREEMENTS

7.1 In making its determination to close the transactions contemplated by this Agreement the State and SMART have relied on the representations and warranties of NWPCO expressly and specifically set forth in this Agreement (including the Schedules attached hereto), the Quitclaim Deed, the Bill of Sale, the Assignment and Assumption Agreement, the Administration and Proration Agreement (if any), and any other agreements, documents and instruments delivered pursuant hereto or in connection with the transactions contemplated by this Agreement (collectively, the "Ancillary Agreements").

7.2 NWPCO's Management of the Acquired Assets Prior to Closing.

(a) Negative Covenants. NWPCO covenants and agrees with SMART that, from the Effective Date of this Agreement through the Closing Date, it will not, without the prior written approval of SMART, do or agree to do any of the following:

(i) Sell, assign, lease, mortgage, pledge, grant any right or interest in, or otherwise transfer or dispose of, all or any part of its real or personal property rights or operating rights with respect to its portion of the Acquired Assets;

(ii) Grant, amend, modify, extend or terminate any operating agreement, trackage rights, haulage rights, marketing agreements, joint facility agreements or other agreements affecting use, access to or rail operations over the Rail Line;

(iii) Amend or renew any Contracts or enter into any new agreement or incur any obligation or liability (contingent or absolute) relating to its portion of the Acquired;

(iv) Abandon or discontinue service on all or any part of the Rail Line;

(v) Enter into, amend or renew any agreements with shippers or receivers for movement of traffic over the Rail Line or for other use of the Rail Line (including without limitation for storage of rail products or related products); or

(vi) Replace or substitute rail or any other Acquired Assets other than with material of the same or better kind and quality.

(b) Affirmative Covenants. NWPCO covenants and agrees with SMART that from the date hereof through the Closing it will conduct its affairs relating to the Acquired Assets in the ordinary course and in consultation with SMART.

7.3 Other Action. Each of the Parties to this Agreement shall use its reasonable best efforts to cause the fulfillment at the earliest practicable date of all of the conditions to the obligations of the Parties to consummate the transactions contemplated under this Agreement.

7.4 Amended Schedules.

(a) At least five (5) business days prior to the Closing Date, NWPCO shall deliver to SMART any final amendments to the Schedules to this Agreement that reflect changes, if any, since the date of this Agreement, and which Schedules, as amended, shall supersede the prior schedules; provided, however, that if the amendments to such Schedules, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect on SMART, then the parties shall be required to take reasonably steps to eliminate such Material Adverse Effect.

VIII. CONDITIONS PRECEDENT TO SMART'S OBLIGATION TO CLOSE

The obligations of SMART to consummate the transactions contemplated by this Agreement are subject to the satisfaction of the following conditions at or prior to the Closing (any or all of which may be waived in whole or in part by SMART, if lawful):

8.1 Representations, Warranties and Covenants. The representations and warranties of NWPCO set forth in Article V shall be true and correct in all material respects at and as of the Closing. NWPCO shall have performed in all material respects all obligations required to be performed by it under this Agreement., except in any case where such failure to perform would not reasonably be likely to have a Material Adverse Effect on SMART;

8.2 No Prohibition to Consummation. No Governmental Entity shall have enacted, issued, promulgated, enforced or entered any law, rule, regulation, executive order, decree, injunction or other order that is then in effect and has the effect of restraining, prohibiting or restricting, in a material respect, the consummation of the transactions contemplated by this Agreement;

8.3 Required Consents of Governmental Entities. All consents, authorizations, orders and approvals of (or filings or registrations with) any Governmental Entity required in connection with the execution, delivery or performance of this Agreement, the failure of which to obtain would prevent or materially delay the consummation of the transactions contemplated by this Agreement or have a Material Adverse Effect on SMART, shall have been obtained and be in full force and effect without the imposition of any condition having a Material Adverse Effect on SMART; and

8.4 Documents at Closing. NWPCO shall have delivered to SMART on or before the Closing all agreements, instruments and documents required to be delivered by NWPCO to SMART pursuant to Section 3.2. NWPCO and SMART shall have agreed upon any Exhibits and other documents which, by the terms of this Agreement, are to be agreed upon by NWPCO and SMART after the date hereof and prior to Closing.

8.5 Governmental Litigation. There shall be no governmental investigation pending or any order, injunction, or decree outstanding, against SMART relating to, or seeking to prohibit or otherwise challenge the consummation of, the transactions contemplated by this Agreement or to obtain substantial damages with respect thereto.

8.6 Future Funding and Assurances. Prior to Closing SMART shall receive satisfactory assurances that the State is committed to and will allocate additional funds to SMART for freight, operations, maintenance and liability of the rail line and the Acquired Assets.

IX. CONDITIONS PRECEDENT TO NWPCO's OBLIGATION TO CLOSE

The respective obligations of NWPCO to consummate the transactions contemplated by this Agreement are subject to the satisfaction of the following conditions at or prior to the Closing (any and all of which may be waived in whole or in part by NWPCO, if lawful):

9.1 Representations, Warranties and Covenants. The representations and warranties of SMART set forth in Article VI of this Agreement shall be true and correct in all material respects at and as of the Closing, except in any case where such failure to be true and correct would not reasonably be likely to have a Material Adverse Effect on NWPCO. SMART shall have performed in all material respects all obligations required to be performed by it under this Agreement, except in any case where such failure to perform would not reasonably be likely to have a Material Adverse Effect on NWPCO;

9.2 No Prohibition to Consummation. No Governmental Entity shall have enacted, issued, promulgated, enforced or entered any law, rule, regulation, executive order, decree, injunction or other order that is then in effect and has the effect of restraining, prohibiting or restricting, in a material respect, the consummation of the transactions contemplated by this Agreement;

9.3 Required Consents of Governmental Entities. All consents, authorizations, orders and approvals of (or filings or registrations with) any Governmental Entity required in connection with the execution, delivery or performance of this Agreement, the failure of which to obtain would prevent or materially delay the consummation of the transactions contemplated by this Agreement, or have a Material Adverse Effect on NWPCO, shall have been obtained and be in full force and effect without the imposition of any condition (other than the imposition by the STB of standard labor protective conditions) having a Material Adverse Effect on NWPCO;

9.4 Documents at Closing. SMART shall have delivered to NWPCO on or before the Closing all agreements, instruments and documents required to be delivered by SMART to NWPCO pursuant to Section 3.3. NWPCO and SMART shall have agreed upon any Exhibits and other documents which, by the terms of this Agreement, are to be agreed upon by NWPCO and SMART after the date hereof and prior to Closing.

9.5 Governmental Litigation. There shall be no governmental investigation pending or any order, injunction, or decree outstanding, against NWPCO relating to, or seeking to prohibit or otherwise challenge the consummation of, the transactions contemplated by this Agreement or to obtain substantial damages with respect thereto.

9.6 RRIF Loan. On or before closing, that certain debt obligation related to the liability for the Rail Line under the Federal Railroad Administration's Rehabilitation and Improvement Financing (RRIF) loan balance due shall be placed into an escrow account..

X. RISK OF LOSS: DEFAULT: TERMINATION

10.1 Risk of Loss. Subject to the limitations stated in this Section 10.1, as between NWPCO and SMART until Closing, the risk of loss or damage by fire or other casualty to the Acquired Assets, ordinary wear and tear excepted, shall be incurred by NWPCO; provided, however, that NWPCO may elect either (i) at its sole cost, to diligently restore, replace and repair such assets to their condition immediately prior to such loss or damage (for which time NWPCO may reasonably extend the Closing Date), or (ii) to provide SMART at Closing with an amount sufficient to pay for the restoration, replacement and repair of such assets to their condition immediately prior to such loss or damage through an assignment of insurance proceeds to which NWPCO would be entitled; provided, however, that, NWPCO shall not be obligated to restore, replace and repair (or pay for such restoration, replacement and repair of) such assets if: (1) SMART, on the one hand, and NWPCO, on the other hand, mutually determine that such restoration, replacement and repair is not necessary; or (2) the aggregate cost of such restoration, replacement and repair is less than \$30,000.

10.2. Termination. This Agreement may be terminated at any time prior to the Closing:

- (a) by mutual written consent of SMART and NWPCO;
- (b) By either party if the Agreement is not consummated by the Closing Date.
- (c) by SMART if the State Transportation Agency does not transfer the appropriated sum of four million dollars (\$4,000,000) as provided for by Senate Bill No. 1029 to SMART.
- (d) by SMART if satisfactory assurances for funding as stated in Section 8.6 of this Agreement have not occurred.

10.3 Effect of Termination. Upon any termination of this Agreement by either NWPCO or SMART as provided in Section 10.2, this Agreement shall become void and of no further force and effect and there shall be no liability or obligation under this Agreement on the part of NWPCO or SMART.

XI. SURVIVAL: INDEMNIFICATION

11.1 Indemnification. NWPCO agrees to indemnify and hold harmless SMART its managers, officers, directors, employees, agents from and against any and all losses, liabilities, claims, damages, costs and expenses, including reasonable attorneys' and accountants' fees, costs of suit and costs of appeal (collectively, the "Damages"), insofar as such Damages (or actions in respect thereof) are based upon or arise out of this transaction transferring the Acquired Assets; or relate to NWPCO's use or operations of the Acquired Assets under this Agreement that are attributable to the period prior to 12:01 a.m. Pacific Time on the day immediately following the Closing Date.

11.2 Indemnification. SMART agrees to indemnify and hold harmless NWPCO its managers,

officers, directors, employees, agents from and against any and all losses, liabilities, claims, damages, costs and expenses, including reasonable attorneys' and accountants' fees, costs of suit and costs of appeal (collectively, the "Damages"), insofar as such Damages (or actions in respect thereof) are based upon or arise out of or relate to SMART's use or operation of the Acquired Assets under this Agreement that are attributable to the period after 12:01 a.m. Pacific Time on the day immediately following the Closing Date.

11.3 Survival of Representations Warranties, Covenants and Indemnification. The representations, warranties, covenants and indemnification of the parties contained in this agreement or in any certificate delivered by them under this agreement will survive the Closing Date of this agreement for a period of two (2) years. No claim for indemnification hereunder may be made after the expiration of the foregoing two-year period.

XII. MISCELLANEOUS`

12.1 Consents and Filings.

(a) Governmental Filings. NWPCO will cause to be made all required filings and submissions under the ICC Termination Act of 1995 and any other laws or regulations applicable to the consummation of the transactions contemplated by this Agreement. NWPCO shall be responsible for all filing fees, Transfers, Use, Taxes and other expenses in connection with such transfer and filings. SMART shall use its reasonable efforts to take all actions and to do all things necessary to acquire the regulatory approval contemplated under this Section 12.1(a).

(b) With Respect to Freight Contracts. Except as otherwise expressly provided in **Schedule 12.1(b)**, and notwithstanding any provision herein to the contrary, the obtaining of authorization, consent or approval for the assignment of the Contracts shall not be a condition precedent to each Party's obligation to close the transactions that are the subject of this Agreement, nor shall SMART have any recourse against NWPCO in connection with the failure to obtain authorization, consent or approval for the assignment of any such Contract, except with respect to the Agreement for the Resurrection of Operations Upon the Northwestern Pacific Railroad Line and Lease Agreement dated September 2006 and any and subsequent amendments).

12.2 Reasonable Efforts. NWPCO and SMART agree to use reasonable efforts to take, or cause to be taken, all actions necessary to comply promptly with all legal requirements that may be imposed with respect to the Agreement and the transactions contemplated herein (which actions shall include, without limitation, furnishing all information required in connection with required approvals of or filings with any Governmental Entity) and shall promptly cooperate with and furnish information to each other in connection with any such requirements imposed upon any of them in connection with the Agreement and the transactions contemplated herein. NWPCO and SMART, both before and within a reasonable period after the Closing, will use reasonable efforts to take all reasonable actions necessary, proper or advisable under applicable laws and regulations to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement, including, without limitation, defending any lawsuits or other proceedings challenging this Agreement.

12.3 Expenses. All deed taxes, transfer taxes, sales taxes, use taxes, recording fees and similar charges, duties, levies and fees incurred in connection with the transactions contemplated hereunder (if any) including the sale, transfer, and delivery of the Acquired Assets shall be borne by NWPCO. Except as provided in the preceding sentence or as otherwise expressly provided in this Agreement, each Party hereto shall pay its own expenses incident to this Agreement and the transactions contemplated hereunder, including without limitation all legal and accounting fees, disbursements and mortgage registration taxes, whether or not the transactions contemplated by this Agreement are consummated.

12.4 Waiver. No delay or failure on the part of any Party hereto in exercising any right, power or privilege under this Agreement, or under any other agreements or instruments given in connection with or pursuant to this Agreement shall impair any such right, power or privilege or be construed as a waiver of default or any acquiescence therein. No waiver shall be valid against any Party hereto unless made in writing and signed by the Party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

12.5 Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12.6 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of the respective successors and permitted assigns of the Parties; provided however, that this Agreement and any of the rights, interests or obligations hereunder may not be assigned, directly or indirectly, or by operation of law or otherwise, by any Party without the prior, written consent of the other Parties.

12.7 Notices. All notices and other communications (individually, a "Notice") hereunder shall be in writing and shall be deemed received on the date such Notice is personally delivered (providing proof of delivery), on the first business day following the date on which such Notice is sent by a nationally recognized overnight courier (providing proof of delivery) or on the fifth business day following the date such Notice is mailed by registered or certified mail (return receipt requested). A Notice to a Party shall, unless another address is specified by such Party to the other Parties, be sent to the address indicated below:

If to NWPCO:

Douglas H. Bosco, Esq.
645 Fourth St, Suite 105
Santa Rosa, California 95403

If to SMART:

Farhad Mansourian
General Manager
Sonoma-Marin Area Rail Transit District (SMART)
5401 Old Redwood Hwy., Suite 200
Petaluma, CA 94954

12.8 Announcements. No press release, or other public announcement or communication, related to this Agreement or the transactions contemplated hereby shall be issued or made without the joint approval of NWPCO and SMART, unless required by law (in the reasonable opinion of counsel), in which case NWPCO and SMART shall each have the right to review and provide input on such press release or other public announcement or communication prior to publication.

12.9 Entire Agreement. This Agreement, including the Exhibits and Schedules hereto and all other instruments and documents referred to herein or delivered pursuant hereto or in connection herewith, represents the entire understanding of the Parties hereto, supersedes all prior oral or written memoranda and agreements by or between two or more of the Parties to the extent they relate in any way to the subject matter hereof, and may not be supplemented or amended, except by a written instrument executed by and delivered to each of the Parties hereto designating specifically the terms and provisions so supplemented and amended.

12.10 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when said counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart. A facsimile signature shall be deemed an original.

12.11 Limitation on Benefits. This Agreement (including the Exhibits and Schedules hereto and the Ancillary Agreements) is not intended to confer upon any person other than the Parties hereto any rights or remedies hereunder, except, to the extent expressly set forth in this Agreement, a Party's successors or permitted assigns.

12.12 Severability. If fulfillment of any clause or provision of this Agreement or performance of any transaction related thereto, at the time such fulfillment or performance shall be due, shall exceed the limit of validity prescribed by law, then the obligation to be fulfilled or performed shall be reduced to the limit of such validity; and if any clause or provision contained in this Agreement operates or would operate prospectively to invalidate any portion of this Agreement, in whole or in part, then such clause or provision only shall be held ineffective, as though not herein contained, and the remainder of this Agreement shall remain operative and in full force and effect (unless the effect of so doing would deprive a Party substantially of the benefit of the bargain negotiated by such Party).

12.13 Governing Law. This Agreement and the Ancillary Agreements shall be construed in accordance with and governed by the laws of the State of California.

12.14 Dispute Resolution. If any dispute arises between the Parties relating to the interpretation, breach or performance of this Agreement or the grounds for the termination thereof, and the Parties cannot resolve the dispute within thirty (30) days of a written request by either Party to the other Party, the Parties agree to hold a meeting, attended by executive level personnel of each Party, to attempt in good faith to negotiate a resolution of the dispute prior to pursuing other available remedies. If, within sixty (60) days after such written request, the Parties have not succeeded in negotiating a

resolution of the dispute, such dispute shall be submitted to final and binding arbitration under the then current commercial rules and regulations of the Judicial Arbitration and Mediation Services ("JAMS") relating to voluntary arbitrations. The arbitration proceedings shall be held before a single arbitrator selected by mutual agreement of the Parties. The Parties shall provide all documents, records and supporting information, and take all such further actions reasonably necessary to resolve the dispute as promptly as practicable after the selection of the arbitrator. Each Party shall bear its own costs and legal fees associated with such arbitration. The decision of the arbitrator shall be final and binding on the Parties. Judgment on the award so rendered may be entered in any court having competent jurisdiction thereof and shall be enforceable under the Federal Arbitration Act.

12.15 Time is of the Essence. With respect to the performance by the Parties of their obligations hereunder, and with respect to the consummation of the transactions that are the subject of this Agreement, the Parties agree and acknowledge that time is of the essence.

12.16 Books and Records. The Parties hereto shall keep records and books of account relating to the Acquired Assets and all transactions contemplated by this Agreement and shall preserve such any such records and books of account for a period of at least 4 years or for the required period under the records retention act (which ever is longer) after Closing, or such longer period as may be required by applicable law. Each Party hereto and its duly authorized representatives, during normal business hours upon reasonable advance notice to the other Party, shall have the right at its sole expense to inspect such books and records of account for purposes of verifying compliance with the terms and conditions of this Agreement; provided, however, that nothing herein shall require any Party to make available documents or data that bear no direct relationship to compliance with the terms and conditions of this Agreement.

DRAFT 05/11/2020

IN WITNESS WHEREOF, each of the Parties hereto has executed this Agreement or has caused this Agreement to be duly executed on its behalf, as of the day and year first above written.

Sonoma-Marin Area Rail Transit District

Northwestern Pacific Railroad Company

By: _____

By: _____

Its: _____

Its: _____

DRAFT

Exhibits

Exhibit A – Quitclaim Deed

Exhibit B – Bill of Sale

Exhibit C – Assignment and Assumption Agreement

Exhibit D – Administration and Proration Agreement (if necessary)

DRAFT

Senate Bill No. 1029

CHAPTER 934

An act to amend Sections 93000, 93010, 93020, and 93021 of, to add and repeal Section 13978.9 of, to repeal Sections 93001, 93002, 93023, and 93024 of, and to repeal and add Sections 93003 and 93022 of, the Government Code, and to amend Section 105095 of the Public Utilities Code, relating to transportation, and making an appropriation therefor.

[Approved by Governor September 29, 2018. Filed with
Secretary of State September 29, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1029, McGuire. North Coast Railroad Authority.

(1) Existing law creates the North Coast Railroad Authority with various powers and duties relating to rail service in the north coast area of the state, including the authorization to acquire, own, operate, and lease real and personal property reasonably related to the operation and maintenance of railroads.

This bill would require the Transportation Agency, in consultation with the Natural Resources Agency, upon the appropriation of moneys by the Legislature for these purposes, to conduct an assessment of the North Coast Railroad Authority to provide information necessary to determine the most appropriate way to dissolve the authority and dispense with its assets and liabilities, and to report on the assessment to the Legislature before July 1, 2020. The bill would authorize those agencies to request the Department of General Services, the Department of Finance, or any department within their agencies, or contract with other entities, to perform the work the agencies deem necessary to carry out the assessment. The bill would require the Transportation Agency to prioritize the assessment of the southern portion of the rail corridor, and would authorize the Transportation Agency to separately report information related to the potential transfer of the southern portion of the rail corridor to the Sonoma-Marín Area Rail Transit District.

This bill would repeal and revise various provisions relating to the authority. The bill would authorize the authority to acquire, own, operate, and lease real and personal property reasonably related to, instead, the furtherance of certain purposes, the planned transfer of all of its assets, and its dissolution. The bill would require the authority to cooperate with the assessment conducted by the Transportation Agency and Natural Resources Agency, and to provide access to all authority records, files, documents, accounts, reports, correspondence, and financial affairs to the agencies, and any entity conducting the assessment for the agencies.

Existing law creates, within the Counties of Sonoma and Marin, the Sonoma-Marín Area Rail Transit District with specified duties and powers. Existing law requires the district to work with specified authorities to achieve a safe, efficient, and compatible system of passenger and freight rail service, and authorizes the district, among other things, to provide a rail transit system for the transportation of passengers and their incidental baggage by rail.

This bill would authorize the district to also provide a rail transit system for the provision of freight service by rail.

Existing law creates the Public Transportation Account as a trust fund. Existing law requires revenues in the account to be used solely for mass transportation and transportation planning purposes, as specified.

This bill would appropriate \$4,000,000 to the Transportation Agency from the Public Transportation Account for rail improvements on the corridor owned by the district and the authority. The bill would allocate those moneys to the district for the acquisition of freight rights and equipment from the Northwestern Pacific Railroad Company to ensure efficient provision of goods movement requirements in the corridor in the context of growing passenger service, and authorizes the transfer of those moneys to the district, as specified.

(2) Because this bill would impose new requirements on local entities, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that the North Coast Railroad Authority's railroad tracks, rights-of-way, and other properties provide an opportunity to create a Great Redwood Trail for hiking, biking, and riding, that may be in the public and economic best interests of the north coast.

SEC. 2. Section 13978.9 is added to the Government Code, to read:

13978.9. (a) Upon the appropriation of moneys by the Legislature for these purposes, the Transportation Agency, in consultation with the Natural Resources Agency, shall conduct an assessment of the North Coast Railroad Authority to provide information necessary to determine the most appropriate way to dissolve the North Coast Railroad Authority and dispense with its assets and liabilities. The Transportation Agency shall report to the Legislature before July 1, 2020, on its findings and recommendations from

the assessment. The report shall include, but not be limited to, all of the following:

(1) An assessment of the North Coast Railroad Authority's debts, liabilities, contractual obligations, and litigation.

(2) An assessment of the North Coast Railroad Authority's assets, including property, rights-of-way, easements, and equipment.

(3) An assessment of the North Coast Railroad Authority's freight contractor lease, including the contractor's assets and liabilities to the extent that information is available.

(4) A preliminary assessment of the viability of constructing a trail on the entirety of, or a portion of, the property, rights-of-way, or easements owned by the North Coast Railroad Authority, and recommendations relating to the possible construction of a trail, including both of the following:

(A) Options for railbanking and the governance structure or ownership structure for a new or successor entity that is necessary to railbank property, rights-of-way, and easements along the rail corridor.

(B) A preliminary assessment of which portions of the terrain along the rail corridor may be suitable for a trail.

(5) An assessment of the options for transferring the southern portion of the rail corridor to the Sonoma-Marín Area Rail Transit District and recommendations on the specific assets and liabilities that could be transferred, including rights or abilities to operate freight rail.

(b) The Transportation Agency and the Natural Resources Agency may request the Department of General Services, the Department of Finance, or any department within their agencies, or contract with other entities, to perform the work the agencies deem necessary to carry out the duties described in this section. Any work done by the Department of General Services, the Department of Finance, or any department within the agencies pursuant to such a request may be conducted using the power and authority of the requested department.

(c) The Transportation Agency shall prioritize the assessment of the southern portion of the rail corridor and may separately report information related to the potential transfer of the southern portion of the rail corridor to the Sonoma-Marín Area Rail Transit District. It is the intent of the Legislature that information and recommendations regarding the potential transfer of the southern portion of the rail corridor to the Sonoma-Marín Area Rail Transit District be provided as expeditiously as possible and not be delayed due to the potential complexity of assessing the northern portion of the rail corridor.

(d) (1) A report to be submitted pursuant to this section shall be submitted in compliance with Section 9795.

(2) Pursuant to Section 10231.5, this section is repealed on January 1, 2024.

SEC. 3. Section 93000 of the Government Code is amended to read:

93000. This title shall be known and may be cited as the North Coast Railroad Authority Closure and Transition to Trails Act.

SEC. 4. Section 93001 of the Government Code is repealed.

SEC. 5. Section 93002 of the Government Code is repealed.

SEC. 6. Section 93003 of the Government Code is repealed.

SEC. 7. Section 93003 is added to the Government Code, to read:

93003. The Legislature finds and declares that it is in the public interest to dissolve the authority, and to transfer its rights-of-way to other entities for the purpose of potentially developing a trail that could include railbanking and continuing freight where it was operational on January 1, 2018.

SEC. 8. Section 93010 of the Government Code is amended to read:

93010. (a) The authority is hereby created, having a service area comprised of the Counties of Humboldt, Mendocino, Sonoma, and Trinity.

(b) The County of Marin may elect to join the authority and, if that election is made, the authority is expanded to include that county.

SEC. 9. Section 93020 of the Government Code is amended to read:

93020. (a) The authority has all of the following powers:

(1) To acquire, own, operate, and lease real and personal property reasonably related to the furtherance of the purposes of this title, the planned transfer of all of its assets, and its dissolution. Any sale, easement, or lease entered into by the authority after August 1, 2018, shall be approved by the California Transportation Commission.

(2) To operate railroads along the rights-of-way where they were in operation on January 1, 2018.

(3) To accept grants or loans from state or federal agencies.

(4) To employ an executive officer, other staff, and consultants deemed appropriate for support of the activities of the authority, to further the purposes of this title.

(b) The authority shall do all of the following:

(1) In coordination with state agencies, immediately begin planning for the transfer of all of the authority's assets and liabilities and for the dissolution of the authority.

(2) Cooperate with its freight contractor to continue freight operations along the rights-of-way where they were in operation on January 1, 2018.

(3) Cooperate with, and provide information upon request to, the Transportation Agency, Natural Resources Agency, or other state or local agencies or contractors working at the direction of the Transportation Agency or Natural Resources Agency.

(4) Cooperate fully with the assessment conducted pursuant to Section 13978.9.

SEC. 10. Section 93021 of the Government Code is amended to read:

93021. The authority may acquire, own, lease, and operate railroad lines and equipment, including, but not limited to, real and personal property, tracks, rights-of-way, equipment, and facilities, to further the purposes of this title.

SEC. 11. Section 93022 of the Government Code is repealed.

SEC. 12. Section 93022 is added to the Government Code, to read:

93022. The authority shall cooperate with the assessment conducted by the Transportation Agency and Natural Resources Agency pursuant to Section 13978.9, and shall provide access to all authority records, files,

documents, accounts, reports, correspondence, and financial affairs to the agencies, and any entity conducting the assessment for the agencies, pursuant to Section 13978.9.

SEC. 13. Section 93023 of the Government Code is repealed.

SEC. 14. Section 93024 of the Government Code is repealed.

SEC. 15. Section 105095 of the Public Utilities Code is amended to read:

105095. The district may provide a rail transit system for the transportation of passengers and their incidental baggage by rail and provision of freight service by rail.

SEC. 16. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 17. The sum of four million dollars (\$4,000,000) is hereby appropriated to the State Transportation Agency from the Public Transportation Account for rail improvements on the corridor owned by the Sonoma-Marín Area Rail Transit District and the North Coast Railroad Authority. These moneys shall be allocated to the Sonoma-Marín Area Rail Transit District for the acquisition of freight rights and equipment from the Northwestern Pacific Railroad Company to ensure efficient provision of goods movement requirements in the corridor in the context of growing passenger service. Following a signed baseline agreement between the State Transportation Agency and the Sonoma-Marín Area Rail Transit District that articulates deliverables, the anticipated expenditure schedule, and reporting requirements, the Secretary of Transportation may transfer these moneys to the Sonoma-Marín Area Rail Transit District pursuant to the provisions of the baseline agreement. These moneys shall not be transferred to the Sonoma-Marín Area Rail Transit District for the acquisition of freight rights and equipment from the Northwestern Pacific Railroad Company unless the terms and conditions of the baseline agreement have been approved by both the Secretary of Transportation and the Director of Finance. If these moneys are not transferred to the Sonoma-Marín Area Rail Transit District within two years of the chaptering of this act, these moneys shall be returned to the Public Transportation Account.

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AMENDED IN ASSEMBLY AUGUST 19, 2019

AMENDED IN ASSEMBLY JUNE 18, 2019

AMENDED IN SENATE MAY 17, 2019

SENATE BILL

No. 356

Introduced by Senator McGuire

February 19, 2019

An act to ~~add Section 93029 to the Government Code, and to amend Sections 105003, 105012, 105003 and 105032 of, and to repeal Sections 105104, 105105, and Section 105180 of, the Public Utilities Code, relating to transportation.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 356, as amended, McGuire. ~~North Coast Railroad Authority: rail right-of-way: Sonoma-Marín Area Rail Transit District.~~

~~Existing law creates the North Coast Railroad Authority with various powers and duties relating to rail service in the north coast area of the state, including the authority to acquire, own, operate, and lease real and personal property reasonably related to the operation and maintenance of railroads, the planned transfer of all of the authority's assets, and the authority's dissolution.~~

Existing law creates, within the Counties of Sonoma and Marin, the Sonoma-Marín Area Rail Transit District, which is governed by a 12-member board of directors, with specified duties and powers. Existing law requires the district to work with specified authorities, including the North Coast Railroad Authority, to achieve a safe, efficient, and compatible system of passenger and freight rail service and authorizes the district to, among other things, provide a rail transit system for the provision of freight service by rail.

~~This bill would require the authority, within 90 days of removing all of its debts, liabilities, and contractual obligations, to convey and transfer its rights, interests, privileges, and title, lien free, relating to a specified rail right-of-way, its licenses and certificates of public convenience and necessity, any common carrier obligations held by the authority or an associated freight operator, and the railroad assets the authority owns to the district.~~

This bill would give the board of governors of the district the duty and power to, among other things, own, operate, manage, and maintain a freight rail system within the district and fix rates, rentals, charges, and classifications of freight service operated by the district. The bill would also give the board of governors of the district the duty and power to consider potential alternatives to help address the housing needs of current and future employees. The bill would repeal the requirement that the district obtain coverage for itself and its employees under certain federal laws.

By imposing new requirements on local entities, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 93029 is added to the Government Code,~~
2 ~~to read:~~
3 ~~93029. Within 90 days of removing all of its debts, liabilities,~~
4 ~~and contractual obligations, the authority shall convey and transfer~~
5 ~~all of its rights, interests, privileges, and title, lien free, relating to~~
6 ~~its rail right-of-way south of mile post 89.0, including any~~
7 ~~associated real property, rail easements, and branch or spur lines,~~
8 ~~its licenses and certificates of public convenience and necessity,~~
9 ~~any common carrier obligations held by the authority or an~~
10 ~~associated freight operator, and the railroad assets the authority~~

owns to the Sonoma-Marín Area Rail Transit District, created pursuant to Section 105010 of the Public Utilities Code.

SEC. 2.

SECTION 1. Section 105003 of the Public Utilities Code is amended to read:

105003. As used in this part, the following terms have the following meanings:

(a) “District” means the Sonoma-Marín Area Rail Transit District.

(b) “Rail transit” means the transportation of passengers and their incidental baggage by rail and provision of freight service by rail.

(c) “Rail transit works” or “rail transit facilities” means any or all real and personal property, equipment, rights, or interests owned or to be acquired by the district for rail transit service purposes, including ancillary bicycle and pedestrian pathways that provide connections between and access to station sites.

(d) “Board of directors,” “board,” or “directors” means the board of directors of the district.

(e) “Public agency” includes the state, and any county, city and county, city, district, or other political subdivision or public entity of, or organized under the laws of, this state, or any department, instrumentality, or agency thereof.

SEC. 3. Section 105012 of the Public Utilities Code is amended to read:

105012. (a) Upon the dissolution of the Sonoma-Marín Area Rail Transit Commission and the Northwestern Pacific Railroad Authority, the district shall succeed to any or all of the powers, duties, rights, obligations, liabilities, indebtedness, bonded and otherwise, immunities, and exemptions of the commission and its board of commissioners and the authority and its board of directors.

(b) Upon the dissolution of the Sonoma-Marín Area Rail Transit Commission and the Northwestern Pacific Railroad Authority, the district shall assume the rights and obligations of the commission and the authority under any contract to which the commission or the authority is a party and that is to be performed, in whole or in part, on or after the date of dissolution of the Sonoma-Marín Area Rail Transit Commission and the Northwestern Pacific Railroad Authority.

1 ~~(e) All real and personal property owned by the Sonoma-Marin~~
2 ~~Area Rail Transit Commission and the Northwestern Pacific~~
3 ~~Railroad Authority may be transferred to the district.~~

4 ~~(d) Upon the dissolution of the Sonoma-Marin Area Rail Transit~~
5 ~~Commission, the district shall assume, without any condition~~
6 ~~whatsoever, all responsibilities and obligations previously assumed~~
7 ~~by the commission with respect to its fund transfer agreement with~~
8 ~~the Department of Transportation for the funding of the~~
9 ~~Sonoma-Marin Area Rail Transit Project.~~

10 ~~(e) On and after the date of dissolution of the Sonoma-Marin~~
11 ~~Area Rail Transit Commission and the Northwestern Pacific~~
12 ~~Railroad Authority, any reference in any law or regulation to the~~
13 ~~commission or the authority shall be deemed to refer to the district.~~

14 ~~SEC. 4:~~

15 *SEC. 2.* Section 105032 of the Public Utilities Code is amended
16 to read:

17 105032. It shall be the duty of the board and it shall have the
18 power to:

19 (a) Own, operate, manage, and maintain a passenger and freight
20 rail system within the territory of the district.

21 (b) Determine the rail transit and freight facilities, including
22 ancillary bicycle and pedestrian pathways, to be acquired and
23 constructed by the district, the manner of operation, and the means
24 to finance them.

25 (c) Adopt an annual budget for the district that provides for the
26 compensation of its officers and employees.

27 (d) Fix rates, rentals, charges, and classifications of rail transit
28 and freight service operated by the district.

29 (e) Adopt an administrative code that prescribes the powers and
30 duties of district officers, the method of appointment of district
31 employees, and the methods, procedures, and systems for the
32 operation and management of the district.

33 (f) Adopt rules and regulations governing the use of rail transit
34 and freight facilities owned or operated by the district.

35 (g) Cause a postaudit of the financial transactions and records
36 of the district to be made at least annually by a certified public
37 accountant.

38 (h) Adopt rules and regulations providing for the administration
39 of employer-employee relations.

1 (i) Consider potential alternatives to help address the housing
2 needs of current and future employees.

3 (j) Do any and all things necessary to carry out the purposes of
4 this part.

5 ~~SEC. 5. Section 105104 of the Public Utilities Code is repealed.~~

6 ~~SEC. 6. Section 105105 of the Public Utilities Code is repealed.~~

7 ~~SEC. 7.~~

8 *SEC. 3.* Section 105180 of the Public Utilities Code is repealed.

9 ~~SEC. 8.~~

10 *SEC. 4.* If the Commission on State Mandates determines that
11 this act contains costs mandated by the state, reimbursement to
12 local agencies and school districts for those costs shall be made
13 pursuant to Part 7 (commencing with Section 17500) of Division
14 4 of Title 2 of the Government Code.

O



SMART | FREIGHT LINE
(NCRA OWNED)

SONOMA COUNTY

NAPA COUNTY

SMART | COMMUTER
FREIGHT LINE

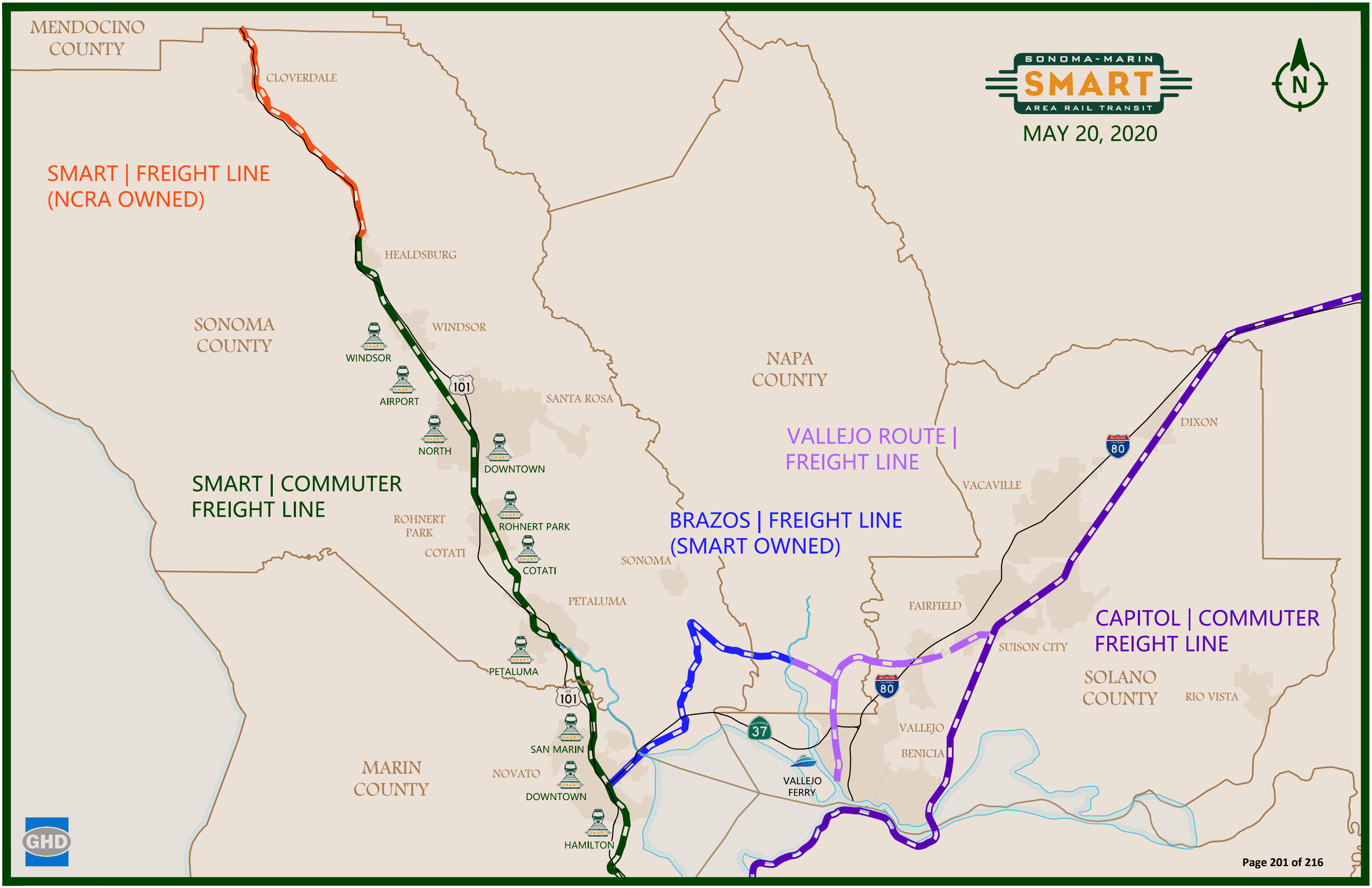
VALLEJO ROUTE |
FREIGHT LINE

BRAZOS | FREIGHT LINE
(SMART OWNED)

CAPITOL | COMMUTER
FREIGHT LINE

MARIN COUNTY

SOLANO COUNTY





**BOARD OF DIRECTORS
REGULAR MEETING MINUTES
May 20, 2020- 1:30 PM**

**IN ACCORDANCE WITH GOVERNOR'S EXECUTIVE ORDERS N-25-20 AND N-29-20
THE SMART BOARD OF DIRECTORS MEETING WILL BE HELD VIRTUALLY**

MEMBERS OF THE PUBLIC MAY NOT ATTEND THIS MEETING IN PERSON

1. Call to Order

Chair Lucan called the meeting to order at 1:30pm. Directors Arnold, Connolly, Fudge, Garbarino, Hillmer, Naujokas, Phillips, Rabbitt, Rogers and Zane were present. Director Pahre joined later.

Chair Lucan welcomed everyone who joined the Board meeting through the variety of methods.

2. Approval of the May 6, 2020 Board Minutes

Richard Brand asked for clarification of the sub-committee that is stated in page 4 of 12 of the minutes. Ms. Rosas Mendoza, Clerk of the Board, responded that the sub-committee includes Directors Connolly, Rabbitt, Rogers, Vice-Chair Pahre and Chair Lucan to review Measure I comments/suggestions.

MOTION: Director Phillips moved approval of the May 6, 2020 Board Minutes. The motion carried 11-0. (Director Pahre joined later)

3. Board Members Announcements

None

Vice Chair Pahre joined the meeting at 1:35pm

4. General Manager's Report

General Manager Mansourian reported that since the start of passenger service in August 2017, SMART has carried 1,871,000 passengers, 184,000 bicycles, and over 7,000 wheelchairs.

He provided an update on the City of Petaluma and City of Santa Rosa property. The City of Petaluma is performing the due diligence process and resolving the pending CEQA litigation, once that is complete, staff will bring back this item to a future Board meeting for approval. The City of Santa Rosa and the Developer are working together and progressing development project.

General Manager Mansourian stated that he has been participating with the Marin Recovers Task Force (marinrecovers.com) to create a plan for a safe reopening of Marin County. He has been in contact with Marin Transit, Transportation Authority of Marin, Golden Gate Bridge and Transportation, and Whistlestop; and will be reaching out to Lyft, Taxi's and Airporters and others. The Task Force has been preparing a Plan that includes safety measures for reopening. Once the Plan is complete, he will be sharing the information.

He said that at the National and State level, representatives have had discussions of how transportation agencies will need to comply with 6 feet social distancing when shelter in place is lifted. Once there is a regulation plan available, Mr. Mansourian will bring it back to the Board for further discussion and direction.

Lastly, he stated that on Monday, May 25th Memorial Day Holiday, SMART will not operate train service.

5. Public Comment on Non-Agenda Items

Duane Bellinger voiced his concerns regarding the second Petaluma station. He said that SMART could have supported a park-n-ride system or could have emphasized a pedestrian orientated community. He said the Board is neglecting their fiduciary duty to receive maximum price for property. The support from Petaluma has gone down; for Measure Q was 77% and for Measure I it was 55%, which is 1/3 loss of the base in East Petaluma. He asked the Board to analyze the reason why the support decreased.

Aleta Dupre stated that the last meeting was very informative. She appreciates the detail of the staff reports. She would like to see SMART in the Clipper START program since SMART already uses Clipper. Also, SMART is one of the safest trains in the world and looks forward to riding the train again.

Sheila Baker stated that SMART Board of Director has Director Rabbitt who represents the City of Petaluma. She thanked him for representing Petaluma well and she would like to see a Petaluma Council member on the SMART Board.

Tyler asked if there is a possibility for SMART train to go on Highway 37. Mr. Mansourian responded that discussion on Agenda Item #7 will answer the question.

6. Consent
 - a. Approval of Monthly Financial Reports
 - b. Accept Monthly Ridership Report – April 2020
 - c. Accept Clipper START Program Report

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

MOTION: Director Phillips moved approval of the Consent Agenda as presented. Director Rogers second. The motion carried 12-0.

7. Expansion of SMART Right-of-Way and Scope of Operations by Adding Freight Service Responsibility and Executing Related Agreement

General Manager Mansourian stated that it's a pleasure to bring this item for your Board's consideration. He displayed the vicinity map for illustration purposes. Mr. Bosco, owner of NWPCo and Mr. Liles (representing Senator McGuire) have joined our meeting to speak and answer any questions regarding the project.

Mr. Mansourian said the Freight and passenger rail service has existed in various forms through Marin and Sonoma counties since the late 1800's. In fact, mile post zero (MP 0) of the railroad is the Ferry Building in San Francisco. In addition to transporting people, it shipped lumber, eggs, wine and other goods.

In 1986, Congressman Bosco introduced and succeeded in passing House Resolution 2 which purchased Southern Pacific the right-of-way for \$24 million, with the vision of continue freight and passenger service. In 1989, the State of California created North Coast Railroad Authority (NCRA) to run freight. In 2006, NCRA selected Northwestern Pacific Company (NWPCo.) as their freight operator. Around the same time, the Golden Gate Bridge, Highway and Transportation District in conjunction with Marin and Sonoma Counties began purchasing southern portions of the railroad, with the vision to preserve the right-of-way. A transitional body called Sonoma-Marine Area Rail Transit Commission (SMART Commission) was made up of Marin and Sonoma County Supervisors, City representatives during the early phase. SMART Commission was staffed by Suzanne Wilford (now Smith) and Farhad Mansourian, the two Executive Directors of Sonoma and Marin Congestion Management Agencies.

In 2002, Assembly member Nation was able to approve Assembly Bill 2224 that created the Sonoma-Marine Area Rail Transit District (SMART) which will provide passenger and freight rail service. He gave a brief overview of the vicinity map.

In 2018, Senator McGuire introduced Senate Bill 1029 (SB 1029) and it was signed into law by Governor Brown on September 2018. The vision of the Bill was to create a single rail system over 300 miles from San Francisco Bay to Humboldt Bay. Senator McGuire and his staff worked closely with SMART staff on the Bill from the beginning. One big hurdle was what to do with NCRA and NWPCo. After months of negotiations, the Bill had the following priorities: 1) to preserve and protect 300 miles of a public transportation right-of-way ('the jewels'); 2) transition NCRA from rail to trails; 3) complete a financial study of NCRA; 4) the process of re-opening the North Coast transportation; and 5) SMART to acquire and take over freight contract from Northwestern Pacific Company to put back in public hands.

It's very important to note that Section 17 of SB 1029 states that the amount of \$4 million from the State of California will be used for the acquisition of freight rights, equipment and easements, from Northwestern Pacific Railroad Company. Senator McGuire was able to secure an additional \$2 million out of \$10 million needed for maintenance. The \$2 million expires at the end of June 2020 and must be incumbent in order not to lose the funds.

The State of California interest in this transaction is based upon the 2018 State Rail Plan and the connectivity between SMART's passenger service. SMART received a letter from Mr. Omishakin, Director of the California Department of Transportation. He read the following statements from the letter... The 2018 California State Rail Plan establishes the framework for investing in rail over the next 20 years and beyond. The Rail Plan identifies the SMART corridor as an important element of the State's interregional passenger rail system, providing reliable mobility along the congested highway 101 corridor. The State has invested over \$30 million through State Rail Assistance and the Transit and Intercity Rail Capital Program to fund significant improvements and expand the SMART system. He concludes saying that Caltrans is committed to partnering with SMART to pursue the expansion of the system as strategy for achieving the State's sustainability, mobility and equity goals. Therefore, they urged SMART to take the important step to accept the State's support for purchasing the freight rights. Also, the State funded an east-west passenger rail feasibility study and SMART is waiting to hear from the State on the next phase project.

Mr. Mansourian stated that Senator McGuire introduced Senate Bill 356 and was passed by the California Senate. This Bill lists the intent from NCRA, NWPCo and SMART. If your Board approves the concept of accepting freight service, SMART will assume maintenance responsibility for an additional 45 miles of right-of-way including bridges and crossings. As a freight operator, SMART will assume all "common carries" duties over the rail line. In addition, as a common carrier for freight, SMART must comply with the requirements and regulations of the Surface Transportation Board. One of the requirements is that SMART must continue to serve NWPCo current customers. A feasibility study to be approved by your Board will give us information on Business potential as well as options on how to provide freight service.

Lastly, if your Board approved the scope of service, there are nine action items that will take many months to work on. Again, Mr. Bosco and Mr. Liles are available to answer any

questions/comments.

Comments

Director Zane asked how much profit will be received to operate the freight? There are a lot of members of the community that are very excited. If SMART can get trucks off the highway and more product into freight is a good thing. She thanked Senator McGuire, Mr. Liles and Mr. Bosco. Mr. Mansourian defer the profit question to Mr. Bosco. Mr. Bosco responded that they receive \$2 million in revenue per year.

Director Fudge asked who owes the rail line east of Napa River. Mr. Mansourian responded Union Pacific Railroad.

Director Phillips voiced his concerns about not having enough financial analysis prior to this approval. He is not sure if this acquisition will yield enough revenue for SMART, which is needed. Also, he is not sure if SMART is equipped to fully take the responsibility of freight. He would like more financial information to review. He asked if there is additional financial information that can be reviewed now or prior to end of June. Mr. Mansourian responded that SMART does not have financial information, the State of California is purchasing the acquisition through SMART. The State of California Task Force have reviewed NCRA and NWPCo financial documents and are satisfied with the results. Once, SMART receives any additional financial correspondence he will provide it to the Board.

Director Rogers he asked if AB 2224 or SB 1029 gives SMART has the authority to own and operate freight service. District Counsel Tom Lyons responded that it is stated in SB 1029, which adds the option to operate freight and the decision-making today is for the Board to decide if SMART should become a freight operator. Director Rogers asked if Measure Q funds will be used to operate freight from Larkspur to Cloverdale. Mr. Lyons responded that the State is purchasing the acquisition and SMART is acting a pass through. Director Rogers asked to clarify for the public that Measure Q has a mandate that funds are used for passenger rail service. Mr. Mansourian responded that Measure Q and other sources of funds have been used to maintain the rail line between Ignacio Wye and Brazos Branch (Napa River) which is SMART property. Director Rogers asked is SMART had a staffing cost if the Board was to approve; also, can another entity run freight? Mr. Mansourian responded that the estimated \$10 million maintenance cost that we asked for includes staffing, maintenance, and capital needs. It will be the Board's decision if other entities can run freight.

Director Naujokas stated that the State strongly believes in the contributions that SMART can solve regional transportation problems and is willing to give the gift of the right-of-way and freight service. He asked what is the process of backing out if at any time during the freight service SMART is not receiving revenue or profit. Mr. Mansourian responded that Surface Transportation Board (STB) requires SMART to continue to service any reasonable customer and currently, NWPCo serves four customers that will require service by rail or other alternative transportation. Mr. Bosco confirmed Mr. Mansourian's response. They have endured two CEQA lawsuits and they have been dismissed. SMART can be much more

profitable than NCRA has been. Director Naujokas said that some of SMART's Engineers-Conductors have been freight operators and now have the ability to recruit and cross train into passenger service. He asked for clarification regarding Positive Train Control (PTC). Mr. Mansourian responded that any locomotive traveling on SMART's right-of-way must be equipped with PTC, NWPCo has met the requirements to operate.

Director Zane left the meeting at 2:26pm

Chair Lucan asked to clarify the reasonable request determination and confirm the cost to provide the service is a key factor. Mr. Mansourian responded with an example: Lagunitas Company approached SMART and spur was added for them to receive their shipment via freight, the cost of the spur was paid by NWPCo.

Director Rogers asked how many existing spurs. Mr. Mansourian responded that they are three spurs.

Public Comment

Walter Allen stated that Acumen fully supports of the expansion of SMART's right-of-way and scope of operations by adding Freight Service responsibility. This is an incredible opportunity for the region. He thanked the General Manager Mansourian and staff for putting the proposal together.

David Schonbrunn stated that Train Riders Association of California are advocates for passenger rail. As environmentalist they would like to see the maximum use of freight rail and few trucks. He submitted his written comments addressing their concerns of how SMART has placed numerous obstacles to a successful freight service (on file with Clerk). He concluded "rubberstamp your staff on your own payroll".

Doug Kerr addressed his concerns regarding freight. SMART has not completed the original mission to provide passenger service from Larkspur to Cloverdale. Taking freight service when the original project is not complete sends a message to the public of SMART going to Cloverdale.

Mike Pechner stated that a feasibility study should have been conducted and provided prior to the meeting for the Board to make a decision. He voiced concerns that SMART has not replaced any of the switches that were removed during construction from Larkspur to Airport Boulevard. Given the finances of SMART it is a bad time to acquire freight.

Allan Hemphill stated that there is "an elephant in the room" and no recognition of the existing agreements which calls and obligate service to Willits. Service is not provided due to not being able to repair the railroad due to lack of funds, NCRA has received a request from Mendocino Railways along with Mendocino Lumber and is pending response.

Bernard Meyers stated that he submitted his written comments and urged the Board to have

staff respond to the memo (on file with Clerk). He voiced his concern regarding SMART paying \$4 million to NWPCo. Also, how much profit did NWPCo received from LPG during the period of 2012-2019.

Aleta Dupre stated this is important and is the beginning of a process. Freight and passenger railroad have co-existed in some way for a century. This is a very worthy item and the beginning and supports approval of this item.

Steve Birdleough stated that freight service needs to be maintained as far north to Willits. He is disturbed by the perception of the Assembly Transportation Committee staff that once the acquisition is completed that freight service would be abandoned. Freight service needs to maintain long term contracts with users. He supports moving forward with this project.

Mike Arnold applauded Director Phillips comments and said he is not against freight service. He is concerned that the Board does not perform due diligence on a very complicated transaction. For example, the General Manager mentioned a \$10 million study and where is the study? He asked the Board to consider the meaning of being an owner of a business if the sales tax does not pass. He urged the Board to review the entire acquisition prior to approving.

Richard Brand voiced his concerns regarding the lack of reports provided. He suggested that the item be tabled and review all the data prior to approval.

Tyler asked what makes SMART a qualifying agency when it can barely provide passenger service? He said that by SMART pulling spurs freight lost business.

Duane Bellinger stated that there were a lot of questions raised. He has been a supporter of rail and pedestrian oriented communities. He asked who would take over the operation if SMART goes bankrupt. He also asked if SMART can receive an extension until additional information is received and reviewed.

Mr. Mansourian said that Mr. Liles and Mr. Bosco are available to respond to the questions and comments.

Mr. Liles apologized for Senator McGuire not being able to join the meeting, he is currently at the Capitol, staff less dealing with the budget. He confirmed that the deadline for \$2 million allocated to this acquisition cannot be extended. Freight service has been provided on SMART's right-of way for many years. This item has nothing to do with Freight service beyond Cloverdale.

Mr. Bosco stated that his business partner John Williams passed away last year and Mr. Williams's wife Linda is his current business partner. They have never placed the railroad for sale and they have been operating and been profitable. SB 1029 was not their idea; however, it makes perfect sense what SMART is considering. As for the public saying that SMART is

putting them out of business, there have been many times that General Manager Mansourian and himself have not agreed on many issues, but overall, they have operated the freight service over 10 years with SMART's cooperation and they also perform dispatching and signal work services.

Chair Lucan asked the Board if they would prefer to take one action at a time or the entire recommendation at once.

Director Arnold responded that the Board shall approve the entire item as a whole.

Director Fudge asked if there is an opportunity to extend freight service to Ukiah in the future. Is the Great Redwood Trail mostly along the Eel River corridor; will the trail start in Cloverdale or could start in Ukiah? Mr. Liles responded that priority for the State and NCRA has been to preserve the transportation corridor. Under STB regulations this will always be a railroad corridor and top priority.

Director Naujokas asked why do we only have until end of June. Mr. Liles responded that Senator McGuire has been very successful in securing funding for this process and the Great Redwood Trail. They received \$3 million to conduct studies, received \$10.8 million last year to pay NCRA debt, and \$2 million to SMART for the transfer of freight operation. SB 1029 was supported and passed unanimously. It has been a high priority at the State level to clean up the problems that have existed on the rail corridor for generations. He added, the \$2 million was appropriated for Fiscal Year 2019-20, two years from when it was signed by the Governor in 2018.

Director Phillips stated that it's very incomprehensible that the Board is facing to make a decision during difficult times with many unknowns. If Senator McGuire has put a lot of time and it's a significant project why can't it be extended. Now the Board has to make a decision and quite frankly "if the right decision is not made, we are going to look like fools". He does not understand why recommendation #7 will be conducted afterwards. He is not prepared to vote in favor today.

Director Connolly asked how was the \$4 million cost determined. In fact, the \$4 million is a State allocation based on State appropriations and approved by numerous state agencies including the State Department of Finance (DOF). As a former member of the Attorney of General Office who worked extensively with DOF, they do not apart any funds without conducting a full due diligence process. He asked what due diligence performed? Mr. Liles responded that the Department of Finance assisted with the acquisition funds and set up a process.

Director Arnold stated that this "watershed" moment. She thanked Senator McGuire for stepping in at the right time. The environmentalist at the Marin – Sonoma border will have a trail that they have always wanted. Businesses are going to have the opportunity to provide goods by freight service. She thanked Mr. Bosco for all his work.

Director Rabbitt stated that SMART is receiving funds from the State to provide freight service. He thanked Senator McGuire for working through a very complicated and complex transaction. Freight service is very important in Sonoma County and he heard from two current customers yesterday pertaining to this item. General Manager Mansourian was very supportive on how to serve the existing customers when problems arise. There is a future for freight in Sonoma and Marin County, simplifying ownership will make it easier to move forward. He looks forward to the economic and financial analysis and business plan.

Director Phillips appreciates Director Rabbitt's comments. He is concerned making a decision without the reports. He asked if analysis have been conducted, why are the reports not available prior to making a decision.

Director Connolly stated that he appreciates all the discussion, as tempting as it is to focus exclusively on a snapshot in time with the assumptions of the challenges that exist today, will always be with us. This is a generational opportunity to continue building a regional transportation system and this is the opportunity to purchase the right-of-way. He read statement from a letter by Mr. Omishakin, Director of Department of Transportation, dated May 18, 2020. The statement said that the Rail Plan identifies the SMART corridor as an important element of the State interregional passenger rail system, providing reliable mobility along the congested highway 101 corridor as well as key transit connections to rural communities in the north State. The letter continues; the SMART owned east-west corridor provides an opportunity to further expand interregional connections and improve reliability and resiliency along the highway 37 corridor and is a priority in the State rail vision. These are the bases for which the State is providing \$4 million for this acquisition. The scope of freight operating service will need to be determined; however, we have heard of many opportunities for SMART. He is ready to move forward to support the acquisition and General Manager Mansourian listed the recommendations on the staff report.

Director Garbarino stated that this is an opportunity not only for SMART but for the environment. She has trust Senator McGuire and SMART staff in all the preliminary analysis they provided to the Board. SMART is not spending any money on this transaction and it's a generational opportunity.

Director Fudge concurred with Director Arnold that this is a "watershed" moment. This bring painful memories when SMART was negotiating an Operating Agreement with NCRA, and NWPCo. We will now be able to operate freight service seamlessly. There will be an increase in safety with one entity operating plus most of the Engineer-Conductor came from freight operations. She has no doubt that freight service will be profitable and she will be meeting with potential customers. She stated that SMART's staff and the Board have never said they will seek abandonment of the freight line service. She added that the approval today is not just on a 2-hour discussion a lot of work has been performed. The State conducted due diligence to provide the funds for this acquisition. This is a watershed moment; a great opportunity and she is happy to vote today.

Director Zane rejoined the meeting at 3:43PM

Director Naujokas thanked everyone for their comments and said he had four key issues: 1) values – this initiative gives SMART the opportunity to reduce greenhouse gas in the community; 2) business – there is clear revenue implications and efficiency of operations, we have resources; 3) faith – the Department of Finance, Department of Transportation, SMART's staff, Mr. Liles and Senator McGuire and the professionalism of elected officials; and 4) risk – yes of course there is always risk and the Board will continue to monitor the operations of SMART.

Director Rogers stated he has three questions: 1) is this a good thing from an operational stand point for SMART – the most compelling aspect is the inability of SMART to prevent a different freight operator to take over; 2) is it good from an economic standpoint – there are various questions and documents that have not been shared, however the Department of Finance has performed due diligence and believes this is a good deal; and 3) timing – he would prefer to review all the document prior to making a decision but given that SMART is receiving funds from the State, this is an opportunity for SMART to provide freight service for the community.

Director Zane said she is glad that Director Fudge spoke about the history of freight. We have come so far in acknowledging freight service is important. In California, freight is not as busy as other states like North Carolina and South Carolina where freight is very active. We have the opportunity to bring revenue and this is a good business investment. There are businesses in the County that will invest in freight. Post pandemic everything is going to change. She thanked everyone who worked on this project especially Senator McGuire, Mr. Liles, Mr. Bosco, Director Fudge, and General Manager Mansourian for all their hard work.

Director Hillmer he expressed his appreciation with all the comments made today. SMART being a unique agency can provide a great value.

Chair Lucan thanked SMART's staff, Mr. Liles, Senator McGuire and Mr. Bosco. There was a lot of conversations about due diligence, purchase, and acquisition, the details are extremely important but moving forward in vision and long- term thinking is also important. In addition to the assets, equipment and right-of-way that SMART is receiving along with \$2 million for infrastructure improvements and additional \$8 million and SMART is not providing any funds for this transaction. He asked himself, what is the best available structure or governance to ensure that freight service continues and that the public has oversight and transparency to freight operations; and the answer is SMART. He is very excited to be supporting this transaction today.

MOTION: Director Arnold moved to approve the Expansion of SMART Right-of-Way and Scope of Operations by Adding Freight Service Responsibility and Executing Related Agreement as presented. Vice Chair Pahre second. The motion carried 11-0-1 (Director Phillips abstain)

8. SMART Budget Survey and Service Reduction Options

General Manager Mansourian stated that at your last meeting it was requested that SMART provide a survey regarding our future service and budget implications. Within days of your meeting, our Outreach Department quickly prepared and distributed a survey providing the public with an opportunity to hear about SMART's proposed reductions. He introduced Communications and Marketing Manager, Julia Gonzalez. Ms. Gonzalez provided a PowerPoint Presentation which is available on SMART's website. Highlights include:

- Community Survey on Proposed Service Reductions
 - Survey open for 7 days (May 11-17)
 - Distributed through SMART's communications methods and thru 65 public and private agencies
 - 3281 respondents – 74% of respondents ride SMART and 26% of respondents have never traveled on SMART
 - When comparing the responses of SMART riders to those of non-riders, they are remarkably similar
 - Full survey results will be available online
- Where Responses came from
- On Eliminating WiFi
 - 90% said it would not factor in decision to ride train
 - 62% would use their own data plan
 - 30% would create a personal hotspot
 - 6 % said data limits would prevent them from accessing internet
- On Pay a fee for WiFi
 - 60% are not willing to pay
 - 28% are willing to pay a \$1-\$2 fee per use
- On Eliminating Weekend Service
 - 29% reported they primarily ride on weekdays, elimination of weekend service would not impact them
 - 18% reported they ride SMART only on weekends
 - 28% said they will ride less if weekend service is cut
- On Reducing Weekday Service
 - 36% ride primarily on weekends
 - 42% found the weekday schedule to be acceptable
- Rider frequency before shelter in place orders
 - 36% rode on weekdays
 - 26% never traveled on SMART
 - 23% were occasional riders, traveling only once a month
 - 15% ride SMART only on weekends (25% of this sub-group travel on a monthly basis for leisure purposes)
- Top 3 factors SMART riders are considering when deciding to ride the train
 - 81% knowing the trains are cleaned twice daily
 - 70% mandatory wearing of face coverings on trains/stations

- 68% environmental benefits of riding transit
- Possible Impacts
 - 17% of survey respondents anticipate only riding on weekends after shelter in place orders ease
 - 12% of respondents do not anticipate returning to riding SMART as shelter in place orders ease
 - 22% are continuing to telecommute
 - 15% are uncertain about their employment status
- Summary
 - 90% of respondents are amenable to the elimination of free onboard WiFi
 - Elimination of Weekend service will result in a loss of leisure and recreational riders
 - The arrival of spring and summer many expressed a desire to ride SMART for weekend leisure trips to San Francisco
 - The proposed weekend service reductions is acceptable if there is the following: 1) earlier AM service; 2) later PM service; and 3) and if the schedule is coordinated with the Ferry

Lastly, General Manager Mansourian gave an overview presentation of the reduction's strategies. We are requesting directions from you on the third strategy. Highlight include:

- Reduction Strategies
 - 1) One Time Savings: \$3.5 million
 - 2) Ongoing Expense Reductions: \$2.6 Million
 - 3) Reduction in Expenses Resulting from Service
 - Elimination of weekend service: Net savings of \$1.6 million
 - Reduction to 22 trips daily: \$3.2 million
 - Reduction in pay and benefits: \$1.1 million
- How quickly do we move to implement the next bucket of reductions?
 - We have imperfect information about the length and impact of the health and economic crises
 - We do not know how deeply we need to cut in the long run
- Three Important Considerations
 - 1) Federal CARES Act Funding
 - 2) Implication of Staff Layoffs
 - 3) Year-Round Budget

In the face of these three important considerations and the survey results – What should the ultimate service schedule look like when we are fully functioning? Do we make significant service cut assumptions now, or do we wait for more information?

- Alternative Service Reductions options
 - Rather than reducing to 22 trips a day, for now we can plan on restoring an extra train at beginning and end of the work day to accommodate public input
- Achieve goals

- Respond to the survey results we received about earlier and later train options
- Could be accomplished without staff layoffs. We would be able to make reductions using attritions and the deletions of vacant positions.
- Strategies
 - SMART would run a “6-1-6” schedule, for a total of 26 runs on the weekday – this will allow SMART to save \$1.1 million annually
 - Board could delay a decision on weekend service until further notice
 - SMART will continue not running weekend service until the shelter in place is lifted and weekend ferry service is restored
 - SMART could maintain the new level of service utilizing the CARES act funding and our unallocated fund balance for several years without using operations reserves
- Budget Preparation – If directed, this reduction option would be included in the budget
 - Preliminary Budget will assume these changes in the June 3 presentation
 - Budget will be adopted on June 17, last meeting before end of the Fiscal Year
 - Continue to monitor and examine the revenues
 - In July, sales tax can be examined for the following months: April, May and June
 - Continue to engage with MTC on the disbursement of the CARES Act funds
 - Continue to update your Board with any findings and assumptions
- Illustration of the 6-1-6 Weekday Schedule

Lastly, public comments have been terrific, we have taken them to heart and added the train service they asked for. We will bring the budget at the next meeting for your considerations

Comments

Chair Lucan stated that he is very happy with the amount of responses that SMART received in a short period of time.

Director Naujokas asked what are the safety mitigation measures that SMART is taking to stop the spread of the virus. Mr. Mansourian responded that the vehicle maintenance staff cleans and sanitizes the trains twice a day. Sanitizer dispenser was added to each train and Engineer-Conductors wear face mask and also provide masks to passengers who don't have one. The only item that is for consideration at the National and State level is if public transportation going to require 6 feet social distance. If so, how will this be implemented with best practices.

Director Phillips said there are two components that are affecting SMART, the current health and economic crisis and the defeat of Measure I. Making the changes that are suggested will offset the systemic issue and with the CARES Act Funds will help with the corona virus issue. What is the probability of not receiving the additional CARES Act fund through MTC? Mr. Mansourian responded that \$10.3 million was approved by MTC and FTA, the remaining \$6.6 is being reviewed by the MTC committee for distribution. Director Rabbitt confirmed that the Blue-Ribbon Committee have not met to discuss the distribution of the remainder of funds.

Director Connolly stated that he is not in the Blue-Ribbon committee, however looks forward to interact with the commission and transit agencies. His preliminary observation, while looking at policy considerations we can't lose site of the fact of the purpose of the CARES Act Funds, which is to provide immediate relief to transit agencies who are strapped due to COVID pandemic. He will be looking for consistency and not lose site of the immediate need of the funds.

Vice Chair Pahre asked if the COVID-19 directives are posted on SMART's website. Mr. Mansourian responded yes. Ms. Gonzalez stated that it's also sent via different social media methods. MTC has provided a videographer too SMART to film staff cleaning the trains.

Dani Sheehan congratulated staff with the new partnership. She urged the Board not to eliminate weekend service and suggested reaching out to the leaders and tourism partners.

Steve Birdleough asked if SMART running three (3) car trains.

Mike Pechner suggested that SMART have efficient connection to the Ferry for Giants baseball games during the weekdays and weekends.

Mr. Mansourian responded that SMART is currently running 2 car passenger service. If SMART was to run 5-1-5 schedule there would not be enough staff to run 3 car train. In the proposed schedule of 6-1-6, SMART will be running a 2-car passenger service and once ridership increases or social distance is required adding an additional car will be a must. The weekend service is for your Board to make a recommendation today.

Chair Lucan asked the Board if they are not in support of staff's recommendations?

Director Fudge stated that SMART will need to provide weekend service within 30-days of shelter in place is lifted. There is going to be an increase in regional travel and we need to be ready to start weekend service when possible. She does not want the Board to forget the request of a later train departing north. She thanked everyone who responded to the survey and provided thoughtful comments and suggestions.

Director Arnold thanked staff for the brilliant survey in a short period of time, she was able to forward to her constituents and contact list.

Director Rogers thanked the General Manager Mansourian and staff for providing the proposed 6-1-6 schedule.

Director Connolly stated that he agrees with the recommendations to not eliminate weekend service. SMART could lose ridership if weekend service is eliminated and new ridership can be attracted by having weekend service.

Director Naujokas stated that is very important to reinforce the message to mitigation safety risk measure to make riders comfortable and an alternative transportation.

Vice Chair Pahre stated that constituents and members of the public have felt that they have not been heard. The survey asked the right questions and provided SMART the ability to provide an alternative proposed 6-1-6 schedule. We are not the only transit agency in the Bay Area who is struggling during this time. The Golden Gate Bridge has also lost approximately 70% - 90% of ridership, crossings and ferry. Not everyone gets what they want and SMART will revisit and is in constant coordination with other agencies

Lastly, Chair Lucan stated that staff received the recommendations to proceed to next phase of the budget. He appreciated Director Naujokas comments regarding safety mitigation measures SMART is conducting to keep passengers safe. He thanked the public to engage and provide feedback in the survey.

9. Next Regular Meeting of the Board of Directors, June 3, 2020 – 1:30PM
10. Adjournment – Meeting adjourned at 5:02PM.

Respectfully submitted,

/s/

Leticia Rosas-Mendoza
Clerk of the Board

Approved on: June 3, 2020