



**BOARD OF DIRECTORS  
REGULAR MEETING AGENDA  
February 15, 2017 – 1:30 PM**  
5401 Old Redwood Highway, 1<sup>st</sup> Floor  
Petaluma, CA 94954

1. Call to Order
2. Approval of the January 4, 2017 Board Meeting Minutes
3. Public Comment on Non-agenda Items
4. Board Member Announcements
5. General Manager's Report
6. Consent
  - a. Approval of Monthly Financial Reports
  - b. Approve Hanson Bridgett, LLP Contract Amendment No. 4
  - c. Accept SMART's 2016 Annual Report
7. Approve Amendments to the 2011 Operating and Coordination Agreement between SMART and North Coast Railroad Authority (NCRA)
8. Closed Session - Conference with legal counsel regarding initiation of an action or to decide whether to initiate an action pursuant to California Government Code Section 54956.9(d)(4). Number of cases: 1.
9. Report Out of Closed Session
10. Next Regular Meeting Board of Directors, March 1, 2017 – 1:30 PM – 5401 Old Redwood Highway, 1<sup>st</sup> Floor, Petaluma, CA 94954
11. Adjournment

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**BOARD OF DIRECTORS  
REGULAR MEETING MINUTES**

**January 4, 2017 - 1:30 PM**

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

1. Call to Order

Chair Arnold called the meeting to order at 1:30 PM. Directors Eddie, Fudge, Lucan, Mackenzie, Moulton-Peters, Pahre, Rabbitt, Russell, Sears and Zane were present. Director Phillips absent.

2. Election of Chairperson and Vice-Chairperson

Chair Arnold thanked the Board Directors for the last 4 years making difficult decisions and being very supportive in moving the project forward. She also thanked General Manager Mansourian and Staff and acknowledged Vice-Chair Pahre for being an excellent partner.

Chair Arnold and Vice-Chair Pahre nominated Director Fudge for Chairperson and Director Sears for Vice-Chairperson.

Directors' Comments

Director Zane asked if the Mayors' and Councilmembers' Association of Sonoma County reappointed Director Fudge to another term. Ms. Fudge replied that appointments will be made at their February meeting. Ms. Zane stated that this can be issue since there are also other candidates being considered for the seat. Director Mackenzie stated that he will be the Chair of the Mayors' and Councilmembers' Association at the February meeting. There are two letters of interest being considered.

**MOTION:** Director Pahre moved to elect Director Fudge for Chairperson and Director Sears for Vice-Chairperson. Director Eddie second. The motion carries 11-0-0. (Director Phillips absent).

Chair Fudge thanked Directors Arnold and Pahre for all their work and dedication in the last four years. Flowers were given as a token of appreciation.

Director Mackenzie congratulated Chair Fudge and Vice-Chair Sears. He thanked Directors Arnold and Pahre for their dedication and accomplishments in the last four years.

Director Pahre stated that acting as the Vice-Chair and working closely with Director Arnold the last four years has been a privilege.

3. Approval of the December 7, 2016 Board Meeting Minutes

**MOTION:** Director Mackenzie moved approval of December 7, 2016 minutes as presented. Director Sears second. The motion carries 11-0-0. (Director Phillips absent).

4. Public Comment on Non-Agenda Items

Duane Bellinger congratulated the new Chair and Vice-Chair. He thanked the construction workers for being at Ely Road during the most recent storm. He suggested that the public should sign up themselves during the free trial period.

Bettina O'Brien stated she is excited for the start of passenger service and thanked SMART staff for their hard work.

Rick Coates stated that Metrolink has brochures with timetable and locations. He suggested SMART prepare something similar.

Sarah Sass (Petaluma Resident) stated her grade-crossing safety concerns in Petaluma are that it is unacceptable to have only one flagger; she suggested two flaggers be located at each grade crossing.

Jack Swearingen stated that an electric shuttle named "Olli" is on trial in the Washington area. He provided the Board with visuals of how it operates.

5. Board Member Announcements

Director Lucan stated that the Ad-Hoc Bicycle Subcommittee met in December 2016. Staff gave them a Pathway update and will continue to meet.

Patricia Tuttle-Brown asked who she should notify at SMART with pathway grants suggestions. Chair Fudge responded to contact General Manager Mansourian.

6. General Manager's Report

General Manager Farhad Mansourian thanked outgoing Chair Arnold and Vice-Chair Pahre for their dedication in serving the Board.

Mr. Mansourian responded Communications and Marketing Manager Jeanne Belding will make contact with Ms. Sass to address her grade-crossing safety concerns.

He announced that SMART received an Outstanding Bridge Project of the Year Award from the American Society of Civil Engineers (ASCE) for the Haystack Landing Rolling Bascule Moveable Railroad Bridge. He acknowledged Senior Engineer John Riley and Chief Engineer Bill Gamlen for their work on the project.

Directors' Comments

Director Mackenzie asked if the DMUs' engine replacement is on track to be completed. Mr. Mansourian responded yes.

7. Consent
  - a. Approve Monthly Financial Reports
  - b. Approve Nossaman LLP Contract Amendment No. 7

Chair Fudge asked for Board comments on the proposed consent agenda.

**MOTION:** Director Eddie moved approval of the Consent Agenda as presented. Director Sears second. The motion carried 11-0-0 (Director Phillips absent).

8. Approval of Monthly Pass (31-days revolving pass) Amounts and Authorize Introductory and Education Periods

General Manager Mansourian stated that your board on May 18, 2016, approved fare amounts and fare products and directed staff to develop a monthly pass and return at a later date. At your Board Workshop on December 7, 2016, your board considered staff's recommendation and received public and board comments.

Proposed Monthly Fare Structure

Staff recommended \$200 per month (31-days) adult pass. The cost per month (31-days) for passengers with disabilities, seniors (65 years older) and youth (5-18 years) would be \$100.

He pointed out SMART's Fare Fact Sheet that is attached to the staff report illustrating various fare options.

Introductory and Education Period

SMART is introducing a new transit option and payment methods to Sonoma and Marin Counties. It will take time for SMART's future riders to get acquainted. For the prospective rider, they will be learning our schedule; how to access to and from our stations; where to purchase and reload Clipper® Card; how to be ready to get onboard and exit; parking bicycles at SMART's stations; bringing bikes and securing them onboard. These are all examples of things a prospective rider may want to learn as part of their transportation solution.

Therefore, staff recommends that your Board approve the following:

- 1) Establish a Monthly Pass (31 days) in the amount of \$200 for adults, with 50% off, or \$100, for passengers with disabilities, seniors aged 65+, and youth ages 5-18;
- 2) The approved fare amounts established by your Board today and on May 18, 2016, will begin September 5, 2017;
- 3) From July 5, 2017, to September 4, 2017 an introductory rate will be offered and all non-discounted regular adult fares will be 50% less than the approved amounts, with all other business rules, including transfer credits, being maintained as established in Your Board's fare program; and
- 4) From the time we are ready to begin passenger revenue service through July 4, 2017, all rides on SMART shall be free as an educational period for our future customers. We will be encouraging riders to acquire and get familiar with the Clipper® Card system during this free period. However, Clipper will not be strictly required but encouraged.

Lastly, the approximate two-month educational period of free service could result in a worst-case financial loss of \$700K in fare revenue. However, this could lead to more rapid change in commute behavior making ridership stronger.

#### Directors' Comments

Director Zane asked for clarification of the financial loss if free service is for a total of two months. Mr. Mansourian responded that the worst case scenario financial loss can be up to \$700K based on ridership analysis. She also asked if SMART received any feedback from businesses on the monthly pass cost of \$200. Mr. Mansourian responded that some of the small businesses will purchase the monthly pass, and it could replace the first two tiers of the Eco-Pass. She asked if SMART had conducted research with other transit agencies on the cost of the monthly pass. Mr. Mansourian responded that Programming and Grants Manager Joanne Parker will respond shortly.

Director Moulton-Peters asked if staff has conducted other purchase options for people who are not technology savvy and seniors. Mr. Mansourian responded that the public will be able to purchase Clipper® Card at some retailers and SMART stations. Also, Clipper is considering expanding retailer locations.

Director Russell stated that the monthly pass gives flexibility to the public and small businesses. She is very pleased that SMART will be offering "free rides" for potential riders to get acquainted with the service.

Director Rabbitt stated that he is very supportive of the monthly pass and introductory/educational period. He asked if the Eco-Pass is eliminated will the new Clipper program allow SMART to do different things. Mr. Mansourian responded Clipper requires a 90-day notice; however, staff will investigate and report back. Director Rabbitt asked how the cost of the monthly pass was determined. Mr. Mansourian responded that staff conducted research of similar transit agencies, demographics and commuters of 2/3 zones.

Chair Fudge stated that this product will benefit Sonoma and Marin Counties.

Public Comments:

Tom Brandon suggested that SMART consider having 3/5 day pass for tourists, just like that available in Washington, DC.

Patricia Tuttle-Brown stated she has been a huge supporter of SMART. She is very excited that SMART will offer “free rides” during an introductory period.

Programming and Grants Manager Joanne Parker responded to previously addressed comments. She stated that the Clipper® Card staff and their board members have been very helpful in exploring various options for SMART. She mentioned that staff conducted research on other transit agencies that offers monthly passes.

- Caltrain: \$190 monthly pass cost for three zones and \$243 for four zones;
- ACE: \$364 monthly pass (calendar) cost from Stockton to San Jose, \$228 from Stockton to Fremont, \$228 from Stockton to Tri-Valley; and
- Capital Corridor: offers \$277 from Oakland to San Jose and \$435 from Oakland to Davis.

The Clipper® Card website has a list of available retail stores that offer the card. There are 10 locations in Sonoma County and they are considering expanding locations.

Director Moulton-Peters stated that she searched the website and was able to locate Clipper® Card retailers.

Director Rabbitt asked what the percentage of riders will purchase the monthly pass. Also, extensive outreach needs to be conducted to let the public know the various types of options SMART offers. He would like the Board to consider college students’ and veterans’ discounts. Mr. Mansourian responded that at the Fare Analysis Workshop it was assumed that 30% will be discounted riders including the monthly pass.

Director Zane stated the Sonoma County Supervisors approved free bus passes for college students and it was financed by the County General Fund. She would like the Board to consider the same program for college students. She asked if SMART does not start passenger service on time will the schedule for free rides be modified. Mr. Mansourian responded that if passenger service is not on schedule he will be informing your Board and timeframes can be modified. Also, the County of Sonoma has a General Fund that subsidizes the cost; however, SMART does not have a separate line item to be able to subsidize that particular cost.

Director Lucan stated that having an age threshold has to be picked. Also, not all individuals once they turn 19 turn in their youth Clipper® Card for an adult card.

Vice-Chair Sears stated that the age group was selected based on other transit agencies. She said that SMART has a good structure and once passenger service begins

modifications can be made.

**MOTION:** Director Pahre moved to Approve the Monthly Pass (31-days revolving pass) Amounts and Authorize Introductory and Education Periods as presented. Director Sears second. The motion carried 11-0-0 (Directors Phillips absent).

9. Approve Additional Enhancements to SMART Stations that include 68 Secure Bike Lockers, 39 Bicycle Racks, and Vehicular Gravel Parking Lots at the Airport and Petaluma Stations and Authorize the General Manager to Execute a Contract with eLock Technologies, LLC to Procure and Install Secure Bike Lockers

Chief Engineer Bill Gamlen stated that at the December 7, 2016 Board Meeting/Workshop staff presented additional station enhancement opportunities consisting of bicycle parking, vehicular parking at Airport and Petaluma Stations and station enhancements that were identified during the station development process in 2015. Highlights included:

- Security Enhancements: Camera Systems at facilities, bike lockers and at-grade crossings;
- Bicycle Parking Types: 1) U Racks; 2) U Racks Shelters and 3) Metal Secure lockers. A list of additional lockers per Station was illustrated.
- Vehicle Parking at SMART Stations at the Sonoma County Airport and Downtown Petaluma. Parking concepts with estimated costs for each location was illustrated.

Lastly, staff is recommending installing 68 secure bike lockers and 39 additional bicycle racks at the Initial Operating Segment stations and constructing gravel parking lots at Airport and Petaluma Stations and authorize the General Manager to execute a contract with eLock Technologies, LLC to procure and install bike lockers.

Directors' Comments:

Director Zane asked for the distance of the parking structure at the Sonoma County Airport to the SMART station. Mr. Gamlen responded approximately  $\frac{3}{4}$  to a 1-mile.

Director Rabbitt asked for clarification on the Petaluma Downtown Parking concept of the linear parking spaces. Mr. Gamlen responded that the parking section is leased to the City of Petaluma. Director Rabbitt asked if the parking spaces will be marked. Mr. Gamlen replied that the parking lots are conceptual and various ideas will be considered to educate the public.

Bjorn Grienpenburg (MCBC) thanked staff and the board for acknowledging the bicycle parking needs and encouraged the board to approve the item.

Duane Bellinger thanked the board for acknowledging the need for parking at the Petaluma Station.

Alisha Oloughlin thanked staff and the board for acknowledging the bicycle communities' considerations. She is very pleased with the outcome of the process and is looking forward to the collaborative spirit in 2017.

**MOTION:** Director Arnold moved to Additional Enhancements to SMART Stations that include 68 Secure Bike Lockers, 39 Bicycle Racks, and Vehicular Gravel Parking Lots at the Airport and Petaluma Stations and Authorize the General Manager to Execute a Contract with eLock Technologies, LLC to Procure and Install Secure Bike Lockers as presented. Director Zane second. The motion carried 11-0-0 (Directors Phillips absent).

Chair Fudge adjourned the Board to closed session at 2:58PM to discuss the following:

10. Closed Session
  - a. Conference with legal counsel regarding litigation pursuant to California Government Code Section 54956.9; North Coast Railroad Authority and Northwestern Pacific Railroad Company v. Sonoma-Marín Rail Transit District (STB Docket No. FD 36077 - NOR 42148)
  - b. Conference with General Manager, Farhad Mansourian, pursuant to California Government Code Section 54956.8 regarding real estate property negotiations.  
Property: Railroad Right-of-Way Spur commencing at Mile Post 39.1 and located on or about 368 and 402 Petaluma Boulevard, Petaluma  
Negotiating Parties: Farhad Mansourian – The Spanos Corporation (TSC)
  - c. Conference with General Manager, Farhad Mansourian, pursuant to California Government Code Section 54956.8 regarding real estate property negotiations.  
Property: Sonoma-Marín Area Rail Transit District – Railroad Square Property  
APN's: 010-171-019 and 010-166-003  
Negotiating Parties: Farhad Mansourian and ROEM

11. Report Out of Closed Session

Chair Fudge reported out of closed session at 4:32 PM on the following:

- a. Conference with legal counsel regarding litigation pursuant to California Government Code Section 54956.9; North Coast Railroad Authority and Northwestern Pacific Railroad Company v. Sonoma-Marín Rail Transit District (STB Docket No. FD 36077 - NOR 42148)
- b. Conference with General Manager, Farhad Mansourian, pursuant to California Government Code Section 54956.8 regarding real estate property negotiations.  
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- c. Conference with General Manager, Farhad Mansourian, pursuant to California Government Code Section 54956.8 regarding real estate property negotiations.  
Property: Sonoma-Marin Area Rail Transit District – Railroad Square Property  
APN's: 010-171-019 and 010-166-003  
Negotiating Parties: Farhad Mansourian and ROEM

*Report Out Items 11a, b, c: Direction given to Counsel and General Manager regarding litigation to set up a potential special meeting of the Board.*

- 12. Next Regular Meeting Board of Directors, February 1, 2017 – 1:30 PM – 5401 Old Redwood Highway, 1<sup>st</sup> Floor, Petaluma, CA 94954
- 11. Adjournment – Meeting adjourned at 4:34PM

Respectfully submitted,

Leticia Rosas-Mendoza  
Clerk of the Board

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



**Debora Fudge, Chair**  
Sonoma County Mayors and  
Councilmembers Association

**Kathrin Sears, Vice Chair**  
Marin County Board of Supervisors

**Judy Arnold**  
Marin County Board of Supervisors

**Jim Eddie**  
Golden Gate Bridge,  
Highway/Transportation District

**Eric Lucan**  
Transportation Authority of Marin

**Jake Mackenzie**  
Sonoma Mayors and Councilmembers  
Association

**Stephanie Moulton-Peters**  
Marin Council of Mayors and  
Councilmembers

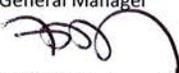
**Barbara Pahre**  
Golden Gate Bridge,  
Highway/Transportation District

**Gary Phillips**  
Transportation Authority of Marin

**David Rabbitt**  
Sonoma County Board of Supervisors

**Carol Russell**  
Sonoma Mayors and Councilmembers  
Association

**Shirlee Zane**  
Sonoma County Board of Supervisors

**Farhad Mansourian**  
General Manager  
  
5401 Old Redwood Highway  
Suite 200  
Petaluma, CA 94954  
Phone: 707-794-3330  
Fax: 707-794-3037  
www.sonomamarintrain.org

February 15, 2017

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

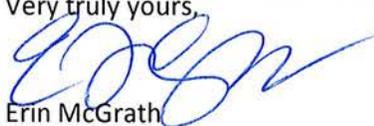
**SUBJECT:** Monthly Financial Reports

Dear Board Members:

**RECOMMENDATION:** Information Item

**SUMMARY:**

As of January 31, SMART ended the month with an unrestricted fund balance of \$55,043,911 and bond fund investments totaling \$25,702,665. Gross Sales Tax Revenue received through the month of January is \$15,474,878, which represents six months of sales tax for the year. Sales tax receipts are still growing but showing signs of slowing and have been leveling out for the last three quarters. We are watching the trend and will report back as we have more data available. Spending is currently below overall budgetary authority as approved by the Board.

Very truly yours,  
  
Erin McGrath  
Chief Financial Officer

Attachment(s): Monthly Financial Report  
Contract Summary

**SMART**  
**Monthly Financial Report**  
As of January 2017

	FY 2016-17 Budget	YTD Actuals	Remaining Budget
<b>Revenues</b>			
Sales/Use Taxes	36,286,248	15,474,878	20,811,370
Interest Earnings	377,500	352,031	25,469
Rent - Real Estate	487,197	287,409	199,788
Federal - FHWA	1,619,924	2,426,214	-
Other Governments	2,478,177	257,119	2,221,058
Measure M	350,000	-	350,000
MTC - RM2	8,436,937	1,349,153	7,087,784
Fare Revenue	1,976,000	-	-
Charges For Services	30,000	36,186	-
State Grants	2,104,500	3,679	2,100,821
Federal FTA Funds	5,533,042	365,696	5,167,346
Miscellaneous Revenue	60,000	169,159	-
<b>Revenue Total</b>	<b>59,739,525</b>	<b>20,721,525</b>	<b>37,963,635</b>
<b>Expenditures</b>			
<b>Administration</b>			
Salaries & Benefits	4,199,937	2,186,147	2,013,790
Services & Supplies	6,602,434	2,823,512	3,778,922
Other Charges	18,791,927	6,866,891	11,925,036
Machinery & Equipment	74,302	25,847	48,455
	<u>29,668,600</u>	<u>11,902,398</u>	<u>17,766,202</u>
<b>Capital</b>			
Salaries & Benefits	1,196,770	526,453	670,317
Services & Supplies	426,266	162,278	263,988
Other Charges	138,177	62,636	75,542
Land	388,500	259,924	128,576
Machinery & Equipment	22,481,183	1,388,443	21,092,741
Infrastructure	32,141,787	15,294,749	16,847,038
Intangible Assets	2,000	2,000	-
	<u>56,774,683</u>	<u>17,696,482</u>	<u>39,078,201</u>
<b>Operations</b>			
Salaries & Benefits	11,086,865	4,692,649	6,394,216
Services & Supplies	5,088,670	1,464,887	3,623,784
Buildings & Capital Improvements	2,914,343	749,949	2,164,394
Inventories	280,000	-	280,000
	<u>19,369,878</u>	<u>6,907,485</u>	<u>12,462,393</u>
<b>Expenditure Total</b>	<b>105,813,162</b>	<b>36,506,365</b>	<b>69,306,797</b>

**Investment Report**

	As of January 2017
<b>Bond Reserve Fund</b>	
Sonoma County Treasury Pool	17,072,500
<b>Interest Fund</b>	
Sonoma County Treasury Pool	3,458,455
<b>Project Fund</b>	
Sonoma County Treasury Pool	273,950
<b>Principal Fund</b>	
Sonoma County Treasury Pool	4,897,760
<b>SMART Fund Balance</b>	
Bank of Marin	5,302,527
Sonoma County Treasury Pool	49,741,384
	<b>80,746,576</b>



## Contract Summary

Active Contracts as of January 31, 2017

Contractor	Scope	Fiscal Year 16-17 Projected	Fiscal Year 16-17 Actuals-To-Date
Adobe Associates Inc.	Real Property Support Services	\$12,000	\$0
Alcohol & Drug Testing Services, LLC	DOT Drug and Alcohol Testing	\$24,875	\$5,918
Alliant Insurance Services	Insurance Brokerage & Risk Management Services	\$69,000	\$0
Area West Environmental, Inc	Environmental Compliance Support Services	\$50,000	\$19,964
Barbier Security Group	Security Guard/Patrol Services	\$15,000	\$14,594
Bender Rosenthal, Inc.	Real Estate Support Services for Larkspur Extension	\$223,780	\$20,712
Bernadette Lambert	Right of Way Acquisition Legal Services	\$4,500	\$0
Bettin Investigations	Background Investigations	\$15,000	\$5,901
Big Cat Advertising	Digital Advertisement Services	\$18,000	\$10,500
BKF Engineers Inc.	Real Property Support Services	\$10,000	\$0
Burke, Williams & Sorensen, LLP	Litigation Support Services	\$150,000	\$24,440
Cal Accessibility, Inc.	ADA Compliance Support Services for CP4	\$25,000	\$6,636
Cascade Healthcare Services	AED Program Management	\$1,750	\$1,750
Century Urban	Real Estate Advisory Services	\$18,513	\$14,138
Certified Employment Group	Temporary Staffing Services	\$40,000	\$21,963
Coates Field Service, Inc.	Real Estate Acquisition and Relocation Services	\$25,000	\$5,215
Conservation Corps North Bay	ROW Maintenance & Weed Abatement	\$40,000	\$0
David Rzepinski & Associates	Transit Market, Fare Analysis, Coordination	\$35,000	\$11,506
David Tattersall & Co.	Real Estate Appraisal Services	\$10,000	\$0
David Tattersall & Co. Real Estate Advisory Service	Real Estate Appraisal Services for Larkspur Extension	\$42,000	\$16,000
Dennis Walther	Electrical Service Design Review	\$5,200	\$5,200
Dr. Mark Clementi	Pre-Employment Psychological Evaluations	\$34,250	\$16,440
Emtec Consulting Services, LLC	Oracle Accounting System Support Services	\$64,761	\$41,203
George Hills Company, Inc.	Third Party Claims Administration Services	\$21,400	\$2,187
GHD, Inc.	SWPP Compliance, AutoCAD Management, Traffic and Hydraulic Analysis for CP4	\$61,170	\$58,125
Granicus, Inc.	Media Streaming & Internet Broadcasting Services	\$8,000	\$4,585
Hanson Bridgett LLP	Legal Services	\$70,000	\$67,632
ICF Jones & Stokes, Inc.	Environmental Permitting Management and Support Services	\$210,000	\$104,023
Intelligent Technology Solutions, Inc.	Maximo MMS Implementation and Support Services	\$306,813	\$261,815
Interwest Consulting Group	Acquisition and Relocation Services	\$3,749	\$1,330
Irwin Inc.	Construction Contract Document Preparation	\$20,000	\$0
Jeffries Public Safety Consulting	Emergency Management Plan Development Services	\$9,250	\$0
John Zanzi	Fire and Life Safety Planning	\$20,000	\$5,863
Kathy Wood & Associates	Acquisition and Relocation Services	\$36,252	\$0
Krebs Construction Services, Inc	Project Cost Management Services	\$30,000	\$683
Kurland Digital	Website Hosting and Support Services	\$700	\$0
LTK Engineering Services	Vehicle and Systems Design and Construction Management Services	\$1,102,287	\$842,249
Macias Gini & O'Connell LLP (MGO)	Financial Audit Services	\$44,401	\$44,401
Maggiora & Ghilotti, Inc.	Non-Motorized Pathway E. Cotati Ave to Golf Course Drive	\$1,105,563	\$1,091,471
Managed Health Network	Employee Assistance Program (EAP) Services	\$1,910	\$309
Masabi LLC	SMART Mobile Ticketing Pilot Project	\$135,000	\$0
MGrodrer, LLC	Project Management Services	\$50,000	\$29,632
Moore Iacofano Goltsman, Inc.	Marketing Implementation and Website Design	\$39,500	\$34,725
Nelson\Nygaard Consulting Associates, Inc.	Bicycle Parking Investment Plan	\$2,351	\$2,351

Contractor	Scope	Fiscal Year 16-17 Projected	Fiscal Year 16-17 Actuals-To-Date
Netwoven Inc.	Design Information Architecture for Document and Project Management Technology	\$62,664	\$29,410
North Bay SAP Services	Substance Abuse Professional Services	\$5,000	\$0
Nossaman LLP	Legal Services - Railroad Regulatory Issues & Transit D-B Projects	\$101,955	\$101,955
Occupational Health Centers of CA	Pre-Employment Evaluation Services	\$21,950	\$8,630
Oracle	Fusion Enterprise Resource Planning (ERP) Software & Hosting Services	\$47,880	\$23,940
Parodi Investigative Solutions	Pre-Employment Background Investigation Services	\$19,600	\$15,250
Paychex, Inc.	Payroll Processing Services	\$21,632	\$10,580
PGH Wong Engineering	Construction Management Support Services	\$43,150	\$42,077
Platinum Advisors, LLC	State Legislative Advocacy Services	\$120,000	\$50,000
Portola Systems, Inc.	SMART Station Network Configuration Services	\$269,904	\$240,384
RailPros, Inc.	Professional Engineering Services for Larkspur Extension	\$661,653	\$538,930
Reforestation Services, Inc.	Vegetation Control Services	\$23,206	\$20,579
Shimmick Construction Co, Inc.	D/B Construction of IOS2, Haystack, OMF, Station Finishes and Pathway	\$6,400,364	\$3,801,314
SPTJ Consulting	Network Infrastructure, Security, Migration and Setup Services	\$389,880	\$131,693
Stacy and Witbeck/Herzog, JV	Design/ Build Construction of Civil, Track & Structures Improvements of IOS-1	\$10,669,655	\$8,194,516
State Water Resources Control Board	Mira Monte Site Cleanup Program	\$6,400	\$2,616
Steve Taylor Excavation	Vehicle Detector Loop Installation Services	\$6,923	\$0
STV, Inc.	On-Call Railroad Bridge Inspection Services	\$100,000	\$72,301
Sumitomo Corporation	Manufacture & Delivery of Vehicles	\$20,843,756	\$621,966
Summit Signal, Inc.	ISTEA - Constructing Black Point Bridge Automation Project	\$194,250	\$109,875
Summit Signal, Inc.	Emergency Call-Out Services for Track and Signals	\$70,000	\$26,960
Summit Signal, Inc.	Track and Signal Inspections	\$85,110	\$76,896
Swiftly, Inc.	AVL Mobile Application and Website Interface	\$9,900	\$9,900
WBE	Design and Installation of Security Equipment	\$207,072	\$47,625
Xentrans, Inc.	DMU WIFI Development Services	\$54,090	\$40,725
	<b>Totals</b>	<b>\$44,647,969</b>	<b>\$17,011,583</b>

\*Actuals-To-Date includes invoices that have been approved as of January 31, 2017, but may not have been processed in SMART's Financial System.



**Debora Fudge, Chair**  
Sonoma County Mayors and Councilmembers Association

**Kathrin Sears, Vice Chair**  
Marin County Board of Supervisors

**Judy Arnold**  
Marin County Board of Supervisors

**Jim Eddie**  
Golden Gate Bridge,  
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**Eric Lucan**  
Transportation Authority of Marin

**Jake Mackenzie**  
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Transportation Authority of Marin

**David Rabbitt**  
Sonoma County Board of Supervisors

**Carol Russell**  
Sonoma Mayors and Councilmembers Association

**Shirlee Zane**  
Sonoma County Board of Supervisors

**Farhad Mansourian**  
General Manager

5401 Old Redwood Highway  
Suite 200  
Petaluma, CA 94954  
Phone: 707-794-3330  
Fax: 707-794-3037  
www.sonomamarintrain.org

February 15, 2017

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

**SUBJECT:** Approval of Hanson Bridgett, LLP Contract Amendment No.4.

Dear Board Member:

**RECOMMENDATION:**

Authorize the General Manager to execute Amendment No. 4 with Hanson Bridgett, LLP for legal support services in the amount of \$100,000, for a contract not-to-exceed amount of \$295,000, and to extend the term of the contract to June 30, 2018.

**SUMMARY:**

Hanson Bridgett has been under contract with SMART since 2005 and has assisted SMART with a number of projects and legal matters over the past several years, including advising on complex real estate transactions, Diesel Multiple Unit railcar procurement, litigation and more recently as part of the labor negotiations team, assisting Human Resources in collective bargaining contract negotiations. Hanson Bridgett has various specialized practice groups including, an employee benefits practice group, a public agency infrastructure and procurement practice group that provide services to a variety of districts, cities, and local governmental agencies. The District anticipates the continued need for Hanson Bridgett's supplemental specialized legal and collective bargaining labor negotiations expertise.

Staff recommends that the District continue to retain the services of Hanson Bridgett for supplemental specialized legal and labor negotiations support on an as-needed basis. Contract Amendment No. 4 provides for an additional 12-month term extension

**FISCAL IMPACT:** Funding for the contract is included in the proposed legal services budget for FY 2016-17.

**REVIEWED BY:** [ x ] Finance  [ ] Administration \_\_\_\_\_  
[ ] Counsel \_\_\_\_\_ [ ] Engineering \_\_\_\_\_  
[ ] HR \_\_\_\_\_ [ ] Other \_\_\_\_\_

Very truly yours,

  
Thomas F. Lyons  
General Counsel

**FOURTH AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES  
BETWEEN THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT  
AND HANSON BRIDGETT, LLP**

This FOURTH AMENDMENT dated as of February 4, 2017 (the “Fourth Amendment”) to the Agreement by and between the SONOMA-MARIN AREA RAIL TRANSIT DISTRICT (“SMART”) and HANSON BRIDGETT, LLP (“CONSULTANT”), dated as of June 20, 2012 (the “Original Agreement,” and as amended by the First, Second, and Third Amendments and now this Fourth Amendment, the “Agreement”).

**RECITALS**

WHEREAS, SMART and CONSULTANT previously entered into the Original Agreement to provide specialized legal expertise in public employee benefits, public transportation issues, and intellectual property matters; and

WHEREAS, SMART and CONSULTANT previously entered into various Amendments to the Agreement between July 1, 2013 and March 1, 2016, to update the Scope of Services, increase the not-to-exceed amount, and extend the term of the Agreement; and

WHEREAS, SMART desires to amend the Agreement to increase the not-to-exceed amount by \$100,000, for a total not-to-exceed amount of \$295,000; and

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 2. COMPENSATION**” is hereby amended so that compensation for services shall not exceed \$295,000.
2. 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 Fourth Amendment as set forth below.

**SONOMA-MARIN AREA RAIL TRANSIT DISTRICT**

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Farhad Mansourian, General Manager

**HANSON BRIDGETT, LLP**

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Madeline Chun, Partner

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Tom Lyons, District Counsel



**Debora Fudge, Chair**  
 Sonoma County Mayors and  
 Councilmembers Association

**Kathrin Sears, Vice Chair**  
 Marin County Board of Supervisors

**Judy Arnold**  
 Marin County Board of Supervisors

**Jim Eddie**  
 Golden Gate Bridge,  
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 www.sonomamarintrain.org

February 15, 2017

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

**SUBJECT:** Annual Report 2016

Dear Board Members:

**RECOMMENDATION:** Receive Report

**SUMMARY:**

Attached for your review is SMART’s Annual Report for 2016, which provides an overview of our activities during the year and a brief financial summary of Fiscal Year 2015-16. This complements our other public reports, including the Comprehensive Annual Financial Report, the monthly General Manager Reports, the Annual Budget, and your Board’s monthly financial reports.

Once again the District has incredible progress to report in both project completion and readiness for passenger service. The report details our progress on the major capital project components including construction of track, bridges, and train control systems; rail car testing, platform finish construction, safety and security efforts and the ramp- up of operations staff and activities. This past year we were finally able to construct a number of pathway segments after the final acceptance of our federal environmental reviews. We also summarize at a high level our Fiscal Year 2015-16 revenues and expenditures in a way that is more accessible to the general public than in our annual financial statements. We believe it’s a helpful, readable addition to the public information available on SMART that can be shared with local partners, constituents, future riders and any other fans of SMART.

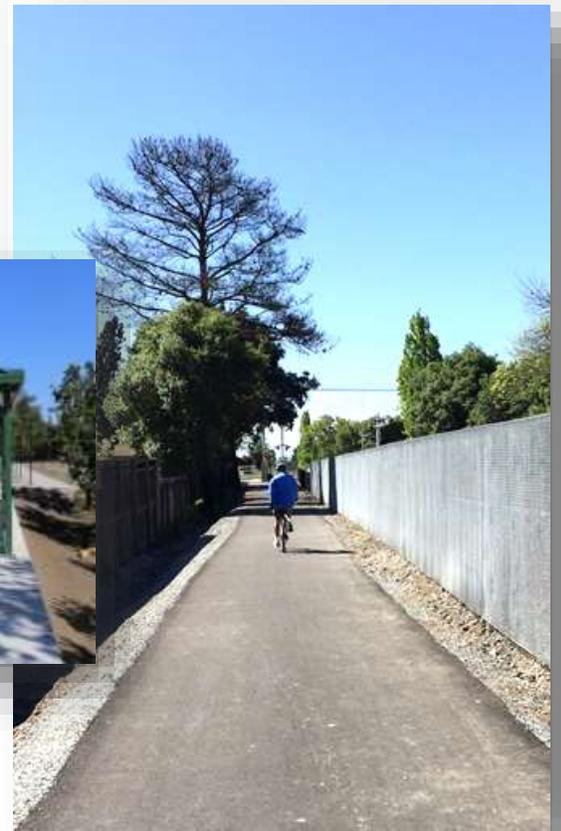
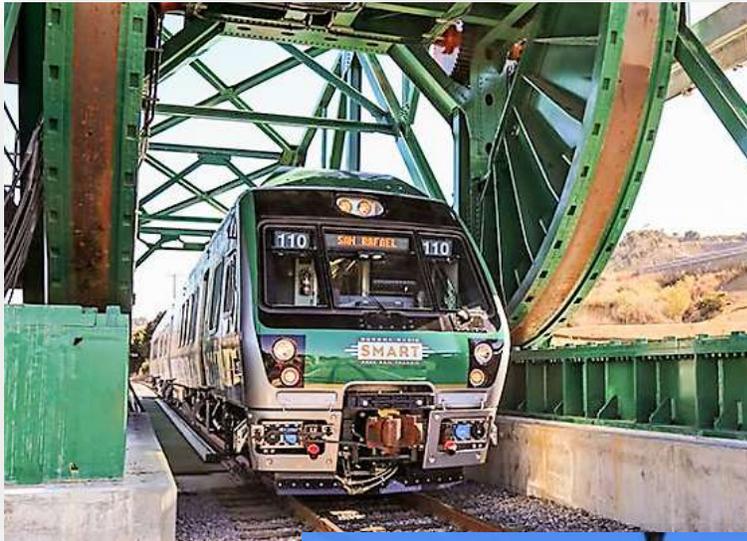
Very truly yours,

Erin McGrath  
 Chief Financial Officer

Attachment: Annual Report 2016 – Measure Q Program

# Sonoma-Marín Area Rail Transit District

## Annual Report 2016



5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954

## About Sonoma-Marin Area Rail Transit (SMART)

SMART is a transit district created by the State of California in 2002 to oversee the development, implementation and operation of a passenger rail system in Marin and Sonoma counties.

SMART is currently implementing a passenger rail and bicycle-pedestrian pathway project funded by Measure Q, a one-quarter cent sales tax approved by Sonoma and Marin voters in 2008. It will ultimately serve a 70-mile corridor from Larkspur to Cloverdale, with a first phase from Downtown San Rafael to Sonoma County Airport Boulevard starting in 2017.

For more information about SMART and its projects and programs, please visit [www.sonomamarintrain.org](http://www.sonomamarintrain.org).

## 2016 Board of Directors

Judy Arnold, Chair

*Marin County Board of Supervisors*

Barbara Pahre, Vice Chair

*Golden Gate Bridge, Highway and Transportation District*

Jim Eddie

*Golden Gate Bridge, Highway and Transportation District*

Shirlee Zane

*Sonoma County Board of Supervisors*

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David Rabbitt

*Sonoma County Board of Supervisors*

Eric Lucan

*Transportation Authority of Marin*

## District Management

Farhad Mansourian

*General Manager*

Erin McGrath

*Chief Financial Officer*



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## Message From The Chair, Board of Directors

On behalf of the SMART Board of Directors, I am pleased to present the 2016 Annual Report, a progress update on our rail and pathway transit project funded by the voters of Marin and Sonoma Counties. Although SMART provides numerous reports to the public such as an audited, Comprehensive Annual Financial Report, monthly project reports and budget reports as part of our regular Board meetings, this Annual Report is designed to encompass information from each of those reports. It presents a summary of our progress to date on the SMART capital project, information on SMART operations, as well as a summary of financial activity for the year.

In 2016, SMART achieved a number of milestones, including:

- Substantial completion of all track, bridges and crossing infrastructure
- Construction of station platforms and finishes at our initial 10 stations
- Completion of multiple sections of the SMART pathway
- Federal approval of SMART's Positive Train Control testing plan
- Board approval of fares, discount programs, transfer credits and Smartphone app
- Addition of secure bike lockers and two more parking lots at stations
- Train test rides and multiple opportunities for the public to provide feedback
- Extensive coordination and training with law enforcement and safety agencies on rail emergencies
- Activation of 24-hour dispatch and complete staffing at the Rail Operations Facility
- Assumption of responsibility for track and signal inspections and maintenance

On behalf of SMART, I'd like to thank our many community partners for their time and effort in helping SMART achieve the goals set forth by the voters of the SMART District. We look forward to continued progress on the SMART rail and pathway project and the exciting start of passenger service in the coming year.

Sincerely,



Debora Fudge, Chair  
Board of Directors

## Trackway & Bridges, Signal & Train Systems

By the end of 2016, SMART's reconstruction of the railroad to prepare for passenger rail service was substantially complete. This included constructing new track throughout the 43-mile alignment, rebuilding or repairing 22 bridges, rebuilding 56 grade crossings, constructing four passing sidings (sections of double track), building ten stations, installing a state-of-the-art signaling and communications systems, and constructing a brand new Rail Operations Center (ROC).



In 2016 the primary focus was on signaling and systems installations, completing station infrastructure and passenger amenities, and commissioning the railroad system. Signal and systems installations includes work to ensure that the trains, the control center and the signals in the system are all communicating with each other. SMART completed integrating all systems with the Haystack Bridge and received approval from the Federal Railroad Administration to operate trains on signal indication over the Bridge. Train system signals were also modified in order to coordinate with local road signals in a number of locations. This helpful traffic preemption equipment was installed in both Petaluma and San Rafael to increase safety and provide more efficient traffic flow.

Commissioning of railroad systems in 2016 required extensive testing of the trains themselves, grade crossing warning systems, and testing the signaling and communication systems. Each system was tested and commissioned independently and then re-tested once the systems were integrated together. Testing began at slower operating speeds and gradually increased until it reached design speeds. At the conclusion of this system-wide testing, SMART will operate the system in a "simulated revenue" operation to mirror what regular service will be like. This operation will test the efficiency of the train schedule, station stops and help prepare the operators and crews for daily operation. This is anticipated to begin in early 2017. Testing will also focus on the implementation of Positive Train Control, as SMART will be among the first commuter rail systems with this safety enhancement. In 2016 the Federal Railroad Administration (FRA) approved SMART's Positive Train Control implementation plan which allows SMART to enter the testing phase planned for in early 2017.

Finally, significant work was completed on systems safety infrastructure, including emergency telephones at the Puerto Suello Tunnel, security cameras and intrusion detection at the Puerto Suello Tunnel and Haystack Bridge, system-wide radio coverage for seamless staff and emergency communication, and increased communication and monitoring capabilities at the centralized Rail Operations Control Center.



## Environmental Mitigation Program

SMART's environmental mitigation program is nearing completion, with the winding down of construction work. In 2013 SMART acquired the historic Mira Monte Marina and began work to restore it to its native condition, creating wetlands, preserving habitat for endangered species and



establishing a mitigation site for impacts that resulted from constructing the rail and pathway system. Construction work to remove old buildings and re-establish wetlands was completed in 2015. In 2016, SMART performed maintenance activities consisting of removing non-native and invasive plants, removing trash, and replanting areas where initial plantings failed to grow. SMART will continue to maintain and monitor the site on an ongoing basis.

## Passenger Rail Cars and Rider Amenities

SMART's brand new, efficient rail cars arrived in 2015 and have been in use since that time for various types of testing. Throughout 2016, SMART continued to perform routine testing on each of the District's 14 cars to ensure readiness for grade crossings, positive train control, and systems communication. During that time, SMART was allowed to conduct some limited public test rides to see how well the trains performed with actual customers. As a result of all of these testing activities, a number of design improvements were added to each car including; improved radio communications, improved bike securement, and better accessibility to restrooms for riders.



In 2016 SMART discovered a potential design flaw in the train engines. Following that discovery, SMART worked with the carbuilder, Sumitomo Corporation of America, to design and approve a solution, which required a part in each engine to be replaced. The replacement work began in the first week of December, and will continue into the Spring of 2017. Additional acceptance testing of the cars will continue into early 2017 to ensure that the cars and the signal system work in tandem for a reliable and safe transit system that will serve the community for decades to come.

SMART installed an Automated Vehicle Location (AVL) system on the trains in 2016. This important safety equipment will, first and foremost, provide location information to all first responders to ensure timely response in case of an emergency. The AVL will also

transmit the location of the vehicle to our third-party contractor, Swiftly, for purposes of allowing the public to know when a train will be arriving at a station. Swiftly produces a smart phone application or “app” that SMART riders can download in order to obtain real-time arrival information. Swiftly will also provide that information to regional information network 511.org, as well as Google and other transit app developers who may provide other ways to use this information.

In 2016 SMART completed a competitive process to obtain a contract with The GBS Group to design and implement free passenger wireless internet services onboard SMART trains. GBS will work to install the necessary infrastructure on the trains which will communicate with local cellular providers to allow passengers a fast and reliable internet connection. SMART will also be providing Wi-Fi at its stations through a contract with Sonic.



## Rail Stations

Although foundation and infrastructure work for station platforms was completed in a number of places prior to 2016, this past year saw visible progress and near completion of work to make the platforms useable for the public. The work at these stations included constructing the high-level boarding platforms, passenger shelters, and important finishes such as railings, information kiosks, signage, bike racks and lighting. At three SMART stations where space was available, new park and ride lots were constructed: Hamilton Station in Novato, North Novato Station and the Rohnert Park Station. In late 2016 the Board also directed staff to use available funding to develop smaller, gravel parking lots at the Petaluma Downtown and Airport stations. Other important improvements installed during the year included security camera systems at stations and parking lots. In addition, although not yet fully functional, SMART contractors worked to install the required cabling needed for the Clipper vending machines and fare collection validators in preparation for passenger service to begin.





SMART also has been working with our local transit operators and local jurisdictions to gather information regarding locations of transit routes, transit stops, schedule and fare information, bicycle infrastructure, and points of interest in proximity to each station. This information will be utilized in wayfinding signage that may be displayed at each station. Staff is

currently working to develop cost estimates for signage and will partner with the Metropolitan Transportation Commission to fund a portion of the wayfinding project.

### BIKE PARKING AT STATIONS

In 2016, SMART finalized the Bicycle Parking Infrastructure Plan, that recommends bike parking infrastructure at the Initial Operating Segment stations as well as the planned Larkspur Station. The plan also evaluated the future northern stations as well, but did not make recommendations. In December of 2016, staff recommended the implementation of the secure bike parking

element of the plan, in addition to the recommended U-Racks. Staff plans to work with local jurisdictions to implement the remaining infrastructure as recommended in the plan. It is expected that both the secure bike parking spaces and the U-Racks will be installed and ready for customer use for the opening day of passenger rail service.



## Bicycle & Pedestrian Pathway

In March 2016, SMART completed the multi-year federal environmental approval process under the National Environmental Policy Act (NEPA) for the SMART Pathway between Guerneville Road in Santa Rosa (Santa Rosa North Station) and McInnis Drive in San Rafael (Marin Civic Center Station). This multi-year effort allowed SMART the ability, to construct multiple segments of pathway in 2016. Several contracts for construction of pathway segments had been awarded in prior years and the federal environmental clearance allowed SMART to apply finally for the required construction permits and even construct many of these segments in 2016 as detailed below.

### **CITY OF SANTA ROSA:**

In 2016 SMART completed the construction of the following SMART Pathway segments in the City of Santa Rosa:

- Guerneville Road to College Avenue in Santa Rosa (Santa Rosa North Station connection)
- 8th to 6th Streets in Santa Rosa
- Hearn to Bellevue Avenues in Santa Rosa

These sections of pathway, in conjunction with previously constructed segments, create a nearly continuous pathway from Bellevue Avenue in southwest Santa Rosa to the Santa Rosa North Station.



### **ROHNERT PARK & COTATI:**

In 2016 SMART began or completed construction of the following SMART Pathway segments in the Cities of Rohnert Park and Cotati:

- Golf Course Drive to Southwest Boulevard (Rohnert Park Station connection)
- Southwest Boulevard to E. Cotati Boulevard (Cotati Station connection)
- E. Cotati Boulevard to Manor Drive (Cotati Station connection)
- Manor Drive to Sonoma Mountain Village (privately funded)

## **PETALUMA:**

In Petaluma, SMART worked to advance engineering design of the SMART Pathway segment from Payran Street to South Point Boulevard in Petaluma, over the Petaluma River and under Highway 101 connecting East and West Petaluma. SMART succeeded in receiving \$1.4 million in highly competitive State Active Transportation Program funds for construction and additional grants have been submitted to complete the full funding package.

## **NOVATO:**

In 2016 SMART was able to apply for construction permits and will construct once permits are issued on the following SMART Pathway segments in the City of Novato:

- Atherton to Rush Creek Place (San Marin Station connection)
- Grant Avenue to Franklin Pedestrian Crossing

SMART also completed permitting and construction of:

- Hamilton Parkway to Hamilton Station (Hamilton Station connection)



## **SAN RAFAEL:**

In 2016, SMART was able to submit permit applications to construct the SMART Pathway from the Marin Civic Center Station to San Pedro Road. The project will be ready for construction in 2017 once permits are issued. Once completed, this segment in combination with the project segments completed in partnership with other agencies, will provide near continuous pathway from Terra Linda to Downtown San Rafael.

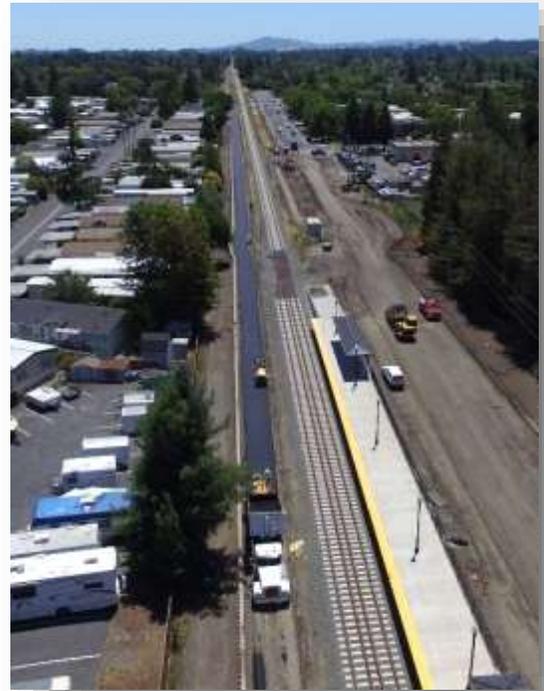
## **PARTNERSHIPS WITH OTHERS:**

The Pathway segments constructed by SMART have been advanced with a combination of funds from the following:

- SMART's Measure Q
- Sonoma County Transportation Authority's (SCTA) Measure M
- Metropolitan Transportation Commission's (MTC) Regional Measure 2 Bridge Toll Safe Routes to Transit
- Sonoma County Open Space and Agricultural Preservation District's Matching Grant Program
- California Natural Resources Agency's and State of California's Enhanced Environmental Mitigation Program
- SCTA/MTC One Bay Area Grant Program
- State of California's Active Transportation Program and Transportation Enhancements

SMART-built segments will join several critical segments of the overall North-South Greenway and SMART Pathway that were built by partner jurisdictions funded through grants, local jurisdiction resources and Measure Q. SMART staff closely coordinated with the project management for each of these projects to ensure seamless integration. Those projects completed by partner jurisdictions included the following:

- Segments of the Foss Creek Trail by the City of Healdsburg
- College to 8th Street Path by the City of Santa Rosa
- Joe Rodota Trail to Hearn by Sonoma County Regional Parks in Santa Rosa
- Lincoln Hill Pathway by Caltrans in San Rafael
- Cal Park Hill Tunnel and Pathway by Marin County between San Rafael and Larkspur
- Central Marin Ferry Connection project completed in May 2016 by the Transportation Authority of Marin connecting the SMART right-of-way across Sir Francis Drake Boulevard between the SMART Larkspur Station and the Larkspur Ferry Terminal.



By joining together the pathway segments constructed by our partners, segments constructed by SMART in 2016, and those segments under contract for construction in 2017, we have completed many of the SMART Pathway connections to our rail stations and provided significant ability to travel by bike through the cities of Santa Rosa, Rohnert Park, Cotati, and San Rafael.

## Rail Extensions

SMART began 2016 with a fully funded rail extension project from Downtown San Rafael to Larkspur. Funding will come from the Federal Transit Administration (FTA) Capital Investment Grant Program,



The Congestion Mitigation and Air Quality Improvement Program (CMAQ), and Regional Measure 2 Bridge Toll funds. This 2.2 mile extension will provide a regional connection with the Golden Gate Ferry to access San Francisco. The project includes a terminal station in Larkspur, three bridges and utilizes the recently (2010) rehabilitated Cal Park Tunnel that connects San Rafael and Larkspur.

SMART began design work for the Larkspur Extension Project which included field survey and geotechnical work, as well as developing the track alignment, bridges and stations details. SMART has spent the year working closely with its local partners: Golden Gate Bridge Highway

and Transportation District (GGBHTD), Marin Transit, the Transportation Authority of Marin (TAM), the Town of Larkspur and the City of San Rafael on the various details of planning the rail extension. This group has developed short-term solutions to reconfigure the Bettini Transit Center in order to prepare for the train. SMART has worked closely with the City of San Rafael on design options to close two at-grade crossings along Francisco Boulevard West and to support the City with their at-grade crossing application to the California Public Utilities Commission to preserve Anderson Drive's ability to cross the railroad track.

SMART initiated a design-build procurement to hire a contractor and designer to complete the design and construct the project. SMART plans to award a contract in the spring of 2017.



## Operations

SMART Operations Department moved very close to the finish line of becoming an operating passenger rail service in 2016. During 2016, Operations hiring continued at a brisk pace. By the end of the year, 45 new staff members had been hired, with only a few vacancies remaining to complete its full-time



staff of nearly 80 people. Reaching nearly full staffing levels allowed the District to take over railroad dispatch responsibilities, which required a fully functioning, 24-hour Operations Control Center(OCC) located at the Rail Operations Center (ROC) in Santa Rosa. SMART has also been utilizing its Fulton Maintenance Of Way facility as the primary site for all non-train maintenance, and the Roblar Satellite Facility which is an alternate site for train crews to report to and includes storage facilities for extra parts and equipment for responses on the south end of the system.

Staff training continues as we ramp up for passenger service. Engineer/Conductors are becoming familiar with our 43-mile service area and related signals and systems. In September, many of the Engineer/Conductors received their SMART badge after completing the required Public Officer training.

The Transportation Division has been staffing and dispatching up to five trainsets per day in support of signal activation activities and other train systems testing as we move toward operations under an Automatic Train Control /Centralized Traffic Control (ATC/CTC) environment.

The Maintenance of Way Division is working with SMART contractors as the newly built signal control system is turned over to SMART control. This includes assumption of responsibilities over many of the inspections required by the Federal Railroad Administration (FRA). This Division is also handling trouble calls related to crossing gates and ensuring any needed repairs are



completed. Mandated track inspections are being completed by SMART's track crew and they are keeping the right-of-way in top condition making the repairs and adjustments needed to provide a smooth ride for our future passengers.

The Vehicle Maintenance Division is working closely with SMART's rail car builder to fix remaining issues, swap engines to correct design problems (mentioned earlier) and to learn all the intricacies related to maintaining a state of the art modern train. Vehicle Maintenance staff continues its training on SMART's complex control systems including the ATC/CTC system that provides Positive Train Control (PTC) protection, radio systems, Wi-Fi installation, Automatic Vehicle Locator (AVL) installation, data recorders, video system maintenance and downloads, train electronic systems, and many other of the thousands of components that make up a rail vehicle.

All of SMART's maintenance activities will be tracked in its new Maintenance Management Information System (MMIS), which became fully operational in December. This system is used by Operations for tracking parts and inventory, creating Purchase Requisitions, creating work orders system-wide, and scheduling required inspections and repairs. As we grow and continue to populate the system with additional information, the MMIS program will become central to and invaluable to most activities on the railroad.



Another program brought online in 2016 is a web-based learning management system. SMART is utilizing this new training system to structure flexible training programs using both computer-based and hands-on training necessary for most jobs in Operations.

Also in 2016, staff continued to develop the plans, schedules, Standard Operating Procedures (SOPs), Timetable, System Special Instructions, rules, manuals and other documents needed to complete pre-revenue testing and transition into full service. FRA acceptance of many of those documents is required before SMART can begin service and this requires staff to be in constant contact with our federal partners to ensure our system meets all federal requirements. This will allow Operations to move into all the pre-service activities needed in early 2017: time-trial testing of the proposed weekday and weekend schedules, training of crews and staff during simulated daily service, emergency drills internally and with other agencies, simulated service disruptions and recovery techniques, and daily practice on excellent customer service.

## FARES AND TRANSIT COORDINATION

In 2016 the SMART Board held several public meetings to discuss train fares, preview SMART’s Clipper vending machines, and approve the development of a smartphone application for the payment of fares. Fares were based on a number of factors, including the need to pay operating costs, comparable fares for other commuter trains, and feedback from the public. Staff worked with other transit agencies to develop a regional transfer discount of \$1.50 when passengers are transferring between the train and local bus services. The Board also adopted an “Eco-Pass” for businesses, colleges or institutions who purchase discounted passes for their employees or members for four six or twelve-month periods. Finally, the Board gave direction in December of 2016 to develop not only a new 31-day monthly pass but also a phased-in approach for fare collection at the beginning of service that will provide periods of free and reduced-cost service before full fares are collected.

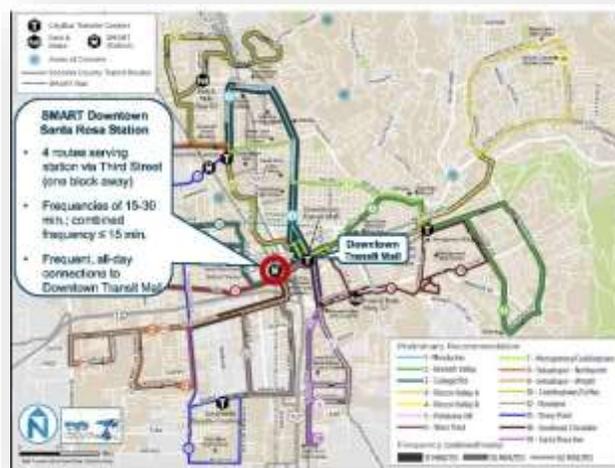


SMART staff convened its transit operator coordination group nine times in 2016, a group that included Golden Gate Transit, Marin Transit, Petaluma Transit, Santa Rosa CityBus, Sonoma County Transit, and MTC’s Clipper staff. Together the group worked on issues such as the transfer credits (mentioned above), marketing coordination, Clipper card implementation, private shuttle implementation, bus route/service modifications to better connect riders to train service times, bus operator rail safety training and orientation, and coordination of service map design and content. The public was notified of proposed service improvements via each operators’

individual public outreach process as well as through a SMART Board discussion.

## SAFETY AND SECURITY

SMART’s safety and security team had a busy year preparing for passenger service and addressing current issues along SMART’s right of way. Training with local police patrol teams, SWAT teams, Bomb



squads, Hostage Negotiation Teams and K-9 teams were conducted throughout the year. We have now trained with every law enforcement agency along the right of way in both Marin and Sonoma Counties. This training has been invaluable in preparing for real emergencies and incidents along our right of way.

SMART partnered with the City of Novato, Novato Fire Protection District and the Novato Police Department to conduct a full-scale training exercise in 2016. This training day covered a variety of scenarios ranging from medical response to a domestic violence incident on the train. Not only was it an exercise of skill and tactical entry, but tested our communication operability utilizing state mutual aid communication channels.



Internally, SMART staff conducted several exercises to prepare for emergencies, including communications and response protocols during accidents and activities necessary during major storms and flooding. Staff has been identifying track “hot spots” during storms, predetermined emergency response locations and working with equipment vendors to set up accounts.



SMART’s Chief of Police continues to work to ensure the District is familiar with and ready for an emergency that may occur, including attending federally-sponsored trainings. SMART and the Marin County Offices of Emergency Services hosted a three day “Terrorist Tools and Tactics for Transit” course. This course was an overview of historical transit cases, prevention efforts, screening best practices and hazard mitigation techniques. Officers from Marin and Sonoma counties were in attendance.

In 2016 SMART continued its ongoing presence at several meetings throughout Marin and Sonoma. These meetings include; Sonoma County Emergency Disaster Council, Sonoma County Police Chiefs Association, Marin County Police Chiefs Association, Homeless Outreach Services Team, FBI Rail Liaison and Transportation Security Administration Mass Transit Stakeholders. At each of these meetings SMART prepares updates to share with our community partners and provides formal presentations

when requested. In addition to the ongoing meetings, SMART applied for grants with Office of Traffic Safety (OTS), Urban Area Security Initiative (UASI) and State Homeland Security Grant Program (SHSGP).



Staff hosted several meetings



throughout the year with Marin and Sonoma County Health and Human Services Departments to discuss suicide prevention. This collaborative approach was used to fund and create signage for SMART's right of way. This signage was an outreach message for suicide prevention and a contact number. The Health and Human Services Departments funded the purchase of signs and SMART staff installed them along the right of way.

In 2016 SMART hosted a number of meetings, tours and information-sharing exercises with other law enforcement, health, school and public safety agencies, including the Department of Homeland Security, Surface Transportation Division, the California Highway Patrol, Sonoma County Sheriff Coroner's Office, Marin County Sheriff Coroner's Office and Central Marin Police Authority, and other first responders. SMART staff was invited to be a guest at the ACE Train derailment debriefing for its first responders. Staff was able to hear firsthand how the coordination worked in responding to a train derailment with 214 passengers on-board. Many valuable lessons were learned by staff that can be applied to SMART.

Security staff in partnership with Operations staff, conduct ongoing fencing reviews and implementation throughout the corridor. The fencing has assisted in making the right-of-way safer by keeping the public out of active train areas as well as clear of garbage, trespassers and homeless encampments. SMART's Fulton property for many years has been a dumping ground for garbage, tires, homeless encampments and a nuisance for the area property owners and Sonoma County Sheriff's. Now that the area has been fenced, these issues have gone away.

SMART also welcomed two Code Compliance Officers in late 2016 who have been busy conducting patrols up and down SMART's track and pathways. In their first month, they responded to twenty calls for service. These calls ranged from trespassing, encampments along the right of way and/or transients on the pathway. In the recent weeks, since SMART's increased presence, the transient population camping on SMART's property has diminished. These patrols will continue on a regular basis to maintain safety along our property. The code compliance team has partnered with many agencies for homeless clean-ups and outreach to include: the Santa Rosa Police Department, California Highway Patrol, Petaluma Police Department and the Homeless Outreach Service Team (HOST).



In 2016, the SMART Board approved an Ordinance setting fees and fines related to public access and activities on the train and on SMART property. The Board also approved joining Marin and Sonoma County's citation processing systems and the purchasing of software and equipment necessary to process citations. SMART's staff can now issue citations for violations of the penal code, vehicle code, or parking violations which will be processed in each county's court system.

In order to provide fast and easy access for passengers on our platforms to our Operations staff, emergency "call box" phones for each of the platforms were purchased and will be installed on station platforms in 2017. This provides a 24-hour emergency line directly to our central control office in Santa Rosa.

Finally, SMART staff participated in ongoing planning for several community events to include, parades in Penngrrove, Novato and San Rafael, a PG&E and First Responder Liaison Day and two major area events the Amgen Bike Tour in Santa Rosa and The Great Race in San Rafael. This planning is to ensure the safety of the public and the railway in these events that cross our active railroad tracks.

## Community Outreach

In 2016, SMART revamped and enhanced its community outreach programs to reach a record number of people. SMART's Communications & Marketing team substantially increased overall public awareness, and worked hard to inform the public about testing activities, rail safety, service details, and the overall progress SMART has been making towards the start of service.



With the start of passenger service targeted for late spring of 2017, safety remains SMART's top priority—and safety is a prominent part of all of the District's presentations, events, and overall messaging. SMART engages the public in a variety of ways, including: presentations and community events; multiple social media channels; digital programs; advertising; and by working with local and national media. SMART's Communications and Marketing team also responded to more than 1,150 public inquiries in 2016 that came in

through email and phone, addressing concerns or questions that arise.

### RAIL SAFETY EDUCATION PROGRAM

With trains operating at higher speeds and with greater frequency as testing progresses, rail safety education for students in grades K-12 remains a high priority. In partnership with our local schools and with Operation Lifesaver, a national non-profit railroad safety education organization, SMART's outreach includes delivering presentations and materials to students that stress the importance of safety around trains, tracks and at all railroad crossings.

SMART significantly expanded its rail safety for students in 2016, nearly doubling its reach from the previous year. Today, SMART's rail safety education program is thriving, and has reached more than 26,000 students at schools in Sonoma and Marin counties. In all of its outreach efforts, SMART makes a special attempt to underscore the fact that rail safety is a community effort: Everyone has a role to play in raising awareness and to encourage safe behavior near all tracks and trains.



## SMART CONNECTS WITH THE COMMUNITY

In addition to attending community events, conducting presentations, and deploying SMART's safety message in local schools, SMART also sponsored several major community events to raise awareness and enhance community connections including the two public test rides reported earlier. Using social media, SMART provided two "tickets to ride" for the first 50 people to provide their favorite rail safety tips. Both rides reached capacity within hours — and elevated the issue of rail safety in the process.

As a capstone to a tremendous year of progress, SMART organized a *Holiday Express Toy Drive*, inviting the community to visit one of three stations, tour the inside of a SMART train, and donate an unwrapped toy for a child in need. The toy drive was a big success, with hundreds of people touring the train and filling two train cars with donated toys that were delivered to Toys for Tots and local nonprofits in Sonoma and Marin counties. More than 600 toys found a new home, and SMART underscored its commitment of giving back to the community.



## Media and Digital Outreach

In 2016, SMART doubled the number of news releases issued and continued to work proactively with media to share the importance of rail safety. Through coverage on television, in print, and online, SMART's system-wide testing provided the backdrop to remind our community to always be alert and aware near SMART tracks and at all crossings.

That effort was supplemented with safety advertising throughout the year, in both Spanish and English. Those safety ads will continue to run in 2017.

With the start of passenger service approaching, SMART began development of a new, customer-focused website, to serve as a key information portal for transit customers. SMART's new website is targeted to launch early 2017, in advance of the start of passenger service.

SMART's Facebook, Twitter, Instagram and email newsletters are designed to enhance all of the District's outreach and marketing programs. In 2016, SMART has successfully ramped up its social media program—with excellent results. Our social media and digital program engagement numbers have more than doubled, reaching record numbers. SMART's Facebook page is now a verified page, which increases SMART's ranking in Facebook's search function. SMART's social media reach on Facebook posts has grown from less than 3,000 to more than 30,000.

Content on social media and other digital channels is focused on rail safety, building affinity through community events, and driving audience engagement in preparation for the start of passenger service.

<b>Social Media Audience Growth: 2015 vs 2016</b>			
<b>Channel</b>	<b>2015</b>	<b>2016</b>	<b>Growth</b>
Facebook	4,273	9,799	129%
Twitter	1,454	2,027	39%
Instagram	347	1,093	215%
Email Newsletter	6,741	8,819	31%

Data as of Dec. 28, 2016

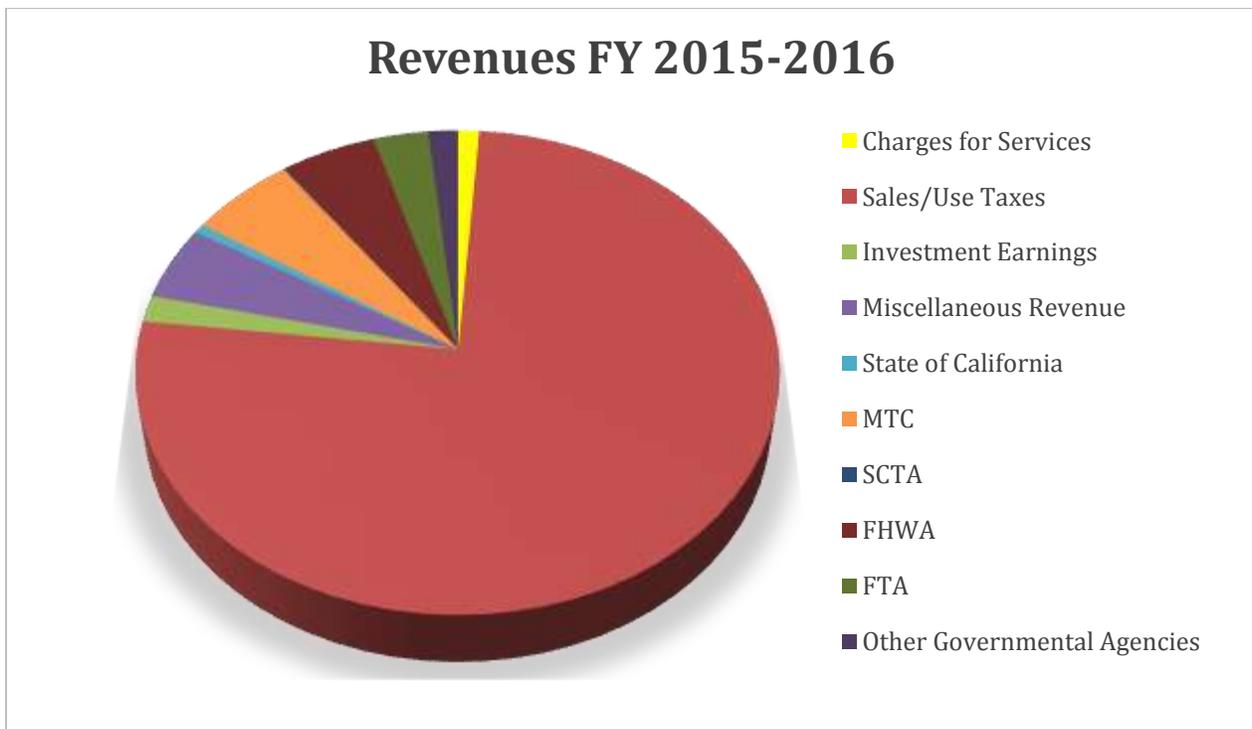
### **SMART Community Connections: 2016 Facts and Figures**

- SMART participated in 134 presentations, meetings and community events, more than double the amount for the prior year.
- SMART reached roughly 70 percent more students with our safety messaging compared to the previous year. More than 26,300 students in Sonoma and Marin county schools received a SMART railroad safety presentation.
- SMART responded to more than 1,150 phone and email public inquiries, answering questions and providing information.
- SMART social media and digital programs showed an average growth in audiences of 103 percent.
- SMART’s Facebook audience grew 129 percent from the previous year.
- SMART’s Twitter audience grew 39 percent from 2015.
- SMART’s Instagram audience grew 215 percent from the previous year.
- SMART’s electronic email newsletter audience grew 31 percent over last year and now reaches 8,819 people.

## Financial Information

SMART produces a number of financial reports that are available to the public, including the Annual Budget, monthly Board reports and the audited Comprehensive Annual Financial Report. Financial information provided in this report is designed to provide the public with a general understanding of revenues and expenditures for the District in the last Fiscal Year. The presentation of these amounts differs from the Comprehensive Annual Financial Report in that they do not include calculations for depreciation and other non-cash adjustments that are necessary for presentation under Government Accounting Standards Board rules. Please refer to the District's Comprehensive Annual Financial Statements for those audited statements.

SMART's revenues in Fiscal Year 2015-16 were \$45.9 million. Sales Tax revenues continued to grow but the rate of growth slowed considerably over the prior year. Tax revenue for the year of \$34.8 million represented an increase of 2.75% over FY 2014-15. Other revenue was primarily related to the completion of the Phase 1 capital project, including \$2.7 million from the Metropolitan Transportation Commission, and \$2.4 million from the Federal Highway Administration.

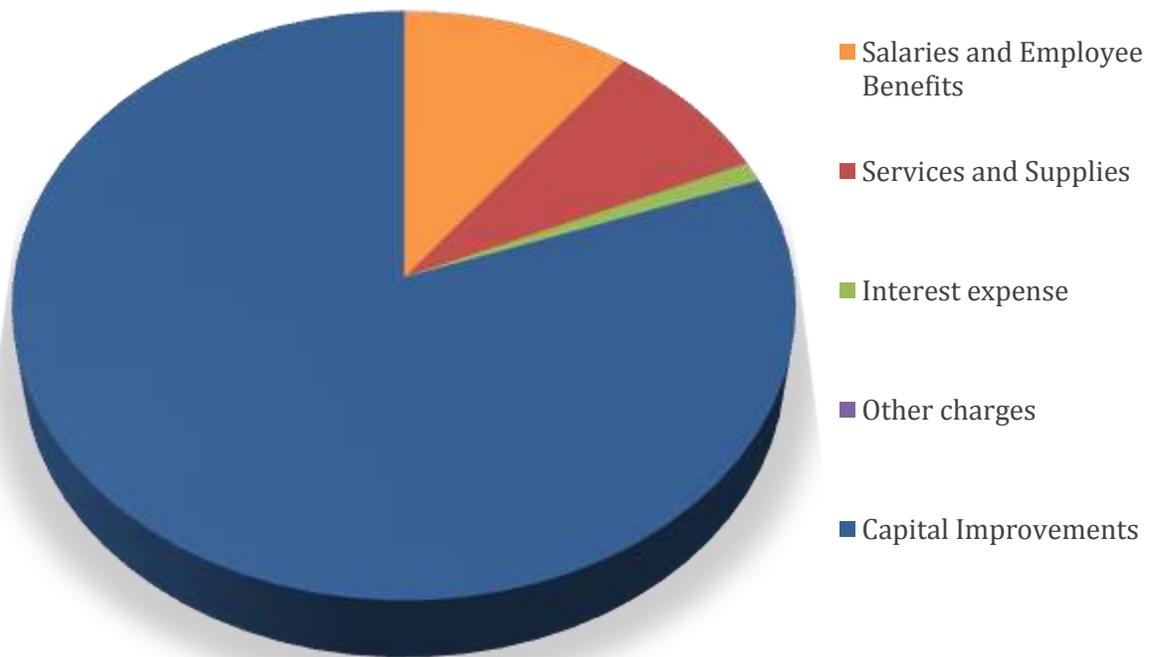


At the end of the Fiscal Year, SMART had an unrestricted cash balance of \$76.5 million. SMART also held bond funds of \$21.6 million, which are primarily reserves controlled by SMART's bond trustee.

Expenditures for Fiscal Year 2015-16 were \$74.9 million. Included in that total were \$7.7 million in non-capitalized salaries and benefits and \$6 million for services and supplies. The vast majority of

expenses were related to the building of the rail and pathway, known as Capital Improvements, which totaled \$60.3 million. Of that amount, over \$8.8 million were for track and infrastructure needed for the railway. \$6.8 million was invested in the new Haystack Bridge, \$10 million was paid for rail vehicles, \$11.3 million was invested in Stations, and nearly \$13 million was paid for train control systems, including Positive Train Control. Direct SMART pathway expenses related to federal environmental clearance, design, and construction were \$2.6 million. Initial design work on the Larkspur Extension was \$1.5 million. Finally, SMART also accepted a donated asset, the Central Marin Ferry Multiuse Pathway in Larkspur which extends from the CalPark Tunnel onto a bridge over Sir Francis Drake Drive to the Ferry Terminal which is valued at \$16.2 million.

### Expenditures FY 2015-2016







**Debora Fudge, Chair**  
 Sonoma County Mayors and  
 Councilmembers Association

**Kathrin Sears, Vice Chair**  
 Marin County Board of Supervisors

**Judy Arnold**  
 Marin County Board of Supervisors

**Jim Eddie**  
 Golden Gate Bridge,  
 Highway/Transportation District

**Eric Lucan**  
 Transportation Authority of Marin

**Jake Mackenzie**  
 Sonoma Mayors and Councilmembers  
 Association

**Stephanie Moulton-Peters**  
 Marin Council of Mayors and  
 Councilmembers

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

**Gary Phillips**  
 Transportation Authority of Marin

**David Rabbitt**  
 Sonoma County Board of Supervisors

**Carol Russell**  
 Sonoma Mayors and Councilmembers  
 Association

**Shirlee Zane**  
 Sonoma County Board of Supervisors

**Farhad Mansourian**  
 General Manager

5401 Old Redwood Highway  
 Suite 200  
 Petaluma, CA 94954  
 Phone: 707-794-3330  
 Fax: 707-794-3037  
 www.sonomamarintrain.org

February 15, 2017

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

**SUBJECT:** Amendments to the 2011 Operating Agreement between North  
 Coast Rail Authority and Sonoma-Marin Area Rail Transit District

Dear Board Members:

**RECOMMENDATION:**

Approve Amendments to the Operating and Coordination Agreement  
 between SMART and North Coast Railroad Authority (NCRA)

**SUMMARY:**

On June 15, 2011, after nearly two years of intense negotiations, your Board  
 approved an Operating and Coordination Agreement (2011 Agreement) that  
 described the rights and responsibilities of the two parties operating over the  
 railroad right-of-way.

The two parties, SMART and North Coast Rail Authority (NCRA), each have  
 rights to operate over the railroad right-of-way other’s properties, and thus  
 developing and then practicing rules of operation was essential. Over the  
 years, the parties disagreed on the interpretation and intent of the adopted  
 language of the 2011 Agreement.

The recent disagreement regarding the storage of Liquidated Petroleum Gas  
 (LPG) by NCRA’s exclusive freight operator, Northwestern Pacific Railroad Co.  
 (NWPCo.), highlighted the need for more refinement and clarity in the 2011  
 Agreement.

To that end and at the request of NCRA and NWPCo., who wished to store  
 LPG as a function of their business, prompted numerous meetings among the  
 parties in the last several months. Subject to Board approval, a tentative  
 agreement has been reached that requires substantial amendment to the  
 existing 2011 Agreement.

The highlights of the changes to the 2011 Agreement are as follow:

1. Storage of LPG.

- NCRA/NWPCo. may store LPG loaded tank cars on tracks at the Schellville yard in accordance with applicable federal, state and local law on the following conditions:
- NCRA/ NWPCo. shall not store LPG or any other hazardous material anywhere else on SMART's tracks, except for LPG as allowed for at the Schellville yard.
- NCRA shall assume the risk, fully indemnify, defend and hold SMART harmless with respect to any claim, damage or liability resulting from transporting/storing hazardous materials.
- Prior to storage of any LPG, NCRA/NWPCo. shall implement any and all health and public safety measures at their cost and expense, including; an emergency response plan, safety and security procedures and safety protocols.
- NCRA and SMART will each identify local first responders for NCRA to consult with on public health and safety issues related to storage of LPG.
- When transporting Hazardous Material on the Healdsburg or Lombard segments, the freight operator shall disclose and provide a copy of the manifest identifying the nature and type of Hazardous Material, identity and quantity of cargo, destination of railcars, total number of railcars, total tonnage and length of train to first responders and SMART dispatch.

2. Positive Train Control (PTC).

- SMART will only be responsible for installing PTC equipment on a total of two freight locomotives.
- NCRA acknowledges and agrees to the activation of SMART Automatic Train Control/Centralized Traffic Control System (ATC) and PTC testing program.
- On an interim basis SMART will provide a "protected" operating window only between midnight and 8 a.m. on Thursdays and Sundays.
- NCRA shall fully cooperate with SMART in providing the locomotives and freight operator staff for installing and testing the PTC system, at no cost to SMART.
- NCRA's operator shall perform, test and pass all required PTC tests prior to entering into PTC/ATC territory.
- SMART shall remain the owner of the installed PTC/ATC equipment and NCRA shall not transfer or assign the PTC/ATC equipment.

3. Financial Responsibility for Sidings/Spurs

- SMART will only be responsible to pay for the cost (up to \$100,000) for one additional siding/spur located near the Sonoma Mountain Village (MPS 45.2) provided NCRA enters into an industrial track shipping agreement with a customer by January 1, 2018 and construction of the spur/siding is completed by January 1, 2019.

4. Records

- In addition to the records required pursuant to the 2011 Agreement, NCRA shall provide additional records related to certification of engineers, inspectors, qualifications, maintenance, bridge safety and inspections.

5. Petaluma station

- NCRA shall quit claim to SMART the freight easement including all rights and interest with respect to the Petaluma Depot/Station in order to provide clear title unencumbered by any freight easement. SMART has been negotiating with a developer to exchange this property for a sum of money, a 150 space parking garage and other related details for a second SMART station in East (or North) Petaluma
- SMART will not oppose NCRA's efforts to enforce a June 16, 2003 agreement entered by and between the City of Petaluma, Petaluma Riverfront, LLC, North Coast Railroad Authority (NCRA) and Northwestern Pacific Railroad Authority, in connection with the construction of a new freight facility on the south-west corner of D Street and Lakeville across from the Petaluma Station.

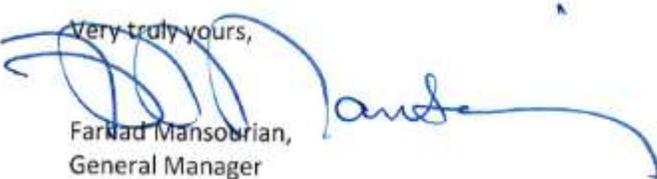
6. Litigation

- NCRA and NWPCo. shall dismiss their petition before the Surface Transportation Board (Docket No. FD 36077).

The attached letter from NCRA reports that their Board of Directors unanimously approved the amendments to the 2011 Agreement at their February 8, 2017 meeting.

It is therefore recommended that you approve the amendments to the 2011 Agreement and that you authorize me to execute appropriate documents.

Very truly yours,

  
Farhad Mansourian,  
General Manager

Attachments: February 9, 2017 Letter from NCRA  
Letter of Intent  
Operating and Coordination Agreement (2011 Agreement)



North Coast Railroad Authority  
419 Talmage Road, Suite M  
Ukiah, CA 95482  
707-463-3280

February 9, 2017

Dear Mr. Farhad:

On February 8, 2017, the North Coast Railroad Authority (NCRA) Board of Directors unanimously approved the attached "Letter of Intent by and Between Sonoma-Marín Area Rail Transit District (SMART), North Coast Railroad Authority (NCRA) and Northwestern Pacific Company (NWP Co.)."

We are hopeful that the SMART Board of Directors will take similar action when it meets February 15, 2017. NCRA is prepared to execute the agreement as soon as approved by the SMART Board.

Please give me a call if you have any questions (510-915-2656).

Cordially,

A handwritten signature in black ink that reads "Mitch Stogner".

Mitch Stogner  
NCRA Executive Director

**CC:**           **Doug Bosco**  
                  **Chris Neary**

**Letter of Intent by and Between Sonoma-Marin Area Rail Transit District,  
North Coast Railroad Authority and Northwestern Pacific Company**

This Letter of Intent is entered into on this day of February \_\_\_\_\_, 2017, by and between Sonoma-Marin Area Rail Transit District (“SMART”), North Coast Railroad Authority (“NCRA”), and the Northwestern Pacific Company (“NWPCo.”) (collectively referred to herein as the “Parties”).

**RECITALS**

WHEREAS, on June 22, 2011, SMART and NCRA entered into an Operating & Coordination Agreement for the Northwestern Pacific Line (hereinafter the “2011 Operating Agreement”);

WHEREAS, NWPCo. is NCRA’s exclusive freight operator, and any obligations regarding freight operations mentioned herein are the obligations of both NCRA and NWPCo.;

WHEREAS, SMART, NCRA and NWPCo. desire to clarify, modify, and amend certain provisions of the 2011 Operating Agreement;

WHEREAS, the Parties desire to resolve issues related to the Petaluma Depo. Station site at 315 D Street in Petaluma;

WHEREAS, on October 4, 2016, NCRA and NWPCo. filed a petition against SMART with the Surface Transportation Board, Docket No. FD 36077, consolidated with NOR 42148, (hereinafter referred to as the “STB action”);

WHEREAS, the Parties now wish to resolve their differences;

WHEREAS, it is the intent of the Parties that SMART shall prepare an Amendment to the 2011 Operating Agreement reflecting the terms outlined herein, and the Parties shall be bound by the terms herein pending execution of the Amendment;

WHEREAS, it is the intent of the Parties that the STB action will be dismissed.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

## TERMS

### I. Amendments to the 2011 Operating Agreement.

Except as otherwise provided for herein, all terms and conditions contained in the 2011 Operating Agreement shall remain in full force and effect. The Parties agree in principle to amend the 2011 Operating Agreement as follows:

#### A. Transport and storage of Liquefied Petroleum Gas "LPG".

1. NCRA/NWPCo. may store LPG loaded tank cars on the Lombard Segment on two 6,000 feet auxiliary tracks located at the Schellville yard in accordance with applicable federal, state, and local law. In the event said tracks are replaced or reconstructed at NCRA/NWPCo.'s cost, SMART shall review and approve of such replacement or reconstruction in accordance with Article VI of the 2011 Operating Agreement. Approval shall not be unreasonably withheld.
2. NCRA shall assume the risk of and agrees to fully indemnify, defend and hold SMART harmless with respect to any claim, damage or liability arising out of acts or omissions (whether negligent or not) of NCRA or any operator, agent, contractor, lessee or licensee of NCRA occurring as a result of transporting hazardous materials on the Lombard/Healdsburg track(s) and/or the storing LPG on the Schellville yard tracks.
3. Prior to storage of any LPG at the Schellville yard, the Parties agree that (1) NCRA/NWPCo. shall implement any and all applicable health and public safety measures at their sole cost and expense, including but not limited to, an emergency response plan, safety and security procedures and safety protocols; and (2) NCRA and SMART will identify local fire and/or first responders, and NCRA/NWPCo. shall consult with them on public health and safety issues related to storage of LPG at the Schellville yard on an ongoing basis.
4. As a condition of storage of LPG at the Schellville yard, and to ensure the health and safety of the community, NCRA/NWPCo. agree that when transporting Hazardous Materials on the Healdsburg or Lombard segments, they shall disclose and provide to appropriate first responders and to SMART dispatch a copy of the manifest identifying the nature and type of Hazardous Material, identity and quantity of cargo, destination of railcars, total number of railcars, total tonnage and length of train.

5. NCRA/ NWPCo. agree they will not store or hold LPG or any other hazardous material (including temporarily storing awaiting final destination instructions, pending resumption or “forwarding orders”) on any track, spur, siding, auxiliary or industrial track on the Healdsburg or Lombard segments, except as is authorized by 49 CFR 174.14 (generally within 48 hours) and for storage of LPG at the Schellville yard tracks as provided in section I. A.1, above.

B. Positive Train Control.

1. The Parties acknowledge and agree that effective January 13, 2017, SMART activated its Automatic Train Control/Centralized Traffic Control system (ATC/CTC signal system) and initiated and placed into operation its Positive Train Control testing program.
2. The Parties acknowledge and agree that SMART has furnished NWPCo.’s Locomotive No. 2009 with the appropriate PTC equipment and NWPCo. is required to make the locomotive available for testing and certification for operation on SMART’s tracks pursuant to FRA regulations.
3. In recognition of PTC and FRA regulations, NCRA/NWPCo. and SMART agree that on an interim basis prior to SMART’s pre-revenue testing and/or operation, SMART will provide NWPCo. with a “protected” operating window between midnight to 8 a.m. on Thursdays and Sundays provided that NWPCo. meets its obligations to deliver the Locomotive No. 2009 for all PTC/ATC system testing as set forth in paragraph I.B. 6, below.
4. With respect to the cost and expense of cabling up NCRA or Operator’s locomotive fleet with PTC equipment, the Parties agree as follows:
  - (a.) SMART will have satisfied all its obligations under section 7.04 of the 2011 Operating Agreement as they relate to the cost and expense of cabling up NCRA or Operator’s locomotive fleet when it: (1) furnishes and installs the on-board PTC/ATC equipment on one additional NCRA/NWPCo. locomotive, and (2) provides training/certification to NWPCo. staff on the use of the on-board equipment.

(b.) NCRA and NWPCo. acknowledge that the process set forth in paragraph 4(a.), above, will take several months and that SMART's contractor will only be available to test and install PTC equipment for a limited time period. Accordingly, NCRA/NWPCo. commit to full cooperation with SMART including, but not limited to: (1) identifying and providing SMART with the additional locomotive and its technical schematics for the design and installation of the equipment no later than three months following execution of this Letter of Intent; and (2) providing SMART with the locomotive and operating personnel for certification, testing and training no later than six months following execution of this Letter of Intent, and thereafter as often as reasonably necessary.

(c.) NCRA and NWPCo. acknowledge and agree that their failure to fully cooperate and meet timelines delineated in paragraph 4(b.), above, shall terminate SMART's obligations as set forth herein, and SMART will be deemed to have satisfied any and all its obligations as they relate to the cost and expense of cabling up NCRA or Operator's locomotive fleet.

5. The Parties agree that SMART shall assume the responsibility for performing ongoing and periodic, inspection and data collection and analysis of the onboard equipment which may include the following:
  - i. Inspect/calibrate wheel diameter
  - ii. Inspect receiver coil height
  - iii. Inspect electromagnet valve
  - iv. Inspect counter
  - v. Inspect and test power supply voltage
  - vi. Perform system isolation tests
  - vii. Perform vital output tests
  - viii. Perform cab signal pickup/dropout tests
  - ix. Perform Alarm tests
  - x. Perform Cut-Out test
  
6. In recognition that SMART has placed the PTC/ATC system into operation, NCRA/NWPCo. agree to make the equipped Locomotive No. 2009 available to SMART immediately following execution of this Letter of Intent, but no later than within five (5) days of execution of the Letter of Intent, for testing of the PTC/ATC system, and for as many days as is necessary to complete testing of the PTC/ATC system at no cost to SMART.

7. NCRA/NWPCo. agree to provide staff to train and/or operate its locomotive(s) during the PTC/ATC system testing at no cost to SMART.
8. SMART agrees to initially furnish, install, provide training and inspection for the onboard PTC/ATC equipment on NCRA/NWPCo.'s two locomotives. Other costs and expenses, including NWPCo. staff, time, locomotive use and fuel, shall be at NCRA/NWPCo.'s sole cost and expense.
9. On an ongoing basis, NCRA/NWPCo. agree to make the equipped locomotive(s) available to SMART immediately upon reasonable request, taking into account the operational needs of NCRA/NWPCo. and SMART for the performance of routine inspections and data analysis of the ATC/PTC equipment a minimum of once per month, or more frequently as needed to inspect the equipment.
10. The parties understand that implementation and operation of the PTC/ATC system requires data, including "no code proceed counter value" to be submitted to dispatch prior to entry into the PTC/ATC territory. SMART shall inform NCRA/NWPCo. of dispatch related data required for entry into PTC/ATC territory and NCRA/NWPCo. shall provide the information to dispatch prior to entry.
11. NCRA/NWPCo. shall perform and pass a PTC/ATC departure test and report results to dispatch prior to entering PTC/ATC controlled territory. NCRA/NWPCo. agree that if the cab signals do not pass the departure test, they will not be able to proceed onto PTC/ATC territory until the equipment is inspected and passes the departure test. Nothing contained herein prevents the parties from agreeing to "protected" blocks of time wherein NCRA/NWPCo. may operate without PTC/ATC control if authorized by the FRA.
12. NCRA/NWPCo. agree that SMART is the owner of the installed PCT/ATC equipment and NCRA/NWPCo. shall not transfer or assign the PCT/ACT equipment to any third party. NCRA/NWPCo. further agree to return any installed PTC/ATC equipment to SMART prior to selling, transferring or returning any equipped locomotive to a third party. In the event reuse of equipment by NCRA/NWPCo. is practicable, the parties shall negotiate in good faith to accommodate same.
13. NCRA/NWPCo. shall be responsible for compliance with any future PTC requirements, including but not limited to ongoing maintenance,

replacement, upgrades or FRA requirements at NCRA/NWPCo.'s sole cost and expense.

C. Financial Responsibility for Sidings/Spurs.

1. SMART agrees to pay up to one hundred thousand dollars (\$100,000) towards the cost of one additional spur located at or near MPs 45.2 and 45.3 near the Sonoma Mountain Village provided: (1) NCRA/NWPCo. enters into an Industrial Track Agreement with a shipping customer by January 1, 2018; (2) the spur construction is completed by January 1, 2019; and (3) the spur/siding and connections can be designed, signalized and constructed at a safe and appropriate location.
2. Subject to section I.C.1. above, the Parties further agree that SMART has otherwise fully satisfied any and all duties and obligations with respect to the payment of Costs for Sidings/Spurs connections as set forth in Section 6.01, 7.04 and Exhibit 3 of the 2011 Operating Agreement.

D. Records.

In addition to the Parties' respective responsibilities set forth in section 16.01 of the 2011 Operating Agreement, NCRA/NWPCo. agree to provide SMART with the following records on a schedule to be agreed upon by the parties:

1. Track inspector qualifications and designations required by 49 CFR 213, and complete maintenance/inspection records for the Subject Segments, including all "track" as defined in the 2011 Operating Agreement.
2. Bridge safety standards records including the Bridge Management Program, bridge inspection reports, and bridge ratings required by 49 CFR 237.
3. A list of certified and qualified engineers and supporting documentation required by 49 CFR 240 and 242.
4. Accident and incident reports as required by 49 CFR 225; documentation of employee training on hazardous materials, safety and security; and alcohol and drug use control programs required by 49 CFR 219.

II. Agreement regarding the Petaluma Station.

The Parties agree to the following with respect to the Petaluma Station:

- A. Upon execution of this Letter of Intent, NCRA shall simultaneously quitclaim to SMART the freight easement including all rights and interest with respect to the Petaluma Depo/Station site at 315 D Street in Petaluma (APN #007-131-003), in order to provide clear title unencumbered by any freight easement.
- B. SMART agrees not to oppose NCRA/NWPCo.'s efforts to enforce an agreement related to the MOU entered into June 16, 2003 in connection with the construction of new freight facilities by Petaluma Riverfront LLC.
- C. In the event NCRA/NWPCo. engages in litigation and a monetary judgement or settlement is awarded in connection with the construction of a new freight facility by Petaluma Riverfront LLC pursuant to the MOU entered into June 16, 2003, SMART agrees not to seek settlement proceeds, if any are awarded. If a freight facility as provided for in the MOU is constructed, SMART agrees that the facility will be for the use of NCRA/NWPCo. freight operations.

III. Board Approval

- A. The Parties agree that this Letter of Intent is subject to the approval of SMART's and NCRA's Board of Directors.
- B. The Parties agree to present this Letter of Intent to their respective Boards for approval by \_\_\_\_\_.
- C. Upon approval of this Letter of Intent by the respective Boards, SMART will prepare an Amended 2011 Operating Agreement reflecting the terms set forth in Section I A-D, above. The Parties agree to be bound by all terms and conditions contained herein pending execution of the Amendment to the 2011 Operating Agreement.
- D. Upon approval of this Letter of Intent by the respective Boards, NCRA shall execute the Quitclaim Deed attached hereto as Exhibit A.
- E. NCRA/NWPCo. shall request a dismissal of the STB action within ten (10) days of Board approval of this letter of Intent.

By: \_\_\_\_\_  
Farhad Mansourian, General Manager  
Sonoma Marin Area Rail Transit

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Doug Bosco, for NWPCo.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mitch Stogner, Executive Director, NCRA

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Christopher Neary, Counsel for NCRA

Date: \_\_\_\_\_

By: \_\_\_\_\_  
SMART District Counsel

Date: \_\_\_\_\_

# **EXHIBIT A**

Recording Requested By And  
When Recorded Return To:

Laura Giraud  
Sonoma-Marín Area Rail Transit District  
5401 Old Redwood Highway, #200  
Petaluma, CA 94954

No Documentary Transfer Tax required under  
Revenue & Taxation Code Section 11922-  
Government Agency acquiring title

No Recording Fee due pursuant to Government  
Code Section 27383

**APN 007-131-003**

*(Space above this line for Recorder's use)*

### QUITCLAIM DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **North Coast Railroad Authority, a public agency ("Grantor")**, does hereby release and quitclaim to **Sonoma-Marín Area Rail Transit District, a public agency ("Grantee")**, all of Grantor's right, title and interest in the real property located in the City of Petaluma, County of Sonoma, State of California, described on Exhibit A and shown on Exhibit B, attached hereto and made a part hereof.

Executed as of this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

\_\_\_\_\_  
North Coast Railroad Authority  
(authorized signature)

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )  
On \_\_\_\_\_ before me, \_\_\_\_\_  
Date Here Insert Name and Title of the Officer  
personally appeared \_\_\_\_\_  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

Corporate Officer -- Title(s): \_\_\_\_\_

Partner --  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer -- Title(s): \_\_\_\_\_

Partner --  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

**Exhibit A**  
Quitclaim Area

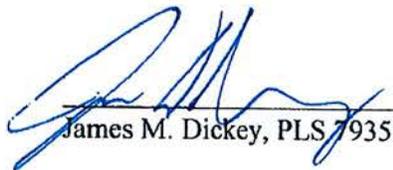
Lying within the State of California, County of Sonoma, City of Petaluma and Block 8 of the City of Petaluma as shown on the map filed in Book 3 of Maps, Page 28, Sonoma County Records, also being All that portion as described in the Deed to Peter Donahue by Deed recorded March 13, 1871 in Book 33 of Deeds at Page 82, Sonoma County Records.

EXCEPTING THEREFROM all that portion described in the deed to the City of Petaluma, dated May 3, 1972, recorded October 17, 1972 in Book 2703 of Official Records at page 12, Sonoma County Records.

ALSO EXCEPTING THEREFROM all that portion describe in the Quitclaim Deed from North Coast Railroad Authority to the Northwestern Pacific Railroad Authority, recorded November 4, 2003 in document 2003-230704, Sonoma County Records.

Being All of APN 007-131-003

Prepared by Cinquini & Passarino, Inc.

  
James M. Dickey, PLS 7935



*2/7/2017*  
Date

1360 North Dutton Avenue, Suite 150, Santa Rosa, CA 95401

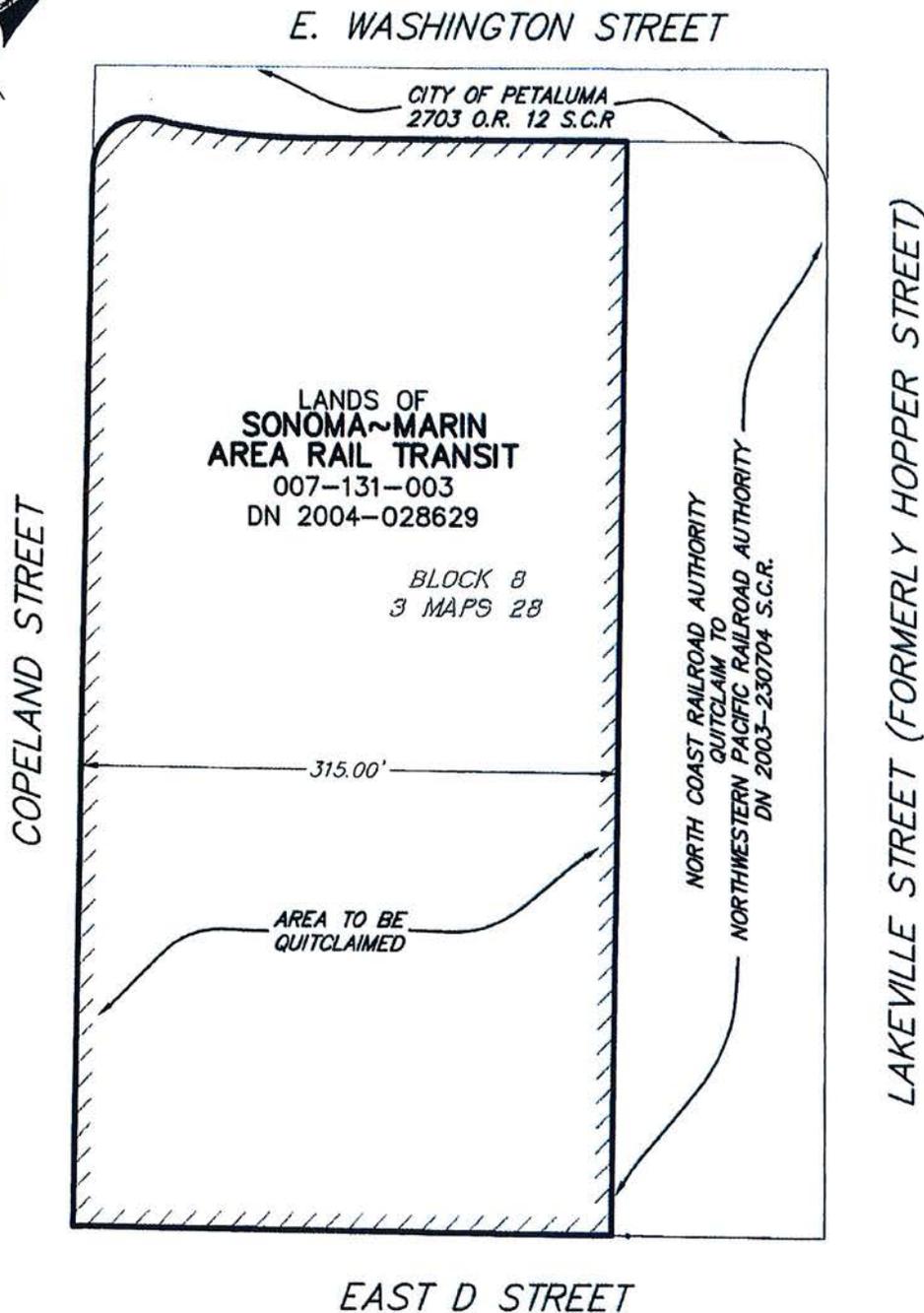
Tel: (707) 542-6268 Fax: (707) 542-2106

[www.cinquinipassarino.com](http://www.cinquinipassarino.com)

CPI No.: 6167-09

Page 1 of 1

Exhibit B



O:\DDT\6167\dwg\1R-Sheets\Petaluma\Petaluma Near Station quitclaim.dwg  
Feb 07, 2017 - 9:42am

OWNER AND MAILING ADDRESS		PROPERTY AREAS		S.M.A.R.T.D.	
SONOMA~MARIN AREA RAIL TRANSIT DISTRICT 5401 OLD REDWOOD HWY #200 PETALUMA, CA 94954		PARCEL: <u>4.5 Acres±</u>		NORTH COAST RAILROAD AUTHORITY QUITCLAIM TO SONOMA~MARIN AREA RAIL TRANSIT DISTRICT	
A.P. No. <u>007-131-003</u>		ACQUISITION DEED		Scale: 1"=100'   Date: 2/7/2017	
O.R. No. <u>D.N. 2004-028629</u>				DWN. JMD	APPROVED
ADDRESS <u>315 D STREET</u>		O.R. _____		CHK. JMD	

**OPERATING & COORDINATION AGREEMENT  
FOR THE NORTHWESTERN PACIFIC LINE**

THIS OPERATING & COORDINATION AGREEMENT ("Agreement"), dated as of the 20<sup>th</sup> day of June, 2011, by and between SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, created under California law ("SMART"), and NORTH COAST RAILROAD AUTHORITY, created under California law ("NCRA").

**RECITALS:**

WHEREAS, pursuant to the JPA Agreement (defined below) and the Cooperative Agreement and set of Principles of Agreement (each dated as of April 30, 1996), all between NCRA and Northwestern Pacific Railroad Authority ("NWPRA"), various commitments were made, including (1) that NWPRA would acquire title to the Healdsburg and Lombard Segments (defined below) and that the NCRA would acquire title to the Willits Segment (defined below), (2) that upon acquisition of the Healdsburg and Lombard Segments NWPRA would convey a perpetual and exclusive easement for the operation of freight service and grant contract rights for the operation of passenger excursion service over the Healdsburg and Lombard Segments to NCRA, and (3) that upon acquisition of the Willits Segment NCRA would convey to NWPRA a permanent easement over the Willits Segment for operation of regularly scheduled passenger commuter service and for operation of certain intercity and other passenger service; and

WHEREAS, on April 30, 1996, NWPRA acquired ownership of the Healdsburg and Lombard Segments and NCRA acquired title to the Willits Segment; and

WHEREAS, NWPRA conveyed the aforementioned easement to NCRA covering the Healdsburg and Lombard Segments; and

WHEREAS, NCRA conveyed the aforementioned easement to NWPRA covering the Willits Segment; and

WHEREAS, on August 19, 1996, NWPRA and NCRA entered into an Operating Agreement for certain portions of the Northwestern Pacific Railroad line (the "Operating Agreement 1996"); and

WHEREAS, the 1996 Operating Agreement was a condition precedent to effectuate the Grant of Easement conveyed by NWPRA to NCRA and by entering into this new operating agreement, the parties do not intend to, in any way, revoke, rescind or otherwise nullify the effectuation of the Grant of Easements from NWPRA to NCRA or NCRA to NWPRA (or its successor, SMART); and

WHEREAS, the 1996 Operating Agreement provided that if NWPRA undertook to provide passenger commuter operations, the parties would enter into an agreement (referred to therein as the "Coordination Agreement") that described in detail the respective rights and obligations of the parties with respect to maintenance, capital expenditures, dispatching, scheduling of operations, environmental liability, taxes and other matters concerning the joint use of the Healdsburg Segment and the Lombard Segment; that passenger commuter operations would receive operating priority over freight operations, provided that freight service continued

to be provided on the Healdsburg Segment and the Lombard Segment in a manner that meets the needs of the shippers on the line; that passenger operations disrupt NCRA's freight operations to the minimum extent possible; and that the agreement would include provisions that address the issues set forth in Schedule 3.10 to the Operating Agreement 1996; and

WHEREAS, SMART is NWPRA's successor in interest; and

WHEREAS, SMART intends to undertake passenger commuter operations on the Healdsburg Segment and on a portion of the Willits Segment pursuant to its easement thereon (together defined more specifically below as the "Shared Track") and may later expand such operations to include some or all of the Lombard Segment and more or the rest of the Willits Segment covered by its easement thereon; and

WHEREAS, multi-use pathways are part of SMART's enabling legislation and integral to SMART's project and planned use of its property; and

WHEREAS, on September 13, 2006, NCRA and Northwestern Pacific Railroad Company ("NWPCo"), a California corporation, entered into a lease agreement for NWPCo to provide freight and excursion service over (inter alia) the Subject Segments;

WHEREAS, the Parties desire to enter into this Agreement setting forth terms and conditions for the use and management of the Subject Segments, superseding the Operating Agreement 1996 and all prior agreements between the parties relating in any way to the subject matter of the Operating Agreement 1996 (including, without limitation, the JPA Agreement, the Cooperative Agreement and the set of Principles Agreement), it being the express intent of the parties to have this Agreement govern exclusively, and formalizing SMART's consent to designation of NWPCo as NCRA's operator, pursuant to Section 16.04 of the Operating Agreement 1996.

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, NCRA and SMART hereby agree as follows:

#### **ARTICLE I – DEFINITIONS**

In addition to capitalized terms defined in the Agreement, Exhibit 1 (incorporated herein by reference) is a list of additional definitions used in this Agreement.

#### **ARTICLE II – MULTI-USE PATHWAY AND OPERATING RIGHTS**

**SECTION 2.01** NCRA Passenger Excursion Service. In addition to the rights granted pursuant to the aforementioned easements granted to NCRA on the Healdsburg Segment and the Lombard Segment, but subject to the condition set forth in SECTION 7.08, NCRA shall have the right to use the Healdsburg Segment and the Lombard Segment to provide passenger excursion service intended primarily for entertainment and recreation and not primarily for transportation, provided that the service originates and terminates off of the Healdsburg Segment (except at Healdsburg Station, approximately NWP MP 68.00) and the Lombard Segment (except to the extent the Lombard Segment remains not part of the Shared Track) and does not provide

intermediate stops on the Healdsburg Segment (except at Healdsburg Station) or the Lombard Segment (except to the extent the Lombard Segment remains not part of the Shared Track) (the "NCRA Passenger Excursion Service"); provided that NCRA may not use the Healdsburg Segment or the Lombard Segment for any other type of passenger service, except that NCRA may transport officers, employees and freight business invitees of NCRA. NCRA acknowledges that it shall have no right to conduct intercity passenger rail service on the Healdsburg Segment or the Lombard Segment. NCRA shall have no right to appoint more than two (2) Passenger Excursion Service contract operators on any portion of the Shared Track during any twelve (12) month period.

**SECTION 2.02** Industrial Track. NCRA, at its own expense, shall have the exclusive right to manage all existing or later built track on the Healdsburg and Lombard Segments used solely for NCRA Freight Service (the "Industrial Track"). NCRA shall have the right to enter into new industrial track agreements on the Subject Segments that are necessary for NCRA to discharge its exclusive common carrier rail freight responsibilities, provided that all such agreements are subject to (and conterminous with) this Agreement (including but not limited to ARTICLE VI hereof) and, on the Lombard and Healdsburg Segments only, such agreements (i) include the standard agreement provisions provided by SMART and the requirements of SMART's Encroachment Policy adopted April 22, 1996, as may be amended from time to time; and (ii) are approved in advance by SMART (which approval shall not be unreasonably withheld, conditioned or delayed).

**SECTION 2.03** SMART Pathway Rights. Subject to the terms of this Agreement, SMART shall have the right to design and construct Pathways on the portion of the Willits Segment that is part of the Shared Track.

### **ARTICLE III – NWPCO AS NCRA OPERATOR**

SMART hereby consents to NWPCo as NCRA's designated operator. NCRA hereby acknowledges that any agreement it may have with NWPCo or any successor designated operator or any third party operator admitted to the Shared Track or the Lombard Segment (collectively defined herein as, the "Operator") is subject to and conterminous with this Agreement.

### **ARTICLE IV – MAINTENANCE**

**SECTION 4.01** Inspections. Within thirty (30) days after the Execution Date of this Agreement, SMART plans to make an inspection of the Shared Track and the Lombard Segment, the result of which shall be contained in a written report. NCRA shall have the right (but not the obligation) to participate in the inspection and shall be furnished with a copy of the inspection report. No more than thirty (30) days before the commencement of NCRA train operations, NCRA and SMART shall make a joint inspection of that portion of the Shared Track and the Lombard Segment on which NCRA plans to operate to document the actual condition and the FRA classification of such track, the result of which shall be contained in a written report (delineated by FRA track classification), reviewed and approved by both Parties within thirty (30) days after the completion of the inspection. This joint inspection may be waived if the

parties agree (in their sole discretion) that a joint inspection is unnecessary due to the FRA inspections conducted in connection with the commencement of NCRA service.

**SECTION 4.02** NCRA Maintenance Responsibility. Subject to SECTION 4.04, NCRA shall perform all ordinary inspection and maintenance functions (including the provision of security, emergency grade crossing notification and response, vegetation control within 15 feet of the center line of track and any additional vegetation control required by law) on any portion of the Lombard Segment and the Healdsburg Segment that it operates on, at its sole cost and expense. NCRA shall maintain such Track to at least FRA Class 1 standards, provided that NCRA's inspection, maintenance and security responsibilities shall not include any equipment and buildings used solely by SMART.

**SECTION 4.03** Second Joint Inspection. At least ten (10) days before any Changeover Date as described in SECTION 4.04, NCRA and SMART shall make a joint inspection of the applicable segment of the Shared Track to document the actual condition and the FRA class of the Track thereon, the result of which shall be contained in a written report (delineated by FRA track classification), reviewed and approved by both Parties within ten (10) days after the completion of the inspection.

**SECTION 4.04** SMART Maintenance Responsibility. SMART shall have the right to take over maintenance on any portion of the Shared Track at any time and an obligation to take over maintenance of any portion of the Shared Track before commencement of construction of Changes and/or Additions to facilitate SMART Commuter Operations. With at least one (1) month advance notice, SMART shall notify NCRA of the date on which it will take over maintenance of any particular portion of the Shared Track. The date of such take over with respect to any particular portion shall be the "Changeover Date" with respect to such portion. After the Changeover Date with respect to any particular portion of Shared Track, SMART shall perform all ordinary maintenance functions and shall inspect and maintain the Track to at least the same requirements set forth in SECTION 4.02. SMART shall maintain all Pathways from inception at its sole cost and expense.

**SECTION 4.05** Maintenance Plans and Reports. Each Party shall, on an annual basis, provide such other Party with a maintenance plan (including vegetation control) and maintenance budget on any portion of the Track where such Party has a maintenance obligation. Each Party also will provide to the other Party annual reports of its actual maintenance expenditures on a schedule agreed to by the Parties.

## ARTICLE V – OPERATIONS AND DISPATCHING

**SECTION 5.01** Dispatching. SMART shall manage and control the Shared Track. SMART shall dispatch the Shared Track and the Lombard Segment. Subject to the ultimate authority of the dispatcher, SMART shall manage and control SMART Commuter Operations and Ancillary Passenger Service, and NCRA shall manage and control NCRA Freight Service and NCRA Passenger Excursion Service. If SMART's dispatcher is not present and on duty, then upon three days notice to SMART, NCRA shall have the right to take over dispatching on the Shared Track and the Lombard Segment. Both parties have the right to seek injunctive relief with respect to any allegation that the SMART dispatcher is not present and on duty. This

SECTION is not subject to ARTICLE XIV. This SECTION is not intended to apply in any situations where SMART's dispatcher is present and on duty, but NCRA has an objection regarding the dispatcher's conduct of his/her duty.

**SECTION 5.02** Rule Book. After prior consultation with NCRA, wherein differences or disputes are reasonably addressed, SMART shall have the right to specify a rule book, employees timetable, special instructions, standard operating procedures, and/or any other rules it reasonably determines are necessary for the safe and efficient operation of the Shared Track and Lombard Segment, and upon receipt of copies thereof, NCRA and the Operator shall follow such rules. Without limiting the generality of SECTION 16.05, maximum allowable freight and passenger train speeds on any segment of track shall adhere to FRA regulations established for the Class of Track on that segment.

**SECTION 5.03** Priority.

(a) SMART Commuter Operations shall have reasonable priority over all other operations on the Shared Track, provided that such priority shall not materially adversely affect NCRA's performance of its common carrier obligation, NCRA's conduct of rail freight operations, or NCRA's ability to provide adequate service to shippers and receivers. SMART Commuter Operations will require blocks of time ("windows") during which there will be no NCRA Freight Service or NCRA Passenger Excursion Service on segments of the Shared Track. These windows may need to be widened in the future as passenger traffic develops and/or formalized in order to meet the FRA's requirements for temporal separation of freight and passenger service to support waiver or other relief from Positive Train Control requirements on the Shared Track. Notwithstanding the generality of the foregoing, SMART expects to have greater flexibility during midday periods, late evenings, nights and weekends/holidays. SMART will meet and confer with NCRA to schedule freight service slots on the Shared Track. A list of windows is attached hereto, for illustrative purposes only, as Exhibit 2.

(b) After consultation with NCRA, SMART shall establish a schedule of all train operations and other activities on the Shared Track. Six months before commencement of SMART Commuter Operations, SMART shall prepare and furnish to NCRA a draft definitive schedule for SMART Commuter Operations. NCRA shall have the right to provide SMART with comments on the draft definitive schedule and SMART shall consider any such comments before finalizing the definitive schedule. SMART shall finalize the definitive initial schedule at least ninety days before commencement of SMART Commuter Operations.

(c) NCRA Passenger Excursion Service and SMART Ancillary Passenger Service shall (i) be subordinate to SMART Commuter Operations, (ii) be of equal dispatch priority (as between themselves) and (iii) shall have reasonable priority over NCRA Freight Service, subject to the standard set forth in the first sentence of SUBSECTION (a) of this SECTION and provided that NCRA shall have the right to subordinate the NCRA Passenger Excursion Service (but not the SMART Ancillary Passenger Service) to NCRA Freight Service.

## ARTICLE VI – MODIFICATIONS AND IMPROVEMENTS

Changes and/or Additions to the Subject Segments shall be subject to the following requirements:

**SECTION 6.01** Right to Make Changes; Financial Responsibility. Each Party shall have the right to make Changes and/or Additions to the Subject Segments at its own cost and expense, except as provided in Exhibit 3. The Parties acknowledge that Changes and/or Additions to the Subject Segments may require alteration or modification of existing Track or other improvements and that the cost and expense of such alteration or modification would be the financial responsibility of the Party then making the Changes and/or Additions. SMART shall manage and control construction of Changes and/or Additions on the Shared Track, including SMART's construction pursuant to its Initial Design Plans; provided that NCRA shall manage and control construction of NCRA-funded and administered Changes and/or Additions on (i) the Lombard Segment or (ii) that portion of the Shared Track between Healdsburg (MP 68.22) and Cloverdale (MP 85.35) before any Changeover Date with respect to such portion; provided further that SMART shall reasonably consider NCRA proposals to manage and control construction of NCRA-funded and administered Changes and/or Additions on the Shared Track not meeting the requirements of subpart (ii) of the foregoing proviso.

**SECTION 6.02** Plans. The Party undertaking the Changes and/or Additions (the "Constructing Party") to the Subject Segments shall deliver to the other Party a set of the design plans (including available schematic drawings and specifications) for Changes and/or Additions at the conceptual stage, thirty percent (30%) completion stage, sixty percent (60%) completion stage and Final Plans. The Party reviewing plans (the "Reviewing Party") shall have thirty (30) days from receipt to review and comment on the conceptual plans and the 30% plans, fifteen (15) days from receipt to review and comment on the 60% plans and fifteen (15) days from receipt to review and approve the Final Plans.

**SECTION 6.03** Review.

(a) If the Reviewing Party reasonably determines that the proposed design or location of Changes and/or Additions, as reflected in any such set of plans, would materially interfere with NCRA Freight Service or SMART Commuter Operations (as the case may be), the Reviewing Party shall provide written comments to the Constructing Party explaining its concerns in this regard within the applicable review period. The Reviewing Party shall have an obligation to identify material interference concerns at the plan review stages where they arise and the Constructing Party shall have no obligation to address concerns that could have been raised in an earlier plan review stage. The Parties shall then use their best efforts to agree on modifications to any such set of plans to resolve such expressed concerns. If the Reviewing Party fails to provide written comments to the Constructing Party on any set of plans within the applicable review period, such Party shall be deemed to have approved such set of plans. Once a set of plans is approved pursuant to this SECTION, or Material Modifications are approved pursuant to SECTION 6.04 such plans or Material Modifications shall be deemed to be final and a part of the Subject Segments as though already constructed.

(b) NCRA's review of the Initial Design Plans shall follow the review provisions in SUBSECTION (a), except that NCRA and SMART hereby agree that the Siding and Spur Provisions (Exhibit 3) are the solution for all cost issues pertaining to freight siding and spur track connections (including without limitation material interference issues) and that (except as set forth in Exhibit 3) SMART shall have no obligation to pay for freight siding or spur track connections.

**SECTION 6.04** Construction; Modification. The Constructing Party shall construct Changes and/or Additions in accordance with the Final Plans approved by the other Party pursuant to this ARTICLE VI and subject to any modifications issued by the Constructing Party that are authorized by this subparagraph. The Constructing Party shall notify and obtain the other Party's advance written consent to any Material Modifications. The other Party shall use its best efforts to complete its review of such Material Modifications as soon as possible but in any event within three (3) business days of receipt of such Material Modifications from the Constructing Party. The other Party's approval shall not be unreasonably withheld, conditioned or delayed unless any such Material Modifications would materially interfere with the other Party's use of the involved property (as articulated in SECTION 6.03).

**SECTION 6.05** Operations During SMART Construction. The Parties have agreed to the following reasonable accommodations for freight operations during SMART's initial and any subsequent construction of Changes and/or Additions for SMART Commuter Operations:

(a) SMART shall establish a schedule for NCRA Freight Service providing 12-hour daytime windows on Sundays and Thursdays on portions under construction or proximate to construction. During such times, NCRA shall have uninterrupted access to such segments for NCRA Freight Service and any construction activities will be subject to such uninterrupted access. During all other times, SMART shall have exclusive access to such segments.

(i) Provided that for a single period not to exceed eighteen (18) weeks, when SMART is undertaking its primary track-laying project on its initial operating segment (presently expected to include, as relevant, the line from the Ignacio Wye to Santa Rosa Railroad Square), which might include using the mechanized track laying equipment (herein, the "Track Construction Period"), SMART shall establish a schedule for NCRA Freight Service providing 48-hour single window on Saturday and Sunday. During such times, NCRA shall have uninterrupted access to track segments under construction or proximate to construction and SMART construction activities will be subject to the requirement that NCRA be afforded such uninterrupted access. During all other times (i.e., 5 consecutive days), SMART shall have exclusive access to the track under construction. SMART shall give NCRA at least thirty (30) days notice of the planned date for commencement of the Track Construction Period. For any subsequent construction of Changes and/or Additions for expanded SMART Commuter Operations, the Parties shall negotiate in good faith to establish an arrangement similar to the Track Construction Period.

(ii) Provided further that for a single period not to exceed eighteen (18) days during SMART's construction of its initial operating segment (presently expected to include, as relevant, the line from the Ignacio Wye to Santa Rosa Railroad Square), there shall be

no NCRA Freight Service on the Shared Track (herein, the "Designated Shutdown Period"). During the Designated Shutdown Period, SMART shall have exclusive access to the Shared Track. SMART shall give NCRA at least sixty (60) days notice of the planned date for commencement of the Designated Shutdown Period. For any subsequent construction of Changes and/or Additions for expanded SMART Commuter Operations, the Parties shall negotiate in good faith to establish an arrangement similar to the Designated Shutdown Period.

(b) During SMART's construction of its initial operating segment (presently expected to include, as relevant, the line from the Ignacio Wye to Santa Rosa Railroad Square), except for the Designated Shutdown Period, if SMART's construction renders the Shared Track out of service for freight for seven (7) days (herein, a "Shutdown Period"), SMART shall have the right to shut down the segment in issue and alternative service to NCRA freight customers shall be arranged, in accordance with this SUBSECTION:

(i) SMART shall procure and pay for an on-call broker to arrange for truck transportation, truck transload or other alternative transportation service for rail freight customers (the "Broker"). NCRA shall notify the Broker if one of its customers wishes to receive such alternative transportation arranged by the Broker. Upon such notification, NCRA shall provide Broker with information pertaining to the alternative transportation, including the identity of the shipper, the shipper's contact information, the location of the shipper facility and the commodities and desired schedule for transportation. The Broker shall arrange alternative transportation and inform NCRA and SMART of the arrangements. The customer shall pay the cost of the alternative transportation. SMART shall reimburse the customer for the alternative transportation to the extent it exceeds the cost that the customer would have paid to NCRA. SMART shall have the right to confer in advance with the Broker regarding the cost of alternative transportation in order to ensure that the cost is reasonable.

(ii) To the extent NCRA arranges alternative transportation for one of its customers or a customer makes its own alternative transportation arrangements, the customer shall pay the cost of the alternative transportation. SMART shall reimburse the customer for the costs of the alternative transportation to the extent it exceeds the cost that the customer would have paid to NCRA, provided that SMART shall have the right to confer in advance with NCRA or the customer regarding the cost of alternative transportation and approve such additional costs in advance, in order to ensure that the cost is reasonable. SMART's approval shall not be unreasonably withheld, conditioned or delayed.

(iii) In either case, SMART also shall pay to NCRA an amount equal to the product of (i) the number of days of the Shutdown Period *multiplied by* (ii) the daily average number of loaded cars originated, terminated or moving over Shared Track calculated from the sixty-day period before the beginning of the Shutdown Period *multiplied by* \$500.

(iv) Alternative transportation service may not work for certain shippers. SMART will use commercially reasonable efforts to advise NCRA in advance of any Shutdown Period so that NCRA can inform those shippers of such cessations.

(c) For any subsequent construction of Changes and/or Additions for expanded SMART Commuter Operations, the Parties shall negotiate in good faith to establish an arrangement similar to the above for Shutdown Periods.

(d) Except as set forth in this ARTICLE VI, NCRA shall have no right to compensation of any kind or character for any interference with or interruptions in freight service during construction or for any extra costs or administrative burdens associated with freight operations or cessations during construction.

**SECTION 6.06 Operations During NCRA Construction.** The Parties do not anticipate that NCRA's Changes and/or Additions on the Shared Track would require cessation of SMART Commuter Operations. Such cessations could, but for this SECTION, harm SMART's Commuter Operations. To avoid any such harm, NCRA's Changes and/or Additions on the Shared Track shall be conducted on weekends and during non-Rush Hour periods, as designated on the schedule established pursuant to SECTION 5.03. If NCRA determines that its Changes and/or Additions on the Shared Track would require cessation of SMART Commuter Operations, it shall so notify SMART thirty (30) days in advance of such cessation and SMART shall arrange for a bus bridge of its passengers around the affected Shared Track during NCRA construction. SMART shall consult with NCRA regarding the bus bridge and such additional operating costs and secure NCRA's approval in advance of commencing the bus bridge (or incurring related costs). NCRA's approval shall not be unreasonably withheld, conditioned or delayed. NCRA shall reimburse SMART for any such documented increased costs associated with the bus bridge for the duration of the cessation. Except as set forth in this SECTION, SMART shall have no right to compensation for such cessations.

**SECTION 6.07 Construction Schedule.** The Constructing Party shall deliver to the other Party on a weekly basis, (i) a schedule for the construction of Changes and/or Additions over the next four weeks showing both the sequence and location of such construction work and (ii) a general schedule of construction activity planned over the next 12 weeks. Upon request of the other Party, the Constructing Party shall meet to discuss and review the schedules.

**SECTION 6.08 Ownership; Salvage.** The Party that pays for Changes and/or Additions shall own such Changes and/or Additions and shall be entitled to sell or reuse the material removed but not reused in the Changes and/or Additions ("Salvage Materials") regardless of when or by whom such material was installed or paid for; provided that upon subsequent removal or replacement of such Changes and/or Additions by such Party, that Party shall have an obligation to restore the relevant portion of the track to at least the condition that existed immediately before the Changes and/or Additions; provided further that the Party removing the Salvage Materials shall give the other Party written notice of, and a right of first refusal for thirty (30) days from such notice on, any proposal to sell the Salvage Materials; provided further that SMART shall indemnify NCRA for any claims by counter-parties under the agreements listed on Exhibit 4 that Salvage Materials purchased by NCRA from the Healdsburg Segment or the Lombard Segment violated such agreements; provided further that NCRA shall be entitled to reuse Salvage Materials from the Willits Segment, but shall have an obligation to remove such Salvage Materials from the construction site within thirty (30) days of notice from SMART, which notice will state the time period when such Salvage Materials will be available for removal. Except as set forth in this ARTICLE VI, neither Party shall have an obligation to

compensate the other Party for the costs of prior Changes and/or Additions, removal of prior Changes and/or Additions or Salvage Materials.

## ARTICLE VII – OTHER RIGHTS AND OBLIGATIONS – OPERATIONS

**SECTION 7.01** Expansion of Shared Track. If SMART wants to expand the geographic scope of the Shared Track to include any portion of the Lombard Segment or any additional portion of the Willits Segment, SMART shall notify NCRA and the Parties shall amend (effective on the date provided in the notice) this Agreement to expand the geographic scope of the Track that constitutes Shared Track under this Agreement and all provisions governing Shared Track shall control over other provisions pertaining to such portions. Such notice by SMART shall be not less than six (6) months in advance of SMART's designated effective date for expansion of the Shared Track. Notwithstanding the foregoing, for the duration of any transportation emergency or non-rail infrastructure outage, SMART shall have the right to conduct SMART Commuter Operations on any portion of the Subject Segments not already part of the Shared Track. In such emergencies, SMART shall give NCRA any advanced notice that is practicable and the Parties will make arrangements for SMART to assume management, control and dispatching of rail operations pursuant to ARTICLE V and maintenance responsibilities pursuant to ARTICLE IV.

**SECTION 7.02** No Admission Of Third Parties. SMART acknowledges that it has no right to grant, and shall not attempt to grant, to any third party any rights whatsoever to conduct rail freight operations on the Healdsburg Segment, the Lombard Segment, or the Willits Segment. SMART and NCRA each (i) acknowledges that it has no right to grant any third party rights to conduct freight or passenger rail service of any kind on the portion of the Subject Segments owned by the other Party and (ii) agrees not to grant such rights (except as required by law) during the term of this Agreement on the portion of the Subject Segments owned by it. For the avoidance of doubt, bona fide contractors (including but not limited to NWPCo and its successors and entities operating trains pursuant to SECTION 7.09) are not third parties within the scope of this SECTION.

**SECTION 7.03** Contractors. Each Party shall have the right to arrange for all or some of its rights and/or obligations under this Agreement to be performed by one or more contractors; provided that (i) neither Party shall admit a contractor to the Shared Track without first providing the other Party with an insurance certificate for Workers Compensation insurance for such contractor and an insurance certificate for liability insurance for such contractor naming the other Party as an additional insured, (ii) the contract shall be subject to the terms of this Agreement and (iii) each Party shall remain responsible for performance of this Agreement. The requirements of this SECTION apply to any successor Operator and to any contract operator of NCRA Passenger Excursion Service or any contract operator of SMART Ancillary Passenger Service.

**SECTION 7.04** Track Modifications Required by Law. SMART shall pay all of the cost and expense of Positive Train Control on the Shared Track, except SMART's obligation to pay for the cost and expense of cabling up NCRA's or Operator's locomotive fleet shall be limited to (i) the number of locomotives in regular freight operations on the day that the Positive Train Control system becomes operational or (ii) five (5) locomotives, whichever is lower. (For

the avoidance of doubt, SMART shall have no obligation to pay for the cost and expense of cabling up any additional locomotives, including additional locomotives that may be used for NCRA Passenger Excursion Service.) Once furnished and installed, NCRA shall be responsible for ongoing maintenance of the on-board equipment. Except as set forth in Exhibit 3, NCRA shall be responsible for the cost and expense of new freight siding and spur track connections required by law. Each Party shall pay for and perform any and all work required by lawful authority in connection with construction, renewal, maintenance and operation of the Track on the property it owns; provided that if the Party otherwise responsible for such work can reasonably demonstrate that such work would not be required in the absence of the other Party's operations or operating rights or that such work would be substantially lower in cost in the absence of the other Party's operations or operating rights, then the other Party shall be responsible for the cost and performance of all such work (in the first instance) or the Parties shall agree to an allocation of the cost of such work (in the second instance).

**SECTION 7.05** Hazardous Materials. Neither Party shall use, generate, transport, handle or store Hazardous Materials on the Subject Segments other than as may be used by the Party in its operations in the normal course of business or, in the case of NCRA, as may be transported by NCRA in its capacity as a common carrier by rail and in all events in accordance with Applicable Laws. Neither Party shall dispose of Hazardous Materials of any kind on the Subject Segments.

**SECTION 7.06** Locomotive Storage. At each location where a Party parks or stores its locomotives while not in use, the Party shall implement appropriate contamination containment procedures with respect to fuel or lubricant drippings.

**SECTION 7.07** Shared Track Blockages. Neither Party shall store or stop equipment or cars on the Shared Track (excluding Industrial Track or other Track designated for the storage, stoppage or passing of trains or equipment or cars) in a way that blocks or fouls the Shared Track. Both Parties shall have the right to help stalled trains or equipment of the other Party (or to move improperly stored or stopped equipment or cars).

**SECTION 7.08** NCRA Passenger Excursion Service and SMART Ancillary Passenger Service. NCRA Passenger Excursion Service on any segment of the Healdsburg Segment shall not commence until ninety (90) days after commencement of SMART Commuter Operations on the same segment; provided that NCRA may operate NCRA Passenger Excursion Service on the portion of the Healdsburg Segment between Healdsburg Station and the northern end of the Healdsburg Segment at any time when such portion is not under construction. SMART may operate SMART Ancillary Passenger Service on the Willits Segment. Specific plans for the operation of NCRA Passenger Excursion trains or SMART Ancillary Passenger Service shall be provided to and discussed with the other party at least 60 days in advance of their proposed date(s) of operation.

**SECTION 7.09** Company Material. SMART (directly or through contractors) shall have the right to move its own company material on the Shared Track or the Lombard Segment, including but not limited to track material and passenger equipment in transport for use in the SMART Commuter Operations. If SMART elects to use a contractor to move such company material, NCRA shall have a right of first refusal for ten (10) days on the work at the contractor's

quoted rate; provided that such right of first refusal shall not apply to passenger equipment in transport for use in the SMART Commuter Operations.

## ARTICLE VIII – OTHER RIGHTS AND OBLIGATIONS – PROPERTY

**SECTION 8.01** No Liens. Neither Party will take any action or fail to take any action which would cause the Subject Segments to be encumbered by any mortgage, indenture, bond, note or lien of any kind that would have a material, adverse effect on the other Party's conduct of rail operations thereon or that would require the payment of money by the other Party.

**SECTION 8.02** Nuisance. Neither Party shall use nor permit the use of the Subject Segments in any manner that will tend to create a nuisance or would materially interfere with the continued commercial, industrial or transportation corridor uses of the Subject Segments.

**SECTION 8.03** Future Easements. Each Party reserves the exclusive right to approve or deny any and all future easements, leases, licenses or rights of occupancy in, on, under, through, above, across or along the property it owns (the Willits Segment in the case of NCRA and the Healdsburg and Lombard Segments in the case of SMART), provided that approval of such future easements, leases, licenses or rights of occupancy by either Party does not unreasonably interfere with SMART Commuter Operations or NCRA Freight Service.

**SECTION 8.04** Utilities. Before a Changeover Date for any particular segment, NCRA shall pay all bills for utilities, including without limitation those for water, sewer, gas and electric service to the Subject Segments, and the Parties shall negotiate in good faith for SMART's reimbursement to NCRA for any utility costs attributable to SMART's activities. After a Changeover Date for any particular segment, each Party shall pay all bills for utilities used solely for such Party's consumption, including without limitation those for water, sewer, gas and electric service, and SMART shall pay all bills for all utilities on the Shared Track, subject to the provisions of SECTION 9.01.

**SECTION 8.05** Defeasance. Neither Party shall make any use of the Subject Segments that is inconsistent with the owning Party's right, title and interest therein and which may cause the right to use and occupy such property to revert to any third party.

**SECTION 8.06** Right of Entry; Cooperation. Each Party hereby grants to the other Party a general right of entry to the Subject Segments owned by it for any lawful purpose related to the rights and obligations of the other Party (whether by law, easement or this Agreement), subject to reasonable advanced notice and safety procedures, and each Party agrees to cooperate in the arrangement of such entry.

**SECTION 8.07** Incorporation of Reserved Rights. SMART hereby reserves all of the reservations made by NWPRRA with respect to the Lombard Segment and the Healdsburg Segment in Sections 1.02 and XV of the Operating Agreement 1996, as fully restated in Exhibit 5. NCRA hereby reserves all of the Certain Reserved Rights with respect to the Willits Segment, as stated in Exhibit 5.

**SECTION 8.08** Settlement & Consent Agreements. Any and all settlement agreements of any kind or character (including but not limited to the agreement between NCRA and the City of Novato) whether executed before or after this Agreement are subordinate and subject to this Agreement. Each Party agrees to secure any necessary agreement amendments or estoppel certificates with respect to any such agreements executed before this Agreement.

## **ARTICLE IX – COST SHARING**

**SECTION 9.01** Dispatching Cost Sharing. Commencing with the first month where there is NCRA Freight Service or NCRA Passenger Excursion Service (herein, “NCRA Trains”) and for each month thereafter (regardless of whether there are NCRA Trains in any particular month) before there are any SMART Commuter Operations or SMART Ancillary Passenger Service (herein “SMART Trains”), NCRA shall pay SMART a fee of \$2,500 for dispatching services. Commencing with the first month where there are NCRA Trains and SMART Trains (assuming that NCRA Trains have commenced), NCRA shall pay SMART a fee for dispatching services that is negotiated in good faith between the parties. If the parties are unable to reach an agreement, then the issue shall be submitted to arbitration. The arbitrator shall decide the appropriate equitable allocation of dispatch costs based upon the parties’ use of the rail line. While arbitration is pending NCRA shall pay SMART the fee applicable before SMART commenced operations.

**SECTION 9.02** Maintenance Cost Sharing. After SMART assumes responsibility for maintenance on a particular segment pursuant to SECTION 4.04, NCRA shall pay SMART for that segment the charges set forth on Exhibit 6.

**SECTION 9.03** Reporting and Invoices for Dispatching and Maintenance. Within ten (10) days of the end of a month, NCRA shall send SMART a report of the prior month’s carloadings showing carloadings that originated, terminated, or moved overhead on the track maintained by SMART. The report also shall identify any cars that weighed more than 263,000 pounds. By the end of the month in which the carloading report was due, SMART shall send NCRA an invoice for the above-described dispatching and maintenance fees.

**SECTION 9.04** Annual Adjustment. The fees in SECTION 9.01 and SECTION 9.02 shall be adjusted annually on the anniversary of the Effective Date by the same percentage as the percentage increase or decrease, if any, in the STB’s rail cost adjustment factor, unadjusted for productivity. If the rail cost factor ceases to exist, the Parties shall use the Consumer Price Index for all Urban Consumers (CPI-U) issued by the U.S. Department of Labor’s Bureau of Labor Statistics or a substantially similar index.

**SECTION 9.05** Five-Year Adjustment. The Parties have concluded that the above-referenced fees fairly reflect the dispatching and maintenance expenses that NCRA reasonably would have expended in the absence of SMART Commuter Operations. On the fifth anniversary of the Effective Date and every five (5) years thereafter, the Parties will negotiate in good faith to re-set the dispatching and maintenance fees in accord with this rationale.

**SECTION 9.06** No Other Related Compensation. Except as set forth above in this ARTICLE IX, or elsewhere in this Agreement, neither Party shall owe the other Party any compensation for maintenance, dispatching or operations on the other Party's property.

## **ARTICLE X – ALLOCATION OF LIABILITY; INDEMNITY**

### **SECTION 10.01** Allocation of Liability.

(a) It is the express intention of the Parties that NCRA assumes the risk of and agrees to indemnify, defend and hold harmless SMART, or any agent, contractor, lessee or licensee of SMART, from any orders, directives, judgments, causes of action, penalties, fees, claims, costs, liabilities, damages, losses and expense (including without limitation court costs and attorneys' fees and all costs of investigating, remediating, or responding to the existence of a claim), or demands of whatsoever nature or source for (i) personal injury to or death of persons whomsoever; (ii) property damage or destruction of whatsoever nature (including without limitation damage to property of SMART or NCRA, or property in NCRA's care, custody or control, and third party property), (iii) violation of any Applicable Laws; or (iv) breach of this Agreement (collectively, "Claims") when such Claims arise out of acts or omissions (whether or not negligent) of NCRA or any agent, contractor, lessee or licensee of NCRA occurring on the Subject Segments after the Execution Date and before the termination of this Agreement; except that NCRA shall not indemnify, defend or hold harmless SMART, or any agent, contractor, lessee or licensee of SMART, to the extent that the Claim arises out of or in connection with acts, omissions or negligence of SMART, or any agent, contractor, lessee or licensee of SMART or is otherwise covered by SECTION 10.01(b).

(b) It is the express intention of the Parties that SMART assumes the risk of and agrees to indemnify, defend and hold harmless NCRA, or any agent, contractor, lessee or licensee of NCRA, from any orders, directives, judgments, causes of action, penalties, fees, claims, costs, liabilities, damages, losses and expense (including without limitation court costs and attorneys' fees and all costs of investigating, remediating, or responding to the existence of a claim), or demands of whatsoever nature or source for (i) personal injury to or death of persons whomsoever; (ii) property damage or destruction of whatsoever nature (including without limitation damage to property of NCRA or SMART, or property in SMART's care, custody or control, and third party property), (iii) violation of any Applicable Laws; or (iv) breach of this Agreement (collectively, "Claims") when such Claims arise out of acts or omissions (whether or not negligent) of SMART or any agent, contractor, lessee or licensee of SMART occurring on the Subject Segments after the Execution Date and before the termination of this Agreement; except that SMART shall not indemnify, defend or hold harmless NCRA, or any agent, contractor, lessee or licensee of NCRA, to the extent that the Claim arises out of or in connection with acts, omissions or negligence of NCRA, or any agent, contractor, lessee or licensee of NCRA or is otherwise covered by SECTION 10.01(a).

### **SECTION 10.02** Procedure.

(a) Claims. If any claim or demand (short of a lawsuit) shall be made by any person against an indemnified Party under this ARTICLE X, the indemnified Party shall,

within sixty (60) days after actual notice of such claim or demand, cause written notice thereof to be given to the indemnifying Party, provided that failure to notify the indemnifying Party shall not relieve the indemnifying Party from any liability which it may have to the indemnified Party under this ARTICLE X except to the extent that the rights of the indemnifying Party are in fact prejudiced by such failure. The indemnifying Party shall have the right, at its sole cost and expense, to participate in the defense of, any such claim or demand, and the Parties agree to cooperate fully with each other in connection with any such defense, such negotiation or claim settlement. In any event, the indemnified Party shall not make any settlement of any claims or demands which might give rise to liability on the part of the indemnifying Party under this ARTICLE X without either providing the indemnifying Party with a full release with respect to such liability or obtaining the prior written consent of the indemnifying Party, which consent shall not be unreasonably withheld, conditioned or delayed. If any claim or demand relates to a matter for which the Parties, under the terms of this ARTICLE X, are to share a Loss, each Party shall be entitled to select its own counsel and defend itself against the claim or demand at its sole cost and expense, and neither Party shall make any settlement of any such claim or demand without giving the other Party reasonable prior notice of the proposed settlement.

(h) Actions. In the event any lawsuit is commenced against either Party for or on account of any Loss for which the other Party may be solely or jointly liable under this Agreement, the Party thus sued shall give the other Party timely written notice that such action is pending, and thereupon the Party so notified may assume or join in the defense thereof. Neither Party shall be bound by any judgment against the other Party unless it shall have been so notified and shall have had reasonable opportunity to assume or join in the defense of the action. When so notified and the opportunity to assume or join in the defense of the action has been afforded, the Party so notified shall, to the extent of its liability under this Agreement, be bound by the final judgment of the court in such action.

**SECTION 10.03** Insurance Not Limit On Indemnification. In no event shall the indemnification provisions of this ARTICLE X be limited to the insurance coverage required under ARTICLE X.

**SECTION 10.04** No Delay Claims. Except as provided in SECTION 6.05, SECTION 6.06 or in instances of intentional or willful delays (in which case the Party asserting the claim shall have the burden of proof), neither Party shall have any claim against the other Party for interruption of or delay to such Party's business, and neither party shall have any claim against the other Party for loss of revenue or profit.

**SECTION 10.05** Survival. Each Party hereto covenants and agrees that its obligations under this ARTICLE X shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement or the satisfaction, discharge or termination of this Agreement in any matter whatsoever.

**SECTION 10.06** Claims. Notwithstanding Government Code Section 905(i) any claim arising out of this Agreement shall be subject to and governed by Government Code sections 900 et seq., commonly referred to as the Government Claims Act, provided that the

filing of a demand for arbitration pursuant to ARTICLE XIV shall satisfy any requirement to file suit within the time specified by the Government Claims Act.

## ARTICLE XI – INSURANCE

### SECTION 11.01 Insurance.

(a) NCRA shall, at its sole cost and expense, procure the following kinds of insurance for the term of this Agreement:

(i) Comprehensive Railroad Liability insurance including contractual liability providing bodily injury, including death, personal injury and property damage coverage with limits as follows: (1) as of the Effective Date, a combined single limit of at least one million dollars (\$1,000,000) for each incident and a general aggregate limit of at least two million dollars (\$2,000,000); (2) as of the commencement of NCRA Freight Service, a combined single limit of at least ten million dollars (\$10,000,000) for each incident and a general aggregate limit of at least ten million dollars (\$10,000,000); and (3) as of the commencement of NCRA Excursion Service, a combined single limit of at least fifty million dollars (\$50,000,000) for each incident and a general aggregate limit of at least fifty million dollars (\$50,000,000).

(ii) Workers' compensation coverage and employer's liability coverage, with a minimum limit of \$2 million each accident, with coverage for Federal Employer's Liability Act exposure, each with a waiver of subrogation endorsement;

(iii) During any time when NCRA is engaged in construction on the Shared Track or the Lombard Segment: (1) railroad protective liability insurance, with liability limits of \$2,000,000 per occurrence and \$6,000,000 aggregate; (2) builders risk insurance, excluding coverage for rail vehicles, with a direct damage limit of \$100,000,000, and earthquake and flood limits of \$50,000,000 each; (3) general liability insurance, with limits of \$2,000,000 per occurrence, and \$4,000,000 aggregate; and (4) excess liability insurance, with limits of \$75,000,000 in excess of the underlying limits general liability limits.

(iv) Provided that, if NCRA can reasonably demonstrate that the cost of its Comprehensive Railroad Liability insurance was higher than it would have been but for the presence of the Pathways, then SMART shall reimburse NCRA for the difference in cost.

(b) SMART shall, at its sole cost and expense, procure the following kinds of insurance for the term of this Agreement:

(i) Prior to commencement of operations: Comprehensive Railroad Liability insurance including contractual liability providing bodily injury, including death, personal injury and property damage coverage with limits as follows: (i) as of the commencement of SMART Commuter Operations, a combined single limit of at least one hundred million dollars (\$100,000,000) for each incident and a general aggregate limit of at least one hundred million dollars (\$100,000,000).

(ii) Effective on the date of the first Changeover Date and during any time when SMART is engaged in construction on the Shared Track: (1) railroad protective

liability insurance, with liability limits of \$2,000,000 per occurrence and \$6,000,000 aggregate; (2) builders risk insurance, excluding coverage for rail vehicles, with a direct damage limit of \$100,000,000, and earthquake and flood limits of \$50,000,000 each; (3) general liability insurance, with limits of \$2,000,000 per occurrence, and \$4,000,000 aggregate; (4) excess liability insurance, with limits of \$75,000,000 in excess of the underlying limits general liability limits; and (5) workers' compensation coverage, with a minimum limit of \$2 million each accident, with a waiver of subrogation endorsement. SMART shall have the option to obtain and maintain such insurance in an owner controlled insurance program, in accordance with California law.

(c) The limits in SECTION 11.01(a) and (b) shall be reviewed every five (5) years to ensure that such limits are in accordance with industry standards, provided that they shall not be lowered.

(d) This insurance shall contain Broad Form Liability covering the indemnity provisions contained in this Agreement, severability of interests and name the other Party as an additional insured with respect to liabilities arising out of the primary insured's obligations in this Agreement. If coverage is purchased on a "claims made" basis, it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked should insurance covering the time period of this Agreement be cancelled unless replaced with a policy containing the same retroactive date as the policy being replaced. NCRA may self-insure to \$1,000,000; SMART may self-insure to \$5,000,000.

(e) Upon the failure of either Party to maintain insurance as provided herein, the other Party shall have the right after giving ten (10) days written notice, to obtain insurance and receive prompt reimbursement.

(f) Both Parties represent and warrant to the other Party that this Agreement has been reviewed with its insurance agent(s)/broker(s) and the agent(s)/broker(s) has been instructed to procure the insurance coverage required herein and name the other Party as an additional insured.

(g) Each Party shall furnish to the other Party certificates of insurance evidencing the required coverage and endorsement(s) and upon written request shall provide certified duplicate copies of any policy. The insurance company(ies) issuing such policy(ies) to either Party shall notify the other Party in writing of any material alteration in any policy, including but not limited to any change in the retroactive date in any "claims made" policies or any reduction of aggregation limits, or cancellation thereof, at least thirty (30) days prior thereto.

(h) The insurance policy(ies) shall be written by an insurance company or companies with current Best's Insurance Guide Rating of A or better. Such insurance company shall be authorized to transact business in the State of California.

## ARTICLE XII – REPRESENTATIONS AND WARRANTIES

SECTION 12.01 SMART. SMART represents and warrants that:

(a) SMART has full power and authority to enter into this Agreement and, subject to necessary regulatory authority, to carry out its obligations hereunder.

(b) This Agreement has been duly authorized, executed and delivered by SMART and is a legal, valid and binding obligation of SMART, enforceable against SMART in accordance with its terms, including without limitation the terms of SECTION 15.03, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law). Neither the execution and delivery of this Agreement by SMART, the consummation by SMART of the transactions contemplated hereby, nor compliance or performance by SMART with any of the provisions hereof does or will violate any judgment, order, law, rule or regulation applicable to SMART or any provisions of the JPA Agreement or SMART's by-laws or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of SMART (other than the encumbrances on the Subject Segments created by this Agreement).

**SECTION 12.02 NCRA.** NCRA represents and warrants that:

(a) NCRA has full power and authority to enter into this Agreement and to carry out its obligations hereunder.

(b) This Agreement has been duly authorized, executed and delivered by NCRA and is a legal, valid and binding obligation of NCRA, enforceable against NCRA in accordance with its terms, including without limitation the terms of SECTION 15.03, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law). Neither the execution and delivery of this Agreement by NCRA, the consummation by NCRA of the transactions contemplated hereby, nor compliance or performance by NCRA with any of the provisions hereof does or will violate any judgment, order, law, rule or regulation applicable to NCRA or any provisions of NCRA's certificate of incorporation or by-laws or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of NCRA (other than the encumbrances on the Subject Segments created by this Agreement).

**ARTICLE XIII – COORDINATION COMMITTEE**

SMART's General Manager and NCRA's Executive Director shall establish a Coordination Committee consisting of not more than two (2) representatives of each Party. NCRA may select representatives from the Operator. SMART may select representatives from its operator, if any. The Coordination Committee shall provide the functions set forth for it in SECTION 5.03, SECTION 6.05 and SECTION 6.06 and shall be a forum for the Parties to share information, discuss matters submitted by one Party to the other Party for review and/or approval, and seek resolution of any issues between the Parties with respect to this Agreement. The Coordination Committee shall meet regularly (in person or telephonically) and also as necessary to address issues between the Parties that require prompt resolution.

## ARTICLE XIV – ARBITRATION

**SECTION 14.01** Controversies Subject to Arbitration. The Parties hereby agree that any failure to pay money when due under the Agreement, any failure to maintain insurance as required under this Agreement, and any disputes arising under SECTION 5.01 or SECTION 16.09 are not subject to arbitration. Otherwise, any and all claims, disputes or controversies between SMART and NCRA arising out of or concerning the interpretation, application, or implementation of this Agreement that cannot be resolved by the Parties through the Coordination Committee or by negotiations shall be submitted (subject to SECTION 14.02) to binding arbitration administered by the American Arbitration Association (“AAA”) under its Commercial Arbitration Rules. If the AAA discontinues promulgation of the Commercial Arbitration Rules, the Parties shall use the AAA’s designated successor rules, and if the AAA does not designate successor rules, the Parties shall agree on other rules. The judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

**SECTION 14.02** Controversies Subject to “Baseball” Style Arbitration.

(a) Any and all claims, disputes or controversies between SMART and NCRA regarding the number of turn-outs on the portion of the Shared Track north of Santa Rosa Railroad Square (MP 53.8)(or any portion thereof) shall be determined by the arbitrator picking, between the list submitted by NCRA and the list submitted by SMART, which Party’s list comes closest the standard set forth in the applicable paragraph of Exhibit 3. The arbitrator shall not be authorized to award a composite or blend of the two lists. The judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(b) Any and all claims, disputes or controversies between SMART and NCRA regarding the amount NCRA shall pay SMART for dispatching services after commencement of SMART Trains pursuant to SECTION 9.01 shall be determined by the arbitrator picking, between the amount submitted by NCRA and the amount submitted by SMART, which Party’s amount is most reasonable. The arbitrator shall not be authorized to award a composite or blend of the two amounts. The judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

**SECTION 14.03** Expedited Arbitration Schedule. The Parties hereby agree that the expedited arbitration procedures set forth in the AAA Commercial Arbitration Rules, Optional Rules for Emergency Measures of Protection, shall apply to any disputes arising under ARTICLE IV, ARTICLE VI or SECTION 7.07 and accordingly the Party applying to the AAA for such emergency relief pursuant to this SECTION shall not be required to set forth in its application the reasons why the Party is entitled to such relief or the reasons why such relief is required on an emergency basis.

**SECTION 14.04** Pending Resolution. During such arbitration proceedings, the business and the operations to be conducted under this Agreement, to the extent that they are the subject of such controversy, shall continue to be transacted, used and paid in the manner and form existing prior to the arising of such controversy, unless the arbitrator shall make a preliminary ruling to the contrary.

**SECTION 14.05 Party Expenses.** Except as otherwise set forth in this SECTION, attorneys' fees, costs and expenses incurred by the Parties in connection with such arbitration shall be apportioned as set forth in the AAA Commercial Arbitration Rules. Any administrative fees imposed by the AAA, including but not limited to the initial filing fee, case service fee, proceed fee, and final fee, shall be apportioned evenly between the Parties. The arbitrator shall have the power to award attorneys' fees and costs to either Party if the arbitrator determines in its reasonable discretion that the position of the other Party to the arbitration was frivolous or otherwise an abuse of the arbitration process.

## **ARTICLE XV – TERM AND TERMINATION**

**SECTION 15.01 Term.** This Agreement shall have a term of forty (40) years and shall automatically renew for three successive terms of ten (10) years each, unless either Party gives notice (at least six [6] months before expiration of the then current term) of its intention to not renew.

**SECTION 15.02 Default.** An "Event of Default" by either Party shall have occurred if any of the following shall occur:

(a) if either Party fails to pay an amount of money due under this Agreement in excess of \$5,000 and such failure continues thirty (30) days after written notice from the other Party of such failure.

(b) if either Party fails to meet its insurance obligations under this Agreement.

(c) for other obligations not subject to arbitration, if either Party fails to meet any such obligation and such failure continues ninety (90) days after written notice from the other Party of such failure.

(d) for obligations subject to arbitration, if an arbitrator finds that either Party has failed to meet any material obligation under this Agreement.

**SECTION 15.03 Remedies Upon Event of Default.** If a Party causes an Event of Default to occur (the "Defaulting Party"), the other Party may, at its option:

(a) proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by the Defaulting Party of the applicable provisions of this Agreement, to enforce the award of an arbitrator and/or to recover damages (together with attorneys' fees and such Party's other costs) for a breach thereof, or to seek other remedies, which may include, but are not limited to:

(i) for default under Section 15.02(a), monetary damages;

(ii) for default under Section 15.02(b), injunctive relief suspending operations of the Defaulting Party until such time as the default is cured and appropriate measures are taken to ensure that future defaults will not occur;

- (iii) for default under Section 15.02(c), injunctive relief or monetary damages;
- (iv) for cessation of all NCRA Freight Service or of all SMART Commuter Operations lasting more than 24 months where the party who has ceased such operations cannot reasonably demonstrate that such operations will recommence within 36 months, or for sustained or persistent Events of Default, termination of this Agreement; provided that in the case of such cessation of NCRA Freight Service or SMART Commuter Operations, the 24 month period shall be tolled for a maximum of 12 months if the party that has ceased such operations is prevented from re-starting such operations by the existence of an injunction. In the event of termination, the non-Defaulting Party shall continue to operate under its easement rights substantially as contemplated by this Agreement as if it were in effect and the Defaulting Party shall have no right to operate but shall maintain its statutory and easement rights. Nothing in this Agreement shall be construed as a forfeiture of the property easement rights held by either party, which are described in the Recitals. In the event the Defaulting Party is NCRA, NCRA shall take all actions necessary and expedient before the STB to secure abandonment and/or discontinuance of service authority on behalf of NCRA and the Operator.

(b) cure the default by making any such payment or performing any such obligation, as applicable, at the Defaulting Party's sole expense, without waiving or releasing the Defaulting Party from any obligation.

(c) The foregoing rights and remedies are and shall be deemed to be cumulative and the exercise of any of them shall not be deemed to be an election excluding the exercise at any time of a different or inconsistent remedy.

(d) Any waiver by either Party of any Event or Default under this Agreement or any delay of either Party in enforcing any remedy set forth herein shall not constitute a waiver of the right to pursue any remedy at a later date or terminate this Agreement for any subsequent Event or Default, nor shall any such waiver in any way affect either Party's right to enforce the Agreement.

(e) The Operator may, in its sole discretion, perform any of the obligations imposed upon NCRA hereunder and cure any default on behalf of NCRA and such performance or cure shall have the same effect as if it had been performed or cured by NCRA; however, nothing in this subsection shall reduce or relieve NCRA of any rights or obligations under this Agreement.

## ARTICLE XVI- MISCELLANEOUS TERMS

### SECTION 16.01 Reports, Records and Inspections.

(a) FRA and CPUC Reports. The Party responsible for maintenance on a particular segment of Track shall provide a copy of all reports (including) all notices or citations alleging deficiencies from FRA track standards of track inspections by FRA or California Public Utilities Commission inspectors on such segment to the other Party promptly upon receipt of such reports, but in no case more than ten (10) business days after receipt.

(b) Records. Each Party shall maintain full and complete records of all maintenance, rehabilitation, track relocation or removal performed on the Subject Segments and shall keep all track profiles and track charts up to date so as to show all program maintenance and rehabilitation performed on the Track. Copies of updated records and track charts on the Subject Segments shall be provided by each Party to the other Party promptly upon request.

(c) Inspections. Each Party shall have the right at any time, upon reasonable notice (except for emergencies, where no notice is required) to inspect the Track then maintained by the other Party for conformity with the standards of maintenance contained in this Agreement and to verify compliance with this Agreement; provided that such inspections shall not unreasonably interfere with the other Party's operations; that all persons conducting such inspections shall execute appropriate releases and indemnity acknowledgements; and that the other Party may accompany the inspecting Party during such inspections. Each Party shall be notified by the other of, and have the right to attend, any FRA or CPUC inspection of any Track on the Subject Segments

(d) Inspection of Records. Each Party shall have the right at any time upon reasonable notice to inspect the other Party's books, records, or any other reports or supporting documents or materials necessary to determine compliance with any provisions of this Agreement. The inspecting Party will conduct inspections during normal business hours and the other Party shall make its facilities available to the inspecting Party's inspectors to permit such inspection without undue interference with the other Party's operations. Any direct expense arising from making the inspection shall be borne by the inspecting Party.

**SECTION 16.02 Billing and Payment.** Invoices submitted to the Parties under this Agreement ("Invoices") must be itemized with a detailed description of the charges. Invoices shall be paid within thirty (30) days after receipt thereof by the payor. If a Party disputes any items on an Invoice, that party may not deduct the disputed item from the payment, but shall notify the payee of the disputed item and the Parties shall use best efforts to resolve the disputed items within thirty (30) days after receipt of the disputed payment. No Invoice shall be submitted later than one hundred twenty (120) days after the last day of the calendar month in which the expense or cost covered thereby is incurred.

**SECTION 16.03 Employee Matters.** The Parties agree that the employees of each Party are not the employees of the other Party. Each Party assumes exclusive responsibility for compliance with all employment laws and regulations applicable to its operations, as well as the

terms of any collective bargaining agreements to which each Party may, from time to time, be a party. During the term of and following termination of this Agreement, each Party shall bear any and all costs of protection of its current or future employees, arising from any labor protective conditions imposed on such Party by the STB or any other regulatory agency or statute as a result of such Party's use, operation or maintenance of the Subject Segments and any related agreements or arrangements, including collective bargaining agreements, or arising as a result of the termination of this Agreement. Nothing contained herein is intended to be for the benefit of any such employee nor should any employee be considered a third party beneficiary hereunder.

**SECTION 16.04 Offers of Financial Assistance.** If either NCRA or the Operator elect to abandon/discontinue common carrier operations on all or any portion of the Healdsburg Segment or the Lombard Segment and SMART or a party designated by SMART files an offer of financial assistance under 49 U.S.C. § 10904, NCRA shall agree to negotiate with SMART or SMART's designee regardless of whether another party files such an offer.

**SECTION 16.05 Compliance with Laws.** During the term of the Agreement, each Party shall comply with all Applicable Laws on the Subject Segments, including but not limited to those controlling air, water, noise, hazardous waste, solid waste, and other pollution, or relating to the use, generation, storage, transport, release, or disposal of Hazardous Materials.

**SECTION 16.06 Entire Agreement; Effect of Prior Agreements.** It is the intention of the Parties that this Agreement shall govern use of their respective rights under their respective easements. This Agreement contains the entire agreement between the Parties, and supersedes all other prior oral or written agreements, commitments, or understanding with respect to the matters provided herein as of the Execution Date, including but not limited to the Operating Agreement 1996, the Cooperative Agreement and the Principles Agreement. (For the avoidance of doubt, the Parties intend by the prior sentence to terminate, annul, replace and make void all of the terms of all prior agreements including any terms that purport to survive termination.) The Parties hereby waive all claims of any kind or character arising out of or under or during the pendency of any of the prior agreements, including without limitation, claims which but for this sentence would survive under California Code Section 1542. THE PARTIES INTEND THIS WAIVER TO COVER ANY CLAIMS THEY DO NOT KNOW OF AGAINST EACH OTHER. For the avoidance of doubt, as of the execution of this Agreement, the Parties have no claims against each other. Notwithstanding the foregoing, at the time of executing this agreement, the parties have not yet resolved and finalized the reconveyance of a deed of trust, to NCRA, encumbering certain property located in Mendocino County commonly referred to as the Ukiah Depot Property. A promissory note executed by NCRA in favor of SMART's predecessor, NPWRA, has been cancelled by SMART, but the reconveyance of the deed of trust has not occurred. Accordingly, this section is not intended to release any obligations SMART may have in regard to effectuating the reconveyance of the deed of trust. No modification of this Agreement shall be binding upon the Party affected unless set forth in writing and duly executed by the Party to be charged; provided that nothing in this agreement shall affect the rights and obligations of the Parties under the Operating Agreement 1996 with respect to matters arising prior to the Effective Date of this Agreement.

**SECTION 16.07 Notices.** All notices, demands, requests, or other communications which may be or are required to be given, served or sent by either Party to the other pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or sent:

(a) If intended for SMART, by mailing by registered or certified mail, return receipt requested, with postage prepaid, or by national overnight delivery service, prepaid, addressed to SMART at:

SMART District Office  
750 Lindaro Street, Suite 200  
San Rafael, CA 94901  
Attention: General Manager

with a copy to:

Office of Sonoma County Counsel  
575 Administration Drive  
Room 105  
Santa Rosa, CA 95403  
Attention: County Counsel

(b) If intended for NCRA, by mailing by registered or certified mail, return receipt requested, with postage prepaid, or by national overnight delivery service, prepaid, addressed to NCRA at:

North Coast Rail Authority  
419 Talmage Road, Suite M  
Ukiah, CA 95482  
Attention: Executive Director

with a copy to:

Christopher J. Neary, Esq.  
110 S. Main Street, Suite C  
Willits, California 95490

And to:

The Northwestern Pacific Railroad Company  
250 Cambridge Avenue, Suite 104  
Palo Alto, CA 94306-1554

Each notice, demand, request or communication which shall be mailed by registered or certified mail to either Party in the manner aforesaid shall be deemed sufficiently given, served or sent for all purposes at the time such notice, demand, request, or communication shall be either received by the addressee or refused by the addressee upon presentation. Either Party may change the name of the recipient of any notice, or his or her address, at any time by complying with the foregoing procedure.

**SECTION 16.08** Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of SMART and NCRA, and shall be binding upon the successors and assigns of SMART and NCRA, subject to the limitations hereinafter set forth. NCRA may not assign its rights under this Agreement or any interest therein, attempt to have any other person assume its obligations under this Agreement, or permit the Operator to assign its lease of NCRA's ownership or operating easement on the Subject Segments without the prior written consent of SMART, which consent may not be unreasonably withheld or delayed. SMART may not assign its rights under this Agreement or any interest therein, attempt to have any other person assume its obligations under this Agreement, or permit any operator to assign its rights of the Subject Segments without the prior written consent of NCRA, which consent may not be unreasonably withheld or delayed. NCRA may not change the Operator or change/engage a contract operator of NCRA Passenger Excursion Service without the prior written consent of SMART, which consent shall not be unreasonably withheld, conditioned or delayed. SMART may not change/engage a contract operator of SMART Ancillary Passenger Service without the prior written consent of NCRA, which consent shall not be unreasonably withheld, conditioned or delayed. Prior to a proposed change in the Operator, NCRA shall secure any necessary approvals from the STB and such other regulatory approvals as may be then required.

**SECTION 16.09** Severability. If fulfillment of any provision hereof or any transaction related hereto shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate 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.

**SECTION 16.10** Headings: Interpretation. The section and subsection headings in this Agreement are for convenience only and shall not be used in its interpretation or considered part of this Agreement. With respect to interpretation of this Agreement and resolution of any ambiguities, neither Party shall be deemed to be the drafter of the Agreement.

**SECTION 16.11** Waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

**SECTION 16.12** Counterparts. This Agreement may be executed in counterparts both of which, when executed and delivered, shall be deemed to be an original and both counterparts taken together shall constitute but one and the same instrument.

**SECTION 16.13** Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

**SECTION 16.14** Agreement Runs With Land; Recordation. This Agreement shall run with the land, except that any parcel transferred by a Party to an unaffiliated person or entity for purposes other than rail operations or trail use that does not contain any facilities used in

connection with the rail operations of the other Party, shall be deemed removed from the property as applicable. This Agreement may be recorded.

**SECTION 16.15** Not for the Benefit of Others. This Agreement and each and every provision herein is for the exclusive benefit of the Parties hereto and not for the benefit of any third party. Nothing herein shall be construed to create or increase any right in any third party to recover by way of damages or otherwise against either of the Parties hereto. Notwithstanding the fact that it has certain direct obligations under this Agreement, NWPCo is not a party to this Agreement and this Agreement shall not be construed to create or increase any right in NWPCo to recover by way of damages or otherwise against either of the Parties hereto.

**SECTION 16.16** Survival. The Parties agree that their respective rights, duties and obligations under any provision which by its terms imposes an obligation on either Party that is continuing in nature shall survive the expiration or termination of this Agreement.

**SECTION 16.17** Force Majeure. Neither Party shall be liable to the other in damages nor shall a default be deemed to have occurred, and each Party shall be excused from performance of any of its obligations hereunder, except obligations involving the payment hereunder of money to the other Party or to a third Party, during the time when such non-performance is occasioned by fire, earthquake, flood, explosion, wreck, casualty, strike, riot, insurrection, civil disturbance, act of public enemy, embargo, war, act of God; provided, that if either Party suffers a work stoppage due to a labor dispute, such Party shall make such reasonable efforts to staff its operations so as to minimize disruptions.

**SECTION 16.18** Participation In Proceedings. If either Party asks the other Party in writing to participate in regulatory proceedings or public hearings of any kind concerning the first Party, the first Party shall reimburse the other Party for the reasonable expenses incurred (including without limitation attorneys' fees) as a result of such participation. Absent such a written request, neither Party shall have an obligation to participate in any such regulatory proceedings or public hearings.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate as of the day and year first herein written.

**SONOMA-MARIN AREA RAIL  
TRANSIT DISTRICT**

By: *Debbie Brown*

Title: Board Chair

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

Title: \_\_\_\_\_

Approved as to form:

*Regina D. Dean*

**NORTH COAST RAILROAD  
AUTHORITY**

By: *Mitch Stog*

Title: Exec. Dir.

By: *H.C. Wagner*

Title: CHAIR

Approved as to form:

*[Signature]*

**EXHIBIT 1 – CERTAIN DEFINITIONS & CROSS-REFERENCES TO TERMS  
DEFINED IN THE AGREEMENT**

“Agreement” shall mean this Operating & Coordination Agreement.

“Applicable Laws” shall mean all federal, state, and local laws, rules, regulations, directives, orders and judgments applicable to the Subject Segments, regardless of scope.

“Changes and/or Additions” shall mean any material improvements (including Pathways) to the Subject Segments constructed after the Execution Date (including but not limited to material additions, betterments and capital projects, for railroad highway grade crossing separations, quiet zones, CTC Signal Systems), and any construction, reconstruction, alteration and modification thereto, and any retirements therefrom, but excluding ordinary maintenance and repair.

“Changeover Date” shall have the meaning set forth in SECTION 4.04.

“Cooperative Agreement” shall mean the Agreement dated April 30, 1996 by and between NWPRA and NCRA.

“CPUC” shall mean California Public Utility Commission or any successor agency.

“CTC Signal Systems” shall mean any signal systems with a bi-directional block signal system under which train movements are authorized by block signal indications with the absolute signals and power switches controlled by the dispatcher from a remote console (including the wayside block signals, power operated switch machines, electronic coded track circuits, relays, and underground cable), including such systems with positive train control.

“Dispatching” shall have the meaning set forth in 49 C.F.R. § 241.5.

“Event of Default” shall have the meaning set forth in SECTION 15.02.

“Execution Date” shall mean the date of execution of this Agreement, as set forth on the first page hereof.

“Final Plans” shall mean design plans for all Changes and/or Additions at the one hundred percent (100%) completion stage, covering all signals and signaling systems.

“FRA” shall mean the Federal Railroad Administration of the United States Department of Transportation or any successor agency.

“Hazardous Materials” shall mean:

- (i) Any substances defined, regulated or listed (directly or by reference) as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic waste,” “pollutant” or “toxic substances” or similarly identified as hazardous to human health or the environment, in or pursuant to:

(A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq.;

(B) the Hazardous Materials Transportation Act, 49 U.S.C. §1802, et seq.;

(C) the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.;

(D) the Clean Water Act, 33 U.S.C. §1251 et seq.;

(E) California Health and Safety Code §§25115-25117, 25249.5, 25249.8, 25281, and 25316;

(F) the Clean Air Act, 42 U.S.C. §7901 et seq.; and

(G) California Water Code §13050;

(ii) any amendments to such enumerated statutes or acts; and

(iii) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated as of the Closing Date under any other applicable federal, state or local environmental laws, including, without limitation, friable asbestos, polychlorinated biphenyls, petroleum (or any fraction thereof), natural gas and synthetic fuel products and byproducts.

“Healdsburg Segment” shall mean that portion of the Northwestern Pacific Railroad Right-of-Way as particularly defined in the JPA Agreement, generally extending from NWP MP 68.22 near Healdsburg, CA to NWP MP 26.96 near Novato, CA, a distance of approximately 41.2 miles; and between MP 26.96 in Novato and MP 25.57 at Ignacio, together with all Track located thereon, except for Industrial Track or stations, track and other facilities constructed exclusively for SMART Commuter Operations.

“Industrial Track” shall have the meaning set forth in SECTION 2.02.

“Initial Design Plans” shall mean all Changes and/or Additions to be constructed on the Shared Track (or any portion thereof) prior to the initiation of SMART Commuter Train Service.

“Invoices” shall have the meaning set forth in SECTION 16.02.

“JPA Agreement” shall mean the Agreement dated May 24, 1995 by and between the Golden Gate Bridge, Highway and Transportation District, the County of Marin, and NCRA.

“Lombard Segment” shall mean that portion of the Northwestern Pacific Railroad Right-of-Way as particularly defined in the JPA Agreement, generally extending from NWP MP 25.6 near Ignacio, CA to Brazos Junction Station in Napa County, CA, at the former Southern Pacific Transportation Company MP 63.4, a distance of approximately 25.3 miles, together with all Track located thereon, except for Industrial Track or stations, track and other facilities constructed exclusively for SMART Commuter Operations.

"Loss" or "Losses" shall mean orders, directives, judgments, causes of action, penalties, fees, claims, costs, liabilities, damages, and expenses (including without limitation court costs and attorneys' fees and all costs of investigating, remediating, or responding to the existence of a claim) of whatsoever nature or source.

"Material Modifications" shall mean a change order issued by the Constructing Party to the approved Final Plans that, in the Constructing Party's reasonable judgment, is material to the overall design and construction of the Changes and/or Additions.

"NCRA" shall mean the North Coast Railroad Authority.

"NCRA Freight Service" shall mean the freight service conducted pursuant to NCRA's perpetual and exclusive easement over the Healdsburg and Lombard Segments and the freight service conducted on the Willits Segment.

"NCRA Passenger Excursion Service" shall have the meaning set forth in SECTION 2.01

"NWPRRA" shall mean the Northwestern Pacific Railroad Authority.

"NWPCo" shall mean Northwestern Pacific Railroad Company), a California corporation.

"Operating Agreement 1996" shall mean the Agreement dated August 19, 1996, by and between NWPRRA and NCRA.

"Operator" shall have the meaning set forth in ARTICLE III.

"Party" or "Parties" shall mean SMART and NCRA or one of them.

"Pathway(s)" shall mean ancillary bicycle and pedestrian pathways on the Shared Track.

"Principles Agreement" shall mean the Agreement dated April 30, 1996 by and between NWPRRA and NCRA.

"Shared Track" shall mean and include the Healdsburg Segment and that portion of the Willits Segment from Healdsburg to Cloverdale (MP 85.35), and as modified as provided in SECTION 7.01.

"SMART" shall mean the Sonoma-Marín Area Rail Transit District.

"SMART Ancillary Passenger Service" shall mean any SMART passenger service (e.g., intercity or excursion passenger service) other than SMART Commuter Operations.

"SMART Commuter Operations" shall mean regularly scheduled passenger service.

"STB" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

"Subject Segments" shall mean the Lombard Segment, the Healdsburg Segment and the Willits Segment, collectively, and shall not include Industrial Track.

"Track" shall mean and include all rail and fastenings, switches and frogs complete, ties, ballast and signals and all appurtenances thereto, including without limitation bumpers, roadbed, embankment, bridges, trestles, tunnels, culverts and any other structures or things necessary for support or construction thereof, and, if any portion thereof is located in a thoroughfare, pavement, any crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing material at vehicular crossings of tracks, culverts, drainage facilities, and crossing warning devices.

"Willits Segment" shall mean that portion of the Northwestern Pacific Railroad Right-of-Way as particularly defined in the JPA Agreement, generally extending from NWP MP 142.5 near Outlet Station to NWP MP 68.22 near Healdsburg, CA, a distance of approximately 74.3 miles, together with all Track located thereon, except for Industrial Track or track and facilities constructed exclusively for SMART Commuter Operations.

**EXHIBIT 2 – PASSENGER WINDOWS EXAMPLE**

<b>Station (Milepost)</b>	<b>AM</b>	<b>PM</b>
Cloverdale (84.7) - Healdsburg (68.0)	6:15 – 7:43*	17:34 – 19:02*
Healdsburg (68.0) – Guerneville Road (55.4)	5:40 – 8:59	16:24 – 19:58
Santa Rosa (53.8) – Petaluma (38.5)	4:42 – 10:00	15:12 - 20:35
Petaluma (38.5) – Ignacio North (25.8) vs (25.57)?	5:16 – 9:31	15:46 – 20:01

Assumes pro-forma passenger timetable of 6-30-10, and ten-minute clearance time by freight trains in advance of scheduled passenger movements.

\*In the Cloverdale-Healdsburg segment, freight trains may have access to the mainline during the morning passenger window after passage of the southbound 7:25 AM train from Cloverdale (#113), and during the afternoon passenger window after passage of the northbound 18:44 PM train (#124) from Healdsburg.

During passenger-only windows, where gaps of more than ten minutes may exist between successive passage of passenger trains, and where feasible operationally, short freight movements may be permitted on or across the mainline at the discretion of the SMART dispatcher.

During the midday, at night, and on weekends and holidays, no passenger-only windows are considered necessary under the current operating concept. Passenger and freight trains will be dispatched by SMART with the objective of minimizing or eliminating delays to either passenger or freight trains.

### EXHIBIT 3 – SIDING/SPUR CONNECTION PROVISIONS

For the portion of the Shared Track between the Ignacio Wye (MP 25.57) and Santa Rosa Railroad Square (MP 53.8) (or any portion thereof):

1. SMART shall pay the Incremental Cost (as defined below) of a turn-out at the following locations (MPs are approximate):
  - Burdell South (MP 30.5)
  - Burdell North (MP 31.7)
  - Park South (MP 39.2)
  - Park North (MP 39.7)
2. In addition, SMART shall pay the Incremental Cost (as defined below) of a turn-out where NCRA can reasonably demonstrate, on or before January 31, 2014, the presence of a bona fide freight rail customer that requires service from a location requiring such a turn-out (i.e., service from the line where the turn-out would be installed).
3. The foregoing obligation is subject to an absolute maximum of 12 turn-outs.
4. "Incremental Cost" means any cost that would not be required if there were no SMART Commuter Operations.
5. Parties other than SMART shall pay (i) the difference between full cost and Incremental Cost on all tie-ins where SMART is responsible for Incremental Cost (as described above) and (ii) the full cost (including for the more expensive turn-out and for signal system tie-in) of any additional turn-outs regardless of whether such cost includes elements that would not be required if there were no SMART Commuter Operations.
6. To the extent NCRA's commencement of NCRA Freight Service is delayed solely as a result of an injunction, the date set forth above (January 31, 2014) shall be extended; provided that the extension is subject to an absolute maximum of one year.

For the portion of the Shared Track north of Santa Rosa Railroad Square (MP 53.8)(or any portion thereof):

7. SMART shall pay the Incremental Cost (as defined above) of a turn-out where NCRA has a bona fide freight rail customer receiving service by such turn-out on the date that SMART issues for review thirty percent (30%) plans pursuant to SECTION 6.02. Any dispute about the number of such turn-outs shall be submitted to "baseball-style" arbitration pursuant to SECTION 14.02(a).
8. Parties other than SMART shall pay the full cost (including for the more expensive turn-out and for signal system tie-in) of any additional turn-outs, including for any freight rail customers identified after SMART issues for review thirty percent (30%) plans pursuant

to SECTION 6.02 and regardless of whether such cost includes elements that would not be required if there were no SMART Commuter Operations.

**EXHIBIT 4 – LIST OF CERTAIN NCRA GRANT AGREEMENTS**

**[NCRA List provided 6/2/11; SMART needs to review agreements]**

## EXHIBIT 5 – CERTAIN RESERVED RIGHTS

SMART reserves all of the following reservations made by NWPRA in the Operating Agreement 1996 with respect to the Lombard and Healdsburg Segments:

- Reservations or exceptions of minerals or mineral rights, and all private and public easements and rights-of-way, however created, for crossings, pipelines, wirelines, fiber optic facilities, roads, streets, highways and other legal purposes;
- Existing and future building, zoning, subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations;
- Encroachments or other conditions that may be revealed by a survey, title search or inspection;
- All existing ways, alleys, privileges, rights, appurtenances and servitudes, however created, liens of mortgage or deeds of trust, and
- The exclusive right to approve or deny any and all future easements, leases, licenses or rights of occupancy in, on, under, through, above, across or along the Healdsburg and Lombard Segments, or any portion thereof, so long as such future easements, leases, licenses or rights of occupancy do not unreasonably interfere with NCRA's rail operations.

NCRA shall not make any use of the Healdsburg and Lombard Segments which is inconsistent with SMART's right, title and interest therein and which may cause the right to use and occupy the Healdsburg and Lombard Segments to revert to any party other than SMART.

NCRA reserves all of the following reservations with respect to the Willits Segment:

- Reservations or exceptions of minerals or mineral rights, and all private and public easements and rights-of-way, however created, for crossings, pipelines, wirelines, fiber optic facilities, roads, streets, highways and other legal purposes;
- Existing and future building, zoning, subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations;
- Encroachments or other conditions that may be revealed by a survey, title search or inspection;
- All existing ways, alleys, privileges, rights, appurtenances and servitudes, however created, liens of mortgage or deeds of trust, and
- The exclusive right to approve or deny any and all future easements, leases, licenses or rights of occupancy in, on, under, through, above, across or along the

Willits Segment, or any portion thereof, so long as such future easements, leases, licenses or rights of occupancy do not unreasonably interfere with SMART Commuter Operations.

- SMART shall not make any use of the Willits Segment which is inconsistent with NCRA's right, title and interest therein and which may cause the right to use and occupy the Willits Segment to revert to any party other than NCRA.

**EXHIBIT 6 – MAINTENANCE CHARGES**

Charge per car mile for cars (loaded or empty) weighing  
less than or equal to 263,000 pounds .....\$0.55

Charge per car mile for cars (loaded) weighing  
more than 263,000 pounds .....\$0.65

Charge per month for maintenance of  
freight-only turns-outs .....\$200 per freight turn-out