



**BOARD OF DIRECTORS
REGULAR MEETING AGENDA
March 6, 2019 – 1:30 PM**

5401 Old Redwood Highway, 1st Floor
Petaluma, CA 94954

1. Call to Order
2. Approval of the February 20, 2019 Board Meeting Minutes
3. Public Comment on Non-agenda Items
4. Board Member Announcements
5. General Manager's Report
6. Consent
 - a. Approval of Empire Cleaners Contract Amendment No. 2
 - b. Approval of Intelligent Technology Solutions, LLC. Contract Amendment No. 4
 - c. Approve a Resolution for Designation of SMART Authorized Agents and Other Required Documents for State Low Carbon and Transit Operating Program Funds
7. Adopt and Support Assembly Bill 147 (Burke/McGuire) regarding collection of use taxes and retailers and marketplace facilitators engaged in business in California
8. Authorize the General Manager to Enter into Purchase Agreements for one used Hyrail Excavator and two used Ballast Cars up Utilizing a Competitive Negotiation Process in an amount not to exceed \$300,000
9. Closed Session
 - a. Conference with General Manager, Farhad Mansourian, pursuant to Government Code Section 54956.8 regarding real estate property negotiations.
Property: Sonoma-Marin Area Rail Transit District
Property Address: Right-of-Way (MP 14.9-68 and MP B25.8-B49.8)
Negotiating Parties: Farhad Mansourian - Sonic

- b. Conference with Labor Negotiator, Farhad Mansourian, General Manager pursuant to Government Code Section 54957.6
Agency Designated Representative: General Manager
Represented Employees: SMART Engineer Conductors Association (SECA), IAMAW Local Lodge No. 1414 and Teamsters Local 665; and Unrepresented Employees

11. Report Out of Closed Session

12. Next Regular Meeting Board of Directors, March 20, 2019 – 1:30 PM – 5401 Old Redwood Highway, 1st Floor, Petaluma, CA 94954

13. Adjournment

DISABLED ACCOMMODATION: If you have a disability that requires the agenda materials to be in an alternate format or that requires an interpreter or other person to assist you while attending this meeting, please contact SMART at least 72 hours prior to the meeting to ensure arrangements for accommodation. Please contact the Clerk of the Board at (707) 794-3072 or dial CRS 711 for more information.

DOCUMENTS: Documents distributed by SMART for its monthly Board meeting or committee meetings, and which are not otherwise privileged, may be inspected at SMART's office located at 5401 Old Redwood Highway, Suite 200, Petaluma, CA 94954 during regular business hours. Documents may also be viewed on SMART's website at: www.sonomamarintrain.org. Materials related to an item on this Agenda submitted to SMART after distribution of the agenda packet are available for public inspection at the SMART Office. For information about accessing SMART meetings by public transit, use the trip planner at www.511



**BOARD OF DIRECTORS
REGULAR MEETING MINUTES**

February 20, 2019 - 1:30 PM

5401 Old Redwood Highway, 1st Floor
Petaluma, CA 94954

1. Call to Order

Chair Phillips called the meeting to order at 1:30pm. Directors Arnold, Fudge, Lucan, Naujokas, Pahre, Rabbitt, Rogers and Zane were present. Directors Connolly and Hillmer arrived later.

2. Approval of the February 6, 2019 Board Minutes

MOTION: Director Rabbitt moved approval of the February 6, 2019 Board Minutes as presented. Director Lucan second. The motion carried 9-0-0 (Directors Connolly and Hillmer arrived later).

3. Public Comment

None

4. Board Members Announcements

Director Arnold introduced her husband Bruce Arnold who was in attendance at the meeting.

Director Rabbitt thanked the General Manager Mansourian who worked all weekend to resolve the closure of Highway 37 due to recent Novato Creek Washout.

Director Fudge said that SMART was notified of the recent passing of Greg Dion. Mr. Dion was SMART's former attorney consultant and requested the meeting be adjourned in his memory.

Director Hillmer arrived 1:33PM

Director Zane stated that she worked on various project with former County Counsel Deputy Dion at the County of Sonoma. He was an attorney consultant for SMART for approximately 5-years.

5. General Manager's Report

General Manager Mansourian provided his written report.

He announced SMART's has carried 1,052,372 passengers and 97,000 bicycles. The next celebration will be when SMART reaches 100,000 bicycles.

He stated that the most recent storm caused the Highway 37 to close due to the Novato Creek Washout. On February 15, 2019, SMART coordinated a field meeting with all affected stakeholders, which included; Marin County Public Works, Marin County Flood Control, City of Novato Public Works Department, City of Novato Police Department, Caltrans, NWPCo and Doug Bosco to design a solution. Also, Directors Arnold and Rabbitt were involved in the various meetings and conference calls that occurred over the weekend.

He introduced Chief Engineer, Bill Gamlen, who gave a brief PowerPoint presentation of the Novato Creek Washout, near Highway 37 area. Mr. Gamlen stated that the work started on Friday night through Monday morning. He mentioned that the following steps will take place: 1) repair railroad embankment and levee; 2) rebuilt track; 3) restore site; and 4) monitor the area through the rest of the Winter.

General Manager Mansourian stated that Senator McGuire requested a meeting on Friday evening and at that meeting, SMART agreed to contribute \$100,000 toward the work that was performed.

Director Connolly arrived 1:43pm

Director Arnold stated that the meeting on Friday night there were approximately 30 people in the room from various agencies to discuss solutions for the washout.

Director Rabbitt stated he has been involved with the State Route 37 Working Group for the last three years. Two years ago, this section of the highway was flooded and closed for approximately 27 days. The near-term fix (3-5 years, will consist of a roundabout Hwy 37/Hwy 121 and extending two lanes eastbound), the intermediate fix (consist of three lane highway with removable barrier) and long-term fix (20-year plan is to raise the entire 22 miles of highway) for this segment of highway. There are Regional Measure 3 funds available to study the Marin County levees.

Public Comments

Richard Brand, thanked staff for a great job in a short period of time to repair the Novato Creek Watershed.

Jack Swearingen addressed his concerns regarding the Novato Creek Washout.

6. Consent

- a. Approval of Monthly Financial Reports
- b. Approval of Certified Employment Group Contract Amendment No. 4

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

MOTION: Director Arnold moved approval of the Consent Agenda as presented. Director Rogers second. The motion carried 11-0-0.

7. Review and Accept SMART's Fiscal Year 2017-18 Single Audit

Chief Financial Officer, Erin McGrath stated that the item before you today is SMART 2018 Single Audit Report. SMART is required to undergo a separate audit process related to significant expenditures of federal funds. The Single Audit focused primarily on federal funds utilized on the San Rafael to Larkspur segment. Other programs reviewed were in FEMA grant funding related to 2017 floods and fire, and the final closeout of the Blackpoint Bridge Automation Project. "We are pleased to report, that there were no material weaknesses or significant deficiencies" she added.

Public Comments

Duane Bellinger asked if the revenue for parking fee is allocated in the miscellaneous revenue column. Ms. McGrath stated that Mr. Bellinger question refers to the Monthly Financial Report and responded that the revenue for parking is allocated in the Miscellaneous Revenue column under Administration.

MOTION: Director Rabbitt moved to Accept SMART's Fiscal Year 2017-18 Single Audit as presented. Director Lucan second. The motion carried 11-0-0.

8. Authorize the General Manager to Execute Contract Amendment No. 2 with Golden Gate Bridge, Highway and Transportation District for Customer Service Needs in the amount of \$671,160 for a two-year term

General Manager Mansourian stated that SMART currently contracts with Golden Gate Bridge (GGB) for customer service needs and the item before you is to approve Contract Amendment No. 2 for a two-year term. Golden Gate Bridge has a bilingual customer service in Downtown San Rafael. The customer service operates Monday through Friday from 7am to 6pm. The type of calls that customer services receives: 1) 51% (schedule, train operations and right-of-way maintenance); 2) 41% (general information, Clipper Card, and Mobile app) and 3) 8% (parking and ParkMobile).

Therefore, staff recommends authorizing the General Manager to execute a Contract Amendment No. 2 with Golden Gate Bridge for two- year term.

Comments

Director Zane asked if Golden Gate Bridge customer service have a policy/timeline to return phone inquiries/complaints. Mr. Mansourian responded that SMART's Chief of Police McGill, Operations Manager, Duane Sayers and Communications and Marketing Manager, Jeanne Belding establish a tier process. Tier 1 (Safety Concerns), which requires immediate response, all others tiers will be distributed to appropriate staff which will respond to the individual(s). Director Zane asked if the public has an option to take a customer service survey. Mr. Mansourian responded that staff will explore options.

Director Hillmer express his gratitude for options for the emergency brake.

Steve Birdlebough stated that he left his calendar on the train and he received a phone call asking if he had forgotten his calendar and it was delivered to him that same day. "They have excellent service" he added.

MOTION: Director Pahre moved to Authorize the General Manager to Execute Contract Amendment No. 2 with Golden Gate Bridge, Highway and Transportation District for Customer Service Needs in the amount of \$671,160 for a two-year term as presented. Director Rabbitt second. The motion carried 11-0-0.

9. Discuss the Topics to be reviewed at the Upcoming Board of Directors Workshop on April 3, 2019 – *Discussion Only*

Chair Phillips stated that he would like to focus on broader policy issues. He would like to discuss the following:

- Develop General Manager succession plan;
- General Manager performance review;
- Formulate long-term goals and objectives;
- Board meeting frequency;
- Consider having one meeting in Santa Rosa and San Rafael;
- Public satisfaction survey;
- Sales Tax extension strategy;
- Safety Policies; and
- Last mile connectivity.

Director Zane suggested discussing the following:

- Schedule;
- Fares and Ridership Diversity;
- Priority of Capital Developments Projects:
- Parking;
- Finishing last three stations (Windsor, Healdsburg and Cloverdale); and

- Quiet Zone Indemnification

Director Lucan asked if the list of items will be prioritized and if General Manager Mansourian had a list of topics that he would like to share. Mr. Mansourian stated that SMART has the following time sensitive items: 1) Weekend and 90-minute gap schedule; 2) overall time schedule from Windsor to Larkspur; 3) 2019 Strategic Plan update and 4) Sales Tax Renewal process.

Director Arnold suggested evaluating the fare structure.

Director Rogers suggested discussing the following:

- Parking;
- Accessibility/enhancements on the train; and
- The configuration of the SMART Board

Director Connolly suggested discussing the following:

- Train Schedule;
- First and last mile connections with local transit and Lyft;
- Fare Integration; and
- North Coast Trail Update

Director Fudge suggested evaluating the ADA parking locations at SMART stations.

Director Hillmer suggested discussing the following:

- Disaster preparation;
- Climate adaptation preparation;
- Fiber Optic; and
- Environmental Benefits with other agencies

Director Naujokas suggested discussing the following:

- Stronger last mile connections;
- Equity Fares increase ridership;
- Real Estate value for SMART and not the Developer;

Director Rabbitt suggested discussing the following:

- Real Estate (Assets/Liabilities)
- 2nd Petaluma Station

Public Comments

Steve Birdleough suggested discussing the first and last mile connectivity with all transit agencies.

Jack Swearingen suggested SMART to have an information booth at the Rail~Volution Conference in September 2019.

Rick Coates stated that the SMART train service tourists people visiting Sonoma County and San Francisco and suggested having shuttle service to popular events.

Chair Phillips thanked everyone for their feedback.

10. Next Regular Meeting Board of Directors, March 6, 2019 – 1:30 PM – 5401 Old Redwood Highway, 1st Floor, Petaluma, CA 94954
11. Adjournment – Meeting adjourned in memory of Greg Dion at 2:33PM.

Respectfully submitted,

Leticia Rosas-Mendoza
Clerk of the Board

Approved on: _____



March 6, 2019

Gary Phillips, Chair
Transportation Authority of Marin

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

Judy Arnold
Marin County Board of Supervisors

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Joe Naujokas
Sonoma County Mayors' and
Councilmembers Association

David Rabbitt
Sonoma County Board of Supervisors

Chris Rogers
Sonoma County 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

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

SUBJECT: Approve Empire Cleaners Contract Amendment No. 2

Dear Board Members:

RECOMMENDATION:

Authorize the General Manager to execute the Contract Amendment No. 2 with Empire Cleaners, in the amount of \$48,000 for professional dry cleaning and alterations services as needed for a not-to-exceed amount of \$119,000 and to extend the term through June 30, 2020.

SUMMARY:

Empire Cleaners has been providing professional dry cleaning and alterations services to SMART since 2017. These services allow SMART Operations staff to maintain their professional appearance when interacting with the public.

Staff recommends authorizing the General Manager to execute Contract Amendment No 2 with Empire Cleaners in the amount of \$48,000 and to extend the term through June 30, 2020.

FISCAL IMPACT: Funding for this amendment is included in the overall budget for current year.

REVIEWED BY: [x] Finance [x] Counsel

Very truly yours,

Duane Sayers
Operations Manager

Attachment(s): Empire Cleaners Contract Amendment No. 2

**SECOND AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES
BETWEEN THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
AND EMPIRE CLEANERS**

This Second Amendment dated as of March 6, 2019 (the “Second Amendment”) to the Agreement for Consultant Services by and between the Sonoma-Marin Area Rail Transit District (“SMART”) and Empire Cleaners (“CONSULTANT”), dated as of March 1, 2017 (the “Original Agreement,” and now as amended by the First Amendment, and this Second Amendment, the “Agreement”).

RECITALS

WHEREAS, SMART and CONSULTANT previously entered into the Original Agreement to provide dry cleaning, uniform laundering, and related services to SMART; and

WHEREAS, SMART desires to amend the Agreement to extend the term through June 30, 2020 and increase the not-to-exceed amount by \$48,000 for a total not-to-exceed amount of \$119,000; 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 5. PAYMENT.** Section 5.02 of the Agreement is amended as follows:

The total not-to-exceed amount is increased by \$48,000 for a total not-to-exceed amount of \$119,000 for the Agreement.

2. **ARTICLE 6. TERM OF AGREEMENT.** Section 6.1 of the Agreement is hereby removed and replaced with the following:

The term of this Agreement shall be in effect through June 30, 2020, unless terminated earlier in accordance with the provisions of Article 7.

3. 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 Second Amendment as set forth below.

**SONOMA-MARIN AREA RAIL TRANSIT
DISTRICT**

Dated: _____

By _____
Farhad Mansourian, General Manager

EMPIRE CLEANERS

Dated: _____

By _____
Its _____

APPROVED AS TO FORM:

Dated: _____

By _____
District Counsel



March 6, 2019

Gary Phillips, Chair
Transportation Authority of Marin

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

Judy Arnold
Marin County Board of Supervisors

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
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Dan Hillmer
Marin County Council of Mayors and
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Eric Lucan
Transportation Authority of Marin

Joe Naujokas
Sonoma County Mayors' and
Councilmembers Association

David Rabbitt
Sonoma County Board of Supervisors

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Shirlee Zane
Sonoma County Board of Supervisors

Farhad Mansourian
General Manager

A handwritten signature in black ink, appearing to read "FM", written over a horizontal line.

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Phone: 707-794-3330
Fax: 707-794-3037
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Sonoma Marin Area Rail Transit Board of Directors
5401 Old Redwood Highway, Suite 200
Santa Rosa, CA 94954

SUBJECT: Approval of Intelligent Technology Solutions, LLC (ITS)
Contract Amendment No. 4

Dear Board Members:

RECOMMENDATION:

Authorize the General Manager to Execute Contract Amendment No. 4 with Intelligent Technology Solutions, LLC (ITS) in the amount of \$19,269 for total not to exceed \$990,177. The change is to fund additional user licenses to meet our current staffing levels until March 31, 2021.

SUMMARY:

This Amendment provides funding to Intelligent Technology Solutions, LLC (ITS) to expand the number of login licenses available in SMART's operations maintenance management system to meet the growing number of staff using the system. This includes additions to SMART's operations staff as well as two additional in-house IT staff. These licenses will become active on April 1, 2019.

BACKGROUND:



In November 2015, your Board approved a Contract with ITS for services to implement, train and support a cloud-based maintenance management information system (MMIS). This system, called MAXIMO, is used to track all aspects of the Operations Department, including but not limited to dispatch logging, purchasing, inventory, and the maintenance of our vehicles, facilities, track, and signal systems.

SMART's MMIS is a cloud-based system, which means that instead of having the IT infrastructure of the system on site at SMART, SMART pays a monthly, per user fee to access the software hosted on a cloud system. The system, as well as our data, is kept redundantly in several geographically independent locations. This ensures that our data and system are well-insulated against failure.

Our staffing levels in the Vehicle Maintenance Department have grown since the initial implementation of MAXIMO creating the need for additional logins to the system. This contract amendment provides the needed additional logins for these additional staff.

Our MMIS has proven to be successful for our Operations Department. As such, we are expanding its use to include Information Technology issue tracking and asset management. This amendment provides additional logins for the SMART IT staff so that IT issue tracking can be handled in MAXIMO.

FISCAL IMPACT: Funding for the amendment is included in the Fiscal Year 2018-19 operations budget.

REVIEWED BY: ☒ Finance  ☒ Counsel 

Very truly yours,



Dan Hurlbutt
Information Systems Manager

Attachment(s): Intelligent Technology Solutions Contract Amendment No. 4

**FOURTH AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES
BETWEEN THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
AND INTELLIGENT TECHNOLOGY SOLUTIONS, LLC**

This Fourth Amendment dated as of March 6, 2019 (the “Fourth Amendment”) to the Agreement for Consultant Services by and between the Sonoma-Marín Area Rail Transit District (“SMART”) and Intelligent Technology Solutions, LLC (“CONSULTANT”), dated as of November 1, 2015 (the “Original Agreement,” and as amended by the First Amendment, the Second Amendment, the Third Amendment, and this Fourth Amendment, the “Agreement”).

RECITALS

WHEREAS, SMART and CONSULTANT previously entered into the Original Agreement to provide implementation, training, and support of a cloud-based Maximo Maintenance Management System (hereinafter “MMS”); and

WHEREAS, SMART and CONSULTANT previously amended the Agreement to increase the not-to-exceed amount and to switch to a full support, fee for service model; and

WHEREAS, SMART desires to increase the Agreement’s not-to-exceed amount by \$19,269 for a total not-to-exceed amount of \$990,177 to increase the number of login licenses for SMART’s MAXIMO Software System; 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. “LIST OF EXHIBITS”

EXHIBITS. The following exhibits are attached hereto and incorporated herein:

(a) EXHIBIT A: SCOPE OF WORK

Figure A-1, or the list of SMART employees requiring login licenses to access MAXIMO is removed and replaced with the attached.

(b) EXHIBIT B: BUDGET

The Budget in **Exhibit B** to the Agreement shall be replaced with the Budget in **Exhibit B** of this Fourth Amendment.

2. **ARTICLE 5. “PAYMENT”** Article 5 of the Agreement is amended as follows:

In addition to the not-to-exceed amount set forth in the Original Agreement and increased by previous Amendments, the Contract amount shall be increased by an amount not-to-exceed \$19,269 for a total not-to-exceed amount of \$990,177.

3. 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.

THIS SPACE INTENTIONALLY LEFT BLANK

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

**INTELLIGENT TECHNOLOGY
SOLUTIONS, LLC**

Dated: _____

By _____
Its _____

APPROVED AS TO FORM:

Dated: _____

By _____
District Counsel

EXHIBIT A

SCOPE OF WORK

Exhibit A is amended as follows:

Figure A-1, or the list of SMART employees requiring licenses, is hereby removed and replaced with the following:

Department	Position Classification	Amendment 4 Login Count
Operations Admin	Operations Manager	1
	Railroad Information Systems	
Operations Admin	Specialist	1
Operations Admin	IT Staff	2
Operations Admin	Administrative Assistant	1
Operations Admin	Accounting	1
Operations Admin	Purchasing	1
Safety Training/Compliance	Safety and Compliance Officer	1
Transportation	Superintendent	1
Transportation	Assistant Superintendent	1
Transportation	Controller-Supervisor	11
Transportation	Engineer-Conductor	0
Transportation	Bridge Tender	0
Vehicle Maintenance (Mechanical)	Superintendent (Chief Mechanical Officer)	1
Vehicle Maintenance (Mechanical)	Vehicle Maintenance Supervisor	5
Vehicle Maintenance (Mechanical)	Vehicle Maintenance Technician	13
Vehicle Maintenance (Mechanical)	Parts Clerk	3
Vehicle Maintenance (Mechanical)	Laborer	10
Signals and Way	Superintendent	1
Signals and Way	Signal Supervisor	2
Signals and Way	Signal Technician	8
Signals and Way	Track Maintenance Supervisor	2
Signals and Way	Track Maintainer	5
Signals and Way	Facilities Maintenance Supervisor	1
Signals and Way	Facilities Maintenance Technician	3
Total Logins:		75

The amended cost of licenses hereby includes all the licenses listed in this **Figure A-1**.

EXHIBIT B BUDGET

NOT-TO-EXCEED BUDGET BY CONTRACT YEAR:

Exhibit B Budget is amended to include the additional licensing costs, and replaces previous Exhibit B Budgets:

	Year 1 Nov '15 - Oct '16	Year 2 Nov '16 - Oct '17	Year 3 Nov '17 - Oct '18	Year 4 Nov '18 - Oct '19	Year 5 Nov '19 - Oct '20	Year 6 (partial) Nov '20-Mar '21	Total
Implementation Services	\$ 226,787	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 226,787
Implementation Travel	\$ 20,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 20,000
24 Hour Support	\$ 9,984	\$ 13,978	\$ 3,495	\$ -	\$ -	\$ -	\$ 27,457
Fee for Service	\$ -	\$ -	\$ 10,901	\$ 14,829	\$ 15,274	\$ -	\$ 41,004
Software as a Service	\$ 107,655	\$ 102,356	\$ 105,406	\$ 108,568	\$ 111,825	\$ 47,166	\$ 582,976
Addition of HSE Operator Log	\$ 4,777	\$ 4,900	\$ 5,068	\$ 5,220	\$ 5,634	\$ 2,452	\$ 28,051
Additional Licensing Costs	\$ -	\$ -	\$ 7,420	\$ 20,637	\$ 25,211	\$ 10,633	\$ 63,899
Total	\$ 369,204	\$ 121,234	\$ 132,290	\$ 149,254	\$ 157,944	\$ 60,251	\$ 990,177



March 6, 2019

Gary Phillips, Chair
Transportation Authority of Marin

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

Judy Arnold
Marin County Board of Supervisors

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

SUBJECT: Designation of SMART Authorized Agents and Other
Required Documents for State Low Carbon and Transit Operating
Program funds

Dear Board Members:

RECOMMENDATIONS:

Approve Resolution Number 2019-02 authorizing the General Manager and Chief Financial Officer as the Authorizing Agents and authorizing the execution of the project (SMART Commuter Rail Operations) to be funded with Low Carbon Transit Operations Program funds.

SUMMARY:



With the start of passenger rail services, SMART became eligible to receive several State funding sources starting in Fiscal Year 2017-18. For some of these funds, Board resolutions authorizing submittal of all necessary application materials are required. The resolution attached to this report would provide approval of SMART's request for Cap and Trade Greenhouse Gas Reduction Fund-supported Low Carbon and Transit Operations Program (LCTOP), managed by the California Department of Transportation. Since 2014, the LCTOP has received a continuous appropriation of 5% of the annual Cap and Trade credit auction proceeds.

LCTOP funds can be used to support transit operating and capital expenditures that expand transit services, increase transit mode share or acquire zero emission vehicles. LCTOP funds can support new transit services for the first five years of operations. The State Controller's Office releases fund availability estimates every year for distribution of LCTOP funds pursuant to several sections of the Public Utilities Code. SMART receives a dedicated allocation of LCTOP funds based on the State Controller's estimate of Public Utilities Code Section 99314, distributions to transit operators based on local revenues generated.

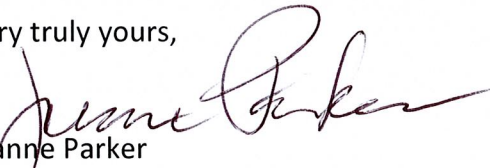
The State Controller's estimate of Fiscal Year 2018-19 Section 99314 LCTOP funds to SMART is \$359,092. SMART's current Fiscal Year 2018-19 Annual Budget anticipated these LCTOP funds being received and used in support of SMART Commuter Rail Operations, including the ability to offer fare discounts through a 31-day pass product and 50% of fares for Youth ages 5-18.

We recommend approval of the attached Board resolution authorizing the submittal of application materials for the LCTOP funds, the designation of the General Manager and/or the Chief Financial Officer as the Authorizing Agents for the funds, and authorizing the execution of Certifications and Assurances for the funds.

FISCAL IMPACT: None. SMART assumed these fund sources for operations costs the FY2018-19 approved budget.

REVIEWED BY: ☒ Finance  ☒ Counsel 

Very truly yours,



Joanne Parker
Programming and Grants Manager

Attachments:

- 1) Authorized Agent and Certifications and Assurances forms for Low Carbon Transit Operations Program Funds
- 2) Resolution Number 2019-02



**FY 2018-2019 LCTOP
Authorized Agent**

AS THE Chair, Board of Directors

(Chief Executive Officer/Director/President/Secretary)

OF THE Sonoma-Marin Area Rail Transit District (SMART)

(Name of County/City/Transit Organization)

I hereby authorize the following individual(s) to execute for and on behalf of the named Regional Entity/Transit Operator, any actions necessary for the purpose of obtaining Low Carbon Transit Operations Program (LCTOP) funds provided by the California Department of Transportation, Division of Rail and Mass Transportation. I understand that if there is a change in the authorized agent, the project sponsor must submit a new form. This form is required even when the authorized agent is the executive authority himself. I understand the Board must provide a resolution approving the Authorized Agent. The Board Resolution appointing the Authorized Agent is attached.

Farhad Mansourian, General Manager

(Name and Title of Authorized Agent)

OR

Erin McGrath, Chief Financial Officer

(Name and Title of Authorized Agent)

OR

Click here to enter text.

(Name and Title of Authorized Agent)

OR

Click here to enter text.

(Name and Title of Authorized Agent)

OR

Gary Phillips

(Print Name)

Chair, Board of Directors

(Title)

(Signature)

Approved this 6 day of **March** , 2019



FY 2018-2019 LCTOP Certifications and Assurances

Lead Agency: Sonoma-Marin Area Rail Transit District

Project Title: SMART Commuter Rail Operations

Prepared by: Joanne Parker

The California Department of Transportation (Caltrans) has adopted the following Certifications and Assurances for the Low Carbon Transit Operations Program (LCTOP). As a condition of the receipt of LCTOP funds, Lead Agency must comply with these terms and conditions.

A. General

1. The Lead Agency agrees to abide by the current LCTOP Guidelines and applicable legal requirements.
2. The Lead Agency must submit to Caltrans a signed Authorized Agent form designating the representative who can submit documents on behalf of the project sponsor and a copy of the board resolution appointing the Authorized Agent.

B. Project Administration

1. The Lead Agency certifies that required environmental documentation is complete before requesting an allocation of LCTOP funds. The Lead Agency assures that projects approved for LCTOP funding comply with Public Resources Code § 21100 and § 21150.
2. The Lead Agency certifies that a dedicated bank account for LCTOP funds only will be established within 30 days of receipt of LCTOP funds.
3. The Lead Agency certifies that when LCTOP funds are used for a transit capital project, that the project will be completed and remain in operation for its useful life.
4. The Lead Agency certifies that it has the legal, financial, and technical capacity to carry out the project, including the safety and security aspects of that project.
5. The Lead Agency certifies that they will notify Caltrans of pending litigation, dispute, or negative audit findings related to the project, before receiving an allocation of funds.
6. The Lead Agency must maintain satisfactory continuing control over the use of project equipment and facilities and will adequately maintain project equipment and facilities for the useful life of the project.
7. Any interest the Lead Agency earns on LCTOP funds must be used only on approved LCTOP projects.
8. The Lead Agency must notify Caltrans of any changes to the approved project with a Corrective Action Plan (CAP).

Certifications and Assurances

9. Under extraordinary circumstances, a Lead Agency may terminate a project prior to completion. In the event the Lead Agency terminates a project prior to completion, the Lead Agency must (1) contact Caltrans in writing and follow-up with a phone call verifying receipt of such notice; (2) pursuant to verification, submit a final report indicating the reason for the termination and demonstrating the expended funds were used on the intended purpose; (3) submit a request to reassign the funds to a new project within 180 days of termination.

C. Reporting

1. The Lead Agency must submit the following LCTOP reports:
 - a. Semi-Annual Progress Reports by May 15th and November 15th each year.
 - b. A Final Report within six months of project completion.
 - c. The annual audit required under the Transportation Development Act (TDA), to verify receipt and appropriate expenditure of LCTOP funds. A copy of the audit report must be submitted to Caltrans within six months of the close of the year (December 31) each year in which LCTOP funds have been received or expended.
 - d. Project Outcome Reporting as defined by CARB Funding Guidelines.
2. Other Reporting Requirements: CARB is developing Funding Guidelines that will include reporting requirements for all State agencies that receive appropriations from the Greenhouse Gas Reduction Fund. Caltrans and project sponsors will need to submit reporting information in accordance with CARB's Funding Guidelines, including reporting on greenhouse gas reductions and benefits to disadvantaged communities.

D. Cost Principles

1. The Lead Agency agrees to comply with Title 2 of the Code of Federal Regulations 225 (2 CFR 225), Cost Principles for State and Local Government, and 2 CFR, Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
2. The Lead Agency agrees, and will assure that its contractors and subcontractors will be obligated to agree, that:
 - a. Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allow ability of individual project cost items and
 - b. Those parties shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Every sub-recipient receiving LCTOP funds as a contractor or sub-contractor shall comply with

Certifications and Assurances

Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

3. Any project cost for which the Lead Agency has received funds that are determined by subsequent audit to be unallowable under 2 CFR 225, 48 CFR, Chapter 1, Part 31 or 2 CFR, Part 200, are subject to repayment by the Lead Agency to the State of California (State). All projects must reduce greenhouse gas emissions, as required under Public Resources Code section 75230, and any project that fails to reduce greenhouse gases shall also have its project costs submit to repayment by the Lead Agency to the State. Should the Lead Agency fail to reimburse moneys due to the State within thirty (30) days of demand, or within such other period as may be agreed in writing between the Parties hereto, the State is authorized to intercept and withhold future payments due the Lead Agency from the State or any third-party source, including but not limited to, the State Treasurer and the State Controller.

A. Record Retention

1. The Lead Agency agrees and will assure that its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred project costs and matching funds by line item for the project. The accounting system of the Lead Agency, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP) and enable the determination of incurred costs at interim points of completion. All accounting records and other supporting papers of the Lead Agency, its contractors and subcontractors connected with LCTOP funding shall be maintained for a minimum of three (3) years after the "Project Closeout" report or final Phase 2 report is submitted (per ARB Funding Guidelines, Vol. 3, page 3.A-16), and shall be held open to inspection, copying, and audit by representatives of the State and the California State Auditor. Copies thereof will be furnished by the Lead Agency, its contractors, and subcontractors upon receipt of any request made by the State or its agents. In conducting an audit of the costs claimed, the State will rely to the maximum extent possible on any prior audit of the Lead Agency pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work performed by the Lead Agency's external and internal auditors may be relied upon and used by the State when planning and conducting additional audits.
2. For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with the performance



FY 2018-2019 LCTOP

of the Lead Agency's contracts with third parties pursuant to Government Code § 8546.7, the project sponsor, its contractors and subcontractors and the State shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times during the entire project period and for three (3) years from the date of final payment. The State, the California State Auditor, or any duly authorized representative of the State, shall each have access to any books, records, and documents that are pertinent to a project for audits, examinations, excerpts, and transactions, and the Lead Agency shall furnish copies thereof if requested.

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

F. Special Situations

Caltrans may perform an audit and/or request detailed project information of the project sponsor's LCTOP funded projects at Caltrans' discretion at any time prior to the completion of the LCTOP.

I certify all of these conditions will be met.

Farhad Mansourian

(Print Authorized Agent)

General Manager

(Title)

(Signature)

(Date)



FY 2018-2019 LCTOP Allocation

Lead Agency:	Sonoma-Marín Area Rail Transit District (SMART)
Project Title:	SMART Commuter Rail Operations
Regional Entity:	Metropolitan Transportation Commission
County:	Sonoma

Lead Agency: I certify the scope, cost, schedule, and benefits as identified in the attached Allocation Request (Request) and attachments are true and accurate and demonstrate a fully funded operable project. I understand the Request is subject to any additional restrictions, limitations or conditions that may be enacted by the State Legislature, including the State's budgetary process and/or auction receipts. In the event the project cannot be completed as originally scoped, scheduled and estimated, or the project is terminated prior to completion, Lead Agency shall, at its own expense, ensure that the project is in a safe and operable condition for the public. I understand this project will be monitored by the California Department of Transportation - Division of Rail and Mass Transportation.

Authorized Agent:	Farhad Mansourian
Title:	General Manager
Lead Agency:	Sonoma-Marín Area Rail Transit District (SMART)
Signature:	
PUC Funds Type:	99313 \$ Amount of 99313 Funds
PUC Funds Type:	99314 \$ 359,092

Contributing Sponsor(s): The contributing sponsor is an entity that passes funds to the Lead Agency to support a project. The contributing sponsor could be the regional entity (PUC 99313) passing their funds to a recipient agency within their region or a recipient agency (PUC 99314) passing their funds through to either a regional entity or a recipient agency within their region. The contributing sponsor(s) must also sign and state the amount and type of LCTOP funds (PUC Sections 99313 and 99314) they are contributing the project. Sign below or attach a separate officially signed letter providing that information. If there is more than one contributing sponsor, please submit additional page, or a letter from the additional Contributing Sponsors.

Authorized Agent:	Authorized Agent
Title:	Authorized Agent's Title
Lead Agency:	Lead Agency.
Signature:	
PUC Funds Type:	99313 \$ Amount of 99313 Funds
PUC Funds Type:	99314 \$ Amount of 99314 Funds

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AUTHORIZING THE EXECUTION OF THE CERTIFICATION AND ASSURANCES AND AUTHORIZED AGENT FORMS FOR THE LOW CARBON TRANSIT OPERATIONS PROGRAM (LCTOP) FOR THE FOLLOWING PROJECT: SMART COMMUTER RAIL OPERATIONS FOR \$359,092

WHEREAS, the Sonoma-Marín Area Rail Transit District (SMART) is an eligible project sponsor and may receive funding from State Low Carbon Transit Operations Program (LCTOP) funds for transit projects; and

WHEREAS, the statutes related to state-funded transit project require implementing agencies to abide by various regulations; and

WHEREAS, Senate Bill 862 (2014) named the Department of Transportation (Department) as the administering agency for the LCTOP; and

WHEREAS, Department has developed guidelines for the purpose of administering and distributing LCTOP funds to eligible project sponsors (Agencies identified as eligible recipients of these funds); and

WHEREAS, SMART wishes to delegate authorization to execute these documents and any amendments thereto to Farhad Mansourian, General Manager; and

WHEREAS, SMART wishes to implement the SMART Commuter Rail Operations Project

NOW, THEREFORE, BE IT RESOLVED THAT THE Board of Directors of the SMART District hereby

1. Authorizes the submittal of the SMART Commuter Rail Operations Project for project nomination and allocation request to the California Department of Transportation for Low Carbon Transit Operations Program funds for \$359,092; and
2. Agrees to comply with all conditions and requirements set for in the Certifications and Assurances and Authorized Agent documents and applicable statutes, regulations and guidelines for all LCTOP funded transit projects; and

Resolution No. 2019-02
Sonoma-Marin Area Rail Transit District
March 6, 2019

3. Designate the General Manager and/or Chief Financial Officer, to be authorized to execute all required documents of the LCTOP program and any Amendments thereto with the California Department of Transportation which may be necessary for the completion of the aforementioned project.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marin Area Rail Transit District held on the 6th day of March, 2019, by the following vote:

DIRECTORS:

AYES:

NOES:

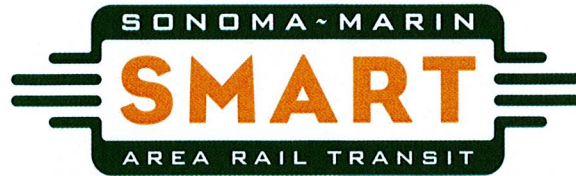
ABSENT:

ABSTAIN:

Gary Phillips Chair, Board of Directors
Sonoma-Marin Area Rail Transit District

ATTEST:

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



March 6, 2019

Gary Phillips, Chair
Transportation Authority of Marin

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

Judy Arnold
Marin County Board of Supervisors

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Joe Naujokas
Sonoma County Mayors' and
Councilmembers Association

David Rabbitt
Sonoma County Board of Supervisors

Chris Rogers
Sonoma County 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

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

SUBJECT: Support for Assembly Bill AB147 (Burke/McGuire) regarding collection of use taxes and retailers and marketplace facilitators engaged in business in California.

Dear Board Members:

RECOMMENDATION: Board of Directors' support Assembly Bill 147 (Burke/McGuire).

SUMMARY:

The deadline to introduce new legislation for the current legislative session was on February 22, 2019. Assemblywoman Autumn Burke, partnering with Senator Mike McGuire, has introduced AB147, which would enact changes to modernize California law and make it consistent with the 2018 *South Dakota v. Wayfair* decision. Under the *Wayfair* decision, the U.S. Supreme Court found that online retailers are required to collect and remit sales tax regardless of whether the online retailer has a physical presence in the state where the order is delivered.

The California Department of Tax and Fee Administration (CDTFA) through its authority has issued a letter stating how it intends to comply with this decision. The CDTFA proposal will take effect on April 1, 2019. The CDTFA proposal relies the \$100,000 threshold used in South Dakota, but CDTFA would apply that dollar threshold to sales within each taxing jurisdiction. This means the state sales tax would be collected once the \$100,000 threshold is reached, but local taxes would only be collected if sales within that local tax district also reach \$100,000.

To simplify this process, AB147 would propose a \$500,000 statewide threshold. State and local sales taxes would both be collected once a statewide total of \$500,000 in sales is reached. This bill would also require sales tax to be collected on all sales made through an intermediary, such as eBay or Amazon.

Under AB147 an entity that sells items through "marketplace facilitator," such as eBay, the marketplace facilitator is required to collect and remit the tax on all sales regardless of the threshold. The local sales tax revenue would be allocated to the local tax districts.

AB147 will generate an estimated \$309 million in additional state and local taxes in 2019-20. This bill is supported by the League of California Cities, California Retailers Association, and State Treasurer Fiona Ma.

This bill is being expedited with the goal of being enacted before April 1, 2019, which is the date the California Department of Tax and Fee Administration's proposal will take effect. AB147 was approved by the Assembly Committee on Revenue and taxation on February 25 and would implement a simpler process to collect sales tax from out of state internet sales. If the bill is implemented, it would create greater price equity for local brick and mortar retailers and would generate additional revenues for SMART and other local taxing authorities.

FISCAL IMPACT: No cost. Potential for increased revenues for SMART starting in Fiscal Year 2019-20.

REVIEWED BY: ☒ Finance  ☒ Legal 

Sincerely,



Joanne Parker
Programming and Grants Manager

Attachment(s): AB147 text

AMENDED IN ASSEMBLY FEBRUARY 14, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 147

Introduced by Assembly Member Burke
(Principal coauthor: Senator McGuire)

December 14, 2018

An act to amend ~~Sections 6015, 6203, and 7262~~ of *Section 7262 of, to amend, repeal, and add Section 6203 of, to add Section 6203.1 to, and to add Chapter 1.7 (commencing with Section 6040) to Part 1 of Division 2 of, the Revenue and Taxation Code*, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 147, as amended, Burke. Use taxes: collection: retailer engaged in business in this ~~state~~: *state: marketplace facilitators*.

Existing state sales and use tax laws impose a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state of, or on the storage, use, or other consumption in this state of, tangible personal property purchased from a retailer for storage, use, or other consumption in this state.

The Sales and Use Tax Law requires every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, not otherwise exempt, at the time of making the sales or at the time the storage, use, or other consumption becomes taxable, to collect the tax from the purchaser, file a return, and remit the tax to the California Department of Tax and Fee Administration. That law defines a retailer engaged in business *in this state* to mean any retailer that has substantial nexus with this state for purposes of the commerce clause of the United States Constitution

and any retailer upon whom federal law permits this state to impose a use tax collection duty, and specifically includes certain retailers engaged in specified activities: duty.

This bill would specify ~~that that, on and after April 1, 2019~~, a retailer engaged in business in this state includes any retailer that, in the preceding calendar year or the current calendar year, has a cumulative sales price from the sale of tangible personal property for delivery in this state that exceeds \$500,000. *The bill would allow the department to grant relief to certain retailers engaged in business in this state for specified interest or penalties imposed on use tax liabilities due and payable for tax reporting periods beginning April 1, 2019 and ending December 31, 2022.*

~~The Sales and Use Tax Law specifies that a retailer engaged in business in this state includes any retailer entering into agreements under which a person or persons in this state, for a commission or other consideration, directly or indirectly refer potential purchasers of tangible personal property to the retailer, whether by an Internet-based link or an Internet Web site, or otherwise, provided that the retailer meets specified total cumulative sales thresholds, including that the retailer has, during the preceding 12 months, total cumulative sales in this state of tangible personal property in excess of \$1,000,000.~~

~~This bill would reduce that threshold to \$500,000. This bill would also define a retailer under the Sales and Use Tax Law to include every person who is registered with the department as a retailer for purposes of the Sales and Use Tax Law or who is a retailer engaged in business in this state as defined in that law and facilitates a retail sale by another seller that is not registered with the department and who 1) lists or advertises for sale, in any forum, tangible personal property owned by the seller that is subject to tax under the Sales and Use Tax Law, and 2) directly or indirectly through agreements or arrangements with third parties collects payment from the customer and transmits that payment to the seller, regardless of whether compensation or other consideration is received in exchange for its services. The bill would provide that a person meeting that definition who facilitates a sale of tangible personal property for another seller that is not registered under the Sales and Use Tax Law is the retailer “selling” or “making a sale of” the tangible personal property for purposes of use tax collection.~~

The Sales and Use Tax Law specifically includes as a retailer engaged in business in this state, among others, (1) any retailer that is a member of a commonly controlled group and is a member of a

combined reporting group that includes another member of the retailer's commonly controlled group that, pursuant to an agreement with or in cooperation with the retailer, performs services in this state in connection with tangible personal property to be sold by the retailer and (2) any retailer entering into agreements under which persons in this state, for a commission or other consideration, directly or indirectly refer potential purchasers of tangible personal property to the retailer, whether by an internet-based link or an internet website, or otherwise, provided that the retailer meets specified total cumulative sales thresholds including that the retailer has, during the preceding 12 months, total cumulative sales in this state of tangible personal property in excess of \$1,000,000.

This bill would eliminate, on April 1, 2019, the specific inclusion of those retailers as a retailer engaged in business in this state.

The Sales and Use Tax Law requires every person desiring to engage in or conduct business as a seller within this state to file with the department an application for a permit for each place of business and requires every retailer selling tangible personal property for storage, use, or other consumption in this State to register with the department.

This bill, on and after October 1, 2019, would provide that a marketplace facilitator, as defined, is considered the seller and retailer for each sale facilitated through its marketplace, as defined, for purposes of determining whether that marketplace facilitator is required to register with the department under the Sales and Use Tax Law. The bill would provide that any marketplace facilitator that is registered or required to register with the department under the Sales and Use Tax law and who facilitates a retail sale of tangible personal property by a marketplace seller, as defined, is the retailer selling or making the sale of the tangible personal property sold through its marketplace for purposes of paying any sales taxes and collecting any use taxes. The bill, for purposes of determining whether a marketplace facilitator has a cumulative sales price from the sale of tangible personal property for delivery in this state that would make it a retailer engaged in business in this state, would require the marketplace facilitator to include all sales made on its own behalf and sales facilitated on behalf of marketplace sellers. The bill would provide a marketplace facilitator relief from liability for the tax on a retail sale in specified circumstances.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and other existing laws authorize

districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which generally conforms to the Sales and Use Tax Law.

In conformity with the Sales and Use Tax Law, existing local use tax ordinances adopted pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law require a retailer engaged in business in this state for purposes of the Sales and Use Tax Law to also collect a use tax adopted pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law. In modified conformity with the Sales and Use Tax Law, existing use district tax ordinances adopted in accordance with the Transactions and Use Tax Law generally require a retailer to collect a use tax adopted pursuant to the Transactions and Use Tax Law only if the retailer is engaged in business in that district.

The changes made to the Sales and Use Tax Law by this bill, by conformity, would be automatically incorporated into local use taxes ordinances adopted pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law. This bill would require districts that impose district use taxes in accordance with the Transactions and Use Tax Law to include a ~~provision~~ *provision, to be operative on April 1, 2019*, that provides that a retailer engaged in business in the district includes any retailer that, in the preceding calendar year or the current calendar year, has *a total cumulative sales price from the sale of tangible personal property to purchasers for delivery in the state in excess of that exceeds* \$500,000, thereby requiring those retailers to collect those district use taxes.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) On June 21, 2018, in *South Dakota v. Wayfair, Inc.*, (2018)
- 4 585 U.S. ____ (hereafter ~~Wayfair~~, *Wayfair*), the United States
- 5 Supreme Court upheld SDCL Chapter 10-64, the South Dakota
- 6 law that requires remote sellers that do not have a physical presence
- 7 in that state to collect sales tax on all sales into South Dakota based
- 8 on the seller's level of economic activity in the state.

(b) SDCL Chapter 10-64-2 provides, in part, that remote sellers with no physical presence in South Dakota are required to collect and remit sales tax and follow all procedures of the law, as if they have a presence in the state, if they meet one of two criteria in the previous calendar year or the current calendar year: (1) the remote seller's gross revenue from the sale of tangible personal property, any products transferred electronically, or services delivered into South Dakota exceeds \$100,000; or (2) the remote seller has sold tangible personal property, any products transferred electronically, or services for delivery into South Dakota in 200 or more separate transactions.

(c) Wayfair overturned longstanding United States Supreme Court precedent, established in *Quill Corp. v. North Dakota*, (1992) 504 U.S. 298, which precluded states from imposing an obligation to collect sales or use tax on a seller unless the seller had a physical presence in the state.

(d) Current California law has a "long-arm" provision that imposes a duty to collect use tax on any retailer that has substantial nexus with this state for the purposes of the commerce clause of the United States Constitution and any retailer upon whom federal law permits this state to impose a use tax collection duty.

(e) In Wayfair, the Court found that South Dakota did not violate the commerce clause of the United States Constitution by imposing a sales tax collection duty on sellers whose economic activity in the state satisfies the sales thresholds in SDCL Chapter 10-64-2. ~~Therefore, by default, a retailer whose economic activity in California satisfies the sales thresholds in SDCL Chapter 10-64-2 is required to collect state and local use tax under California's "long-arm" provision. Also, by default, a retailer whose economic activity in a district satisfies the sales thresholds in SDCL Chapter 10-64-2 is required to collect and remit that district's use tax on its sales for delivery in the district.~~

(f) It is the intent of the Legislature by enacting this act to modernize California law consistent with the holding of Wayfair, which allows this state to impose a use tax collection duty on retailers who have specified levels of economic activity in this state, even though they do not have a physical presence in this state. It is also the intent of the Legislature to ensure that small businesses are not unduly burdened by the ~~default~~ expansion of the duty to collect use tax ~~due to Wayfair tax.~~

(g) The provisions of this act are intended to protect small businesses by modifying existing law to: (1) increase the level of economic activity a retailer must have in California for the state to impose a use tax collection obligation on the retailer; (2) define the term “retailer” to include marketplace facilitators and require marketplace facilitators that meet the higher economic activity threshold to collect and remit the use tax on behalf of their marketplace sellers that are not registered with the California Department of Tax and Fee Administration to collect and remit the use tax; *sellers*; and (3) alleviate the burden of tracking economic activity in each individual district that imposes a district tax.

~~SEC. 2. Section 6015 of the Revenue and Taxation Code is amended to read:~~

~~6015. (a) “Retailer” includes:~~

~~(1) Every seller who makes any retail sale or sales of tangible personal property, and every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others.~~

~~(2) Every person engaged in the business of making sales for storage, use, or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption.~~

~~(3) Any person conducting a race meeting under Chapter 4 of Division 8 of the Business and Professions Code, with respect to horses which are claimed during such meeting.~~

~~(4) (A) Every person who is registered with the department under Chapter 2 (commencing with Section 6051) or Chapter 3 (commencing with Section 6201) of this part or who is a retailer engaged in business in this state as defined in Section 6203 and facilitates a retail sale by another seller that is not registered with the department under Chapter 2 (commencing with Section 6051) or Chapter 3 (commencing with Section 6201) of this part and does both of the following:~~

~~(i) Lists or advertises for sale, in any forum, tangible personal property owned by the seller that is subject to tax under this part.~~

~~(ii) Directly or indirectly through agreements or arrangements with third parties collects payment from the customer and transmits that payment to the seller, regardless of whether the person~~

1 ~~facilitating the retail sale receives compensation or other~~
2 ~~consideration in exchange for its services.~~

3 ~~(B) A person who is a retailer pursuant to this paragraph and~~
4 ~~facilitates a sale of tangible personal property for another seller~~
5 ~~that is not registered under Chapter 2 (commencing with Section~~
6 ~~6051) or Chapter 3 (commencing with Section 6201) of this part~~
7 ~~is the retailer “selling” or “making a sale of” the tangible personal~~
8 ~~property for purposes of Chapter 3 (commencing with Section~~
9 ~~6201).~~

10 ~~(b) When the department determines that it is necessary for the~~
11 ~~efficient administration of this part to regard any salesmen,~~
12 ~~representatives, peddlers, or canvassers as the agents of the dealers,~~
13 ~~distributors, supervisors, or employers under whom they operate~~
14 ~~or from whom they obtain the tangible personal property sold by~~
15 ~~them, irrespective of whether they are making sales on their own~~
16 ~~behalf or on behalf of the dealers, distributors, supervisors, or~~
17 ~~employers the department may so regard them and may regard the~~
18 ~~dealers, distributors, supervisors, or employers as retailers for~~
19 ~~purposes of this part.~~

20 ~~(c) Notwithstanding subdivision (b), a newspaper carrier is not~~
21 ~~a retailer and the retailer is the publisher or distributor for whom~~
22 ~~the carrier delivers the newspapers. The publisher or distributor is~~
23 ~~responsible for the tax measured by the price charged to the~~
24 ~~customer by the carrier.~~

25 *SEC. 2. Chapter 1.7 (commencing with Section 6040) is added*
26 *to Part 1 of Division 2 of the Revenue and Taxation Code, to read:*

27
28 *CHAPTER 1.7. MARKETPLACE FACILITATOR ACT*

29
30 *Article 1. General Provisions and Definitions*

31
32 *6040. This chapter shall be known as and referred to as the*
33 *Marketplace Facilitator Act.*

34 *6041. For purposes of this part, the following definitions shall*
35 *apply:*

36 *(a) “Marketplace” means a physical or electronic place,*
37 *including, but not limited to, a store, booth, internet website,*
38 *catalog, television or radio broadcast, or a dedicated sales*
39 *software application, where a marketplace seller sells or offers*
40 *for sale tangible personal property for delivery in this state*

1 regardless of whether the tangible personal property, marketplace
2 seller, or marketplace has a physical presence in this state.

3 (b) “Marketplace facilitator” means a person who contracts
4 with marketplace sellers to facilitate for consideration, regardless
5 of whether deducted as fees from the transaction, the sale of the
6 marketplace seller's products through a marketplace operated by
7 the person, and who engages in both of the following:

8 (1) Directly or indirectly, through one or more related persons,
9 in any of the following:

10 (A) Transmitting or otherwise communicating the offer or
11 acceptance between the buyer and seller.

12 (B) Owning or operating the infrastructure, electronic or
13 physical, or technology that brings buyers and sellers together.

14 (C) Providing a virtual currency that buyers are allowed or
15 required to use to purchase products from the seller.

16 (D) Software development or research and development
17 activities related to any of the activities described in paragraph
18 (2), if such activities are directly related to a marketplace operated
19 by the person or a related person.

20 (2) In any of the following activities with respect to the
21 marketplace seller's products:

22 (A) Payment processing services.

23 (B) Fulfillment or storage services.

24 (C) Listing products for sale.

25 (D) Setting prices.

26 (E) Branding sales as those of the marketplace facilitator.

27 (F) Order taking.

28 (G) Advertising or promotion.

29 (H) Providing customer service or accepting or assisting with
30 returns or exchanges.

31 (c) “Marketplace seller” means a person who has an agreement
32 with a marketplace facilitator and makes retail sales of tangible
33 personal property through a marketplace owned, operated, or
34 controlled by a marketplace facilitator, even if such person would
35 not have been required to hold a seller's permit or permits, or
36 required to collect the tax imposed pursuant to Chapter 3
37 (commencing with Section 6201), had the sale not been made
38 through such marketplace.

Article 2. *Registration and Collection*

6042. *A marketplace facilitator shall be considered the seller and retailer for each sale facilitated through its marketplace for purposes of determining whether the marketplace facilitator is required to register with the department under Chapter 2 (commencing with section 6051) or Chapter 3 (commencing with Section 6201), in addition to each sale for which the marketplace facilitator is the seller or retailer or both under Chapter 1 (commencing with Section 6001).*

6043. *A marketplace facilitator that is registered with the department or required to register with the department under Chapter 2 (commencing with Section 6051) or Chapter 3 (commencing with Section 6201) and that facilitates a retail sale of tangible personal property by a marketplace seller is the retailer selling or making the sale of the tangible personal property sold through its marketplace for purposes of this part.*

6044. *For purposes of determining the cumulative sales price from the sale of tangible personal property for delivery in this state pursuant to Section 6203:*

(a) *A marketplace facilitator shall include all sales of tangible personal property for delivery in this state, including sales made on its own behalf and sales facilitated on behalf of marketplace sellers.*

(b) *A marketplace seller shall include all sales of tangible personal property for delivery in this state, including sales made on its own behalf and sales facilitated through any marketplace facilitator's marketplace.*

6044.5. (a) *If the department determines that a marketplace facilitator was the retailer selling or making a sale of tangible personal property for purposes of this part and that a marketplace seller reported and paid tax to the department with regard to that sale, then the tax shall be credited against the marketplace facilitator's liability with regard to that sale and the remainder may be refunded to the marketplace seller.*

(b) *Section 6204 and Chapter 7 (commencing with Section 6901), including Section 6901.5, apply to refunds under this section.*

6045. *A marketplace seller shall register with the department under Chapter 2 (commencing with Section 6051) or Chapter 3*

1 *(commencing with Section 6201), as required, for retail sales made*
2 *on its own behalf and not facilitated through a registered*
3 *marketplace facilitator.*

4
5 *Article 3. Marketplace Facilitator Relief*
6

7 *6046. If the marketplace facilitator demonstrates to the*
8 *satisfaction of the department that the marketplace facilitator has*
9 *made a reasonable effort to obtain accurate information from an*
10 *unrelated marketplace seller about a retail sale and that the failure*
11 *to remit the correct amount of tax imposed under this part was*
12 *due to incorrect information provided to the marketplace facilitator*
13 *by the unrelated marketplace seller, then the marketplace*
14 *facilitator shall be relieved of liability for the tax for that retail*
15 *sale. This section does not apply with regard to a retail sale for*
16 *which the marketplace facilitator is the retailer selling or making*
17 *the sale of the tangible personal property on its own behalf or if*
18 *the marketplace facilitator and marketplace seller are related.*
19 *Where a marketplace facilitator is relieved of liability for the tax*
20 *on a retail sale under this section, the marketplace seller is the*
21 *retailer for that retail sale.*

22 *6047. (a) A marketplace facilitator shall be relieved of the tax*
23 *on retail sales facilitated through its marketplace as provided in*
24 *subdivision (c) if the marketplace facilitator demonstrates to the*
25 *satisfaction of the department all of the following:*

26 *(1) The retail sales were facilitated for a marketplace seller*
27 *prior to January 1, 2023, through a marketplace of the marketplace*
28 *facilitator.*

29 *(2) The marketplace facilitator is not the marketplace seller.*

30 *(3) The marketplace facilitator and the marketplace seller are*
31 *not related.*

32 *(4) The failure to collect sales and use tax was due to a good*
33 *faith error other than an error in sourcing the sale pursuant to*
34 *the Transactions and Use Tax law (Part 1.6 (commencing with*
35 *Section 7251)).*

36 *(b) To the extent that a marketplace facilitator is relieved of*
37 *liability for collection of sales and use tax under this section, the*
38 *marketplace seller for whom the marketplace facilitator has*
39 *facilitated the retail sale is also relieved of liability, unless the*
40 *marketplace seller is the retailer for those retail sales pursuant to*

1 *Section 6046. The department may determine the manner in which*
2 *a marketplace facilitator or marketplace seller shall claim the*
3 *liability relief provided in this section.*

4 *(c) The liability relief provided under this section shall not*
5 *exceed the following percentage of the total sales and use tax due*
6 *on sales facilitated by a marketplace facilitator for marketplace*
7 *sellers, which sales shall not include sales by the marketplace*
8 *facilitator or persons related to the marketplace facilitators:*

9 *(1) For sales facilitated during the fourth quarter of 2019 or*
10 *during the 2020 calendar year, 7 percent.*

11 *(2) For sales facilitated during the 2021 calendar year, 5*
12 *percent.*

13 *(3) For sales facilitated during the 2022 calendar year, 3*
14 *percent.*

15 *(d) Nothing in this section shall be construed to relieve any*
16 *person of liability for collecting but failing to remit to the*
17 *department sales and use tax.*

18 *6048. A class action may not be brought against a marketplace*
19 *facilitator on behalf of purchasers arising from or in any way*
20 *related to an overpayment of sales or use tax collected before*
21 *January 1, 2023, by the marketplace facilitator, regardless of*
22 *whether such action is characterized as a tax refund claim. Nothing*
23 *in this section shall affect a purchaser's right to seek a refund from*
24 *the department pursuant to Article 1 (commencing with Section*
25 *6901) of Chapter 7.*

26
27 *Article 4. Operative Date*
28

29 *6049.5. (a) This chapter shall become operative on October*
30 *1, 2019.*

31 *(b) The provisions of this chapter are severable. If any provision*
32 *of this chapter or its application is held invalid, that invalidity*
33 *shall not affect other provisions or applications that can be given*
34 *effect without the invalid provision or application.*

35 *SEC. 3. Section 6203 of the Revenue and Taxation Code, as*
36 *added by Section 3 of Chapter 313 of the Statutes of 2011, is*
37 *amended to read:*

38 *6203. (a) Except as provided by Sections 6292 and 6293, every*
39 *retailer engaged in business in this state and making sales of*
40 *tangible personal property for storage, use, or other consumption*

1 in this state, not exempted under Chapter 3.5 (commencing with
2 Section 6271) or Chapter 4 (commencing with Section 6351),
3 shall, at the time of making the sales or, if the storage, use, or other
4 consumption of the tangible personal property is not then taxable
5 hereunder, at the time the storage, use, or other consumption
6 becomes taxable, collect the tax from the purchaser and give to
7 the purchaser a receipt therefor in the manner and form prescribed
8 by the department.

9 (b) As respects leases constituting sales of tangible personal
10 property, the tax shall be collected from the lessee at the time
11 amounts are paid by the lessee under the lease.

12 (c) “Retailer engaged in business in this state” as used in this
13 section and Section 6202 means any retailer that has substantial
14 nexus with this state for purposes of the commerce clause of the
15 United States Constitution and any retailer upon whom federal
16 law permits this state to impose a use tax collection duty. “Retailer
17 engaged in business in this state” specifically includes, but is not
18 limited to, any of the following:

19 (1) Any retailer maintaining, occupying, or using, permanently
20 or temporarily, directly or indirectly, or through a subsidiary, or
21 agent, by whatever name called, an office, place of distribution,
22 sales or sample room or place, warehouse or storage place, or other
23 place of business.

24 (2) Any retailer having any representative, agent, salesperson,
25 canvasser, independent contractor, or solicitor operating in this
26 state under the authority of the retailer or its subsidiary for the
27 purpose of selling, delivering, installing, assembling, or the taking
28 of orders for any tangible personal property.

29 (3) As respects a lease, any retailer deriving rentals from a lease
30 of tangible personal property situated in this state.

31 ~~(4) Any retailer that is a member of a commonly controlled~~
32 ~~group, as defined in Section 25105, and is a member of a combined~~
33 ~~reporting group, as defined in paragraph (3) of subdivision (b) of~~
34 ~~Section 25106.5 of Title 18 of the California Code of Regulations,~~
35 ~~that includes another member of the retailer’s commonly controlled~~
36 ~~group that, pursuant to an agreement with or in cooperation with~~
37 ~~the retailer, performs services in this state in connection with~~
38 ~~tangible personal property to be sold by the retailer, including, but~~
39 ~~not limited to, design and development of tangible personal~~

1 property sold by the retailer, or the solicitation of sales of tangible
2 personal property on behalf of the retailer.

3 (5)

4 (4) Any retailer that, in the preceding calendar year or the current
5 calendar year, has a cumulative sales price from the sale of tangible
6 personal property for delivery in this state that exceeds five hundred
7 thousand dollars (\$500,000).

8 (6) (A) Any retailer entering into an agreement or agreements
9 under which a person or persons in this state, for a commission or
10 other consideration, directly or indirectly refer potential purchasers
11 of tangible personal property to the retailer, whether by an
12 Internet-based link or an Internet Web site, or otherwise, provided
13 that both of the following conditions are met:

14 (i) The total cumulative sales price from all of the retailer's
15 sales, within the preceding 12 months, of tangible personal property
16 to purchasers in this state that are referred pursuant to all of those
17 agreements with a person or persons in this state, is in excess of
18 ten thousand dollars (\$10,000).

19 (ii) The retailer, within the preceding 12 months, has total
20 cumulative sales of tangible personal property to purchasers in
21 this state in excess of five hundred thousand dollars (\$500,000).

22 (B) An agreement under which a retailer purchases
23 advertisements from a person or persons in this state, to be
24 delivered on television, radio, in print, on the Internet, or by any
25 other medium, is not an agreement described in subparagraph (A);
26 unless the advertisement revenue paid to the person or persons in
27 this state consists of commissions or other consideration that is
28 based upon sales of tangible personal property.

29 (C) Notwithstanding subparagraph (B), an agreement under
30 which a retailer engages a person in this state to place an
31 advertisement on an Internet Web site operated by that person, or
32 operated by another person in this state, is not an agreement
33 described in subparagraph (A), unless the person entering the
34 agreement with the retailer also directly or indirectly solicits
35 potential customers in this state through use of flyers, newsletters,
36 telephone calls, electronic mail, blogs, microblogs, social
37 networking sites, or other means of direct or indirect solicitation
38 specifically targeted at potential customers in this state.

1 ~~(D) For purposes of this paragraph, “retailer” includes an entity~~
2 ~~affiliated with a retailer within the meaning of Section 1504 of the~~
3 ~~Internal Revenue Code.~~

4 ~~(E) This paragraph shall not apply if the retailer can demonstrate~~
5 ~~that the person in this state with whom the retailer has an agreement~~
6 ~~did not engage in referrals in the state on behalf of the retailer that~~
7 ~~would satisfy the requirements of the commerce clause of the~~
8 ~~United States Constitution.~~

9 (d) Except as provided in this subdivision, a retailer is not a
10 “retailer engaged in business in this state” under paragraph (2) of
11 subdivision (c) if that retailer’s sole physical presence in this state
12 is to engage in convention and trade show activities as described
13 in Section 513(d)(3)(A) of the Internal Revenue Code, and if the
14 retailer, including any of his or her representatives, agents,
15 salespersons, canvassers, independent contractors, or solicitors,
16 does not engage in those convention and trade show activities for
17 more than 15 days, in whole or in part, in this state during any
18 12-month period and did not derive more than one hundred
19 thousand dollars (\$100,000) of net income from those activities
20 in this state during the prior calendar year. Notwithstanding the
21 preceding sentence, a retailer engaging in convention and trade
22 show activities, as described in Section 513(d)(3)(A) of the Internal
23 Revenue Code, is a “retailer engaged in business in this state,” and
24 is liable for collection of the applicable use tax, with respect to
25 any sale of tangible personal property occurring at the convention
26 and trade show activities and with respect to any sale of tangible
27 personal property made pursuant to an order taken at or during
28 those convention and trade show activities.

29 (e) Any limitations created by this section upon the definition
30 of “retailer engaged in business in this state” shall only apply for
31 purposes of tax liability under this code. Nothing in this section is
32 intended to affect or limit, in any way, civil liability or jurisdiction
33 under Section 410.10 of the Code of Civil Procedure.

34 (f) (1) *The amendments made to this section by the act adding*
35 *this subdivision shall become operative on April 1, 2019.*

36 (2) *If Chapter 1.7 (commencing with Section 6040) or the*
37 *amendments made to this section by the act adding this subdivision*
38 *is held in a final decision of a court of competent jurisdiction to*
39 *violate the substantial nexus standard of the commerce clause of*

1 *the United States Constitution, this section shall become*
2 *inoperative and shall be repealed on the date of that final decision.*

3 *SEC. 4. Section 6203 is added to the Revenue and Taxation*
4 *Code, to read:*

5 *6203. (a) Except as provided by Sections 6292 and 6293, every*
6 *retailer engaged in business in this state and making sales of*
7 *tangible personal property for storage, use, or other consumption*
8 *in this state, not exempted under Chapter 3.5 (commencing with*
9 *Section 6271) or Chapter 4 (commencing with Section 6351), shall,*
10 *at the time of making the sales or, if the storage, use, or other*
11 *consumption of the tangible personal property is not then taxable*
12 *hereunder, at the time the storage, use, or other consumption*
13 *becomes taxable, collect the tax from the purchaser and give to*
14 *the purchaser a receipt therefor in the manner and form prescribed*
15 *by the department.*

16 *(b) As respects leases constituting sales of tangible personal*
17 *property, the tax shall be collected from the lessee at the time*
18 *amounts are paid by the lessee under the lease.*

19 *(c) "Retailer engaged in business in this state" as used in this*
20 *section and Section 6202 means any retailer that has substantial*
21 *nexus with this state for purposes of the commerce clause of the*
22 *United States Constitution and any retailer upon whom federal*
23 *law permits this state to impose a use tax collection duty. "Retailer*
24 *engaged in business in this state" specifically includes, but is not*
25 *limited to, any of the following:*

26 *(1) Any retailer maintaining, occupying, or using, permanently*
27 *or temporarily, directly or indirectly, or through a subsidiary, or*
28 *agent, by whatever name called, an office, place of distribution,*
29 *sales or sample room or place, warehouse or storage place, or*
30 *other place of business.*

31 *(2) Any retailer having any representative, agent, salesperson,*
32 *canvasser, independent contractor, or solicitor operating in this*
33 *state under the authority of the retailer or its subsidiary for the*
34 *purpose of selling, delivering, installing, assembling, or the taking*
35 *of orders for any tangible personal property.*

36 *(3) As respects a lease, any retailer deriving rentals from a*
37 *lease of tangible personal property situated in this state.*

38 *(4) Any retailer that is a member of a commonly controlled*
39 *group, as defined in Section 25105, and is a member of a combined*
40 *reporting group, as defined in paragraph (3) of subdivision (b) of*

1 *Section 25106.5 of Title 18 of the California Code of Regulations,*
2 *that includes another member of the retailer's commonly controlled*
3 *group that, pursuant to an agreement with or in cooperation with*
4 *the retailer, performs services in this state in connection with*
5 *tangible personal property to be sold by the retailer, including,*
6 *but not limited to, design and development of tangible personal*
7 *property sold by the retailer, or the solicitation of sales of tangible*
8 *personal property on behalf of the retailer.*

9 (5) (A) Any retailer entering into an agreement or agreements
10 under which a person or persons in this state, for a commission
11 or other consideration, directly or indirectly refer potential
12 purchasers of tangible personal property to the retailer, whether
13 by an internet-based link or an internet website, or otherwise,
14 provided that both of the following conditions are met:

15 (i) The total cumulative sales price from all of the retailer's
16 sales, within the preceding 12 months, of tangible personal
17 property to purchasers in this state that are referred pursuant to
18 all of those agreements with a person or persons in this state, is
19 in excess of ten thousand dollars (\$10,000).

20 (ii) The retailer, within the preceding 12 months, has total
21 cumulative sales of tangible personal property to purchasers in
22 this state in excess of one million dollars (\$1,000,000).

23 (B) An agreement under which a retailer purchases
24 advertisements from a person or persons in this state, to be
25 delivered on television, radio, in print, on the internet, or by any
26 other medium, is not an agreement described in subparagraph
27 (A), unless the advertisement revenue paid to the person or persons
28 in this state consists of commissions or other consideration that
29 is based upon sales of tangible personal property.

30 (C) Notwithstanding subparagraph (B), an agreement under
31 which a retailer engages a person in this state to place an
32 advertisement on an internet website operated by that person, or
33 operated by another person in this state, is not an agreement
34 described in subparagraph (A), unless the person entering the
35 agreement with the retailer also directly or indirectly solicits
36 potential customers in this state through use of flyers, newsletters,
37 telephone calls, electronic mail, blogs, microblogs, social
38 networking sites, or other means of direct or indirect solicitation
39 specifically targeted at potential customers in this state.

1 (D) For purposes of this paragraph, “retailer” includes an
2 entity affiliated with a retailer within the meaning of Section 1504
3 of the Internal Revenue Code.

4 (E) This paragraph shall not apply if the retailer can
5 demonstrate that the person in this state with whom the retailer
6 has an agreement did not engage in referrals in the state on behalf
7 of the retailer that would satisfy the requirements of the commerce
8 clause of the United States Constitution.

9 (d) Except as provided in this subdivision, a retailer is not a
10 “retailer engaged in business in this state” under paragraph (2)
11 of subdivision (c) if that retailer’s sole physical presence in this
12 state is to engage in convention and trade show activities as
13 described in Section 513(d)(3)(A) of the Internal Revenue Code,
14 and if the retailer, including any of the retailer’s representatives,
15 agents, salespersons, canvassers, independent contractors, or
16 solicitors, does not engage in those convention and trade show
17 activities for more than 15 days, in whole or in part, in this state
18 during any 12-month period and did not derive more than one
19 hundred thousand dollars (\$100,000) of net income from those
20 activities in this state during the prior calendar year.
21 Notwithstanding the preceding sentence, a retailer engaging in
22 convention and trade show activities, as described in Section
23 513(d)(3)(A) of the Internal Revenue Code, is a “retailer engaged
24 in business in this state,” and is liable for collection of the
25 applicable use tax, with respect to any sale of tangible personal
26 property occurring at the convention and trade show activities
27 and with respect to any sale of tangible personal property made
28 pursuant to an order taken at or during those convention and trade
29 show activities.

30 (e) Any limitations created by this section upon the definition
31 of “retailer engaged in business in this state” shall only apply for
32 purposes of tax liability under this code. Nothing in this section
33 is intended to affect or limit, in any way, civil liability or
34 jurisdiction under Section 410.10 of the Code of Civil Procedure.

35 (f) If Chapter 1.7 (commencing with Section 6040) or the
36 amendments to Section 6203, as added by Section 3 of Chapter
37 313 of the Statutes of 2011, made by the act adding this section is
38 held in a final decision of a court of competent jurisdiction to
39 violate the substantial nexus standard of the commerce clause of

1 *the United States Constitution, this section shall become operative*
2 *on the date of that final decision.*

3 *SEC. 5. Section 6203.1 is added to the Revenue and Taxation*
4 *Code, to read:*

5 *6203.1. (a) The department, in its discretion, may relieve a*
6 *retailer engaged in business in this state that meets the*
7 *requirements of subdivision (b) of the following:*

8 *(1) The penalties provided by Sections 6484, 6511, and 6591.*

9 *(2) All or any part of the interest imposed on the person by this*
10 *part.*

11 *(b) This section shall apply to any retailer engaged in business*
12 *in this state that meets all of the following conditions:*

13 *(1) The retailer registered under Article 2 (commencing with*
14 *Section 6225) on or after April 1, 2019, as a retailer engaged in*
15 *business pursuant to paragraph (4) of subdivision (c) of Section*
16 *6203.*

17 *(2) The total cumulative sales price from the retailer's sales,*
18 *within the preceding 12 months, of tangible personal property for*
19 *delivery in this state does not exceed one million dollars*
20 *(\$1,000,000).*

21 *(3) The retailer was not previously registered, or required to*
22 *be registered, with the department under Chapter 2 (commencing*
23 *with Section 6051) or Chapter 3 (commencing with Section 6201).*

24 *(4) The retailer's failure to collect and remit use tax was due*
25 *to a good faith error and occurred notwithstanding the exercise*
26 *of ordinary care and the absence of willful neglect.*

27 *(5) The retailer is not a marketplace facilitator as defined in*
28 *Section 6041.*

29 *(6) Any other factors as deemed necessary by the department.*

30 *(c) The department may grant relief only for interest or penalties*
31 *imposed on use tax liabilities due and payable for tax reporting*
32 *periods beginning April 1, 2019, and ending December 31, 2022.*

33 ~~SEC. 4.~~

34 *SEC. 6. Section 7262 of the Revenue and Taxation Code is*
35 *amended to read:*

36 *7262. The use tax portion of any transactions and use tax*
37 *ordinance adopted under this part shall impose a complementary*
38 *tax upon the storage, use, or other consumption in the district of*
39 *tangible personal property purchased from any retailer for storage,*
40 *use, or other consumption in the district. The tax shall be at a rate*

1 of one-eighth of 1 percent, or a multiple thereof, of the sales price
2 of the property whose storage, use, or other consumption is subject
3 to the tax, and the ordinance shall include provisions in substance
4 as follows:

5 (a) Provisions identical to those contained in Part 1
6 (commencing with Section 6001), insofar as they relate to use
7 taxes and are not inconsistent with this part, except that the name
8 of the district as the taxing agency shall be substituted for that of
9 the state. The name of the district shall be substituted for the word
10 “state” in the phrase “retailer engaged in business in this state” in
11 Section 6203 and in the definition of that phrase.

12 The following additional provisions shall be included:

13 (1) “A retailer engaged in business in the district” shall also
14 include any retailer that, in the preceding calendar year or the
15 current calendar year, has *a total cumulative sales price from the*
16 *sale of tangible personal property to purchasers for delivery* in the
17 ~~state in excess of that exceeds~~ five hundred thousand dollars
18 (\$500,000).

19 (2) Except as provided in paragraph (3), a retailer engaged in
20 business in the district shall not be required to collect use tax from
21 the purchaser of tangible personal property, unless the retailer
22 ships or delivers the property into the district or participates within
23 the district in making the sale of the property, including, but not
24 limited to, soliciting or receiving the order, either directly or
25 indirectly, at a place of business of the retailer in the district or
26 through any representative, agent, canvasser, solicitor, subsidiary,
27 or person in the district under the authority of the retailer.

28 (3) “A retailer engaged in business in the district” shall also
29 include any retailer of any of the following: vehicles subject to
30 registration pursuant to Chapter 1 (commencing with Section 4000)
31 of Division 3 of the Vehicle Code, aircraft licensed in compliance
32 with Section 21411 of the Public Utilities Code, or undocumented
33 vessels registered under Division 3.5 (commencing with Section
34 9840) of the Vehicle Code. That retailer shall be required to collect
35 use tax from any purchaser who registers or licenses the vehicle,
36 vessel, or aircraft at an address in the district.

37 (b) A provision that all amendments to the provisions of Part 1
38 (commencing with Section 6001) relating to the use tax and not
39 inconsistent with this part shall automatically become a part of the

1 ordinance. However, no amendment shall operate so as to affect
2 the rate of tax imposed by the district's board.

3 (c) A provision that the amount subject to tax shall not include
4 the amount of any sales tax or use tax imposed by the State of
5 California or by any city, city and county, or county pursuant to
6 the Bradley-Burns Uniform Local Sales and Use Tax Law (Part
7 1.5 (commencing with Section 7200)) or the amount of any
8 state-administered transactions or use tax.

9 (d) A provision that any person subject to a use tax under an
10 ordinance adopted pursuant to this part shall be entitled to credit
11 against that tax or any transactions tax, or to reimbursement for a
12 transactions tax, paid to a district or retailer in a district imposing
13 a transactions and use tax pursuant to this part.

14 (e) A provision that, in addition to the exemptions provided in
15 Sections 6366 and 6366.1, the storage, use, or other consumption
16 of tangible personal property, other than fuel or petroleum products,
17 purchased by operators of aircraft, and used or consumed by the
18 operators directly and exclusively in the use of the aircraft as
19 common carriers of persons or property for hire or compensation
20 under a certificate of public convenience and necessity issued
21 pursuant to the laws of this state, the United States, or any foreign
22 government, is exempt from the use tax.

23 (f) A provision that the storage, use, or other consumption in
24 the district of tangible personal property is exempt from the tax if
25 the purchaser is obligated to purchase the property for a fixed price
26 pursuant to a contract entered into prior to the operative date of
27 the ordinance. The possession of, or the exercise of any right or
28 power over, tangible personal property under a lease which is a
29 continuing purchase of the property is exempt from tax for any
30 period of time for which the lessee is obligated to lease the property
31 for an amount fixed by a lease entered into prior to the operative
32 date of the ordinance. For purposes of this subdivision, the storage,
33 use, or other consumption of, or possession of, or exercise of any
34 right or power over, tangible personal property shall be deemed
35 not to be obligated pursuant to a contract or lease for any period
36 of time for which any party to the contract or lease has the
37 unconditional right to terminate the contract or lease upon notice,
38 whether or not the right is exercised.

(g) Any provision in an ordinance that is required to be included pursuant to paragraph (1) of subdivision (a) shall become operative on April 1, 2019.

~~SEC. 5. Chapter 3.5~~

SEC. 7. (a) The Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to any guidelines, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600 of the Government Code, established or issued by the California Department of Tax and Fee Administration to implement, interpret, or make specific the amendments made to Sections ~~6015, 6203, 6203~~ and 7262 of the Revenue and Taxation Code by this act.

(b) Implementation of Chapter 1.7 (commencing with Section 6040) of Part 1 of Division 2 of the Revenue and Taxation Code and Section 6203.1 of the Revenue and Taxation Code, as both proposed to be added by this act, for the 2018–19 and 2019–20 fiscal years, is deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare and, therefore, the California Department of Tax and Fee Administration is hereby authorized to adopt emergency regulations to implement those provisions during the 2018–19 and 2019–20 fiscal years, in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

~~SEC. 6.~~

SEC. 8. The amendments made to Sections ~~6015, 6203, 6203~~ and 7262 of the Revenue and Taxation Code by this act shall not have any retroactive effect.

~~SEC. 7.~~

SEC. 9. It is the intent of the Legislature that any additional General Fund revenues derived from state use taxes collected as a result of the amendments made to ~~Sections 6015 and Section 6203~~ of the Revenue and Taxation Code by this act, after reservation of appropriate amounts for purposes of Section 8 of Article XVI of the California Constitution (Proposition 98) and any other constitutional provisions, be allocated for wildfire disaster relief, including relief to those communities affected by

1 the Paradise Fire and other recent wildfires, and be used to combat
2 childhood poverty and establish safe and clean shelters for all
3 children.

4 ~~SEC. 8.~~

5 *SEC. 10.* This act is an urgency statute necessary for the
6 immediate preservation of the public peace, health, or safety within
7 the meaning of Article IV of the California Constitution and shall
8 go into immediate effect. The facts constituting the necessity are:

9 In order to ensure that small businesses are not unduly burdened
10 by the default expansion of the duty to collect use tax under state
11 law due to the application of the holding in *South Dakota v.*
12 *Wayfair, Inc.*, (2018) 585 U.S. ____ and to ensure that the state and
13 local governments timely receive tax revenues that have been
14 previously undercollected to enable them to fund crucial programs
15 and services, it is necessary for this act to take effect immediately.

O



March 6, 2019

Gary Phillips, Chair
Transportation Authority of Marin

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

Judy Arnold
Marin County Board of Supervisors

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Dan Hillmer
Marin County Council of Mayors and
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SUBJECT: Authorize the General Manager to solicit Proposals, Negotiate, and Enter into Purchase Agreements for a used Hyrail Excavator and two used Ballast Cars utilizing a competitive negotiation process.

RECOMMENDATION:

Authorize the General Manager to solicit Proposals to competitively negotiate and enter into purchase Agreements for one used Hyrail Excavator and two used Ballast Cars up to a combined not-to-exceed amount of \$300,000.

SUMMMAR:

Currently SMART uses a third-party contractor to provide ballast car service, an excavator, and operator to assist in performing ballast restoration projects. For three weeks of service, the cost to SMART is \$89,000. In addition, SMART has required over \$20,000 in excavator rentals over the past two years to complete projects.

The addition of the Hyrail Excavator will not only allow SMART to perform ballast restoration projects, but also add debris cleanup, vegetation removal, and the ability to respond to emergency right-of-way repairs quickly and efficiently. The image below is an example of a Hyrail Excavator that SMART may purchase.



The addition of the used Ballast Cars will enable SMART to perform ballast restoration projects in-house. Over the past year, SMART has experienced the need for larger scale ongoing track surface correction projects. SMART-owned ballast cars will reduce third-party contracting costs, increase repair response time during emergency situations, create greater flexibility in terms of internal project scheduling, and provide greater control over work being performed along the right-of-way.

Should SMART be required to continue track maintenance operations without owning Ballast Cars, we would be at the mercy of market availability to address track issues and complete projects. Currently, ballast cars are scarce and not readily available in the marketplace. This delay may result in slow orders on the track, which may adversely affect service provided. The below image is an example of the Ballast Cars SMART may purchase.



The Hyrail Excavator and Ballast Cars will be expected to have ten or more years of useful life remaining on them. Time is of the essence with purchasing these pieces of equipment as SMART is receiving dollar-for-dollar matching funds from the State of California.

For SMART to solicit proposals to competitively negotiate for specialized rail transit equipment, your Board is required to authorize this action (by 2/3 vote). This process will allow for the consideration of technical and commercial factors, as well as price, in the purchasing evaluation. The technical and commercial factors evaluated include, but are not limited to, vehicle performance, age, quality, reliability, capacity, and lifecycle. Authorization in advance is necessary due to the limited availability and how specialized these pieces of equipment are in the used market.

Staff recommends authorizing the General Manager to enter into purchase agreements for a used Hyrail Excavator and two used Ballast Cars utilizing a competitive negotiation process up to a combined not-to-exceed amount of \$300,000. This is to allow for flexibility in the negotiation process and to account for all inspection, freight costs, and taxes associated with these purchases.

FISCAL IMPACT: The Operations budget for Fiscal Year 2018-19 includes funding for the purchases based on receiving a dollar-for-dollar match grant from the State of California.

REVIEWED BY: [x] Finance  [x] Counsel 

Very Truly Yours,



Ken Hendricks
Procurement Coordinator