



**BOARD OF DIRECTORS
MEETING AGENDA
May 20, 2020 – 1:30 PM**

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

MEMBERS OF THE PUBLIC MAY NOT ATTEND THIS MEETING IN PERSON

[ZOOM TELECONFERENCE INSTRUCTIONS](#)

PUBLIC COMMENT PRIOR TO MEETING:

If you wish to make a comment you are strongly encouraged to please submit your comment by 5:00 p.m. on Tuesday, May 19, 2020 at

<https://www.surveymonkey.com/r/SMARTBoardComments>

PUBLIC COMMENT DURING THE MEETING:

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

1. Call to Order
2. Approval of the May 6, 2020 Board Minutes
3. Board Member Announcements
4. General Manager’s Report
5. Public Comment on Non-Agenda Items
6. Consent
 - a. Approval of Monthly Financial Reports
 - b. Accept Monthly Ridership Report- April 2020
 - c. Accept Clipper START Program Report

7. Expansion of SMART Right-of-Way and Scope of Operations by adding Freight Service Responsibility and Executing Related Agreements
8. SMART Budget Survey and Service Reduction Options
9. Next Regular Meeting of the Board of Directors, June 3, 2020 – 1:30 PM
10. Adjournment

DISABLED ACCOMODATIONS:

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



**BOARD OF DIRECTORS
REGULAR MEETING MINUTES
May 6, 2020- 1:30 PM**

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

MEMBERS OF THE PUBLIC MAY NOT ATTEND THIS MEETING IN PERSON

1. Call to Order

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

Chair Lucan welcomed everyone who joined the Board meeting through the variety of methods. -

2. Approval of the April 15, 2020 Board Minutes

Minutes to be corrected to reflect Director Connolly and Aleta Dupre changes.

MOTION: Director Phillips moved approval of the April 15, 2020 Board Minutes as corrected. Director Zane second. The motion carried 11-0 (Director Arnold joined later).

3. Board Members Announcements

Director Rabbitt stated that he will be participating in the MTC Programming and Allocations for the CARES Act Federal Transit Administration Funding distribution. The first meeting is scheduled in the next few weeks.

Director Naujokas stated that he will need to leave the meeting early today.

Director Arnold joined the meeting at 1:37pm

Chair Lucan stated that at the last meeting the Board and staff received a lot of comments/suggestions regarding Measure I campaign, and he encouraged the public to continue doing so. Chair Lucan invited Directors Connolly, Rabbitt, and Rogers to join Vice Chair Pahre and himself to work with staff to coordinate the information received. The information will be provided at a future Board meeting.

4. General Manager's Report

General Manager Mansourian reported that since the start of passenger service in August 2017, SMART has carried 1,869,524 passengers, 184,000 bicycles, and over 7,000 wheelchairs. Also, I have continued to provide you weekly ridership data, now showing an increase in riders.

He announced that Marin County Supervisors established the "Marin Recovers Task Force" (www.marinrecovers.com) to create a plan for the safe reopening of Marin County. The goal is to create a collaboration with various agencies, 13 sectors including transportation have been identified. They asked him to participate as the Transportation Sector Coordinator. He has been in contact with Marin Transit, Golden Gate Bridge and Transportation Authority of Marin and will be reaching out to Lyft, Taxi's, Airporters and others, to prepare plans for safety measures for reopening of each sector.

General Manager Mansourian stated that the City of Petaluma Council approved an Agreement for the Corona Station construction. Under the agreement the Developer will dedicate a 1.27-acre parcel at Corona Road and North McDowell to SMART for the construction of the station. The Developer will purchase the Downtown SMART property for \$8 million and convey the parcel at Corona Road. Staff will bring to the Board at future meeting for approval. A group of Citizens have filed a litigation against the City of Petaluma and Developer. The Developer asked for an escrow extension to November 2020, due to the COVID-19, SMART approved the escrow extension for additional non-refundable deposit.

Lastly, at our next Board meeting, Mr. Mansourian be presenting to the Board Senate Bill 1029, introduced by Senator McGuire and approved by the Governor. Senate Bill 1029 states that it will re-organize the railroad that will be transferred to SMART. Senate Bill 356 established various agreements for Senate Bill 1029.

Comments

Director Connolly stated that he is glad to read that the bike share along the right-of-way is moving forward. He asked the status of the Clipper Start Program with Metropolitan Transportation Commission (MTC). Mr. Mansourian responded that MTC did not award SMART's request to join the program. Staff will provide a written report to the Board.

5. Public Comment on Non-Agenda Items

Steve Birdlebough stated that he is having a difficult time hearing the meeting.

Richard Brand he thanked the Board members whom he has been in touched with and whom have been putting a lot of time exchanging ideas. He also attended the Citizen's Oversight Committee meeting a couple of weeks ago, approximately 40 people attended the meeting. He suggested having a press release announcing to the public that they can listen to SMART's meeting via new technology.

Eris Weaver stated she is happy to see people using the pathways again. At the last Board meeting there were discussions about being more open in receiving public comment and engaging with the community; however, she is very surprised that the Citizen's Oversight Committee meeting in April 2020 is not discussed in the General Manager's Report or in the Board packet for today's meeting. She suggested including the Citizen's Oversight Committee meeting report in the Board packet.

Jack Swearingen said that the Friends of SMART are aware of the letter that William Richards submitted to the Board. He suggested that the Board consider some of the comments made.

Aleta Dupre stated that the Zoom Teleconference is very helpful to engage in the meetings. She suggested having a consistent train schedule throughout the day, and understands it's difficult to change. She would like the Board and SMART to strongly advocate to other agencies the Clipper and Apps. SMART provides a very streamline ticketing service, for the public to have a consistent system to use public transportation.

Duane Bellinger stated that it would have been helpful to have a discussion on the second Petaluma station at an open session Board meeting. He said that the traffic situation at Downtown Petaluma and proposed Corona station are not well thought out. For SMART to give an extension on a real estate transaction until November without public input is improper in his opinion, especially considering the appraisal used in the negotiation is three years old and excluded the value that was added by SMART. He said the Board is neglecting their fiduciary duty to receive maximum price for property. The support from Petaluma has gone down, for Measure Q was 77% and for Measure I it was 55%, which is 1/3 loss of the base in East Petaluma. He asked the Board to analyze the reason for the support decrease.

Steve Birdlebough stated that he is Citizen's Oversight Committee member. At the last meeting they had a large audience a received feedback/comments. The Committee will review and prepare a staff report to present to the full Board at a future meeting. Another Citizen's Oversight Committee meeting is scheduled after the next May Board meeting. He asked members of the public to be patient.

Ben Peters stated how disappointed the citizens of Petaluma are with SMART in particular with SMART's management. He strongly encouraged every Board member to review the City of Petaluma Council minutes of May 4th. The Petaluma City Council did approve the Agreement, it was with universal condemnation of how SMART's management negotiated the Agreement. Every single member of Petaluma at the City Council expressed their frustration and disappointment with SMART's management. The citizens of Petaluma,

echoing their elected leaders will be working on a vote with no confidence for SMART's General Manager. If anything like Measure I was to come back it would have to be with new management at SMART, he added. The Corona Station is a disaster and the lawsuit has an opportunity of succeeding due to not having an Environmental Impact Report. A Mitigated Negative Declaration does not meet the basic legal standards for a complex project. Petaluma is unhappy with SMART's management, and would like to see a functioning train and management. The Petaluma Mayor strongly condemned how SMART has acted on this project. This is disappointing and frustrating and looks forward for further opportunity for the public to provide comments on the second Petaluma Station.

General Manager Mansourian stated that the comments received at the Citizen's Oversight Committee meeting regarding Measure I were documented and provided to the Vice Chair Pahre and Chair Lucan to review with the sub-committee as mentioned earlier. The Citizen's Oversight Committee will continue to meet through this process. The Citizen's Oversight Committee is a separate committee and once their agenda and minutes are approved the Clerk can distribute to members of the public.

General Manager Mansourian said that he strongly disagrees with Mr. Peters comments that every Petaluma City Council member picked a fight with him at the meeting. Director Rabbitt and himself have clarified at various Board meetings that SMART does not have any approval jurisdiction or authority over the Corona property development. The development is with the City of the Petaluma and Developer. SMART's agreement with the City of Petaluma is the sale of Downtown Petaluma property and receiving 1.27-acres at Corona Road and subject to your Board policy approval the proceeds will build the second Petaluma Station.

Director Rabbitt stated that General Manager Mansourian spoke accurately. The agreement is to sell the Downtown Petaluma property and received 1.27-acres for the construction of the second Petaluma Station to fulfill the City of Petaluma vision. SMART has nothing do to with the development of either site (Corona Road property and Downtown Property). It is a CEQA Lawsuit that was filed, from people who don't approve of the development project. He acknowledges the General Manager Mansourian for the extension for which the developer provided additional non-refundable funds into escrow. It is very disappointing there is misinformation on this particular project.

6. Consent
 - a. Accept COVID-19 Actions Taken – Status Report

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

MOTION: Director Arnold moved approval of the Consent Agenda as presented. Director Naujokas second. The motion carried 12-0.

7. Fiscal Year 2019-20 Budget Update, Fiscal Year 2020-21 Budget Reductions, and Approval of Early Action Items

Chief Financial Officer, Erin McGrath stated that the PowerPoint presentation is available on SMART's website. Highlights include:

- Overview
- Challenges and CARES Act Update
- Revenue Projection
 - Challenges for next budget
 - Fiscal Year 2020-21
 - Wide Range Possibilities
- Input on Budget Reductions Strategies
 - Bucket #1: One-time savings: Total of \$3.5 million (each will be put on hold until other funding can be identified. The budget will not include/make use of one-time revenue anticipated for Railroad Square or Petaluma Property)
 - Bucket #2: Reduction in Ongoing Expenses Non-Salary: Total of \$2.6 million (the sooner we get started on these items the more we will save)
 - Bucket #3: Reduction in Expenses Due to Reduction in Service
- Approve Early Actions on Reductions
 - Early Notice to Wi-Fi Contractors
 - Authority for Contract Extension with PFM to pursue refinancing
 - Rail liability Insurance: Cost avoidance strategy

Comments

Director Arnold asked for clarification on the Black Point repair cost. Ms. McGrath responded that there had been some accidents damaging the bridge that have not been repaired. Mr. Mansourian said that the bridge need repairs from two hit and run by barges accidents that occurred two years ago. Once Senate Bill 1029 agreement is approved by your Board, SMART will use those funds to repair the damages.

Director Naujokas asked if staff has research the possibility of turning the Wi-Fi to a revenue source, like airlines. Ms. McGrath responded that the fee would be high vs. the revenue received. Mr. Mansourian stated that an on-board survey was conducted and passengers were not in favor of paying. Director Naujokas asked if not purchasing the \$95 million in insurance exposes SMART to uninsured liability. Ms. McGrath responded that you are always exposed to greater risk than you can purchase. We believe that the risk of the service given our safety that is being provided is very low. This is an acceptable risk for where SMART is today.

Director Rogers asked for clarification of the elimination of the Wi-Fi on-board and not the Wi-Fi at stations platform. Ms. McGrath responded that the stations platform Wi-Fi will continue and is free and being provided through a public/private partnership with Sonic and a number of benefits were negotiated through the partnership.

Director Naujokas left the meeting at 2:33pm

Director Phillips thanked Ms. McGrath for the report and the reasonable assumptions made. He asked for more detail of the PFM service contract of \$150,000. Ms. McGrath responded that it's a preliminary cost based on the hours they need to work. Once an estimated cost is provided, she will report back to the Board.

Director Fudge asked if there can be one (1) hot spot on the train instead of Wi-Fi, for less cost. Ms. McGrath responded that staff can research that technology. Director Fudge is in favor of Customer Service being provided at SMART, where staff can provide accurate information.

Director Garbarino said that transferring the Customer Service to SMART staff is an excellent idea, and a good cost savings. She thanked Ms. McGrath for a very clear presentation .and detailed staff report.

Director Rabbitt thanked Ms. McGrath and staff for the report. He asked if the deficit at the end of this year will be absorbed through fund balance and not carried over. He asked if the \$2.9 million shortage will have to come from the reduction of service and/or the second phase of CARES Act funds.

Director Zane thanked Ms. McGrath for a very clear presentation and report. She asked if the fare revenue estimate reductions, are those numbers based on what is happening at this time. Ms. McGrath responded that the revenue will depend on what the on-going cuts your Board approves today, which could impact the fare revenue. The chart shows 30% projection reductions of what would have been received in the next fiscal year. Director Zane said that the great recession affected the sales tax over a three-year period, where would SMART be considered mild, moderate or deep impact with the sales tax at this time. Ms. McGrath responded that it is very to predict how it will go up. The great recession occurred over a two-year period, however the COVID-19 shutdown occurred fast and has remained. It's possible that the fiscal year 2020 impact could be less, and the fiscal year 2021 impact would be higher, it is reasonable to assume that it could be as low as 15% and high 20% and will not recover in one year but it could take up to three years. In the fiscal year 2020 budget, SMART will not be using as much of the reserves, due to the CARES Act funding that SMART has received. The upcoming budget will hope to solve the problems for the next three years, knowing that the entire economy can be shut down and will recover in six, nine months or one year.

Director Connolly questioned the elimination of the on-board Wi-Fi as a proposed measure. If the proposed new train schedule will be the primary focus for commuters, and there is a fairly large contingency of students whom take the train for school. The Wi-Fi is an important service for those travelers would impact ridership or use of SMART service in a negative way. Has SMART conducted any analysis or public outreach regarding Wi-Fi usage. The tree

mitigation shows a savings of approximately \$2.2 million; how does it align with fire mitigation priorities for both counties. Ms. McGrath responded that there is no relationship between the two. SMART will continue to perform weed abatement along the right-of-way for fire safety. SMART is also working with PG&E, who is conducting fire mitigation that crosses the right-of-way. With the efforts of property owners, PG&E and SMART there are no concerns. The Wi-Fi to riders' specific outreach has not been conducted at this time. The equipment will remain and SMART can re-evaluate in 6 to 8 months and can turn it back on at a later time.

Vice Chair Pahre stated that Ms. McGrath said that the Wi-Fi will have the option to turn back on once SMART evaluates and determines if it is affecting ridership. She thanked Ms. McGrath for the transparent approach, where she presents the Board the thought processes that has been discussed with the General Manager. It is very easy to look at a piece of paper and not being able to understand, and perhaps this is why the members of the public question. As the Golden Gate Bridge representative, the Customer Service at Golden Gate Bridge handles a lot of behind the scene pieces; she is very supportive that SMART takes charge.

Director Phillips stated that the assumptions made are reasonable and added that the City of San Rafael received from sales tax consultant a recommendation of 18% reduction over a three-year period. He said that the Wi-Fi is an important service.

Chief Financial Officer, Erin McGrath continued the presentation. Highlight include:

- Bucket #3: Reduction on Ongoing Services and Staff total of \$5.8 million
 - Elimination of Weekend Service
 - Cost reductions of \$2.2 million
 - Net Savings of \$1.6 million
 - Revenue Loss of \$600,000
 - Reconfiguration of Train Service to 22 Trips Daily
 - 5 morning and afternoon commute trains, with 1 midday
 - Net Savings of \$4.7 million
 - Revenue loss of \$1.5 million
 - Other Reductions to Benefits and Pay
 - Eliminate cost of living increases
 - Capping SMART's share medical plans
 - Voluntary Separation Incentives (depending years of service)

General Manager Mansourian stated that it is a very difficult time for staff and the Board. He has been working with the department heads and the Chief Financial Officer on two budgets scenario: 1) Measure I being successful and 2) Measure I not being successful. Now COVID-19 has added to the complexity of SMART's budget. Assuming SMART receives the CARES Act funds of \$10 million and the federal balance of \$6.6 million, we still need to go through the painful process. Working with department heads and operations staff, we sit in those meeting feeling we are drilling a hole in our hearts because we are eliminating service and positions. Matching the service and staffing levels to meet the Budget goals, we asked ourselves what

level of service can we provide and still meet the target budget reduction, and we operate on a single track with is challenging and complex. Highlight include:

- What it takes to Operate a Commuter Train
 - Board of Directors
 - General Manager
 - Administration Division/Functions
 - Operations Division
- Operations Division/Functions
 - Transportation: 29 Engineer-Conductors, 10 Dispatch – Field Supervisors, and 2.5 Bridge Tenders
 - Maintenance of Way (Track, Signal System, Facilities and Pathways)
 - Tracks: currently own 57.3 miles plus 25 miles Brazos, with pending 21 more miles when SB 1029 is approved; 74 miles of vegetation control; Federal Railroad Administration required inspections; and 9 track employees responsible
 - Signal Systems: 72 at-grade crossing, 7 at-grade crossings, 64 wayside signals, 38 switches, Positive Train Control, Federal Railroad Administration required inspections; and 11 signal system employees responsible
 - Facilities: 2 tunnels, 32 bridges, 12 stations plus Windsor, 12 miles of bicycle/pedestrian pathways, 5 park and rides lots plus Windsor, 25 miles of fencing, 4 maintenance facilities; and 4 facility employees responsible
 - Vehicle Maintenance
 - 18 train cars (Diesel Multiple Units)
 - 32 Maintenance and Agency Vehicles
 - 28 Employees: 10 Laborers: clean inside the train, fueling, cleaning bathrooms and waste disposal; 16 vehicle technicians and supervisors covering 3 shifts; and 2 parts and inventory control
 - Federal Railroad Administration required inspections
- What does it take to run only one train
 - Need to maintain 45 miles of tracks
 - Need to maintain all grade-crossings
 - Need to maintain all signal systems
 - Need to maintain all stations
 - Need to maintain Positive Train Control
 - Need to staff and manage a 24-7, 365 days a year dispatch center
- Staff needed to run only one train
 - 4 Engineer/Conductors
 - 4 Dispatch and Field Supervisors
 - 19 Tracks, Signals, Facility and Pathway
 - 5 Vehicle Maintenance
 - 3 Safety and Security
 - 1 Train Control
 - 1 Code Compliance
 - 1 Administrative Support

- 1 Manager
- Including Payroll, Finance, Legal, Human Resources, IT, Purchasing, Real Estate, and Capital
- SMART – Operating Schedule Overview (32 minutes headways)
- Pre COVID-19 Schedule Illustration (38 Trips)
- COVID-19 Schedule Illustration (16 Trips)
- 5-1-5 Example Schedule (22 Trips)
- Summary - We have identified a range of budget options and savings proposals.
 - Bucket #1: One-time savings: Total of \$3.5 million
 - Bucket #2: Reduction in Ongoing Expense, Non-Service: Total of \$2.6 million annually
 - Bucket #3: Reduction in Ongoing Expense Due to Reductions in Service/Staff: Net savings of \$5.8 million annually
- Recommendations
 - 1) Provide Input on Budget and Operational Changes
 - 2) Approve Early Actions on Fiscal Year 2019-20 and 2020-21 Budget items for:
 - a. Elimination of On-Board Wi-Fi Service
 - b. Reduce rail liability insurance
 - c. Proceed with steps for Bond Refinancing
 - d. Direct staff to notify public on service reductions

Chair Lucan stated that staff is recommending three immediate action items.

Comments

Aleta Dupre stated that this is not an easy to make decisions, the budget is already very lean and not a lot that can be taken. She is okay removing the Wi-Fi, however there is a lot of people and students that have limited internet or none at all. Certainly, the Wi-Fi is helpful to those whom don't have consistent 24-hour internet access. She voiced concerns about the reduction of the train insurance, however she understands. Lastly, she is concerned that if tree mitigation is reduced because it could cause hazard along the right-of-way.

Duane Bellinger would like to know how much income is SMART receiving from a real estate transaction in Petaluma. It seems that the Corona project is related to the Windsor project. If funds are needed to complete the Petaluma/Corona project, he suggested that only the platform and Positive Train Control to be built until other funds become available. His vehicle insurance is reducing liability due to less driving, SMART is providing fewer trains service and liability is less, he asked if SMART has received a rate reduction.

Chair Lucan suggested taking action of staff recommendations, since Director Phillips will need to leave the meeting.

Director Phillips stated that he is in favor of the three recommendations by staff and will have to leave the meeting.

Director Phillips left the meeting at 3:20pm.

Director Connolly suggested that the elimination of the on-board Wi-Fi be revised, once staff received feedback from members of the public and riders.

Director Zane suggested that staff conduct community engagement prior to eliminating the on-board Wi-Fi service.

Director Fudge stated that the free Wi-Fi attracts riders, however its over \$500,000. It will hurt the segment of riders that have limited internet service. The elimination Wi-Fi can also potentially save one or two positions/jobs. It's a difficult decision to eliminate Wi-Fi and jobs. Assuming when SMART can add items back there will be discussion in the future. If sales tax revenue is higher than anticipated would providing Wi-Fi back to passengers would be the least expensive. Mr. Mansourian responded that once its eliminated, staff would have to negotiate a new contract.

Director Rogers stated that immediate actions are necessary to stabilize the budget. It is not ideal to eliminate the on-board Wi-Fi; in the short term the public will understand. He agrees with Director Connolly that once community engagement around Measure I the changes being proposed will need to be part of the discussion. The Board needs to make clear the commitment that we are going to listen and receive feedback and that the Board will consider at a later time. In the short-term due to the many uncertainly, he is willing to approve staff recommendations.

Vice Chair Pahre moved to approve the three immediate action recommendations Director Rabbitt Second. The Board will revisit the Wi-Fi contract once feedback is received.

Director Rabbitt stated that nobody wants to eliminate Wi-Fi, however the cost is \$500,000.

MOTION: Director Pahre moved to Approve Early Notice to Wi-Fi Contractors and continue to monitor how it affects ridership and part of the Boards discussions. Director Rabbitt second. The motion carried 10-0 (Directors Naujokas and Phillips absent).

MOTION: Director Rogers moved to Proceed with steps for Bond Refinancing with PFM contract extension. Director Fudge second. The motion carried 10-0 (Directors Naujokas and Phillips absent).

MOTION: Director Garbarino moved to Approve Rail Liability Insurance from \$295 million to \$200 million. Director Arnold second. The motion carried 10-0 (Directors Naujokas and Phillips absent).

Chair Lucan asked the Board to provide staff direction to Bucket #3 – Reduction in Ongoing Services and Staff

Director Rogers stated that SMART has not conducted outreach with the public. It is a discussion that will need to happen to know what type of service they would like from SMART. Is it going to be a commuter rail service that gets people to their jobs/home or a focus on tourism? He would like to receive information prior to making a decision. He suggested having historical spending information with the budget, that the public can understand the spending and engage them in the process.

Director Connolly said he concurs with Director Rogers statement particularly around listening and public engagement as SMART moves forward with operations of the system. He suggested conducting analysis with different operating scenarios during the week, like 22 trips vs. 16 trips. How does the weekend service see itself with the rail service moving forward, we are going to learn from the public. We are in a drastic position to do cost reductions scenario at this time.

Director Naujokas joined the meeting 3:40pm

Director Fudge stated that when shelter-in-place ends and travel resumes, people's habits will change and start to travel locally. A mini tourism boost can occur and she suggested researching with the travel tourism. Just looking back to on SMART's milestones this is a very difficult decision that needs to happen. She understands the logic of 22 trips per day, and need to hear from the public in the next few weeks, since SMART's budget needs approval in June 2020. Her goal is to layoff as few people as possible and keep as many employed.

Director Rabbitt stated that he has been in contact with Sonoma County Tourism, which have state wide program that will start when shelter-in-place start to lift. He suggested conducting outreach to evaluate public expectation the next two weeks. He is worried that once shelter-in-place is removed, people will not take public transportation not trusting the system. SMART needs to show how clean and safe the train is.

Director Zane stated that public input needs to be heard prior to reducing/cutting service. The community outreach and engagement are very critical at this point.

Director Arnold asked how will outreach be conducted in the next two weeks. Mr. Mansourian responded outreach by social media, newspaper, and website. All the decisions made by the Board will require implementation and constant budget monitoring. It could also be difficult retrieving staff once they are layoff. These are difficult decision that need to happen prior to final budget approval in June.

Director Pahre stated that it's going to be a challenge for the Board to know from the public responses which are life changing or pleasure experience. We need to ask why they ride SMART, for pleasure or commute service. The Board and staff will have tragic challenges ahead.

Chair Lucan stated SMART is faced with difficult decisions. “We as an agency have evolved from a construction agency to a transit agency”. At this time, we need to get creative of how to engage the public due to COVID-19, where the Board is not making decision in a vacuum but with as much public input. Perhaps using Zoom teleconference to engage the public, many different ways. Also, the Board decisions on the budget, do not necessary mean it will be implemented on July 1st.

General Manager Mansourian said he will provide an update/status at the next meeting of the following items: 1) SB 1029 status; 2) Petaluma Agreement; and 3) Santa Rosa to provide the Board with more options.

Director Rabbitt thanked staff and acknowledge that it’s a very difficult time. It is very important to provide as much information as possible and receive feedback in the next few weeks. The choices and decisions will be the best of what is available at the time.

Director Arnold said that during this COVID-19 crisis, the Marin County Supervisors provide messages to the public via email. She suggested that Board members can provide SMART message via those contacts.

Director Naujokas stated that SMART is faced with various challenges, however there could be opportunities.

Director Garbarino acknowledged all the hard work that staff has provided during COVID-19. Staff has the support of the Board to make the correct decision. It is really had to image where SMART was prior to COVID-19.

8. Next Regular Meeting of the Board of Directors, May 20, 2020 – 1:30PM
9. Adjournment – Meeting adjourned at 4:28PM.

Respectfully submitted,

Leticia Rosas-Mendoza
Clerk of the Board

Approved on: _____



May 20, 2020

Eric Lucan, Chair
Transportation Authority of Marin

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

Judy Arnold
Marin County Board of Supervisors

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Joe Naujokas
Sonoma County Mayors' and
Councilmembers Association

Gary Phillips
Transportation Authority of Marin

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

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

SUBJECT: Monthly Finance Reports

Dear Board Members:

RECOMMENDATION: Information Item

SUMMARY:

We are presenting the monthly reports for activity through the month of April. The budget report shows transactions for the first ten months of the fiscal year. Fare revenues, which had averaged over \$325,000 a month, were \$76,047 for the month of April. We have received 8 payments from the State against our sales tax revenue owed, and that total is \$27,514,993. We have not yet received any receipts that would inform us on the impact of the stay-at-home orders. Bond fund investments through April totaled \$20,032,219 while other cash and investments equaled \$44,802,131. Expenditures are on target to be at or below authorized budgeted amounts and will be examined and reported as part of the budget presentation next month.

Very truly yours,

/s/
Erin McGrath
Chief Financial Officer

Attachment(s): 1) Monthly Finance Report
2) Contract Summary Report

Sonoma-Marin Area Rail Transit District
 Monthly Finance Reports
 Through April 2020

	FY 2019-20 Approved Budget	Actual	Remaining Budget
Revenues			
Administration			
Sales/Use Taxes	\$ 27,973,136	\$ 19,404,459	\$ 8,568,677
Interest Earnings	295,000	626,674	-
Rent - Real Estate	265,755	305,892	-
Advertising Revenue	221,750	318,920	-
Miscellaneous Revenue	50,000	124,132	-
Administration Subtotal	28,805,641	20,780,076	8,568,677
Operations			
Fund Balance	9,505,068	9,505,068	-
Sales/Use Tax	11,292,866	8,110,534	3,182,332
Fare & Parking Revenue	4,187,000	3,058,606	1,128,394
Federal Funds	-	29,121	-
State Grants	7,404,794	3,649,738	3,755,057
Other Charges	40,000	227,322	-
Operations Subtotal	32,429,728	24,580,388	8,065,783
Capital			
Fund Balance	28,620,039	28,620,039	-
Federal Funds	4,650,000	1,490,281	3,159,719
State Grants	14,010,000	7,850,601	6,159,399
Other Governments/Misc	4,528,192	3,794,322	733,870
Measure M	200,625	-	200,625
MTC	-	192,015	-
Miscellaneous Revenue	-	300,000	-
Capital Subtotal	\$ 52,008,856	\$ 42,247,259	\$ 10,253,612
Revenue Total	\$ 113,244,225	\$ 87,607,723	\$ 26,888,073
Expenditures			
Administration			
Salaries & Benefits	\$ 5,146,304	\$ 3,626,511	\$ 1,519,793
Services & Supplies	6,835,130	3,575,145	3,259,986
Debt Service/Other Charges	16,847,600	7,412,600	9,435,000
Machinery & Equipment	95,000	45,942	49,058
Administration Subtotal	28,924,034	14,660,198	14,263,836
Operations			
Salaries & Benefits	16,146,984	11,080,534	5,066,450
Services & Supplies	11,781,730	5,603,372	6,178,359
Buildings & Capital Improvements	4,501,014	1,737,110	2,763,904
Operations Subtotal	32,429,728	18,421,015	14,008,713
Capital			
Salaries & Benefits	1,732,501	1,015,977	716,524
Services & Supplies	1,304,340	255,605	1,048,735
Other Charges	1,127,965	683,047	444,917
Land	11,000	11,000	-
Machinery & Equipment	15,350,088	10,750,241	4,599,848
Infrastructure	32,482,961	12,996,182	19,486,779
Capital Subtotal	\$ 52,008,856	\$ 25,712,052	\$ 26,296,803
Expenditure Total	\$ 113,362,618	\$ 58,793,266	\$ 54,569,352

Investment Report

	<u>Amount</u>
Bond Reserve Fund	
Sonoma County Treasury Pool	\$ 17,072,500
Interest Fund	
Sonoma County Treasury Pool	1,151,781
Project Fund	
Sonoma County Treasury Pool	-
Principal Fund	
Sonoma County Treasury Pool	1,807,938
SMART Operating Accounts	
Bank of Marin	18,319,535
Sonoma County Treasury Pool	26,482,596
Total	\$ 64,834,349

Capital Project Report

	<u>Budget</u>	<u>Actual</u>	<u>Remaining</u>
Additional Railcar Purchase			
Revenues	\$ 11,000,000	\$ 8,250,000	\$ 2,750,000
Expenditures	\$ 11,000,000	\$ 8,250,000	\$ 2,750,000
San Rafael to Larkspur Extension			
Revenues	\$ 55,435,059	\$ 52,718,404	\$ 2,716,656
Expenditures	\$ 55,435,059	\$ 53,064,154	\$ 2,370,905
Windsor Extension			
Revenues	\$ 65,000,000	\$ 1,159,036	\$ 63,840,964
Expenditures	\$ 65,000,000	\$ 3,229,396	\$ 61,770,604
Petaluma Payran to Southpoint Pathway			
Revenues	\$ 3,261,098	\$ 1,622,070	\$ 1,639,028
Expenditures	\$ 3,261,098	\$ 2,556,566	\$ 704,532



Contract Summary

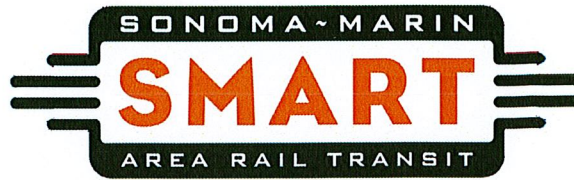
Active Contracts as of May 1, 2020

Contractor	Scope	Fiscal Year 19/20 Projected	Fiscal Year 19/20 Actuals-To-Date
A.J. Janitorial Service	Janitorial Services for all Stations, Roblar, ROC, and Fulton	\$102,320	\$73,145
Air Technology West	Maintenance and On-Call Repair for Air Compressors	\$6,000	\$4,165
Alcohol & Drug Testing Services, LLC	DOT Drug and Alcohol Testing	\$39,000	\$8,446
Alliant Insurance Services	Insurance Brokerage & Risk Management Services	\$80,000	\$0
Alstrom Transportation	DMU Collision-Damaged Repair Work and Overhauls	\$202,543	\$106,527
American Rail Consultants, Inc.	Railroad Bridge Engineering, Inspection, & Design	\$48,672	\$11,307
Aramark Uniform Services	Employee Uniform Provider and Cleaning Service	\$31,724	\$21,541
Asbury Environmental Services (AES)	Recycling & Disposal Service for Used Oil, Fuel Filters, Rags, and Related Equipment	\$10,000	\$2,195
Barbier Security Group	Security Patrol Services along Right-of-Way	\$200,000	\$175,175
Barnes & Company, LLC	Safety Outreach Services	\$25,000	\$19,838
Beacon Economics	Sales Tax Revenue Forecast Consulting Services	\$10,000	\$10,000
Becoming Independent	Emergency Bus Bridge Services	\$25,538	\$10,588
Bettin Investigations	Background Investigations	\$8,863	\$7,016
Biddle Consulting Group, Inc.	Federal Equal Employment Opportunity Plan Creation and Completion	\$7,500	\$5,000
Big Cat Advertising	Digital Advertisement Services	\$18,000	\$15,000
Biggs Cardosa Associates, Inc.	Engineering Design and Construction Support for Payran to Southpoint Multi-Use Pathway	\$43,954	\$10,550
Bradford D. Andersen dba Andersen Window Tinting	Installation of High Heat Rejecting Tint on DMU Windows	\$4,150	\$4,150
Bright Star Security, Inc.	Security Patrol Services at SMART's Cal Park Tunnel	\$6,100	\$3,118
Burke, Williams & Sorensen, LLP	Litigation Support Services	\$163,513	\$2,306
CALOPPS - City of Foster City	HR Recruitment Services	\$3,500	\$3,500
Certified Employment Group	Temporary Staffing Services	\$42,329	\$18,255
Cinquent & Passarino, Inc.	Right-of-Way Land Surveying and Related Services	\$60,000	\$34,222
Corey, Canapary & Galanis	NTD Compliant Passenger Counting Services	\$33,603	\$33,603
DeAngelo Brothers, LLC (DBI Services)	Vegetation Control Services	\$37,651	\$37,651
Delta Wheel Truing Solutions	Modifications to the Wheel Truing Machine	\$34,911	\$0
Doug Williams	Fire and Life Safety Consultant	\$8,000	\$7,280
Dr. Lance O'Connor	Occupational Health Screening Services	\$3,600	\$340
Dr. Mark Clementi	Pre-Employment Psychological Evaluations	\$25,000	\$17,244
eLock Technologies, LLC	Station Bike Lockers and Maintenance Services	\$54,576	\$39,334
Empire Cleaners	Uniform Dry-Cleaning, Laundering, and Related Services	\$40,000	\$19,440
Erntec Consulting Services, LLC	Oracle Accounting System Support Services	\$50,000	\$7,823
ePath Learning, Inc.	Business Training Library	\$10,005	\$10,005
ePath Learning, Inc.	Cloud-Based Training / Learning Management Software	\$6,180	\$6,180
Everbridge, Inc.	Nixle Computer Software (Cloud-based)	\$11,800	\$11,800
George Hills Company, Inc.	Third Party Claims Administration Services	\$10,000	\$3,791
GHD, Inc.	SWPP Compliance, AutoCAD Management, Traffic and Hydraulic Analysis	\$65,757	\$59,773
Ghiotti Bros, Inc.	Enhanced Pedestrian Safety Improvements	\$577,604	\$538,158
Golden Gate Bridge, Highway and Transportation District	Weekend Bus Service between San Rafael Transit Center and Larkspur Ferry	\$68,664	\$19,803
Golden Gate Bridge, Highway and Transportation District	Customer Service Support Services	\$335,580	\$185,823
GP Crane & Hoist Services	Cal/OSHA Crane Inspection Services	\$15,000	\$450
Granicus, Inc.	Media Streaming & Internet Broadcasting Services	\$10,348	\$7,760
Granite Construction Company	Non-Motorized Pathway, Payran to Southpoint	\$2,002,053	\$2,001,853
Hanford A.R.C.	Implementation and Monitoring Las Gallinas Creek Riparian Enhancement Plan	\$15,230	\$8,160
Hanson Bridgett LLP	Legal Services	\$170,000	\$116,213
Hogan Lovells LLP	Legal Services - Freight and Passenger Rail Sector	\$100,000	\$23,256

Contractor	Scope	Fiscal Year 19/20 Projected	Fiscal Year 19/20 Actuals-To-Date
Holland Company	Track geometry and Measurement Services	\$24,000	\$24,000
Hulcher Services, Inc.	On-Call Derailment Services	\$72,000	\$0
Industrial Railways Company	Ballast Car Operations	\$70,884	\$70,884
Innovation Business Solutions	Payroll Processing Solutions	\$35,400	\$20,004
Intellectrace, Inc.	Internet/Cellular Tower Maintenance Services	\$40,000	\$22,180
Intelligent Technology Solutions, Inc.	Maximo MMS Implementation and Support Services	\$176,000	\$144,835
Leete Generators	Generator Maintenance	\$1,432	\$1,195
LM Disability Consulting	Disability Access Consulting	\$12,000	\$2,513
LTK Engineering Services	Vehicle and Systems Design and Construction Management Services	\$178,507	\$154,476
Managed Health Network	Employee Assistance Program (EAP) Services	\$2,338	\$1,922
Masabi LLC	SMART Mobile Ticketing Pilot Project	\$57,600	\$39,750
MaxAccel	Compliance Management Software Design/Implementation/Asset Management	\$14,000	\$10,087
Maze & Associates	Financial Audit Services	\$46,664	\$42,603
M/Grodner, LLC	Project Management Services	\$94,000	\$20,525
Mike Brown Electric Co.	On-Call Electrical Maintenance	\$19,895	\$4,011
Militus, Inc.	Cybersecurity Monitoring and Assessment	\$40,000	\$40,000
Militus, Inc.	Cybersecurity Assessment Services	\$40,000	\$40,000
Modern Railway Systems, Inc.	Design and Construction of Systems Improvements for the Windsor Extension Project	\$1,000,000	\$0
Netspeed Solutions, Inc.	SMART Phone System Maintenance	\$16,050	\$8,732
Netspeed Solutions, Inc.	Emergency Telephone Gateway Upgrade for Porto Suello Tunnel	\$5,272	\$5,272
Netwoven Inc.	SharePoint Maintenance, Support, Implementation, and Related Services	\$48,000	\$38,544
North Bay SAP Services	Use of Nextdoor Platform for Community Notifications	\$7,600	\$4,513
Northwestern Pacific Railroad Company, Inc.	Substance Abuse Professional Services	\$3,800	\$0
Occupational Health Centers of CA	Provision and Operation of Ballast Car	\$36,000	\$25,760
Pamco Machine Works, Inc.	Pre-Employment Evaluation Services	\$25,000	\$13,480
Parodi Investigative Solutions	Railroad Wheel Pressing Services	\$378,000	\$164,490
PFM Financial Advisors, LLC	Pre-Employment Background Investigation Services	\$20,000	\$10,150
Pivotal Vision, LLC	Financial Advisory Services	\$100,000	\$67,196
Platinum Advisors, LLC	Security Software Licensing	\$2,200	\$2,200
Portola Systems, Inc.	State Legislative Advocacy Services	\$60,000	\$60,000
Portola Systems, Inc.	Uninterrupted Power Supply Battery Backup at SMART Stations	\$63,700	\$30,499
Precision Wireless	SMART Station Network Configuration Services	\$202,541	\$178,809
Premier Fall Protection, Inc.	Tech Support and Maintenance for Land Mobile Radio	\$25,000	\$3,434
Rail Enterprises	Inspection and Certification Services for SMART's Fall Protection Equipment	\$8,000	\$2,784
RailPros, Inc.	Ballast Car Transportation and Logistics Coordination	\$35,000	\$28,914
Reyff Electric Company	Professional Engineering Services for Larkspur Extension	\$250,000	\$179,706
Santa Rosa Fire Equipment Service, Inc.	Installation of Circuits to Wall-Mounted EV Chargers	\$4,320	\$4,320
SEFAC USA	SMART Fire Equipment Maintenance	\$7,029	\$6,252
ServPro of Lake Mendocino and Sonoma County	Portable Lifting Jack Inspection and Certification Services	\$5,000	\$0
Sonoma County Fleet Operation Division	Biohazard Clean-Up and Hazmat Services	\$206,795	\$166,775
Sonoma County Probation Department	Non-Revenue Fleet Maintenance Services	\$75,000	\$21,246
Sonoma County Transit	Right-of-Way Vegetation Control, Brush and Debris Removal, and Homeless Camp Clean-up	\$30,000	\$5,100
Sperry Rail Service	Bus Service Route 56 (North Stations)	\$192,109	\$122,463
SPTJ Consulting	Rail Flaw Detection Services	\$13,500	\$12,819
	Network Infrastructure, Security, Migration and Setup Services	\$365,580	\$133,853

Contractor	Scope	Fiscal Year 19/20 Projected	Fiscal Year 19/20 Actuals-To-Date
Stacy and Witbeck, Inc.	Design/Build Construction of Civil, Track & Structures of Windsor Extension	\$8,300,000	\$1,909,417
Stacy and Witbeck, Inc.	Railroad Track Maintenance, Alignment, and Restoration	\$20,000	\$210,210
Stacy and Witbeck/Herzog, JV	Design/Build Construction of Civil, Track & Structures Improvements of Larks spur Extension	\$8,599,958	\$8,130,293
Stantec Consulting Services, Inc.	Environmental Permit Management and Construction Compliance Monitoring	\$92,277	\$6,116
Stercycle, Inc.	Medical Waste Pick-Up and Disposal Services	\$1,918	\$0
Sue Evans	Real Estate Support Services	\$17,849	\$13,412
Sumitomo Corporation	Manufacture & Delivery of Rail Vehicles	\$14,567,201	\$10,317,197
Summit Signal, Inc.	Emergency Call-Out Services for Track and Signals	\$10,000	\$0
Survival CPR & First Aid, LLC	First Aid and CPR Training, AED Compliance Program	\$5,090	\$5,090
Swiftly, Inc.	AVL Mobile Application and Website Interface	\$8,925	\$8,400
Terris, Barnes & Walters	Ballot Measure Communication Consulting	\$15,053	\$15,053
The GBS Group	Internet Connectivity (Wi-Fi) for SMART Trains	\$500,690	\$399,521
Triliant, LLC	Online Training Program	\$2,467	\$2,467
Transportation Certification Services, Inc.	Onsite Inspection and Training Services	\$8,000	\$4,145
Trillium Solutions, Inc.	Transit Feed Mapping Software	\$1,000	\$1,000
United Mechanical Incorporated	HVAC Maintenance Services at SMART Facilities	\$20,700	\$12,966
United Mechanical Incorporated	Bridge Tender House HVAC Install Project	\$8,749	\$8,749
Utah Transit Authority	DMU Wheel Truing Services	\$28,413	\$28,413
Van Scoyoc Associates	Federal Lobbying Services	\$60,000	\$45,000
VenTek Transit Inc.	Clipper Vending Machine Operations and Maintenance Services	\$313,557	\$191,510
VenTek Transit Inc.	Clipper Card Vending Machine Contract Assigned to SMART	\$341,724	\$264,586
WBE	Existing CCTV System On-Call Maintenance	\$50,000	\$8,216
West Coast Arborists, Inc.	Tree Trimming, Removal, and Related Services	\$66,978	\$66,978
WRA Environmental Consultants	Environmental Permitting, Management, & Support Services	\$205,216	\$140,747
Totals		\$42,380,249	\$27,427,566

Actuals-To-Date includes invoices that have been approved as of April 30, 2020, but may not have been processed in SMART's Financial System



May 20, 2020

Eric Lucan, Chair
Transportation Authority of Marin

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

Judy Arnold
Marin County Board of Supervisors

Damon Connolly
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Farhad Mansourian
General Manager

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www.sonomamarintrain.org

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

SUBJECT: Monthly Ridership Report – April 2020

Dear Board Members:

RECOMMENDATIONS: Information Item

SUMMARY:

We are presenting the monthly ridership report for activity for the month of April 2020. This report shows trends in ridership for SMART by tracking Totals, Average Weekday riders, and Average Weekend/Holiday riders via the two methods we employ to track riders on a daily basis: Onboard Counts and Clipper + Mobile App paid fares. The report details bicycles and wheelchairs counted as well.

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

This and future reports will compare the most recent month to the same month during the prior year, as is standard industry practice for tracking trends over time. The report also shows progress so far in the Fiscal Year compared to the same time in the last Fiscal Year, to enable tracking of riders relative to budget expectations.

SMART's rider data for March 2020 was posted on the SMART Ridership web site (<http://sonomamarintrain.org/RidershipReports>) and SMART's April 2020 data will be posted once validated.

The April 2020 report covers the dramatic decline of riders due to the coronavirus pandemic. In response to the pandemic, SMART annulled service on weekends starting March 21 and reduced weekday services, first from 38 to 34 trips, then to 32 trips and, starting April 6, reduced weekday service to 16 trips.

FISCAL IMPACT: None

REVIEWED BY: Finance /s/_____ Counsel /s/_____

Very truly yours,

/s/
Joanne Parker
Programming and Grants Manager

Attachment(s): 1) April 2020 Monthly Ridership Report

APRIL 2020 COVID-19 SHELTER IN PLACE RIDERSHIP REPORT

COVID-19 related public health orders to Stay at Home in March 2020 remain in effect and the pandemic continues to have severe impacts to SMART’s ridership, along with the ridership of every transit system in the nation. As happened with transit systems around the Bay Area, SMART’s average weekday ridership dropped 91% (2,925 boardings the week of March 2-6 to 252 boardings the week of March 30 – April 3).

SMART modified services in March 2020 due to the pandemic, with weekend service annulled starting March 21/22 and weekday service reduced first by 4 trips (down to 34) on March 23rd, then by another 18 trips, (down to 16), on April 6. The week of April 6-10 saw a weekday average ridership of 181. That figure increased 38% to 249 average weekday riders during the first week in May.

For the first ten months of Fiscal Year 2020 (July 1 – April 31), SMART’s total ridership, including during the COVID period is down 7% overall. Fare payments through the Clipper and SMART App systems are down 16% in Fiscal Year 2020, due to the COVID-related ridership losses and a variety of Free Fare days and programs offered in Fiscal Year 2020. Weekend/Holiday ridership, not including weekends after March 14-15 due to COVID-related service annulments, is up 5% from Fiscal Year 2019. The Weekender pass celebrating the Larkspur Extension and Veteran/Military Free Veterans-Memorial weekends have contributed to a 7% decrease in fare collection on Weekends/Holidays in FY 2020.

The total number of bicycles onboard have increased 10% year-over-year, with the percentage of riders bringing bicycles onboard growing from 9.5% in April 2019 to 15.4% in April 2020, and 23% the first week in May.

MONTHLY TOTALS YEAR-OVER-YEAR	April 2019	April 2020	% Change
Total Ridership (Onboard Counts)	60,256	6,230	-90%
Total Paid Ridership (Clipper + App Only)	54,627	5,579	-90%
Average Weekday Ridership (Onboard Counts)	2,418	215	-91%
Average Weekday Paid Ridership (Clipper + App Only)	2,201	192	-91%
Average Weekend/Holiday Ridership (Onboard Counts)	883	0	-100%
Average Weekend/Holiday Paid Ridership (Clipper + App Only)	777	12	-98%
Total Bikes Onboard	5,750	958	-83%
Total Wheelchairs Onboard	193	24	-88%

FISCAL YEAR-TO-DATE	First 10 months FY19	First 10 months FY20	% Change*
Total Ridership (Onboard Counts)	597,111	553,349	-7%
Total Paid Ridership (Clipper + App Only)	538,670	452,015	-16%
Average Weekday Ridership (Onboard Counts)	2,425	2,261	-7%
Average Weekday Paid Ridership (Clipper + App Only)	2,238	1,898	-15%
Average Weekend/Holiday Ridership (Onboard Counts)	957	1,009	+5%
Average Weekend/Holiday Paid Ridership (Clipper + App Only)	756	703	-7%
Total Bikes Onboard	56,135	61,541	+10%
Total Wheelchairs Onboard	2,085	2,086	+0%

*NOTES: COVID-19 Stay at Home Orders issued third week of March 2020. SMART annulled services starting March 21. SMART experienced similar ridership reductions to other transit systems in the Bay Area and Nationally. Free fare days and free fare programs offered in Fiscal Year 2020 also contributed to lower Clipper + App numbers than Fiscal Year 2019.



May 20, 2020

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SUBJECT: Information Requested regarding Clipper START

Dear Board Members:

RECOMMENDATIONS: Information Item

SUMMARY:

Your Board requested additional information regarding SMART's January 2020 application to the Metropolitan Transportation Commission (MTC) for Low-Carbon Transit Operating Funds to pay for necessary software program to enter into the Clipper START low income fare program. A summary of the outcome, that SMART was not selected to receive the funds, was presented in the April General Manager's Report to the Board.

As you recall, there were two parts to the action your Board took in January. The first part was the adoption of a Low-Income Fare Policy by your Board and request to be admitted into the Clipper START low income fare regional program in development for launch of a pilot phase this month. The second part was Your Board's authorization of submittal of an application for Low Carbon Transit Operating Program funds to provide up to \$700,000 to pay for the software programming costs that might be necessary to accommodate SMART within the Clipper START Program. The agenda packet for the MTC Programming and Allocations Committee meeting of March 11 contained MTC's detailed staff recommendation that resulted in SMART's request being denied. The MTC staff report is attached and found that SMART's request did not fit within the several screening criteria from policies adopted prior to SMART entering the passenger operations phase.

No further written communication has taken place between SMART staff and MTC staff regarding either request.

FISCAL IMPACT: None

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

Very truly yours,
/s/
Joanne Parker
Programming and Grants Manager

Attachment(s): 1) MTC Programming and Allocations Committee March 11, 2020, Staff Report

Metropolitan Transportation Commission Programming and Allocations Committee

March 11, 2020

Agenda Item 4a

MTC Resolution No. 4273, Revised

Subject: A request for approval of the program of Projects for the FY2019-20 Cap and Trade Low Carbon Transit Operations Program (LCTOP).

Background: The Low Carbon Transit Operating Program (LCTOP) receives 5% of the state's Cap and Trade auction revenues. Funds are allocated annually, with half of the program distributed to transit operators based on revenue, and half distributed to regions based on population.

The State Controller's Office (SCO) released FY2019-20 LCTOP amounts on February 14, 2020, totaling \$146 million in funding statewide. Approximately \$14.2 million in population-based funds were made available to MTC and \$39.1 million in revenue-based funds were made available directly to operators in the region.

FY2019-20 Population-Based Funds Programming

For MTC's share (\$14.2 million), projects are programmed based on the Cap and Trade Funding Framework, MTC Resolution No. 4130, adopted in April 2016; approximately \$4.7 million is being distributed to each of the following three project categories. See Attachment A of Resolution No. 4273, Revised for further detail.

- 1) North Counties/Small Operators. North county and small operators will implement a variety of projects, including service expansion and procurement of zero-emission buses and supportive bus-charging infrastructure. About \$3 million, or 64% of the funds from this category, will be used for zero-emission buses or infrastructure.
- 2) Fare Policy. Funds will be used to support the implementation of the Regional Means-Based Transit Fare pilot program, called Clipper START. This year's funding will be focused on providing funding to transit operators (as specified in Commission's pilot program policy) to offset a portion of their fare revenue losses as a result of offering a means based discount. As a reminder, the pilot includes BART, Caltrain, GGBHTD, and Muni with a discount ranging from 20-50%. Clipper START is expected to begin accepting applications April 1, 2020.
- 3) Transit Performance Initiative (TPI). The Cap and Trade Funding Framework sets aside minimum percentages over five years for SFMTA, VTA, and AC Transit. In the first three years of the LCTOP program, the Transit Performance Initiative has funded projects for these three operators, and the projected minimum set asides have nearly been reached. This year, staff released an open call for projects for any LCTOP-eligible operator, including SFMTA, VTA, and AC Transit, to propose TPI-eligible projects.

In response to the call, MTC received four applications totaling \$6.5 million. The applications are detailed in Attachment A to this item. A review panel consisting of MTC staff evaluated the projects based on their readiness, management capacity, cost-effectiveness, and performance indicators. Based on the project evaluation, staff recommends funding three

out of the four applications. The ECCTA application for Wi-Fi installation is the smallest request, and funding the full amount is recommended to ensure the improvements are included on paratransit vehicles. The NVTA and SFMTA applications are for larger projects with multiple components. The remaining TPI funds are recommended to be split between these two projects proportional to their total TPI request. The SMART application to join Clipper START is not consistent with the adopted Means-Based Fare Program Framework or the MTC Cap and Trade Framework, and is not recommended for funding through the TPI program. Details and recommended award amounts are shown in Attachment A.

LAVTA FY2017-18 Project Revision

MTC has also received a request from LAVTA to revise their previously programmed FY2017-18 project in the north counties/small operators category. The zero emissions bus purchase originally planned for those funds is being delayed, so the LCTOP funds planned for the purchase need to be shifted to another project that can be implemented this year in order to spend the funds within the time limit required by Caltrans. LAVTA is requesting to shift the funds to the Fare-Free Summer Rides Promotion, an operational project that will fund a fare-free promotion during June, July, and August in 2020 and 2021. LAVTA will be submitting a Corrective Action Plan to Caltrans to request this change, but Caltrans requires MTC to take action to reprogram the funds and provide concurrence on the change.


Issues:

Schedule: Project sponsors are responsible for submitting applications to Caltrans by April 8, 2020. Staff recommends that MTC approval of Resolution No. 4273, Revised be conditioned on local support documentation being submitted to Caltrans. Pending Commission approval, staff will submit Resolution No. 4273, Revised to Caltrans as documentation of the region's contribution of population-based funds to the various LCTOP projects.

Disadvantaged Communities: LCTOP requires 50% of funds spent in a jurisdiction to benefit a Disadvantaged Community, if any are located in that jurisdiction. As the recipient of population-based funds for the region, MTC must ensure this requirement is met overall for the region's funds. Additionally, the agencies receiving MTC's population-based funds must meet this requirement for their own jurisdiction. These requirements will be met through the list of projects in Attachment A of Resolution No. 4273, Revised, with over 90% of funds going to projects that directly benefit Disadvantaged Communities or otherwise satisfy the state's requirement by investing in zero-emission buses or supporting infrastructure.

Recommendation: Refer Resolution No. 4273, Revised to the Commission for approval.

Attachments: Attachment A – Transit Performance Initiative Applications and Scoring
MTC Resolution No. 4273, Revised



Therese W. McMillan

FY 2019-20 Low Carbon Transit Operations Program - Transit Performance Initiative Applications and Scoring

Operator	Project Title	Project Description	Funding Request	Staff Notes	LCTOP Recommended Funding Amount
NVTA	Imola Park and Ride and Express Bus Stop Improvements	Improvements to the park-and-ride at SR-29 at Imola Ave, including in-line bus stations at the on/off ramps, intersection and sidewalk improvements to help riders reach new bus stops from the park and ride, improved lighting, signal improvements including bus signal priority technology, and long-term bicycle parking for riders.	\$1,301,799	Enables significant time savings for riders by re-routing bus route 29 en route to the El Cerrito BART Station and route 11x en route to the Vallejo Ferry Terminal from Downtown Napa to SR-29. This project is partially funded through a previous TPI round focused on the North Bay.	\$1,052,102
SMART	Clipper START for SMART	Software and hardware modifications to implement the Clipper START regional low-income rider fare program on SMART commuter rail services.	\$700,000	MTC has done extensive planning and outreach work to determine the scope and extent of the Clipper START pilot program, which is funded through another LCTOP set-aside amount. Funding an addition to the program through TPI would not be consistent with either the adopted Means-Based Fare Program Framework or the MTC Cap and Trade Framework. Staff has received inquiries from multiple transit operators interested in joining the Clipper START pilot program and will present this information to the Commission as part of the Clipper START pilot program evaluation.	\$0

FY 2019-20 Low Carbon Transit Operations Program - Transit Performance Initiative Applications and Scoring

Operator	Project Title	Project Description	Funding Request	Staff Notes	LCTOP Recommended Funding Amount
ECCTA	Wi-Fi for Bus and Paratransit Rider Connectivity	Enable Wi-Fi access for customers systemwide - on buses, microtransit vehicles, and paratransit vehicles. This will improve the rider experience and increase rider access to the mobile paratransit scheduling app, the MyRide on-demand scheduling service, and the planned Integrated Dynamic Transit Operation (IDTO) app, which will allow a rider transferring between two Tri-Delta buses to request the next bus hold for up to 5 minutes if their current bus is running late.	\$340,505	The IDTO app (currently in testing and planned to be in operation by Summer 2020) will save individual riders 30 to 60 minutes in wait time due to missed connections, but may delay other riders on a held vehicle for up to 5 minutes. Additionally, passengers would have increased access to the new paratransit scheduling app and the MyRide on-demand scheduling service. Tri-Delta has received a significant amount of requests for Wi-Fi on board their vehicles, including for trip planning purposes. Tri-Delta's low-income, senior, and ADA users have access to affordable smart phones, but may not be able to afford large data plans.	\$340,505
SFMTA	27 Bryant Tenderloin Transit Reliability Project	Improve the reliability of the 27 Bryant Muni line by simplifying the route from four to two turns, increasing stop spacing to an average of two blocks in areas without steep grades, extending bus zones at eight stops, adding transit bulbs at eight intersections, and enhancing pedestrian safety for riders accessing bus stops through sidewalk bulbs, new crosswalks, and signal improvements.	\$4,118,000	The 27 Bryant route experiences significant delays due to traffic congestion in the downtown area, frequent stops, and traffic signal delay. This project would reduce delays and improve travel times by simplifying the route and reducing the number of stops required. Additional improvements would enhance the rider experience and rider safety.	\$3,328,131
Total					\$4,720,738

Date: March 22, 2017
W.I.: 1515
Referred by: PAC
Revised: 03/22/17-ED 04/26/17-C
05/24/17-ED 03/28/18-C
05/23/18-ED 04/24/19-C
06/26/19-C 03/25/20-C

ABSTRACT

Resolution No. 4273, Revised

This resolution adopts the allocation requests for the Cap and Trade Low Carbon Transit Operations Program for the San Francisco Bay Area.

This resolution includes the following attachments:

Attachment A – Cap and Trade Low Carbon Transit Operations Program – Population-based Funds Project List

This resolution was amended through Executive Director’s Administrative Authority on March 22, 2017 to update the name of the GGBHTD project.

This resolution was revised via Commission Action on April 26, 2017 to replace the SFMTA Geary Bus Rapid Transit Phase 1 project with the AC Transit San Pablo and Telegraph Rapid Bus Upgrades project.

This resolution was amended through Executive Director’s Administrative Authority on May 24, 2017 to replace the City of Union City Convert New Cutaway Vans from Gasoline to Gasoline-Hybrid project with the AC Transit East Bay Bus Rapid Transit project.

This resolution was revised via Commission Action on March 28, 2018 to add the FY 2017-18 LCTOP Population-based Funds Project List to Attachment A, and to add the Transit Performance Initiative Project Savings Policy as Attachment B.

This resolution was amended through Executive Director’s Administrative Authority on May 23, 2018 to replace the FY 2017-18 AC Transit East Bay Bus Rapid Transit project with the AC Transit San Leandro BART – Transit Access Improvements project.

This resolution was revised via Commission Action on April 24, 2019 to add the FY 2018-19 LCTOP Population-based Funds Project List to Attachment A.

This resolution was revised via Commission Action on June 26, 2019 to replace the FY 2018-19 VTA Fast Transit Program: Speed Improvement Project with the VTA 2021 Zero Emission Bus Procurement project.

This resolution was revised via Commission Action on March 25, 2020 to add the FY 2019-20 LCTOP Population-based Funds Project List to Attachment A and to revise LAVTA's FY2017-18 project.

Further discussion of these actions is contained in the Programming and Allocations Summary Sheets dated March 8, 2017, April 12, 2017, March 7, 2018, April 10, 2019, June 12, 2019, and March 11, 2020.

Date: March 22, 2017
W.I.: 1515
Referred by: PAC

RE: Cap and Trade Low Carbon Transit Operations Program

METROPOLITAN TRANSPORTATION COMMISSION
RESOLUTION NO. 4273

WHEREAS, the Metropolitan Transportation Commission (MTC) is the regional transportation planning agency for the San Francisco Bay Area pursuant to Government Code Section 66500 et seq.; and

WHEREAS, Plan Bay Area (“Plan”), the region’s integrated long-range transportation and land use plan adopted by MTC, provides the planning foundation for transportation improvements and regional growth throughout the San Francisco Bay Area through 2040; and

WHEREAS, the Plan includes a \$3.1 billion reserve from future Cap and Trade funding; and

WHEREAS, the Plan identifies the expected uses of Cap and Trade funding as including but not limited to transit operating and capital rehabilitation/replacement, local streets and roads rehabilitation, goods movement, and transit-oriented affordable housing, consistent with the Plan's focused land use strategy; and

WHEREAS, the Plan states that Cap and Trade revenues will be allocated to specific programs through a transparent and inclusive regional public process; and

WHEREAS, the Plan calls for the process to ensure that at least 25 percent of the Cap and Trade revenues will be spent to benefit disadvantaged communities in the Bay Area; and

WHEREAS, Senate Bill 852 (Statutes 2014) establishes the Low Carbon Transit Operations Program (LCTOP) from the Greenhouse Gas Reduction Fund; and

WHEREAS, MTC is the recipient of the population-based funding in LCTOP funds pursuant to Public Utilities Code Section 99313 and 99314; and

WHEREAS, MTC has adopted Resolutions 4123 and 4130, a Programming Framework for the Cap and Trade funds and Transit Core Capacity Challenge Grant program; and

WHEREAS, staff has prepared a LCTOP population-based funding allocation request list, Attachment A, for submittal to Caltrans based on the distribution formula in Resolution 4130, said attachment attached hereto and incorporated herein as though set forth at length; and

WHEREAS, MTC is an eligible project sponsor and may receive state funding from the LCTOP now or sometime in the future for transit projects; and

WHEREAS, the statutes related to state-funded transit projects require a local or regional implementing agency to abide by various regulations; and

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

WHEREAS, the Department has developed guidelines for the purpose of administering and distributing LCTOP funds to eligible project sponsors (local agencies); and

WHEREAS, MTC wishes to implement the LCTOP program of projects attached hereto as Attachment A; now, therefore, be it

RESOLVED, that MTC adopts LCTOP program of projects, attached hereto as Attachment A, and finds it consistent with the RTP; and, be it further

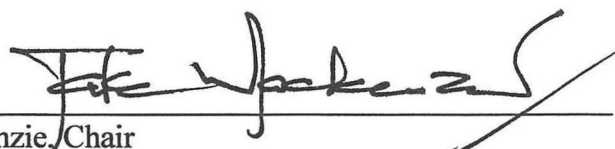
RESOLVED, that MTC agrees to comply with all conditions and requirements set forth in the applicable statutes, regulations and guidelines for all LCTOP funded transit projects; and, be it further

RESOLVED, that MTC hereby authorizes the submittal of the project nominations and allocation requests to the Department in LCTOP funds attached hereto as Attachment A; and, be it further

RESOLVED, that the Executive Director is authorized to make changes to Attachment A, including revisions to existing allocation requests up to \$1,000,000, and authorize new

allocations up to \$1,000,000 to conform to sponsor requests, and Caltrans and State Controller's actions.

METROPOLITAN TRANSPORTATION COMMISSION



Jake Mackenzie, Chair

The above resolution was entered into by the Metropolitan Transportation Commission at a regular meeting of the Commission held in San Francisco, California, on March 22, 2017.

FY 2016-17 Low Carbon Transit Operations Program Requests

Based on State Controller's Office Letter dated 2/1/2017

Agency	Project(s)	FY 2016-17 LCTOP Population-Based Funding	Date
CCCTA	Martinez Shuttle	\$ 228,378	3/22/17
ECCTA	Pittsburg eBART Connector Service Demonstration Project	\$ 137,935	3/22/17
LAVTA	Las Positas College Easy Pass Fare Voucher Program	\$ 94,419	3/22/17
NVTA	Vine ZEB Procurement Program	\$ 65,105	3/22/17
AC Transit (from Union City) ⁴	East Bay Bus Rapid Transit Project	\$ 33,064	5/24/17
WCCTA	Continue Expanded Service on Route 11	\$ 30,450	3/22/17
GGBHTD ¹	Purchase Sixty-seven (67) 40-Foot Diesel-Electric Hybrid Buses	\$ 74,635	3/22/17
Marin Transit ¹	MCTD 2016 Transit Service Expansion	\$ 45,803	3/22/17
City of Fairfield ²	Local Bus Fleet Replacement - Diesel-Electric Hybrid Buses	\$ 67,091	3/22/17
Solano County Transit ²	SolTrans Electric Bus Purchase	\$ 129,018	3/22/17
City of Petaluma ³	Weekday Afternoon Service Enhancements	\$ 27,715	3/22/17
City of Santa Rosa ³	Increased Frequency on Trunk Routes - Santa Rosa CityBus Operating	\$ 80,639	3/22/17
Sonoma County Transit ³	Electric Bus Purchase	\$ 122,069	3/22/17
North Counties / Small Operat		\$ 1,136,320	
MTC	Clipper Fare Payment System	\$ 1,118,681	3/22/17
AC Transit	San Pablo and Telegraph Rapid Bus Upgrades	\$ 1,118,681	4/26/17
TOTAL		\$ 3,373,683	

* MTC approval conditioned on local support documentation submitted to Caltrans

1. Marin County received \$120,438, and distributed between Marin Transit and GGBHTD as noted.

2. Solano County received \$196,109, and distributed between City of Fairfield and Solano County Transit as noted.

3. Sonoma County received \$230,423, and distributed between City of Petaluma, City of Santa Rosa, and Sonoma County Transit as noted.

4. City of Union City received \$33,064 and released funds back to MTC. These funds have been re-programmed to AC Transit for FY16-17 as noted. When MTC distributes population-based funds for the FY17-18 LCTOP program according to the Cap and Trade Funding Framework (MTC Resolution No. 4130, Revised), the same amount will be redirected from the Transit Performance Initiative category to the North Counties/Small Operators category, provided that sufficient funds are available.

FY 2017-18 Low Carbon Transit Operations Program Requests

Based on State Controller's Office Letter dated 2/7/2018

Agency	Project(s)	FY 2017-18 LCTOP Population-Based Funding	Date
CCCTA	New Service and Additional Weekend Trips (Martinez DAC)	\$ 375,378	3/28/18
CCCTA	Low/No Electric Bus	\$ 265,319	3/28/18
ECCTA	Continue Service -- New Route 381	\$ 386,968	3/28/18
LAVTA	Fare-Free Summer Rides Promotion	\$ 264,885	3/25/20
NVTA	Vine Zero Emission Bus (ZEB) Procurement Program	\$ 182,646	3/28/18
Union City ¹	Paratransit Vehicle Replacement	\$ 125,822	3/28/18
WCCTA	Purchase and Install New AVL/CAD/APC System	\$ 85,426	3/28/18
GGBHTD ²	Purchase Sixty-four (64) 40-foot Diesel-Electric Hybrid Buses	\$ 202,999	3/28/18
Marin Transit ²	MCTD 2016 Transit Expansion [Third year]	\$ 134,881	3/28/18
City of Fairfield ³	Electric Bus Infrastructure Upgrade Project	\$ 189,628	3/28/18
Solano County Transit ³	SolTrans Electric Bus Purchase	\$ 360,542	3/28/18
City of Petaluma ⁴	Enhanced Weekday Afternoon Transit Service	\$ 77,990	3/28/18
City of Santa Rosa ⁴	Maintain Increased Frequency on Trunk Routes and Improve Route 15 Service - Santa Rosa CityBus Operating	\$ 226,261	3/28/18
Sonoma County Transit ⁴	Electric Bus Purchase	\$ 342,183	3/28/18
North Counties / Small Operat		\$ 3,220,928	
MTC	Clipper Fare Payment System	\$ 3,138,381	3/28/18
SFMTA	Mission Bay Loop	\$ 1,440,568	3/28/18
VTA	Phase 1	\$ 874,631	3/28/18
AC Transit	San Leandro BART -- Transit Access Improvements	\$ 579,338	5/23/18
AC Transit	South Alameda County Major Corridors Travel Time Improvement	\$ 210,780	3/28/18
TOTAL		\$ 9,464,626	

* MTC approval conditioned on local support documentation submitted to Caltrans

1. City of Union City amount includes \$33,064 in funds from Transit Performance Initiative category as discussed in note 4 of FY2016-17 table.

2. Marin County received \$337,880, and distributed between Marin Transit and GGBHTD as noted.

3. Solano County received \$550,170, and distributed between City of Fairfield and Solano County Transit as noted.

4. Sonoma County received \$646,434 and distributed between City of Petaluma, City of Santa Rosa, and Sonoma County Transit as noted.

FY 2018-19 Low Carbon Transit Operations Program Requests

Based on State Controller's Office Letter dated 1/31/2019

Agency	Project(s)	FY 2018-19 LCTOP Population-Based Funding	Date
CCCTA	Martinez to Amtrak BART II	\$ 375,378	4/24/19
CCCTA	Free Fares for Routes 11, 14, and 16 Serving the Monument Corridor	\$ 596,332	4/24/19
ECCTA	New Route 383	\$ 586,893	4/24/19
LAVTA	Purchase Four (4) Zero-Emission Replacement Buses and Related Support Infrastructure	\$ 401,737	4/24/19
NVTA	NVTA Zero Emission Bus Procurement Project	\$ 277,010	4/24/19
Union City	Electric Vehicle Charging Infrastructure for Union City Transit Fleet	\$ 140,680	4/24/19
WCCTA	"Spare the Fare" -- Free Rides on Weekday Spare the Air Days	\$ 129,561	4/24/19
GGBHTD ¹	Purchase Sixty-four (64) 40-foot Diesel-Electric Hybrid Buses	\$ 307,876	4/24/19
Marin Transit ¹	Purchase Four 40ft Electric Transit Vehicles	\$ 204,568	4/24/19
City of Fairfield ²	Electric Infrastructure Upgrade Phase I	\$ 287,598	4/24/19
Solano County Transit ²	SolTrans All-Electric Bus Purchase	\$ 140,000	4/24/19
Solano County Transit ²	Electrical Infrastructure for Charging All-Electric Buses	\$ 406,815	4/24/19
City of Petaluma ³	Purchase One Zero-Emission Replacement Bus	\$ 122,145	4/24/19
City of Santa Rosa ³	Maintain Increased Frequency on Routes 1 and 2	\$ 347,666	4/24/19
Sonoma County Transit ³	Electric Bus Purchases	\$ 510,600	4/24/19
North Counties / Small Operat		\$ 4,834,859	
MTC	Infrastructure for Regional Means-Based Transit Fare Pilot	\$ 4,759,808	4/24/19
SFMTA	West Portal Optimization and Crossover Activation	\$ 2,184,830	4/24/19
VTA	2021 Zero Emission Bus Procurement ⁴	\$ 1,326,504	6/26/19
AC Transit	Dumbarton Innovative Deployments to Enhance Arterials (IDEA)	\$ 1,248,474	4/24/19
TOTAL		\$ 14,354,475	

* MTC approval conditioned on local support documentation submitted to Caltrans

1. Marin County received \$512,444, and distributed between Marin Transit and GGBHTD as noted.

2. Solano County received \$834,413 and distributed between City of Fairfield and Solano County Transit as noted.

3. Sonoma County received \$980,411 and distributed between City of Petaluma, City of Santa Rosa, and Sonoma County Transit as noted.

4. This project is not considered eligible for the TPI category but will count toward VTA's minimum set-aside. VTA is expected to commit a like amount of a local funds to a TPI project. Staff will follow up on this commitment through semi-annual TPI updates to the Commission.

FY 2019-20 Low Carbon Transit Operations Program Requests

Based on State Controller's Office Letter dated 2/14/2020

Agency	Project(s)	FY 2019-20 LCTOP Population-Based Funding	Date
CCCTA	Martinez Amtrak to BART III	\$ 215,710	3/25/20
CCCTA	Free Fares for Routes 11, 14, and 16 serving the Monument Corridor II	\$ 748,023	3/25/20
ECCTA	Hydrogen Fueling Station	\$ 582,076	3/25/20
LAVTA	Purchase four (4) Zero-Emission Replacement Buses and Related Support Infrastructure	\$ 398,439	3/25/20
NVTA	NVTA Zero Emissions Bus	\$ 274,736	3/25/20
Union City	Electric Vehicle Charging Infrastructure for Union City Transit Fleet	\$ 139,526	3/25/20
WCCTA	Spare the Fare - Free Rides on Spare the Air Days	\$ 128,498	3/25/20
GGBHTD ¹	Golden Gate High Speed Ferry Vessel Acquisition	\$ 304,638	3/25/20
Marin Transit ¹	Purchase four 40ft Electric Transit Vehicles	\$ 203,600	3/25/20
City of Fairfield ²	Electric Infrastructure Upgrade, Phase 1	\$ 231,718	3/25/20
Solano County Transit ²	Electrical Infrastructure for Charging All-Electric Buses	\$ 595,846	3/25/20
City of Petaluma ³	Purchase One Replacement Zero-Emission Bus	\$ 120,890	3/25/20
City of Santa Rosa ³	Maintain Increased Frequency on Routes 1 and 2	\$ 341,082	3/25/20
Sonoma County Transit ³	Electric Bus Purchase	\$ 510,392	3/25/20
North Counties / Small Operators Subtotal		\$ 4,795,174	
MTC	Discount Fare Subsidy for BART, Caltrain, GGBHTD, and SFMTA, Regional Means-Based Transit Fare Pilot	\$ 4,720,738	3/25/20
NVTA	Imola Park and Ride and Express Bus Stop Improvements	\$ 1,052,102	3/25/20
ECCTA	Wi-Fi for Bus and Paratransit Rider Connectivity	\$ 340,505	3/25/20
SFMTA	27 Bryant Tenderloin Transit Reliability Project	\$ 3,328,131	3/25/20
TOTAL		\$ 14,236,650	

* MTC approval conditioned on local support documentation submitted to Caltrans

1. Marin County received \$508,238 and distributed between Marin Transit and GGBHTD as noted.

2. Solano County received \$827,564 and distributed between City of Fairfield and Solano County Transit as noted.

3. Sonoma County received \$972,364 and distributed between City of Petaluma, City of Santa Rosa, and Sonoma County Transit as noted.

Date: March 28, 2018
W.I.: 1515
Referred by: PAC

Attachment B
MTC Resolution No. 4273
Page 1 of 1

Transit Performance Initiative Project Savings Policy

The following policy is adopted for projects funded through the Transit Performance Initiative Investment Program, including those projects funded with federal STP/CMAQ funds and Low Carbon Transit Operations Program funds:

Savings following project completion may be used to expand the scope of the project, if the expanded scope provides additional quantifiable benefits to the original transit corridor. The expanded scope must be approved by MTC staff prior to expenditure. All other project savings will be returned to MTC proportionally.

Staff will update the Commission on any such actions through the semi-annual Transit Performance Initiative updates.



May 20, 2020

Eric Lucan, Chair
Transportation Authority of Marin

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

Judy Arnold
Marin County Board of Supervisors

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Joe Naujokas
Sonoma County Mayors' and
Councilmembers Association

Gary Phillips
Transportation Authority of Marin

David Rabbitt
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General Manager

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

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

Dear Board Members:

RECOMMENDATIONS:

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

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

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

SUMMARY:

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

HISTORY:

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

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

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

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

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

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

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

Senate Bill 1029 (McGuire)

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

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

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

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

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

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

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

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

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

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

The Process is summarized here:

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

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

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

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

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

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

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

Current Actions and Pending Legislations:

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

NCRA:

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

NWPCo:

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

SMART: SUMMARY OF OBLIGATIONS

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

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

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

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

Environment/Operational Benefits:

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

FUNDING:

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

POLICY DECISION:

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

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

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

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

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

Very truly yours,

/s/

Farhad Mansourian
General Manager

Cc: Senator McGuire

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

Attachment(s):

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



May 15, 2020

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

Dear Chair Lucan:

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

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

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

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

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

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

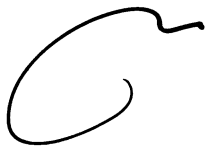
We have worked hard in the Senate over the years to bring state dollars to SMART and will continue to do so to ensure you are made whole on this added obligation. We have been quite successful over the last couple of years in acquiring funding for the whole SB 1029 process, and that includes \$2 million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

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

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

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

Warmest Regards,

A handwritten signature in black ink, appearing to read "MIKE MCGUIRE". The signature is stylized with a large, sweeping initial "M" and a smaller "G" that loops back.

MIKE MCGUIRE
Senator

California State Transportation Agency

Sonoma-Marín Area Rail Transit District

Baseline Agreement

DRAFT

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DRAFT

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

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

Termination Date of this Agreement: April 30, 2025

SMART: Sonoma Marin Area Rail Transit (“SMART”)

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

RECITALS

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

ARTICLE I - DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II –PROJECT AND ADMINISTRATION

Section 1. Project and Project Management

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

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

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

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

Section 2. Program Supplement

A. General

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

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

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

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

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

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

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

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

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

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

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

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

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

B. *Project Overrun*

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

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

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

C. *Cost Savings and Project Completion*

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

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

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

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

D. Scope of Work

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

E. Program Supplement Amendments

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

Section 3. Allowable Costs and Payments

A. Allowable Costs and Progress Payment Invoice

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

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

B. *Final Invoice*

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

ARTICLE III – GENERAL PROVISIONS

Section 1. Funding

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

Section 2. Audits and Reports

A. *Cost Principles*

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

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

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

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

B. *Record Retention*

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

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

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

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

C. *Reporting Requirements*

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

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

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

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

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

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

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

Section 3. Special Requirements

A. *California Transportation Commission Resolutions*

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

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

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

B. *SMART Resolution*

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

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

C. *Termination*

1. Termination Convenience by State

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

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

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

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

2. Termination After SMART's Obligations Fully Performed

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

D. *Third Party Contracting*

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

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

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

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

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

E. Change in Funds and Terms/Amendments

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

F. Project Ownership

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

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

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

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

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

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

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

e. The Credit due State as a refund shall not be required if SMART dedicates the proceeds of such sale or transfer exclusively to a new or replacement State approved public transit or freight rail purpose, which replacement facility or vehicles will then also be subject to the identical use restrictions for that new public purpose and the Credit ratio due State should that replacement project or those replacement vehicles cease to be used for that intended described pre-approved public transit purpose.

i. In determining the present fair market value of property for purposes of calculating State's Credit under this Agreement, any real property portions of the Project site contributed by SMART shall not be included. In determining State's proportionate funding participation, State's contributions to third parties (other than SMART) shall be included if those contributions are incorporated into the Project.

ii. Once State has received the Credit as provided for above because SMART, or a sub-recipient, as applicable, has (a) ceased to utilize the Project for the described intended

transportation purpose(s) for which State funding was provided and State has not consented to that cessation of services or (b) sold or transferred title to or control over Project to another party (absent State approval for the continued transit operation of the Project by that successor party under an assignment of SMART's duties and obligations), neither SMART, subrecipient, nor any party to whom SMART or subrecipient, as applicable, has transferred said title or control shall have any further obligation under this Agreement to continue operation of Project and/or Project facilities for those described public transportation purposes, but may then use Project and/or any of its facilities for any lawful purpose.

iii. To the extent that SMART operates and maintains Intermodal Transfer Stations as any integral part of Project, SMART shall maintain each station and all its appurtenances, including, but not limited to, restroom facilities, in good condition and repair in accordance with high standards of cleanliness (Public Utilities Code section 99317.8). Upon request of State, SMART shall also authorize State-funded bus services to use those stations and appurtenances without any charge to State or the bus operator. This permitted use will include the placement of signs and informational material designed to alert the public to the availability of the State-funded bus service (for the purpose of this paragraph, "State-funded bus service" means any bus service funded pursuant to Public Utilities Code section 99316).

G. *Disputes*

Parties shall develop a mutually agreed upon issue resolution process, as described below, and issues between the Parties are to be resolved in a timely manner. The Parties agree to the following:

1. If the Parties are unable to reach agreement on any particular issue relating to either Parties' obligations pursuant to this Agreement, the Parties agree to promptly follow the issue resolution process as outlined below:

a. CalSTA's project manager and the SMART's equivalent may initiate the process of informal dispute resolution by providing the other Party with written notice of a dispute. The written notice shall provide a clear statement of the dispute, and shall refer to the specific provisions of this Agreement or Program Supplement that pertain to the dispute. CalSTA's project manager and the SMART's equivalent shall meet and attempt to resolve the dispute within five days from the written notice. If the dispute is resolved, the Parties shall create and sign a short description of the facts and the resolution that was agreed upon by the Parties.

b. If the dispute is not resolved by the fifth day from the written notice, CalSTA's chief deputy for rail and transit and the SMART's equivalent shall meet and review the dispute within five days. CalSTA's deputy and the SMART's equivalent manager shall attempt to resolve the dispute within ten days of their initial meeting. If the dispute is resolved, the Parties shall create and sign a short description of the facts and the resolution that was agreed upon by the Parties.

c. If the dispute is not resolved by the tenth day, CalSTA's Secretary or designee and the SMART's equivalent manager shall meet and review the dispute within five days. CalSTA's

Secretary or designee and the SMART's equivalent manager shall attempt to resolve the dispute within ten days of the initial meeting. If the dispute is resolved, the Parties shall create and sign a short description of the facts and the resolution that was agreed upon by the Parties.

H. *Hold Harmless and Indemnification*

1. Neither State nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by SMART, its agents and contractors under or in connection with any work, authority, or jurisdiction delegated to SMART under this Agreement or any Program Supplement or as respects environmental clean-up obligations or duties of SMART relative to Project. It is also understood and agreed that, SMART shall fully defend, indemnify and the State and their officers and employees harmless from any liability imposed for injury and damages or environmental obligations or duties arising or created by reason of anything done or imposed by operation of law or assumed by, or omitted to be done by SMART under or in connection with any work, authority, or jurisdiction delegated to SMART under this Agreement and all Program Supplements.

2. SMART shall indemnify, defend and hold harmless State, the CTC and the State Treasurer relative to any misuse by SMART of State funds, Project property, Project generated income or other fiscal acts or omissions of SMART.

I. *Labor Code Compliance*

SMART shall include in all subcontracts awarded using Project funds, when applicable, a clause that requires each subcontractor to comply with California Labor Code requirements that all workers employed on public works aspects of any project (as defined in California Labor Code §§ 1720-1815) be paid not less than the general prevailing wage rates predetermined by the Department of Industrial Relations as effective the date of Contract award by the SMART.

J. *Non-Discrimination Clause*

1. In the performance of work under this Agreement, SMART, its contractor(s) and all subcontractors, shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability, mental disability, medical condition, age, marital status, family and medical care leave, pregnancy leave, and disability leave. SMART, its contractor(s) and all subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. SMART, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Each of SMART's contractors and all subcontractors shall give written notice of their

obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

2. Each of the SMART's contractors, subcontractors, and/or subrecipients shall give written notice of their obligations under this clause to labor organizations with which they have collective bargaining or other labor agreements. The SMART shall include the non-discrimination and compliance provisions hereof in all contracts and subcontracts to perform work under this Agreement.

3. Should federal funds be constituted as part of Project funding or compensation received by SMART under a separate Contract during the performance of this Agreement, SMART shall comply with this Agreement and with all federal mandated contract provisions as set forth in that applicable federal funding agreement.

4. SMART shall include the non-discrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this Agreement.

5. The SMART shall comply with the nondiscrimination program requirements of Title VI of the Civil Rights Act of 1964. Accordingly, 49 CFR 21 (Nondiscrimination in Federally-Assisted Programs of The Department Of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964) and 23 CFR Part 200 (Title VI Program and Related Statutes—Implementation and Review Procedures) are made applicable to this Agreement by this reference. Wherever the term "Contractor" appears therein, it shall mean the SMART.

6. The SMART shall permit, and shall require that its contractors, subcontractors, and subrecipients will permit, access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission or any other agency of the State of California designated by Department to investigate compliance with this Section J.

K. *State Fire Marshal Building Standards Code*

The State Fire Marshal adopts building standards for fire safety and panic prevention. Such regulations pertain to fire protection design and construction, means of egress and adequacy of exits, installation of fire alarms, and fire extinguishment systems for any State-owned or State-occupied buildings per section 13108 of the Health and Safety Code. When applicable, SMART shall request that the State Fire Marshal review Project PS&E to ensure Project consistency with State fire protection standards.

L. *Americans with Disabilities Act*

By signing this Master Agreement, SMART assures State that SMART shall comply with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA (42 U.S.C. 12101 et seq.).

M. *Access for Persons with Disabilities*

Disabled access review by the Department of General Services (Division of the State Architect) is required for all publicly funded construction of buildings, structures, sidewalks, curbs and related facilities. SMART will award no construction contract unless SMART's plans and specifications for such facilities conform to the provisions of sections 4450 and 4454 of the California Government Code, if applicable. Further requirements and guidance are provided in Title 24 of the California Code of Regulations.

N. *Disabled Veterans Program Requirements*

1. Should Military and Veterans Code sections 999 et seq. be applicable to SMART, SMART will meet, or make good faith efforts to meet, the 3% Disabled Veterans Business Enterprises goals (or SMART's applicable higher goals) in the award of every contract for Project work to be performed under these this Agreement.

2. SMART shall have the sole duty and authority under this Agreement and each Program Supplement to determine whether these referenced code sections are applicable to SMART and, if so, whether good faith efforts asserted by those contractors of SMART were sufficient as outlined in Military and Veterans Code sections 999 et seq.

O. *Environmental Process*

Completion of the Project environmental process ("clearance") by SMART (and/or State if it affects a State facility within the meaning of the applicable statutes) is required prior to requesting Project funds for right-of-way purchase or construction. No State agency may request funds nor shall any State agency, board or commission authorize expenditures of funds for any Project effort, except for feasibility or planning studies, which may have a significant effect on the environment unless such a request is accompanied with all appropriate documentation of compliance with or exemption from the California Environmental Quality Act (CEQA) (including, if as appropriate, an environmental impact report, negative declaration, or notice of exemption) under California Public Resources Code section 21080(b) (10), (11), and (12) provides an exemption for a passenger rail project that institutes or increases passenger or commuter services on rail or highway rights-of-way already in use.

P. *Force Majeure*

Each party will be excused from performance of its obligations where such non-performance is caused by any event beyond its reasonable control, such as any non-appealable order, rule or regulation of any federal or state governmental body, fire, flood, earthquake, storm, hurricane or other natural disaster, epidemic, pandemic, war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockade, embargo, labor dispute, strike, lockout or interruption, provided that the party excused

hereunder shall use all reasonable efforts to minimize its non-performance and to overcome, remedy or remove such event in the shortest practical time.

Should a *force majeure* event occur which renders it impossible for a period of forty-five (45) or more consecutive days for either party to perform its obligations hereunder, the Parties agree to negotiate in good faith to amend the existing Master Agreement or Supplemental Agreement to deal with such event and to seek additional sources of funding to continue the delivery of the project and/or operation of the Service.

ARTICLE IV – MISCELLANEOUS PROVISIONS

Section 1. Miscellaneous Provisions

A. *Successor Acts*

All statutes cited herein shall be deemed to include amendments to and successor statutes to the cited statutes as they presently exist.

B. *Successor and Assigns to the Parties*

Neither this Agreement nor any right, duty or obligation hereunder may be assigned, transferred, hypothecated or pledged by any party without the express written consent of the other party; provided, that unless otherwise expressly required herein, a party shall not be obligated to obtain the written consent of the other party with respect to any contract related to the Service for the provision of goods and/or services to the contracting party in the ordinary course of business.

C. *Notice*

Any notice which may be required under this Agreement shall be in writing, shall be effective when received, and shall be given by personal service, or by certified or registered mail, return receipt requested, to the addresses set forth below, or to such other addresses as may be specified in writing and given to the other party in accordance herewith.

If given to CalSTA:

California State Transportation Agency

915 Capitol Mall, Suite 350B

Sacramento, CA 95814

Attention: Chief Deputy Secretary for Rail and Transit

with a copy to:

California Department of Transportation

Division of Rail and Mass Transportation

P.O. Box _____

Sacramento, CA 95812-

Attention: Division Chief for Rail and Mass Transportation

If given to the SMART:

Agency Name

Address.

City, XXXXX-XXXX

Attention: Contact Name

D. *Amendment*

This Agreement may not be changed, modified, or amended except in writing, signed by the parties hereto, and approved in advance in writing by the Secretary, and any attempt at oral modification of this Agreement shall be void and of no effect.

E. *Representation and Warranties of the Parties*

1. SMART hereby represents and warrants to the Department that:

a. SMART is in good standing under applicable law, with all requisite power and authority to carry on the activities for which it has been organized and proposed to be conducted pursuant to this Agreement.

b. SMART has the requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement by such entity, the performance by it of its obligations thereunder and the consummation of the transactions contemplated thereby have been duly authorized by the governing board of such entity and no other proceedings are necessary to authorize this Agreement or to consummate the transactions contemplated thereby. The Agreements have been duly and validly executed and delivered by such entity and constitute valid and binding obligations of such entity, enforceable against it in accordance with their terms, except to the extent that such enforceability may be subject to bankruptcy, insolvency, reorganization, moratorium or other laws now or hereinafter in effect relating to the creditor's rights and the remedy of specific enforcement and injunctive and other forms of equitable relief, and may be subject to equitable defenses and to the discretion of the court before which any proceeding therefore may be brought.

c. Neither the execution and delivery of this Agreement and the performance of its obligations thereunder nor the consummation of the transactions contemplated thereby will (i) conflict with or result in a breach of any provision of any agreement to which SMART is a party; (ii) violate any write, order, judgment, injunction, decrees, statute, rule or regulation of any court or governmental authority applicable to such entity or its property or assets.

2. CalSTA does hereby represent and warrant with respect to each of this Agreement to SMART that:

a. It validly exists with all requisite power and authority to carry on the activities proposed to be conducted pursuant to this Agreement.

b. It has the requisite power and authority to execute and deliver this Agreement and to carry out its obligations thereunder. The execution and delivery of this Agreement, the performance by it of its obligations thereunder and the consummation of the transactions contemplated thereby have been duly authorized and no other proceedings are necessary to authorize this Agreement or to consummate the transactions contemplated thereby. The agreements have been duly and validly executed and delivered by it and constitute valid and binding obligations, enforceable against it in accordance with their terms, except to the extent that such enforceability may be subject to bankruptcy, insolvency, reorganization, moratorium or other laws now or hereinafter in effect relating to creditor's rights and other forms of equitable relief, and may be subject to equitable defenses and to the discretion of the court before which any proceeding therefore may be brought.

c. Neither the execution and delivery of this Agreement and the performance of its obligations thereunder nor the consummation of the transactions contemplated thereby will (i) conflict with or result in a breach of any provision of any agreement to which SMART is a party; (ii) violate any writ, order, judgment, injunction, decree, statute, rule or regulation of any court or governmental authority applicable to such entity or its property or assets.

F. *Construction, Number, Gender and Captions*

The Agreements have been executed in the State of California and shall be construed according to the law of said State. Numbers and gender as used therein shall be construed to include that number and/or gender which is appropriate in the context of the text in which either is included. Captions are included therein for the purposes of ease of reading and identification. Neither gender, number nor captions used therein shall be construed to alter the plain meaning of the text in which any or all of them appear.

G. *Complete Agreement*

This Agreement, including Appendices, constitutes the full and complete agreement of the parties, superseding and incorporating all prior oral and written agreements relating to the subject matter of this Agreement. All attached Appendices A and B are hereby incorporated and made an integral part of this Agreement by this reference.

H. *Partial Invalidity*

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this

Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

I. *Conflicts*

To the extent that any provision of or requirement of this Agreement may conflict with a provision or requirement of any other agreement between the parties hereto, or between a party hereto and any other party, which is attached to this Agreement as an appendix, the following priority of agreements shall be employed to resolve such conflict. In the event of a conflict, the Master Agreement controls the Program Supplement and any further Amendments.

J. *Counterparts*

This Agreement may be executed in one or more counterparts and may include multiple signature pages, all of which shall be deemed to be one instrument. Copies of this Agreement may be used in lieu of the original.

K. *Governing Law*

The Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers.

[SIGNATURES TO FOLLOW]

**CALIFORNIA STATE
TRANSPORTATION AGENCY**

Sonoma-Marín Area Rail Transit

BY: _____
DAVID S. KIM
Secretary

BY: _____
Farhad Mansourian
General Manager

DATE: _____

DATE: _____

APPROVED AS TO FORM AND PROCEDURE

CALIFORNIA STATE TRANSPORTATION AGENCY

BY: _____
Attorney

DATE: _____

APPENDIX A
[DEPARTMENT DELEGATION]

DRAFT

**APPENDIX B
RECIPIENT'S RESOLUTION
(INSERT AGENCY BOARD RESOLUTION)**

DRAFT

ASSET TRANSFER AGREEMENT

This Asset Transfer Agreement (the "Agreement"), entered into and effective this __ day of _____, 2019 (the "Effective Date"), is made and entered into by and between Sonoma-Marine Area Rail Transit District, a public transit district established under California law ("SMART"), and the Northwestern Pacific Railroad Company ("NWPCO"), a California Corporation established under California law). SMART and NWPCO are sometimes herein referred to individually as a "Party" and collectively as the "Parties" to this Agreement.

WHEREAS, Senate Bill No. 1029 enacted into law on August 24, 2018, appropriates the sum of four million dollars to the State Transportation Agency to be allocated to the Sonoma-Marine Area Rail Transit District under certain conditions for the acquisition of freight rights and equipment from NWPCO;

WHEREAS, SMART is authorized to acquire such freight rights and related equipment from NWPCO in order to carry out the purposes of Senate Bill No. 1029;

WHEREAS, in order to effectuate the intent of Senate Bill No. 1029, NWPCO and SMART hereby agree to enter in a baseline agreement for the transfer and conveyance of NWPCO's freight rights and equipment to SMART pursuant to the terms and conditions necessary to receive approval from the State Secretary of Transportation and Director of Finance;

WHEREAS, the transfer and conveyance of NWPCO's freight interest, rights and equipment is not considered to be a Project subject to environmental review;

WHEREAS, in order to effectuate the intent of Senate Bill No. 1029, NWPCO shall consummate an Agreement with the North Coast Rail Authority, ("NCRA") to discontinue NWPCO operations South of milepost 89.0 (Sonoma/Mendocino County line) and to assign, transfer and convey its freight rights and equipment related thereto to SMART;

WHEREAS, in order to effectuate the intent of Senate Bill No. 1029, the NCRA-SMART 2011 Operating and Coordination Agreement dated June 20th, 2011, and as thereafter amended dated December 13, 2017, shall continue to be in full force and effect for operations north of milepost 89.0 only.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties intending to be legally bound hereby agree as follows:

I. DEFINITIONS

1.1 Defined Terms. As used herein, the following terms shall have the meanings specified in this Section 1. 1 (such definitions to be equally applicable to the singular and plural forms of the term defined) as follows:

“Acquired Assets” - Shall have the meaning set forth in Section 2.1(b) hereof.

“Action” – Shall mean any suit, claim, action, arbitration, audit or proceeding before any court, tribunal, arbitral body or other Governmental Entity.

“Administration and Proration Agreement” - Shall have the meaning set forth in Section 2.6 hereof.

“Agreement” – Shall have the meaning set forth in the preamble hereto.

“Ancillary Agreements” – Shall have the meaning set forth in Section 7.1 hereof.

“Assignment and Assumption Agreement” – Shall have the meaning set forth in Section 2.1(a)(iv) hereof.

“Assumed Liabilities” – Shall have the meaning set forth in Section 2.3 hereof.

“Bill of Sale” – Shall have the meaning set forth in Section 2.1(a)(iii) hereof.

“Closing” – Shall have the meaning set forth in Section 3.1 hereof.

“Closing Date” – Shall have the meaning set forth in Section 3.1 hereof.

“Contracts” – Shall have the meaning set forth in Section 2.1(a)(iv) hereof.

“Environmental Claim” - Shall mean any claim, action, demand, or notice by or on behalf of any Governmental Entity, person or entity alleging potential liability under, or a violation of, any Environmental Law.

“Environmental Laws” - Shall mean federal, state or local laws or any applicable regulation, rule, order or decree relating to pollution or protection of the environment, including but not limited to laws relating to emissions, discharges, releases or threatened releases of pollutants, contaminants or hazardous or toxic material or wastes, including petroleum, into ambient air, surface water, ground water or land or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants or hazardous or toxic materials or wastes, including but not limited to petroleum.

“Environmental Permits” - Shall mean any and all permits, licenses, approvals, registrations, notifications, exemptions and any other authorization pursuant to or required under any Environmental Law.

“Environmental Remedial Action” - Shall mean any and all actions required to (i) clean up, remove, treat, contain or in any other way take remedial action or response action of or with respect to any Material of Environmental Concern in the environment; (ii) prevent the Release or threat of Release or minimize the further Release of Materials of Environmental Concern so they do not migrate or endanger public health or welfare or the indoor or outdoor environment; or (iii) perform pre-remedial studies and investigations and post-remedial monitoring and care. The term “Environmental Remedial Action” includes without limitation any action which constitutes a “removal”, “remedial action” or “response” as

defined by Section 101 of CERCLA, 42 U.S.C. § 9601(23), (24), and (25), as amended, and the same or similar words as used and defined under counterpart laws of applicable states or other jurisdictions.

“Environmental Report” - Shall mean any report, study, assessment, audit or other similar document prepared by or on behalf of NCRA or NWPCO, which addresses any issue of actual or potential noncompliance with, or actual or potential liability under, any Environmental Law.

“Excluded Assets” – Shall have the meaning set forth in Section 2.2 hereof.

“Excluded Liabilities” – Shall have the meaning set forth in Section 2.4 hereof.

“Governmental Entity” - Any agency, authority, entity, board, bureau, court, commission, department, instrumentality or administration of the United States government, any state government or any local or other governmental body in a state, territory or possession of the United States or the District of Columbia, with jurisdiction over the applicable subject matter.

“Liens” – Shall mean any lien, security interest, option, mortgage, pledge, restriction or encumbrance, except if created as a result of applicable federal and state securities law restrictions.

“Material Adverse Effect” - Shall mean a change or effect that (i) has or is reasonably likely to have an adverse effect on the business, assets, condition (financial or otherwise) or results of operation of an entity, or (ii) impairs or is reasonably likely to impair an entity’s ability to perform any of its obligations under this Agreement, which, in each case, results or is reasonably likely to result in an out of pocket expenditure of more than –\$50,000__ (the “Dollar Threshold”) over and above available insurance coverage, but shall not mean a change or effect (i) that relates to the economy and financial markets generally and not specifically to such entity, (ii) that relates to the industry in which such entity operates generally and not specifically to such entity, (iii) that results from natural disasters, calamities and other force majeure events, or (iv) that results from any outbreak or escalation of armed hostilities, any acts of war or terrorism.

“Materials of Environmental Concern” - Shall mean any material or substance that is defined or classified as a “hazardous substance”, “hazardous material”, “hazardous waste”, “pollutant”, “contaminant”, or any other substance regulated pursuant to or that could give rise to liability under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601(14)), as amended; the Federal Water Pollution Control Act (33 U.S.C. § 1321), as amended; the Resource Conservation and Recovery Act (42 U.S.C. §§ 6903, 6921), as amended; the Federal Water Pollution Control Act (33 U.S.C. § 1317(a)(1)), as amended; the Clean Air Act (42 U.S.C. § 7412), as amended; the Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. App. § 1802(4)), as amended; the Federal Insecticide and Rodenticide Act (7 U.S.C. § 136), as amended; analogous state and local laws; and any other Environmental Laws.

“NCRA” – Shall mean the North Coast Railroad Authority or any successor agency designated by law which may be responsible for NCRA’s debts, liabilities or obligations following the Closing.

“Notice” – Shall have the meaning set forth in Section 12.7 hereof.

“Party” or “Parties” – Shall have the meaning set forth in the preamble hereto.

“Quitclaim Deed” – Shall have the meaning set forth in Section 2.1(a)(i) hereof.

“Rail Line” – Shall have the meaning set forth in Section 2.1(a)(i) hereof.

“Release” – Shall mean any release, emission or discharge of any Material of Environmental Concern, in, into or onto the environment, including any release, as defined in CERCLA or any other Environmental Law, of any Material of Environmental Concern.

“SMART” – Shall mean the Sonoma-Marin Area Rail Transit District.

“STB” – Shall mean the Surface Transportation Board of the Department of Transportation or any successor federal agency with primary jurisdiction over the Rail Line conveyance transaction that is the subject of this Agreement.

“Taxes” – Shall mean all ad valorem and real property taxes, personal property taxes, sales and use and similar taxes, assessments and charges (if any) relating to the Acquired Assets.

1.2 Other Definitional Provisions. (a) Unless otherwise stated, terms, phrases and expressions used in this Agreement (whether or not capitalized) which pertain to railroad assets shall have the meaning commonly given such terms under common usage and practice of the railroad industry.

(b) All references to the real and personal property and other assets, rights, benefits, privileges and interests transferred by NWPCO under the terms of this Agreement shall mean any and all ownership or leasehold interests of NWPCO in and to such real and personal property and other assets, rights, benefits, privileges and interests, to the extent applicable, as such real and personal property and other assets, rights, benefits, privileges and interests are owned, leased, used or held for use by NWPCO.

(c) The Article and Section headings contained in this Agreement are for reference purposes only and shall not effect affect in any way the meaning or interpretation of this Agreement. The Exhibits and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof. Unless the context of this Agreement otherwise requires: (i) words of any gender include the other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms “hereof,” “herein,” “hereby” and derivative or similar words refer to this entire Agreement; and (iv) the terms “Article” or “Section” refer to the specified Article or Section of this Agreement. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless otherwise specified. Whenever the words “included,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

II. TRANSFER OF NWPCO ASSETS

2.1 Transfer of NWPCO’s Assets.

(a) Pursuant to the terms and subject to the conditions of this Agreement, NWPCO hereby agrees to transfer and convey to SMART at Closing all of its right, title and interest in and to the

following assets that are either owned by NWPCO or leased by it, (subject to provisions of Section 2.2 regarding Excluded Assets):

(i) any and all real property interests owned or leased by NWPCO (including any fee interest, leasehold interest, deed of trust or easement rights) in the railroad right of way and associated real property (including any spur or branch lines, depot property or other real property interests along or adjacent to the pertinent rail corridor) That constitute part of the line of railroad and rail corridor extending from approximately milepost 89.0 at the Sonoma/Mendocino County line south to approximately milepost 14 and east to the City of American Canyon approximately at milepost 49.80 (Brazos Junction the "Rail Line"), which real property is more particularly described in the Quitclaim Deed attached hereto as **Exhibit A (the "Quitclaim Deed")**.

(ii) any and all fixtures, appurtenances and articles of personal property that constitute part of the Rail Line (including without limitation rail, ties, spikes, tie plates, ballast, rail anchors, bridges, culverts, materials, supplies and other supporting structures) as well as signals and road crossing protection equipment, which personal property is more particularly described in the Quitclaim Deed;

(iii) any and all personal property which is reasonably related to the operation and maintenance of the Rail Line, including but not limited to any locomotives, railcars and other railroad equipment, maintenance machinery, roadway equipment parts and supplies and rail inventories as more particularly described in the Bill of Sale attached hereto as **Exhibit B (the "Bill of Sale")**;

(iv) any and all contractual rights, privileges and authorizations relating to the Rail Line,(the "Contracts") as more particularly described in the Assignment and Assumption Agreement attached hereto as **Exhibit C** ("the Assignment and Assumption Agreement") and **Schedule 1** thereto (which lists the Contracts to be assigned from NWPCO to SMART at Closing);

(v) any and all licenses, certificates of public convenience and necessity, common carrier rights, freight restart rights, or other rights or authorizations relating to rail operations on the Rail Line; and

(vi) any and all other rights, privileges and assets relating to the Rail Line which may be identified by the Parties hereto prior to or subsequent to Closing.

(b) The assets described above shall be referred to in this Agreement as the "Acquired Assets."

2.2 Excluded Assets. The following real property, personal property, fixtures, and other assets shall be excluded from the assets that will be transferred and conveyed from NWPCO to SMART pursuant to this Agreement (the "Excluded Assets"):

(a) the real property interests which constitute part of the right-of-way and rail corridor north of approximately milepost 89.0 at the Sonoma/Mendocino County Line;

(b) the portions of any and all contractual rights, privileges and authorizations that do not apply or relate to the Acquired Assets (including without limitation those contractual rights,

privileges and authorizations relating or applying to the northern portion of the right-of-way and rail corridor north of approximately milepost 89.0 at the Sonoma/Mendocino County Line;

(c) any and all contractual rights, privileges and authorizations that would otherwise be transferred to SMART but that SMART instructs NWPCO to terminate prior to the Closing (including, without limitation, any contractual agreements between NCRA and NWPCO), provided NWPCO can lawfully effectuate such termination pursuant to such contractual agreements

(d)-any and all contractual rights, privileges and authorizations that entitle NWPCO to the repayment of amounts owed to it by NCRA, (except for any interest in real property owned by NCRA south of milepost 89.0)

(e) any interest in real property heretofore specifically pledged by NCRA to NWPCO for the repayment of debt (including the Ukiah Railroad Depot Property and the Mason Street Property pledged in that certain Remediation Agreement referenced hereto entered into by and between NCRA and NWPCO) or such interest in real property owned by NCRA north of milepost 89.0 as might be lawfully claimed by NWPCO in the future to secure or effectuate such repayment

(f) Other assets not included in the Acquired Assets, including accounts receivable for goods or services already provided and cash related to the period prior to 12:01 a.m. Pacific Time on the day immediately following the Closing Date.

2.3 Assumed Obligations. At the Closing, SMART shall assume the following obligations of NWPCO relating to the Acquired Assets (subject to the provisions of Section 2.4 regarding Excluded Liabilities) (the "Assumed Liabilities"):

(a) All obligations attributable to the period commencing on and after 12:01 a.m. Pacific Time on the day immediately following the Closing Date (as defined in Section 3.1 of this Agreement) that arise under the Contracts assigned by NWPCO to SMART pursuant to Section 2.1, as more particularly set forth in the Assignment and Assumption Agreement; and

(b) All obligations and liabilities attributable only to the period commencing on and after 12:01 a.m. Pacific Time on the day immediately following the Closing Date relating solely to SMART's, operation or use of the Acquired Assets.

2.4 Limitation on Assumption of Liabilities. Except as expressly stated above with respect to the Assumed Liabilities, SMART shall not assume or be responsible for any and all of NWPCO, NCRA, the State of California and/or any other parties' obligations and liabilities, including but not limited to the following (the "Excluded Liabilities")

(a) All obligations and liabilities attributable to the period prior to 12:01 a.m. Pacific Time on the day immediately following the Closing Date that arose under the Contracts assigned to SMART pursuant to Section 2.1, as more particularly set forth in the Assignment and Assumption Agreement;

(b) All obligations and liabilities attributable to the period prior to 12:01 a.m. Pacific

Time on the day immediately following the Closing Date relating to NWPCO's ownership/leasehold, operation, use and/or possession of the Acquired Assets;

(c) All obligations and liabilities of NWPCO for the payment of Taxes, damages, lawsuits, causes of action, fines or fees (if any) applicable to the Acquired Assets or otherwise that occurred or arose prior to 12:01 Pacific Time on the day immediately following the Closing Date, except to the extent expressly allocated to SMART under this Agreement;

(d) All obligations and liabilities of NWPCO under that portion of any Contract that does not relate to the Acquired Assets; and

(e) All obligations and liabilities of NWPCO relating to the Excluded Assets.

2.5 Purchase Price; Consideration. As consideration for the sale to Buyer of the Purchased Assets, at the Closing Buyer shall pay to Seller the sum of Four Million Dollars (\$4,000,000), (the "Purchase Price"). The parties acknowledge and agree that no other payments or other transfers of value from SMART to NWPCO or any other party will be required at Closing in order to consummate the transfer and conveyance transaction specified herein—nor is any part of the consideration intended to pay or offset any indebtedness owed by NCRA to NWPCO.

2.6 Adjustments and Prorations. To the extent that any adjustment or proration of revenue received after Closing pertaining to the Contracts to be assigned to and assumed by SMART is determined by the Parties to be necessary, or other post-Closing adjustments and prorations relating to Taxes or otherwise are required, the Parties shall enter into an Administration and Proration Agreement in the form attached hereto as **Exhibit D**.

III. CLOSING:

3.1 Closing Date and Place. The closing of the transactions contemplated herein (the "Closing") shall take place at the offices of SMART prior to December 31, 2020 on such specific date mutually agreeable to the Parties, which shall be no later than the third (3rd) business day after satisfaction or waiver of the conditions set forth in Article VIII and IX ("Closing Date").

3.2 Deliveries by NWPCO. At or prior to the Closing, NWPCO shall deliver to SMART the following:

- (a) an executed Quitclaim Deed;
- (b) an executed Bill of Sale;
- (c) an executed Assignment and Assumption Agreement;
- (d) an executed Administration and Proration Agreement (if necessary);
- (e) an executed Agreement between NCRA and NWPCO (1) consenting to NWPCO's discontinuation of operations and partial termination of Lease with NCRA south of the Sonoma/Mendocino County line (MP 89), and (2) the assignment transfer and conveyance of its

railroad assets and associated rights to SMART, and (3) termination of the NCRA-SMART 2011 Operating and Coordination Agreement as amended, dated December 13, 2017 as such agreement is applicable to sections south of milepost 89.0

(f) such certificates, resolutions, instruments and documents as SMART may reasonably require to evidence NWPCO's transfer of the Acquired Assets to SMART in accordance with the legislative intent of [S.B. No. 1029].

(g) such certificates, resolutions, instruments and documents as SMART, STB or FRA may require to terminate NCRA and NWPCO freight operations and authorize SMART freight operation south of milepost 89.0.

3.3 Deliveries by SMART. At or prior to the Closing, SMART shall deliver to NWPCO the following:

- (a) an executed Assignment and Assumption Agreement; and
- (b) an executed Administration and Proration Agreement (if necessary); and
- (c) the Purchase Price, which shall be payable by wire transfer of immediately available funds to the account designated by NWPCO; and
- (d) SMART shall use its reasonable efforts to take all necessary actions or resolutions and execute any required instruments and documents to acquire the regulatory approval contemplated under this and Section 12.1(a)

IV. ADDITIONAL UNDERTAKINGS AND AGREEMENTS

4.1 Timing. The parties agree that in the event that any date on which performance is to occur falls on a Saturday, Sunday or state or national holiday, then the time for such performance shall be extended until the next business day thereafter occurring.

V. NWPCO'S REPRESENTATIONS AND WARRANTIES

NWPCO represents, warrants, and/or covenants, as applicable, as of the date hereof and as of Closing that:

5.1 Organization and Power and Authority. NWPCO is a California Corporation duly organized and validly existing under California law, and has all requisite power and authority and full legal capacity to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement by NWPCO have been duly authorized by all necessary action on the part of NWPCO. This Agreement has been duly executed and delivered by NWPCO, and assuming that this Agreement is a valid and binding obligation to SMART, this Agreement constitutes a valid and binding obligation of NWPCO, enforceable against NWPCO in accordance with its terms.

5.2 Noncontravention. Except as set forth on **Schedule 5.2**, and except for filings, permits,

authorizations, consents and approvals as may be required by, and other applicable requirements of, the Surface Transportation Board (“STB”), the execution, delivery and performance of this Agreement NWPCO will not (i) conflict with or result in a breach of any provision of NWPCO’s contracts or NCRA’s authorizing legislation (as amended by [S.B. No. 1029]); (ii) require any filing with, or permit, authorization, consent or approval of, any Governmental Entity; (iii) result in a violation or breach of any of the terms, conditions or provisions of any note, bond, or mortgage to which NWPCO is a party or by which it or any of its properties or assets may be bound; (iv) violate any order, writ, injunction, judgment, decree, statute, rule or regulation applicable to NWPCO (v) result in the creation or imposition of any Lien on any of the Acquired Assets. To achieve the assurances hereunder as to NCRA, prior to closing, NWPCO shall confirm and provide SMART with the same verifications and noncontravention assurances from NCRA related to their ability to approve this agreement and the assignment, transfer and conveyance of the freight rights and interest to SMART.

5.3 Licenses and Permits. NWPCO has not received written notice from any Governmental Entity, and to NWPCO’s knowledge no notice has been threatened in writing by any Governmental Entity, asserting that NWPCO does not have a license, permit, variance, certification, exemption, franchise, authorization or approval necessary to own, lease, use and/or operate, as applicable, the Acquired Assets as such assets are currently operated.

5.4 Litigation. Except as disclosed in **Schedule 5.4** attached hereto, there is no Action pending before any Governmental Entity or arbitrator, or to NWPCO’s knowledge threatened in writing before any Court, Governmental Entity or arbitrator, in either case against or affecting or involving: (i) the Acquired Assets, or the business, operations, value or use thereof or related thereto; or (ii) NWPCO, as to which an adverse determination would materially impair the ability of NWPCO to perform its obligations under this Agreement. Neither NWPCO nor the Acquired Assets is subject to any outstanding order, writ, judgment, award, injunction or decree that, individually or in the aggregate, could reasonably be expected to prevent or materially delay the consummation of the transactions contemplated by the Agreement.

5.5 Title to Assets.

(a) The real property leasehold interest held by NWPCO and personal property owned by NWPCO (including any locomotives, maintenance and construction equipment) to be conveyed by NWPCO to SMART pursuant to this Agreement will be free and clear of all Liens as of the Closing.

(b) NWPCO has good and valid title to the personal property that will be conveyed to SMART.

(c) For Assets owned by NCRA that NWPCO has a long-term lease, NWPCO will convey the long-term lease and transfer the exclusive right to use such Assets, under a long-term lease to SMART.

5.6 Status of Agreements.

(a) NWPCO represents and warrants that, to its knowledge, no party to any of the Contracts is in breach or default thereof and each of the assigned Contracts is in full force and effect.

(b) NWPCO represents and warrants that it has no knowledge of any ~~other~~ written

contracts and agreements, except for those contracts covered by the Assignment and Assumption Agreement or the Agreement for the Resurrection of Operations Upon the Northwestern Pacific Railroad line and Lease Agreement dated September 2006, that give third parties the right to use, access, enter or operate over the Rail Line.

5.7. Environmental Matters. Except as set forth in **Schedule 5.7** hereto, (i) NWPCO has not received written notice from any Governmental Entity alleging a violation by NWPCO of any applicable Environmental Laws, there are no pending Environmental Claims against NWPCO, and NWPCO has no knowledge of any Environmental Claim threatened in writing against the NWPCO, (ii) NWPCO is not subject to any judgment, decree, order, injunction or similar requirement relating to compliance with any Environmental Law or to Materials of Environmental Concern; and (iii) to the knowledge of NWPCO, it has provided to SMART true and complete copies of all Environmental Reports prepared on or after 2006, each of which is identified in **Schedule 5.7**.

5.8 Taxes. Except as set forth on **Schedule 5.8**, (i) NWPCO has timely filed all tax returns that it was required to file with respect to the Acquired Assets, (ii) all such tax returns were correct and complete in all material respects and were prepared in substantial compliance with all applicable laws and regulations, and (iii) all taxes due and owing by or with respect to NWPCO, to the extent applicable to the Acquired Assets, have been paid. There are no Liens on any of the Acquired Assets that arose in connection with any Tax or otherwise.

VI. SMART'S REPRESENTATIONS AND WARRANTIES

SMART represents, warrants and/or covenants, as applicable, as of the date hereof and as of Closing, that:

6.1 Organization and Power and Authority. SMART is a public agency duly organized and validly existing under California law and has all requisite power and authority and full legal capacity to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement by SMART have been duly authorized by all necessary action on the part of SMART. This Agreement has been duly executed and delivered by SMART, and assuming that this Agreement is the valid and binding obligation of SMART, this Agreement constitutes a valid and binding obligation of SMART, enforceable against SMART in accordance with its terms.

6.2 Noncontravention. Except for filings, permits, authorizations, consents and approvals as may be required under, and other applicable requirements of, the STB, the execution, delivery and performance of this Agreement by SMART will not (i) conflict with or result in any breach of its authorizing statute (as amended by [S.B. No. 1029]),(ii) require any filing with, or permit, authorization, consent or approval of, any Governmental Entity, or (iii) violate any order, writ, injunction, judgment, decree, statute, rule or regulation applicable to SMART.

6.3 Litigation. SMART is not subject to any outstanding order, writ, injunction or decree that, individually or in the aggregate, could reasonably be expected to prevent or materially delay the consummation of the transactions contemplated by the Agreement. There is no Action pending, or to

SMART's knowledge threatened in writing, before any Governmental Entity or arbitrator against or affecting or involving SMART as to which an adverse determination would materially impair the ability of SMART to perform its obligations under this Agreement.

VII. COVENANTS AND AGREEMENTS

7.1 In making its determination to close the transactions contemplated by this Agreement the State and SMART have relied on the representations and warranties of NWPCO expressly and specifically set forth in this Agreement (including the Schedules attached hereto), the Quitclaim Deed, the Bill of Sale, the Assignment and Assumption Agreement, the Administration and Proration Agreement (if any), and any other agreements, documents and instruments delivered pursuant hereto or in connection with the transactions contemplated by this Agreement (collectively, the "Ancillary Agreements").

7.2 NWPCO's Management of the Acquired Assets Prior to Closing.

(a) Negative Covenants. NWPCO covenants and agrees with SMART that, from the Effective Date of this Agreement through the Closing Date, it will not, without the prior written approval of SMART, do or agree to do any of the following:

(i) Sell, assign, lease, mortgage, pledge, grant any right or interest in, or otherwise transfer or dispose of, all or any part of its real or personal property rights or operating rights with respect to its portion of the Acquired Assets;

(ii) Grant, amend, modify, extend or terminate any operating agreement, trackage rights, haulage rights, marketing agreements, joint facility agreements or other agreements affecting use, access to or rail operations over the Rail Line;

(iii) Amend or renew any Contracts or enter into any new agreement or incur any obligation or liability (contingent or absolute) relating to its portion of the Acquired;

(iv) Abandon or discontinue service on all or any part of the Rail Line;

(v) Enter into, amend or renew any agreements with shippers or receivers for movement of traffic over the Rail Line or for other use of the Rail Line (including without limitation for storage of rail products or related products); or

(vi) Replace or substitute rail or any other Acquired Assets other than with material of the same or better kind and quality.

(b) Affirmative Covenants. NWPCO covenants and agrees with SMART that from the date hereof through the Closing it will conduct its affairs relating to the Acquired Assets in the ordinary course and in consultation with SMART.

7.3 Other Action. Each of the Parties to this Agreement shall use its reasonable best efforts to cause the fulfillment at the earliest practicable date of all of the conditions to the obligations of the Parties to consummate the transactions contemplated under this Agreement.

7.4 Amended Schedules.

(a) At least five (5) business days prior to the Closing Date, NWPCO shall deliver to SMART any final amendments to the Schedules to this Agreement that reflect changes, if any, since the date of this Agreement, and which Schedules, as amended, shall supersede the prior schedules; provided, however, that if the amendments to such Schedules, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect on SMART, then the parties shall be required to take reasonably steps to eliminate such Material Adverse Effect.

VIII. CONDITIONS PRECEDENT TO SMART'S OBLIGATION TO CLOSE

The obligations of SMART to consummate the transactions contemplated by this Agreement are subject to the satisfaction of the following conditions at or prior to the Closing (any or all of which may be waived in whole or in part by SMART, if lawful):

8.1 Representations, Warranties and Covenants. The representations and warranties of NWPCO set forth in Article V shall be true and correct in all material respects at and as of the Closing. NWPCO shall have performed in all material respects all obligations required to be performed by it under this Agreement., except in any case where such failure to perform would not reasonably be likely to have a Material Adverse Effect on SMART;

8.2 No Prohibition to Consummation. No Governmental Entity shall have enacted, issued, promulgated, enforced or entered any law, rule, regulation, executive order, decree, injunction or other order that is then in effect and has the effect of restraining, prohibiting or restricting, in a material respect, the consummation of the transactions contemplated by this Agreement;

8.3 Required Consents of Governmental Entities. All consents, authorizations, orders and approvals of (or filings or registrations with) any Governmental Entity required in connection with the execution, delivery or performance of this Agreement, the failure of which to obtain would prevent or materially delay the consummation of the transactions contemplated by this Agreement or have a Material Adverse Effect on SMART, shall have been obtained and be in full force and effect without the imposition of any condition having a Material Adverse Effect on SMART; and

8.4 Documents at Closing. NWPCO shall have delivered to SMART on or before the Closing all agreements, instruments and documents required to be delivered by NWPCO to SMART pursuant to Section 3.2. NWPCO and SMART shall have agreed upon any Exhibits and other documents which, by the terms of this Agreement, are to be agreed upon by NWPCO and SMART after the date hereof and prior to Closing.

8.5 Governmental Litigation. There shall be no governmental investigation pending or any order, injunction, or decree outstanding, against SMART relating to, or seeking to prohibit or otherwise challenge the consummation of, the transactions contemplated by this Agreement or to obtain substantial damages with respect thereto.

8.6 Future Funding and Assurances. Prior to Closing SMART shall receive satisfactory assurances that the State is committed to and will allocate additional funds to SMART for freight, operations, maintenance and liability of the rail line and the Acquired Assets.

IX. CONDITIONS PRECEDENT TO NWPCO'S OBLIGATION TO CLOSE

The respective obligations of NWPCO to consummate the transactions contemplated by this Agreement are subject to the satisfaction of the following conditions at or prior to the Closing (any and all of which may be waived in whole or in part by NWPCO, if lawful):

9.1 Representations, Warranties and Covenants. The representations and warranties of SMART set forth in Article VI of this Agreement shall be true and correct in all material respects at and as of the Closing, except in any case where such failure to be true and correct would not reasonably be likely to have a Material Adverse Effect on NWPCO. SMART shall have performed in all material respects all obligations required to be performed by it under this Agreement, except in any case where such failure to perform would not reasonably be likely to have a Material Adverse Effect on NWPCO;

9.2 No Prohibition to Consummation. No Governmental Entity shall have enacted, issued, promulgated, enforced or entered any law, rule, regulation, executive order, decree, injunction or other order that is then in effect and has the effect of restraining, prohibiting or restricting, in a material respect, the consummation of the transactions contemplated by this Agreement;

9.3 Required Consents of Governmental Entities. All consents, authorizations, orders and approvals of (or filings or registrations with) any Governmental Entity required in connection with the execution, delivery or performance of this Agreement, the failure of which to obtain would prevent or materially delay the consummation of the transactions contemplated by this Agreement, or have a Material Adverse Effect on NWPCO, shall have been obtained and be in full force and effect without the imposition of any condition (other than the imposition by the STB of standard labor protective conditions) having a Material Adverse Effect on NWPCO;

9.4 Documents at Closing. SMART shall have delivered to NWPCO on or before the Closing all agreements, instruments and documents required to be delivered by SMART to NWPCO pursuant to Section 3.3. NWPCO and SMART shall have agreed upon any Exhibits and other documents which, by the terms of this Agreement, are to be agreed upon by NWPCO and SMART after the date hereof and prior to Closing.

9.5 Governmental Litigation. There shall be no governmental investigation pending or any order, injunction, or decree outstanding, against NWPCO relating to, or seeking to prohibit or otherwise challenge the consummation of, the transactions contemplated by this Agreement or to obtain substantial damages with respect thereto.

9.6 RRIF Loan. On or before closing, that certain debt obligation related to the liability for the Rail Line under the Federal Railroad Administration's Rehabilitation and Improvement Financing (RRIF) loan balance due shall be placed into an escrow account..

X. RISK OF LOSS: DEFAULT: TERMINATION

10.1 Risk of Loss. Subject to the limitations stated in this Section 10.1, as between NWPCO and SMART until Closing, the risk of loss or damage by fire or other casualty to the Acquired Assets, ordinary wear and tear excepted, shall be incurred by NWPCO; provided, however, that NWPCO may elect either (i) at its sole cost, to diligently restore, replace and repair such assets to their condition immediately prior to such loss or damage (for which time NWPCO may reasonably extend the Closing Date), or (ii) to provide SMART at Closing with an amount sufficient to pay for the restoration, replacement and repair of such assets to their condition immediately prior to such loss or damage through an assignment of insurance proceeds to which NWPCO would be entitled; provided, however, that, NWPCO shall not be obligated to restore, replace and repair (or pay for such restoration, replacement and repair of) such assets if: (1) SMART, on the one hand, and NWPCO, on the other hand, mutually determine that such restoration, replacement and repair is not necessary; or (2) the aggregate cost of such restoration, replacement and repair is less than \$30,000.

10.2. Termination. This Agreement may be terminated at any time prior to the Closing:

- (a) by mutual written consent of SMART and NWPCO;
- (b) By either party if the Agreement is not consummated by the Closing Date.
- (c) by SMART if the State Transportation Agency does not transfer the appropriated sum of four million dollars (\$4,000,000) as provided for by Senate Bill No. 1029 to SMART.
- (d) by SMART if satisfactory assurances for funding as stated in Section 8.6 of this Agreement have not occurred.

10.3 Effect of Termination. Upon any termination of this Agreement by either NWPCO or SMART as provided in Section 10.2, this Agreement shall become void and of no further force and effect and there shall be no liability or obligation under this Agreement on the part of NWPCO or SMART.

XI. SURVIVAL: INDEMNIFICATION

11.1 Indemnification. NWPCO agrees to indemnify and hold harmless SMART its managers, officers, directors, employees, agents from and against any and all losses, liabilities, claims, damages, costs and expenses, including reasonable attorneys' and accountants' fees, costs of suit and costs of appeal (collectively, the "Damages"), insofar as such Damages (or actions in respect thereof) are based upon or arise out of this transaction transferring the Acquired Assets; or relate to NWPCO's use or operations of the Acquired Assets under this Agreement that are attributable to the period prior to 12:01 a.m. Pacific Time on the day immediately following the Closing Date.

11.2 Indemnification. SMART agrees to indemnify and hold harmless NWPCO its managers,

officers, directors, employees, agents from and against any and all losses, liabilities, claims, damages, costs and expenses, including reasonable attorneys' and accountants' fees, costs of suit and costs of appeal (collectively, the "Damages"), insofar as such Damages (or actions in respect thereof) are based upon or arise out of or relate to SMART's use or operation of the Acquired Assets under this Agreement that are attributable to the period after 12:01 a.m. Pacific Time on the day immediately following the Closing Date.

11.3 Survival of Representations Warranties, Covenants and Indemnification. The representations, warranties, covenants and indemnification of the parties contained in this agreement or in any certificate delivered by them under this agreement will survive the Closing Date of this agreement for a period of two (2) years. No claim for indemnification hereunder may be made after the expiration of the foregoing two-year period.

XII. MISCELLANEOUS`

12.1 Consents and Filings.

(a) Governmental Filings. NWPCO will cause to be made all required filings and submissions under the ICC Termination Act of 1995 and any other laws or regulations applicable to the consummation of the transactions contemplated by this Agreement. NWPCO shall be responsible for all filing fees, Transfers, Use, Taxes and other expenses in connection with such transfer and filings. SMART shall use its reasonable efforts to take all actions and to do all things necessary to acquire the regulatory approval contemplated under this Section 12.1(a).

(b) With Respect to Freight Contracts. Except as otherwise expressly provided in **Schedule 12.1(b)**, and notwithstanding any provision herein to the contrary, the obtaining of authorization, consent or approval for the assignment of the Contracts shall not be a condition precedent to each Party's obligation to close the transactions that are the subject of this Agreement, nor shall SMART have any recourse against NWPCO in connection with the failure to obtain authorization, consent or approval for the assignment of any such Contract, except with respect to the Agreement for the Resurrection of Operations Upon the Northwestern Pacific Railroad Line and Lease Agreement dated September 2006 and any and subsequent amendments).

12.2 Reasonable Efforts. NWPCO and SMART agree to use reasonable efforts to take, or cause to be taken, all actions necessary to comply promptly with all legal requirements that may be imposed with respect to the Agreement and the transactions contemplated herein (which actions shall include, without limitation, furnishing all information required in connection with required approvals of or filings with any Governmental Entity) and shall promptly cooperate with and furnish information to each other in connection with any such requirements imposed upon any of them in connection with the Agreement and the transactions contemplated herein. NWPCO and SMART, both before and within a reasonable period after the Closing, will use reasonable efforts to take all reasonable actions necessary, proper or advisable under applicable laws and regulations to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement, including, without limitation, defending any lawsuits or other proceedings challenging this Agreement.

12.3 Expenses. All deed taxes, transfer taxes, sales taxes, use taxes, recording fees and similar charges, duties, levies and fees incurred in connection with the transactions contemplated hereunder (if any) including the sale, transfer, and delivery of the Acquired Assets shall be borne by NWPCO. Except as provided in the preceding sentence or as otherwise expressly provided in this Agreement, each Party hereto shall pay its own expenses incident to this Agreement and the transactions contemplated hereunder, including without limitation all legal and accounting fees, disbursements and mortgage registration taxes, whether or not the transactions contemplated by this Agreement are consummated.

12.4 Waiver. No delay or failure on the part of any Party hereto in exercising any right, power or privilege under this Agreement, or under any other agreements or instruments given in connection with or pursuant to this Agreement shall impair any such right, power or privilege or be construed as a waiver of default or any acquiescence therein. No waiver shall be valid against any Party hereto unless made in writing and signed by the Party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

12.5 Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12.6 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of the respective successors and permitted assigns of the Parties; provided however, that this Agreement and any of the rights, interests or obligations hereunder may not be assigned, directly or indirectly, or by operation of law or otherwise, by any Party without the prior, written consent of the other Parties.

12.7 Notices. All notices and other communications (individually, a “Notice”) hereunder shall be in writing and shall be deemed received on the date such Notice is personally delivered (providing proof of delivery), on the first business day following the date on which such Notice is sent by a nationally recognized overnight courier (providing proof of delivery) or on the fifth business day following the date such Notice is mailed by registered or certified mail (return receipt requested). A Notice to a Party shall, unless another address is specified by such Party to the other Parties, be sent to the address indicated below:

If to NWPCO:

Douglas H. Bosco, Esq.
645 Fourth St, Suite 105
Santa Rosa, California 95403

If to SMART:

Farhad Mansourian
General Manager
Sonoma-Marin Area Rail Transit District (SMART)
5401 Old Redwood Hwy., Suite 200
Petaluma, CA 94954

12.8 Announcements. No press release, or other public announcement or communication, related to this Agreement or the transactions contemplated hereby shall be issued or made without the joint approval of NWPCO and SMART, unless required by law (in the reasonable opinion of counsel), in which case NWPCO and SMART shall each have the right to review and provide input on such press release or other public announcement or communication prior to publication.

12.9 Entire Agreement. This Agreement, including the Exhibits and Schedules hereto and all other instruments and documents referred to herein or delivered pursuant hereto or in connection herewith, represents the entire understanding of the Parties hereto, supersedes all prior oral or written memoranda and agreements by or between two or more of the Parties to the extent they relate in any way to the subject matter hereof, and may not be supplemented or amended, except by a written instrument executed by and delivered to each of the Parties hereto designating specifically the terms and provisions so supplemented and amended.

12.10 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when said counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart. A facsimile signature shall be deemed an original.

12.11 Limitation on Benefits. This Agreement (including the Exhibits and Schedules hereto and the Ancillary Agreements) is not intended to confer upon any person other than the Parties hereto any rights or remedies hereunder, except, to the extent expressly set forth in this Agreement, a Party's successors or permitted assigns.

12.12 Severability. If fulfillment of any clause or provision of this Agreement or performance of any transaction related thereto, at the time such fulfillment or performance shall be due, shall exceed the limit of validity prescribed by law, then the obligation to be fulfilled or performed shall be reduced to the limit of validity; and if any clause or provision contained in this Agreement operates or would operate prospectively to invalidate any portion of this Agreement, in whole or in part, then such clause or provision only shall be held ineffective, as though not herein contained, and the remainder of this Agreement shall remain operative and in full force and effect (unless the effect of so doing would deprive a Party substantially of the benefit of the bargain negotiated by such Party).

12.13 Governing Law. This Agreement and the Ancillary Agreements shall be construed in accordance with and governed by the laws of the State of California.

12.14 Dispute Resolution. If any dispute arises between the Parties relating to the interpretation, breach or performance of this Agreement or the grounds for the termination thereof, and the Parties cannot resolve the dispute within thirty (30) days of a written request by either Party to the other Party, the Parties agree to hold a meeting, attended by executive level personnel of each Party, to attempt in good faith to negotiate a resolution of the dispute prior to pursuing other available remedies. If, within sixty (60) days after such written request, the Parties have not succeeded in negotiating a

resolution of the dispute, such dispute shall be submitted to final and binding arbitration under the then current commercial rules and regulations of the Judicial Arbitration and Mediation Services (“JAMS”) relating to voluntary arbitrations. The arbitration proceedings shall be held before a single arbitrator selected by mutual agreement of the Parties. The Parties shall provide all documents, records and supporting information, and take all such further actions reasonably necessary to resolve the dispute as promptly as practicable after the selection of the arbitrator. Each Party shall bear its own costs and legal fees associated with such arbitration. The decision of the arbitrator shall be final and binding on the Parties. Judgment on the award so rendered may be entered in any court having competent jurisdiction thereof and shall be enforceable under the Federal Arbitration Act.

12.15 Time is of the Essence. With respect to the performance by the Parties of their obligations hereunder, and with respect to the consummation of the transactions that are the subject of this Agreement, the Parties agree and acknowledge that time is of the essence.

12.16 Books and Records. The Parties hereto shall keep records and books of account relating to the Acquired Assets and all transactions contemplated by this Agreement and shall preserve such any such records and books of account for a period of at least 4 years or for the required period under the records retention act (which ever is longer) after Closing, or such longer period as may be required by applicable law. Each Party hereto and its duly authorized representatives, during normal business hours upon reasonable advance notice to the other Party, shall have the right at its sole expense to inspect such books and records of account for purposes of verifying compliance with the terms and conditions of this Agreement; provided, however, that nothing herein shall require any Party to make available documents or data that bear no direct relationship to compliance with the terms and conditions of this Agreement.

DRAFT 05/11/2020

IN WITNESS WHEREOF, each of the Parties hereto has executed this Agreement or has caused this Agreement to be duly executed on its behalf, as of the day and year first above written.

Sonoma-Marín Area Rail Transit District

Northwestern Pacific Railroad Company

By: _____

By: _____

Its: _____

Its: _____

DRAFT

Exhibits

Exhibit A – Quitclaim Deed

Exhibit B – Bill of Sale

Exhibit C – Assignment and Assumption Agreement

Exhibit D – Administration and Proration Agreement (if necessary)

DRAFT

Senate Bill No. 1029

CHAPTER 934

An act to amend Sections 93000, 93010, 93020, and 93021 of, to add and repeal Section 13978.9 of, to repeal Sections 93001, 93002, 93023, and 93024 of, and to repeal and add Sections 93003 and 93022 of, the Government Code, and to amend Section 105095 of the Public Utilities Code, relating to transportation, and making an appropriation therefor.

[Approved by Governor September 29, 2018. Filed with
Secretary of State September 29, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1029, McGuire. North Coast Railroad Authority.

(1) Existing law creates the North Coast Railroad Authority with various powers and duties relating to rail service in the north coast area of the state, including the authorization to acquire, own, operate, and lease real and personal property reasonably related to the operation and maintenance of railroads.

This bill would require the Transportation Agency, in consultation with the Natural Resources Agency, upon the appropriation of moneys by the Legislature for these purposes, to conduct an assessment of the North Coast Railroad Authority to provide information necessary to determine the most appropriate way to dissolve the authority and dispense with its assets and liabilities, and to report on the assessment to the Legislature before July 1, 2020. The bill would authorize those agencies to request the Department of General Services, the Department of Finance, or any department within their agencies, or contract with other entities, to perform the work the agencies deem necessary to carry out the assessment. The bill would require the Transportation Agency to prioritize the assessment of the southern portion of the rail corridor, and would authorize the Transportation Agency to separately report information related to the potential transfer of the southern portion of the rail corridor to the Sonoma-Marin Area Rail Transit District.

This bill would repeal and revise various provisions relating to the authority. The bill would authorize the authority to acquire, own, operate, and lease real and personal property reasonably related to, instead, the furtherance of certain purposes, the planned transfer of all of its assets, and its dissolution. The bill would require the authority to cooperate with the assessment conducted by the Transportation Agency and Natural Resources Agency, and to provide access to all authority records, files, documents, accounts, reports, correspondence, and financial affairs to the agencies, and any entity conducting the assessment for the agencies.

Existing law creates, within the Counties of Sonoma and Marin, the Sonoma-Marín Area Rail Transit District with specified duties and powers. Existing law requires the district to work with specified authorities to achieve a safe, efficient, and compatible system of passenger and freight rail service, and authorizes the district, among other things, to provide a rail transit system for the transportation of passengers and their incidental baggage by rail.

This bill would authorize the district to also provide a rail transit system for the provision of freight service by rail.

Existing law creates the Public Transportation Account as a trust fund. Existing law requires revenues in the account to be used solely for mass transportation and transportation planning purposes, as specified.

This bill would appropriate \$4,000,000 to the Transportation Agency from the Public Transportation Account for rail improvements on the corridor owned by the district and the authority. The bill would allocate those moneys to the district for the acquisition of freight rights and equipment from the Northwestern Pacific Railroad Company to ensure efficient provision of goods movement requirements in the corridor in the context of growing passenger service, and authorizes the transfer of those moneys to the district, as specified.

(2) Because this bill would impose new requirements on local entities, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Appropriation: yes.

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

SECTION 1. The Legislature finds and declares that the North Coast Railroad Authority's railroad tracks, rights-of-way, and other properties provide an opportunity to create a Great Redwood Trail for hiking, biking, and riding, that may be in the public and economic best interests of the north coast.

SEC. 2. Section 13978.9 is added to the Government Code, to read:

13978.9. (a) Upon the appropriation of moneys by the Legislature for these purposes, the Transportation Agency, in consultation with the Natural Resources Agency, shall conduct an assessment of the North Coast Railroad Authority to provide information necessary to determine the most appropriate way to dissolve the North Coast Railroad Authority and dispense with its assets and liabilities. The Transportation Agency shall report to the Legislature before July 1, 2020, on its findings and recommendations from

the assessment. The report shall include, but not be limited to, all of the following:

(1) An assessment of the North Coast Railroad Authority's debts, liabilities, contractual obligations, and litigation.

(2) An assessment of the North Coast Railroad Authority's assets, including property, rights-of-way, easements, and equipment.

(3) An assessment of the North Coast Railroad Authority's freight contractor lease, including the contractor's assets and liabilities to the extent that information is available.

(4) A preliminary assessment of the viability of constructing a trail on the entirety of, or a portion of, the property, rights-of-way, or easements owned by the North Coast Railroad Authority, and recommendations relating to the possible construction of a trail, including both of the following:

(A) Options for railbanking and the governance structure or ownership structure for a new or successor entity that is necessary to railbank property, rights-of-way, and easements along the rail corridor.

(B) A preliminary assessment of which portions of the terrain along the rail corridor may be suitable for a trail.

(5) An assessment of the options for transferring the southern portion of the rail corridor to the Sonoma-Marin Area Rail Transit District and recommendations on the specific assets and liabilities that could be transferred, including rights or abilities to operate freight rail.

(b) The Transportation Agency and the Natural Resources Agency may request the Department of General Services, the Department of Finance, or any department within their agencies, or contract with other entities, to perform the work the agencies deem necessary to carry out the duties described in this section. Any work done by the Department of General Services, the Department of Finance, or any department within the agencies pursuant to such a request may be conducted using the power and authority of the requested department.

(c) The Transportation Agency shall prioritize the assessment of the southern portion of the rail corridor and may separately report information related to the potential transfer of the southern portion of the rail corridor to the Sonoma-Marin Area Rail Transit District. It is the intent of the Legislature that information and recommendations regarding the potential transfer of the southern portion of the rail corridor to the Sonoma-Marin Area Rail Transit District be provided as expeditiously as possible and not be delayed due to the potential complexity of assessing the northern portion of the rail corridor.

(d) (1) A report to be submitted pursuant to this section shall be submitted in compliance with Section 9795.

(2) Pursuant to Section 10231.5, this section is repealed on January 1, 2024.

SEC. 3. Section 93000 of the Government Code is amended to read:

93000. This title shall be known and may be cited as the North Coast Railroad Authority Closure and Transition to Trails Act.

SEC. 4. Section 93001 of the Government Code is repealed.

SEC. 5. Section 93002 of the Government Code is repealed.

SEC. 6. Section 93003 of the Government Code is repealed.

SEC. 7. Section 93003 is added to the Government Code, to read:

93003. The Legislature finds and declares that it is in the public interest to dissolve the authority, and to transfer its rights-of-way to other entities for the purpose of potentially developing a trail that could include railbanking and continuing freight where it was operational on January 1, 2018.

SEC. 8. Section 93010 of the Government Code is amended to read:

93010. (a) The authority is hereby created, having a service area comprised of the Counties of Humboldt, Mendocino, Sonoma, and Trinity.

(b) The County of Marin may elect to join the authority and, if that election is made, the authority is expanded to include that county.

SEC. 9. Section 93020 of the Government Code is amended to read:

93020. (a) The authority has all of the following powers:

(1) To acquire, own, operate, and lease real and personal property reasonably related to the furtherance of the purposes of this title, the planned transfer of all of its assets, and its dissolution. Any sale, easement, or lease entered into by the authority after August 1, 2018, shall be approved by the California Transportation Commission.

(2) To operate railroads along the rights-of-way where they were in operation on January 1, 2018.

(3) To accept grants or loans from state or federal agencies.

(4) To employ an executive officer, other staff, and consultants deemed appropriate for support of the activities of the authority, to further the purposes of this title.

(b) The authority shall do all of the following:

(1) In coordination with state agencies, immediately begin planning for the transfer of all of the authority's assets and liabilities and for the dissolution of the authority.

(2) Cooperate with its freight contractor to continue freight operations along the rights-of-way where they were in operation on January 1, 2018.

(3) Cooperate with, and provide information upon request to, the Transportation Agency, Natural Resources Agency, or other state or local agencies or contractors working at the direction of the Transportation Agency or Natural Resources Agency.

(4) Cooperate fully with the assessment conducted pursuant to Section 13978.9.

SEC. 10. Section 93021 of the Government Code is amended to read:

93021. The authority may acquire, own, lease, and operate railroad lines and equipment, including, but not limited to, real and personal property, tracks, rights-of-way, equipment, and facilities, to further the purposes of this title.

SEC. 11. Section 93022 of the Government Code is repealed.

SEC. 12. Section 93022 is added to the Government Code, to read:

93022. The authority shall cooperate with the assessment conducted by the Transportation Agency and Natural Resources Agency pursuant to Section 13978.9, and shall provide access to all authority records, files,

documents, accounts, reports, correspondence, and financial affairs to the agencies, and any entity conducting the assessment for the agencies, pursuant to Section 13978.9.

SEC. 13. Section 93023 of the Government Code is repealed.

SEC. 14. Section 93024 of the Government Code is repealed.

SEC. 15. Section 105095 of the Public Utilities Code is amended to read:

105095. The district may provide a rail transit system for the transportation of passengers and their incidental baggage by rail and provision of freight service by rail.

SEC. 16. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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

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AMENDED IN ASSEMBLY AUGUST 19, 2019

AMENDED IN ASSEMBLY JUNE 18, 2019

AMENDED IN SENATE MAY 17, 2019

SENATE BILL

No. 356

Introduced by Senator McGuire

February 19, 2019

An act to ~~add Section 93029 to the Government Code, and to amend Sections 105003, 105012, 105003 and 105032 of, and to repeal Sections 105104, 105105, and Section 105180 of, the Public Utilities Code, relating to transportation.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 356, as amended, McGuire. ~~North Coast Railroad Authority: rail right-of-way: Sonoma-Marin Area Rail Transit District.~~

~~Existing law creates the North Coast Railroad Authority with various powers and duties relating to rail service in the north coast area of the state, including the authority to acquire, own, operate, and lease real and personal property reasonably related to the operation and maintenance of railroads, the planned transfer of all of the authority's assets, and the authority's dissolution.~~

Existing law creates, within the Counties of Sonoma and Marin, the Sonoma-Marin Area Rail Transit District, which is governed by a 12-member board of directors, with specified duties and powers. Existing law requires the district to work with specified authorities, including the North Coast Railroad Authority, to achieve a safe, efficient, and compatible system of passenger and freight rail service and authorizes the district to, among other things, provide a rail transit system for the provision of freight service by rail.

~~This bill would require the authority, within 90 days of removing all of its debts, liabilities, and contractual obligations, to convey and transfer its rights, interests, privileges, and title, lien free, relating to a specified rail right-of-way, its licenses and certificates of public convenience and necessity, any common carrier obligations held by the authority or an associated freight operator, and the railroad assets the authority owns to the district.~~

This bill would give the board of governors of the district the duty and power to, among other things, own, operate, manage, and maintain a freight rail system within the district and fix rates, rentals, charges, and classifications of freight service operated by the district. The bill would also give the board of governors of the district the duty and power to consider potential alternatives to help address the housing needs of current and future employees. The bill would repeal the requirement that the district obtain coverage for itself and its employees under certain federal laws.

By imposing new requirements on local entities, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 ~~SECTION 1. Section 93029 is added to the Government Code,~~
 2 ~~to read:~~
 3 ~~93029. Within 90 days of removing all of its debts, liabilities,~~
 4 ~~and contractual obligations, the authority shall convey and transfer~~
 5 ~~all of its rights, interests, privileges, and title, lien free, relating to~~
 6 ~~its rail right-of-way south of mile post 89.0, including any~~
 7 ~~associated real property, rail easements, and branch or spur lines,~~
 8 ~~its licenses and certificates of public convenience and necessity,~~
 9 ~~any common carrier obligations held by the authority or an~~
 10 ~~associated freight operator, and the railroad assets the authority~~

1 ~~owns to the Sonoma-Marín Area Rail Transit District, created~~
2 ~~pursuant to Section 105010 of the Public Utilities Code.~~

3 ~~SEC. 2.~~

4 *SECTION 1.* Section 105003 of the Public Utilities Code is
5 amended to read:

6 105003. As used in this part, the following terms have the
7 following meanings:

8 (a) “District” means the Sonoma-Marín Area Rail Transit
9 District.

10 (b) “Rail transit” means the transportation of passengers and
11 their incidental baggage by rail and provision of freight service by
12 rail.

13 (c) “Rail transit works” or “rail transit facilities” means any or
14 all real and personal property, equipment, rights, or interests owned
15 or to be acquired by the district for rail transit service purposes,
16 including ancillary bicycle and pedestrian pathways that provide
17 connections between and access to station sites.

18 (d) “Board of directors,” “board,” or “directors” means the board
19 of directors of the district.

20 (e) “Public agency” includes the state, and any county, city and
21 county, city, district, or other political subdivision or public entity
22 of, or organized under the laws of, this state, or any department,
23 instrumentality, or agency thereof.

24 ~~SEC. 3.~~ Section 105012 of the Public Utilities Code is amended
25 to read:

26 ~~105012. (a) Upon the dissolution of the Sonoma-Marín Area~~
27 ~~Rail Transit Commission and the Northwestern Pacific Railroad~~
28 ~~Authority, the district shall succeed to any or all of the powers,~~
29 ~~duties, rights, obligations, liabilities, indebtedness, bonded and~~
30 ~~otherwise, immunities, and exemptions of the commission and its~~
31 ~~board of commissioners and the authority and its board of directors.~~

32 ~~(b) Upon the dissolution of the Sonoma-Marín Area Rail Transit~~
33 ~~Commission and the Northwestern Pacific Railroad Authority, the~~
34 ~~district shall assume the rights and obligations of the commission~~
35 ~~and the authority under any contract to which the commission or~~
36 ~~the authority is a party and that is to be performed, in whole or in~~
37 ~~part, on or after the date of dissolution of the Sonoma-Marín Area~~
38 ~~Rail Transit Commission and the Northwestern Pacific Railroad~~
39 ~~Authority.~~

1 ~~(e) All real and personal property owned by the Sonoma-Marin~~
 2 ~~Area Rail Transit Commission and the Northwestern Pacific~~
 3 ~~Railroad Authority may be transferred to the district.~~

4 ~~(d) Upon the dissolution of the Sonoma-Marin Area Rail Transit~~
 5 ~~Commission, the district shall assume, without any condition~~
 6 ~~whatsoever, all responsibilities and obligations previously assumed~~
 7 ~~by the commission with respect to its fund transfer agreement with~~
 8 ~~the Department of Transportation for the funding of the~~
 9 ~~Sonoma-Marin Area Rail Transit Project.~~

10 ~~(e) On and after the date of dissolution of the Sonoma-Marin~~
 11 ~~Area Rail Transit Commission and the Northwestern Pacific~~
 12 ~~Railroad Authority, any reference in any law or regulation to the~~
 13 ~~commission or the authority shall be deemed to refer to the district.~~

14 ~~SEC. 4.~~

15 *SEC. 2.* Section 105032 of the Public Utilities Code is amended
 16 to read:

17 105032. It shall be the duty of the board and it shall have the
 18 power to:

19 (a) Own, operate, manage, and maintain a passenger and freight
 20 rail system within the territory of the district.

21 (b) Determine the rail transit and freight facilities, including
 22 ancillary bicycle and pedestrian pathways, to be acquired and
 23 constructed by the district, the manner of operation, and the means
 24 to finance them.

25 (c) Adopt an annual budget for the district that provides for the
 26 compensation of its officers and employees.

27 (d) Fix rates, rentals, charges, and classifications of rail transit
 28 and freight service operated by the district.

29 (e) Adopt an administrative code that prescribes the powers and
 30 duties of district officers, the method of appointment of district
 31 employees, and the methods, procedures, and systems for the
 32 operation and management of the district.

33 (f) Adopt rules and regulations governing the use of rail transit
 34 and freight facilities owned or operated by the district.

35 (g) Cause a postaudit of the financial transactions and records
 36 of the district to be made at least annually by a certified public
 37 accountant.

38 (h) Adopt rules and regulations providing for the administration
 39 of employer-employee relations.

1 (i) Consider potential alternatives to help address the housing
2 needs of current and future employees.

3 (j) Do any and all things necessary to carry out the purposes of
4 this part.

5 ~~SEC. 5. Section 105104 of the Public Utilities Code is repealed.~~

6 ~~SEC. 6. Section 105105 of the Public Utilities Code is repealed.~~

7 ~~SEC. 7.~~

8 *SEC. 3.* Section 105180 of the Public Utilities Code is repealed.

9 ~~SEC. 8.~~

10 *SEC. 4.* If the Commission on State Mandates determines that
11 this act contains costs mandated by the state, reimbursement to
12 local agencies and school districts for those costs shall be made
13 pursuant to Part 7 (commencing with Section 17500) of Division
14 4 of Title 2 of the Government Code.

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MENDOCINO COUNTY

CLOVERDALE



MAY 20, 2020

SMART | FREIGHT LINE
(NCRA OWNED)

SONOMA COUNTY

HEALDSBURG

WINDSOR

WINDSOR

AIRPORT

NORTH

DOWNTOWN

ROHNERT PARK

ROHNERT PARK

COTATI

COTATI

SONOMA

PETALUMA

PETALUMA

US 101

SAN MARIN

NOVATO

DOWNTOWN

HAMILTON

NAPA COUNTY

VALLEJO ROUTE |
FREIGHT LINE

BRAZOS | FREIGHT LINE
(SMART OWNED)

DIXON

VACAVILLE

CAPITOL | COMMUTER
FREIGHT LINE

SUISON CITY

SOLANO COUNTY

RIO VISTA

FAIRFIELD

VALLEJO

BENICIA

VALLEJO FERRY

MARIN COUNTY





May 20, 2020

Eric Lucan, Chair
Transportation Authority of Marin

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

Judy Arnold
Marin County Board of Supervisors

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Joe Naujokas
Sonoma County Mayors' and
Councilmembers Association

Gary Phillips
Transportation Authority of Marin

David Rabbitt
Sonoma County Board of Supervisors

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5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

SUBJECT: SMART Budget Survey and Service Reduction Options

Dear Board Members:

RECOMMENDATIONS:

Receive report on Survey and Provide Direction on Further Budget Reductions

OVERVIEW:

As we have discussed at your last two meetings, we are continuing to work to address the dual challenges of the loss of Measure I and the ongoing impacts of the COVID-19 shutdowns. At your last meeting we presented options for reducing the budget. Today we will be presenting you with survey information you requested regarding our future service and the implications for our budget.

BUDGET INPUT:

Because we are facing uncertain economic circumstances, we have been working to provide your Board with options for budget reductions. At your last two meetings, we discussed potential inclusion of three "buckets" of expenditure reductions, two of which your Board has already given early direction on.

The first bucket, which will save \$3.5 million in one-time expenses that we are able to defer, eliminate or fund using other sources. The second bucket of \$2.6 million includes reductions in contracts for services such as customer service, WiFi and an expectation of savings from a smaller refinancing. Your Board has already given direction on this package and those will be included in the budget presentation in June.

We are also continuing to evaluate other savings we can squeeze out of the current expenditures and are making progress at capturing those for additional fund balance in the future. We anticipate our budget will include other reductions we have been able to capture as part of our efforts.

The third “bucket” we presented to you was made up of the elimination of weekend service, a reduction to 22 trips on weekdays, and the associated salary and employee reductions. We identified for you that the weekend service reduction would provide a net savings of \$1.6 million. The reduction to 22 trips would allow SMART a net savings of \$3.2 million. Also included in this bucket are various ideas to reduce benefits and pay of \$1.1 million that we are currently exploring with our staff and union representatives. These reductions are available to us at any point we need to implement them, whether we do it this year, or in the future as our economic circumstances require.

Upon presentation of these reduction options, your Board requested that we do outreach on the proposed new schedule and other reduction options such as the WiFi service. We immediately went to work on that request.

SURVEY RESULTS:

Within days of your meeting, we quickly prepared and distributed a survey to provide the public with an opportunity to hear about the reductions that SMART is considering and to receive input. We will have a complete presentation for you at our meeting, because the survey is still ongoing and will not be complete until Sunday May 17th. The survey was widely distributed and we are receiving good feedback.

Although we do not yet have complete survey results, we can share with you some preliminary results from the more than 2,700 responses so far.

Who responded to the survey?

- 75% of respondents have traveled on SMART (38% are regular weekday riders)
- 25% of respondents have never traveled on SMART

SMART riders on Elimination of WiFi

- 90% said the elimination of WiFi would NOT factor into their decision to ride SMART
- 57% were not willing to pay for WiFi service. (90% said they would either use their own data plan (64%) or create a personal hotspot (27%) to access the internet. Only 7% reported that data limits would prevent them from accessing the internet
- 30% would be willing to pay a \$1 - \$2 fee per use for onboard WiFi

SMART riders on the Elimination of Weekend Service

- 22% reported they ONLY ride SMART on weekends
- 37% reported they only ride on weekdays, and this change would not impact them
- Weekend and leisure riders who frequently take SMART would no longer have a use for the service if weekend service were to be eliminated.
- Respondents also expressed that the weekend schedule did not fit their needs. The majority of these comments suggested weekend schedule changes such as:
 - Earlier and Later Weekend Service, with fewer mid-afternoon trips.
 - Eliminating one, but not both, weekend service days. Example: Saturday only service

- Another common theme was the need for weekend service for recreation, events, cycling, tourism, and business. Riders were anticipating taking SMART more frequently, noting that the connection to the Larkspur Ferry increased their desire to ride.

SMART riders on the Weekday Service Reductions

- Only 50% weekday riders found the proposed weekday schedule to be acceptable for their commute needs.
- Respondents frequently cited the need for:
 - Earlier morning trains for both southbound and northbound commuters
 - Later evening trains for both southbound and northbound commuters
 - Trains that accommodated school commuters
 - Maintaining a schedule that synced with the Larkspur Ferry

Again, we will have more complete survey results for you by the end of Monday and will post those results on SMART website.

BUDGET IMPLICATIONS:

Our policy question is this: How quickly do we move to implement the next “bucket” of reductions? How many of those reductions should we implement right away? We have direction already to implement our first two “buckets” of reductions in the budget. However, we have imperfect information about the length and impact of the health and economic crisis. We do not know how deeply we need to cut in the long run.

In trying to answer this policy question there are three important factors that argue for a more measured approach to this moment in our decision making.

1. Federal CARES Act Funding:

We are very fortunate that we will be receiving substantial funds from the Federal government that will help us to close immediate revenue gaps. Assuming the Metropolitan Transportation Commission (MTC) allocates the remaining 31% of CARES Act funds using the same formula that they agreed to with the 25 General Managers of the Bay Area transit services, our share would be \$16.9 million in funding. This can support the equivalent of our full operating costs for 6 months.

Having these funds allows us time to determine the true impact of the shelter in place order on the sales tax and make better projections into future years.

2. Implications of Staff Layoffs: As we discussed in our May 6 meeting, we do not believe that it serves our riders and the public to react too quickly by laying off good employees that we discover 6 months later we needed to keep. Eventually the public will return to work and our ridership will ultimately begin to return, even if the timing of that is uncertain. Ramping up service requires trained, qualified employees which, as you know, takes significant time. So, although we have the ability to make drastic cutback decisions at any point, there is a human toll and a long-term strategic risk to our future sustainability.

3. Year-Round Budget: Finally, although we are required to adopt a budget by June 30th, we will not be stopping the budget process on July 1. After July 1 we will be getting more information on quarterly sales tax, more information on the economy reopening, and seeing if our budget needs to be corrected. Every service, business, government and individual will be doing the exact same thing seeing where we are and readjusting to the conditions on the ground.

In the face of these three important considerations and the survey results we have presented to you, the policy decision before the Board is what our ultimate service schedule will look like when we are fully functioning? Do we make significant service cut assumptions now, or do we wait?

There is no crystal ball that will tell us what level of reductions will be needed in the long run. Given the uncertainty of sales tax impacts over the next two to four years and our previously identified structural deficit, it would be prudent to make some assumptions of a reduction in full service now. It would also make planning more clear for our staff and our riders.

The cutback scenarios we presented to you at your May 6 meeting all involve layoffs that we might need to implement at some time in the coming months or beyond. However, given the significant CARES Act funding we expect to receive, the difficulty of replacing skilled employees who have been laid off, and our ability to review our decision making at any time, we would like to suggest an alternative fourth “bucket” for your consideration.

We have the option of choosing to look at a smaller reduction in service that would result in restoring an extra train at the beginning and another one at the end of the work day in response to the public input. This would achieve two goals: First it would respond to the survey results we have received to date about an earlier and later train option. Second, it could be accomplished without staff layoffs. We would be able to make reductions using attrition and the deletion of vacant positions.

In this scenario, SMART would run a “6-1-6” schedule, which means six morning runs, six evening runs and one midday run, for a total of 26 runs on the weekday. Our projection of the savings associated with that service are \$1.1 million. For now, we would not assume any cuts to the weekend. We would defer that decision to later in the year after our revenue picture is clearer. We would continue not running weekend service until the shelter-in-place is lifted and weekend ferry service is restored.

Based on the reduction decisions we have made so far, and this additional \$1.1 million reduction associated with running 26 trips on weekdays, we believe we could maintain that new level of service utilizing the CARES act funding and our unallocated fund balances for several years without dipping into the minimum \$10 million operations reserve your Board agreed on.

This policy choice could be implemented in the budget that we present on June 3 for your further discussion and public input. The budget will then be adopted on June 17th at your last meeting before the end of the Fiscal Year.

Again, that would only be the beginning of the process for our management of this crises. We will continue to monitor and examine the revenues and we will know more in July than we do today about sales tax receipts for the April, May and June quarter. We will also continue to engage MTC on the disbursement of the CARES Acts funds we have yet to receive. In whatever scenario we choose and reductions we implement, we will return in the coming months to report on our findings and whether our assumptions and decisions should be revisited.

Very truly yours,

/s/
Farhad Mansourian
General Manager