

TRAC

Train Riders Association of California

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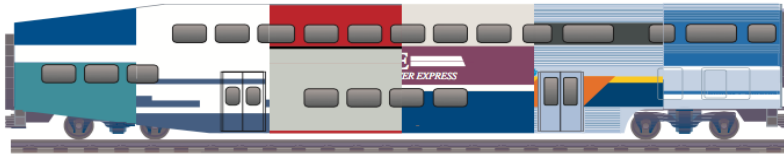
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March 31, 2021

Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
Washington, DC 20423-0001

Re: Docket # AB-1310X
Northwestern Pacific Railroad Company - Discontinuance of Service
Exemption in Marin, Napa, And Sonoma Counties, CA

Dear Sir or Madam:

The Train Riders Association of California ("TRAC") is a statewide rail advocacy organization that has worked since 1984 to improve passenger rail service in California. We object to the proposed exemption of the transfer of NWPCO's common carrier obligations to the Sonoma-Marin Area Rail Transit District ("SMART") under 49 U.S.C. § 10502. For the reasons set forth below, we assert that exemption would fail to ensure implementation of 49 U.S.C. § 10101(4):

to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense.

A second rationale for denying the proposed exemption is that the controversies raised in this proceeding make it similar to the proposed exemption that the Board recently denied:

Here, not only is the transaction proposed in Docket No. FD 36471 highly controversial, but the verified notice of exemption and opposing submissions also raise unresolved questions that require more detailed consideration than the expedited class exemption process is designed to provide. Rio Grande Pacific Corporation—Continuance In Control Exemption—Colorado, Midland & Pacific Railway Company, FD 36470 et al, slip op. at 4 (STB served March 25, 2021).

This line has a history of controversy. It received 2007 and 2008 decisions by the Board in Docket No. FD 35073, not to mention a case that went all the way to the California Supreme Court: *Friends of the Eel River v. North Coast Railroad Authority*, (2017) 3 Cal.5th 677, cert. denied.

Perhaps it would be appropriate to note at this point that the author¹ of these comments has worked continuously since 1990 to bring passenger rail service back to Marin and Sonoma Counties, and so, is a strong supporter of SMART, if not its management.

TRAC submitted many of the attached documents with the STB on June 4, 2020, after SMART voted on May 20 to acquire NWPCO's freight rights. Our intention was to give the STB's staff prior notice of the contested issues in the upcoming transfer. On June 8, we requested STB give us notice of any filing by SMART or NWPCO, but were told that, unlike the agencies we typically deal with, the STB has no email notification system. As a result of not receiving notice, we missed the comment period for SMART's filing (FD 36481). Because TRAC placed STB on notice of the controversy surrounding that filing, SMART's Verified Notice of Exemption should not have been given exempt treatment.

Granting NWPCO the requested exemption would have the effect of transferring NWPCO's common carrier rights to SMART without any further proceedings. Our primary concerns for why that would be problematic are articulated in reasons 1 - 10 in our 5/18/20 SMART Freight Proposal comments (Exhibit 1). (These comments were received by SMART and included in its Board Public Comments Received packet, Exhibit 5b, starting on PDF page 9 of 29.)

The most concerning aspect of SMART becoming a common carrier is its financial condition. The SMART Board received the Board of Directors Financial Presentation on 8/7/19 (Exhibit 2), which showed that the agency's primary funding source urgently needed to be extended. Unfortunately, Measure I, the 30-year sales tax extension ballot measure, failed at the March 2020 election, receiving 55.66%² where 66.67% was required for passage. TRAC questions whether SMART could qualify for common carrier status if it were required to file a formal application under 49 C.F.R. § 1150.1.

Is SMART Seeking Common Carrier Status in Good Faith?

Besides the questions of SMART's fitness to become a freight operator raised in TRAC's 5/18/20 comments to SMART (Exhibit 1), an issue we believe to be of great concern to the STB is whether SMART is seeking freight operator rights in good faith. We presented evidence to the SMART Board indicating it was not. An email from the then-Chief Consultant of the California Assembly's Transportation Committee said, "freight operations will cease upon the elimination of NCRA." (See email attached to TRAC 5/18/20 comment letter to SMART, Exhibit 1a.) That is consistent with SMART's hostile behavior towards shippers over the past ten years. See newspaper article (Exhibit 7): "SMART leaves businesses out of the loop."

Comments by TRAC in the Board Public Comments Received packet (Exhibit 5a), PDF page 7 of 29 also address the question of good faith:

The Train Riders Association of California, TRAC, offered evidence in its letter to your [SMART's] Board that staff is being less than candid in its assertion that it intends to operate freight service. A long series of decisions by SMART support the presumption that the agency has always wanted to eliminate freight service on the NWP:

* The standard for light rail, 115-lb rail, was specified for SMART, instead of the typical freight rail standard of 136-lb rail.

* Stations south of Ignacio were intentionally designed with clearances that prevent freight rail vehicles from entering them. No gantlet tracks were provided.

* All switches to industrial spurs not in operation at the time of SMART's construction were removed. Replacing a large number (> 14) of these switches with signalling and motorization would be exceedingly costly, endangering the ability of a freight carrier to grow its service.

We recognize that the wisdom of California's decisionmaking process that resulted in the petitions by NWPCO and SMART is outside the Board's purview. However, we point to our analysis of the tortured logic in the State's report ordered by SB 1029: *Assessment of the North Coast Railroad Authority and Viability of a Great Redwood Trail*, Report to the Legislature.³ Point #4 in the TRAC's Detailed Analysis of the Flaws in the *Assessment* (Exhibit 3) dissects the State's justification for SMART becoming a freight operator. (See p. 6 for the worst examples of deceptive logic, or at best, incompetent analysis.) The double-talk there is not indicative of a business intent.

Nowhere⁴ in the Report to the Legislature is there a serious analysis of the potential market and revenues for a freight operator. This, plus the referenced contorted logic, suggests an effort to bamboozle the reader about the merits of becoming a freight operator. The SMART Board, at its May 2020 meeting, received no business numbers whatsoever before it voted to approve the purchase of NWPCO. (See Exhibit 4) We suggest SMART should be tasked with rebutting the presumption that the facts indicate that it does not intend to actively participate in the rail freight business.

This Freight Rights section (pp. 7, 71-75) of the Report to the Legislature⁵ failed to alert decisionmakers to the responsibilities, costs and liabilities that inure to the holder of freight rights. Decisionmakers that are completely unaware of the significance of what they have voted to take on are not characteristic of a competent freight operator.

TRAC asserts that SMART is not entitled to receive a certificate of public convenience and necessity through the exempt transfer of carrier status. In order to fulfill its responsibility to implement the policy in 49 U.S.C. § 10101(4), the Board must determine if an NWPCO exemption, which would allow SMART to become a common carrier, will in fact result in "effective competition among rail carriers and with other modes."

If the Board deems the evidence we present herein to be credible, it should require SMART to file a formal application for common carrier status under 49 C.F.R § 1150.1, rather than allow an exempt transfer from NWPCO. The following sections of the application would help the Board determine whether SMART is capable of ensuring effective competition between rail and truck over the longer term:

§ 1150.4(c): "an explanation of why the public convenience and necessity require or permit the proposal."

§ 1150.4(e): "the volume of traffic estimated to be interchanged"

§ 1150.4(g)(2) "The nature or type of existing and prospective industries (e.g., agriculture, manufacturing, mining, warehousing, forestry) in the area, with general information about the age, size, growth potential and projected rail use of these industries."

§ 1150.5: "As exhibit D, an operating plan, including traffic projection studies; a schedule of the operations; information about the crews to be used and where employees will be obtained; the rolling stock requirements and where it will be obtained; information about the operating experience and record of the proposed operator unless it is an operating railroad; any significant change in patterns of service; any associated discontinuance or abandonments; and expected operating economies."

§ 1150.6: "(b) As exhibit E a recent balance sheet. As exhibit F, an income statement for the latest available calendar year prior to filing the application.

"(c) A present value determination of the full costs of the proposal. If construction is proposed, the costs for each year of such construction (in a short narrative or by chart).

"(d) A statement of projected net income for 2 years, based upon traffic projections. Where construction is contemplated, the statement should represent the 2 years following completion of construction.

A legitimate candidate for common carrier status would have ready answers for all the above questions.

Freight Service to Willits

The other serious concern for the STB is the explicit scheme by the State of California to ignore the needs of the shippers along the line from Cloverdale to Willits. The line has been out of service since FRA Emergency Order No. 21 was published Dec. 9, 1998 (63 FR 67976). The State's documents^{6,7} make it clear it will seek to have its subdivisions railbank the segment. There was no public process in the decision to railbank the Cloverdale to Willits segment of the line. That decision, made behind closed doors by persons unknown, is expressed for the first time in a legally significant form in this NWPCO Petition for Exemption.

We strenuously disagree with NWPCO's assertion that "Detailed scrutiny of NWPCO's proposed discontinuance under 49 U.S.C. §10903 is not necessary to carry out the RTP." (NWPCO Petition at 5.) NWPCO's admission belies that:

However, at least for the immediate future, NWPCO will retain operating authority on a segment of line north of the Subject Line from milepost 89 to milepost 142.5 ("Out-of-Service Line"). NCRA owns the Out-of-Service Line and

holds a residual common carrier obligation and the State of California is exploring the feasibility of developing the Out-of-Service Line as a trail. (NWPCO Petition at 10, footnotes omitted.)

The letter from the Mendocino Railway in the SMART Board Public Comments Received packet (Exhibit 5c) expressed the desire to serve those shippers:

Mendocino is very interested in acquiring the freight rights currently held by Northwestern Pacific Company (“NWP”) on the NCRA/NWP line or, at the very least, the rights to that portion of the line between Cloverdale and Willits, California which directly connect with its railroad. (PDF page 26 of 29.)

Indeed, Mendocino has previously notified the NCRA that there are shippers located on the Mendocino line that would like to connect with the interstate railroad network via a functional NCRA/NWP line but have been prevented from doing so. (Exhibit 5d, PDF page 27 of 29.)

Mendocino Railway wrote a February 6, 2020 letter to NCRA requesting service on the line between Cloverdale and Willits, to connect with the nationwide rail network. (Exhibit 5e, PDF page 28 of 29. Exhibit 8, Verification.) Exhibit 9 is a verified letter requesting service from the Mendocino Family of Companies.

This is not a routine transaction. Although a portion of the line south of Cloverdale is also out-of-service because of the Emergency Order, the Petition for Exemption pertains to only the line south of Cloverdale. (This may possibly be because SMART plans to eventually run passenger service to there.) Neither the Petition nor any other public document offers an economic or technical justification for the decision to permanently strand the shippers on the Cloverdale to Willits segment of the line. The Petition for Exemption should therefore be denied, consistent with these STB precedents:

As such, the agency has often explained that these streamlined class exemption procedures are reserved for transactions involving *routine, uncomplicated, and non-controversial matters*. Burlington N. & Santa Fe Ry.—Acquis. & Operation Exemption—South Dakota, FD 34645, slip op. at 2-3 (STB served Jan. 14, 2005). (Emphasis added.)

They are not intended for use in matters that involve substantial controversy and local interest. Saratoga & N. Creek Ry.—Operation Exemption—Tahawus Line, FD 35559, slip op. at 5 (STB served May 14, 2012). *A notice that raises unresolved issues or questions that require considerable scrutiny may be rejected.* Id. (Emphasis added.)

Granting the exemption would result in the conveyance of the common carrier status to SMART with the future of the Out-of-Service Line unresolved. It would be contrary to 49 U.S.C. § 10101(4) for the Board to accede to NWPCO's arbitrary Petition to sever the line at Cloverdale. Exemption would negatively impact the shippers located north of there, leaving them uncertain as to whether rail freight service will ever be available. 49 U.S.C. § 10903(d) suggests that an exemption in this matter would be unwarranted:

A rail carrier providing transportation subject to the jurisdiction of the Board under this part may:

- (1) abandon any part of its railroad lines; or
- (2) discontinue the operation of all rail transportation over any part of its railroad lines;

only if the Board finds that the present or future public convenience and necessity require or permit the abandonment or discontinuance. In making the finding, the Board shall consider whether the abandonment or discontinuance will have a serious, adverse impact on rural and community development.

The rural economy between Cloverdale and Willits would benefit from this proceeding resolving whether the Out-of-Service Line will be reopened. The NWP from Lombard to Willits should be treated as one integral entity. The State of California and SMART should not be allowed to manipulate the STB by arbitrarily dividing these segments.

Conclusion

The former Chief Engineer of the NCRA wrote to the NCRA (Exhibit 6) with his concerns, concluding that "Once the deal is agreed and sealed, any prospect of operating freight or passenger excursion service north of Cloverdale will be forever lost." TRAC's comments are intended to provide the legal foundation for the Board's deciding to not choose the expedient path of granting the exemption. By so doing, rail service can be prevented from being "forever lost."

The Train Riders Association of California respectfully requests the Board deny the Petition for Exemption for NWPCO's proposed discontinuance because of the controversy over lack of service on the Cloverdale to Willits segment of the line. We request that it direct NWPCO to revise its petition to address service for that segment.

On the basis of the evidence *supra*, TRAC further requests that the Board reject SMART's Verified Notice of Exemption in the related Finance Docket No. 36481, and require SMART to file a formal application for common carrier status under 49 C.F.R. § 1150.1.

Thank you for considering these comments. We would be pleased to answer any questions you might have, at the phone number below.

Sincerely yours,

/s/ DAVID SCHONBRUNN

David Schonbrunn, President
415-370-7250

Attachments

Exhibit 1: TRAC's 5/18/20 comments on SMART's Freight Proposal
Exhibit 2: Board of Directors Financial Presentation 8/7/19
Exhibit 3: TRAC's Detailed Analysis of the Flaws in the *Assessment*
Exhibit 4: SMART Board of Directors Packet
Exhibit 5: Board Public Comments Received
Exhibit 6: Former Chief Engineer Letter to NCRA
Exhibit 7: Newspaper article: SMART leaves businesses out of the loop
Exhibit 8: Verification of Mendocino Railway letter
Exhibit 9: Verified letter requesting service from the Mendocino Family of Companies
Proof of Service

¹ The author is also President of the Transportation Solutions Defense and Education Fund, TRANSDEF, which submitted an informational filing in the related Docket # AB 1305X on 3/25/21.

² <https://www.marincounty.org/depts/rv/election-info/past-elections/page-data/tabs-collection/past2020/march-3> <https://www.marincounty.org/userdata/RV/Results.pdf>
(Accessed 3/26/21)

³ <https://calsta.ca.gov/-/media/calsta-media/documents/sb-1029-assessment-of-ncra-report-to-legislature.pdf>

⁴ Except for this conclusory statement on pp. 35-36 made without evidence: "Absent a large economic draw on the north coast, such as a resurgence in the redwood forest products industry or development of the Humboldt Port, it does not make economic sense to invest further public funds into preserving and rehabilitating a freight railroad currently."

⁵ <https://calsta.ca.gov/-/media/calsta-media/documents/sb-1029-assessment-of-ncra-report-to-legislature.pdf>

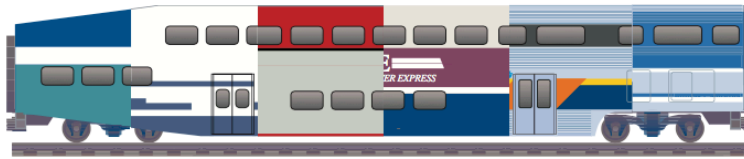
⁶ See p. 2-1, "RTT [Rails To Trails] Southern Section" accessible at:
<https://calsta.ca.gov/-/media/calsta-media/documents/sb-1029-assessment-of-ncra-report-to-legislature.pdf> (accessed 3/26/21)

⁷ See Government Code § 5883(a)(1) as proposed by SB 69 (accessed 3/26/21):
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB69

Exhibit 1

TRAC

**Train Riders
Association
of California**



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May 18, 2020

Submitted to:

www.surveymonkey.com/r/SMARTBoardComments

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William F. McGeehan III
Contra Contra County

Eric Lucan, Chair
SMART District Board of Directors
5401 Old Redwood Highway
Petaluma, CA 94954

Re: Agenda Item # 7, May 20 Meeting

Dear Chair Lucan:

The Train Riders Association of California ("TRAC") is a statewide rail advocacy organization that has worked since 1984 to improve passenger rail service in California. As environmentalists, we are actively interested in seeing a substantial shift from freight trucking to freight rail. We write to offer our opinion that the staff proposal to expand SMART's Scope of Operations by adding Freight Service Responsibility is seriously ill advised.

It is important to note that, while we strongly recommend not proceeding to become a freight carrier, our organization believes it to be in the best interests of the State and the respective counties for SMART to accept the full ROW transfer as initially contemplated by SB 1029, i.e., Healdsburg to Willits. We recommend the Board reject elements 1, 3, 5, 6, 7, & 8 of the staff proposal. Our opinions are based on the following considerations:

1. SMART is in no financial position to undertake new responsibilities.
2. SMART's long-standing hostility towards NCRA made us concerned that staff's proposal to undertake freight service might be part of an elaborate plan to abandon freight service in the NWP corridor. That concern was validated today by the attached email from an Assembly Transportation Committee staffer, stating that "freight operations will cease upon the elimination of NCRA."
3. That quote suggests bad faith in SMART's proposal to "transfer[] common freight carrier rail operations authority to SMART for all freight services south of MP 89."
4. Having participated in blocking the Southern Pacific's attempt to abandon the corridor a generation ago, we caution SMART that

abandonment would be controversial, very costly and unlikely to succeed.

5. If SMART is actually intending to shut down freight service, that would explain the proposal to truncate the NWP line at the Sonoma-Mendocino County Line, rather than at MP 142.5 in the City of Willits, as was set forth in earlier versions of SB 1029. Please note that no findings of fact or an engineering rationale were presented in support of the decision to not serve Mendocino.
6. The proposal as it now stands would deprive freight service (and passenger excursion service) to a route 53 miles into the heart of Mendocino County. We know from the work of the North Coast Rails and Trails Coalition that there are at least 21 Mendocino shippers that oppose the truncation of the ROW at Cloverdale.
7. If SMART is actually intending to operate freight, it would run the risk of the public coming to believe--rightly or wrongly--that it was "wasting" tax revenues on freight, which had not been authorized by either Measure Q or Measure I. That would threaten prospects for eventually passing a sales tax extension.
8. NWP Co is a privately owned company motivated by profit. Government agencies neither have profit motives nor do they incentivize (or appreciate) employee risk taking. SMART has neither the entrepreneurial culture nor the requisite expertise to become a freight operator, making it a bad fit for such a mission.
9. We see the following claims, which form the foundation for SMART staff's recommendation to assume freight rail service, to be unsupported by either logic or real-world operational considerations.
 - a. "Having the freight contract in SMART's hands will make the potential for an East-West train from Novato to Suisun City substantially easier."
 - b. "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."
10. It is unheard of that a supposedly competent government agency would propose to take over a business without any formal due diligence or a business plan--unless, of course, it didn't intend to operate that business. A business plan would need to identify potential risks and obstacles, as well as evaluate revenues and costs.
11. SB 1029 was chaptered by the Secretary of State on 9/29/18. That means June 2020 is not the deadline for qualifying for funding.

Finally, we note that the acronym LPG stands for Liquified Petroleum Gas.

Thank you for considering these comments.

Sincerely yours,

David Schonbrunn, President, TRAC

CC: Senator McGuire
Assemblymember Levine
Kevin Fixler, Press Democrat
Will Houston, Independent Journal
Surface Transportation Board

Attachment: Email from Eric Thronson to Mike Arnold, 7/17/18

From: Thronson, Eric <Eric.Thronson@asm.ca.gov>
Sent: Tuesday, July 17, 2018 11:13 AM
To: Mike Arnold
Subject: RE: Comments on SMART Taking over Freight

Professor Arnold,

Thank you for taking an interest, we rarely get enough of the public interested in the policy we work on to provide alternative perspectives, so I appreciate your call and email!

Generally, your point is well taken. One fundamental misunderstanding, though, is that freight operations are going to cease upon the elimination of NCRA, so the operating costs are not going to be much. Sure, there may be some general oversight, and future maintenance of the ROW is a concern, but my understanding is that there is either going to be a deal made identifying more funding for work like that or the bill won't get signed into law. So you are correct to worry about this is, but I think that it will be resolved before any action is taken. SMART isn't going to absorb costs without additional revenue, and the state isn't going to either without identifying a source to pay for it.

Hope that helps, I can discuss this further with you if you would like, though I am going to be out of the office until next week so hopefully it can wait until then. Thanks again, have a nice week-

Eric

From: Mike Arnold [mailto:arnold@alcopartners.com]
Sent: Monday, July 16, 2018 2:45 PM
To: Thronson, Eric
Subject: Comments on SMART Taking over Freight

Hi Eric,

I read your summary of SB 1029 (posted on SMART's website attached to their Board packet) and had a comment regarding the financial impacts of SMART taking over the NCRA's responsibilities south of Willits.

As someone who has been involved on various issues related to this line, I am concerned that the bill and various summaries do not mention the ongoing operating deficits that SMART will inherit once it takes over NCRA's responsibilities. Unless I missed it, I could find no explicit reference to a source of annual revenues to cover these costs.

The summaries I've read do mention the existing liabilities and various debts incurred by the NCRA and how they'll likely be funded. But there is no mention of the annual operating costs SMART will incur from overseeing and maintaining the additional row as well as the operating costs associated with overseeing freight operations in the region.

The economic logic and history on this line is pretty clear: NWP Co did not pay sufficient revenues through its lease agreements to fully fund the NCRA's operations. And as a consequence, the NCRA borrowed operating funds from NWP Co, posting various assets as collateral. (This is one of the sources of liabilities that the bill addresses.)

At the same time, it's a fair bet that had the NCRA actually charged NWP Co sufficiently

there probably wouldn't have been any freight service. Doug Bosco and John Williams negotiated a pretty sweet deal, but it is also pretty clear that there wasn't sufficient demand for freight services in the corridor to generate sufficient revenues to cover the costs of NCRA's operations.

Now consider the cost factors associated with SMART. These are far higher than those associated with the NCRA. For example, SMART actually pays their employees consistently and in many cases, very well. They use high priced consultants and when confronting the NCRA, SMART employed high priced legal talent specializing in elements of the federal freight regulations.

As a consequence, SMART's operating costs are going to be far higher than NCRA's to produce the required oversight and maintenance services.

But what will be the ongoing annual revenue source for these operating costs?

And, if these revenues aren't provided, SMART won't have a choice other than to allocate some of its sales tax revenues to execute its new responsibilities.

It doesn't stop there. SMART is a highly levered agency, where nearly 40% of its sales tax revenues are pledged to pay off the construction bonds issued several years ago to finance construction of the passenger rail line. In addition, these bond payments are scheduled to rise. Based on SMART's strategic plan, they are assumed to rise faster than sales tax revenues.

The financial impact of allocating some of SMART's revenues to freight will therefore have a levered impact on revenues available for passenger operations.

In light of the popularity of passenger rail with the public, I am hoping your committee has taken this issue into account.

If you are interested in discussing this any further, don't hesitate to contact me.

Prof. Mike Arnold
Lecturer, OLLI Program
Dominican University
San Rafael, CA
415-382-1264

Exhibit 2



BOARD OF DIRECTORS AUGUST 7, 2019

Financial Projections

TIMELINE:

- Today: Board Workshop on Financial Projections
 - » Receive input on preliminary projection results
- August 15 and 29, 2019:
 - » Citizens Oversight Committee review Strategic Plan
- September 4, 2019
 - » Board Review Draft Ordinance and Expenditure Plan
- September 19, 2019
 - » Board Review Draft Ordinance and Expenditure Plan
- October 2 and 16, 2019
 - » Board Discussion and Approval of Strategic Plan
- November 6, 2019
 - » Final Board Action Approving Ballot Measure
- March 3, 2020
 - » Voter approval of Sales Tax Renewal

SIX-YEAR VIEW

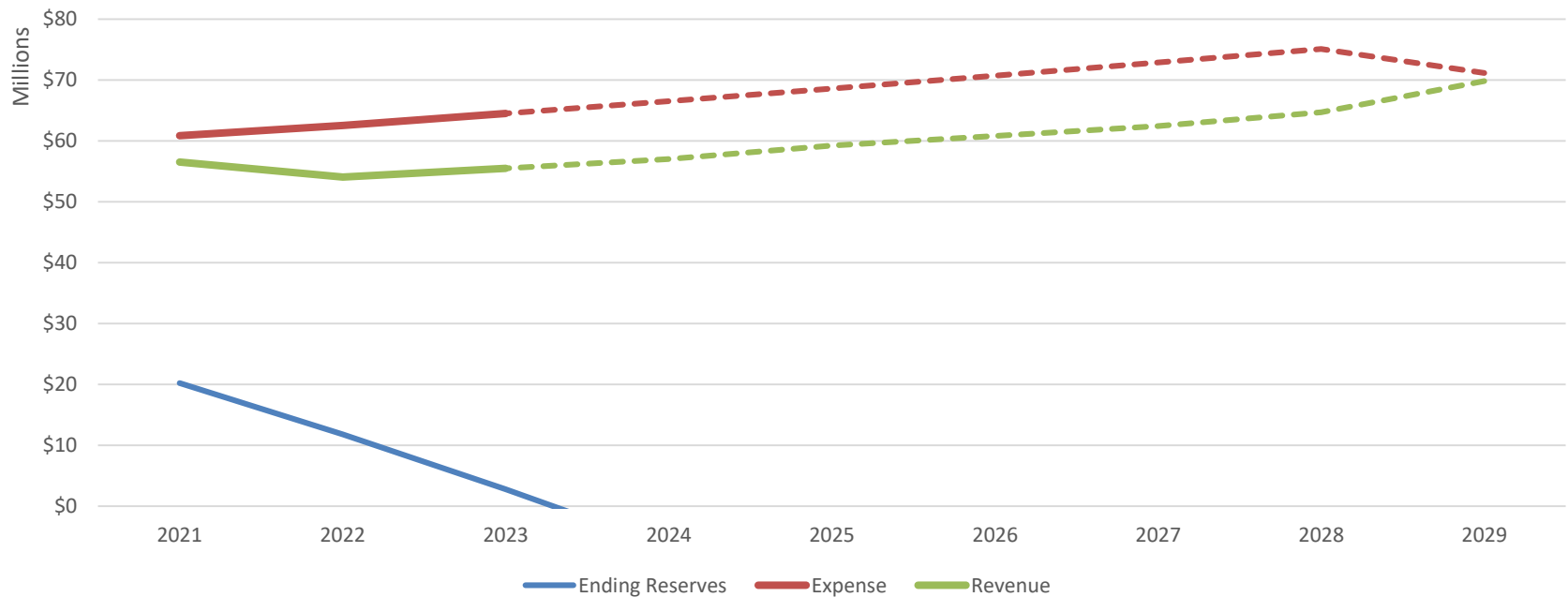
■ Background:

- » Before completion of Phase 1, Fund Balance was planned and used for capital projects
- » However, future operating costs exceed revenues and will deplete reserves and fund balance
- » Six-year view reflects discussions during April 3 Board presentation and May 15 Budget presentation

	<i>(dollars in millions)</i>						
	Fiscal Year	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Operations Revenue		\$ 47.2	\$ 54.5	\$ 51.0	\$ 56.5	\$ 54.1	\$ 55.5
Operations Expense (incl. debt service)		\$ (39.5)	\$ (54.4)	\$ (58.0)	\$ (60.6)	\$ (62.5)	\$ (64.5)
Capital Expenses Not Covered by Grants		\$ (9.1)	\$ (13.6)	\$ (12.2)	\$ (0.3)	\$ 0.0	\$ 0.0
Subtotal (Needs Fund Balance)		\$ (1.4)	\$ (13.5)	\$ (19.2)	\$ (4.4)	\$ (8.5)	\$ (9.0)
Starting Fund Balance		\$ 41.5	\$ 40.0	\$ 26.5	\$ 7.3	\$ 2.9	\$ 0.0
Ending Fund Balance		\$ 40.0	\$ 26.5	\$ 7.3	\$ 2.9	\$ (5.5)	\$ (9.0)
Operating Reserve		\$ 17.0	\$ 17.0	\$ 17.0	\$ 17.0	\$ 11.5	\$ 2.5

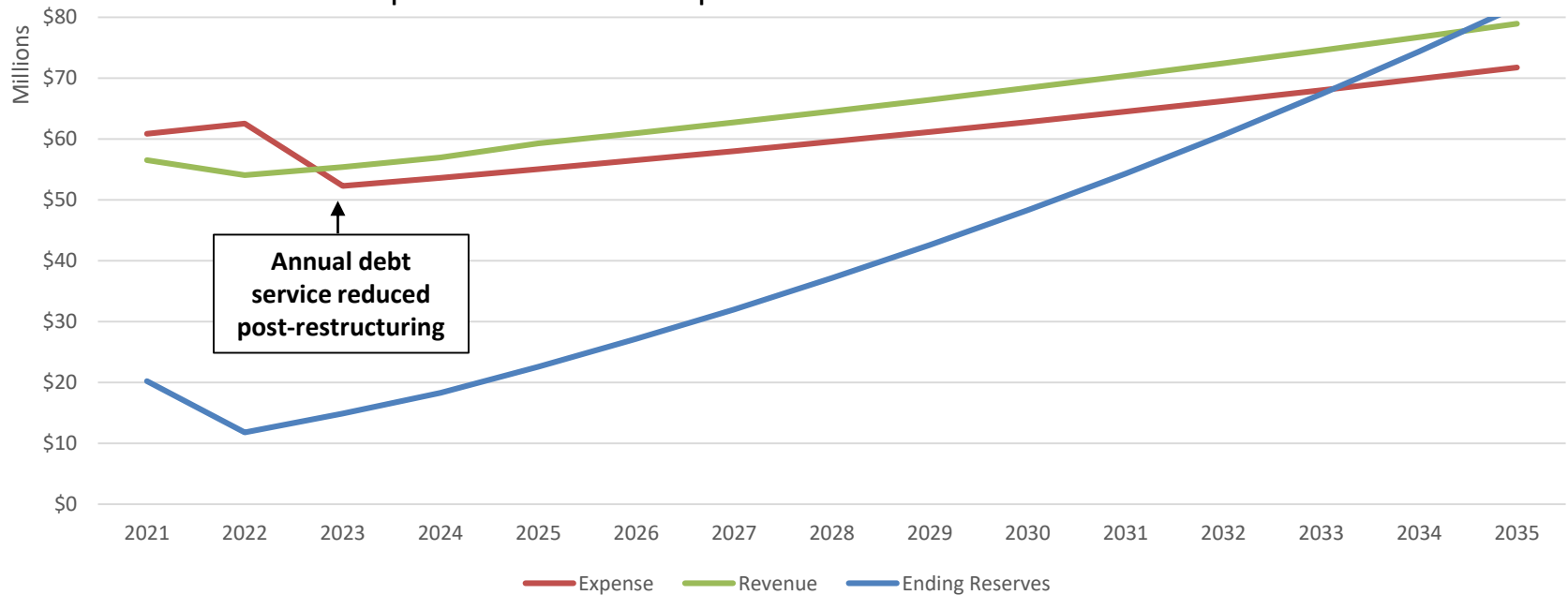
NO 2020 SALES TAX RENEWAL

- With no changes to planned operations, expenses would continue to exceed revenues every year through FY 2029
 - » Reductions of \$9 million needed to bring future picture into balance
- Fund balance projected to be fully depleted during FY2024
 - » Operations unsustainable without cost reductions



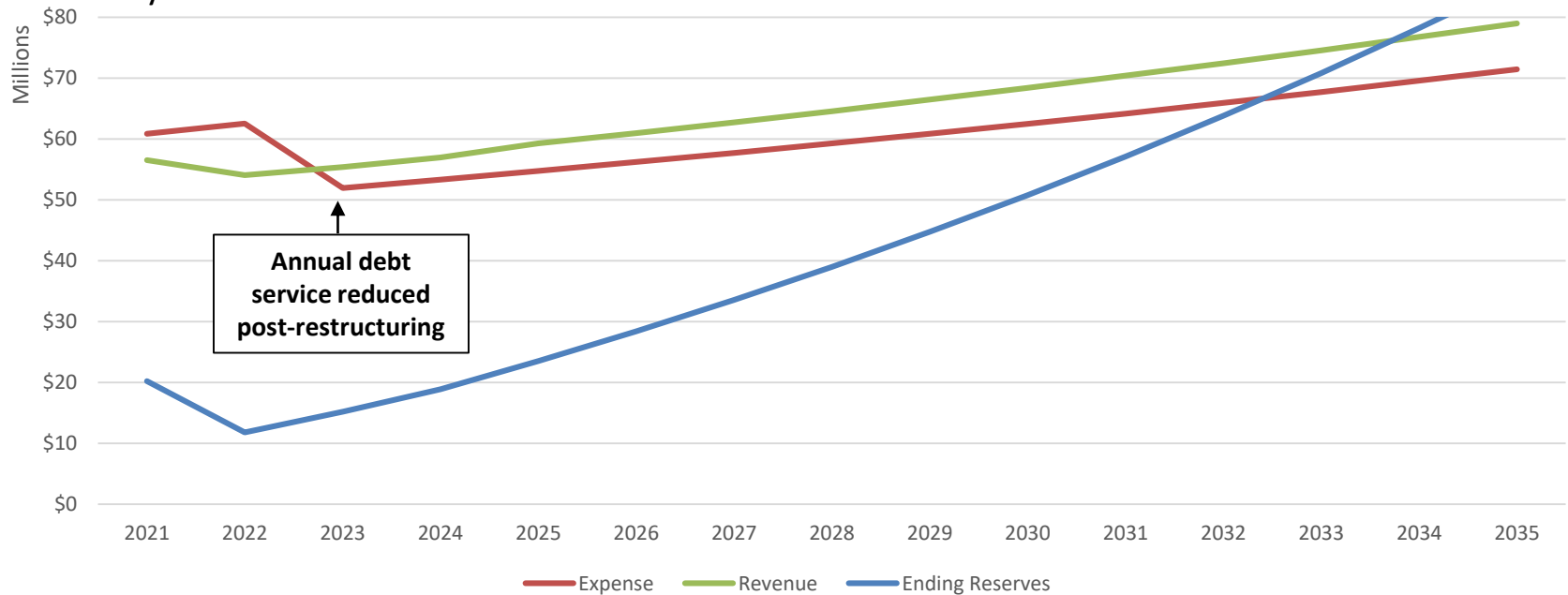
20-YEAR SALES TAX AND DEBT EXTENSION

- 20-year extension of the sales tax would enable SMART to restructure outstanding debt
 - » Extending final maturity to FY2049 reduces annual payments by \$12.2 million, providing capacity for operations
- Expenses exceed revenues annually until debt is restructured in FY2022
- From FY2023 forward, net revenue and fund balance remain positive through end of tax
- Net revenue estimated at \$3.1 million in FY2023 and forecast to grow annually thereafter, which could be used to fund additional operating costs related to Healdsburg and Cloverdale
- Net revenue would not provide sufficient capital for rail extensions



30-YEAR SALES TAX AND DEBT EXTENSION

- Restructuring outstanding debt with a final maturity to FY2052 (30 years) reduces annual payments by \$12.5 million, providing capacity for operations
- Expenses exceed revenues annually until debt is restructured in FY2022
- From FY2023 forward, net revenue and fund balance remain positive through end of tax
- Net revenue estimated at \$3.4 million in FY2023 and forecast to grow annually thereafter, which could be used to fund additional operating costs related to Healdsburg and Cloverdale
- Additional years provide more flexibility to explore capital funding options with additional net revenue in later years



NEXT STEPS

- Strategic Plan draft reviewed in August with Citizen Oversight Committee will include more detail on projections and assumptions
- Alternate scenarios can be discussed and presented as part of the Strategic Plan

Exhibit 3

Detailed Analysis of the Flaws in the Assessment

We start by asserting that the *Assessment of the North Coast Railroad Authority and Viability of a Great Redwood Trail*, Report to the Legislature, the foundation for this legislation, is profoundly inadequate and flawed. The State would endanger itself by relying on it. Page references are to the *Assessment*.

1. The concept for the Great Redwood Trail was never evaluated in the context of the State's mandate for the NCRA:

The Act was intended to ensure continuation of railroad service on the Northwestern Pacific (NWP) rail line, and envisioned the railroad playing a major role in the transportation infrastructure serving the North Coast. In creating the NCRA to restore and preserve rail service, the Legislature recognized that California's North Coast region suffers from restricted access and limited transport options.

Even though a trail cannot meet these goals, no analysis has ever been done as to the costs and benefits of abandoning these state goals. Now, in the age of Climate Change, the need for low-carbon transportation has become a major policy driver. However, the option of using the rail corridor to once again provide either passenger or freight rail service, or both, was **never** considered. The following assertion is made without the slightest bit of evidence:

Absent a large economic draw on the north coast, such as a resurgence in the redwood forest products industry or development of the Humboldt Port, it does not make economic sense to invest further public funds into preserving and rehabilitating a freight railroad currently. (pp. 35-36.)

That statement is a frozen-in-amber piece of 1980's thinking, which emphasizes public funding. The possibility of transferring the right-of-way to a private entity in exchange for a trail easement, with private investment rehabilitating the tracks, was never considered. No study was done of potential shippers for rail freight--especially in Mendocino County, despite a coalition of shippers there who desire rail freight service having submitted comments on SMART's proposed assumption of freight rights. Given the impacts of existing truck traffic on Highway 101, freight rail could provide significant local benefits.

The scope of work for the *Assessment* was clearly kept narrow, with the only option being a trail. "The Task Force did not analyze this scenario [New Railroad Buys Out NCRA] and no interested parties reached out during the assessment period." (p. 89.) TRAC is informed that nearby railroads were not contacted by the Task Force, so there was no outreach. This is not how legitimate policy is developed.

2. The discussion of the legalities of railbanking (pp. 34-37) is superficial and potentially dangerous. Most glaring is its failure to analyze the significance of *Marvin M. Brandt Revocable Trust vs. United States*, a U.S. Supreme Court case that overturned all

certainties in the railbanking process. As a result, the following naïve statement could lure the State into a liability and litigation quagmire: "Railbanking therefore ends the abandonment process and avoids the activation of reversionary clauses." (p. 35.) Should railbanking go horribly wrong, however, the *Assessment* frankly admits, "Parcels held by easement would likely revert to the underlying property owner, creating breaks in the corridor." (p. 36.)

3. Section 2.2.1 of the Appendix (p. 2-4), Corridor Ownership is wholly inadequate. Never once is the word "easement" mentioned, despite the fact that it is the single most important constraint on the feasibility of railbanking. The following central assertion would be self-contradictory in the absence of easements: "More than 150 grantees hold property rights to over 30,000 acres of land **within the right-of-way** (ROW) through agreements, leases, deeds, resolutions or ordinances, licenses, and quitclaims." (p. 2-4, emphasis added.)

4. The "Freight Rights in the Southern Section" section (p. 71) is deeply flawed and misleading. Most importantly, it is entirely silent on the responsibilities, costs and liabilities that inure to the holder of freight rights. An Assembly Transportation Committee staffer informed us that there wouldn't be any costs, because SMART wouldn't be running freight once the rights were transferred. That view, which seems to underly the *Assessment*, is deeply uninformed as to the legalities involved.

The section conflates the ownership of the ROW with the ownership of freight rights, thereby confusing and misleading the reader.

If the State does not take advantage of this unique opportunity, future capital costs to extend and increase passenger service in the context of a different freight operator may be prohibitive, putting expansion of passenger service on the existing corridor at risk. (p. 71.)

Because SMART already owns the ROW, both the contention above and below are nonsensical.

The acquisition of freight rights in the SMART corridor would secure a significant interregional transportation corridor and close a critical gap in the statewide rail network, as identified in the 2018 California State Rail Plan and the SMART Feasibility Study. The acquisition will foster a rail connection between the Solano and Sacramento regions to the North Bay Area and provide resiliency and redundancy along the congested and flood-prone SR 37 corridor. (p. 72.)

How can freight rights close a gap where the ROW is already owned by the public? The only gap that exists is a gap in passenger service. A private sector operator, working with a public subsidy, could provide passenger service on the SR 37 corridor at a much lower cost than SMART, which produced a billion-dollar capital estimate for CalSTA. A particularly fallacious set of arguments [with TRAC's comments in brackets] was offered

here:

A public transit agency owning both the passenger and freight rights consolidates control of the corridor. [True, but of limited relevance.] Split ownership of rights on the corridor not only increases operational costs for the public transit provider [Nonsense] but can also cause delays and otherwise degrade performance. [Not if there is an effective Operating Agreement.] Because SMART does not own the freight easement, it cannot ensure that it receives a financial benefit from the freight operations on its track to offset increased maintenance costs. [Untrue. Track charges are part of an Operating Agreement. The public operator also has none of the liabilities and costs.] This arrangement limits the ability of the passenger operator to efficiently operate a service that is convenient and attractive to passengers. [Nonsense.] (pp. 72-73.)

Discussions of access fees and improvement costs imposed by a host railroad (p. 73) are entirely irrelevant to a publicly owned ROW. These appear to be desperate attempts to justify something quite illogical. The following are further desperate attempts at justification:

By transferring all rights and ownership to SMART, SMART can better manage the railroad to prioritize on-time-performance and adapt schedules to meet changing market demands. (p. 73.)

It is anticipated that exclusive ownership of the railroad tracks and rights will provide necessary redundancy resiliency and emergency support for future climate change impacts, such as flooding and fire, or other emergency freight or passenger transportation needs. (p 74.)

TRAC believes that a private operator could provide passenger service to Cloverdale and on up to Willits at a dramatically lower capital and operating cost than SMART, which employs a gold-plated public sector design standard. Negotiations with private sector entities on an appropriate subsidy to provide that service should therefore occur prior to there being a transfer of the ROW ownership.

Exhibit 4



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
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Sonoma County Mayors' and
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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

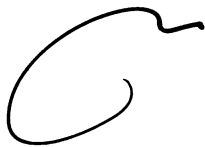
We have worked hard in the Senate over the years to bring state dollars to SMART and will continue to do so to ensure you are made whole on this added obligation. We have been quite successful over the last couple of years in acquiring funding for the whole SB 1029 process, and that includes \$2 million 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 be 'MIKE MCGUIRE', with a stylized, looping initial 'M' and a small flourish at the end.

MIKE MCGUIRE
Senator

California State Transportation Agency

Sonoma-Marín Area Rail Transit District

Baseline Agreement

DRAFT

TABLE OF CONTENTS

<i>RECITALS</i>	4
<i>ARTICLE I - DEFINITIONS</i>	5
<i>ARTICLE II – PROJECTS AND ADMINISTRATION</i>	6
Section 1. Projects and Project Management	6
Section 2. Program Supplement	6
A. General	6
B. Project Overrun	8
C. Cost Savings and Project Completion	8
D. Scope of Work	9
E. Program Supplement Amendments	9
Section 3. Allowable Costs and Payments	9
A. Allowable Costs and Progress Payment Invoice	9
B. Final Invoice	10
<i>ARTICLE III – GENERAL PROVISIONS</i>	10
Section 1. Funding	10
Section 2. Audits and Reports	10
A. Cost Principles	10
B. Record Retention	11
C. Reporting Requirements	12
Section 3. Special Requirements	13
A. California Transportation Commission Resolutions	13
B. SMART Resolution	13
C. Termination	13
D. Third Party Contracting	14
E. Change in Funds and Terms/Amendments	15
F. Project Ownership	15
G. Disputes	17
H. Hold Harmless and Indemnification	18
I. Labor Code Compliance	18
J. Non-Discrimination Clause	18
K. State Fire Marshal Building Standards Code	19
L. Americans with Disabilities Act	19
M. Access for Persons with Disabilities	20
N. Disabled Veterans Program Requirements	20
O. Environmental Process	20
P. Force Majeure	20
<i>ARTICLE IV – MISCELLANEOUS PROVISIONS</i>	21
Section 1. Miscellaneous Provisions	21
A. Successor Acts	21

B.	Successor and Assigns to the Parties _____	21
C.	Notice _____	21
D.	Amendment _____	22
E.	Representation and Warranties of the Parties _____	22
F.	Construction, Number, Gender and Captions _____	23
G.	Complete Agreement _____	23
H.	Partial Invalidity _____	23
I.	Conflicts _____	24
J.	Counterparts _____	24
K.	Governing Law _____	24
<i>Appendix A - _____</i>		26
Appendix B - _____		27

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

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

Termination Date of this Agreement: April 30, 2025

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

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

RECITALS

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

ARTICLE I - DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II –PROJECT AND ADMINISTRATION

Section 1. Project and Project Management

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

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

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

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

Section 2. Program Supplement

A. General

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

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

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

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

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

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

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

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

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

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

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

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

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

B. *Project Overrun*

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

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

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

C. *Cost Savings and Project Completion*

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

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

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

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

D. Scope of Work

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

E. Program Supplement Amendments

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

Section 3. Allowable Costs and Payments

A. Allowable Costs and Progress Payment Invoice

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

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

B. *Final Invoice*

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

ARTICLE III – GENERAL PROVISIONS

Section 1. Funding

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

Section 2. Audits and Reports

A. *Cost Principles*

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

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

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

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

B. *Record Retention*

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

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

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

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

C. Reporting Requirements

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

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

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

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

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

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

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

Section 3. Special Requirements

A. *California Transportation Commission Resolutions*

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

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

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

B. *SMART Resolution*

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

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

C. *Termination*

1. Termination Convenience by State

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

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

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

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

2. Termination After SMART's Obligations Fully Performed

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

D. *Third Party Contracting*

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

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

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

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

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

E. Change in Funds and Terms/Amendments

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

F. Project Ownership

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

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

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

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

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

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

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

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

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

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

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

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

G. *Disputes*

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

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

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

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

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

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

H. *Hold Harmless and Indemnification*

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

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

I. *Labor Code Compliance*

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

J. *Non-Discrimination Clause*

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

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

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

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

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

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

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

K. *State Fire Marshal Building Standards Code*

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

L. *Americans with Disabilities Act*

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

M. *Access for Persons with Disabilities*

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

N. *Disabled Veterans Program Requirements*

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

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

O. *Environmental Process*

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

P. *Force Majeure*

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

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

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

ARTICLE IV – MISCELLANEOUS PROVISIONS

Section 1. Miscellaneous Provisions

A. *Successor Acts*

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

B. *Successor and Assigns to the Parties*

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

C. *Notice*

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

If given to CalSTA:

California State Transportation Agency

915 Capitol Mall, Suite 350B

Sacramento, CA 95814

Attention: Chief Deputy Secretary for Rail and Transit

with a copy to:

California Department of Transportation

Division of Rail and Mass Transportation

P.O. Box _____

Sacramento, CA 95812-

Attention: Division Chief for Rail and Mass Transportation

If given to the SMART:

Agency Name

Address.

City, XXXXX-XXXX

Attention: Contact Name

D. *Amendment*

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

E. *Representation and Warranties of the Parties*

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

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

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

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

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

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

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

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

F. *Construction, Number, Gender and Captions*

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

G. *Complete Agreement*

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

H. *Partial Invalidity*

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

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

I. *Conflicts*

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

J. *Counterparts*

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

K. *Governing Law*

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

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

[SIGNATURES TO FOLLOW]

**CALIFORNIA STATE
TRANSPORTATION AGENCY**

Sonoma-Marín Area Rail Transit

BY: _____
DAVID S. KIM
Secretary

BY: _____
Farhad Mansourian
General Manager

DATE: _____

DATE: _____

APPROVED AS TO FORM AND PROCEDURE

CALIFORNIA STATE TRANSPORTATION AGENCY

BY: _____
Attorney

DATE: _____

APPENDIX A
[DEPARTMENT DELEGATION]

DRAFT

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

DRAFT

ASSET TRANSFER AGREEMENT

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

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

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

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

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

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

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

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

I. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. TRANSFER OF NWPCO ASSETS

2.1 Transfer of NWPCO’s Assets.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. CLOSING:

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

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

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

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

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

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

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

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

IV. ADDITIONAL UNDERTAKINGS AND AGREEMENTS

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

V. NWPCO'S REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

5.5 Title to Assets.

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

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

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

5.6 Status of Agreements.

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

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

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

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

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

VI. SMART'S REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

VII. COVENANTS AND AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

7.4 Amended Schedules.

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

VIII. CONDITIONS PRECEDENT TO SMART'S OBLIGATION TO CLOSE

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

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

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

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

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

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

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

IX. CONDITIONS PRECEDENT TO NWPCO's OBLIGATION TO CLOSE

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

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

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

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

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

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

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

X. RISK OF LOSS: DEFAULT: TERMINATION

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

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

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

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

XI. SURVIVAL: INDEMNIFICATION

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

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

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

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

XII. MISCELLANEOUS

12.1 Consents and Filings.

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

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

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

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

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

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

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

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

If to NWPCO:

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

If to SMART:

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

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

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

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

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

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

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

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

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

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

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

DRAFT 05/11/2020

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

Sonoma-Marin Area Rail Transit District

Northwestern Pacific Railroad Company

By: _____

By: _____

Its: _____

Its: _____

DRAFT

Exhibits

Exhibit A – Quitclaim Deed

Exhibit B – Bill of Sale

Exhibit C – Assignment and Assumption Agreement

Exhibit D – Administration and Proration Agreement (if necessary)

DRAFT

Senate Bill No. 1029

CHAPTER 934

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

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1029, McGuire. North Coast Railroad Authority.

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

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

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

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

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

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

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

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

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

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

Appropriation: yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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AMENDED IN ASSEMBLY AUGUST 19, 2019

AMENDED IN ASSEMBLY JUNE 18, 2019

AMENDED IN SENATE MAY 17, 2019

SENATE BILL

No. 356

Introduced by Senator McGuire

February 19, 2019

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 2.

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

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

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

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

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

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

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

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

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

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

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

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

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

14 ~~SEC. 4:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 ~~SEC. 7.~~

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

9 ~~SEC. 8.~~

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

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SMART | FREIGHT LINE
(NCRA OWNED)

SONOMA
COUNTY

NAPA
COUNTY

SMART | COMMUTER
FREIGHT LINE

VALLEJO ROUTE |
FREIGHT LINE

BRAZOS | FREIGHT LINE
(SMART OWNED)

CAPITOL | COMMUTER
FREIGHT LINE

SOLANO
COUNTY

MARIN
COUNTY

Exhibit 5

Board of Directors Meeting: May 20, 2020 – Public Comments

Date	Name	5. Public Comment on Non-Agenda Items
		None
Date	Name	6. Consent <ul style="list-style-type: none"> a. Approval of Monthly Financial Reports b. Accept Monthly Ridership Report- April 2020 c. Accept Clipper START Program Report
		None
Date	Name	7. Expansion of SMART Right-of-Way and Scope of Operations by adding Freight Service Responsibility and Executing Related Agreements
5/16/2020	Bob Williamson	<p>SMART Directors,</p> <p>Item 7 of your May 20 meeting agenda (as best I understand it) involves SMART taking over freight responsibility and some existing right of way North of Healdsburg from NWP Co. Of the eight page document describing the takeover, there is one short paragraph on page seven about “funding”. It talks about \$2 million provided by the State for specific deferred maintenance and repairs. It also mentions \$8 million of unfunded needs, without differentiating how much is for one time needs and how much for ongoing needs which could likely make it more than that over time.</p> <p>Additionally, without mentioning costs, it calls for hiring a “freight consultant” to perform needed studies. Should not this have been done before presenting the May 20 proposals? It seems illogical that SMART would sign a number of commitments for future financial responsibilities if they have not yet hired knowledgeable help to develop some numbers to see if the deal makes economic sense.</p> <p>A missing piece of the analysis is the profitability or cash drain of this new freight business. McGuire’s May 15 letter says that “according to NWPCo financials” the operations are profitable, but has anyone done any due diligence on that?</p>

Board of Directors Meeting: May 20, 2020 – Public Comments

		<p>A history of financial failure even after subsidies casts suspicion about that profitability assertion, and certainly suggests that forecast numbers for the freight business be developed for independent evaluation and public disclosure.</p> <p>Most importantly, how can SMART, facing current and future financial deterioration, even consider taking on significant new responsibilities and financial obligations? Especially when there is no organized data about their future financial impact! Is this a good example of transparency and seeking public input?</p> <p>The agenda document mentions additional State funding might come through. With the recent announcements on State finances in trouble without a federal bail-out, this source is quite risky. To have an advertised “good business proposal” be based on “political maneuvering” for future subsidy dollars is a weak proposition.</p> <p>Like any responsible acquisition, this one should have an independently reviewed forecast of financial results and input from the prime stakeholder – the public and taxpayers. Is it responsible to sign on to unknown obligations now, before detailed financial information on near term and ongoing costs have been determined and disclosed?</p>
5/18/2020	Bernie Meyers	<p><u>Part 1 of 2</u></p> <p>Reasons to extend the time in which comments can be submitted and the SMART Board and public can fully consider Agenda item 7 now set for the May 20, 2020 meeting: 1. This is a very important decision. Giving the public only 5 days, two of them over a weekend, to review, absorb, and comment on 67 pages of complicated material is neither fair nor logical. The Item should be heard on the 20th and then continued for further public input and discussion until at least your next Board meeting in early June (or later). As shown below, there is no reason to rush this through. 2. The current shelter-in-place situation makes conferring with and among others in the public difficult, thus slowing down any cogent review. 3. At least some of the material was available on or about April 7 (see footer on Baseline draft) and May 11 (see “Draft 5/11/20 on Asset Transfer Agreement) and yet not provided to the public until Friday, May 16. 4. The closing date of the transaction is on or before December 31, 2020, or such LATER date as the parties may agree to, so there is ample time for public review and input (see, page 82 in packet, the Asset Transfer Agreement (page 7 of 20), Part III, CLOSING) 5. SB 356, which is relied upon by the material before you, has not</p>

Board of Directors Meeting: May 20, 2020 – Public Comments

		<p>been passed by the Legislature, nor signed by the Governor. What if it is not passed? What happens if it is modified before it is passed? How will this affect the mater you are voting upon? Why vote now, before passage of SB 356?</p> <p><u>Part 2 of 2</u></p> <p>6. If there is any reason to proceed soon, it is, according to your cover Memo (May 20 Memo, page 4 (at page 42 of your packet), last full paragraph) that the \$4 mil appropriated in SB 1029 will expire on June 30. But the legislation (SB 1029, Sect. 17) only requires a signed Baseline Agreement between the State Transportation Agency and SMART - nothing more. You can do that very soon. No agreement with NWPCO is required to transfer the funds to SMART. If an agreement is not reached with NPWCO, then the funds can be returned to the State. In fact, if additional funds are not provided by the State before closing, closing will not take place and there is no indication that the additional funds will be provided – especially in the current severe economic crunch the State is experiencing. Also, June 30 is not mentioned in SB 1029 – only two years from the “chaptering of [SB 1029]”. SB 1029 was not signed by the then-Governor until Sept. 29, 2018 (per page 41). Does that mean 9/28/20 is the last date? According to the Baseline Agreement the last date it is Sept. 28, 2020 (see page 52 Recitals, par. 3). Finally, should extra time be needed for a proper public review, seek additional time in the Legislature to do so. 7. If there is a delay in reaching an agreement with NWPCO there will be no repercussions to freight shipments or passenger traffic. NWPCO will simply continue to serve its customers as it has. SMART will continue to serve passengers as it has. 8. If, despite the above, the Board does not start the proceeding as scheduled on Wednesday, May 20, and continue the hearing until your next meeting in early June, but instead votes to go through with the matter, including providing a \$4,000,000 payment to NWPCO, I believe you will be making a major mistake. As you will see from my questions, which I will be providing separately, there are many unanswered questions about the proposed transaction and substantial reasons for holding it off until further information is received. In sporting terms, you will have made an unforced error of great consequence.</p> <p>Thank you – Bernie Meyers, Novato</p>
5/18/2020	David Schonbrunn	Letter Attached.
5/19/2020	Bernie Meyers	Letter Attached.
5/19/2020	William A. Mullins	Letter Attached.

Board of Directors Meeting: May 20, 2020 – Public Comments

5/19/2020	Norman Gilroy	<p>Mr. Mansourian,</p> <p>With regard to Item 7 on the agenda for tomorrow's SMART Board meeting, would you please advise your Board that Mobilize Sonoma is:</p> <p>a. strongly in support of your proposed action to proceed with taking over responsibility for freight service south of the Mendocino County line.</p> <p>b. also in support of Item 9 in the list of proposed actions under item 7 that calls for "assigning 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".</p> <p>As you know, this is an issue of great importance to the people of the Sonoma Valley (who we represent on land use issues), and we stand ready to assist the proposed SMART committee in its work and its outreach in the community.</p> <p>Thank you for your efforts in this regard, Norman Gilroy, on behalf of Mobilize Sonoma.</p>
5/19/2020	Bill Denker	<p>Our company Viper Rail Car Storage Inc supports the NWP as the operator of the freight operations over the lines it currently has freight service on. Bill Denkers - President Viper Rail Car Storage Inc. 794 Emerald Oaks Dr Farmington, UT 84025 801-390-1126</p>
5/19/2020	Peter Hively	<p>In 2008 the voters approved a 20 year sales tax for a passenger rail system and adjacent pathway. We did not approve a public bailout of a failed freight operation.</p> <p>Please keep your eyes on the ball. The stated goal of SMART was to reduce freeway traffic and greenhouse gases. You have failed to achieve these objectives, and run your finances into the ground. Halfway through the 20 year life of the tax you've already come back to us for a 30 year tax extension, which failed badly.</p> <p>In my opinion, the failure of Measure I was a vote of no confidence. The message was, you need to make substantial changes to have any chance of success and future support. You</p>

Board of Directors Meeting: May 20, 2020 – Public Comments

		<p>need to listen to us, and show us that you can do what you promised before you ask for another extension. With a few exceptions, your public comments since the election indicate that you have failed to understand the message. Now you want to try your hand at running freight? NO! That is not what we voted for.</p>
5/19/2020	<p>Jeffrey Rhoads, Executive Director Resilient SHore</p>	<p>Considering the operating costs incurred by a public agency VS those incurred by a lean shoreline operator, it's reasonable to conclude current service by NWP to freight customers can continue to be provided at lowest cost and without public obligation. Will SMART's assuming freight operations result in increased cost, loss of operational flexibility and ultimate abandonment of freight service?</p> <p>Having a private operator providing freight service from the northern terminus of SMART's operations eventually to Willits may well be the only game in town for a while. This may also be an opportunity to provide modest excursion passenger service to the north at no cost to the public (other than capital improvement subsidy to rehabilitate the tracks and associated facilities).</p> <p>This is deja vu all over again when one considers NWP's pioneering rehabilitation of the tracks and initiation operations from Napa Junction to Windsor.</p> <p>Many rail corridors support high density passenger service and freight service. Local examples include Caltrain on the peninsula, the UP Capital corridor from the Bay Area to Sacramento and UP ACE to Stockton. I suspect Marin and Sonoma agriculture and the Lagunitas Brewery rely on inexpensive delivery of feed grains by rail. Considering the light traffic volumes coordination of freight and passenger services on SMART is not likely a significant burden.</p> <p>While operating freight on SMART may be an operational inconvenience, having SMART "go into the freight business" to have better control of train operations may not offset the financial obligations and flexibility advantages of having a private operator provide the service.</p>
5/19/2020	<p>John Martin, Hunt & Behrens, Inc.</p>	<p>As freight customers of the NWP, we have been happy with the service provided by NWP over the years. SMART should keep NWPCo as the operating contractor indefinitely in order to</p>

Board of Directors Meeting: May 20, 2020 – Public Comments

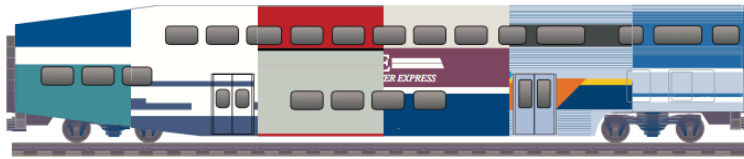
		<p>keep any transition seamless, and to keep all communications and interactions the same . A representative should be appointed or voted onto the SMART board in an effort to represent every freight party in the North Bay.</p> <p>Let's not reinvent the wheel with a relationship that has been working all these years.</p>
5/19/2020	David Schonbrunn, President, TRAC	<p>The Train Riders Association of California, TRAC, offered evidence in its 5/18/20 letter to your Board that staff is being less than candid in its assertion that it intends to operate freight service. A long series of decisions by SMART support the presumption that the agency has always wanted to eliminate freight service on the NWP.</p> <p>* The standard for light rail, 115-lb rail, was specified for SMART, instead of the typical freight rail standard of 136-lb rail.</p> <p>* Stations south of Ignacio were intentionally designed with clearances that prevent freight rail vehicles from entering them. No gauntlet tracks were provided.</p> <p>*All switches to industrial spurs not in operation at the time of SMART's construction were removed. Replacing a large number (> 14) of these switches with signalling and motorization would be exceedingly costly, endangering the ability of a freight carrier to grow its service.</p> <p>The claim that "complete control over its right-of-way" is operationally beneficial is way overblown. Far more important is the agency's inability to cover its budgeted expenses.</p> <p>Another inaccurate statement by staff is that the funding will expire by the end of June 2020. (p. 42 of 111.) The actual date is here: "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." (p. 52 of 111.)</p> <p>TRAC strongly urges the Board to accept the ROW from Willets to Napa, along with grants to rehabilitate the rail to a modest Class 2 standard, and reject the proposed agreements to take over freight service. David Schonbrunn, President, TRAC</p>
5/19/2020	Hal Wagenet	<p>Legal considerations:</p> <p>1) Since NCRA is responsible for preservation and freight service for the entire corridor, what happens to the common carrier obligation north of Milepost 89 in your concept? That obligation cannot be left to NCRA, which has no means to satisfy it, but should properly</p>

Board of Directors Meeting: May 20, 2020 – Public Comments

		<p>devolve to SMART, since it controls the line and access to the northern segment AND has substantial funds to fulfill the obligation.</p> <p>2) The Operator contract with NWPCo also includes the option/responsibility to serve customers in Mendocino County. California Northern and Mendocino Redwood Company are both major potential shippers and have formally requested service. In these two cases, SMART seeks to cherrypick NCRA and NWPCo assets, leaving the undesirable obligation twisting in the wind. Contract law precludes this.</p> <p>3) The STB must approve a de facto denial of common carrier obligation as SMART obviously intends. On what basis does SMART rest its intentions to cutoff potential revenue, diminish public access, and shrink the transportation network by taking the assets of NCRA and NWPCo and leaving the liabilities on the table?</p>
Date	Name	8. SMART Budget Survey and Service Reduction Options
5/19/2020	Peter Hively	<p>At this point you're wasting millions of taxpayer dollars while filling the air with diesel exhaust to run mostly empty trains up and down the tracks. I'm afraid this pandemic may be the final nail in the coffin. Ridership is down from already insignificant numbers and it's not coming back anytime soon. I'm afraid it is time to face the facts, pull the plug and shut this down permanently. If you're not ready to accept that conclusion, the next best thing is to make drastic cuts, run a few trains at commute hours only and keep limping along.</p>
5/19/2020	Jeffrey Rhoads, Executive Director Resilient SHore	<p>Do what you must to preserve SMART as an operation and respond to the needs of the greatest number of passengers. While I personally benefit from weekend service, and believe this may well be the only use of SMART service by a cohort of Marin residents who don't rely on it for commuting, let ridership and operating costs drive your decision.</p>

TRAC

**Train Riders
Association
of California**



1025 Ninth Street Suite 223
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(916) 557-1667
www.calrailnews.org
president@calrailnews.org

May 18, 2020

Submitted to:

www.surveymonkey.com/r/SMARTBoardComments

Officers

David Schonbrunn
President
Marin County

Greg Thompson
Secretary
Sacramento County

Gordon Osmundson
Treasurer
Alameda County

Susan MacAdams
Washington, D.C. Rep.

Board Members

Ron Jones
Madera County

Art Brown
Orange County

Derek Casady
San Diego County

John Deeter
Sacramento County

Fred Glienna
Los Angeles County

William F. McGeehan III
Contra Contra County

Eric Lucan, Chair
SMART District Board of Directors
5401 Old Redwood Highway
Petaluma, CA 94954

Re: Agenda Item # 7, May 20 Meeting

Dear Chair Lucan:

The Train Riders Association of California ("TRAC") is a statewide rail advocacy organization that has worked since 1984 to improve passenger rail service in California. As environmentalists, we are actively interested in seeing a substantial shift from freight trucking to freight rail. We write to offer our opinion that the staff proposal to expand SMART's Scope of Operations by adding Freight Service Responsibility is seriously ill advised.

It is important to note that, while we strongly recommend not proceeding to become a freight carrier, our organization believes it to be in the best interests of the State and the respective counties for SMART to accept the full ROW transfer as initially contemplated by SB 1029, i.e., Healdsburg to Willits. We recommend the Board reject elements 1, 3, 5, 6, 7, & 8 of the staff proposal. Our opinions are based on the following considerations:

1. SMART is in no financial position to undertake new responsibilities.
2. SMART's long-standing hostility towards NCRA made us concerned that staff's proposal to undertake freight service might be part of an elaborate plan to abandon freight service in the NWP corridor. That concern was validated today by the attached email from an Assembly Transportation Committee staffer, stating that "freight operations will cease upon the elimination of NCRA."
3. That quote suggests bad faith in SMART's proposal to "transfer[] common freight carrier rail operations authority to SMART for all freight services south of MP 89."
4. Having participated in blocking the Southern Pacific's attempt to abandon the corridor a generation ago, we caution SMART that

abandonment would be controversial, very costly and unlikely to succeed.

5. If SMART is actually intending to shut down freight service, that would explain the proposal to truncate the NWP line at the Sonoma-Mendocino County Line, rather than at MP 142.5 in the City of Willits, as was set forth in earlier versions of SB 1029. Please note that no findings of fact or an engineering rationale were presented in support of the decision to not serve Mendocino.
6. The proposal as it now stands would deprive freight service (and passenger excursion service) to a route 53 miles into the heart of Mendocino County. We know from the work of the North Coast Rails and Trails Coalition that there are at least 21 Mendocino shippers that oppose the truncation of the ROW at Cloverdale.
7. If SMART is actually intending to operate freight, it would run the risk of the public coming to believe--rightly or wrongly--that it was "wasting" tax revenues on freight, which had not been authorized by either Measure Q or Measure I. That would threaten prospects for eventually passing a sales tax extension.
8. NWP Co is a privately owned company motivated by profit. Government agencies neither have profit motives nor do they incentivize (or appreciate) employee risk taking. SMART has neither the entrepreneurial culture nor the requisite expertise to become a freight operator, making it a bad fit for such a mission.
9. We see the following claims, which form the foundation for SMART staff's recommendation to assume freight rail service, to be unsupported by either logic or real-world operational considerations.
 - a. "Having the freight contract in SMART's hands will make the potential for an East-West train from Novato to Suisun City substantially easier."
 - b. "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."
10. It is unheard of that a supposedly competent government agency would propose to take over a business without any formal due diligence or a business plan--unless, of course, it didn't intend to operate that business. A business plan would need to identify potential risks and obstacles, as well as evaluate revenues and costs.
11. SB 1029 was chaptered by the Secretary of State on 9/29/18. That means June 2020 is not the deadline for qualifying for funding.

Finally, we note that the acronym LPG stands for Liquified Petroleum Gas.

Thank you for considering these comments.

Sincerely yours,

David Schonbrunn, President, TRAC

CC: Senator McGuire
Assemblymember Levine
Kevin Fixler, Press Democrat
Will Houston, Independent Journal
Surface Transportation Board

Attachment: Email from Eric Thronson to Mike Arnold, 7/17/18

From: Thronson, Eric <Eric.Thronson@asm.ca.gov>
Sent: Tuesday, July 17, 2018 11:13 AM
To: Mike Arnold
Subject: RE: Comments on SMART Taking over Freight

Professor Arnold,

Thank you for taking an interest, we rarely get enough of the public interested in the policy we work on to provide alternative perspectives, so I appreciate your call and email!

Generally, your point is well taken. One fundamental misunderstanding, though, is that freight operations are going to cease upon the elimination of NCRA, so the operating costs are not going to be much. Sure, there may be some general oversight, and future maintenance of the ROW is a concern, but my understanding is that there is either going to be a deal made identifying more funding for work like that or the bill won't get signed into law. So you are correct to worry about this is, but I think that it will be resolved before any action is taken. SMART isn't going to absorb costs without additional revenue, and the state isn't going to either without identifying a source to pay for it.

Hope that helps, I can discuss this further with you if you would like, though I am going to be out of the office until next week so hopefully it can wait until then. Thanks again, have a nice week-

Eric

From: Mike Arnold [mailto:arnold@alcopartners.com]
Sent: Monday, July 16, 2018 2:45 PM
To: Thronson, Eric
Subject: Comments on SMART Taking over Freight

Hi Eric,

I read your summary of SB 1029 (posted on SMART's website attached to their Board packet) and had a comment regarding the financial impacts of SMART taking over the NCRA's responsibilities south of Willits.

As someone who has been involved on various issues related to this line, I am concerned that the bill and various summaries do not mention the ongoing operating deficits that SMART will inherit once it takes over NCRA's responsibilities. Unless I missed it, I could find no explicit reference to a source of annual revenues to cover these costs.

The summaries I've read do mention the existing liabilities and various debts incurred by the NCRA and how they'll likely be funded. But there is no mention of the annual operating costs SMART will incur from overseeing and maintaining the additional row as well as the operating costs associated with overseeing freight operations in the region.

The economic logic and history on this line is pretty clear: NWP Co did not pay sufficient revenues through its lease agreements to fully fund the NCRA's operations. And as a consequence, the NCRA borrowed operating funds from NWP Co, posting various assets as collateral. (This is one of the sources of liabilities that the bill addresses.)

At the same time, it's a fair bet that had the NCRA actually charged NWP Co sufficiently

there probably wouldn't have been any freight service. Doug Bosco and John Williams negotiated a pretty sweet deal, but it is also pretty clear that there wasn't sufficient demand for freight services in the corridor to generate sufficient revenues to cover the costs of NCRA's operations.

Now consider the cost factors associated with SMART. These are far higher than those associated with the NCRA. For example, SMART actually pays their employees consistently and in many cases, very well. They use high priced consultants and when confronting the NCRA, SMART employed high priced legal talent specializing in elements of the federal freight regulations.

As a consequence, SMART's operating costs are going to be far higher than NCRA's to produce the required oversight and maintenance services.

But what will be the ongoing annual revenue source for these operating costs?

And, if these revenues aren't provided, SMART won't have a choice other than to allocate some of its sales tax revenues to execute its new responsibilities.

It doesn't stop there. SMART is a highly levered agency, where nearly 40% of its sales tax revenues are pledged to pay off the construction bonds issued several years ago to finance construction of the passenger rail line. In addition, these bond payments are scheduled to rise. Based on SMART's strategic plan, they are assumed to rise faster than sales tax revenues.

The financial impact of allocating some of SMART's revenues to freight will therefore have a levered impact on revenues available for passenger operations.

In light of the popularity of passenger rail with the public, I am hoping your committee has taken this issue into account.

If you are interested in discussing this any further, don't hesitate to contact me.

Prof. Mike Arnold
Lecturer, OLLI Program
Dominican University
San Rafael, CA
415-382-1264

Questions/Comments Regarding the SMART/NWPCO
Proposed Agreement – SMART Board Meeting of May 20, 2020

Note: “P” refers to your packet page.

P 39 5/20 Memo

Par. 1. Before moving ahead with these agreements and filings with the STB, shouldn't you decide, after fully considering all sides, whether SMART should become a common carrier and freight service provider? Once you accept that obligation, you cannot simply shed it by a simple filing with the STB. If, for example, it turns out that providing freight service is a money-losing proposition (as every carrier in the last 40 to 50 years has discovered), unless the STB agrees to relieve you of your burden, you will be asking the taxpayers to subsidize that service as well as your passenger service.

P 39, Par 5. What will happen if the funding for ongoing maintenance and the “capital project” of the freight area is either not secured or is inadequate?

P 39, Par. 5. How can you determine if it is fiscally prudent to spend funds on maintenance and new capital projects without an adequate study – and, what happens if it is **not** fiscally prudent to spend the necessary funds?

P. 39, Par 7. **This puts the cart before the horse. SMART should “seek a knowledgeable freight consultant to perform an Economic Feasibility Study of the entire SMART-owned area and analysis for options to provide freight services in the future” BEFORE the purchase!**
You have known for nearly two years that this was on the horizon. Why has this not already been done?

P 40, Par. 8. **Present the proposed agreement with NWPCO NOW.** What happens if:

- A. SMART cannot agree to terms with NWPCO?
- B. The terms are onerous (Please observe the NCRA/NWPCO 2006 Lease, negotiated after NCRA chose NWPCO as the winner of its RFP is the most lopsided railroad lease I have examined.)
- C. SMART loses money on this venture and it appears that it will continue to do so indefinitely?

P 40, Par 9. **This deals with your investigation of storing LPG cars in Sonoma County. What happens if:**

- A. **As a freight common carrier, you must provide this storage service under federal law?**
- B. **This is the only way your freight service is profitable, or as profitable as it can be?**

P 40, Summary. A. **What if the \$2 mil to address deferred maintenance and needed repairs is WAY insufficient?**

B. What is the benefit of spending any money now for any deferred maintenance and repairs for freight service?

P 42, Section 17. **Please observe that SB 1029 appropriates \$4 mil, but there is NO requirement that all \$4 mil need be spent!**

P 42, 5 lines from the bottom. What happens if the STB does not approve the transfer or does so with conditions SMART does not want?

P 43, First par. Where is the east-west passenger rail feasibility study?
Why is it important that SMART have “complete control over the rail line”?
What are the “expensive responsibilities” at line 6 and are they fiscally prudent?

P 43, Par 2. What are the “necessary infrastructure and safety fixes” referenced at Memo, p.5, Par 2? Is the cost of these the \$10 mil mentioned in the next paragraph and by the time the \$10 mil is expended in “the next few years” what are the estimated ongoing upgrades and maintenance costs? Are they a fiscally prudent expense?

P. 43, 3rd full Par. I applaud Sen. McGuire’s efforts set out in this part. But times have radically changed since this portion was written. Any funding requests will need to show that they are fiscally prudent and can hold their own against the myriad of competing interests for California and federal tax dollars that will be required to be spent in the next several years – and very possibly in the next decade or generation. As such, **how can you be certain that the funding staff says is needed will be of sufficient priority? What will happen absent the appropriations you envision?**

p. 43, 3rd full Par. For exactly what was the \$8.8 mil mentioned used for?

P 43, Current Actions. **SB 356 has not been enacted. What if it is not passed, or not passed in its current form?**

P 43, NCRA. **Transfer of the lopsided NCRA/NWPCO lease to SMART would be sheer folly. The 104-year lease was in my opinion negotiated in a back room deal and entered into in violation of the Brown Act. It is extremely favorable to NWPCO (for example, no trackage fees will be paid to NCRA under it) and toxic to NCRA or to anyone who succeeds to NCRA’s position.**

PP 43 – 44 NCRA & NWPCO.

A. Before transferring **anything** to SMART, look at exactly what is being transferred and what are SMART’s rights and obligations there under. What are the costs/benefits to SMART for each transfer?

B. Does anything (such as right-of-way and old depots) being transferred to SMART by (1) NCRA and (2) NWPCO involve hazardous substances? If so, how are they to be dealt with?

C. What, if any, assets, including any rights, title or interests NWPCO currently has are to be retained by NWPCO? If there are any, why are they to be retained?

P 44, penultimate par. **Enter into the “interim” agreement with NWPCO to act as your freight operator BEFORE agreeing to the proposals before you and have it open for public review and comment before the SMART Board considers it. Otherwise NWPCO has the upper hand in the negotiations.**

P 44, last par. While this sounds nice, just how will SMART having “freight operation responsibilities” “allow SMART to have the ability to provide increased freight services to local freight customers in a more efficient and environmentally friendly way”? Also, how will this “benefit SMART’s ability to grow service”?

P 47, McGuire letter of 5/15

He states at paragraph 3: “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.”

Despite repeated request, NWPCO has not given to the NCRA Board its P&L statements, customer lists, freight traffic numbers, amount of freight carried, etc. etc. for its entire 9 years of operations. It even withheld such information from the NCRA Board when NWPCO and NCRA jointly submitted a RRIF loan application to the FRA. How can anyone now trust NWPCO when it says that its current financials are correct? Before accepting any financial or economic data from NWPCO, secure certified material done by credible outside entities and **review the entire history** - not a brief slice.

Is the current financial statement truthful? Is it in line with past financials? What assumptions were made in the current financials that were not in the past, and vice-versa? How much income/expense is attributable to the LPG storage SMART is considering eliminating – and will the STB allow it? Will the STB require SMART to store even more LPG once SMART owns the entire right-of-way? What are NWPCO’s costs/expenses and will they remain the same under SMART ownership? Will the current economic malaise cut into freight revenues and, if so, for how long? Has it already? Are the fixed costs affected by the current economic problems?

NWPCO pays nothing to NCRA for its track and NCRA and SMART are charged with bringing the right-of-way up to snuff. How does that affect NWPCO’s financials? What do the auditor’s notes say? Can the financials be opened to the public?

P 47, letter, last Par. How does “extending SMART’s right of way ownership” and getting freight make getting to Cloverdale and to Suisun easier to achieve?

P 48, middle Par. He states **that Auditors from the Dept of Finance and experts from the State Transportation Agency “say the deal is worth the investment”. Please provide the audit and statements for public review.**

**Cal State Transportation Agency Baseline Agreement (pp 49 – 72)
(Between SMART and State of Cal DOT)**

Pp 50 – 72 are all dated April 7, 2020 in the footer. Why were they not provided for public inspection earlier?

P 52. Why does the Agreement terminate on April 30, 2025, or at all?

P 52 Recital 3 Note the Recital states that the \$4 mil will revert to the Public Transportation Account if not transferred to SMART by **Sept. 28, 2020**. And, **there is no requirement that the Agreement with NWPCO be executed by Sept 28, or June 30, or any other date.**

P 54 Section 2 A. Why does this Agreement not have any force and effect until a separate Project specific program supplement has been fully executed?

P 63, Item 4. Labor Laws. This provision is fine, but it raises the question of whether NWPCO has been so bound? Did NWPCO comply with said requirements? Will SMART be paying its employees at the same rates NWPCO paid its equivalent employees? And will the benefits SMART provides be the same as those provided by NWPCO? If not, will there be additional costs incurred by SMART that NWPCO did not incur?

Pp 64 – 65. Could you please explain Section e. (ii) in terms a layperson could understand?

**ASSET TRANSFER AGREEMENT (pp 76 – 95)
(Between SMART and NWPCO)**

P 76, 1st WHEREAS SB 1029 was signed by the then-Governor on Sept. 29, 2019 (see page 41). Does this change the Aug 24, 2018 date at line 1?

P 76, 3rd WHEREAS The Baseline Agreement (at packet pp 49 – 72) does not involve NWPCO. It is between SMART and Cal DOT and is specifically mentioned in SB 1029. This Asset Transfer agreement (pp 76 – 95) only involves SMART and NWPCO and is not specifically referenced in SB 1029. Please change this Whereas clause accordingly.

P 76, 5th WHEREAS A. Where in SB 1029 is there a requirement for NWPCO to enter into an agreement with NCRA to discontinue operations South of milepost 89.0?

B. SB 1029, Sec. 2 adds Gov. Code Section 13978.9 which requires The Transportation Agency, in consultation with the Natural Resources Agency to conduct an assessment on NCRA to provide information necessary to determine the most appropriate way to dissolve NCRA and dispense with its assets and liabilities. The Transportation Agency shall report to the Legislature before July 1, 2020 on its findings and recommendations, including:

(1) An assessment of NCRA's debts, liabilities, contractual obligations, and litigation.

(2) An assessment of NCRA's assets, including property, rights-of-way, easements, and equipment.

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

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

Has that report been completed? If so, please provide it to the public. If not, when will it be and in its absence why should SMART proceed with this purchase at this time?

C. Does the Resurrection of Operations and Lease between NCRA and NWPCO entered into Sept. 2006, as amended twice in 2011, retain any force and effect? If so, over which portion(s) of the right-of-way? If not, have NWPCO so state in writing. After the proposed agreements are executed, does NWPCO retain any rights to carry freight over any portion of the right-of way? Where?

P 76, 6th WHEREAS A. Where in SB 1029 does it require that the SMART- NCRA 2011 Operating and Coordination Agreement dated June 20, 2011 (as amended Dec. 13, 2017) continue to be in effect for operations north of milepost 89.0? What will be the effect of keeping this agreement in effect north of MP 89.0?

B. What, if any, rights does NWPCO retain north of milepost 89.0 if the agreements before the Board are entered into? If none, have NWPCO so state, in writing. If there are some, what are they and why does NWPCO retain them?

C. If NWPCO has rights north of milepost 89.0 should there be a valid EIR that governs any freight operations therein? If not, why not? If a valid EIR is needed, please identify the governing EIR.

P 78, Definitions - "Environmental Report"

A. Is there any valid environmental Report certified by NCRA? If so, please identify it.

B. Will SMART and/or NWPCO and any successor to NWPCO comply with the requirements of the NCRA EIR certified in

2011 and thereafter voided on April 10, 2013? If not, why not?

P 78 and Pages 80 – 81 (Sect. 2.2) “Excluded Assets”

- A. Why are these assets excluded?
- B. Identify each and every Excluded Asset and the estimated value thereof.
- C. Why should NWPCO retain them?
- D. What rights, if any, does NCRA have in each Excluded Asset?
- E. What did NWPCO pay for each Excluded Asset?
- F. What rights, if any, does the State have in each Excluded Asset?
- G. What rights, if any, does the United States have in each Excluded Asset?

P 78, Defined Terms – “Environmental Report”

Is there an existing, valid environmental impact prepared by or on behalf of NCRA? If so, please identify it and will SMART comply with all of its terms and conditions for the right-of-way south of milepost 89.0?

P 78, Definitions – “NCRA”

What successor agency, if any, will there be after the proposed agreements before the Board is executed?

P 79 and Page 80 (Sect 2.1(a)(i)), Definitions – “Rail Line”

Is the Rail Line being conveyed to SMART in the right-of-way and associated property **south** of milepost 89.0? If so, what right, title or interest, if any does NWP have at any point **north** of milepost 89.0 and why is it not being transferred?

P 80 Sect. 2.1(i) Transfer of NWPCO Assets

- A. Exactly what, if any, NWPCO assets are NOT being transferred to SMART?
- B. To the extent there are any not being transferred, why are they not?
- C. What is the value of each asset not being transferred, and for each, did NWPCO provide anything of value for it?
- D. Is the line from milepost 14 and east already owned by SMART?

P 80, Sect 2.1(iii) Please provide the Bill of Sale.

P 80, Sect. 2.1(iv) Please provide Exhibit C (Assignment and Assumption Agreement) and Schedule 1 (list of contracts from NWPCO to SMART) thereto.

P 80, Sect. 2.1(v) Please provide each of the licenses, certificates, common carrier rights, etc.

P 80, Sect. 2.1(vi) What other other rights, privileges and assets relating to the Rail Line have been identified by (1) SMART and (2) by NWPCO?

P 80 - 81, Sect 2.2 “Excluded Assets”

- A. 2.2(a). Why does NWPCO have ANY interest in any property (real or personal) or other assets north of milepost 89.0? Aren’t they all the property of NCRA? What value, if any, did NWPCO provide for any such assets? Has any such property been appraised and, if so, when, by whom, and for what amount?
- B. 2.2(b). What contractual rights, privileges and authorizations does NWPCO have for anything north of MP 89.0?
- C. 2.2(c). What, if any, contractual rights, privileges and authorizations will SMART instruct NWPCO “to terminate” prior to closing, and why so instruct NWPCO?
- D. 2.2(d). What exactly are the rights, privileges and authorizations that entitle NWPCO to any repayment of amounts owed to it by NCRA?
- E. 2.2(e). Exactly what is the value of the debt NCRA allegedly owes NWPCO as referred to in this paragraph dealing with the Ukiah Depot and Mason Street properties? Were any or all of these amounts linked to contracts not entered into by public bidding and instead were entered into with a company NWPCO supported? If so, might this be the State’s last opportunity to save itself from having NWPCO obtain what may be inflated or improper gains from these contracts and dealings?

P 82, Sect 2.4 “Limitation on Assumption of Liabilities”

Sect. (c) What, if any, obligations and liabilities are “expressly allocated to SMART under this Agreement”?

Sect. (d) What, if any, obligations and liabilities does NWPCO have under any contract that does not relate to Acquired Assets?

P 82, Sect. 2.5 “Purchase Price; Consideration”

A. Exactly how did SMART arrive at the purchase price of \$4,000,000? Note that it is no answer to say that the State arrived at the \$4 mill figure. The State (via SB 1029) has provided SMART with \$4 mill, but the State did not REQUIRE that SMART pay NWPCO all \$4 mill. On what basis did SMART determine that \$4 mill, no less, no more, was the correct amount?

B. What, if any, indebtedness does NWPCO claim is owed to it by NCRA?

C. Does NWPCO agree that NCRA and/or the State can assert any right of offset against any claim(s) NWPCO might assert against NCRA and/or the State for claims NWPCO might make against either or both? Will NWPCO allow any statute of limitation it might otherwise assert against NCRA and/or the State to be tolled? As the funds SMART is utilizing under these agreements are from the State, isn't it appropriate to include such demands herein?

E. Does NWPCO give up entirely any right it may have or assert to run trains (freight, passenger, excursion, or otherwise) north of milepost 89.0? If not, what rights does it claim to have, and why will it not relinquish all such rights? Also, if not, what value does NWPCO attribute to all such rights?

F. Does NWPCO agree that if it has any rights to run any trains north of milepost 89.0, it will and does agree, nonetheless, for itself and for any others who might otherwise run trains to customers north of milepost 89.0, to NOT run any trains south of milepost 89.0 for any purposes whatsoever, on any part of SMART's right-of-way and will and does agree to forego any and all rights, whether arising under federal law, state law, or otherwise, to run trains on SMART's right-of-way?

G. Note that if NWPCO serves customers in Mendocino County, Trinity County, or Humboldt County it may be entitled to run its trains on the SMART right-of-way under federal law.

H. Note also the NWPCO said that it had no intention to run trains beyond the old NCRA "Russian River Division" and so NCRA was able to limit the EIR to this segment of the line. Yet NWPCO stated in its 2006 RFP response that it intended to run freight trains with gravel from Island Mountain (Trinity County) and that such trains would be very long and run frequently.

P 82, III Closing Date Sect. 3.1 Note the closing date is "prior to Dec. 31, 2020 [or] such specific date mutually agreeable to the Parties". So there is ample time to have public review and input. If, for some reason, extra time is needed, allot it, or, if need be, seek it from the Legislature.

Pp 82 – 83 Sect. 3.2 Deliveries by NWPCO

(e) Note that the discontinuance of NWPCO operations south of milepost 89.0 and even the termination of the 12/13/17 agreement for sections south of milepost 89.0 may mean that NWPCO can still run trains south of milepost 89.0 in conjunction with any common carrier rights it has north of milepost 89.0.

P 83, Sect. 3.2 (f). Exactly what certificates, etc does SMART want from NWPCO?

Will SMART also get such certificates, etc from NCRA?

P 83, Sect. 3.2(g) Does this mean to “terminate NCRA and NWPCO freight operations” in their entirety, or only south of milepost 89.0? And, if not entirely, what freight operations are envisioned north of milepost 89.0 and who will run them?

P 84, Sect. 5.3 Licenses and Permits

What consent decrees are applicable to the operations SMART will acquire herein and who is responsible for fulfilling them?

Note: There may be at least two: The Novato Consent Decree and the NCRA Environmental Consent Decree entered in a case brought by the State. Are there others?

P 84, Sect. 5.4 Litigation - Please set out Schedule 5.4.

P 84, Sect. 5.5 Title to Assets

Are NWPCO’s assets in good condition, wear and tear excepted? If not, what provision is there for NWPCO to cover the diminution?

Pp 84 – 85 Sect. 5.6 Status of Agreements

What happens if a NWPCO representation is incorrect?

Should there be for such an occurrence – or for any other provision herein that NWPCO may violate – a “claw back” provision? If so, where will the clawed back funds come from?

P 85, Sect. 5.7 Environmental Matters

A. What happens if a NWPCO representation is incorrect? Should there be for such an occurrence a “claw back” provision? If so, where will the clawed back funds come from?

B. Should NWPCO be required to have insurance against any environmental violations? If so, how much and with what terms?

P 85, Sect. 5.8 Taxes

What happens if a NWPCO representation is incorrect?

Should there be for such an occurrence a “claw back” provision? If so, where will the clawed back funds come from?

P 86, Sect. VII, 7.2(a) Negative Covenants

May SMART withhold its written approval of a request from NWPCO under this Section for any reason whatsoever?

P 88, Sect. 8.6 Future Funding and Assurances. **What if:**

A. Prior to closing, SMART does not 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?

- B. The State commits, but cannot deliver in a timely fashion, in part or in total?**
- C. What, exactly, are “satisfactory assurances”?**
- D. Who makes the determination that an assurance is not “satisfactory”?**
- E. Are such “satisfactory assurances” to be a matter of public record?**
- F. Will the absence of such assurances allow SMART to refuse to close? (See also, Section 10.2(d), at Page 89). If so, does NWPCO agree? If so, include it herein.**
- G. What are the Acquired Assets?**

P 88, Sect. 9.6 RRIF Loan.

What does this Section mean?

Who is to place the loan balance due into an escrow account?

What are the instructions that are to accompany the deposit?

Who is the escrow entity?

What result will occur if this Section is breached?

P 89, Sect. 10.1 Risk of Loss.

Why should NWPCO receive any benefit from any loss that occurs while NWPCO is in charge of its own assets, whether \$30,000 or less?

P 89, Sect. 10.2 Termination, (d).

- A. Who is to make the determination that there are – or are not - “satisfactory assurances for funding” as stated in Section 8.6? What criteria must be made to satisfy the determination?**
- B. What happens if the Agreement is terminated?**
- C. If there is termination, where does the \$4 mill go?**
- D. Does NWPCO still operate freight if there is a termination?**

P 90, Sect. 12.1(a) Government Filings.

Add “NWPCO” in the last sentence, to read “SMART and NWPCO shall each use reasonable efforts to take all actions and do all things necessary ...”

P 93, Sect. 12.16 Books and Records.

Who determines what documents or data bear no direct relationship to compliance with the terms and conditions of this Agreement? What criteria are used?

Why not do the study envisioned under paragraph 7 of the May 20 cover Memo to the Board before the purchase. Won’t that study tell you

and the public something about the value of the “stuff” you are about to purchase and the wisdom *vel non* of the transaction?

Pp 97 – 98 SB 1029

- A. Where is the report required by Section 2, Section 13978.9 (a)? It is due by July 1, 2020.**
- B. Where is the assessment of the southern portion of the rail corridor and the report related to the potential transfer of the southern portion of the rail corridor to SMART? It is to “be provided as expeditiously as possible”.**

How and when was the \$4,000,000 purchase price arrived at?

If NWPCO has caused any environmental damage in the area south of milepost 89.0, how will SMART be able to have NWPCO clean it up or pay SMART to do so? Is there any claw back provision herein that covers this situation? Is there an adequate insurance policy that covers it?

Please make available for public inspection all NWPCO reports to SMART at any time since January 1, 2018.

Has SMART made any payments to NWPCO at any time since January 1, 2018? If so, what payments and why?

Has SMART made any payments to NCRA at any time since January 1, 2018? If so, what payments and why?

What is the status of the NCRA property in Cloverdale? Who will get the proceeds from the sale, lease or other disposition of any NCRA property in Sonoma County, including any land and any building(s) thereon?

What is the status of all NCRA property in Sonoma County? Who will get the proceeds from the sale, lease or other disposition of any NCRA property in Sonoma County, including any gravel rights, any land, and any building(s) thereon?

What is the status of all NCRA property in Napa County? Who will get the proceeds from the sale, lease or other disposition of any NCRA property in Napa County, including any gravel rights, any land, and any building(s) thereon?

What is the status of all NCRA property in Marin County? Who will get the proceeds from the sale, lease or other disposition of any NCRA property in Marin County, including any gravel rights, any land, and any building(s) thereon?

How, if at all, will SMART's acquisition of NWPCO's freight rights, including its common carrier status, effect SMART's ability to discontinue SMART passenger traffic?

What steps will SMART need to take should it decide to close down its freight traffic, and what costs will SMART incur in so proceeding?

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS

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E-Mail: wmullins@bakerandmiller.com

May 19, 2020

VIA E-MAIL

Mr. Eric Lucan
Chairman
The Sonoma-Marín Area Rail Transit District
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

Re: Item 7 – May 20, 2020 Board Meeting Agenda

Dear Mr. Lucan:

I am writing in my capacity as outside counsel for Mendocino Railway (“Mendocino”). You may recall that Mendocino is the successor to the California Western Railroad and is the operator of the “Skunk Train.” Mendocino is a common carrier railroad authorized by the Surface Transportation Board (“STB”) to provide freight rail service on Mendocino’s rail line between Fort Bragg and Willits, California. Mendocino’s line connects with the North Coast Railroad Authority’s (“NCRA”) rail line at Willits. Through that connection, Mendocino Railway connects to the national rail network.

It has come to Mendocino’s attention that item 7 on the agenda for the May 20, 2020 meeting of the Board of Directors for Sonoma-Marín Area Rail Transit District (“SMART”) reflects some discussion or action to be taken relating to the “Expansion of SMART Right-of-Way and Scope of Operations by adding Freight Service Responsibility and Executing Related Agreements.” Having just learned of the agenda item and briefly reviewed the published documents, Mendocino is attempting to fully understand the scope of the previous discussions and of the proposed plan of action.

Mendocino has a strong interest in ensuring that common carrier operations will be maintained on the entire NCRA line. In fact, Mendocino is very interested in acquiring the freight rights currently held by Northwestern Pacific Company (“NWP”) on the NCRA/NWP line or, at the very least, the rights to that portion of the line between Cloverdale and Willits, California which directly connect with its railroad. Working with SMART and local and statewide stakeholders, Mendocino believes that a comprehensive plan can be developed that

BAKER & MILLER PLLC

Mr. Eric Lucan

May 19, 2020

Page 2

would allow for SMART transit operations, freight operations, and trail use to coexist in the entire corridor up to Willits, not just portions of it. Indeed, Mendocino has previously notified the NCRA that there are shippers located on the Mendocino line that would like to connect with the interstate railroad network via a functional NCRA/NWP line but have been prevented from doing so. Mendocino's most recent notification was via a February 6, 2020 letter to Mitch Stogner, a copy of which is attached hereto.

Mendocino believes that it is uniquely positioned to restore freight traffic on the entire NCRA line, providing the people and businesses of the region – including freight customers in Fort Bragg, Willits, and the communities between Willits and Cloverdale – with a service that has too long been absent. It can do so while ensuring that SMART preserves its ability to perform its passenger operations and the state can develop a trail.

In order to provide an opportunity for discussion and for the SMART Board to hear Mendocino's plans, Mendocino would like to respectfully request that you defer any final votes relating to Item 7 on the agenda. Such a deferral would allow time to discuss this matter with SMART, NCRA, NWP/NWP, and Senator Mike McGuire. Absent a better understanding of how the common carrier rights of Mendocino's customers will be preserved under the proposed plan as outlined in Item 7, Mendocino intends to carefully monitor any proceedings at the STB and may be forced to oppose any regulatory approvals or take other actions at the STB to preserve the common carrier rights of its shippers.

Sincerely,

/s/ William A. Mullins

William A. Mullins

Attorney for Mendocino Railway

cc: Mike Hart, President, Mendocino Railway
Mitch Stogner, Executive Director, North Coast Railroad Authority
Doug Bosco, President & Legal Counsel, Northwestern Pacific Co.
Leticia Rosas-Mendoza, Clerk of the Board



MENDOCINO RAILWAY

Foot of Laurel Street
Fort Bragg, California 95437
707-964-6371 T
707-634-6428 F

February 6, 2020

Mitch Stogner
Executive Director
North Coast Railroad Authority
419 Talmage Road, Suite M
Ukiah, California 95482

Dear Mitch,

I am, as you may recall, Vice President of Mendocino Railway. I am writing to formally request that the North Coast Railroad Authority (“NCRA”) restore rail service on its rail line extending south from Willits, California so that we can provide freight service for our shippers who seek rail transportation services on the national rail network.

As you may also recall, Mendocino Railway is the successor to the California Western Railroad (“CWR”), operator of the “Skunk Train”, and a common carrier railroad authorized by the Surface Transportation Board (“STB”) to provide freight rail service on Mendocino Railway’s rail line between Fort Bragg and Willits, California. *See Mendocino Railway—Acquisition Exemption—Assets of the California Western Railroad*, STB Finance Docket No. 34465 (STB served Apr. 9, 2004). Mendocino Railway’s line connects with the NCRA’s line at Willits. Through that connection, Mendocino Railway connects to the national rail network.

Since 1998, the NCRA’s line has been embargoed as a result of unsafe operating conditions and noncompliance with federal railroad safety laws and regulations. This embargo ended, and has continued to prevent, Mendocino Railway’s access to the national rail network beyond Willits. Shippers located on our line cannot access the national rail network until the NCRA restores service on its line.

In 2004, prior to our purchase of the CWR, the CWR’s bankruptcy trustee filed a claim with the STB against the NCRA alleging that the NCRA had violated its common carrier obligation by failing to reopen the line from Willits south. This lawsuit is addressed in *Michael H. Meyer, Trustee in Bankruptcy for California Western Railroad, Inc. v. North Coast Railroad Authority, d/b/a Northwestern Pacific Railroad*, STB Finance Docket No. 34337 (STB served Jan. 31, 2007). The STB rejected the trustee’s claim on the grounds that there was no evidence of a continuing demand for service on the line. In the absence of evidence that freight shippers were interested in service over the embargoed line, the STB appeared to conclude that the NCRA did not have a common carrier obligation to reopen its line.

Mitch Stogner
Executive Director
North Coast Railroad Authority
February 6, 2020
Page 2

Though the NCRA's line has been closed for over 20 years, stranding Mendocino Railway's line from the national rail network, there is now strong evidence of shipper interest in rail freight transportation using Mendocino Railway's line and the NCRA line. Mendocino Railway accordingly in 2019 applied for a federal grant under the U.S. Department of Transportation's Better Utilizing Investments to Leverage Development ("BUILD") program to improve its line for such service. In connection with its grant application, Mendocino Railway determined that there are several companies located on or near Mendocino Railway's line with a strong interest in freight service in conjunction with a connection to the national rail network at Willits. Many of these companies supported Mendocino Railway's grant application, with local manufacturers, lumber companies, an aggregate company, and a brewery expressing their desire for a rail freight alternative to trucks.

A market for rail freight service on Mendocino Railway's line clearly exists but we need a viable connection to the national rail network at Willits in order to serve that market. We have tried to work with the Northwestern Pacific Railroad Company ("NWPCO"), the current operator of the NCRA's line, to restore service on the NCRA's line, and we recently expressed our willingness to take over operation of the NCRA's line in order to ensure its reopening. But our efforts have not been successful. If the NCRA continues to maintain its embargo of its line from Willits south we believe that the NCRA will be in violation of its common carrier obligations. We therefore urge the NCRA to take immediate steps to restore service on its line so that we can restore interstate freight service to the customers who desire it.

Thank you for your attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Jason Pinoli", with a stylized flourish at the end.

Robert Jason Pinoli
Vice President

Exhibit 6

May 22, 2020

NCRA Board of Directors
Mitch Stogner, NCRA Executive Director
419 Talmage Road. Suite M
Ukiah CA 95482

Subject: **SMART Decision to Take Over Freight Operations**

Dear NCRA Board members and Executive Director,

I am deeply concerned that the Sonoma Marin Area Rail Transit District (SMART) has voted to assume total control of the existing NCRA routing within the SMART corridor from Napa Junction to Cloverdale. SMART has no business taking over freight operations as it has no experience or competence with running rail freight and all the responsibilities associated with operating rail freight including marketing and providing efficient service to Redwood Empire industries and clients.

SMART will also be taking on more financial liability at a time when the voters have questioned SMART's handling of their own operations and projects.

Hidden in the whole picture of SMART's takeover of freight is the push to pull back future rail freight to Cloverdale instead of Willits. There are several industries that could currently be served by NWP if the line were open today. Once the deal is agreed and sealed, any prospect of operating freight or passenger excursion service north of Cloverdale will be forever lost.

I urge the Board to not vote in favor of SMART's intention to take over rail freight operations.

Respectfully yours,

Michael R. Strider, P.E.
Former NCRA Chief Engineer
707-318-2633
mstrider67@gmail.com

Exhibit 7



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Vote for your favorites in the Best of Sonoma County Contest! First round ends this weekend.



SMART leaves businesses out of loop



Ken Pryzmierski, manager of California Shingle and Shake Company in Rohnert Park walks along the spur line that was once hooked to the NWP tracks. SMART replaced the tracks for the commuter rail, but never reconnected the spur line used by the company for rail deliveries, Tuesday May 20, 2014. (Kent Porter / Press Democrat)

By MATT BROWN
THE PRESS DEMOCRAT
May 20, 2014, 6:31 PM

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Bay Area transportation committee backs SMART extension
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Lagunitas Brewing Company of Petaluma receives three train cars per week full of malted barley from Canada to make its popular IPA, Little Sumpin' Sumpin' and Imperial Stout beers.

The grain travels more than 1,000 miles over rails to reach Petaluma but then stops less than a mile short of the Lagunitas brewery, where it is loaded onto trucks and is driven the rest of the way south on McDowell Boulevard.

This final bit of logistical gymnastics is necessary despite Lagunitas Brewing's location along the train tracks.

The property historically had a rail spur — a kind of driveway off the main tracks into the plant to facilitate freight cars. But that connection was not restored when contractors rebuilt the rail line to prepare for commuter train service in 2016.

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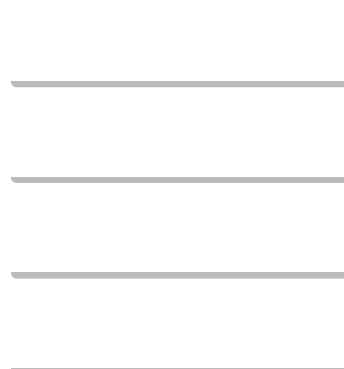
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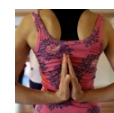
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to affect traffic in Santa Rosa

As a result, Lagunitas Brewing is forced to use a spur that Sonoma-Marin Area Rail Transit built just to the north at Adobe Lumber.

“Ideally, we would activate our spur and bring the grain directly here,” said Leon Sharyon, chief financial officer at the Petaluma brewery. “It’s silly that our shipments come all that way but not all the way here.”

The Lagunitas Brewing line is one of a handful of rail spurs that have been shut off as SMART builds the tracks for commuter service. Businesses along the line are upset at losing direct access to freight service, which can increase property values and save shipping costs.

SMART says some spurs need to disappear to meet federal safety guidelines. The rail authority is upgrading some spurs that serve legitimate businesses but can’t afford to restore all the switches.

The issue highlights the challenges of operating a passenger rail system on a corridor shared with freight service and the competing interests and constituents of each.

“We’re duking it out with SMART over the spurs,” said Jake Park, general manager of freight operator Northwestern Pacific. “They have the big stick. It’s their way or the highway.”

SMART, which owns the right-of-way, is building the \$427 million commuter rail system from San Rafael to Airport Boulevard north of Santa Rosa. It has an agreement with the North Coast Railroad Authority, the public agency that oversees freight service on the line, to restore spurs to businesses that need them, said Farhad Mansourian, SMART general manager.

After laying dormant for a decade, freight rail restarted in 2011 from Windsor to Schellville, where trains connect with other lines heading east. At the time, property owners along the line expressed interest in connecting to the freight network.

“The agreement was that if it was a bona fide business, they get a connection,” Mansourian said. “We are in full support of getting businesses connected to our freight provider. We see each other as partners.”

Businesses that want a rail spur and were not included in the original agreement can ask SMART to install one at the company’s cost, Mansourian said. The lines, including expensive switching equipment, cost about \$300,000, he said.

“We are spending taxpayers’ money,” he said. “We are

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accountable to the taxpayers.”

Voters in Sonoma and Marin counties approved a quarter-cent sales tax in 2008 to build a 70-mile rail line from Larkspur to Cloverdale. But in the face of slumping sales tax revenues, the rail agency has been forced to build the line in segments.

Some spurs, especially those located near curves in the track, need to be shut down for safety purposes, Mansourian said. The aging tracks and wooden rail ties that can handle 40 mph freight trains are being swapped out for modern steel rails and concrete ties to accommodate trains that will approach 80 mph.

Last year, SMART closed a spur in Rohnert Park used by California Shingle and Shake, according to John Schunzel, the company's general manager. The company had shipped laminated shingles and plywood from Oregon and Washington over the rails and now has to pay higher costs to truck in the materials, he said.

“I think they have an obligation to put the spur back,” Schunzel said. “We would use it immediately if it were in.”

Having a rail spur on a piece of commercial or industrial land can increase property values, according to Nick Abbott, a partner with North Bay Property Advisors.

“It would add value for the right kind of use,” said Abbott, whose company owns a 30,000-square-foot Santa Rosa warehouse that had its spur removed. “I think a tenant would pay more if they thought they would be sending a lot of product east of the Rockies.”

Glenn Kantock, who owns a piece of property along the lines at Airport Boulevard, said he has been contacted by Kendall-Jackson and other companies about using the rail spur on his land.

But that spur sits on the location where SMART is building the northern-most station of the initial segment, and Kantock said workers disconnected the line a week ago. SMART only recently decided to extend the line from Santa Rosa to Airport Boulevard after receiving funding in December.

Kantock said he is missing a business opportunity by not being able to lease his spur to shippers.

“We want our spur back,” he said. “The absence of the spur has created a real void.”

Freight rail advocates tout the environmental benefits of shipping goods via train. They point out that one rail car

can carry the same amount of cargo as four semi-trucks.

The same advantages — a reduced carbon footprint from getting drivers out of their cars — helped sell commuter rail to voters in Sonoma and Marin counties in 2008.

“The public would benefit from getting trucks off the road,” Kantock said. “People should be just as excited about freight rail as they are about passenger rail.”

1 | 2 | 3



Featured Comment



Cheers! • 15 hours ago

One argument favoring train use is its reduction in CO2 emissions. Rarely said, however, is that almost all of that gain comes through freight hauling. Passenger trains don't count for much of the saving. Shortsighted is the first word that comes to mind here, and maybe not so smart also applies.

25 ^ | v • Share ›

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Cheers! • 16 hours ago

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One argument favoring train use is its reduction in CO2 emissions. Rarely said, however, is that almost all of that gain comes through freight hauling. Passenger trains don't count for much of the saving. Shortsighted is the first word that comes to mind here, and maybe not so smart also applies.

25 ^ | v • Reply • Share ›



dope! • 17 hours ago

SMART, is funded by the businesses and people of the community, if people want spurs, they should have them , especially if they had used them prior to rails being closed . To not return them to the places that had them is totally against what the whole rail system is about..... And to think we trust these people with our town and our taxes to begin with... (DONT GET ME STARTED)

21 ^ | v • Reply • Share ›



This comment was deleted.



Nick Karels → bradpibal • 17 hours ago

Yessir... all the way to Eureka! It would be a boon for North Coast commerce, Plus, that's a deep-water port up there.



James Bennett → dope! • 5 hours ago

I think it might be time for folks to get started.

1 ^ | v • Reply • Share ›



Nick Karels • 17 hours ago

Hey Mr. Mansourian, "That's not 'SMART'!"

I'm paying sales taxes for a train that "might, soon someday" reach my town (Healdsburg) in the next decade. All your money pit is going to do in the short run, is duplicate service better served by ;Golden Gate Transit's buses.

I don't know what the toy trains you played with as a kid looked like, but mine were FREIGHT TRAINS!

Remove the sphincter from around your neck, and quit derailling the best use for the rail which you were mistakenly given the privilege of ruining.

31 ^ | v • Reply • Share ›



James Bennett • 16 hours ago

Who decides if the business is 'legitimate'?

This is an important aspect of what Smart Growth is about. Remaking our communities and picking winners and losers. When government picks winners and losers, they have a name for that.

Starts with an 'F', ends with an 'ISM'.

15 ^ | v • Reply • Share ›



trycommonsense → James Bennett • 16 hours ago

James it is worse than that in our society now . Its called prostitution, I thought it was illegal but our politicians are just the most expensive street walkers on the curb.

9 ^ | v • Reply • Share ›



notausefullidiot • 17 hours ago

So Lagunitas is not a a bona fide business?

12 ^ | v • Reply • Share ›



defhigh → notausefullidiot • an hour ago

An EXTREMELY profitable, private business, why should they hold their hand out for public tax-payer money? If they want rail, let them pay for it.

^ | v • Reply • Share ›



trycommonsense • 16 hours ago

This is why we need voter I.D laws . When you vote you should have to swipe your drivers license with the magnetic strip to record your vote. That way people will think more about their vote. We would have been much better off spending the money on improved rail service for freight thus taking more semi- tractor trailers off the local highways. At the very least there should be scooter platforms on the trains so commuters can scooter the distance to their final destination(i.e) office ,workplace etc. Instead we just vote for what feels good at the time based on what the chosen few interested parties dupe people into voting for . It never ceases to amaze me what people will vote for after a slick ad campaign and some so called endorsements from the LEADERS. (Effrin).

10 ^ | v • Reply • Share ›



Peter Iodence • 5 hours ago

Smart train is more like the dumb train if you ask me. The



Smart train is more like the dumb train if you ask me. The mentioning of legitimate business should request hook up and pay for it themselves. Where do these people come from anyway? To run a legitimate business you need an infrastructure in place to be conducive to such, the exodus of companies moving out of this area to set up shop in another location or out of state in the last twenty years is appalling. Oh, and yes a brewery is a legitimate business that should be supported not hindered otherwise they move to Texas or somewhere else where they could be more efficient and profitable. That is called Smart Business!

8 ^ | v • Reply • Share ›



BC • 16 hours ago

The "SMART" train and "SMART" growth is not intended to serve industrial business needs. Its purpose is to convert business use by the station areas to high density housing. In order for "PLAN BAY AREA" to move forward businesses by the tracks will have to be eliminated or relocated.

8 ^ | v • Reply • Share ›



Geoff Johnson → BC • 3 hours ago

Right, BC -- high-rise, high density workers' barracks along the 101/SMART corridor!

^ | v • Reply • Share ›



LB62 • 7 hours ago

If Lagunitas Brewing wants a rail spur at their location, why don't they pay for it?

6 ^ | v • Reply • Share ›



Guest → LB62 • 5 hours ago

They already had one and it was cut out with the installation of the new tracks.

7 ^ | v • Reply • Share ›



cgust8 • 18 hours ago

I'm curious as to why, since freight has been active since 2011, why none of the businesses who are unhappy with their spurs being cut, didn't start shipping earlier on..?

6 ^ | v • Reply • Share ›



Kraut → cgust8 • 14 hours ago

Exactly. Most of these spurs went unused even before the line was shut down for 10 years. Case in point, is the spur in Rohnert Park that was mentioned in this article. That spur has not seen a rail car for 20+ years and the owner is full of beans about using it. No reason to pay money to connect a business if it has no rail shipments and the owners only want to increase "their property value" despite the cost to putting in a switch.

2 ^ | v • Reply • Share ›



Beaumarino • 4 hours ago

Once again idiot environmentalists hurting our environment rather than improving via this experiment in social engineering. And now we are seeing just one example of peripheral damage, and there are more to come thanks to starry-eyed brainwashed young people who pushed this boondoggle into law in the first Obama presidential election. Oh, have I mentioned lately, FIX THE DAMN ROADS!

5 ^ | v • Reply • Share ›



Geoff Johnson → Beaumarino • 2 hours ago

Don't forget that the Sonoma County Alliance also

sponsored the SMART campaign -- once they figured out that it was meant to encourage continuous growth along the 101 corridor, from Larkspur to Cloverdale.

^ | v • Reply • Share ›



Andy Wolf • 7 hours ago

Sue them and break them, you'll be doing everyone a favor.

5 ^ | v • Reply • Share ›



Robert Dreyer • 18 hours ago

SMART is applying for federal grants because the sales tax is not enough to actually provide train service anytime soon. Gotta believe that the additional cost of restoring old spurs is simply out of their price range.

Also doubt real estate investors and the Lagunitas Brewery have the money to pay for the construction themselves.

5 ^ | v • Reply • Share ›



Dar → Robert Dreyer • 4 hours ago

All of which is truly unfortunate.

1 ^ | v • Reply • Share ›



defhigh → Robert Dreyer • an hour ago

You're kidding right? I love Lagunitas, both their beer and what they do for the community in terms of charity benefits, but they are FREAKIN LOADED with money. Like, ridiculous. If they want a rail line they could write a check for \$300k tomorrow and never even notice. They probably make \$200-300k per DAY.

^ | v • Reply • Share ›



Andy Wolf • 2 hours ago

Maybe the businesses should relocate to Novato, I believe there are lots of spurs there. The idiots in SC are running every other employer out of the county so why stop there? If I owned stock in a company that located in SC, I'd sell it immediately or try to get the board of directors removed.

2 ^ | v • Reply • Share ›



Geoff Johnson → Andy Wolf • 2 hours ago

Good point, Andy. People who work in Marin can't afford to live there; so the local fat-cats want them to relocate to the proposed workers' barracks along the 101/SMART corridor, and commute from as far north as Cloverdale..

1 ^ | v • Reply • Share ›



Veronica Gee • 4 hours ago

The Smart Train experiment just gets dumber & dumber. On the one hand, you have viable businesses providing needed local employment who currently USE rail to keep costs manageable and on the other hand, Smart has a "dream" that someday people will want to ride a train to basically nowhere they need to go. And they get to decide who gets a spur and who doesn't. They take them out, they'll put them back for \$300k if they feel like approving it. We now have an expensive albatross which is choking out local businesses in favor of a commuter train that most people don't need. Maybe once in a blue moon, you'll want to go from point A to point B and Smart will take you there but before you even think of Smart, you're already there. I'm trying to figure out why I would ever need to go to Larkspur or Windsor on Smart. First I have to get in my car and drive to Smart - then I get to Larkspur and... have no reason to be there so I'll have lunch maybe. If I take a ferry into SF, again I'm stuck needing more transportation. My trip to SF is now taking me

see more

2 ^ | v • Reply • Share ›



trycommonsense • 16 hours ago

Forgot to mention , wonder how many people needing ,wanting rail spurs voted for SMART TRAIN. Voter I. D NEEDED. get it

2 ^ | v • Reply • Share ›



Guest → trycommonsense • 5 hours ago

Nobody really voted for freight trains they were sold on a commuter train to nowhere with NO idea of the cost associated. And they are getting freight trains mostly instead.

2 ^ | v • Reply • Share ›



Geoff Johnson → Guest • 2 hours ago

True! To some degree, SMART is a stalking horse for the NWP's freight rail service.

^ | v • Reply • Share ›



defhigh • an hour ago

I agree that freight rail benefits the public *slightly* by getting trucks off the road, but the major benefactors are the private, FOR PROFIT companies who ship their goods via it. Why should the public - SMART is publicly funded by the TAX PAYERS - be asked to pay for something that mostly benefits these FOR PROFIT corporations? I love Lagunitas brewco as much as the next guy (ok, maybe more) but they have PLENTY of money without holding their hand out for a public subsidy.

1 ^ | v • Reply • Share ›



Steve Pallas • 3 hours ago

Right of way yes , right to remove spurs no .

1 ^ | v • Reply • Share ›



Kevlar9 • 5 hours ago

Why is the issue of spurs only now coming up? Locating
One new comment above.
spurs should have been part a central part of the discussion

for the past twenty years.

Unfortunately, all of the train-hating blow-hards have been so busy with their "Three lanes, all the way" rhetoric that they forgot to advocate for the spurs, over which they are now having their latest conniption fit.

1 ^ | v • Reply • Share ›



Guest → Kevlar9 • 5 hours ago

We could have afforded 4 lanes with the cost of Smart and increased our buses that go everywhere cheaply! and the reason is most of the past the train rails deteriorated and now with new tracks it became viable again.

3 ^ | v • Reply • Share ›



Anthony Ross • 6 hours ago

That just sucks!

1 ^ | v • Reply • Share ›



Keith Rhinehart • 2 hours ago

There must be a way to include freight rail service. It will not add but a few millions to the expected \$220 million it will take to complete the project to Cloverdale. Our struggling economy demands this option, not to mention the GHG reduction that will be realized by reducing over the highway

reduction that will be realized by reducing over the highway freight, just like the new, clean-burning Dutra Asphalt plant will do.

^ | v • Reply • Share ›



thisAjoke! • 2 hours ago

Your Gas taxes @ Waste

^ | v • Reply • Share ›



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Exhibit 8

VERIFICATION

I, Robert Jason Pinoli, President of Mendocino Railway, verify under penalty of perjury that the statements made in my February 6, 2020 letter to NCRA are true and correct.

A handwritten signature in black ink, appearing to be 'R. Pinoli', with a large loop at the end.

March 31, 2021

Exhibit 9



February 12, 2020

Mitch Stogner
Executive Director - North Coast Rail Authority
419 Talmage Road, Suite M
Ukiah, California 95482

Mr. Stogner,

The Mendocino Family of Companies (Mendocino Redwood Company, LLC, Mendocino Forest Products Company, LLC, Humboldt Redwood Company, LLC and Humboldt Sawmill Company, LLC, collectively "MRC-HRC") requests the North Coast Railroad Authority ("NCRA") maintain the existing rail infrastructure and restore service on its rail line extending south from Willits, CA.

MRC-HRC is the largest producer of Redwood and Redwood Products in the world and exports those goods from Northern California. Rail would make the distribution from our Calpella Distribution Center ("CDC") more cost effective and reduce fossil fuel use.

MRC-MRC would request that specific emphasis on track restoration be placed on the 6 mile stretch of track from Calpella, CA to Ukiah, CA. This would help our company shuttle processed lumber from our Ukiah Mill to the CDC, reducing costs, and lowering greenhouse gas emissions.

We would also remind the NCRA of several historic agreements encumbering the NCRA track. Any abandonment of the line would trigger a reversion clause similar to the one for the land conveyed by The Pacific Lumber Company (HRC) to the San Francisco Northwestern Railway Company (NCRA) by deed dated May 15th, 1903 and recorded in Humboldt County on May 16th, 1903, Book 82 of Deeds, Page 410. The clause reads as follows:

".... or if thereafter such railroad shall not be maintained upon the aforesaid strip of land hereby conveyed, then to the extent that the same shall not be so used it shall revert to the Lumber Company, and upon its request the Railway Company will, by proper deed, reconvey the same."

Since the last train ran on of the Northwestern Pacific Railroad north of Sonoma was in 2001, it could be argued the rail has been abandoned. Removal of the rail infrastructure would further support that claim. Therefore, any lands with reversion clauses would convey back to MRC-HRC.

In addition to any reversion clauses in the original land conveyances, HRC-MRC assumed the timber rights sold by the Northwest Pacific Railroad to PALCO for the sections of NCRA rail in Mendocino, Humboldt and Trinity Counties. Any conversion of the railroad to a trail would be required to address any resulting potential losses or harm to MRC-HRC.

If the NCRA would like to raise revenue to preserve and improve the existing rail infrastructure, MRC-HRC would be willing to discuss purchase options of non-track parcels adjacent to our ownership and we would be willing to provide a list of potential sites.

Sincerely


John W. Kuhry
Asset Manager



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Redwood™**



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REDWOOD AND DOUGLAS-FIR



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March 31, 2021

VERIFICATION

I, John W. Kuhry, Asset Manager of the Mendocino Family of Companies, verify under penalty of perjury that the statements made in my February 12, 2020 letter to NCRA are true and correct.

John W. Kuhry
Asset Manager
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jkuhry@mendoco.com