

FUNDING REIMBURSEMENT AGREEMENT

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AND CITY OF PETALUMA

THIS REIMBURSEMENT AGREEMENT ("Agreement") is entered into as of _____, by and between the **SONOMA-MARIN AREA RAIL TRANSIT DISTRICT** (District), a regional transportation district duly established under the laws of California, and the **CITY OF PETALUMA** (City), a California municipal corporation and charter city.

Recitals

- A. The SMART District rail corridor, historically known as the Northwestern Pacific Railroad Authority (NWPRA), generally parallels Highway 101 running north-south in Sonoma and Marin Counties. The corridor is owned by the District from Milepost (MP) 84 in Cloverdale southward to MP 11.4 in Corte Madera.
- B. The District operates and maintains the rail corridor in accordance with applicable California Public Utilities Commission (CPUC) and Federal Railroad Administration (FRA) laws and regulations.
- C. The District has completed California Environmental Quality Act (CEQA) review and is proceeding with design and construction of passenger rail service and accompanying multi use path along an approximately 70-mile existing rail corridor extending from Cloverdale in Sonoma County, California, to a location near the ferry terminal in Larkspur, Marin County, California.
- D. The City is currently in the process of repaving North McDowell Boulevard from Old Redwood Highway to Sunrise Parkway, including the roadway adjacent to the Districts' railroad crossing of North McDowell Boulevard at railroad milepost MP 40.7 ("Crossing"), including class 2 bicycle path of travel improvements along North McDowell Blvd ("City Project").
- E. The City developed construction documents for the City Project, including paving and bicycle path of travel improvements for the Crossing.
- F. The District received bids for the Petaluma North Station Platform, Grade Crossing Reconstruction and Pathway Project which includes the reconstruction of the Crossing and a class 1 pathway in both the District right-of-way as well as the City right-of-way, and adding a new City signalized pedestrian crosswalk across McDowell Boulevard ("District Project"), which is within the City right of way that the City is paving pursuant to the City Project.
- G. Due to overlapping work pursuant to the City and District Projects at the Crossing, the City and District staff have determined that it will be cost effective to coordinate concerning the City and District Projects where project elements overlap. For purposes of this Agreement, the City and District improvements pursuant to their overlapping Projects at the Crossing are together referred to as the Crossing Improvements.

- H. The District is agreeable to constructing the Crossing Improvements, including the Crossing Improvements that are or will become a part of the City Project,.
- I. The City is committed to reimbursing the District for the full cost and expense of constructing the Crossing Improvements that make up part of the City Project, as specified in this Agreement, including, without limitation, in Section 3 and Exhibit D.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and District agree as follows:

1. RECITALS

The above recitals are true and correct and are hereby incorporated in and expressly form a part of this Agreement.

2. COORDINATION

The City shall coordinate the Work with The District's Chief Engineer or his designee, contact information for the parties' respective representatives is set forth below:

District	City
Bill Gamlen	Jeff Stutsman
Chief Engineer Sonoma Marin Area Rail Transit District (SMART) 5401 Old Redwood Highway, Suite 200 Petaluma, CA 94954	Deputy Director of Operations City of Petaluma 202 N McDowell Blvd. Petaluma, California 94954
Phone: 707.794.3330	Phone: 707.776.3673
Email: BGamlen@sonomamarintrain.org	Email: JStutsman@cityofpetaluma.org

3. SCOPE OF WORK

- i. Crossing Improvements. The Crossing Improvement work covered by this agreement at the Crossing is graphically depicted in Exhibit A ("Crossing Improvements").

The City's Class 2 bicycle pathway improvements at the Crossing are shown in Exhibit A and Exhibit B ("City Improvements")

District shall pave roughly 28,100 square feet of City roadway and construct City's class 2 bicycle pathway improvements including but not limited to entrance and exit ramps on Northbound and Southbound North McDowell Boulevard including green bike lane striping pursuant to City's design. In addition to improving the Crossing itself, the District is constructing a class 1 bicycle and pedestrian pathway from Southpoint Boulevard to Main Street in Penngrove as part of the planned north-south pathway network connecting stations in Marin and Sonoma counties ("District

Improvements”). A portion of the class 1 at the Crossing pathway will be in City right of way along the south-west side of North McDowell Boulevard from the north side of the crossing to the entrance to Petaluma Estates where the class 1 pathway will cross North McDowell Boulevard in a new City signalized pedestrian crosswalk. The pathway will also include a new City signalized pedestrian crossing on Corona Road. These District constructed improvements in the City’s right of way (“District-Constructed City Improvements”) are shown in Exhibits A and C. These two new City signalized pedestrian crossing at North McDowell Boulevard and Corona Road shall be accepted, owned, operated and maintained by the City and shall become the property of the City upon completion of the Crossing Improvements.

ii. Deductive Change Order

1. Following award of the District Contract, the District will issue a deductive change order amending some of the bid items listed in Exhibit D of this Agreement that comprise the City Improvements, as those bid items appear in the District Contract. Following issuance of the deductive change order, Exhibit D and Section 5, paragraph ii of this Agreement shall be amended accordingly, by memorandum in accordance with this section or otherwise, to reflect the amended scope of the City Improvements and the City Improvements costs that the City is obligated to reimburse pursuant to this Agreement. The District and the City estimate that following issuance of the deductive change order and corresponding amendment of this Agreement, the cost of the City Improvements will be reduced from \$806,102.00 to approximately \$574,000.

iii. Request for Additional Work.

1. Initiation Conference: The City may initiate a request for additional work to be covered under this Agreement. Such request shall be made in writing to District. The request shall include a description of the proposed work. Following receipt of the request, the parties shall meet to establish and agree on the following information:

- a. Project Manager Information (name, address, phone number, fax number, and email address).
- b. Project Information (project name, project area, location map).
- c. Project/task number.
- d. Account number.
- e. Time allowed to perform the work or Construction Schedule.

2. Agreement Memorandum. The District will prepare an Agreement Memorandum setting forth the terms for the additional work as established during the Initiation Conference. The Agreement Memorandum will be executed by authorized representatives of both parties and become an amendment to this Agreement prior to the District issuance of a written

authorization to proceed.

4. DISTRICT'S RESPONSIBILITIES

The District shall be responsible for the following:

- i. Contract Administration: District has included the City Improvements in a construction contract (CV-BB-23-004, the "District Contract") that will provide for construction of a new passenger rail station in Petaluma, reconstruction of the North McDowell Boulevard at-grade crossing, and bicycle and pedestrian pathways in the District right-of-way as well as in and along portions of City right of way comprising the Crossing Improvements. The City Improvements were included as Additive Alternate Bid Table E – North McDowell Boulevard Reconstruction (Petaluma Section) in the District Contract.
- ii. Construction: The District will oversee and administer the District Contract, manage day-to-day construction activities, and accept the construction of the District Project, including the Crossing Improvements (which include the City and District Crossing Improvements). The District shall not be responsible for inspecting the City Improvements for conformance with the City Improvements design.
- iii. Permitting and Approvals: District shall participate and submit a joint GO 88B application to the CPUC that includes the crossing Improvements.

5. CITY 'S RESPONSIBILITIES

The City agrees to perform the following:

- i. Permitting and Approvals: City shall participate and submit a joint GO 88B application to the CPUC for the crossing Improvements and inspect, review, approve and accept the City Improvements constructed pursuant to this Agreement and the District Contract, to the extent the City Improvements are in accordance with the City Improvements design and the District Contract.
- ii. Payment: The cost for the Improvements is \$806,102 as shown in the District Contract CV-BB-23-004 Additive Alternate Bid Table E, which is included in Exhibit D of this Agreement. The City shall allocate an additional ten percent (10%) contingency funding in the amount of \$806,102 to cover unknowns, differing site conditions and other unanticipated costs that may arise in constructing the City Improvements for a total estimated City financial commitment for construction of the City Improvements pursuant to this agreement of up to \$886,712, including contingency. This amount does not represent a "cap" on costs for the City Improvements. The City shall be responsible for all the costs of constructing the City Improvements. City payments for City The City shall reimburse District in accordance with Section 6 below.

- iii. Right of Entry: City shall provide any required permits to the District's Contractor at no cost to construct the Crossing Improvements.
- iv. McDowell Boulevard Roadway Shutdown: the City shall allow and coordinate with the District concerning complete closure of McDowell Boulevard for up to two weekends between Friday night at 20:00 to Monday morning at 05:00 during construction of the Crossing Improvements . The City shall waive any fees for the roadway closure and issue any necessary permits in a timely manner. District and/or its contractor shall provide City a minimum of 30 days' notice prior to any full closure of McDowell Boulevard.
- v. Construction: The City shall be responsible for timely inspection and acceptance of the City Improvements, and shall promptly notify District if it determines the City improvements are not in conformance with City Improvements design. In the event of such non-conformance of the City Improvements, City and District will confer and agree on a resolution; however, City may not direct the District's contractor.
- vi. Ownership of City's improvements: Upon completion and acceptance of the City Improvements in accordance with the City Improvements design, the District Contract and this Agreement, City shall be deemed to have assumed full responsibility, ownership, maintenance, and control of the City Improvements.

6. PAYMENT AND REIMBURSEMENT PROCEDURES

- i. Within 30 days of receipt of District's invoice, City shall reimburse District for the cost of constructing the City Improvements. City payments for the cost of constructing the City Improvements will be consistent with the unit prices bid and measured quantities for the City Improvements work completed in accordance with the City Improvements design and the District Contract.

7. INDEMNIFICATION

- i. Insurance and Indemnification: District shall require its contractor to include City as an additional insured party under the contract per the standard requirements of the DISTRICT contract. District agrees to secure such protections against liability for the City to the maximum extent permitted by such contracts. City agrees to fully cooperate with District concerning securing protection against liability for the City pursuant to this provision. To the extent that the District is an additional insured and/or a loss payee and/or the beneficiary of waivers of liability – such as, for example, waivers of subrogation - or of policy endorsements concerning insurance requirements that apply pursuant to the District Contract and any related contracts concerning construction of the Crossing Improvements, District agrees to secure such protections against liability for the City to the maximum extent permitted by such contracts.

- ii. City shall indemnify, defend, and hold the District harmless concerning any and all liability, damage, claims, suits actions, arbitration proceedings, administrative proceedings, regulatory proceedings, penalties, fines, expenses and costs (including without limitation, claims expenses, attorneys' fees and costs and fees of litigation), of any nature caused by the design, maintenance and operation of the City Improvements. To the extent that the City is an additional insured and/or a loss payee and/or the beneficiary of waivers of liability – such as, for example, waivers of subrogation - or of policy endorsements concerning insurance requirements that apply pursuant to contracts of the City concerning design of the City Improvements, the City agrees to secure such protections against liability for the District to the maximum extent permitted by such contracts. District agrees to fully cooperate with City concerning securing protection against liability for the District pursuant to this provision. This indemnification obligation shall survive the expiration or termination of this Agreement.
- iii. Upon the completion and acceptance of the City Improvements in accordance with Section 5, paragraph (vi) of this Agreement, and upon the termination or expiration of this Agreement, the respective duties of the District and the City concerning improvements owned by each of them in their property and rights of way shall be those duties established under applicable laws and regulations. Nothing in this Agreement is intended to modify or may be construed to modify the respective duties of the District and the City concerning improvements owned by each of them in their property and rights of way pursuant to applicable laws and regulations. This provision shall survive the expiration or termination of this Agreement.

8. ADDITIONAL REQUIREMENTS

- i. Amendments to Agreement

This Agreement may be amended only by the mutual written consent of both parties.

- ii. Termination

Either party may terminate this Agreement by giving 30-days prior written notice to the other party, in the manner described below in Section 8.iii of this Agreement of its intent to terminate. City shall pay District for all expenses, cost, contractor's claims associated with the portion of City's work as of the termination date.

- iii. Notice

Unless otherwise requested by a party, all notices, demands, requests, consents, or other communications which may be or are required to be given by either party to the other shall be in writing and shall be deemed effective upon service. Notices shall be deemed to have been properly given when served on the party to whom the same is to be given by hand delivery or by deposit in the United States mail addressed to the party as follows:

District: Bill Gamlen, P.E
 Chief Engineer
 Sonoma-Marin Area Rail Transit District
 5401 Old Redwood Highway

Petaluma, CA 94954

City: Jeff Stutsman
Deputy Director of Operations
City of Petaluma
202 McDowell Blvd.
Petaluma, California 94954

When a notice is given by a generally recognized overnight courier service, the notice, invoice, or payment shall be deemed received on the next business day. When a notice or payment is sent via United States Mail, it shall be deemed received seventy-two (72) hours after deposit in the United States Mail, registered or certified, return receipt requested, with the postage thereon fully prepaid. In all other instances, notices and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

iv. Governing Law

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

v. Entire Agreement

This instrument contains the entire agreement between the parties, and no statement, promise, or inducement made by either party or agents of the parties that is not contained in this written contract shall be valid or binding; and this contract may not be enlarged, modified, or altered except in writing signed by the parties.

vi. Authority of City and District

The undersigned District and City officials hereby represent and warrant that they have the authority to execute and deliver this Agreement on behalf of City or District, as applicable.

vii. No Waiver of Breach

The waiver by any of the Parties of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

viii. Time of Essence

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

ix. Construction

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. City and District acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. City and District acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

f. Consent

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

g. No Third-Party Beneficiaries

There is no third person or entity who is an intended third-party beneficiary under this agreement. No incidental beneficiary, whatever relationship such person may have with the Parties, shall have any right to bring an action or suit, or to assert any claim against the Parties under this agreement. Nothing contained in this agreement shall be construed to create and the Parties do not intend to create any rights in third parties.

h. Captions

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

i. Acceptance of Electronic Signatures and Counterparts

The parties agree that this Agreement, any Agreements ancillary to this Agreement and related documents to be entered into this Agreement will be considered executed when all parties have signed this Agreement. Signatures delivered by scanned image as an attachment to electronic mail or delivered electronically through the use of programs such as DocuSign must be treated in all respects as having the same effect as an original signature. Each party further agrees that this Agreement may be executed in two or more counterparts, all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the District and the City have executed this Agreement as of the date first above written.

CITY OF Petaluma:

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT:

By: _____

By: _____

Peggy Flynn
City Manager
City of Petaluma

Eddy Cumins
General Manager
SMART District

ATTEST:

By: _____

Kami Noriega
Deputy City Clerk

APPROVED AS TO FORM FOR CITY:

APPROVED AS TO FORM FOR DISTRICT:

By: _____

Eric Danly
City Attorney

By: _____

Thomas Lyons
SMART District Counsel