

**COOPERATIVE FUNDING AGREEMENT BETWEEN  
THE CITY OF PETALUMA AND THE  
SONOMA-MARIN AREA RAIL TRANSIT DISTRICT**

This Agreement is made and entered into as of \_\_\_\_\_, 2023 (“Effective Date”) by and between the **CITY OF PETALUMA**, a California municipal corporation and charter city, hereinafter referred to as “**CITY**” and the **SONOMA-MARIN AREA RAIL TRANSIT DISTRICT**, a regional transportation district, hereinafter referred to as “**SMART**.”

**RECITALS**

1. The **CITY** Council previously approved an agreement (“Prior Corona Station Agreement”) between the **CITY** and **SMART** for construction of Corona SMART Station improvements (“Project”) by adoption of Resolution no. 2020-081 N.C.S. on June 1, 2020. The **SMART** Board approved the Prior Corona Station Agreement with the **CITY** by adopting Resolution no. 2020-16 on July 17, 2020. The Prior Corona Station Agreement would have provided a total of \$2 million in **CITY** traffic impact fee proceeds. However, the Prior Corona Station Agreement was contingent on the sale of the Downtown SMART parcel, and the buyer, abandoned the purchase and the Agreement was never executed.

2. In anticipation of entering the Prior Corona Station Agreement with **SMART**, **CITY** staff reviewed the EIR and Mitigation Monitoring Plan that **SMART** certified for the Sonoma Marin Area Rail Transit Project, which included the planned Project. Accordingly, Resolution 2020-081 N.C.S. included findings that approval of the Prior Corona Station Agreement was not subject to subsequent or supplemental environmental review because the environmental impact from development and operation of the Project has already been assessed in the **SMART** EIR and supporting documents (SCH no. 2002112033). The findings also noted that the Prior Corona Station Agreement relates to the provision of funds for the design and construction of the Project, which was included in the certified EIR for the **SMART** project, and that the Council adopted all CEQA findings set forth in the City of Petaluma CEQA Review of and CEQA Findings for Corona Station, which was attached to the resolution.

3. In May, 2016, the **CITY** Council adopted Resolution no. 2016-076 N.C.S. amending the **CITY’s** Traffic Mitigation Impact fees to provide up to an estimated additional \$2,355,134 allocated to parking improvements required for the Project.

4. In anticipation of entering the Prior Corona Station Agreement with **SMART**, the **CITY** consulted with Willdan, the consultant who prepared the City’s 2016 traffic impact fee amendments, to determine whether the fee proceeds allocated to the Project parking improvements could properly be applied to other Project improvement costs than parking improvements. Willdan concluded that the traffic relief resulting from Project ridership is the

same whether the fee proceeds are used for parking or other station improvements, and that the **CITY** may apply the traffic impact fee proceeds to Project costs other than parking costs.

5. **SMART**, in partnership with the Sonoma County Transportation Agency (“SCTA”) and local transit operators, was awarded a 2022 Transit and Intercity Rail Capital Program (“TIRCP”) grant to complete construction of the Project. **SMART** has allocated a total of \$13,521,187 to the Project, as follows: \$9,521,187 in TIRCP funds, \$2,000,000 in SCTA Measure M funds, and \$2,000,000 in **CITY** (traffic impact fee proceeds) funds. Accordingly, the **SMART** Board adopted Resolution 2022-33 on October 19, 2022, to increase **SMART**’s expenditure authority for fiscal Year 2022-2023 by \$13,521,187 for the Project.

6. Pursuant to the actions described in these recitals allocating necessary funding to the Project, **CITY** and **SMART** desire to enter into a Cooperative Funding Agreement (“Agreement”) to define a framework to enable the two parties to work cooperatively in delivering the Project in an effort to obtain traffic relief as identified in the **CITY**’s traffic impact legislation fee, as amended in May, 2016, and to provide all of the other transportation and environmental and other benefits that the Project will provide to the **SMART** ridership generally, and to residents of the **CITY** and the surrounding region.

7. **SMART** has prepared a financial plan and schedule for completion of the Project (hereinafter referred to as the “Project Plan”) which is attached hereto as Exhibit A

8. By entering this Agreement, **CITY** and **SMART** are committed to contributing their respective share of the Project costs as described above and to making available a total of up to \$13,521,187 for construction of the Project.

NOW, THEREFORE, in consideration of the foregoing, **CITY** and **SMART** hereby agree as follows:

## **SECTION I**

### **SMART AGREES:**

1. Project Completion. To timely complete the Project in accordance with the estimated deadlines set forth in the Project Plan.

2. Invoices. Upon award of the construction contract, **SMART** may submit to **CITY** an invoice or invoices for up to \$2,000,000, which is the **CITY**’s share of the Project expenses as to the City for payment shall list Project expenses incurred in accordance with the Project Plan. Invoices shall be in a form reasonably acceptable to **CITY**’s Finance Director.

3. Compliance with Laws. With regard to administering and completing the Project, **SMART** shall at all times comply with all applicable laws of the United States, the State of California, the County, and with all applicable regulations promulgated by federal, state, regional,

or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

4. Records. To allow **CITY** to audit all expenditures relating to the Project funded through this Agreement. For the duration of the Project, and for five (5) years following completion of the Project, or earlier discharge of the Agreement, **SMART** shall make available to **CITY** all records relating to expenses incurred in performance of this Agreement.

5. Reporting Requirements. To provide monthly updates on the Project to **CITY** in the form attached hereto as Exhibit B.

## **SECTION II**

### **CITY AGREES:**

1. Payment to SMART. Consistent with the Project Plan, to make available **CITY** funds of up to \$2,000,000 to assist with the Project for design, permitting, and construction in accordance with the Project Plan.. **CITY** shall process **SMART** invoice within forty-five (45) days of receiving an invoice in a form reasonably acceptable to **CITY's** Finance Director.

2. Notice of Audit. To provide timely notice to **SMART** if an audit is to be conducted.

## **SECTION III**

### **IT IS MUTUALLY AGREED:**

1. Funding Needs and Availability. If additional funds beyond those identified in Exhibit A are necessary to complete the Project, **CITY** will cooperate with **SMART** to identify and secure new or increased fund commitments; however, completion of the Project remains the responsibility of **SMART**. The **CITY** funding available to the Project for expenditure is limited to approved appropriations by the **CITY** Council. If the Project costs are less than the amount listed in the Project Plan, funds will be returned to the **CITY** on a pro rata basis in proportion with the City's share of the total Project costs. **SMART** shall pay the City the City's share of the total Project savings, calculated by multiplying the total Project savings by the City's percentage share of the total Project costs listed in the Project Plan within \_\_\_\_ days of completion of the Project.

2. Term. This Agreement become effective on the Effective Date and will remain in effect until discharged as provided in Paragraph 3 or 13 of this Section III.

3. Discharge. This Agreement shall be subject to discharge as follows:

a. This Agreement may be canceled by a party for breach of any obligation, covenant or condition hereof by the other party, upon notice to the breaching party. With respect to any breach which is reasonably capable of being cured, the breaching party shall have thirty (30)

days from the date of the notice to initiate steps to cure. If the breaching party diligently pursues cure, such party shall be allowed a reasonable time to cure, not to exceed sixty (60) days from the date of the initial notice, unless a further extension is granted by the non-breaching party. Upon cancellation, the non-breaching party retains the same rights as a party exercising its right to terminate under the provisions of paragraph 3(b), except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance. If the Agreement is cancelled by **CITY** because of **SMART** breach and failure to cure in accordance with this provision, **CITY** may, at its option, demand repayment of all funds determined by audit not to have been expended in accordance with this Agreement, with interest accrued thereon as would have accrued had such funds been invested in the Local Agency Investment Fund.

b. By mutual consent of both parties, this Agreement may be terminated at any time. Upon termination by mutual consent, **SMART** shall repay to **CITY** the City's prorata share of unexpended Project funds calculated by multiplying the total Project unexpended funds by the City's percentage share of the total Project costs listed in the Project Plan.

4. Indemnity. Each Party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and costs) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party.

a. Neither **CITY** nor any Council member, officers, agents or employees thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by **SMART** under or in connection with the construction of **SMART's** Project, or any obligation, authority or jurisdiction exercised or assumed by **SMART** under this Cooperative Funding Agreement. It is understood and agreed that **SMART** shall fully defend, indemnify and hold harmless **CITY**, its Council members, officers, agents and employees from all claims, suits, or actions of every nature, kind and description brought for or on account of any injury or damage occurring by reason of anything done or omitted to be done by **SMART** under or in connection with the construction of **SMART's** Project, or any authority, jurisdiction, or obligation assumed by **SMART** under this Cooperative Funding Agreement.

b. Neither **SMART**, nor any Directors, officers, agent or employee thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by **CITY** under or in connection with any obligation, authority, jurisdiction, exercised or assumed by the **CITY** under this Cooperative Funding Agreement. It is understood and agreed that **CITY** shall fully defend, indemnify and hold harmless **SMART**, its directors, officers, agents and employees from all claims, suits, or actions of every nature, kind and description brought for or on account of injury or damage occurring by reason of anything done or omitted to be done by **CITY** under or in connection with any authority, jurisdiction or obligations assumed by **CITY** under this Cooperative Funding Agreement.

5. Notices. 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 addresses which may be specified in writing to the parties hereto:

To **CITY**: Peggy Flynn, City Manager  
City of Petaluma  
11 English Street  
Petaluma, CA 94952  
(707) 778-4345  
[citymanager@cityofpetaluma.org](mailto:citymanager@cityofpetaluma.org)

To **SMART**: Eddy Cumins, General Manager  
Sonoma-Marín Area Rail Transit District  
5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954  
(707) 794-3330  
[ECumins@SonomaMarinTrain.org](mailto:ECumins@SonomaMarinTrain.org)

6. Additional Acts and Documents. Each party agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of the Agreement.

7. Integration. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.

8. Amendment. This Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

9. Independent Agency. **SMART** renders its services under this Agreement as an independent agency. None of the **SMART's** agents or employees shall be agents or employees of the **CITY**.

10. Assignment. The Agreement may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of the other party.

11. Successors. This Agreement shall be binding upon the successor(s), assignee(s) or transferee(s) of the **CITY** or **SMART** as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Agreement other than as provided above.

12. Severability. Should any part of this Agreement be determined to be unenforceable, invalid, or beyond the authority of either party to enter into or carry out, such determination shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

13. Limitation. All obligations of **CITY** under the terms of this Agreement are expressly subject to **CITY's** continued authorization to collect and expend the **CITY's** traffic impact fee proceeds. If for any reason **CITY's** right to collect or expend proceeds from such traffic impact funds is terminated or suspended in whole or part, **CITY** shall promptly notify **SMART**, and the parties shall consult on a course of action. If, after twenty-five (25) working days, a course of action is not agreed upon by the parties, this Agreement shall be deemed terminated by mutual or joint consent.

14. Relationship of the Parties: No Intended Third-Party Beneficiaries. The Parties intend by this Agreement to establish a cooperative funding relationship, and do not intend to create a partnership, joint venture, joint enterprise, or any other business relationship. 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.

[Signatures on next page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

SMART

CITY OF PETALUMA

By: \_\_\_\_\_  
Eddy Cumins  
Executive Director

By: \_\_\_\_\_  
Peggy Flynn  
City Manager

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
Tom Lyons  
General Counsel

By: \_\_\_\_\_  
Eric Danly  
City Attorney

**COOPERATIVE FUNDING AGREEMENT BETWEEN  
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**EXHIBIT A**

**PROJECT DESCRIPTION FINANCIAL PLAN AND SCHEDULE (2023 Dollars)**

<b>Project Phase</b>	<b>Amount</b>	<b>Estimated Start Date</b>	<b>Estimated Completion Date</b>
<i>Design</i>	\$1,519,892	01/01/2023	06/30/2023
<i>Construction</i>	\$12,001,295	09/01/2023	12/31/2024
<i>Totals by Fund</i>	\$13,521,187		



**COOPERATIVE FUNDING AGREEMENT NO. SCTA21002  
BETWEEN THE CITY PETALUM  
AND  
SONOMA-MARIN RAIL TRANSIT DISTRICT**

**EXHIBIT B**

**PROJECT REPORTING LETTER**

