

**AGREEMENT FOR CONSTRUCTION AND MAINTENANCE OF SAFETY
IMPROVEMENTS RELATED TO QUIET ZONE**

THIS AGREEMENT is made and entered into this _____ day of _____, 2018, by and between the City of Novato, hereinafter referred to as "the CITY", and the Sonoma-Marín Area Rail Transit District, a California special district, hereinafter referred to as "SMART." The CITY and SMART are collectively referred to as "Parties."

RECITALS

WHEREAS, SMART owns certain railroad right-of-way assets ("ROW") for passenger service in and through the CITY over which passenger trains are and will be operated in a manner that provides safety for motorists and pedestrians, including a system of warning signals and gates at grade crossings and the use of warning horns on trains as required by the Federal Railroad Administration ("FRA"), the California Public Utilities Commission ("CPUC") and any other governmental body with regulatory authority; and

WHEREAS, the CITY established a quiet zone for grade crossings within the CITY, as provided by FRA regulations; and

WHEREAS, the FRA requires that a CITY wishing to establish a quiet zone must meet specified requirements and issue a Notice of Intent to establish a quiet zone, as provided by the FRA regulations; and

WHEREAS, the appropriate jurisdiction issued a Notice of Intent to establish a Quiet Zone within the City's jurisdictional limits. The boundaries of that Quiet Zone and the crossings it covers within the City's limits are shown on Exhibit "A" attached hereto and incorporated by this reference (the "Quiet Zone"); and

WHEREAS, the CITY understands and acknowledges that the establishment of the Quiet Zone results in the FRA directing all railroads operating within the Quiet Zone to comply with the FRA directive to cease the sounding of locomotive horns within the Quiet Zone, except under conditions provided under section 49 CFR part 222.23; and

WHEREAS, SMART has, as part of its track reconstruction, constructed certain Supplemental Safety Measures (SSMs) and Alternative Safety Measures ("ASMs"), within the CITY, as shown in Exhibits "B-1 through B-10" attached hereto and incorporated herein by this reference (the "Quiet Zone Improvements"); and

WHEREAS, the construction of the Quiet Zone Improvements have assisted the CITY in the process of establishing a Quiet Zone; and

WHEREAS, as part of the CITY's Quiet Zone establishment process a diagnostic review of each proposed Quiet Zone crossing has been conducted and City has identified those crossings as qualifying for Quiet Zone status as of the date of this Agreement; and

WHEREAS, the CITY acknowledges that additional SSMs and/or ASMs, supplementing or modifying the Quiet Zone Improvements identified in Exhibit B-1 through B-10, may be required to be installed at the CITY's rail crossings for the purpose of maintaining the qualification of the CITY's Quiet Zone under requirements of the FRA, the CPUC and/or other regulatory agencies ("Future Quiet Zone Improvements"); and

WHEREAS, while the CITY may in the future desire to install Future Quiet Zone Improvements at one or more of the CITY's rail crossings for the purpose of maintaining the CITY's Quiet Zone designation, the Parties acknowledge that this Agreement is not intended to apply to any such Future Quiet Zone Improvements, and that SMART does not, by this Agreement, agree or undertake any duty to pay or incur any cost or contribute monetarily to their design or installation, and the Parties further acknowledge that failure to install Future Quiet Zone Improvements may impact the FRA's quiet zone directive; and

WHEREAS, the Parties recognize CITY and North Coast Railroad Authority (NCRA) entered into a November 2008 Consent Decree wherein the CITY may make demands on NCRA for CITY's costs and expenses incurred hereunder; and

WHEREAS, the Parties wish to memorialize their agreement as to their respective obligations with respect to the maintenance and repair of the Quiet Zone Improvements;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, it is agreed as follows:

AGREEMENT

SMART Responsibilities.

SMART shall:

1. Participate as reasonably necessary in diagnostic team evaluation meetings collectively arranged by the CITY and SMART per FRA and/or CPUC requirements from time to time.
2. Review preliminary and final reports, studies, and designs submitted by the CITY in relation to the establishment and continuation of the Quiet Zone.
3. Cooperate and provide technical assistance to the CITY in its efforts to establish, continue and/or re-establish a Quiet Zone.
4. After mailing the Notice of Establishment of a Quiet Zone by the CITY, as required by the FRA or the CPUC, and upon the Quiet Zone establishment date specified in the Notice of

Establishment, SMART as directed by the FRA, has and shall continue to cease routine use of the locomotive horn at crossings identified by the CITY pursuant to 49 CFR Part 222.45, as amended from time to time, or any other applicable law.

5. SMART's rights and duties regarding the sounding of the locomotive horns shall be as set forth in 49 CFR Part 222.23, as amended from time to time, and by other applicable law that governs when the locomotive Engineer is required or has discretion to sound the locomotive horn; and nothing contained in this Agreement shall be construed to alter such rights and duties.
6. Maintain, repair, and replace the Quiet Zone Improvements identified as "SMART ROW-SMART MAINTAINED" on Exhibits B-1 through B-10, at SMART's expense, such that they remain in proper operating condition and fully compliant with applicable laws and regulations.
7. [Omitted].
8. Except for urgent or emergency circumstances, for work performed within CITY's ROW, SMART shall obtain the applicable encroachment permit approvals from the CITY and any other regulatory agencies. CITY shall charge no fees for CITY permits issued pursuant to this Agreement.
9. Pursuant to CPUC General Order 72B, at all public crossings within the CITY, SMART shall maintain and repair the crossing areas between lines two (2) feet outside of the rails of each track, or, where two or more tracks are involved, the area between the tracks where the distance between the center lines of tracks is fifteen (15) feet or less measured at the center line of the road or highway normal to the tracks.
10. Notify the CITY if SMART becomes aware of any regulatory changes that affect the CITY's Quiet Zone.
11. Notify the CITY if SMART becomes aware of any modifications to the existing infrastructure near the Quiet Zone Improvements, regardless of whether the changes affect these facilities, to allow the CITY to anticipate impacts to the CITY's roadways.

CITY Responsibilities.

CITY shall:

12. Diligently review and administer any encroachment permit application from SMART in order to allow SMART to enter into CITY'S ROW as needed for the purpose of performing any work required pursuant to this Agreement.
13. When seeking to establish or continue a Quiet Zone within its jurisdiction, CITY or the

agency designated as its lead agency, shall act as the lead agency and comply with the requirements set forth in 49 CFR Part 222 applicable to public authorities (as that term is defined in 49 CFR Part 222). As the lead agency, the CITY, or its designee, shall be responsible for securing any additional funding, permitting, environmental analysis, and approvals necessary to establish, continue or re-establish the Quiet Zone, and for producing studies and documentation as may be required by the regulations or administrative policies and procedures of the FRA and/or the CPUC, or other applicable policies or procedures.

14. Conduct, as part of its initial establishment of the Quiet Zone, an initial comprehensive diagnostic review (which the parties acknowledge has been performed and need not be performed again by reason of this Agreement) and thereafter shall perform periodic reviews on a schedule determined by the FRA, the CPUC, and any other governmental body with regulatory authority. These reviews will be conducted consistent with FRA and CPUC orders and regulations and will consider any changes to the use or crossings, together with the already constructed Quiet Zone Improvements and any other circumstances that may or will affect the continued qualification of the CITY crossings (shown in Exhibit "A") as a Quiet Zone.
15. Maintain, repair, and replace the Quiet Zone Improvements identified as "CITY ROW-CITY MAINTAINED" on Exhibits B-1 through B-10, at CITY's expense, such that they remain in proper operating condition and fully compliant with applicable laws and regulations.
16. [Omitted]
17. Pursuant to CPUC General Order 72B, the CITY shall maintain the public roadway improvements, including raised medians, roadways, sidewalks, and paths of travel, outside of the crossing area described in Paragraph 9 above, at all crossings within the CITY.
18. Obtain, and at all times maintain in full force and effect, at its sole cost and expense, Comprehensive General Liability Insurance, or, if self-insured shall maintain excess liability coverage, and shall remove any exclusion relating to performance of operations within the vicinity of any railroad, bridge, trestle, track, roadbed, tunnel, underpass, or crossing from its general liability coverage for both the self-insured and excess policies.
19. Indemnify, defend and hold harmless SMART and/or any entity providing dispatch or passenger rail service or using SMART's ROW, from and against any and all claims, suits, losses, damages, costs, and expenses (including reasonable attorneys' fees and other defense costs), for injury or death and for loss and damage to property arising from the negligent acts or omissions or willful misconduct on the part of the CITY, its officers, agents, contractors, or employees in the construction, operation, repair or maintenance of any improvements shown as CITY ROW-CITY MAINTAINED on Exhibits B-1 through B-10, , and/or the performance of work pursuant to Paragraphs 15 and 17 above; and as to such indemnification obligation, the CITY's insurance shall be primary insurance to SMART.

20. Establish a Quiet Zone page or link on the CITY website to provide more information regarding the Quiet Zone (i.e. www.cityofnovato.org/quietzone).
21. Collaborate and cooperate with SMART to develop a community education and awareness program in order to educate the public regarding additional safety measures and what to expect once the Quiet Zone is established.
22. Notwithstanding anything to the contrary stated herein, this Agreement shall not, in any way, affect the rights and obligations of CITY, North Coast Railroad Authority (NCRA) or Northwestern Pacific Railroad Company (NWPCo) as bound by the Consent Decree filed in the case entitled *City of Novato v. North Coast Railroad Authority et al.*, Marin County Superior Court Case No. CV 074645, on November 3, 2008, and as amended.”

PARTIES:

23. Should the FRA, the CPUC or any other governmental body with regulatory authority over SMART issue any regulation, rule, ordinance, or other law that would require an upgrade or the installation of Future Quiet Zone Improvements in order to maintain or re-establish the City’s quiet zone, the Parties acknowledge that SMART shall not be responsible for any cost for construction, reconstruction or upgrades of the improvements for the purpose of maintaining the CITY’s Quiet Zone designation.
24. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (1) placed in the United States mail, certified, return receipt requested, or (2) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified above or below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days advance written notice of such change in address.

If to SMART:

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
5401 Old Redwood Highway, Ste. 200
Petaluma, CA 94954
Attention: Chief Engineer

If to CITY:

CITY OF NOVATO
Attn: Public Works Director
922 Machin Avenue
Novato, CA 94945

With copy to:

CITY OF NOVATO
Attn: City Manager
922 Machin Avenue
Novato, CA 94945

25. All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the laws of the State of California. Venue shall be the County of Marin.
26. To the maximum extent possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, or held to be invalid under applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder or any other provision of this Agreement.
27. The Parties hereby acknowledge and agree that (a) each party has actively participated in the negotiation and drafting of this Agreement, (b) each such party has consulted or has had the opportunity to consult with their own independent counsel relative to matters contemplated under this Agreement, (c) each party and party's counsel have reviewed the Agreement, and (d) any rule of construction to the effect that ambiguities are to be resolved against the drafting party(ies) shall not apply in the interpretation of this Agreement, or any portions hereof or any amendments hereto.
28. This Agreement is the full and complete agreement between SMART and the CITY with respect to all matters relating to this Agreement, and supersedes any and all other agreements between the parties hereto relating to rights, responsibilities and obligations of the Parties as described herein. However, nothing herein is intended to terminate any surviving obligation of the CITY or SMART or the parties' obligations to defend and hold one another harmless in any prior written agreement between the parties.
29. Persons who are not parties to this Agreement shall have no rights or obligations as a result of this Agreement. This Agreement is between the parties hereto and no other person or entity is an express, intended, or implied third party beneficiary hereof.
30. Waiver. Any party's failure to enforce or exercise its rights with respect to any provision hereof shall not be construed as a waiver of such rights or of such provision.
31. Dispute Resolution. In the event of a dispute between the parties arising from this Agreement, the parties agree to attempt resolution informally, and then through non-binding mediation, prior to filing any court action to enforce this Agreement.

32. Recitals. The recitals are incorporated by this reference.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day, month and year first above written.

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

By: _____
Farhad Mansourian, General Manager

APPROVED AS TO FORM:

By: _____
Thomas F. Lyons, District Counsel

CITY OF NOVATO

By: _____
Regan M. Candelario, City Manager

ATTEST:

APPROVED AS TO FORM:

By: _____
Claudia Laughter, City Clerk

By: _____
Jeffrey Walter, City Attorney