



**DATE:** March 22, 2018

**TO:** Transportation Authority of Marin Board of Commissioners

**FROM:** Dianne Steinhauser, Executive Director  
Bill Whitney, Principal Project Delivery Manager

**SUBJECT:** North-South Greenway Gap Closure Project – Reaffirm Board Action that Requests the Metropolitan Transportation Commission (MTC) Allocate Funding to SMART via TAM and other Funding Related Actions- (Action) - Agenda Item No.6b

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**RECOMMENDATION:**

Staff is recommending the Board approve the following actions:

- 1) Reaffirm a previous action to request MTC allocate \$850,000 in Regional Measure 2 toll bridge funds for use by TAM to be directed to SMART for acquisition of land rights in preparation for a future project. Also confirm request to MTC for \$500,000 in funds to complete design, right, of way activities, and permits for the Northern Segment of the North/ South Greenway in Larkspur, and request MTC to re-direct \$2.9 mil in RM2 funds for the Multi-Use Pathway in San Rafael.
- 2) Incorporate additional requirement for both TAM and SMART to indemnify MTC with respect to early land acquisition, under an agreement by SMART and TAM that includes potential return of funding to MTC.
- 3) Adopt an MTC condition stating that any savings from the North-South Greenway project are to be applied to the permanent (not interim) relocation/facility for the San Rafael Transit Center and
- 4) Continue to work closely with funding partners the City of San Rafael and the County of Marin to close the \$500,000 funding gap in the Multi-Use Path project. This gap is in addition to the \$2.95M Regional Measure 2 mentioned below.
- 5) Reaffirm the development and approval by TAM’s Executive Director an agreement with City of San Rafael to pass-through RM2 funds granted to TAM by MTC for the Multi-Use Pathway project in San Rafael.

Note TAM is proceeding with an MOU between TAM and SMART regarding the projects. This has been previously authorized by the TAM Board. The SMART Board will consider approval of the MOU at its April 21st meeting.

The Programming and Projects Executive Committee considered this item at the March 12th meeting and recommended it be forwarded to the full Board for approval.

**BACKGROUND:**

On Monday February 12th, 2018, at a special TAM Board meeting, the Board took action to request MTC move \$2.95M Regional Measure 2 toll funds currently programmed to the Southern Segment of the North-South Greenway in Corte Madera/ Larkspur to another Greenway Segment- the 2<sup>nd</sup> to Anderson Multi-use Pathway in San Rafael. This will enable the urgent project in San Rafael to proceed simultaneously with the SMART rail construction. The action was taken with the condition that the Southern Segment be a priority for any grant opportunities to backfill the funding shortfall.

The TAM Board added a condition to their action that staff return to the Board if any conditions must be adopted due to SMART concerns about the action.

In a separate action, the Board at its December 1, 2016 meeting approved an allocation request to MTC in the amount of \$850,000 for right-of-way activities associated with the Southern Segment of the North-South Greenway Gap Closure Project (Resolution Attached). The Board also approved a resolution authorizing the funds be directed to SMART to address right-of-way impacts including conditions of the allocation, and acknowledged the potential that the multi-use path (MUP) may be removed should SMART extend passenger rail service south from the Larkspur Station (Resolution Attached). A total of \$730,000 has been identified as “lost lease revenue” and \$120,000 has been identified to compensate SMART for future removal of the path.

**DISCUSSION/ANALYSIS:**

Staff participated in a meeting held Wednesday February 14<sup>th</sup> amongst executives from the City of San Rafael, TAM, Golden Gate Bridge Highway and Transportation District, SMART, and MTC. Agreement was reached to transfer RM2 funds to the San Rafael MUP with the understanding that TAM will adopt conditions stated below enabling MTC to proceed with actions in March to- assign funds needed to proceed with the Northern Segment of the North South Greenway in Larkspur ( \$500,000) , dedicate RM2 funds to comply with the City of San Rafael’s and SMART’s construction schedule ( \$2.95 mil), and allocate funds to SMART for early acquisition of right of way ( \$850,000).

As part of the discussion, MTC requested that TAM reaffirm the previous Board action to direct funds to SMART as compensation for lost lease revenue, and future removal of the path should it be necessary. SMART has informed TAM it has terminated lease agreements necessary to clear the right-of-way allowing the project to proceed as scheduled.

**Conditions Agreed to by Partners**

MTC has also requested TAM acknowledge and agree to a condition it placed on their previous funding action associated with the Greenway Project. The MTC condition states that any savings from the North-South Greenway project are to be applied to the permanent (not interim) relocation/facility for the San Rafael Transit Center. It should be noted that TAM staff is not confident there will be savings realized given the current scope of the project that includes developing a multi-use path from the Central Marin Ferry Connector Bridge over Corte Madera Creek, down Old Redwood Highway, and along the railroad alignment connecting the paths at Wornum Drive. However, if savings are realized TAM is expected to meet this condition from MTC.

The MTC Programming and Allocation Committee considered the allocation of the \$850,000 at its March 14<sup>th</sup> meeting and recommended approval to the full Commission. This recommendation included a requirement for TAM and SMART to indemnify MTC with respect to early land acquisition. MTC staff recommended the following commitment be included in the MOU between SMART and TAM:

*SMART AND TAM indemnify and hold harmless MTC, its Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any CEQA action, act or failure to act of SMART or TAM their officers, employees or agents, or subcontractors or any of them in connection with their performance of services under this allocation of RM2 funds. In the event any CEQA action stops the project, SMART and TAM agree to return such allocated funds to MTC for alternative allocation that shall be with the discretion of MTC.*

With approval from the Executive Committee and the Board, staff will incorporate the above paragraph into the MOU with SMART. SMART leadership has agreed to this condition.

Staff has coordinated this funding action with SMART staff. SMART has researched CEQA requirements and provided the following as clarification related to this action.

*These funds are a reimbursement for maintenance and preservation of the property in its current status and for loss of current and future revenue and are not considered a "project" under CEQA (see 15378(b)(5)) as the activities will not result in direct or indirect physical changes in the property or environment and any proposed future project would be subject to future CEQA action.*

**Outstanding Issue**

The San Rafael MUP currently is projected to have a funding shortfall of approximately \$500,000. The City of San Rafael and the County of Marin are considering how best to close the gap in funds. Note TAM has enabled \$3.7 million to be programmed and allocated to the San Rafael MUP to date. This project is regionally significant and further advances TAM's goals to promote non-motorized travel in this corridor.

**FISCAL CONSIDERATION:**

TAM has previously submitted a request for RM2 funding in the amount of 850,000 from MTC. The MTC Programming and Allocations Committee approved the funding at its March 7<sup>th</sup> meeting and MTC is expected to finalize this allocation at the March 28<sup>th</sup> Meeting.

**NEXT STEPS:**

Execute Agreement between TAM and SMART in accordance with the Resolution approved on December 1, 2016 and includes the above stated indemnity clause.

**ATTACHMENTS:**

- (1) Staff Report from December 1, 2016
- (2) Previously Approved Allocation Request Resolution for the \$850,000 Right-of-Way Activities
- (3) Previously Approved Resolution Stating the Conditions Directing funding to SMART

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**DATE:** December 1, 2016

**TO:** Transportation Authority of Marin Board of Commissioners

**FROM:** Dianne Steinhauser, Executive Director  
Bill Whitney, Principal Project Delivery Manager

**SUBJECT:** North-South Greenway Gap Closure Project – Approve RM2 Funding Request and Authority to Distribute to SMART for Right-of-Way Impacts (Action) - Agenda Item No.7e

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**RECOMMENDATION:**

The Board (1) approve a Resolution authorizing the Executive Director to submit a request to the Metropolitan Transportation Commission to allocate Regional Measure 2 toll bridge funds for right-of-way activities associated with the southern segment of the North-South Greenway Gap Closure Project; (2) approve a resolution authorizing the funds be directed to SMART to address right-of-way impacts including conditions of the allocation, and (3) authorize the Chair send a letter to MTC to acknowledge the potential the path may be removed should SMART extend passenger rail service south from the Larkspur Station.

This item was continued from the October 27th Board Meeting. No action was taken as further discussion was necessary with SMART to consider Board member comments.

Following the Board discussion staff revised the Resolution to incorporate comments made by the Commissioners. These revisions were transmitted to SMART. Specifically they were as follows:

- Revise the attachments to substitute the phrase “remove the path” with “remove or relocate the path”.
- Include a provision that will prorate the lost lease amount to SMART based on the duration should the duration be less than twenty-five (25) years.

TAM Commissioners and staff have met with SMART officials to discuss the comments stated above. SMART officials are reluctant to include the phrase “remove or relocate the path”. Prior to the Executive Committee meeting on November 14<sup>th</sup> the SMART General Manager reaffirmed this position and stated that he and the SMART Board would only agree to the original revised resolution delivered to the TAM Board at their October 28<sup>th</sup> Board meeting. This position was discussed by the Executive Committee members on November 14<sup>th</sup> and after considerable debate concluded it is in the best interest of the project to accept SMART’s position; however they acknowledged inclusion of the provision to “relocate” is preferred, but is not an option because the right-of-way is controlled by SMART and they do not want to be obligated for any future action, at this time.

TAM staff consulted with County Counsel who confirmed SMART is effectively issuing a license agreement which is revocable, but provides both parties the flexibility in the future to consider alternative alignments.

TAM staff has consulted with MTC staff on the remaining comment. MTC has stated in the case of other projects in the region, and funded under the RM2 program, a prorated clause to adjust funding for a similar condition is implied and not necessary.

## **BACKGROUND:**

On June 26, 2014 the Board approved an allocation request to MTC to initiate environmental and preliminary engineering on the North-South Greenway Gap Closure Project. During earlier discussions the also Board considered an implementation strategy that allowed a portion of the project to be accelerated by splitting the project into a northern segment and a southern segment.

### Northern Segment Update

Project development on the northern segment is progressing well. A CEQA compliant environmental document has been approved by Caltrans and we are now in the final design phase. This phase of the project will “close the gap” by creating an accessible multi-use path connecting the new bridge over Sir Francis Drake Blvd with the Greenbrae Pedestrian Overcrossing to the south. Widening the historically narrow Caltrans northbound highway 101 off-ramp sidewalk/path structure over Corte Madera Creek is a signature element of the project. The final design is scheduled to be completed in approximately one year from now.

### Southern Segment

The Southern Segment project is being administered by the County of Marin on behalf of TAM. It was recognized early on that this phase has a number of issues that have not been studied to date and would require a more in-depth analysis as compared to the northern segment which has had the benefit of previous engineering efforts. This phase of the project will “close the gap” by creating an accessible multi-use path connecting the northern segment (at the Corte Madera Creek crossing touchdown) with the existing paths at the intersection of Old Redwood Highway and Wornum Drive by way of the SMART right-of-way (R/W) out on the levee. A pass-through corridor from Redwood Highway out to the levee will also be included.

As a condition of the original MTC allocation of funding, a boundary survey and title search of the SMART right-of-way (R/W) was completed in the area south of Corte Madera Creek. This information is being used by County Engineers to establish an alignment that best fits the site conditions and minimizes the environmental and potential land use impacts.

Note the Southern Segment project has been on hold for almost a year pending authority from SMART for temporary use of their right of way.

## **DISCUSSION/ANALYSIS:**

### Use of SMART R/W for a Multi-Use Path

SMART has in good faith considered the use of a portion of their R/W for the purpose of constructing, maintaining, and operating a publically accessible multi-use path within the southern segment. They have stated that the use of the R/W must be at no cost to SMART as a condition of use. It is noted that the SMART R/W extends south from the Southern terminus of the Initial Operating Segment at the Larkspur Station and continues over Corte Madera Creek down to the area by the Village Shopping Mall in Corte Madera. Extension of the passenger rail beyond the Larkspur Station remains a possibility in the future.

### Preliminary Path Alignment in SMART R/W

The two key constraints associated with selecting a path alignment are the proximity of the salt marsh and the existing land use within the R/W. SMART has historically granted an opportunity for private parties to lease portions of the R/W. The Engineers assessed a number of design variations that evaluated the best fit of a path alignment. It was concluded that placing the majority of the path on the footprint of the existing railroad tracks would minimize the impacts to current lease holders while avoiding the salt marsh habitat. This “best fit alignment” will have unavoidable impacts to existing lease holders.

### Lost Lease Revenue to SMART

The County Real Estate & Engineering Divisions have worked with SMART to obtain lease agreement information and used the boundary and title information to establish the lease space boundaries. By comparing the preliminary alignment with the location of the leased space boundaries the impact to each lease holder was determined. In order to proceed with the project SMART will need to re-negotiate or terminate a number of lease agreements.

The County has provided the findings to SMART and they have mutually agreed the lost lease revenue value to SMART over a 25 year period has been established to be \$730,000.

### Incompatible use of SMART R/W

As stated above the evaluation of the potential alignments examined a number of locations to provide the best fit given the constraints. Unlike the previous projects to the north, namely the Cal Park Tunnel Path or the Central Marin Ferry Connection Path, the conditions for the southern segment do not allow a path alignment to be horizontally separated from the current or future railroad track alignment without significant impacts to either the natural environment or the existing land use conditions. As a result of the site constraints the best fit was generally determined to be the current foot print of the railroad tracks.

Given that SMART considers extension of passenger rail service to be a viable option in the future the compatibility of both a multi-use path and a rail has been very difficult to achieve. It is recognized that in the future when, and if, the passenger rail service is extended south of Corte Madera Creek the path will be required to be removed, with no commitment to replacing it. The County has assessed the cost of removal at a future date to be \$120,000.

### Conformation of Public Support

TAM and the County have discussed the conclusion of our studies with MTC staff to make the case that the public benefit of proceeding with constructing the path with an understanding the path may be removed in the future is a risk that is considered to be a reasonable risk given the challenges and timeframe of extending passenger rail south.

MTC is supportive of our conclusions and is willing to recommend funding the project; however, they have asked TAM to provide a letter that clearly confirms our understanding the path will be removed at the time rail service is extended south of the Larkspur Station. Staff has drafted a letter for the Board to consider, and if supported, will be conveyed to MTC. Similarly, MTC has asked our local bicycle coalition to consider the conclusion of our analysis that the dual use of the R/W is incompatible and that in the future the path may be required to be removed. TAM has discussed this issue with the coalition and requested their consideration to send a similar letter to MTC.

**FISCAL CONSIDERATION:**

TAM is requesting the MTC allocate a total of \$850,000 of RM2 funding to compensate SMART for their long term lost lease revenue and the future cost to remove the path at the time rail service is extended south. The attached Resolution and updated Initial Project Report are attached for consideration by the Board, including required letter to SMART on removal of the path. If approved, the Executive Director will make the request to MTC.

Note that the Southern Segment project is still in the early planning stages and could run into obstacles in the future that prevent the project from proceeding. Note also that this \$850,000 constitutes full and complete payment to SMART for the usage of their right of way. Both of these conditions are so noted in the agreement with SMART to receive the funds from MTC through TAM.

An analysis of the overall project funding plan has been completed. Our overall project funding plan remains valid and the estimated cost of the project including capital and capital support costs are within the available funds as described in the attached Initial Project Report Update.

**NEXT STEPS:**

Submit the Initial Report Update to MTC for consideration of a funding allocation and work with SMART to enter into a funding agreement per the conditions stated in the Resolution.

Continue to work with the County of Marin to restart the environmental and preliminary engineering phase.

**ATTACHMENTS:**

1. Resolution to distribute funds to SMART with conditions
2. Letter MTC
3. Initial Project Report – Updated October 27, 2016



**TAM RESOLUTION NO. 2016-16**

**RM2 Implementing Agency Resolution of Project Compliance  
Allocation Request: Project No. 11.5**

**Project Title: North South Greenway Gap Closure Project**

Whereas, SB 916 (Chapter 715, Statutes 2004), commonly referred as Regional Measure 2, identified projects eligible to receive funding under the Regional Traffic Relief Plan; and

Whereas, the Metropolitan Transportation Commission (MTC) is responsible for funding projects eligible for Regional Measure 2 funds, pursuant to Streets and Highways Code Section 30914(c) and (d); and

Whereas, MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for Regional Measure 2 funding; and

Whereas, allocations to MTC must be submitted consistent with procedures and conditions as outlined in Regional Measure 2 Policy and Procedures; and

Whereas, Transportation Authority of Marin is an eligible sponsor of transportation project(s) in Regional Measure 2, Regional Traffic Relief Plan funds; and

Whereas, the North South Greenway Gap Closure Project eligible for consideration in the Regional Traffic Relief Plan of Regional Measure 2, as identified in California Streets and Highways Code Section 30914(c) or (d); and

Whereas, the Regional Measure 2 allocation request, attached hereto in the Initial Project Report and incorporated herein as though set forth at length, lists the project, purpose, schedule, budget, expenditure and cash flow plan for which Transportation Authority of Marin is requesting that MTC allocate Regional Measure 2 funds; and

Resolved, that on March 2, 2004, the Marin County Board of Supervisors created the Transportation Authority of Marin by Resolution No. 2004-21, pursuant to Section 180050 of the California Public Utilities Code ("PUC"). As required by California PUC Section 180051(a) and California Government Code Section 65089(a), a majority of City and Town Councils of Marin County, representing a majority of the incorporated population of Marin, have concurred on the membership of the Transportation Authority of Marin and designated the Transportation Authority of Marin as the Congestion Management Agency for Marin County.

Resolved, that Transportation Authority of Marin, and its agents shall comply with the provisions of the Metropolitan Transportation Commission's Regional Measure 2 Policy Guidance (MTC Resolution No. 3636); and be it further

Resolved, that Transportation Authority of Marin certifies that the project is consistent with the Regional Transportation Plan (RTP).

Resolved, that the year of funding for any design, right-of-way and/or construction phases has taken into consideration the time necessary to obtain environmental clearance and permitting approval for the project.

Resolved, that the Regional Measure 2 phase or segment is fully funded, and results in an operable and useable segment.

Resolved, that Transportation Authority of Marin approves the Updated Initial Project Report, attached to this resolution; and be it further

Resolved, that Transportation Authority of Marin approves the cash flow plan, attached to this resolution; and be it further

Resolved, that Transportation Authority of Marin has reviewed the project needs and has adequate staffing resources to deliver and complete the project within the schedule set forth in the updated Initial Project Report, attached to this resolution; and be it further

Resolved, that Transportation Authority of Marin is an eligible sponsor of projects in the Regional Measure 2 Regional Traffic Relief Plan, Capital Program, in accordance with California Streets and Highways Code 30914(c); and be it further

Resolved, that Transportation Authority of Marin is authorized to submit an application for Regional Measure 2 funds for the North South Greenway Gap Closure Project in accordance with California Streets and Highways Code 30914(c); and be it further

Resolved, that Transportation Authority of Marin certifies that the projects and purposes for which RM2 funds are being requested is in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), and with the State Environmental Impact Report Guidelines (14 California Code of Regulations Section 15000 et seq.) and if relevant the National Environmental Policy Act (NEPA), 42 USC Section 4-1 et. Seq. and the applicable regulations thereunder; and be it further

Resolved, that there is no legal impediment to Transportation Authority of Marin making allocation requests for Regional Measure 2 funds; and be it further

Resolved, that there is no pending or threatened litigation which might in any way adversely affect the proposed project, or the ability of Transportation Authority of Marin to deliver such project; and be it further

Resolved, that Transportation Authority of Marin indemnifies and holds harmless MTC, its Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of Transportation Authority of Marin, its officers, employees or agents, or subcontractors or any of them in connection with its performance of services under this allocation of RM2 funds. In addition to any other remedy authorized by law, so much of the funding due under this allocation of RM2 funds as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages, and be it further

Resolved, that Transportation Authority of Marin shall, if any revenues or profits from any non-governmental use of property (or project) that those revenues or profits shall be used exclusively for the public transportation services for which the project was initially approved, either for capital improvements or maintenance and operational costs, otherwise the

Metropolitan Transportation Commission is entitled to a proportionate share equal to MTC's percentage participation in the projects(s); and be it further

Resolved, that Transportation Authority of Marin shall post on both ends of the construction site(s) at least two signs visible to the public stating that the Project is funded with Regional Measure 2 Toll Revenues; and be it further

Resolved, that Transportation Authority of Marin authorizes its Executive Director to execute and submit an allocation request for work projected to be in FY 16/17, to fund the Right-Of-Way phase for the North South Greenway Gap Closure Project, in the amount of \$850,000 for the purposes and amounts included in the Initial Project Report attached to this resolution; and be it further

Resolved that the Executive Director is hereby delegated the authority to make non-substantive changes or minor amendments to the IPR as deemed appropriate.

Resolved, that a copy of this resolution shall be transmitted to MTC in conjunction with the filing of the Transportation Authority of Marin application referenced herein.

PASSED AND ADOPTED at a regular meeting of the Transportation Authority of Marin held on the 1st day of December 2016, by the following vote:

AYES: Commissioners: Arnold, Campbell, Connolly, Fredericks, Furst, Hillmer, Kinsey, Kuhl, Lucan, McInerney, Moulton-Peters, Phillips, Reed, Rice

NOES: Commissioners:

ABSENT: Commissioners: Sears, Theodores



Stephanie Moulton-Peters, Chair  
Transportation Authority of Marin

ATTEST:



Dianne Steinhauser  
Executive Director

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**TAM RESOLUTION NO. 2016-17**

**A RESOLUTION OF THE TRANSPORTATION AUTHORITY OF MARIN (TAM) FOR THE ALLOCATION OF \$850,000 OF REGIONAL MEASURE 2 (RM2) FUNDS FOR THE NORTH SOUTH GREENWAY GAP CLOSURE PROJECT TO THE SONOMA MARIN AREA RAIL TRANSIT DISTRICT (SMART)**

**WHEREAS**, The Metropolitan Transportation Commission (MTC) re-directed RM2 funding from the Highway 101 Greenbrae Corridor Improvements (Project No. 11.1) to Bicycle and Pedestrian Improvements referred to as the North/South Greenway Gap Closure Project (Project No. 11.5); and

**WHEREAS**, TAM approved an implementation plan that splits the project into a northern segment and a southern segment in an effort to accelerate project delivery of portions of the project; and

**WHEREAS**, MTC has allocated \$2.6M of RM2 funds for environmental and preliminary engineering (both northern and southern segment), and allocated \$1.5M for design of the northern segment; and

**WHEREAS**, As a condition of the allocation MTC required and project partners supported a property title search and boundary survey of SMART right-of-way (R/W) which has been used to define project parameters and constraints within the southern segment; and

**WHEREAS**, SMART has in good faith considered the use of a portion of their R/W for the purpose of constructing, maintaining, and operating a publically accessible multi-use path within the southern segment; and

**WHEREAS**, A preliminary path alignment has been established that generally follows the existing railroad tracks and is based in part from the results of the boundary and title search along with the known environmental constraints; and

**WHEREAS**, SMART has historically granted an opportunity for private parties to lease portions of the R/W and under the proposed alignment some of the leases will be impacted to some degree; and

**WHEREAS**, SMART and the County have assessed the financial loss of renegotiating or terminating existing land use leases over a twenty-five year period and determined the financial loss to be \$730,000; and

**WHEREAS**, SMART possesses the R/W that will allow a future extension of passenger rail service from the Larkspur Station south to the area adjacent to the Village Shopping Center in Corte Madera; and

**WHEREAS**, SMART will require the path be removed from the R/W at the time the southern rail extension is implemented. SMART and the County have determined the cost to remove the path at a future date to be \$120,000; and

**WHEREAS**, TAM has submitted a request to MTC for an allocation of RM 2 funds to resolve the SMART R/W issues in the amount of \$850,000 to compensate SMART for future loss of lease revenue and for the future cost of removing the multi-use path from SMART R/W.

**RESOLVED**, That the Transportation Authority of Marin approves the allocations of \$850,000 to SMART to resolve the R/W issues within SMART R/W provided that SMART agrees to enter into a written funding agreement with TAM confirming the following commitments:

1. SMART agrees to authorize the use of a portion of their R/W for the purpose of constructing a multi-use path generally following the footprint of the existing railroad track within the southern segment.
2. SMART agrees to enter into a future Memorandum of Understanding (MOU) authorizing the use of a portion of their R/W for the purpose of maintaining and operating a multi-use path within the southern segment. The MOU must be substantially completed with all parties' conceptual agreement prior to proceeding into final design. Formal Board/Council actions may take place as the design progresses. TAM understands the use of the SMART R/W to operate and maintain the path will be at no cost to SMART.
3. SMART agrees the compensation for future lost lease revenue in the amount of \$730,000 is based on estimated impacts of current likely affected lease areas.
4. TAM recognizes and supports SMART's right to remove the path at a future date when SMART determines this R/W is needed for their operations. SMART agrees the compensation to remove the path in the future in the amount of \$120,000 shall be final and no future demand for additional payment will be made.
5. SMART agrees to submit an invoice for payment to TAM for R/W impacts and future path removal costs. The transfer of funds shall occur at the time SMART notifies lessees to vacate SMART R/W as mutually agreed by parties.

PASSED AND ADOPTED at a regular meeting of the Transportation Authority of Marin held on the 1<sup>st</sup> day of December 2016, by the following vote:

AYES: Commissioners: Arnold, Campbell, Connolly, Fredericks, Furst,  
Hillmer, Kinsey, Kuhl, Lucan, McInerney, Moulton-Peters,  
Phillips, Reed, Rice

NOES: Commissioners:

ABSENT: Commissioners: Sears, Theodores



Stephanie Moulton-Peters, Chair  
Transportation Authority of Marin

ATTEST:



Dianne Steinhauser  
Executive Director