

**Letter of Intent by and Between Sonoma-Marin Area Rail Transit District,
North Coast Railroad Authority and Northwestern Pacific Company**

This Letter of Intent is entered into on this day of February _____, 2017, by and between Sonoma-Marin Area Rail Transit District (“SMART”), North Coast Railroad Authority (“NCRA”), and the Northwestern Pacific Company (“NWPCo.”) (collectively referred to herein as the “Parties”).

RECITALS

WHEREAS, on June 22, 2011, SMART and NCRA entered into an Operating & Coordination Agreement for the Northwestern Pacific Line (hereinafter the “2011 Operating Agreement”);

WHEREAS, NWPCo. is NCRA’s exclusive freight operator, and any obligations regarding freight operations mentioned herein are the obligations of both NCRA and NWPCo.;

WHEREAS, SMART, NCRA and NWPCo. desire to clarify, modify, and amend certain provisions of the 2011 Operating Agreement;

WHEREAS, the Parties desire to resolve issues related to the Petaluma Depo. Station site at 315 D Street in Petaluma;

WHEREAS, on October 4, 2016, NCRA and NWPCo. filed a petition against SMART with the Surface Transportation Board, Docket No. FD 36077, consolidated with NOR 42148, (hereinafter referred to as the “STB action”);

WHEREAS, the Parties now wish to resolve their differences;

WHEREAS, it is the intent of the Parties that SMART shall prepare an Amendment to the 2011 Operating Agreement reflecting the terms outlined herein, and the Parties shall be bound by the terms herein pending execution of the Amendment;

WHEREAS, it is the intent of the Parties that the STB action will be dismissed.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

TERMS

I. Amendments to the 2011 Operating Agreement.

Except as otherwise provided for herein, all terms and conditions contained in the 2011 Operating Agreement shall remain in full force and effect. The Parties agree in principle to amend the 2011 Operating Agreement as follows:

A. Transport and storage of Liquefied Petroleum Gas "LPG".

1. NCRA/NWPCo. may store LPG loaded tank cars on the Lombard Segment and on two 6,000 feet auxiliary tracks located at the Schellville yard in accordance with applicable federal, state, and local law. In the event said tracks are replaced or reconstructed at NCRA/NWPCo.'s cost, SMART shall review and approve of such replacement or reconstruction in accordance with Article VI of the 2011 Operating Agreement. Approval shall not be unreasonably withheld.
2. NCRA shall assume the risk of and agrees to fully indemnify, defend and hold SMART harmless with respect to any claim, damage or liability arising out of acts or omissions (whether negligent or not) of NCRA or any operator, agent, contractor, lessee or licensee of NCRA occurring as a result of transporting hazardous materials on the Lombard/Healdsburg track(s) and/or the storing LPG on the Schellville yard tracks.
3. Prior to storage of any LPG at the Schellville yard, the Parties agree that (1) NCRA/NWPCo. shall implement any and all applicable health and public safety measures at their sole cost and expense, including but not limited to, an emergency response plan, safety and security procedures and safety protocols; and (2) NCRA and SMART will identify local fire and/or first responders, and NCRA/NWPCo. shall consult with them on public health and safety issues related to storage of LPG at the Schellville yard on an ongoing basis.
4. As a condition of storage of LPG at the Schellville yard, and to ensure the health and safety of the community, NCRA/NWPCo. agree that when transporting Hazardous Materials on the Healdsburg or Lombard segments, they shall disclose and provide to appropriate first responders and to SMART dispatch a copy of the manifest identifying the nature and type of Hazardous Material, identity and quantity of cargo, destination of railcars, total number of railcars, total tonnage and length of train.

5. NCRA/ NWPCo. agree they will not store or hold LPG or any other hazardous material (including temporarily storing awaiting final destination instructions, pending resumption or “forwarding orders”) on any track, spur, siding, auxiliary or industrial track on the Healdsburg or Lombard segments, except as is authorized by 49 CFR 174.14 (generally within 48 hours) and for storage of LPG at the Schellville yard tracks as provided in section I. A.1, above.

B. Positive Train Control.

1. The Parties acknowledge and agree that effective January 13, 2017, SMART activated its Automatic Train Control/Centralized Traffic Control system (ATC/CTC signal system) and initiated and placed into operation its Positive Train Control testing program.
2. The Parties acknowledge and agree that SMART has furnished NWPCo.’s Locomotive No. 2009 with the appropriate PTC equipment and NWPCo. is required to make the locomotive available for testing and certification for operation on SMART’s tracks pursuant to FRA regulations.
3. In recognition of PTC and FRA regulations, NCRA/NWPCo. and SMART agree that on an interim basis prior to SMART’s pre-revenue testing and/or operation, SMART will provide NWPCo. with a “protected” operating window between midnight to 8 a.m. on Thursdays and Sundays provided that NWPCo. meets its obligations to deliver the Locomotive No. 2009 for all PTC/ATC system testing as set forth in paragraph I.B. 6, below.
4. With respect to the cost and expense of cabling up NCRA or Operator’s locomotive fleet with PTC equipment, the Parties agree as follows:
 - (a.) SMART will have satisfied all its obligations under section 7.04 of the 2011 Operating Agreement as they relate to the cost and expense of cabling up NCRA or Operator’s locomotive fleet when it: (1) furnishes and installs the on-board PTC/ATC equipment on one additional NCRA/NWPCo. locomotive, and (2) provides training/certification to NWPCo. staff on the use of the on-board equipment.

(b.) NCRA and NWPCo. acknowledge that the process set forth in paragraph 4(a.), above, will take several months and that SMART's contractor will only be available to test and install PTC equipment for a limited time period. Accordingly, NCRA/NWPCo. commit to full cooperation with SMART including, but not limited to: (1) identifying and providing SMART with the additional locomotive and its technical schematics for the design and installation of the equipment no later than three months following execution of this Letter of Intent; and (2) providing SMART with the locomotive and operating personnel for certification, testing and training no later than six months following execution of this Letter of Intent, and thereafter as often as reasonably necessary.

(c.) NCRA and NWPCo. acknowledge and agree that their failure to fully cooperate and meet timelines delineated in paragraph 4(b.), above, shall terminate SMART's obligations as set forth herein, and SMART will be deemed to have satisfied any and all its obligations as they relate to the cost and expense of cabling up NCRA or Operator's locomotive fleet.

5. The Parties agree that SMART shall assume the responsibility for performing ongoing and periodic, inspection and data collection and analysis of the onboard equipment which may include the following:

- i. Inspect/calibrate wheel diameter
- ii. Inspect receiver coil height
- iii. Inspect electromagnet valve
- iv. Inspect counter
- v. Inspect and test power supply voltage
- vi. Perform system isolation tests
- vii. Perform vital output tests
- viii. Perform cab signal pickup/dropout tests
- ix. Perform Alarm tests
- x. Perform Cut-Out test

6. In recognition that SMART has placed the PTC/ATC system into operation, NCRA/NWPCo. agree to make the equipped Locomotive No. 2009 available to SMART immediately following execution of this Letter of Intent, but no later than within five (5) days of execution of the Letter of Intent, for testing of the PTC/ATC system, and for as many days as is necessary to complete testing of the PTC/ATC system at no cost to SMART.

7. NCRA/NWPCo. agree to provide staff to train and/or operate its locomotive(s) during the PTC/ATC system testing at no cost to SMART.
8. SMART agrees to initially furnish, install, provide training and inspection for the onboard PTC/ATC equipment on NCRA/NWPCo.'s two locomotives. Other costs and expenses, including NWPCo. staff, time, locomotive use and fuel, shall be at NCRA/NWPCo.'s sole cost and expense.
9. On an ongoing basis, NCRA/NWPCo. agree to make the equipped locomotive(s) available to SMART immediately upon reasonable request, taking into account the operational needs of NCRA/NWPCo. and SMART for the performance of routine inspections and data analysis of the ATC/PTC equipment a minimum of once per month, or more frequently as needed to inspect the equipment.
10. The parties understand that implementation and operation of the PTC/ATC system requires data, including "no code proceed counter value" to be submitted to dispatch prior to entry into the PTC/ATC territory. SMART shall inform NCRA/NWPCo. of dispatch related data required for entry into PTC/ATC territory and NCRA/NWPCo. shall provide the information to dispatch prior to entry.
11. NCRA/NWPCo. shall perform and pass a PTC/ATC departure test and report results to dispatch prior to entering PTC/ATC controlled territory. NCRA/NWPCo. agree that if the cab signals do not pass the departure test, they will not be able to proceed onto PTC/ATC territory until the equipment is inspected and passes the departure test. Nothing contained herein prevents the parties from agreeing to "protected" blocks of time wherein NCRA/NWPCo. may operate without PTC/ATC control if authorized by the FRA.
12. NCRA/NWPCo. agree that SMART is the owner of the installed PCT/ATC equipment and NCRA/NWPCo. shall not transfer or assign the PCT/ACT equipment to any third party. NCRA/NWPCo. further agree to return any installed PTC/ATC equipment to SMART prior to selling, transferring or returning any equipped locomotive to a third party. In the event reuse of equipment by NCRA/NWPCo. is practicable, the parties shall negotiate in good faith to accommodate same.
13. NCRA/NWPCo. shall be responsible for compliance with any future PTC requirements, including but not limited to ongoing maintenance,

replacement, upgrades or FRA requirements at NCRA/NWPCo.'s sole cost and expense.

C. Financial Responsibility for Sidings/Spurs.

1. SMART agrees to pay up to one hundred thousand dollars (\$100,000) towards the cost of one additional spur located at or near MPs 45.2 and 45.3 near the Sonoma Mountain Village provided: (1) NCRA/NWPCo. enters into an Industrial Track Agreement with a shipping customer by January 1, 2018; (2) the spur construction is completed by January 1, 2019; and (3) the spur/siding and connections can be designed, signalized and constructed at a safe and appropriate location.
2. Subject to section I.C.1. above, the Parties further agree that SMART has otherwise fully satisfied any and all duties and obligations with respect to the payment of Costs for Sidings/Spurs connections as set forth in Section 6.01, 7.04 and Exhibit 3 of the 2011 Operating Agreement.

D. Records.

In addition to the Parties' respective responsibilities set forth in section 16.01 of the 2011 Operating Agreement, NCRA/NWPCo. agree to provide SMART with the following records on a schedule to be agreed upon by the parties:

1. Track inspector qualifications and designations required by 49 CFR 213, and complete maintenance/inspection records for the Subject Segments, including all "track" as defined in the 2011 Operating Agreement.
2. Bridge safety standards records including the Bridge Management Program, bridge inspection reports, and bridge ratings required by 49 CFR 237.
3. A list of certified and qualified engineers and supporting documentation required by 49 CFR 240 and 242.
4. Accident and incident reports as required by 49 CFR 225; documentation of employee training on hazardous materials, safety and security; and alcohol and drug use control programs required by 49 CFR 219.

II. Agreement regarding the Petaluma Station.

The Parties agree to the following with respect to the Petaluma Station:

- A. Upon execution of this Letter of Intent, NCRA shall simultaneously quitclaim to SMART the freight easement including all rights and interest with respect to the Petaluma Depo/Station site at 315 D Street in Petaluma (APN #007-131-003), in order to provide clear title unencumbered by any freight easement.
- B. SMART agrees not to oppose NCRA/NWPCo.'s efforts to enforce an agreement related to the MOU entered into June 16, 2003 in connection with the construction of new freight facilities by Petaluma Riverfront LLC.
- C. In the event NCRA/NWPCo. engages in litigation and a monetary judgement or settlement is awarded in connection with the construction of a new freight facility by Petaluma Riverfront LLC pursuant to the MOU entered into June 16, 2003, SMART agrees not to seek settlement proceeds, if any are awarded. If a freight facility as provided for in the MOU is constructed, SMART agrees that the facility will be for the use of NCRA/NWPCo. freight operations.

III. Board Approval

- A. The Parties agree that this Letter of Intent is subject to the approval of SMART's and NCRA's Board of Directors.
- B. The Parties agree to present this Letter of Intent to their respective Boards for approval by _____.
- C. Upon approval of this Letter of Intent by the respective Boards, SMART will prepare an Amended 2011 Operating Agreement reflecting the terms set forth in Section I A-D, above. The Parties agree to be bound by all terms and conditions contained herein pending execution of the Amendment to the 2011 Operating Agreement.
- D. Upon approval of this Letter of Intent by the respective Boards, NCRA shall execute the Quitclaim Deed attached hereto as Exhibit A.
- E. NCRA/NWPCo. shall request a dismissal of the STB action within ten (10) days of Board approval of this letter of Intent.

By: _____
Farhad Mansourian, General Manager
Sonoma Marin Area Rail Transit

Date: _____

By: _____
Doug Bosco, for NWPCo.

Date: _____

By: _____
Mitch Stogner, Executive Director, NCRA

Date: _____

By: _____
Christopher Neary, Counsel for NCRA

Date: _____

By: _____
SMART District Counsel

Date: _____