

**LEASE BY AND BETWEEN SONOMA-MARIN AREA RAIL TRANSIT
DISTRICT (SMART) AND THE COUNTY OF SONOMA**

This Lease, dated as of this _____ day of _____ 2023 (“Effective Date”), is by and between the SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, a public agency lawfully formed and operating under the laws of the State of California (hereinafter called “SMART”, “Lessor” or “Landlord”), and the County of Sonoma, a political subdivision of the State of California (hereinafter called “County”, “Lessee” or “Tenant”). SMART and Lessee are sometimes referred to hereinafter individually as a “Party” and collectively as the “Parties.” (Account Number: 2022-LSE-002)

In consideration of the mutual agreements of the parties set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1. PREMISES

1.1 Premises

SMART hereby leases to Lessee, and Lessee hereby leases from SMART, for the term, at the rent, and upon the covenants and conditions hereinafter set forth, that fenced northern portion of the real property identified by Sonoma County Assessor’s Parcel Number (“APN”) 001-221-017 located at the northern portion of 425 Asti Road in the City of Cloverdale, County of Sonoma, State of California, consisting of approximately that certain 15,130 square feet of fenced yard (“Land” or “Yard” or “Property”) and containing that certain approximately 1,687 square foot warehouse building (“building” or “warehouse”), and together known as the “Lease Area” or the “Premises”, as more particularly described and depicted on EXHIBIT A - Description of Premises, attached hereto and expressly made a part of this Lease by this reference.

ARTICLE 2. TERM AND RENT

2.1 Term

2.1.1 Initial Lease Term. The Initial Lease Term of this Lease shall be for a period of Ten (10) Years totaling One Hundred Twenty (120) Months, commencing on February 1, 2023, and ending on January 31, 2033 (“Term”). Commencement Date beginning is subject to the delivery requirements of SMART contained in Section 3.2 of this Agreement for commencement, and shall run consecutively for 10 years therefrom unless terminated earlier as provided herein.

2.1.2 Option Lease Term(s). There are no Option Terms. Any Option Terms will require a new or Amended Lease Agreement in writing and signed by the Parties.

2.2 Rent

2.2.1 Rent for Initial Lease Term. Rent for the first month of the Lease, anticipated to commence beginning on February 1, 2023, and each successive month for the Term set forth in **Section 2.1**, during **Initial Lease Year 1**, shall be Eight Hundred Forty-Three and 50/100 Dollars (\$843.50) per month (\$.50 per square foot per month) totaling Fifty-Nine Thousand Four Hundred Two and 66/100 Dollars (\$10,122.00) per year (\$6.00 per square foot per year).

2.2.2 Triple Net Lease. Rent shall be on a Triple Net (“NNN”) basis. so that this Lease shall yield net to Landlord the Rent to be paid each month during the Term of this Lease per this Section 2. Accordingly, and except as otherwise provided in this Lease, all costs, expenses and obligations of every kind or nature whatsoever relating to the Premises which may arise or become due during the Term of this Lease including, without limitation, all costs and expenses of maintenance and repairs, insurance and taxes, shall be paid by Lessee. Nothing herein contained shall be deemed to require Lessee to pay or discharge any liens or mortgages of any character whatsoever which may exist or hereafter be placed upon the Premises by an affirmative act or omission of Landlord.

2.2.3 Rental Adjustments. There shall be an annual increase adjustment of Three Percent (3%) on the annual rent, the first day of the second year of the Initial Lease Term (Anniversary Date) and every year thereafter on each Anniversary Date.

2.2.4 Delivery of Rental Payment. The rental payment shall be delivered to SMART in accordance with the provisions and to the address set forth in **Section 9.6**.

2.2.5 Proration of Rent. The Rent for the first full calendar month of the Lease Term shall be paid on the Commencement Date. If any payment date (including the Commencement Date) for Rent, falls on a day other than the first day of that calendar month, or if any Rent payment is for a period shorter than one calendar month, the Rent for that fractional calendar month shall prorated accordingly for the remainder of the month.

2.3 Condition of Premises on Termination or Expiration of Lease

Subject to Section 3.4 upon the expiration or sooner termination of this Agreement, Lessee, at its sole cost and expense, shall remove, revise, or relocate its structures and equipment and restore the Premises to its original condition as of the Date of Lease Commencement (“Original Condition”), as depicted in the photographs provided on EXHIBIT B, which is hereby referenced and incorporated into this Lease, and vacate the Premises. Should Lessee neglect to restore the Premises to the Original Condition, subject to normal wear and tear as well as necessary improvements made by Lessee to the Property’s infrastructure, SMART may perform such work or have the work performed and Lessee shall

immediately reimburse SMART for all costs associated with such work upon receipt of a statement.

2.4 Termination for Convenience

SMART and Lessee may, at any time during the Term of this Lease, terminate the Lease by giving written notice to the other Party of at least Thirty (30) days prior to the date when such termination shall become effective. In such event, all obligations under this Lease shall cease, and no further obligation of the parties shall be due. In the event of such termination by SMART, any unearned rental paid by Lessee shall be prorated and returned to Lessee. The Parties agree that SMART shall make an effort to provide Lessee with One Hundred-Eighty (180) Days' Notice where possible.

2.5 Holding Over

There will be no holding over by the Lessee. If additional time is needed, then a new Lease will need to be negotiated.

2.6 Security Deposit

None required.

ARTICLE 3. USE OF PREMISES

3.1 Specified Use

Lessee shall use and occupy the Premises as a Community Emergency Resilience Center (CERC) that will operate as a community-based, logistics and operational support resources that will support dynamic community-level disaster response for the Sonoma Operational Area, used to maintain pre-positioned supplies and equipment in the facility that will also serve as the community coordinating center. Included in Lessee's Use of Premises herein is the right of Lessee's employees, contractors, agents, customers and invitees to have the right to use on an exclusive basis and free of charge the entire Lease Area, as shown on Exhibit A, including use of the Building along with the parking area and Yard within the Lease Area for vehicle parking and outside storage. In the event Lessee desires to change the Use of Premises, the Parties agree to discuss such proposed use, and if in agreement, execute an Amendment to this Lease accordingly.

3.1.1 Installation & Use of Telecommunications Equipment. Lessee shall have the right to install, at Lessee's sole cost and expense, a satellite dish or similar antennae on the roof of the Premises. Lessee shall provide SMART with plans in advance for approval, such approval by SMART not to be unreasonably withheld. Lessee shall have the right to install, operate and maintain telecommunications equipment on or about the Premises, including the roof of the Premises. In installing the telecommunications equipment, Lessee shall adhere to industry standards for installation and workmanship, with all work to be completed according to the SMART-approved plans. At Lessee's

sole cost and expense, SMART reserves the right to have its roofing inspector supervise and review installation(s) to ensure that the integrity of the roof structure is maintained. In addition, the installation of such equipment shall not cause damage to the Premises and the use shall not result in excessive electrical use or diminish the rentable square footage of the Premises. Lessee, at its sole cost and expense, shall be responsible for procuring whatever consents, approvals, licenses or permits that may be required for the installation, use, operation and removal of Lessee's system. Lessee shall at all times and at Lessee's sole cost and expense be responsible for proper maintenance of the Telecommunications Equipment and all governmental permits and approvals required in connection therewith. Lessee shall be solely responsible for the costs and expenses to repair any portion of the premises, including but not limited to the building and roof, as a result of Lessee's installation and usage of said telecommunications equipment thereon.

Lessee shall not use or permit use of the Premises for any other purpose whatsoever without obtaining the prior written consent of SMART, which consent may be granted or withheld at SMART's sole and absolute discretion.

3.2 Condition of Premises

Notwithstanding the Preparation of Premises requirements borne by SMART per Section 3.2.1 herein, Lessee hereby acknowledges that neither SMART nor anyone acting on or on behalf of SMART has made any representation, warranty or promise to Lessee concerning the physical aspects or condition of any portion or part of the Premises or improvements, the feasibility, desirability or convertibility of the Premises into any particular use, the zoning, building or land use restrictions applicable to the Premises, projected income or expenses for any of the Premises, the conditions of the soil, subsoils, ground water, or surface waters, or the presence or absence of any toxic waste or hazardous substances or material, and that by entering into this Agreement has not relied on any representation, statement or warranty of SMART or anyone acting for or on the behalf of SMART, and that all matters concerning the Premises shall be independently verified by Lessee, and that the Lessee shall use and occupy the Premises on Lessee's own examination thereof, AND THAT LESSEE IS USING THE PREMISES IN "AS IS" PHYSICAL CONDITION AND "AS IS" STATE OF REPAIR.

Lessee does hereby waive, and SMART does hereby disclaim all warranties of any type or kind of description but not limitation, those of fitness for particular purpose, leaseability, habitability and use. Lessee hereby expressly waives any and all claims for damages or for rescission or cancellation of this Agreement because of any representations made by SMART or by any agent of SMART. Lessee acknowledges that it has had sufficient time to conduct all inspections, reviews and studies of the Premises that Lessee may deem necessary. Lessee hereby expressly assumes the risk that adverse physical conditions and the full extent thereof, may not be revealed by Lessee's inspections, reviews and studies of the Premises. It is an expressly bargained-for agreement herein that Lessee shall be responsible, at Lessee's sole cost and expense, for causing the Premises to comply in all respects with all Laws and Orders, to the extent

needed or caused by Lessee's use or occupation of the Premises and arising out of conditions after the Commencement Date.

The Parties agree that Lessee shall not be liable for any condition of the Premises, including but not limited to the presence of Hazardous Materials, not caused by Lessee or persons for whose acts or omissions Lessee is legally responsible. It is the intention of the Parties that Lessee shall not be liable for conditions of the Premises caused by persons other than Lessee or by persons for whose acts and omissions Lessee is not legally responsible.

3.2.1 Preparation of Premises. Notwithstanding the provisions of **Section 3.2** herein, SMART shall deliver the Premises to Lessee in a condition free of personal property items, both within the building and on the yard.

3.3 Compliance with Law; Waste/Nuisance

Lessee agrees to comply with all federal, state, county and municipal laws, statutes, zoning restrictions, ordinances or governmental rules, regulations or requirements of duly constituted public authorities now in force or which may hereafter be in force insofar as Lessee is subject thereto or which affect or relate to or are in any way applicable to Lessee's use of the Premises. Lessee shall not commit, suffer, or Lease the commission by others of: (i) any waste or nuisance on the Premises; (ii) any action or use of the Premises which interferes or conflicts with a necessary railroad function as determined by SMART; or (ii) any action on the Premises in violation of any laws or ordinances. Commencement of any government proceedings to prohibit Lessee's use of the Premises on the basis that Lessee's use is illegal shall, at the option of the SMART, be deemed a breach of the Lease.

3.4 Improvements

3.4.1 Pre-approval of Initial & Subsequent Improvements. Lessee shall not make any initial improvements or alternations to the Premises costing more than Twenty Thousand Dollars (\$20,000) until design and improvement plans are reviewed by SMART and written approval from SMART is received by Lessee, such approval by SMART shall not be unreasonably withheld. Subsequent improvements or alterations costing more than Twenty Thousand Dollars (\$20,000) shall also require review and prior written approval by SMART. Unless directed otherwise in writing by SMART, Lessee shall remove any additions or improvements within thirty (30) days of the expiration or termination of this Lease and shall restore the Premises to its Original Condition per Section 2.3 of this Lease.

3.4.2 Effect of Early Termination on Lessee's Initial Improvement Expenditures. The parties agree that in the event that SMART terminates this Agreement in advance of the Initial Term's Ten (10) Year Expiration Date that SMART shall reimburse Lessee the unamortized amount of its Initial Improvements, prorated from the date Lessee vacates the Premises and returns Premises to SMART per the

conditions of Section 2.3 herein. The amortization schedule shall be a straight-line method over the useful life of the Initial Term's Ten (10) Year period. Within Six (6) Months of Lease Commencement, Lessee shall provide SMART with an itemized list of said Initial Improvements and correlating expenditures. The Parties agree that in no event shall the Initial Improvement Expenditures which SMART is potentially subject to for prorated reimbursement due to SMART's early termination under this Section exceed Twenty Thousand Dollars (\$20,000.00). In no event shall SMART be responsible for any such prorated reimbursement if termination is initiated by Lessee or due to any Default or Breach of this Agreement by Lessee nor shall SMART be responsible for any such reimbursement in the event of casualty or loss for any reason beyond SMART's control.

3.4.3 Ownership of Improvements During Term. All fixtures and improvements constructed on the Premises by Lessee, as Permitted by this Agreement, shall be owned by Lessee until expiration of the Term or sooner termination of this Agreement by Lessor following uncured Default by Lessee. Lessee shall not, however, remove any improvements from the Premises nor waste, destroy or modify any improvements on the Premises, except as Permitted by this Agreement. The parties covenant for themselves and all persons claiming under them that the improvements are real property.

3.4.4 Ownership at Termination. At the option of SMART, all fixtures and improvements on the Premises at the expiration of the term or sooner termination of this Agreement by Lessor following uncured Default by Lessee shall, without compensation to the Lessee, then become SMART's property free and clear of all claims or liens to or against them by Lessee or any third person, and Lessee shall indemnify SMART against all liability and loss arising from such claims or from SMART's exercise of any rights conferred by this Section 3.4.4, but only to the extent such claim or lien arises before the date of termination.

3.4.5 Lessee's Duty to Remove. At the expiration or sooner termination of this Agreement, SMART may, at its option, demand that Lessee remove from the Premises all or some of the fixtures and improvements installed by Lessee. A demand to take effect at the normal expiration of the term shall be effected by notice given at least thirty (30) days before the expiration date. A demand to take effect on any other termination of this Agreement shall be effected by notice given in or concurrent with notice of such termination or within thirty (30) days after such termination. Lessee shall comply with the notice before the expiration date for normal termination, and within thirty (30) days after the notice for other terminations.

3.5 Utilities

Lessee shall be responsible for furnishing the Premises with any utilities it requires as part of its occupancy under this Lease, at its sole cost and expense. Lessee shall pay for all utilities supplied to the Premises, including, but not limited to, water, heat, light, power, telephone, and any other utilities currently serving the Premises.

3.6 Signs

Except for signage identifying Lessee's business, or in an emergency, Lessee shall not place, or Lease to be placed on the Premises, any signs, advertisements or notices, without SMART's prior written consent, which consent may be granted or withheld at SMART's sole discretion.

3.7 Vending

Lessee shall not conduct or Lease the vending or sale of any goods or services upon the Premises.

3.8 Hazardous Materials

Lessee shall not use, create, store or allow any hazardous materials or waste on the Premises. Lessee shall be responsible for and bear the entire cost of removal and disposal of hazardous materials or waste, including any spills or leaks of oil, gasoline, or contaminants, introduced to the Premises by Lessee or persons for whose acts and omissions Lessee is legally responsible during Lessee's period of possession of the Premises. Lessee shall also be responsible for any cleanup and decontamination on or off the Premises necessitated by such material or waste.

If during the term of this Lease, Lessee knows or has cause to believe that any Hazardous Materials, as defined below, have come to be located in, on, under or about the Premises, other than as expressly consented to by SMART in writing, Lessee shall immediately give SMART written notice thereof, together with a copy of any statement, report, notice, registration, applications, Lease, business plan, Lease, claim, action or proceeding given to, or received from, any governmental authority or private party concerning said Hazardous Materials.

Should any discharge, leakage, spillage, or emission of any Hazardous Materials, as defined below, or pollution of any type occur upon or from the Premises during the Term caused by Lessee or persons for whose acts and omissions Lessee is legally responsible, Lessee, at Lessee's sole expense, shall clean all property affected thereby as required by law.

Lessee shall indemnify, hold harmless, and defend SMART, its directors, officers, agents and employees (collectively, the "Indemnitees") from and against all liability, claims, costs and expenses (including, without limitation, any fines, penalties, judgments, litigation costs, attorneys' fees, and consulting, engineering and construction costs) incurred by such Indemnitees or any of them as a result of Lessee's breach of this Section 3.8, or as a result of the presence, disposal, storage, generation or release on the Premises at any time during the term of this Lease of any "hazardous materials," "hazardous substances," "hazardous wastes" or "toxic substances" as those terms may be defined in any federal, state or local legislation currently existing or enacted in the future

(collectively “Hazardous Materials”), regardless of whether such liability, cost or expense arises during or after the term of this Lease, and regardless of whether such liability, cost or expense is contributed to or caused by the negligence, active or passive, of SMART, but only to the extent caused by Lessee or persons for whose acts and omissions Lessee is legally responsible .

The provisions of this Section 3.8 shall survive the expiration or termination of this Lease.

ARTICLE 4. MAINTENANCE AND REPAIRS

4.1 Lessee’s Obligations

Lessee, at its own cost and expense, shall maintain the Premises and all improvements thereon, in good repair and in compliance with all requirements of law.

Lessee agrees to perform weed abatement on the Premises during the Lease Term pursuant to local Fire Department Standards.

Lessee shall designate in writing to SMART a representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness, and general order of the Premises.

4.2 SMART’s Rights

In the event Lessee fails to perform its obligations under this Article, SMART shall give Lessee thirty (30) days written notice to do such acts as are reasonably required to so maintain the Premises. If Lessee fails to commence the work within the said thirty-day period or fails to diligently prosecute it to completion, SMART shall have the right to terminate this Lease for Material Default under Section 7 of this Lease, or in the alternative, SMART shall have the right, but not the obligation, to do such acts and expend such funds at the expense of Lessee as are reasonably required to perform such work. Any amount so expended by SMART shall be paid by Lessee promptly after demand. SMART shall have no liability to Lessee for any damage, inconvenience or interference with the use of the Premises by Lessee as a result of performing such work.

ARTICLE 5. INDEMNIFICATION

5.1 Waiver of Claims

Lessee shall assume all risk of damage to property and/or personal injury or death of any person in or about the Premises from any cause arising out of this Lease, except to the extent caused by SMART’s sole negligence or willful misconduct. Lessee hereby waives all claims in respect thereof against SMART except to the extent caused by SMART’s sole active negligence or willful misconduct. It is expressly agreed that Lessee rather than SMART is wholly responsible for maintaining safe conditions on the Premises

during the Term, and that SMART's non-provision of maintenance, police or safety services does not constitute negligence of any kind.

5.2 Agreement to Indemnify

5.2.1 Indemnification. Lessee agrees to accept all responsibility for loss or damage to any person or entity, including but not limited to SMART, and to defend, indemnify, hold harmless, reimburse and release SMART, its officers, agents and employees from and against any and all actions, claims, damages, disabilities, liabilities and expense, including but not limited to attorneys' fees and the cost of litigation incurred in an action by SMART to enforce the indemnity provisions herein, whether arising from personal injury, property damage or economic loss of any type, that may be asserted by any person or entity, including Lessee, arising out of or in connection with any of the circumstances described in Sections 5.2.2, 5.2.3, 5.2.4 and 5.2.5, to the extent caused by Lessee or persons for whose acts and omissions Lessee is legally responsible, whether or not there is a concurrent negligence on the part of SMART, but, to the fullest extent allowed by law, excluding liability due to the sole active negligence or due to the willful misconduct of SMART. If there is a possible obligation to indemnify, Lessee's duty to defend exists regardless of whether it is ultimately determined that there is not a duty to indemnify. SMART shall have the right to select its own legal counsel at the expense of the Lessee, subject to Lessee's approval, which approval shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Lessee or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts, and continues beyond termination of this Agreement.

5.2.2 Use of Premises. Use of the Premises in any manner not provided for in this Lease by Lessee, its agents, employees, invitees, sub-Lessees, Lessees and contractors, and the agents, employees, patrons, contractors and invitees of sub-Lessees, including any use of the Premises is not allowed under this Agreement.

5.2.3 Breach by Lessee. Any breach by Lessee of the terms, covenants or conditions herein contained.

5.2.4 Approval of Agreement. The approval of this Agreement by SMART (or any additional Regulatory agencies).

5.2.5 Other Activities. Any other activities under this Agreement by Lessee, its agents, employees, sub-Lessees, contractors, subcontractors, Lessees or invitees.

ARTICLE 6. INSURANCE

At all times during the life of this Lease, or as may further be required by this Lease, Lessee at its own cost and expense shall provide the insurance specified by this Article.

6.1 Evidence Required

At or before execution of this Lease, Lessee shall provide Lessor with a certificate of insurance (“COI”) executed by an authorized representative of the insurer(s) evidencing that Lessee’s insurance complies with this Article. The certificate shall reference the applicable Lease Account Number and Name of Tenant/City as title to which the certificate relates. In addition, copies of properly executed endorsements required for each policy set forth in this Article shall be included with and attached to the Certificate of Insurance.

6.2 Notice of Cancellation, Renewal, Reduction or Material Change in Coverage

All policies shall be endorsed to provide thirty (30) days prior written notice of any cancellation, reduction or material change in coverage. For policies that extend beyond the coverage policy year, Lessee shall submit to SMART’s Real Estate Manager, per the “Notice” provisions of Section 9.6 herein, certification confirming the insurance has been renewed and continues in place.

6.3 Qualifying Insurers

All policies shall be issued by California admitted companies which hold a current policy holders alphabetic and financial size category rating of not less than A:VIII according to Best’s Insurance Reports.

6.4 Insurance Required

- A. **Commercial General Liability Insurance** for bodily injury (including death) and property damage which provides limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate.

1. **Coverage shall include:**

- a) Premises and Operations;
- b) Products/Completed Operations;
- c) Broad Form Property Damage;
- d) Contractual liability;
- e) Personal Injury liability; and
- f) Cross-Liability and Severability of Interests.

2. Such insurance shall include the following endorsements, **copies of which shall be provided to SMART:**

- a) Inclusion of the District, its directors, officers, representatives, agents and employees as additional insured as respects to Lessee’s operations in connection with this Lease;

- b) Stipulation that the insurance is primary insurance, and that no insurance or self-insurance of the District will be called upon to contribute to a loss.
- B. Comprehensive Automobile Liability** for bodily injury (including death) and property damage which provides coverage limits of at least One Million Dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.
- C. Workers' Compensation/Employer's Liability Insurance.** Statutory Workers' Compensation and Employer's Liability insurance for not less than One Million Dollars (\$1,000,000) per accident applicable to Employer's Liability coverage for all employees engaged in services or operations under this Lease. The policy shall include broad form all states/other states coverage. Coverage shall be specifically endorsed to include the insurer's waiver of subrogation in favor of the District, its directors, officers, representatives, agents and employees, a copy of which shall be provided to the District. Should Lessee contract any work to be done on the Leased premises, Lessee shall require each contractor or subcontractor of any tier to similarly comply with this Article, all in strict compliance with federal and state laws.
- D. Property Insurance.** Property Insurance against all risks of loss to any Tenant/Lessee improvements or betterments, at full replacement cost, with no coinsurance penalty provision.

6.5 Special Provisions

- A.** The foregoing requirements as to the types and limits of insurance coverage to be maintained by Lessee and any approval of said insurance by Lessor is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Lessee pursuant to this Lease, including but not limited to the provisions concerning indemnification.
- B.** Lessor acknowledges that some insurance requirements contained in this article may be fulfilled by a funded self-insurance program of Lessee. However, this shall not in any way limit liabilities assumed by Lessee under this Lease. Any self-insurance program must be approved in writing by Lessor.
- C.** Should any of the work under this Lease be contracted, Lessee shall require each of its contractor or subcontractor of any tier to provide the aforementioned coverage, or Lessee may insure its contractor(s) under its own policy(s).

- D. Lessor reserves the right to terminate the Lease in the event of material noncompliance with the insurance requirements of this article.

6.6 Material Breach

If Lessee, for any reason, fails to maintain insurance coverage, which is required pursuant to this Lease, the same shall be deemed a material breach of this Lease. SMART, at its sole option, may terminate this Lease and obtain damages from Lessee resulting from said breach. Alternatively, SMART may purchase such required insurance coverage, and Lessee shall immediately reimburse SMART for all direct and indirect costs associated with acquisition of such insurance coverage upon receipt of a statement therefor. These remedies shall be in addition to any other remedies available to SMART.

6.7 Mutual Waiver of Subrogation

For the purpose of waiver of subrogation, the parties mutually release and waive unto the other all rights to claim damages, costs or expenses for any injury to property caused by a casualty or any other matter whatsoever in, on or about the Premises if the amount of such damage, cost or expense has been paid to such damaged party under the terms of any policy of insurance or would have been paid if the injured party had carried the insurance required of it hereunder. All insurance policies carried with respect to this Lease, if permitted under applicable law, shall contain a provision whereby the insurer waives, prior to loss, all rights of subrogation against either SMART or Lessee.

ARTICLE 7. DEFAULT

7.1 Material Default

The occurrence of any of the following shall constitute a material default and breach of this Lease by Lessee.

- A. Any failure by Lessee to pay rent or any other monetary sums required to be paid hereunder.
- B. The abandonment or vacation of the Premises by Lessee. Failure to occupy and operate the Premises for thirty (30) consecutive days shall be deemed an abandonment or vacation.
- C. A failure by Lessee to observe and perform any other provision of this Lease to be observed or performed by Lessee, where such failure continues for thirty (30) days after written notice thereof by SMART to Lessee; provided, however, that if the nature of such default is such that it cannot be reasonably cured within such thirty (30) day period, Lessee shall not be deemed to be in default if Lessee shall within such period commence such cure and thereafter diligently prosecute it to completion.

- D.** The making by Lessee of any general assignment or general arrangement for the benefit of creditors; the filing by or against Lessee of a petition to have Lessee adjudged bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy, unless in the case of:
- (i) a petition filed against Lessee, the same is dismissed within sixty (60) days;
 - (ii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets, where possession is not restored to Lessee within forty-five (45) days; **or**
 - (iii) the attachment, execution or other judicial seizure of substantially all of Lessee's assets, where such seizure is not discharged within thirty (30) days.

7.2 Immediate Termination

In the event of any material default or breach by Lessee, SMART may at any time thereafter following thirty (30) days' notice and opportunity to cure the default, without limiting SMART in the exercise of any right or remedy at law or in equity which SMART may have by reason of such default or breach, immediately terminate this Lease.

7.3 SMART's Remedies

In the event of any uncured material default or breach by Lessee, SMART may at any time thereafter, without limiting SMART in the exercise of any right or remedy at law or in equity which SMART may have by reason of such default or breach, and without limiting Lessee's right to terminate this Lease for convenience:

- A.** Maintain this Lease in full force and effect and recover the rent and other monetary charges as they become due, without terminating Lessee's right to possession, irrespective of whether Lessee shall have abandoned the Premises. In the event SMART elects not to terminate the Lease, SMART shall have the right to attempt to re-let the Premises at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the Premises as SMART deems reasonable and necessary without being deemed to have elected to terminate the Lease, including removal of all persons and property from the Premises; such property may be removed and stored in public warehouse or elsewhere at the cost of and for the account of Lessee. In the event any such re-letting concurs, this Lease shall terminate automatically upon the new Lessee taking possession of the Premises. Notwithstanding that SMART fails to elect to terminate the Lease initially, SMART at any time during the term of this Lease may elect to terminate this Lease by virtue of such previous default of Lessee.

Such termination shall be deemed a termination for convenience as provided in this Lease.

B. Terminate Lessee's right to possession by any lawful means, in which case this Lease shall terminate, and Lessee shall immediately surrender possession of the Premises to SMART. In such event SMART shall be entitled to recover from Lessee all damages incurred by SMART by reason of Lessee's default including without limitation thereto, the following:

- i) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; **plus**
- ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that is proved could have been reasonably avoided, but not to exceed the worth of 90 days' rent; **plus**
- iii) any other amount necessary to compensate SMART for all the detriment proximately caused by Lessee's failure to perform his obligations under this Lease or which in the ordinary course of events would be likely to result therefrom; **plus**
- iv) at SMART's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable State law.

Upon any such re-entry SMART shall have the right to make any reasonable repairs, alterations or modification to the Premises, which SMART in its sole discretion deems reasonable and necessary to restore the Premises to its Original Condition. As used in subparagraphs (i) and (ii), above, the "**worth at the time of award**" is computed by allowing interest at a rate equal to the Federal Reserve Bank discount rate per annum from the date of default. As used in subparagraph (iii), above, the "**worth at the time of award**" is computed by discounting such amount at the discount rate of the Federal Reserve Bank at the time of award. The term "**rent**" as used in this Article shall be deemed to be and to mean rent to be paid pursuant to Article 2 and all other monetary sums required to be paid by Lessee pursuant to the terms of this Lease.

7.4 SMART's Right to Cure Lessee's Default

At any time after Lessee is in default or material breach of this Lease, SMART may, at its sole discretion, but is not required, cure such default or breach at Lessee's cost. Unless shorter notice is expressly provided for herein, SMART shall give Lessee thirty (30) days written notice prior to curing such default or material breach at Lessee's cost. If SMART at any time, by reason of such default or breach, pays any sum or does any act that requires the payment of any sum or incurs any costs, the sum paid or incurred cost by SMART shall be due immediately from Lessee to SMART.

ARTICLE 8. ASSIGNMENTS, SUBLEASES AND ENCUMBRANCES

8.1 Assignments and Subleases

Lessee shall not assign, transfer or sublease its interest in this Lease or in the Premises without first obtaining SMART's prior written consent which may be granted or withheld in SMART's sole and absolute discretion. SMART's consent to any assignment, sublease or encumbrance shall not constitute a waiver of any of the terms, covenants or conditions of the Lease, which shall apply to each and every assignment or sublease of this Lease. SMART's consent to one assignment or subletting shall not be construed as consent to any other assignment or subletting. Despite consent of SMART to assignment or sublease, Lessee shall remain liable for any cause of action arising out of the subsequent lease.

Lessee's failure to obtain SMART's required prior written approval of any assignment or sublease shall render such assignment or sublease void and of no effect whatsoever.

8.4 Encumbrances

Lessee shall not encumber the Premises in any manner whatsoever. Lessee shall keep the Premises and the property in which the Premises are situated free from any liens arising out of any work performed, material furnished, or obligations incurred by or for Lessee.

ARTICLE 9. ADDITIONAL PROVISIONS

9.2 Right to Re-Entry

SMART shall have the right to enter the Premises at reasonable hours and, except in the event of an emergency, on reasonable prior notice to (1) inspect the Premises; (2) exhibit the Premises to prospective purchasers, lenders, or Lessees; (3) determine whether lessee is complying with all obligations under this Lease, including but not limited to the right to take samples of substances and materials present for testing should there be a concern that hazardous materials have been placed on the Premises; (4) perform testing or other investigatory work, including, but not limited to, excavating around pier footings, surveying and potholing. Re-entry by SMART shall be done as promptly as reasonable possible and with as little interference to Lessee as reasonably possible. Re-entries restricting use of the Premises for periods longer than 24 hours are addressed below.

9.3 Non-Discrimination

Lessee, on behalf of itself and its representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the performance and enjoyment of this Lease, that: (1) no person shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises on the grounds of race, color, religion, national origin, or gender; (2) in the

construction of any improvements on, over, or under such land and the furnishing of services thereon, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination on the grounds of race, color, religion, national origin, or gender; All nondiscrimination rules or regulations required by law to be included in this Lease are incorporated herein by this reference.

Failure by Lessee to carry out these requirements is a material breach of this Lease, which may result in the termination of this Lease or such other remedy as SMART deems appropriate. In the event of breach of the above non-discrimination covenants, SMART shall have the right to terminate the Lease pursuant to Article 7.

9.4 Relocation

Lessee understands and agrees that this tenancy is of a temporary nature, and that no relocation payment will be sought or provided in any form as a consequence of this tenancy. LESSEE EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO RECEIVE BENEFITS UNDER FEDERAL AND STATE UNIFORM RELOCATION ACTS (UNITED STATES CODE, TITLE 42, SECTION 4601, ET SEQ.; CALIFORNIA GOVERNMENT CODE, SECTION 7260, ET SEQ.) AS A RESULT OF SMART'S TERMINATION OF THE LEASE, USE OR POSSESSION OF ALL OR ANY PORTION OF THE PREMISES.

Lessee

9.5 Condemnation

If any of the Premises shall be taken by eminent domain and a part thereof remains which is susceptible of occupation for the Specified Use described in Section 3.1, this Lease shall, as to the part taken, terminate as of the date title shall vest in the Condemnor or the date that Condemnor receives possession, and the rent payable hereunder shall be adjusted so that Lessee shall be required to pay for the remainder of the term only such proportion of such rent as the value of the part remaining after condemnation bears to the value of the entire premises at the date of condemnation; but in such event SMART may terminate this Lease as of the date when title to the part so taken vests in the Condemnor. If all of the Premises of such part taken thereof be so taken so that there does not remain a portion susceptible of occupation for the Specified Use hereunder, this Lease shall thereupon terminate. If a part of all the Premises be so taken, all compensation awarded upon such taking shall go to SMART, and Lessee hereby assigns to SMART any right to compensation or damages to which Lessee may be entitled by reason of any such taking.

9.6 Notices

All notices shall be given in writing and shall be delivered personally or by certified U.S. mail. Such notices or payments shall be addressed as follows:

If to SMART: Sonoma-Marín Area Rail Transit District
5401 Old Redwood Highway, Suite 200
Petaluma, California 94954
Attention: Randy Friedland, Real Estate Manager
(707) 794-3069
rfriedland@sonomamarintrain.org

If to Lessee: County of Sonoma
Facilities Development & Management
2300 County Center Drive, Suite A220
Santa Rosa, CA 95403
Attention: Real Estate Manager
Fax No. (707) 565-3476

With a copy to: County of Sonoma

Sonoma County contact at execution of Lease:
Warren Sattler, Real Estate Manager
Sonoma County Public Infrastructure
(707) 565-3195
warren.sattler@Sonoma-County.org

All payments of rent shall be delivered personally, by mail or electronically. Such payments shall be payable to SMART and addressed as follows:

To SMART: Sonoma-Marín Area Rail Transit District
5401 Old Redwood Highway, Suite 200
Petaluma, California 94954
Attention: SMART Accounting Manager
(707) 794-3330
billing@sonomamarintrain.org

When a notice or payment 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.

9.7 Subordination of Prior Lease

This Lease terminates any prior or existing Lease, tenancy or rental agreement between Lessor and Lessee with respect to the Premises leased hereby.

9.8 Tax

Lessee recognizes and understands in accepting this Lease that its interest therein may be subject to a possessory interest tax that the city or county may impose on such interest, and that such tax payment shall not reduce any rent due SMART hereunder, and any such tax shall be the sole liability of and be paid by the Lessee.

9.9 Entire Agreement

This Lease constitutes the final expression of the Lease agreement between the parties and the entire agreement between the parties, and it may be amended only in writing signed by both parties. No obligations other than those set forth herein will be recognized.

9.10 Severability

If any term or provision of this Lease shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

9.11 Cost of Suit

If SMART or Lessee shall bring an action for any relief against the other, declaratory or otherwise, arising out of this Lease, the losing party shall pay the successful party's reasonable attorneys' fees.

9.12 Governing Law; Venue

This Lease shall be governed by the laws of the State of California. Unless the parties mutually agree in writing otherwise, any action to enforce the terms of this Lease or for the breach thereof shall be brought and tried in the Superior Court of the County of Sonoma.

9.13 No Waiver

No covenant, term or condition, or the breach thereof, shall be deemed waived, except by written consent of the party against whom the waiver is claimed. Any waiver shall not be deemed to be a waiver of any preceding or succeeding breach. Acceptance by SMART of any performance by Lessee after the time the same shall have become due shall not constitute a waiver by SMART of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by SMART in writing.

9.14 Binding Effect

Subject to any provisions herein as to assignment and subletting, the terms of this Lease shall bind and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns.

9.15 Exhibits and Addenda

All exhibits and addenda to which reference is made in this Lease are incorporated in the Lease by the respective references to them. Reference to the "Lease" includes matters incorporated by reference.

9.16 Construction of this Lease

The singular number includes the plural wherever the context so requires. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and each includes corporate, partnership, or other legal entities when the context so requires. Each party has relied on his own examination of this Lease, the counsel of its own advisors, and the language in the Lease itself. This Lease shall be construed according to the meaning of its language, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall under no circumstances be employed in interpreting this Lease or any of its terms.

9.17 Captions

The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the provisions hereof and shall have no effect upon the construction or interpretation of any part hereof.

9.18 Relationship of the Parties: No Intended Third-Party Beneficiaries

The parties intend by this Lease to establish the relationship of SMART and Lessee, and do not intend to create a partnership, joint venture, joint enterprise, or any other business relationship other than SMART to Lessee. 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 Lease shall be construed to create and the parties do not intend to create any rights in third parties.

9.19 Time of the Essence

Time is and shall be of the essence with respect to each and every provision contained in this Lease.

9.21 Americans with Disabilities Act (“ADA”)

- A. Compliance with ADA. Lessee covenants and agrees that nothing shall be done by Lessee on the Lease Area in violation of the Americans with Disabilities Act (“ADA”), and that Lessee shall maintain, repair, and use the Premises and all improvements, fixtures and personal property therein and thereon, and conduct its business within the Premises, in accordance with the requirements of the ADA.
- B. **Responsibility for Costs Associated with ADA Compliance.** In the event that any improvements, alterations or repairs to the Lease Area are required by governmental authority under the ADA or its implementing regulations or guidelines, Lessee shall be solely responsible for all items due to Lessee's use of the Lease Area. Lessee covenants and agrees to pay all costs and expenses as Lessee's sole responsibility.

9.22 Amount Due Payable in U.S. Money.

All sums payable under this Agreement must be paid in lawful money of the United States of America.

ARTICLE 10. AUTHORITY TO EXECUTE LEASE

10.1 Authority

If Lessee is a corporation, partnership, limited liability company, or political division or subdivision of the State of California (“Entity”), each individual executing this Lease on behalf of that Entity represents and warrants that:

- (a) The individual is authorized to execute and deliver this Lease on behalf of that Entity, and this Lease is binding on that Entity in accordance with its terms;
- (b) The Entity is a duly organized and legally existing corporation, partnership limited liability company, or political division or subdivision of the State of California capable of entering into this Lease.

—THIS SPACE INTENTIONLLY LEFT BLANK—
[SIGNATURE PAGE FOLLOWS]

SMART Cloverdale Maintenance Facility Lease Agreement
between SMART(Lessor) & County of Sonoma (Lessee)
Sonoma County APN #: 001-221-017 (Portion thereof); MP 84.96

IN WITNESS WHEREOF, the parties have executed this Lease As of the Effective Date.

LESSOR (SMART): SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

By:_____

Name: Eddy Cumins

Its: General Manager

DATE_____

LESSEE (County): COUNTY OF SONOMA, a political subdivision of the State of California

By:_____

Name: Johannes Hoevertsz

Its: Director, Sonoma County Public Infrastructure

DATE_____

APPROVED AS TO FORM FOR LESSEE:

Deputy County Counsel

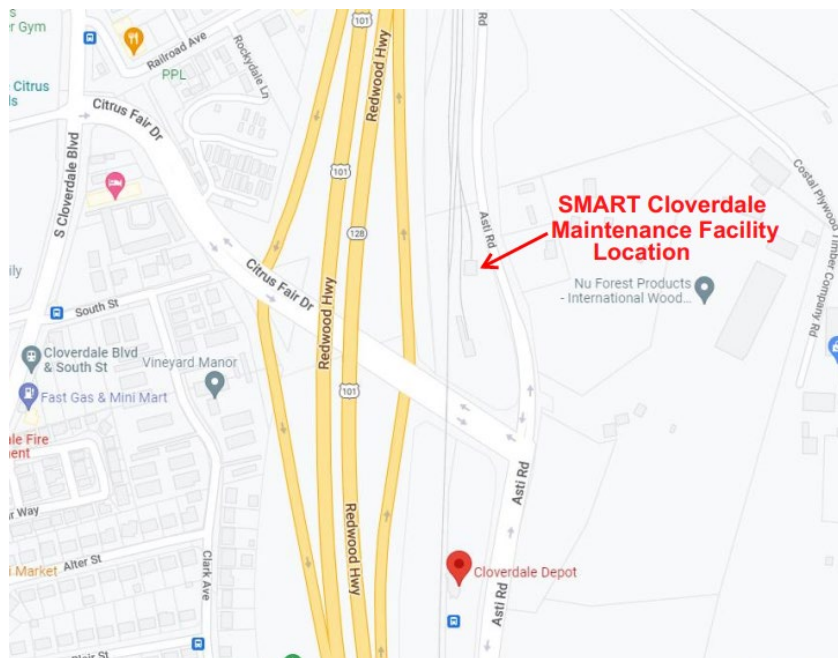
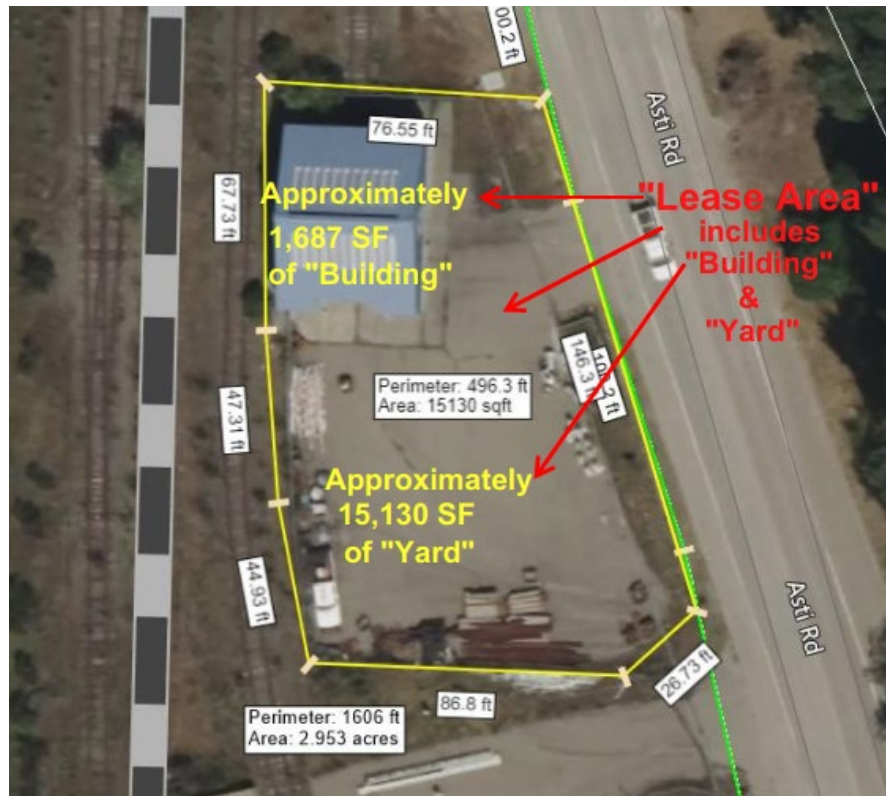
Chris Godley, Director
Emergency Management Department

Warren Sattler, Real Estate Manager
Sonoma County Public Infrastructure

CERTIFICATE OF INSURANCE ON FILE WITH DEPARTMENT:

Reviewed by: _____ Date: _____

EXHIBIT A – Description of Premises



SMART Cloverdale Maintenance Facility Lease Agreement
between SMART(Lessor) & County of Sonoma (Lessee)
Sonoma County APN #: 001-221-017 (Portion thereof); MP 84.96

EXHIBIT B – Condition of Premises

[Attach Photos of Premises Prior to Execution]