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July 22, 2014

The Honorable Faye D'Opal
Marin County Civil Grand Jury
3501 Civic Center Drive, Room 275
San Rafael, CA 94903

Steven Woodside
Marin County Counsel
3501 Civic Center Drive, Room 275
San Rafael, CA 94903

SUBJECT: Responses to Marin County Civil Grand Jury

Dear Honorable Faye D'Opal and Mr. Woodside,

Enclosed please find responses to findings and recommendations from
Marin County Civil Grand Jury Report "SMART – Down the Track" dated
April 25, 2014.

Very truly yours,

A handwritten signature in blue ink that reads "Leticia Rosas-Mendoza".

Leticia Rosas-Mendoza
Clerk of the Board

Cc: Judy Arnold, SMART Chair
Barbara Pahre, SMART Vice-Chair
Farhad Mansourian
Tom Lyons

Sonoma-Marin Area Rail Transit District

Response to Findings and Recommendations from Marin County Civil Grand Jury Report "SMART – Down the Track" April 25, 2014

FINDINGS:

F1. SMART management is doing a good job in completing the construction phase of the project that is likely to result in the start of passenger service from Santa Rosa to San Rafael in late 2016.

Response: **Agree**

F2. SMART has been successful in securing a portion of the needed government grants over and above the sale tax revenues necessary to complete the fourteen-station system approved by voters. An additional amount of funding still needs to be obtained to complete the project.

Response: **Agree**

F3. SMART management is focused primarily on construction of the project and has not yet developed a formal operating plan for the system.

Response: **Disagree.** SMART Management under the direction of the Board of Directors has been focusing on all aspects of the SMART project including construction, leveraging funds and developing the details of upcoming operations.

F4. Some SMART Board members do not have an adequate understanding of the financial and system operating issues to enable them to fulfill their role as Board members.

Response: **Disagree.** According to the state law: The Board is the legislative body of the district and, consistent with provisions of the enabling legislation, shall determine all district policy.

The Grand Jury report found SMART Board members to be "capable people... dedicated to serving the public". The primary statutory duty of the Board is to determine district policy. SMART Board members, similar to other public Boards, rely on their top managers and key experts to accomplish the policy goals set by the Board and voted by people.

F5. SMART's current organization structure is heavily dependent on the current management for whom there is no succession plan.

Response: **Disagree.** SMART's organization is established by State legislation which establishes the powers and duties of SMART's management. Management is vested with the statutory authority to, among things, be responsible for the proper administration of all affairs of the District. The statute also

provides for succession planning by vesting in the Board the power of appointment and removal of SMART officers. SMART is a small but efficient organization. The Board should not spend taxpayer funds on duplicate and unwarranted additional senior staffing on the speculative concern about the "death" of a SMART officer.

F6. SMART did not complete the update of its 2009 Strategic Plan within two years as was committed in the conclusion of the plan.

Response: **Disagree.** The voters mandated Measure Q which requires the preparation of a Strategic Plan (which was created in 2009) and an update every 5 years (which is currently underway). SMART is complying with Measure Q requirements and the will of the voters.

F7. The SMART Board did not act on its commitment to the 2010 Marin County Civil Grand Jury to request the Citizen's Oversight Committee (COC) to submit to the Board an annual written report on the status of SMART's Strategic Plan.

Response: **Partially Disagree.** SMART's response to the 2010 Grand Jury's recommendation No. 7 stated "The role of the Citizens Oversight Committee (COC) is defined in the Measure Q". Measure Q provides in part, that "A Citizens Oversight Committee (COC) will be established.... to provide input and review on the Strategic Plan and subsequent updates". Under Measure Q a strategic plan was prepared in 2009 and is scheduled to be updated in 2014.

Although SMART's 2010 response did indicate that an annual written report would be requested Measure Q does not require that the Citizens Oversight Committee meet annually. SMART acknowledges that its 2010 response to recommendation No. 7 could have been clearer. By its response, SMART did not intend to expand the role of the Citizens Oversight Committee as defined in Measure Q but rather intended to request a written report from the Citizens Oversight Committee when it met regarding the strategic plan. Measure Q requires that the Citizens Oversight Committee submit a written report to the Board on a status of the 2014 strategic plan update currently under consideration.

F8. SMART has not been updating its five-year revenue and expense projections on annual bases.

Response: **Disagree.** As approved by the voters and pursuant to the requirements of Measure Q, the Chief Financial Officer provides forecasting reports and an annual report setting forth the amount of funds collected and expended and the status of any project component authorized to be funded by the expenditure plan.

F9. SMART management has been responsive to establishing a contingency fund to help pay operations costs in periods in which sales tax revenues are inadequate to cover operating costs.

Response: **Agree.** SMART has always intended to set up prudent reserves in advance of commuter rail operations to address revenue or expenditure uncertainty. Those reserves will be approved as part of each annual budget.

F10. Citizens Oversight Committee is not as active as it should be in providing ongoing input into the SMART Strategic Plan and monitoring the status of the plan.

Response: **Disagree.** As noted above, the implementing guidelines in the Voter approved Measure Q define the role of the Citizens Oversight Committee to “provide input and review on the strategic plan and subsequent updates”. In addition, the Citizens Oversight Committee has met periodically to receive reports related to implementation of the plan and to receive updates related to construction milestones. SMART believes that the Citizens Oversight Committee properly provided input into the 2009 strategic Plan and will actively participate and will provide input to the 2014 update as required by Measure Q.

F11. SMART lacks a formal mechanism to receive input from citizens on operations issues.

Response: **Disagree.** The Grand Jury reports that SMART is doing a good job of providing transparency to the citizens it serves. Just like all other public agencies in California, each SMART meeting contains an opportunity for the public to address any agenda item as well as “open time” where citizens can provide input on all SMART matters including operations issues. SMART believes that the input provided at its noticed public meetings and otherwise is an adequate mechanism for current operations issues. Additionally, our website provides for the public to send us comments as well.

F12. SMART is making an effort to become more transparent in the way it operates; however, there is still room for improvement.

Response: **Agree.** SMART agrees with the Grand Jury’s conclusion that SMART is doing a “good job” in the area of transparency to the citizens it serves.

Recommendations

The Grand Jury recommends that:

R2. SMART continue to be aggressive in securing additional grants and other funding that will allow it to complete construction of the System.

Response: This recommendation is already implemented and is ongoing.

R3. SMART management continue its focus on developing a formal operations plan as it moves close to the start of passenger service.

Response: This recommendation has already been implemented and is ongoing.

R4. SMART Board establish training and mentoring process for new members that would better prepare them to fulfill their roles as Board Members.

Response: This recommendation is already implemented. The composition, appointment and removal of SMART Board members are set by State law. The SMART Board cannot compel mandatory training and mentoring processes or certain qualifications beyond those established by law. Notwithstanding, SMART Senior Staff and experienced Board members have and will continue to provide training and mentoring for newly appointed Board members.

R5. The SMART Board develop a formal succession plan for their key management staff.

Response: This recommendation will not be implemented. State Law already delegates authority to the SMART Board to appoint key management staff including a General Manager or Chief Financial Officer or Legal Counsel. The establishment of a "formal succession" plan will unlawfully restrict the power of future SMART Boards who at that time will exercise their statutory power to appoint key management staff.

R6. SMART update its strategic plan by the end of 2014 and every two years thereafter.

Response: This recommendation will be partially implemented. SMART will comply with the voter mandate contained in Measure Q that the Strategic Plan be updated in 2014 and at least every five years thereafter.

R7. The SMART Board require the Citizen's Oversight Committee to submit to them an annual written report on the status of the SMART's Strategic Plan.

Response: **This recommendation will not be implemented.** As mandated by Measure Q the SMART Board will require the Citizen's Oversight Committee to submit written input to it when the COC reviews subsequent strategic plan updates.

R8. SMART update its five-year revenue and expense projections on an annual basis.

Response: **This recommendation will not be implemented.** SMART's financial projections are updated regularly. In 2011 and 2012 SMART's projections were updated for the Bond sale. Earlier this year updates were provided as requested by rating agencies. Later in 2014, the Board will consider a new update as part of the Strategic Plan process. The Chief Financial Officer will update all economic assumptions as economic conditions change or as needed.

R9. The SMART Board formally establish and approve an operations contingency fund that can be used should sales tax revenues be inadequate to fund operating expenses.

Response: **This recommendation is already implemented.** As part of adoption of annual budget by the Board, Operations contingency is set aside. Future reserves will be approved a part of each annual budget.

R10. SMART Board establish an organizational structure and process for the Citizen's Oversight Committee to provide ongoing input into SMART's Strategic Plan.

Response: **This recommendation is already implemented.** The process for the Citizens Oversight Committee to provide ongoing input into SMART's Strategic Plan is set forth in Measure Q and is followed.

R11. The SMART Board create Citizen Advisory Groups and establish an organizational structure to allow the groups to advise the Board and General Manager on issues affecting SMART's operations.

Response: **This recommendation will not be implemented.** As noted by the Grand Jury, Citizen Advisory Groups (CAG) are generally established to provide input and make recommendations "on matters affecting system users". Since SMART is not scheduled to be operational until late 2016 it would be pre-mature to create a Citizen Advisory Groups (CAG) at this time.

R12. SMART continue its efforts to become more transparent by posting all minutes of meetings of the Board of Directors and Citizen's Oversight Committee and modifying its website to have these posted independently of meeting agendas.

Response: **This recommendation is already implemented.** It is Board practice to include minutes of the previous meeting as part of the current meeting agenda for approval or modifications since they have to be approved or modified as submitted.