DATE: May 4, 2020

TO: Honorable Mayor and Members of the City Council through City Manager

FROM: Peggy Flynn, City Manager
       Eric Danly, City Attorney

SUBJECT: Consideration and Possible Introduction of an Ordinance Approving an Amendment to the Lease Agreement between SMART and the City for the Depot Property, APN 007-131-004, to Provide for Shared Use of Parking on the Depot Property and Access, Signage and Striping Improvements on the Depot Property.

RECOMMENDATION

It is recommended that the City Council introduce the attached ordinance approving an amendment to the Lease Agreement between SMART and the City for the Depot Property, APN 007-131-004, to provide for shared use of parking on the Depot Property and access, signage and striping improvements on the Depot Property, and authorizing the City Manager to sign on behalf of the City an amendment to the Lease Agreement with SMART substantially in accordance with the draft amendment included as Exhibit 1 to the ordinance.

BACKGROUND

As noted in the staff report regarding the proposed Corona Station Agreement with SMART, the City Council has recently approved most of the entitlements needed for the Corona Station Residential Project (Corona Residential Project) proposed by two Lomas Partners related entities, Lomas Corona Station LLC, and Lomas SMART LLC. These entities are referred to in the aggregate in this staff report and attachments as “Developer.” Except for the ordinance approving a Development Agreement between Developer and the City, and the Development Agreement itself, all of the entitlements for the Corona Residential Project include as a condition precedent that must be satisfied before the entitlements take effect that the City must have entered an agreement with SMART for construction of a second Petaluma SMART station at Corona (Corona SMART Station). A provision in the Development Agreement with Developer allows the City to terminate the Development Agreement without liability if the City does not reach an agreement with SMART on the Corona SMART Station. The provisions in the Corona Residential Project approvals conditioning their effectiveness (or giving the City a right of termination) based on the City reaching an agreement with SMART on the Corona SMART Station all reflect the emphasis the City Council has placed on achieving the Corona SMART Station.

Staff have been working for some time to finalize a Corona Station Agreement with SMART for presentation to the City Council. Staff first attempted to have a Corona Station Agreement ready
for City Council approval on February 24, 2020. Further discussions with SMART followed, and we most recently met online with SMART staff on April 23 to finalize an agreement. The resulting agreement is being presented to the City Council for approval as Item 4C on tonight’s agenda.

The proposed Corona Station Agreement being presented to the City Council tonight includes language requiring cooperation on an amendment to the City’s lease agreement with SMART for the Depot property, APN 007-131-004. The property subject to lease consists of about 71,874 square feet of land, and three buildings, the Petaluma Passenger Depot, a 2,450 square foot building, the Baggage Shed, a 520 square foot building, and the Freight Shed, a 4,760 square foot building. The proposed Corona Station Agreement also includes a provision requiring the City Council to introduce an ordinance approving an amendment to the City’s lease agreement with SMART for the Depot property by May 4, 2020, and for the amendment to be effective by June 18, 2020. The proposed Corona Station Agreement requires the City and SMART to amend the Depot Lease agreement to provide for the City’s and SMART’s shared use of parking spaces on the Depot property, and design and construction by SMART of new access, striping and related improvements on the Depot property. The changes are required as a result of sale and development of the Downtown SMART Property and loss of SMART parking on the Downtown SMART Property, and the related need to reconfigure the vehicular access into the Depot property from East Washington Boulevard. Part of the current access to the Depot property from East Washington Boulevard is located on the Downtown SMART Property and will be lost and reconfigured when that property is sold and developed.

The current lease between the City and SMART for the Depot property was originally entered by the Petaluma Community Development Commission (the City’s former redevelopment agency) and the Northwestern Pacific Railroad Authority on August 1, 2003. SMART succeeded the Northwestern Pacific Railroad Authority as owner and lessor of the Depot property, the Petaluma Community Development Successor Agency succeeded the Petaluma Community Development Commission by operation of law when California redevelopment agencies were dissolved by state statute, and on August 22, 2013, the Petaluma Community Development Successor Agency assigned it lease interest in the Depot property to the City. The former Petaluma Community Development Commission subleased part of the Depot property containing the Freight Shed and parking and related facilities to the Petaluma Arts Alliance and sublicensed part of the Depot property consisting of the Passenger Depot and parking and related facilities to the Petaluma Downtown Association.

Section 4 of the Depot property lease anticipates that all or a portion of the leased Premises may be needed for transportation related purposes, including development, construction, maintenance, and operation of transportation systems or transit related projects, including passenger loading areas and parking. Section 4 requires SMART to provide the City 365 days prior notice that SMART needs to obtain possession of all or a portion of the Premises. Section 4 also provides that if SMART only requires a portion of the Premises, the lease shall continue in effect except the rent shall be reduced in proportion to the area of the part of the Premises rendered unusable for conduct of City business compared to the total area of the Premises.

Section 8(a) of the lease specifies that the rent due totals $12,000 per year, to be paid monthly in advance on the first day of each month. Section 8(b) of the Depot property lease provides that to
the extent the City’s receipt of rents from sublessees in any calendar year exceeds the sum of 1) 1/25\textsuperscript{th} of the amount necessary to amortize the City’s actual out of pocket costs for the improvements to the buildings on the Depot property over a 25 year period, and 2) the City’s cost of operating and maintaining the Premises for that year, and 3) the rents paid to the City during that year, the City must pay SMART 50% of the amount by which the sum of 1), 2) and 3) exceeds the City’s receipt of rents.

The Depot property lease took effect on August 1, 2003 for an initial ten year term expiring August 2, 2013. In accordance with Section 13 of the Depot property lease, the lease terms include three 5-year renewal options. The City is required to give notice to SMART of the City’s intent to renew the lease not more than 180 days and at least 120 days prior to the end of the lease term. The City renewed the lease once prior to the expiration of the initial ten-year term in 2013, and again prior to the expiration of the first 5-year renewal in 2018. Currently the lease is in effect until August 1, 2023. The City may renew the lease one more time by giving SMART notice sometime between February 1 and April 1, 2023. If the City does so and unless the City and SMART agree to a further extension of the Depot property lease, it will expire August 2, 2028.

DISCUSSION

Under the provisions of Section 5 of the proposed Corona Station Agreement with SMART, which is also before the City Council for approval at the May 4, 2020 City Council meeting, as a result of the loss of the SMART parking on the Downtown SMART Property being sold to Developer, the City and SMART intend to provide for the City’s and SMART’s shared use of the parking currently located on the Depot property and leased to the City. Under the proposed shared parking, SMART patrons may use parking spaces at the Depot during SMART’s operational hours and patrons of the sublessees and licensees on the Depot property (the Petaluma Downtown Association and the Petaluma Arts Alliance) may use parking spaces at the Depot during the sublessees’ and licensees’ operational hours on a first come, first served basis. No other parking will be allowed, including no overnight parking or parking for any residential, retail or commercial use, and SMART will be responsible for enforcing parking restrictions on the property as with other SMART parking facilities. Under Section 4 of the lease, in order to obtain part of the leased premises for transportation related purposes, SMART would be required to provide the City 365 days’ notice. Since that is impractical under the circumstances the lease amendment attached as Exhibit 1 to Attachment 1, the ordinance approving the lease amendment, waives the 365 notice requirement.

The current parking area at the Depot property consists of approximately 50 parking spaces totaling approximately 25,960 square feet of the 71,874 square foot Depot parcel. Based on the formula in Section 4 of the Depot property lease for reduction of rent upon SMART obtaining part of the Premises for transportation related purposes, to reflect the shared use of the parking on the Depot property pursuant to the amended Depot property lease, the City’s annual rent of $12,000 would be reduced by 18% ($2,167) to $9,833, which corresponds with the reduction in leased space from 71,874 square feet to 45,914 square feet, with the reduction divided by two, because SMART and City will share the parking spaces, with each receiving approximately ½ of the benefit of the parking spaces. Although the rent the City pays for the Depot property lease reflects the use of redevelopment funds to restore the improvements on the Depot property, nonetheless the rent
has not been adjusted since the lease commenced on August 1, 2003, and accordingly, City staff have recommended that the City waive the rent reduction that otherwise would apply under Section 4 of the Depot property lease, and as result, the lease amendment included as Exhibit 1 to Attachment 1 provides for waiver of the lease reduction that otherwise would apply, and, similarly, for waiver of the City’s obligation to share subtenant rent with SMART that otherwise could apply under Section 8(b) of the lease.

Section 46 of the Petaluma Charter requires that the City Council take certain actions by ordinance, including actions involving sale, acquisition or lease of real property when the amount in question exceeds $3,000. In accordance with Section 46, an ordinance (Attachment 1) has been prepared for the City Council’s approval of the proposed amendment to the Depot property lease with SMART. The City Council’s introduction and ultimate adoption of the ordinance approving the lease amendment would satisfy one of the requirements of the proposed Corona Station Agreement with SMART which is also included on the May 4, 2020 City Council meeting agenda.

ENVIRONMENTAL ANALYSIS

The approval of the amendment to the Depot property lease is considered a discretionary action that may therefore be a “project” under the California Environmental Quality Act (CEQA). Nonetheless, approval of the lease amendment is exempt under the “common sense” exception in CEQA Guidelines Section 15061(b)(3) which establishes the general rule for projects concerning which it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Such activities are not subject to CEQA. The lease amendment relates to the use of existing parking on the Depot property and to ingress, parking and signage improvements on the Depot property that will be required as a result of the sale of the Downtown SMART Property to the Developer, and the need to reconfigure vehicle access to and parking on the property. The amendment to the Depot property lease is also exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines as involving the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features involving negligible or no expansion of existing or former use, including, in accordance with Section 15301, subdivision (c), regarding existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities, transit improvements such as bus lanes, pedestrian crossings, and other similar alterations.

COUNCIL GOAL ALIGNMENT

Introduction and adoption of the ordinance approving an amendment to the Depot property lease aligns with Workplan Item #22 to complete the second SMART station at Corona as included in the City Council goals for 2019-2021. The Depot property lease amendment is a requirement of the proposed Corona Station Agreement with SMART.

FINANCIAL IMPACTS

Introduction and adoption of the ordinance approving an amendment to the Depot property lease as presented would leave the City’s rent payments for the Depot property unchanged, and will also
facilitate, pursuant to the proposed Corona Station Agreement with SMART, use of City Traffic Impact Fee proceeds for design and construction of the Corona SMART Station, and use of proceeds from SMART’s sale of the Downtown SMART Property for design and construction of the Corona SMART Station.

ATTACHMENTS

Attachment 1: Ordinance Approving an Amendment to the Lease Agreement between the City and SMART for the Depot Property
   Exhibit 1: Draft Lease Amendment
ORDINANCE NO. _______ N.C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PETALUMA APPROVING AN AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE CITY OF PETALUMA AND THE SONOMA MARIN AREA RAIL TRANST DISTRICT FOR THE PETALUMA DEPOT PROPERTY, A.P.N. 007-131-004, TO PROVIDE FOR SHARED PARKING, INGRESS, SIGNAGE AND PARKING IMPROVEMENTS

WHEREAS, Lomas Corona Station LLC, the owner of property at 890 North McDowell Boulevard, APN 137-061-019, in Petaluma (“Corona Property”) and Lomas SMART LLC, which is in contract to purchase property owned by SMART located at 315 East D Street, APN 007-131-003, in Petaluma (“Downtown SMART Property”) are under the same management and ownership, and are referred to in this ordinance as the “Developer;” and

WHEREAS, the Downtown SMART property is adjacent to property owned by SMART located at A.P.N. 007-131-004 (“Depot Property”) that contains SMART station and depot and other improvements and that is subject to a lease agreement between SMART and the City (“Depot Lease”), and the City licenses the Depot Property to the Downtown Business Association and the Petaluma Arts Alliance for office space use; and

WHEREAS, Developer has submitted applications to the City for approval of development of the Corona Station Residential Project (the “Corona Project”) on the Corona Property, including applications for a Zoning Text Amendment (“Corona Zoning Amendment”), a Development Agreement (“Development Agreement”), a Density Bonus and Development Concession/Incentive (“Corona Density Bonus”), a Tentative Subdivision Map (“Corona Tentative Map”), Conditional Use Permit (“Corona Use Permit”), and Site Plan and Architectural Review (“Corona SPAR”) for a 110 unit residential project within the MU1B zone with Flood Plain-Combining (FP-C) Overlay, on the Corona Property; and

WHEREAS, Developer is in contract with SMART to purchase the Downtown SMART Property which shall in turn be sold to the Hines company (“Hines”) for development of a residential project (“Downtown Project”) on the Downtown SMART Property; and

WHEREAS, Developer has provided the City conceptual plans for the Downtown Project, but no application has been submitted to the City for the Downtown Project, and the conceptual plans for the Downtown Project indicate a project consisting of 402 residential units and ground floor tenant amenity uses; and

WHEREAS, Developer plans to use the proceeds from Developer’s sale of the Corona Project to purchase the Downtown SMART Property from SMART, and to sell the Downtown
SMART Property to Hines, including City-approved alternative inclusionary housing compliance, but otherwise subject to future City approval of subsequent entitlement applications to be submitted by Hines; and

WHEREAS, Developer’s fee ownership of the Corona Property entitles Developer to engage in the development of the Corona Property in accordance with Section 23.030 of the City Development Agreement Requirements; and

WHEREAS, Developer’s contractual obligation to purchase the Downtown SMART Property in accordance with the Developer/SMART Agreement entitles the Developer to engage in Development of the Downtown SMART Property in accordance with Section 23.030 of the City Development Agreement Requirements subject to the terms of the Developer/SMART Agreement dated October 12, 2019 (“Developer/SMART Agreement”); and

WHEREAS, the Developer/SMART Agreement is attached to and made a part of the Development Agreement, and in accordance with Section 9(a) of the Developer/SMART Agreement, the close of escrow on the purchase of the Downtown SMART Property is required to occur on May 19, 2020; and

WHEREAS, Section 2(a) of the Developer/SMART Agreement requires as consideration for purchase of the Downtown SMART Property a payment of $8 million, and in accordance with Section 9(c) of the Developer/SMART Agreement, Developer must deposit into escrow the remainder of the $8 million purchase amount, less a non-refundable $500,000 deposit already given by Developer and closing costs allocable to Developer by May 15, 2020; and

WHEREAS, Section 9(e), the Developer/SMART Agreement also requires Developer to dedicate to SMART 1.27 acres of land at the corner of McDowell Boulevard and Corona Road in Petaluma for the Corona SMART Station improvements, and the Corona Tentative Map includes such 1.27 acres of land as a remainder parcel; and

WHEREAS, SMART intends to use the proceeds from sale of the Downtown SMART Property for the cost of design and construction of the Corona SMART Station on land at McDowell Boulevard and Corona Road in Petaluma, with terms regarding the design and construction of the Corona SMART Station being the subject of the proposed agreement to be executed between SMART and the City; and

WHEREAS, in 2016, the City contracted with Willdan Financial Services (“Willdan”) to perform a nexus analysis to determine the City’s ability to fund the cost of parking improvements for the Corona Station project from the City’s traffic development impact fees; and

WHEREAS, Willdan determined that a nexus exists for including parking structure improvements for the Corona Station project in the City’s traffic impact fee program, that similar to other transit improvements included in the fee program, 22.43% of the cost of the Corona Station parking improvements could be attributed to future development, and that based on an estimated parking structure improvement cost of $10,500,000, $2,355,134 of the parking structure improvement costs could be recovered through an increase in the City’s traffic impact fees; and
WHEREAS, on May 16, 2016, the City Council approved Resolution No. 2016-076 N.C.S. repealing and replacing Resolution No. 2015-191 N.C.S and modifying the City’s traffic impact fee program based on the Willdan analysis to add up to $2,355,134 in funding for parking improvements for the Corona Station; and

WHEREAS, the City has anticipated since updating City traffic impact fees on May 16, 2016 that City funding for the Corona Station would come entirely from traffic impact fee proceeds, and that City funding for the Corona SMART station would be allocated entirely to parking improvement costs; and

WHEREAS, as a result of changing cost estimates for the Corona Station project, the City financial contribution must be designated more generally for Corona Station improvements, which may include station design, construction, parking improvements and other costs, pursuant to SMART’s design/build contract; and

WHEREAS, Willdan, the consultants that prepared the 2016 update to the City’s Traffic Impact fees have confirmed that using City traffic fee proceeds for Corona Station costs is permitted under the City’s existing Traffic Impact Fee legislation because the nexus - traffic relief due to Corona Station SMART ridership - is unchanged, and the costs are also comparable, and, as a result, the City may rely entirely on Traffic Impact Fee proceeds to provide $2 million toward the Corona Station project costs; and

WHEREAS, the proposed City/SMART Agreement provides for allocation of $2 million in City funds for the Corona SMART Station improvements, which will provide traffic relief in Petaluma via commuter use of the Corona SMART Station consistent with the purposes of the use of Traffic Impact Fee proceeds for the Corona Station project; and

WHEREAS, Developer’s payment for purchase of the Downtown SMART Property in accordance with the Developer/SMART Agreement, the proceeds of which are to be used to fund construction of the Corona SMART Station, and Developer’s dedication of 1.27 acres of land at McDowell Boulevard and Corona Road for the Corona SMART Station are critical elements of achieving the Corona Station and essential consideration regarding the City’s review of the Corona Project, the Downtown Project, and the Development Agreement; and

WHEREAS, the City’s payment of $2 million in City Traffic Impact Fee proceeds allocated to the Corona Station project improvements is also a critical element of achieving the Corona Station and essential consideration for purchase of the Downtown SMART Property and the Development Agreement; and

WHEREAS, SMART indicates that construction work for the Corona Station must coincide with the construction work on the planned Windsor SMART station originally scheduled for March 2020, such that Developer’s payment for the Downtown SMART Property and dedication of 1.27 acres at Corona Road and McDowell Boulevard must occur before the scheduled closing on the Downtown SMART Property purchase on May 19, 2020 for the Corona Station construction to proceed in conjunction with the Windsor station; and
WHEREAS, the justification for entering into the Development Agreement with the Developer regarding the Corona Station Residential Project and the Downtown Project and the special long-term project considerations that make preservation of existing zoning requirements desirable throughout the life of the Corona Project, or so long as otherwise provided in the Development Agreement, consist of dedication of land for, and funding of, construction of the Corona Station on land at McDowell Boulevard and Corona Road in Petaluma, as well as considerations regarding inclusionary housing compliance of the Corona and Downtown projects; and

WHEREAS, the City Council has recently approved most of the entitlements needed for the Corona Project proposed by Developer; and

WHEREAS, except for the ordinance approving a Development Agreement between the Developer and the City, and the Development Agreement itself, all of the entitlements for the Corona Project include as a condition precedent that must be satisfied before the entitlements take effect that the City must have entered an agreement with SMART for construction of the Corona Station; and

WHEREAS, a provision in the Development Agreement with Developer allows the City to terminate the Development Agreement without liability if the City does not reach an agreement with SMART for construction of the Corona Station; and

WHEREAS, the conditions in the Corona Project approvals conditioning their effectiveness (or giving the City a right of termination) based on the City reaching an agreement with SMART on the Corona Station all reflect the emphasis the City Council has placed on achieving the Corona Station; and

WHEREAS, Staff have been working for some time to finalize a Corona Station Agreement with SMART for presentation to the City Council, and most recently met online with SMART staff on April 23 to finalize an agreement, with the resulting agreement being presented to the City Council for approval as Item 4C on the May 4, 2020 City Council agenda; and

WHEREAS, the proposed Corona Station Agreement being presented to the City Council includes language requiring cooperation regarding an amendment to the lease agreement between SMART and the City for the Depot property, APN 007-131-004; and

WHEREAS, the Depot property subject to lease consists of about 71,874 square feet of land, and three buildings, the Petaluma Passenger Depot, a 2,450 square foot building, the Baggage Shed, a 520 square foot building, and the Freight Shed, a 4,760 square foot building; and

WHEREAS, the proposed Corona Station Agreement includes a provision requiring the City Council to introduce an ordinance approving an amendment to the lease for the Depot property by May 4, 2020, and for the amendment to be effective by June 1, 2020, and the proposed Corona Station Agreement provides for the City and SMART amending the Depot Lease agreement to provide for the City’s and SMART’s shared use of parking spaces on the Downtown
WHEREAS, the contemplated changes to the Depot property lease are required as a result of sale and development of the Downtown SMART Property, the loss of SMART parking on the Downtown SMART Property, and the related need to reconfigure the vehicular access into the Depot property from East Washington Boulevard, because part of the current access to the Depot property from East Washington Boulevard is located on the Downtown SMART Property and will be lost and reconfigured when that property is sold and developed; and

WHEREAS, Section 4 of the Depot property lease anticipates that all or a portion of the leased property may be needed for transportation related purposes, including development, construction, maintenance, and operation of transportation systems or transit related projects, including passenger loading areas and parking; Section 4 requires SMART to provide the City 365 days prior notice that SMART needs to obtain possession of all or a portion of the leased Premises; and Section 4 also provides that if SMART only requires a portion of the Premises, the lease shall continue in effect except the rent shall be reduced in proportion to the area of the part of the Premises rendered unusable for conduct of the City’s business compared to the total area of the Premises; and

WHEREAS, Section 8(a) of the Depot property lease specifies that the rent due totals $12,000 per year, to be paid monthly in advance on the first day of each month, and Section 8(b) of the Depot property lease provides that to the extent the City’s receipt of rents from sublessees in any calendar year exceeds the sum of 1) 1/25th of the amount necessary to amortize the City’s actual out of pocket costs for the improvements to the buildings on the Depot property over a 25 year period, and 2) the City’s cost of operating and maintaining the leased property for that year, and 3) the rents paid to the City during that year, the City must pay SMART 50% of the amount by which the sum of 1), 2) and 3) exceeds the City’s receipt of rents; and

WHEREAS, the Depot property lease is in effect until August 1, 2023, and the City may renew the lease by giving SMART notice sometime between February 1 and April 1, 2023, and if the City does so and unless the City and SMART agree to a further extension of the Depot property lease, the lease will expire August 2, 2028; and

WHEREAS, under the provisions of Section 5 of the proposed Corona Station Agreement with SMART, which is also before the City Council for approval at the May 4, 2020 City Council meeting, as a result of the loss of the SMART parking on the Downtown SMART Property being sold to Developer, the City and SMART intend to provide for the City’s and SMART’s shared use of the parking currently located on the Depot property and leased to the City such that: SMART patrons may use parking spaces at the Depot during SMART’s operational hours and the patrons of City’s sublessees and licensees (the Petaluma Downtown Association and the Petaluma Arts Alliance) may use parking spaces at the Depot during sublesse’s and licensees’ operational hours on a first come, first served basis; no other parking will be allowed, including no overnight parking or parking for any residential, retail or commercial use, and SMART will be responsible for enforcing parking restrictions as for other SMART parking facilities; and
WHEREAS, the current parking area at the Depot property consists of approximately 50 parking spaces totaling approximately 25,960 square feet of the 71,874 square foot Depot parcel, and, based on the formula in Section 4 of the Depot property lease for reduction of rent upon SMART obtaining part of the leased property for transportation related purposes, to reflect the shared use of the parking on the Depot property pursuant to the amended Depot property lease, the City’s annual rent of $12,000 would be reduced by 18% ($2,157) to $9,833, which corresponds with the reduction in leased space from 71,874 square feet to 45,914 square feet, with the reduction divided by two, because SMART and City will share the parking spaces, with each receiving approximately ½ of the benefit of the parking spaces; and

WHEREAS, the 365 day notice requirement in Section 4 of the Depot property lease regarding SMART obtaining part of the leased property for transportation related purposes is impractical under the circumstances and the lease amendment attached to this ordinance as Exhibit 1 has been drafted to wave that notice requirement; and

WHEREAS, although the rent the City pays for the Depot property lease reflects the use of redevelopment funds to restore the improvements on the Depot property; nonetheless, the rent has not been adjusted since the lease commenced on August 1, 2003, and accordingly, City staff have recommended that the City waive the rent reduction that otherwise would apply under Section 4 of the Depot property lease, and as result, the lease amendment included as Exhibit 1 provides for waiver of the lease reduction that otherwise would apply, and, similarly, for waiver of the City’s obligation to share subtenant rent with SMART that otherwise could apply under Section 8(b) of the lease; and

WHEREAS, Section 46 of the Petaluma Charter requires that the City Council take certain actions by ordinance, including actions involving sale, acquisition or lease of real property when the amount in question exceeds $3,000; and

WHEREAS, approval of the amendment to the Depot property lease agreement is exempt under the “common sense” exception in CEQA Guidelines Section 15061(b)(3) which establishes the general rule for projects concerning which it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, because the lease amendment relates to the use of existing parking on the Depot property and to ingress, parking and signage improvements on the Depot property that will be required as a result of the sale of the Downtown SMART Property to the Developer, and the need to reconfigure vehicle access to and parking on the Depot property; and

WHEREAS, the amendment to the Depot property lease is also exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines as involving the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use, including, in accordance with Section 15301, subdivision (c), regarding existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities, transit improvements, such as bus lanes, pedestrian crossings, and other similar alterations;
NOW, THEREFORE, be it ordained by the Council of the City of Petaluma as follows:

Section 1. Recitals Made Findings. The above recitals are hereby declared to be true and correct and are incorporated into this ordinance as findings of the City Council.

Section 2. Amendment Exempt from CEQA. Approval of the amendment to the Depot property lease agreement pursuant to this ordinance exempt from CEQA under the “common sense” exception in CEQA Guidelines Section 15061(b)(3) which establishes the general rule for projects concerning which it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, because the lease amendment relates to the use of existing parking on the Depot property and to ingress, parking and signage improvements on the Depot property that will be required as a result of the sale of the Downtown SMART Property to the Developer, and the need to reconfigure vehicle access to and parking on the property. The amendment to the Depot property lease is also exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines as involving the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use, including, in accordance with Section 15301, subdivision (c), regarding existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities, transit improvements, such as bus lanes, pedestrian crossings, and other similar alterations.

Section 3. Amendment to Depot Property Lease Approved. The amendment to the Depot Property lease between the City of Petaluma and the Sonoma Marin Area Rail Transit District (“SMART”) which is attached to and made a part of this ordinance as Exhibit 1 is hereby approved.

Section 4. City Manager Authorized to Execute Amendment. Upon this ordinance taking effect, the City Manager or her designee are hereby authorized to execute on behalf of the City an amendment to the Depot Property Lease between SMART and the City substantially in accordance with that attached as Exhibit 1, subject to such changes to the amendment deemed necessary or appropriate by the City Manager and approved by the City Attorney to affect the intended purposes of this ordinance.

Section 5. Severability. The City Council hereby declares that every section, paragraph, sentence, clause, and phrase of this ordinance is severable. If any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses, or phrases.

Section 6. Effective Date. This ordinance shall be in full force and effective 30 days after its adoption and shall be published and/or posted in the manner required by the City’s charter.
INTRODUCED this 4th\textsuperscript{th} day of May, 2020.

Teresa Barrett, Mayor

ATTEST:

Claire Cooper, City Clerk
WHEREAS, City staff have been working for some time to finalize a Corona Station Agreement with SMART for presentation to the City Council, and most recently met online with SMART staff on April 23, 2020 to finalize an agreement, with the resulting agreement being presented to the City Council for approval as Item 4C on the May 4, 2020 City Council agenda; and

WHEREAS, the proposed Corona Station Agreement being presented to the City Council includes language requiring cooperation regarding an amendment to the City’s lease agreement with SMART for the Depot property, APN 007-131-004; and

WHEREAS, the lease agreement between the City and SMART for the Depot property was originally entered by the Petaluma Community Development Commission (the City’s former redevelopment agency) and the Northwestern Pacific Railroad Authority on August 1, 2003, and SMART succeeded the Northwestern Pacific Railroad Authority as owner and lessor of the Depot property, the Petaluma Community Development Successor Agency succeeded the Petaluma Community Development Commission by operation of law when California redevelopment agencies were dissolved by state statute, and on August 22, 2013, the Petaluma Community Development Successor Agency assigned its lease interest in the Depot property to the City; and

WHEREAS, the Depot property subject to lease consists of about 71,874 square feet of land, and three buildings, the Petaluma Passenger Depot, a 2,450 square foot building, the Baggage Shed, a 520 square foot building, and the Freight Shed, a 4,760 square foot building; and

WHEREAS, the proposed Corona Station Agreement includes a provision requiring the City Council to introduce an ordinance approving an amendment to the lease for the Depot property by May 4, 2020, and for the amendment to be effective by June 18, 2020, and the proposed Corona Station Agreement provides for the City and SMART amending the Depot Lease agreement to provide for the City’s and SMART’s shared use of parking spaces on the Depot property, and design and construction by SMART of new access, striping and related improvements on the Depot property; and

WHEREAS, the contemplated changes to the Depot property lease are required as a result of sale and development of the Downtown SMART Property and loss of SMART parking on the
Downtown SMART Property, and the related need to reconfigure the vehicular access into the Depot property from East Washington Boulevard, because part of the current access to the Depot property from East Washington Boulevard is located on the Downtown SMART Property and will be lost and reconfigured when that property is sold and developed; and

**WHEREAS**, Section 4 of the Depot property lease anticipates that all or a portion of the leased Premises may be needed for transportation related purposes, including development, construction, maintenance, and operation of transportation systems or transit related projects, including passenger loading areas and parking; Section 4 requires SMART to provide the City 365 days prior notice that SMART needs to obtain possession of all or a portion of the Premises; and Section 4 also provides that if SMART only requires a portion of the Premises, the lease shall continue in effect except the rent shall be reduced in proportion to the area of the part of the Premises rendered unusable for conduct of City business compared to the total area of the Premises; and

**WHEREAS**, Section 8(a) of the Depot property lease specifies that the rent due totals $12,000 per year, to be paid monthly in advance on the first day of each month, and Section 8(b) of the Depot property lease provides that to the extent the City’s receipt of rents from sublessees in any calendar year exceeds the sum of 1) 1/25th of the amount necessary to amortize the City’s actual out of pocket costs for the improvements to the buildings on the Depot property over a 25 year period, and 2) the City’s cost of operating and maintaining the leased property for that year, and 3) the rents paid to the City during that year, the City must pay SMART 50% of the amount by which the sum of 1), 2), and 3) exceeds the City’s receipt of rents; and

**WHEREAS**, the Depot property lease is in effect until August 1, 2023, and the City may renew the lease by giving SMART notice sometime between February 1 and April 1, 2023, and if the City does so and unless the City and SMART agree to a further extension of the Depot property lease, it will expire August 2, 2028; and

**WHEREAS**, under the provisions of Section 5 of the proposed Corona Station Agreement with SMART, which is also before the City Council for approval at the May 4, 2020 City Council meeting, as a result of the loss of the SMART parking on the Downtown SMART Property being sold to Developer, the City and SMART intend to provide for the City’s and SMART’s shared use of the parking currently located on the Depot property and leased to the City such that: SMART patrons may use parking spaces at the Depot during SMART’s operational hours and patrons of the City’s sublessees and licensees may use parking spaces at the Depot during the sublessees’ and licensees’ operational hours on a first come, first served basis; no other parking will be allowed, including no overnight parking or parking for any residential, retail or commercial use, and SMART will be responsible for enforcing parking restrictions as for other SMART parking facilities; and

**WHEREAS**, the current parking area at the Depot property consists of approximately 50 parking spaces totaling approximately 25,960 square feet of the 71,874 square foot Depot parcel, and, based on the formula in Section 4 of the Depot property lease for reduction of rent upon SMART obtaining part of the Premises for transportation related purposes, to reflect the shared use of the parking on the Depot premises pursuant to the amended Depot property lease, the City’s
annual rent of $12,000 would be reduced by 18% ($2,167) to $9,833, which corresponds with the reduction in leased space from 71,874 square feet to 45,914 square feet, with the reduction divided by two, because SMART and City will share the parking spaces, with each receiving approximately ½ of the benefit of the parking spaces; and

WHEREAS, the 365 day notice requirement in Section 4 of the Depot property lease regarding SMART obtaining part of the leased property for transportation related purposes is impractical under the circumstances and this lease amendment has been drafted to wave that notice requirement; and

WHEREAS, although the rent the City pays for the Depot property lease reflects the use of redevelopment funds to restore the improvements on the Depot property, nonetheless the rent has not been adjusted since the lease commenced on August 1, 2003, and accordingly, City staff have recommended that the City waive the rent reduction that otherwise apply under Section 4 of the Depot property lease, and as result, this lease amendment provides for waiver of the lease reduction that otherwise would apply, and, similarly, for waiver of the City’s obligation to share subtenant rent with SMART that otherwise could apply under Section 8(b) of the lease; and

WHEREAS, Section 46 of the Petaluma Charter requires that the City Council take certain actions by ordinance, including actions involving sale, acquisition or lease of real property when the amount in question exceeds $3,000; and

WHEREAS, approval of the amendment to the Depot property lease agreement is exempt under the “common sense” exception in CEQA Guidelines Section 15061(b)(3) which establishes the general rule for projects concerning which it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, because the lease amendment relates to the use of existing parking on the Depot property and to ingress, parking and signage improvements on the Depot property that will be required as a result of the sale of the Downtown SMART Property to the Developer, and the need to reconfigure vehicle access to and parking on the Depot property; and

WHEREAS, the amendment to the Depot property lease is also exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines as involving the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use, including, in accordance with Section 15301, subdivision (c), regarding existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities, transit improvements such as bus lanes, pedestrian crossings, and other similar alterations;

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the City of Petaluma, a California municipal corporation and charter city (City), and the Sonoma Marin Area Rail Transit District, a regional transportation district (SMART), hereby agree to amend the Commercial Lease (Lease) first entered August 1, 2003 by the Northwestern Pacific Railroad Authority, as predecessor in interest to SMART, and the
Petaluma Community Development Commission, as predecessor in interest to the City, concerning Assessor’s Parcel No. 007-131-004.

**Amendments Concerning Leased Premises and Use of the Leased Premises**

In accordance with Section 31, paragraph (c) of the Lease concerning amendments, and with reference to Section 1, Premises, Section 4, Use/Termination for Transit Activities, Section 5, Use, Section 6, Restrictions on Use, Section 12, Tenant Improvements and Other Alterations, Section 17, Indemnification, and Section 19, Insurance, the City and SMART hereby modify the Lease in accordance with this amendment (Amendment) as follows, notwithstanding anything to the contrary in the Lease:

The above recitals are hereby declared to be true and correct and made a part of this Amendment.

Section 1, Premises of the Lease is hereby modified in accordance with the following:

a. Reconfiguration of ingress, parking, and related improvements.

The area and boundaries of the Premises, as defined and described in the Lease, are not modified by this Amendment. However, as a result of the sale of the Downtown SMART property to the Developer, and loss of the SMART parking and also ingress improvements onto the Premises currently on the Downtown SMART property, the ingress from East Washington Boulevard, the configuration of the parking stalls currently on the Premises, and related improvements such as curb, gutter, sidewalk, bus access and drainage improvements (SMART Improvements), will have to be redesigned and reconfigured in accordance with the terms of this Amendment.

b. Shared parking

The reconfigured parking stalls on the Premises will be shared by City, City’s sublessees and licensees, and SMART, and the patrons of City’s sublessees and licensees and of SMART, such that SMART patrons may use the parking stalls during SMART’s operational hours, and City, City’s sublessees and licensees and their invitees may use the parking stalls during the City’s, City’s sublessees’ and licensees’ operational hours, on a first come, first served basis. No other parking will be permitted on the Premises, including no overnight parking or parking for any residential, retail or commercial use. SMART will be responsible for enforcing these parking restrictions as for other SMART parking facilities.

Section 4, Use/Termination for Transit Activities of the Lease is hereby modified in accordance with the following:

a. Need to use a portion of the Premises for transportation related purposes.

In accordance with Section 4 of the Lease, and due to the sale of the Downtown SMART Property and loss of the SMART parking and also ingress improvements onto the Premises currently on the Downtown SMART property, SMART has a need for a portion of the Premises for transportation related purposes, and more particularly, for reconfiguration of the ingress from East Washington
Boulevard to the Premises, the parking stalls currently on the Premises, and related improvements on the Premises such as curb, gutter, sidewalk, bus access and drainage improvements. SMART also has a need to permit SMART patrons to use the reconfigured parking stalls on the Premises in accordance with the terms of this Amendment. Solely for the purposes SMART’s need to reconfigure Premises improvements and to use the reconfigured improvements for transportation related purposes pursuant to this Amendment, the City and SMART hereby agree that the 365 day notice requirement in Section 4 of the Lease is waived and shall not apply.

b. No reduction of rent.

Under Section 4 of the Lease, as a result of SMART’s need to obtain part of the Premises for transportation related purposes, the City’s obligation to pay Rent under the Lease would be reduced in proportion to the area of the Premises rendered unusable for the conduct of the City’s business compared to the total area of the Premises. Under Section 4, the City’s annual Rent obligation of $12,000 would be reduced by 18% ($2,157) to $9,833, which corresponds with the reduction in leased Premises area from 71,874 square feet to 45,914 square feet, divided by two, because SMART and City will share the reconfigured Premises parking spaces, with each receiving approximately ½ of the benefit of the parking spaces. Although the rent the City pays for the Depot property lease reflects the use of redevelopment funds to restore the improvements on the Depot property, nonetheless the rent has not been adjusted since the lease commenced on August 1, 2003, and accordingly the City waives the rent reduction that otherwise apply under Section 4 of the Depot property lease, solely for purposes of this Amendment. Similarly, the City’s obligation to share subtenant rent with SMART that would apply under Section 8(b) of the Lease is waived for purposes of this Amendment.

Section 5, Use, of the Lease, is hereby modified in accordance with the following:

The use of the Premises pursuant to the Lease shall include the shared use of the parking on the Premises as described in this Amendment. Notwithstanding anything to the contrary in Section 5 of the Lease, the City and SMART shall each be liable for their respective use of the Premises in accordance with this Amendment, and for their related operations and maintenance on the Premises, and City and SMART agree to cooperate in good faith concerning their respective operations and maintenance on the Premises.

Section 6, Restrictions on Use, of the Lease, is hereby modified in accordance with the following:

SMART also agrees to comply with all provisions of Section 6 of the Lease that are applicable to SMART’s operations, maintenance, and improvement activities on the Premises pursuant to this Amendment. In particular, SMART agrees, at SMART’s sole expense, to comply with all applicable laws, regulations, rule and orders with respect to SMART’s use and/or improvement of the Premises in accordance with Section 6 of the Lease.

Section 12, Tenant Improvements and Other Alterations, of the Lease is hereby modified to add a new paragraph c. in accordance with the following:
c. Reconfiguration of ingress from East Washington Boulevard, the Premises parking, and related improvements.

SMART shall design and construct the SMART Improvements at SMART’s sole expense. SMART will submit for City review and approval, which approval will not be unreasonably withheld, improvement plans for reconfiguration of ingress from East Washington Boulevard to the Premises, the Premises parking, and related improvements. Improvement work encroaching into City right of way will be subject to issuance of a City encroachment permit. City agrees to cooperate with SMART and not unreasonably withhold City encroachment permits. Once SMART has satisfied the requirements for issuance of an encroachment permit or permits for work encroaching into City right of way, such permit or permits will be issued at no cost to SMART. SMART will be solely liable for the SMART Improvements work and agrees to indemnify and hold the City and the City’s sublessees and licensees harmless concerning the SMART Improvements work in accordance with Section 17 of the Lease, as amended. SMART agrees to cooperate and coordinate with the City concerning the SMART Improvements and the SMART Improvements work to the extent reasonably possible to minimize impacts on the operations of the City and City’s sublessees and licensees.

Section 17, Indemnification, of the Lease, is hereby modified in accordance with the following:

Section 17 of the Lease is hereby amended such that SMART agrees to indemnify, defend and hold harmless the City and the City’s sublessees and licensees concerning the use, maintenance, occupation, alteration or improvement of the Premises by SMART, any act, omission or neglect of SMART, SMART’s officers, employees, agents, servants, sublessees, concessionaires, contractors or visitors, and/or any breach or default by SMART of any of the terms, covenants or conditions of the Lease, to the same extent and subject to the same limitations as the City’s obligation to indemnify, defend and hold harmless SMART pursuant to that section.

Section 19, Insurance, of the Lease, is hereby modified in accordance with the following:

SMART agrees to maintain during the term of the Lease and any extension of the Lease the insurance specified in Section 19 of the Lease, and to provide evidence of insurance as specified in that section.

Except as modified by this Amendment, the Lease shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, a representative authorized to bind the City and a representative authorized to bind SMART have each executed this Amendment on the date indicated.

City of Petaluma

SMART

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Peggy Flynn, City Manager                                      Farhad Mansourian, General Manager
Date
Approved as to form:

Eric W. Danly, City Attorney

Date
Approved as to form:

Thomas F. Lyons, District Counsel