



**BOARD OF DIRECTORS
MEETING AGENDA
April 6, 2022 – 1:30 PM**

In accordance with AB 361, Sonoma-Marín Area Rail Transit District Resolution No. 2021-24, Governor Newsom’s March 4, 2020, State of Emergency due to the COVID-19 pandemic and Marin and Sonoma Counties Health Officials recommendations to continue measures that promote social distancing the SMART Board of Directors Meeting will continue to be held virtually through Zoom.

MEMBERS OF THE PUBLIC MAY NOT ATTEND THIS MEETING IN PERSON

[ZOOM TELECONFERENCE INSTRUCTIONS](#)

PUBLIC COMMENT PRIOR TO MEETING:

If you wish to make a comment you are strongly encouraged to please submit your comment by 5:00 p.m. on Tuesday, April 5, 2022 at <https://www.surveymonkey.com/r/SMARTBoardComments>

PUBLIC COMMENT DURING THE MEETING:

The SMART Board Chair will open the floor for public comment during the Public Comment period on the agenda. Please check and test your computer settings so that your audio speaker and microphones are functioning. Speakers are asked to limit their comments to two (2) minutes. The amount of time allocated for comments during the meeting may vary at the Chairperson’s discretion depending on the number of speakers and length of the agenda.

1. Call to Order
2. Approval of the March 16, 2022 Board Meeting Minutes
3. Board Member Announcements
4. General Manager’s Report
5. Public Comment on Non-Agenda Items

Consent Calendar

- 6a. Consider and Approve a Resolution to continue virtual Tele/Video Conference Meetings during the COVID-19 State of Emergency
- 6b. Approval of Monthly Financial Reports
- 6c. Approve Contract Amendment No 3 with Masabi, LLP
- 6d. Authorize the General Manager to Award Contract No. MK-PS-22-001 to Vector Media Holding Corporation to sell and manage advertising space onboard SMART's trains and facilities at no cost to SMART

Regular Calendar

7. Downtown San Rafael Gate Down Timing Study Presentation (*Informational Item*) – *Presented by Aaron Parkes*
8. Approve a Resolution Creating a Non-PERS Medical Group and Electing to be subject to the Public Employees Medical and Hospital Care Act at an unequal amount for Freight Division Employees and Annuitants – *Presented by Heather McKillop*
9. Authorize the General Manager to Award a Purchase Order to Aspen Equipment Co. for the purchase of one (1) Hi-Rail Track Inspector Truck in the amount of \$117,247.75 – *Presented by Ken Hendricks*
10. Authorize the General Manager to award Contract No. OP-PS-21-005 to Urban Transportation Associates, Inc. in an amount of \$336,684 to design, furnish, and install an Automatic Passenger Counter System on board SMART's eighteen (18) trains – *Presented by Ken Hendricks*
11. Authorize the General Manager to Execute Contract No. MK-PS-21-003 with Craft and Commerce ,LLC in an amount of \$40,000 and not-to-exceed \$200,000 for each Fiscal Years 2023, 2024, and 2025 for marketing services- *Presented by Matt Stevens*
12. Approve Resolutions Authorizing the Annual Filing of Grant Applications for Various State and Federal Fund Programs for a Total of \$18,735,803 in Fiscal Year 2022-2023 Budget Operations Grant Support – *Presented by Joanne Parker*
13. State Route 37 Highway Improvements and SMART Draft White Paper (*Information/Discussion*) - *Presented by Bill Gamlen*
14. Next Regular Meeting of the Board of Directors, April 20, 2022 – 1:30 PM
15. Adjournment

DISABLED ACCOMODATIONS:

Upon request, SMART will provide for written agenda materials in appropriate alternative formats, or disability-related modification or accommodation, to enable individuals with disabilities to participate in and provide comments at/related to public meetings. Please submit a request, including your name, phone number and/or email address, and a description of the modification, accommodation, service, or alternative format requested at least two (2) days before the meeting. Requests should be emailed to Leticia Rosas-Mendoza, Clerk of the Board at lrosas@sonomamarintrain.org or submitted by phone at (707) 794-3072. Requests made by mail SMART's, 5401 Old Redwood Highway, Suite 200, Petaluma, CA 94954 must be received at least two days before the meeting. Requests will be granted whenever possible and resolved in favor of accessibility.



**BOARD OF DIRECTORS
REGULAR MEETING MINUTES
March 16, 2022 - 1:30 PM**

In accordance with AB 361, Sonoma-Marina Area Rail Transit District Resolution No. 2021-24, Governor Newsom’s March 4, 2020, State of Emergency due to the COVID-19 pandemic, and Marin and Sonoma Counties Health Officials recommendations to continue measures that promote social distancing, the SMART Board of Directors Meeting will continue to be held virtually through Zoom.

MEMBERS OF THE PUBLIC MAY NOT ATTEND THIS MEETING IN PERSON

1. Call to Order

Director Fudge called the meeting to order at 1:34pm. Directors Bagby, Colin, Coursey, Garbarino, Hillmer, Lucan and Rogers were present; Directors Arnold and Rabbitt joined later; Directors Connolly and Pahre absent.

2. Approval of the March 2, 2022, Board Meeting Minutes

MOTION: Director Bagby moved approval of March 2, 2022, Board Meeting Minutes as presented. Director Hillmer second. The motion carried 7-0 (Directors Arnold and Rabbitt joined later; Directors Lucan and Coursey abstain; Directors Connolly and Pahre absent).

3. Board Members Announcements

Director Garbarino thanked General Manager Cumins for an excellent presentation with the San Rafael Chamber Government Affairs Committee.

Director Arnold joined at 1:37pm

Chair Rabbitt joined at 1:38pm

4. General Manager’s Report

General Manager Cumins provided a brief update on the following:

- Transit Security Administration (TSA) Mask Directive
- Ridership Update

- Bicycle Ridership
- Park-n-ride Usage

Transit Security Administration (TSA) Mask Directive

Transit Security Administration (TSA) announced that it will continue to require mask wearing on all transit systems (including passenger trains and stations) until April 18. TSA added that it is working with the Center for Disease Control (CDC) to revise its policy framework for when and under what circumstances masks will continued to be required.

Ridership and Bicycle Update

Ridership continues to trend in the right direction. On Tuesday, March 8 SMART had the highest ridership since the start of COVID-19 with 1,479 riders and on Saturday, March 12, SMART had the highest Saturday ridership with 976 riders. Additionally, riders bringing bikes on board the train have been resilient and numbers have held steady throughout the COVID-19 pandemic.

Park-n-Ride Usage

SMART parking lots have been underperforming and have had little utilization. This is the context for bringing a resolution before the board to make parking free through August 31, 2022.

Comments

Chair Rabbitt asked if the presentation will be available to the public and Board members. General Manager Cumins responded yes.

Director Colin asked if staff will be conducting the same type of study for parking lots with parking availability in other parts of the line. General Manager Cumins responded that this study was on SMART's park-n-ride lots.

Director Fudge stated that the Airport Station parking lot was full by 8am prior to COVID-19.

General Manager Cumins stated that Airport Station and Downtown Petaluma are different from others.

Director Rogers asked if there is an updated study of how people get to the train stations and on the trains. How do we move them towards the lot instead or some other type of way of raising the capacity and to make it more usable for people who don't take the train? General Manager Cumins responded that during the development of the Strategic Planning for Ridership a lot of questions and studies will be considered for the first and last mile connections.

Chair Rabbitt stated that SMART has a full range of first and last mile opportunities. There are people who do park and then ride the train, and we want to make sure that there's going to be spots available for them so they can continue to commute by train. He encouraged staff to continue to monitor and study.

5. Public Comment on Non-Agenda Items

Eris Weaver thanked General Manager Cumins for the Bicycle Ridership statistics. She asked if there is a plan to increase bicycle capacity. She sees more people getting on the train with bicycles at the Cotati Station. She appreciates staff looking at all these factors.

Richard Brand stated that staff provided the Board with an excellent presentation on Interregional Transit Network Integration. The next chapter for SMART is going to be an envisioning process to see what is done to move and improve on what has been built. He said there is freight business in Mendocino County, the Board needs to consider and work with the County to become a common carrier.

Doug Kerr expressed the importance of regional connections. He said that in April he will be attending the Save-the-Redwood league luncheon in San Francisco and thought of using public transportation instead of driving would be most appropriate. However, public transportation allows him to arrive over 1 hour early or late to the lunch. He said that the issue is lack of time that people must get to connections. Providing excellent connections, must be a top priority if SMART truly believes in smarter transportation for a smarter future.

Mike Pechner thanked General Manager Cumins for hiring Freight Manager, Jon Kerruish. Mr. Kerruish has over 35 years of freight experience, however his job is not going to be easy because the prior administration was not rail freight friendly. He urged the Board to be patient.

Duane Bellinger suggested staff conduct a survey and provide an incentive with the park-n-ride parking customers to get information on how to get them back.

6. Consent

- a. Accept Monthly Ridership Reports – February 2022
- b. Authorize the General Manager to Execute Contract Amendment No. 2 with EMR, LLC to add the SafeTrack Compliance Reporting Module to SMART’s existing MaxAccel Software Subscription in an amount of \$20,100

Chair Rabbitt asked for Board and public comments on the proposed Consent Agenda.

MOTION: Director Lucan moved approval of the Consent Agenda as presented. Director Garbarino second. The motion carried 9-0 (Directors Connolly, Pahre and Rogers absent)

- 7. Authorize the General Manager to Award Contract No. FN-PS-22-001 to Eide Bailly LLP to provide financial audit services with a not-to-exceed amount of \$172,750 for the initial term of three years; Authorizing the General Manager the approval authority to extend the contract utilizing Option Year 4 with a not-to-exceed amount of \$62,855 and Option Year 5 with a not-to-exceed amount of \$65,748 – *Presented by Ken Hendricks*

Procurement Manager, Ken Hendricks stated that SMART contracts with a third-party certified public accountancy firm to perform annual independent audit services ant to assist

with the preparation of the annual financial reports. The existing contract is set to expire and in anticipation of the existing contract, SMART issued a Request for Proposal to procure the next Consultant. SMART received four (4) responsive proposals from the following: 1) Badawi & Associates; 2) Eide Bailly, LLP; 3) Maze and Associates; and 4) Pimenti & Brinker, LLP.

The selection committee reviewed the proposals using the evaluation criteria identified in the request for proposal. Upon conclusion of the evaluation process the Selection Committee determined that Eide Bailly, LLP provided the best overall benefit to SMART.

The initial term of the contract is three years with the amount not to exceed \$172,750 with Option Year 4 not to exceed amount of \$62,855 and Option Year 5 with a not to exceed amount of \$65,748

Staff recommends authorizing the General Manager to award Contract No. FN-PS-22-001 to Eide Bailly, LLP and approval authority to extend the contract utilizing Option Year 4 and Option Year 5.

MOTION: Director Arnold moved to Authorize the General Manager to Award Contract No. FN-PS-22-001 to Eide Bailly LLP to provide financial audit services with a not-to-exceed amount of \$172,750 for the initial term of three years; Authorizing the General Manager the approval authority to extend the contract utilizing Option Year 4 with a not-to-exceed amount of \$62,855 and Option Year 5 with a not-to-exceed amount of \$65,748 as presented. Director Garbarino second. The motion carried 9-0 (Directors Connolly, Pahre and Rogers absent)

8. Approve a Resolution Authorizing the General Manager to Award Contract No. CV-PS-22-001 to CSW Stuber - Stroeh Engineering Group, Inc. (CSW|ST2) for a total contract amount of \$2,466,130 for the Marin County Non-Motorized Pathway Project Engineering Design Services and Support – *Presented by Bill Gamlen*

Chief Engineer, Bill Gamlen stated that the item before the Board today is to award professional Services contract for engineering design and permitting services to prepare construction and environmental permit documents for five sections of Bicycle/Pedestrian pathway in Marin County, totaling nearly 6 miles. This represents the final key to get all of SMART's planned pathway segments "shovel ready".

SMART issued a Request for Proposal on December 22, 2021, for Civil Engineering Design and Environmental Permitting services for these segments in San Rafael and Novato. SMART received two (2) responsive proposal on January 27, 2022. The selection committee reviewed and evaluated the proposals and determined that CSW Stuber - Stroeh Engineering Group, Inc. to be the highest-ranking proposer.

Staff recommends approving Resolution No. 2022-06 to authorize the General Manager to execute Contract No. CV-PS-22-001 with CSW Stuber - Stroeh Engineering Group, Inc for a total amount of \$2,466,130.

Comments

Director Coursey suggested including maps of the infrastructure for the public and the Board.

Matthew Hartzell thanked staff and the Board for advancing the 5 sections of pathway in Marin County. In the long-term it would be helpful to see a trestle bridge on the Hanna Ranch Road segment. He would like to see Grant Avenue to Olive Avenue segment to be Class 1 Multi-Use Path. He made the following request that some of the \$5.9 million surplus be used to apply to design engineering and environmental permitting for alternative of the San Rafael connection, which is the segment between the top of Puerto Suello Hill and North San Pedro Road and that smart allocates 20% match for construction funds for all 12 pathway segments in the Request for Proposal one and two.

Director Lucan asked for clarification on the next steps with this contract. Mr. Gamlen responded that staff has been working with each of the municipalities on alignments and on the grade crossing. All the alignments in this case, primarily with Novato have been reviewed with the California Public Utilities Commission. There is the option of putting a bridge across Novato Creek for the bike path that is a significant length, that would be a significant bridge, and made the most sense to build in the near term. The cost in the contract includes the permitting fees and mitigation costs which can be significant for some of these segments. Staff can provide updates throughout milestones as we get designed packages.

Warren Wells thanked staff and the Board for moving forward the pathway segments. suggested

MOTION: Director Hillmer moved to Approve a Resolution Authorizing the General Manager to Award Contract No. CV-PS-22-001 to CSW Stuber - Stroeh Engineering Group, Inc. (CSW|ST2) for a total contract amount of \$2,466,130 for the Marin County Non-Motorized Pathway Project Engineering Design Services and Support as presented. Director Fudge second. The motion carried 9-0 (Directors Connolly, Pahre and Roger absent)

9. Approve a Resolution extending the reduction in fares prices and allow free parking at SMART designated park-n-rides through August 2022 – *Presented by Heather McKillop*

Chief Financial Officer, Heather McKillop stated that the item before the Board today is to approve Resolution No. 2022-07 to extend the reduction in fares and free parking at SMART's park-n-ride through August 2022.

She provided a presentation that will be available on the website. Highlights include:

Promotional Fares – Current

- Individual
- Discounted Fares
- 31-Day Pass
- Weekend Day Pass

Benefits of Implementation of Promotional Fares

- Easy to Understand
- Easy to implement
- Consistent with local transit transfer agreements
- Significant discount
- Weekday
- Keeps the daily accumulator at \$15 max vs. \$23 max

Implementation

- Clipper Card
- Masabi App

Fares

- Pre-Pandemic Revenue
- Fiscal Year 2022 Revenue through January
- Estimated Foregone Revenue through August 2022

SMART Park-n-Rides that Charge for Parking

- Sonoma County Airport
- Rohnert Park
- Petaluma Downtown
- Novato San Marin
- Novato Hamilton
- Larkspur

Parking

- Cost
- Pre-Pandemic Revenue
- Fiscal Year 2022 Revenue Through January
- Estimated Foregone Revenue through August 2020

Comments

Director Lucan asked for clarifications on how the process will be rolled out. Ms. McKillop responded that SMART will suspend the parking through the APP and staff will post signs over our current parking signs that say that parking is currently not being charged at this time and suspended through August 2022.

Director Bagby stated that some of the park-n-rides are popular, and she asked for clarification on the free parking process. Ms. McKillop responded that SMART will not be monitoring the Masabi app for vehicle license plate numbers, however staff will be monitoring the parking lots, since we don't want it to become a junkyard for people to just park any vehicle there for any length of time. Director Bagby suggested monitoring the parking lots to view who is parking and if there is increase activity. General Manager Cumins stated that SMART's Compliance Officers will monitor those areas for compliance and staff will review the outcome of the free parking and report back to the Board.

Director Hillmer asked if staff can provide a percentage of the riders who walk to the train stations and take the train. He would like to know how that observation would come back and create an opportunity, for SMART real estate. He said if there are any ideas that we can learn and discuss at a future meeting.

Rick Luttmann stated that is better to attract people to drive to a train station and take the train then drive the entire distance. SMART needs to encourage people to walk, bike or take the bus to the stations for short trips.

Matthew Hartzell voice support for the suggestion that Director Hillmer stated of exploring various opportunities, especially with transit oriented development and bicycle and pedestrian oriented development.

Steve Birdleough appreciates the staffs effort and flexibility in this area.

Director Rogers stated that he represents Santa Rosa which includes Railroad Square and hears from people that it would be convenient to have a parking lot at that site. There is also a number of different housing projects that are currently under construction, including one that was facilitated and owned previously by SMART and that does put our values to the test and allows us to move forward with real transit oriented development. The main complaints he hears consistently from Council members from Rohnert Park who do not serve on the SMART Board is that they have worked with SMART on various agreements related to parking. He said that the City of Rohnert Park sold the parking lot to SMART for \$1.00 and SMART began charging for parking and the City of Rohnert Park would like it to be free all the time not just during the promotional period.

Chair Rabbitt stated that staff and the Board need to continue to look at real estate opportunities and challenges. The City of Petaluma has denied two projects and those parking lots are empty. Parking fees were established to control and enforce parking rules.

MOTION: Director Coursey moved to Approve a Resolution extending the reduction in fare prices and allow free parking at SMART designated park-n-rides through August 2022 as presented. Director Hillmer second. The motion carried 10-0 (Directors Connolly and Pahre absent)

10. Discuss/Approve Planning for the Future Vision Statement, Mission Statement and Objectives – *Presented by Eddy Cumins*

General Manager Cumins stated that at the March 2, 2022, the Board of Directors directed staff to further refine the recommended statements based on public feedback. He provided a presentation which included the following highlights:

Planning Model

- SWOT Analysis
- Mission/Vision
- Objectives

- Goals
- Strategy Development
- Strategy Deployment
- Monitor Performance
- Results

Vision

Smarter Transportation for a Smarter Future (*SMART envisions an innovative Transportation system that provides integrated mobility solutions, promotes sustainable growth, and quality of life*)

Mission

Connecting Communities or #We Connect Communities (*SMART provides safe, reliable, and environmentally responsible transportation options*)

Values

- Safety
- Integrity
- Stewardship
- Continues Improvement

Comments

Director Colin thanked General Manager Cumins for having this conversation and presentation. She loves how the message is graphically interesting. She also sees the benefit of having the values as an internal message and an external message. She likes the mission statement with a hashtag.

Director Rogers asked for clarification for #We Connect Communities. General Manager Cumins responded that its SMART's opportunity to own the hashtag message.

Director Lucan stated that he enjoyed serving on the committee and likes We Connect Communities and not sure if the hashtag needs to be the official Mission Statement or just on social media.

Director Fudge likes #We Connect Communities since it will attract more media.

Director Arnold thanked General Manager Cumins for the final version of the vision and mission statements and ready to vote for the item.

Chair Rabbitt stated that he enjoyed being on the committee and the process.

Director Coursey does not have a preference of using or not using the hashtag.

Director Hillmer stated there is a benefit to using the hashtag when its SMART related.

Director Lucan stated that there is an agreement from the Board to use the hashtag, however, does it need to be on the official mission statement or just used for marketing/social media.

Steve Birdlebough stated that he is very pleased with the results, and he does not use hashtags.

Jack Swerengen stated that the hashtag will bring digital natives. He likes the entire concept that has been presented.

Eris Weaver has very mixed feelings about using the hashtag. She suggested that it could be used for marketing/social media.

Richard Brand stated that he prefers not using the hashtag in the official statement.

Warren Wells stated that he prefers not using the hashtag in the official statement.

Director Rogers stated that he prefers not using that hashtag.

General Manager Cumins clarified that the Board has agreed that the Mission statement be **We Connect Communities** and having the ability to use the hashtag for marketing/social medial purposes. Lastly, he finished the presentation

Strategic Objectives

- Ridership
- Pathways
- Extensions
- Freight

Next steps:

The General Manager and SMART staff will conduct a series of public listening sessions on the four Key Objectives – Ridership, Pathways, Extensions, and Freight. After this series of public listening sessions, input will be integrated into the development of Goals and Strategies, which will be presented to the Board of Directors for approval at a future board meeting.

The SMART Board adopted the following Vision and Mission Statements.

Vision:

Smarter Transportation for a Smarter Future – SMART envisions an innovative transportation system that provides integrated mobility solutions, promotes sustainable growth, and enhances quality of life.

Mission:

We Connect Communities – SMART provides safe, reliable, and environmentally responsible transportation options.

11. Next Regular Meeting of the Board of Directors, April 6, 2022 – 1:30 PM
12. Adjournment - Meeting adjourned at 3:25PM

Respectfully submitted,

Leticia Rosas-Mendoza
Clerk of the Board

Approved on: _____

Resolution No. 2022-01.04 (APR)
Sonoma-Marín Area Rail Transit District
April 6, 2022

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, STATE OF CALIFORNIA, AND RELATED FINDINGS REGARDING VIRTUAL-CONFERENCE MEETINGS DURING THE COVID-19 STATE OF EMERGENCY

WHEREAS, on March 4, 2020, Governor Newsom proclaimed pursuant to his authority under the California Emergency Services Act, California Government Code Section 8625, that a state of emergency exists with regards to a novel coronavirus (a disease now known as COVID-19); and

WHEREAS, on June 4, 2021, in lifting many restrictions that the State previously imposed due to COVID-19, the Governor indicated that those changes did not end the ongoing, proclaimed state of emergency; and

WHEREAS, as of the date of this Resolution, neither the Governor nor the Legislature have exercised their respective powers pursuant to California Government Code Section 8629 to lift the state of emergency either by proclamation or by concurrent resolution in the state Legislature; and

WHEREAS, Marin and Sonoma Health Officials continue to recommend that we continue to emphasize social distancing in order to minimize the potential spread of COVID-19 during indoor, public meetings;

WHEREAS, in light of this recommendation, the Board of Directors of SMART desires to continue to have the flexibility, for itself to meet virtually via tele/video conference.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board of Directors of SMART has resolved to continue with virtual meetings, and has reconsider the circumstances of the emergency and determine that the state of emergency continues to directly impact the ability of the members to meet safely in person;
2. There is an ongoing proclaimed state of emergency relating to the novel coronavirus causing the disease known as COVID-19.
3. State and Local officials continue to recommend measures to promote social distancing, and as a result of that emergency, meeting in person would present imminent risks to the health or safety of attendees of in-person meetings and of this legislative body within the meaning of California Government Code Section 54953(e)(1).

Resolution No. 2022-01.04 (APR)
Sonoma-Marín Area Rail Transit District
April 6, 2022

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 6th day of April 2022, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

David Rabbitt, Chair, Board of Directors
Sonoma-Marín Area Rail Transit District

ATTEST:

Leticia Rosas-Mendoza, Clerk of the Board of Directors
Sonoma-Marín Area Rail Transit District



April 6, 2022

David Rabbitt, Chair
Sonoma County Board of Supervisors

Barbara Pahre, Vice Chair
Golden Gate Bridge,
Highway/Transportation District

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Chris Coursey
Sonoma County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Eddy Cumins
General Manager

5401 Old Redwood Highway
Suite 200
Petaluma, CA 94954
Phone: 707-794-3330
Fax: 707-794-3037
www.sonomamarintrain.org

Sonoma-Marín Area Rail Transit Board of Directors
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

SUBJECT: Monthly Financial Reports

Dear Board Members:

RECOMMENDATION: Approve Monthly Financial Reports

SUMMARY:

Revenues are reflected in the first section of the Monthly Financial Status report. We have provided a chart that lists the revenues forecasted in the FY 2021-22 amended budget which was approved by the Board in February 2022 and the amounts collected to date. In addition, we have specifically broken out sales tax and fare revenues to show current and comparative information over the last three years.

Expenditures are reflected in the second part of the Monthly Financial Status report. We have added expenditure gauges so with a glance the reader can see what percentage has been spent in administration, operations, capital, and freight. We have also provided the detail information on approved budget, actual expenditures, and remaining budget. Please keep in mind that expenditures don't always occur on a straight-line basis, many large expenditures such as debt service only occur on specific intervals. In addition, we are including more extensive information on our capital program.

We have also included information regarding SMART's investment policy, where our funds are being held, and how much is currently being held. In addition, we have shown the current obligations, reserves, and fund balance requirements for FY 2021-22.

Very truly yours,

/s/
Heather McKillop
Chief Financial Officer

Attachment(s): 1) Monthly Financial Status Report
2) Contract Summary Report



**MONTHLY FINANCIAL STATUS
FEBRUARY 2022**

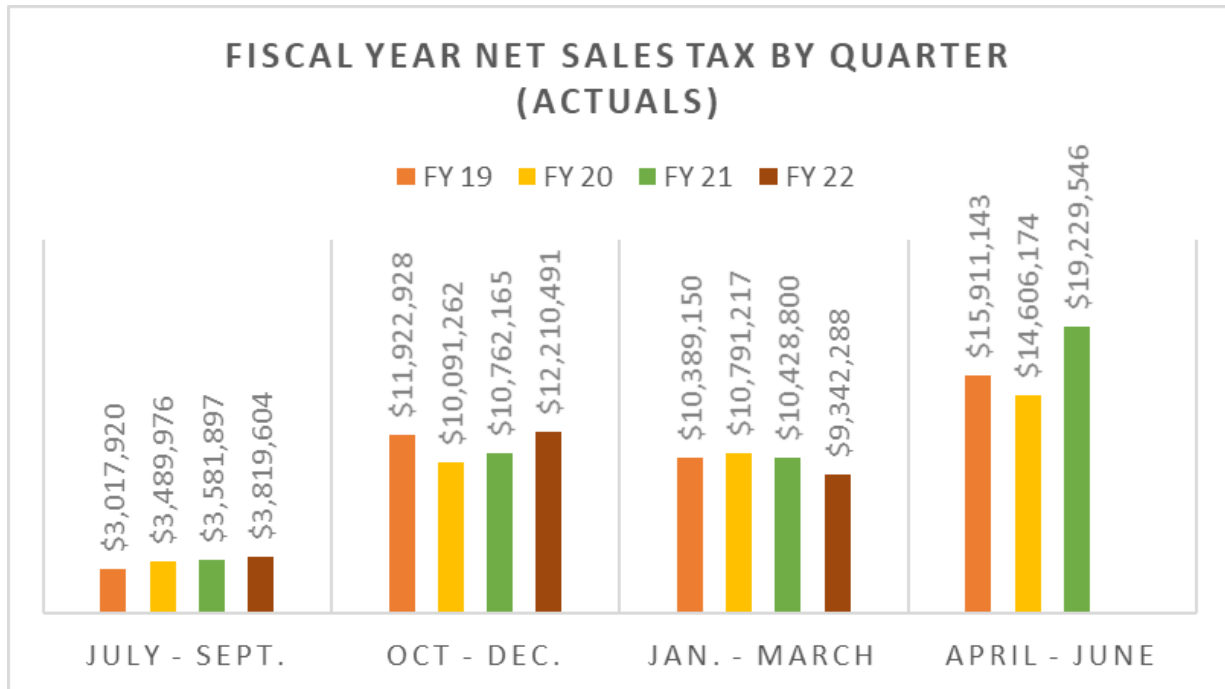
REVENUES

	FY 2021-22 Approved Budget	Actual	Amount Over/ Under Budget	Comments
Revenues				
Transit/Pathway				
Sales/Use Taxes	\$ 46,981,000	\$ 25,372,383	\$ (21,608,617)	Sales Taxes are recorded when received not when earned
Interest and Lease Earnings	\$ 623,865	\$ 503,812	\$ (120,053)	Leases renew throughout the year
Miscellaneous Revenues	\$ 30,000	\$ 32,413	\$ 2,413	
Fare Revenue	\$ 1,200,000	\$ 766,737	\$ (433,263)	
Parking Revenue	\$ 27,000	\$ 9,586	\$ (17,414)	
State Grants	\$ 8,660,684	\$ 1,946,798	\$ (6,713,886)	State grants are received throughout the year
Charges For Services	\$ 57,500	\$ 231,272	\$ 173,772	Includes dispatching and flagging services which are performed throughout the year
Federal Funds (Non-COVID Relief)	\$ 3,037,733	\$ 427,048	\$ (2,610,685)	Federal funds are received on a reimbursable basis. Funds have to be expended before they can be requested.
Federal Funds (COVID Relief)	\$ 7,225,294	\$ 4,724,821	\$ (2,500,473)	American Rescue Plan (ARP) Funds
Other Governments/ Misc.	\$ 161,998	\$ 162,179	\$ 181	
Transit/Pathway Subtotal	\$ 68,005,074	\$ 34,177,049	\$ (33,828,025)	
Freight				
Interest and Lease Earnings	\$ -	\$ 127,354	\$ 127,354	Lease income from freight right-of-way
State Grants	\$ 5,803,473	\$ 4,028,648	\$ (1,774,825)	Includes \$4m for freight rights grant
Freight Subtotal	\$ 5,803,473	\$ 4,156,002	\$ (1,647,471)	
Total Revenues	\$ 73,808,547	\$ 38,333,051	\$ (35,475,496)	

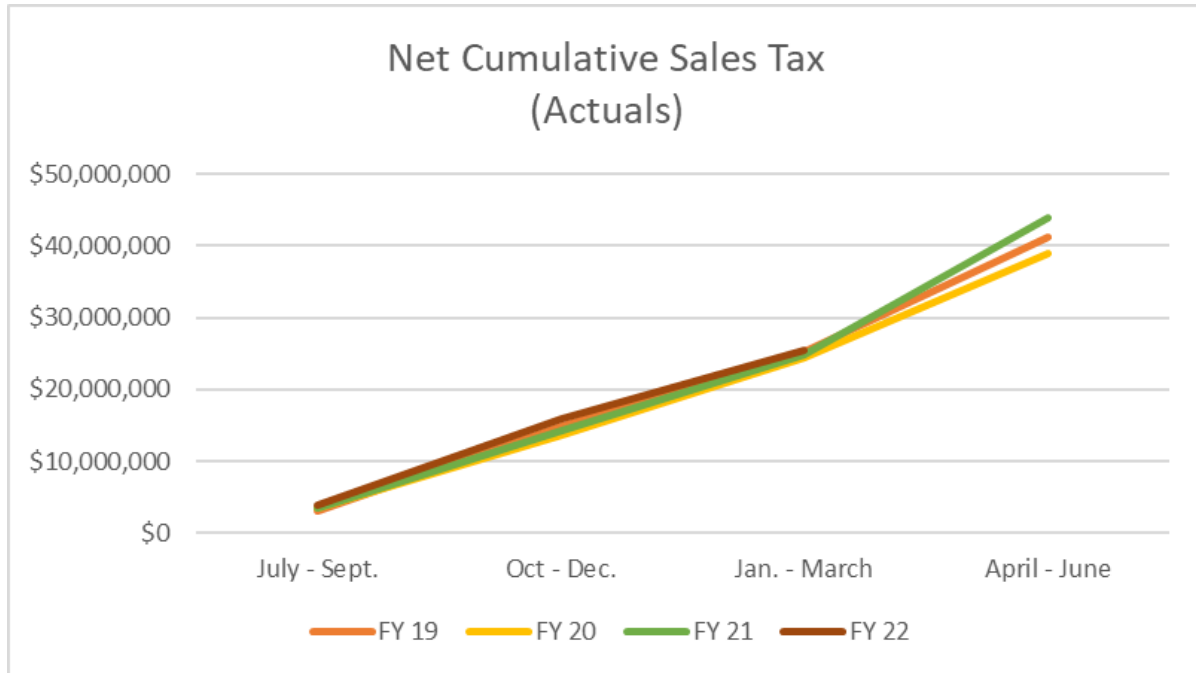
**Measure Q Sales Tax
Fiscal Year (FY) 2021/2022**

Time Period	July - Sept.	Oct - Dec.	Jan. - March	April - June
Forecasted FY 22 Budget	\$ 3,506,166	\$ 10,518,498	\$ 13,518,498	\$ 19,434,838
Actual	\$ 3,819,604	\$ 12,210,491	\$ 9,342,288	
Difference	\$ 313,438	\$ 1,691,993	\$ (4,176,210)	

**Fiscal Year 2019-2022 Net Sales Tax Comparison
(by Quarter)**

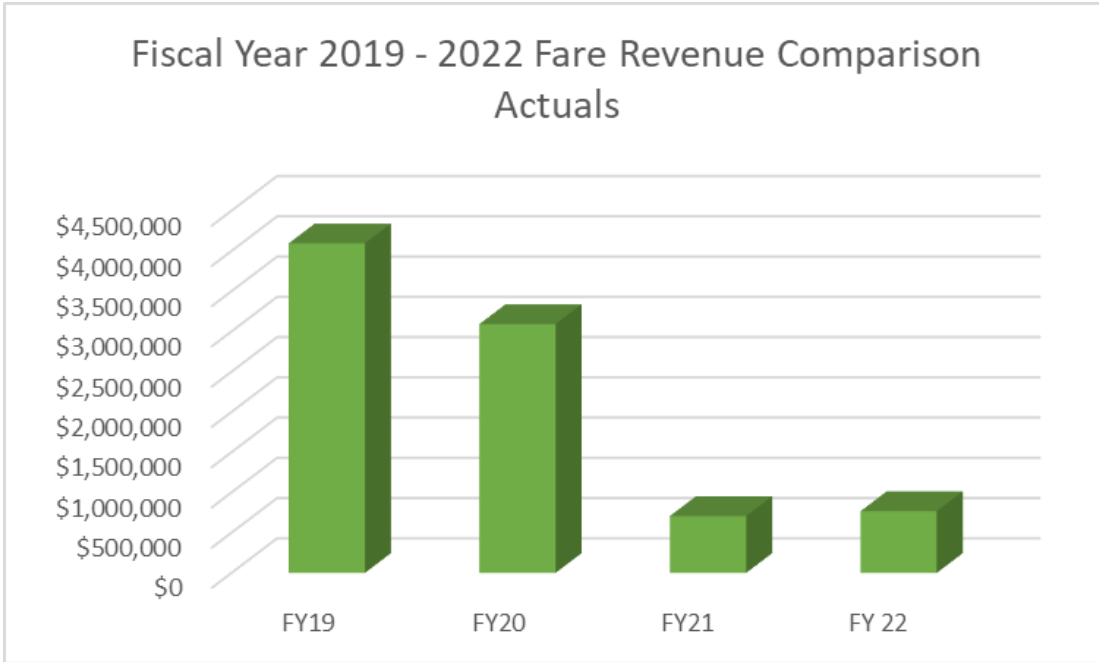


Fiscal Year 2019-2022 Net Cumulative Sales Tax Comparison

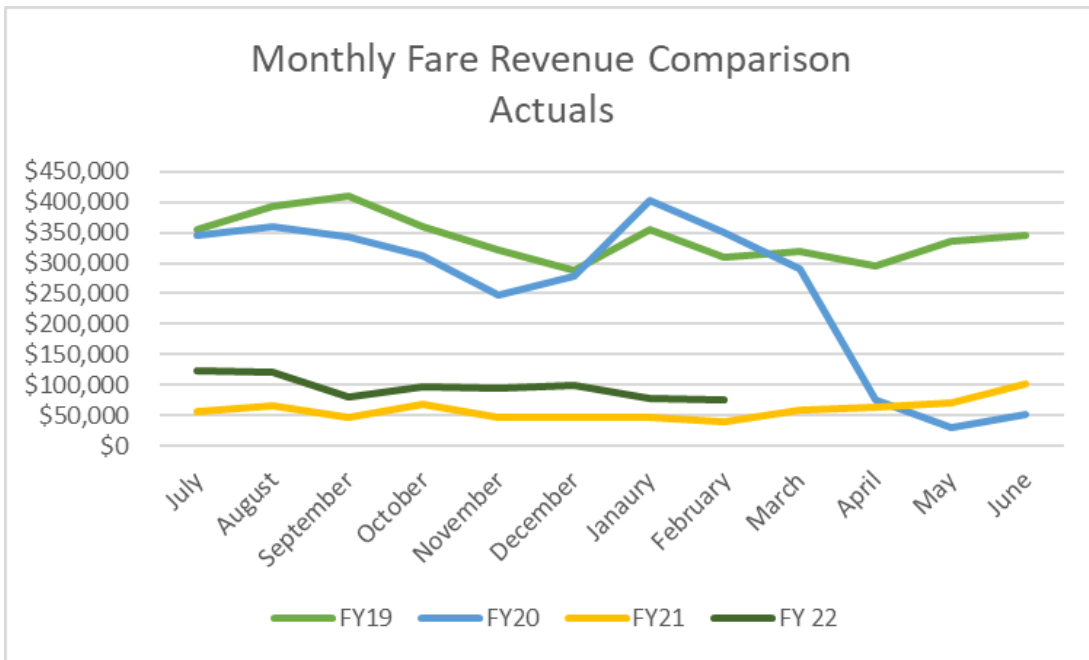


Note: Sales Taxes are recorded when received not when earned.

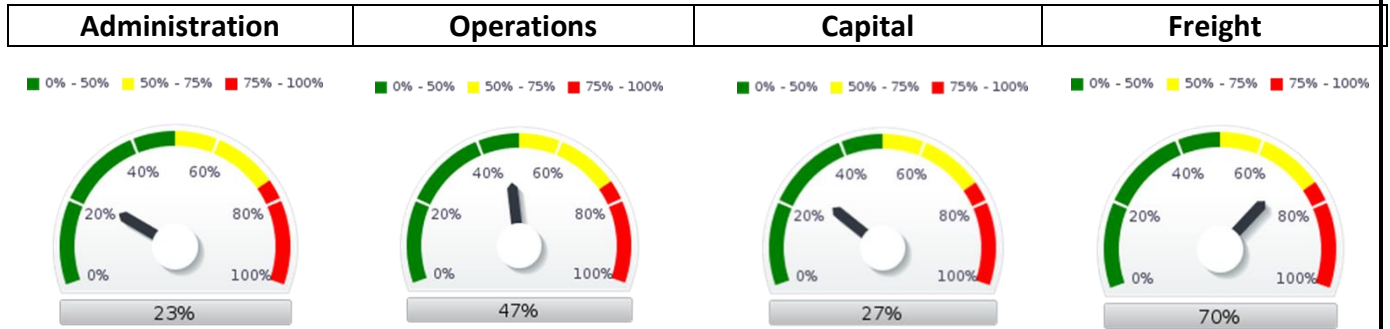
Fiscal Year 2019-2022 Fare Revenue Comparison



Fiscal Year 2019-2022 Monthly Fare Revenue Comparison



EXPENDITURES



	FY 2021-22 Approved Budget	Actual	Amount Over/ Under Budget
Expenditures			
Administration			
Salaries & Benefits	\$ 5,924,313	\$ 3,138,636	\$ 2,785,677
Services & Supplies	\$ 10,253,016	\$ 3,710,629	\$ 6,542,387
Debt Service/Other Charges	\$ 14,936,756	\$ 284,034	\$ 14,652,722
Machinery & Equipment	\$ 390,600	\$ 56,981	\$ 333,619
Administration Subtotal	\$ 31,504,685	\$ 7,190,280	\$ 24,314,405
Operations			
Salaries & Benefits	\$ 16,287,214	\$ 8,925,695	\$ 7,361,519
Services & Supplies	\$ 6,929,110	\$ 2,749,645	\$ 4,179,465
Other Charges	\$ -	\$ 3,883	\$ (3,883)
Buildings & Capital Improvements	\$ 2,566,940	\$ 598,119	\$ 1,968,821
Operations Subtotal	\$ 25,783,264	\$ 12,277,342	\$ 13,505,922
Capital			
Salaries & Benefits	\$ 659,626	\$ 898,186	\$ (238,560)
Services & Supplies	\$ 815,185	\$ 202,655	\$ 612,530
Other Charges	\$ 30,000	\$ 24,953	\$ 5,047
Machinery & Equipment	\$ 2,377,804	\$ 1,168,132	\$ 1,209,672
Infrastructure	\$ 6,407,407	\$ 322,976	\$ 6,084,431
Capital Subtotal	\$ 10,290,022	\$ 2,616,902	\$ 7,673,120
Freight	\$ 5,803,473	\$ 4,045,307	\$ 1,758,166
Total All Expenditures	\$ 73,381,444	\$ 26,129,831	\$ 47,251,613

CAPITAL PROJECTS

Capital Project Report						
		Total Project Budget	Expended in Prior Fiscal Years	Budgeted in FY 22 (Includes Amended Budget)	Remaining to be Budgeted in Future Years	Project Status
Additional Railcar Purchase		\$ 11,000,000	\$ 9,900,000	\$ 1,100,000	\$ -	All milestone payments complete
Windsor Extension		\$ 65,000,000	\$ 24,408,475	\$ -	\$ 40,591,525	Funds on hold, pending MTC lawsuit on RM3 funding. Awaiting Supreme Court decision
Sonoma County Pathway Connector Project - Design & Construction		\$ 15,781,499	\$ 1,560,454	\$ 1,471,962	\$ 12,749,083	In design & permitting
- Southpoint to Main (2.9 miles)						
- Golf Course to Bellevue (2.8 miles)						
Marin & Sonoma Pathway Design & Permitting		\$ 10,881,476	\$ -	\$ 3,641,412	\$ 7,240,064	The design consultant work has been divided into two Request for Proposals (RFPs). The Phase I was awarded in February and Phase II is to be awarded in March.
RFP Phase I Locations:						
- McInnis Parkway at Bridgewater Drive to Smith Ranch Road (0.74 miles)						
- Main Street to East Railroad Ave. (1.48 miles)						
- Joe Rodota Trail to 3rd Street (0.06 miles)						
- Santa Rosa Downtown Station to 6th Street (0.04 miles)						
- Guerneville Road to West Steele Lane (0.32 miles)						
- West Steel Lane to San Miguel Road (1.2 miles)						
- San Miguel Blvd. to Airport Blvd. (3.1 miles)						
Payran to Lakeville Pathway - Design & Construction		\$ 1,085,806	\$ -	\$ -	\$ 1,085,806	Pending grant execution & securing environmental permits
Black Point Bridge - Fender & Structural Repair		\$ 715,000	\$ 49,865	\$ 116,173	\$ 548,962	Freight Project - Awaiting environmental construction permits
Basalt Creek Timber Bridge Replacement		\$ 495,498	\$ -	\$ 136,104	\$ 359,394	In design
San Antonio Tributary Timber Trestle Replacement		\$ 984,540	\$ 1,583	\$ 133,494	\$ 849,463	In design
McDowell Blvd. Crossing Reconstruction - Design & FY21 Const.		\$ 1,150,000	\$ -	\$ 150,000	\$ 1,000,000	In design

INVESTMENTS

Investments are guided by the SMART investment policy adopted each year with the budget. The policy outlines the guidelines and practices to be used in effectively managing SMART's available cash and investment portfolio. District funds that are not required for immediate cash requirements are to be invested in compliance with the California Code Section 53600, et seq.

SMART uses the Bank of Marin for day-to-day cash requirements and for longer term investments the Sonoma County Treasury Pool is used. This chart reflects a point in time verses a projection of future fund availability.

<u>Cash On Hand</u>	
Bank of Marin	\$ 24,723,718
Sonoma County Investment Pool *	\$ 67,086,679
Total Cash on Hand	\$ 91,810,397
<u>Reserves</u>	
Self-Insured	\$ 2,370,675
OPEB/ CalPERS	\$ 3,574,676
Operating Reserve	\$ 10,000,000
Capital Sinking Fund	\$ 7,625,000
Corridor Completion	\$ 7,000,000
Total Reserves	\$ 30,570,351
Cash Balance	\$ 61,240,046
Less: Current Encumbrances	\$ 4,907,662
Balance	\$ 56,332,384
Less: Estimated FY22 Year-end Fund Balance	\$ 37,393,310
Remaining Balance	\$ 18,939,074
* Does not include funds held by the trustee for debt service	



Contract Summary

Active Contracts as of March 1, 2022

PASSENGER RAIL

Contractor	Scope	Fiscal Year 21/22 Projected	Fiscal Year 21/22 Actuals-To-Date
A.J. Janitorial Service	Janitorial Services for all Stations, Roblar, ROC, and Fulton	\$104,000.00	\$58,380.00
AI-Media, Inc.	As Needed Live Captioning Services for Public Meetings	\$15,000.00	\$2,160.00
Air Technology West	Maintenance and On-Call Repair for Air Compressors	\$4,800.00	\$3,154.00
Alcohol & Drug Testing Services, LLC	DOT Drug and Alcohol Testing	\$36,000.00	\$17,299.00
All Purpose Safety Training Solutions	"Train the Trainer" Training Services	\$6,585.00	\$0.00
Allen, Glaessner, Hazelwood LLP	Legal Services for Litigation and Rail Transit Issues	\$91,782.00	\$20,658.00
Alliant Insurance Services	Insurance Brokerage and Risk Management Services	\$70,000.00	\$0.00
American Integrated Services, INC.	On-Call Biohazard Remediation Services	\$50,000.00	\$0.00
American Rail Engineers Corporation	Railroad Bridge Engineering, Inspection, & Design	\$89,640.00	\$13,470.00
Asbury Environmental Services (AES)	Recycling & Disposal Service for Used Oil, Fuel Filters, Rags, and Related Equipment	\$18,600.00	\$8,262.00
Atlas Copco Compressors, LLC	Air Compressor Maintenance Services	\$3,000.00	\$0.00
Barbier Security Group	Security Patrol Services along Right-of-Way	\$67,000.00	\$0.00
Barnes & Company, LLC	Consulting Services for SMART Toy Drive Events	\$15,000.00	\$15,000.00
Bay Area Traffic Solutions	Flagging Support for MOW	\$13,000.00	\$8,950.00
BBM Railway Equipment, LLC	Wheel Press Machine - Furnish, Install, Configure, Test, Commission, and Train SMART Staff	\$748,390.00	\$198,306.00
Becoming Independent	Emergency Bus Bridge Services	\$37,000.00	\$7,600.00
Bettin Investigations	Public Safety and Emergency Training Consultation Services	\$5,000.00	\$188.00
Bright Star Security, Inc.	Security Patrol Services at SMART's Cal Park Tunnel	\$5,220.00	\$5,220.00
Bright Star Security, Inc.	Security Patrol at SMART's Cal Park Tunnel	\$5,490.00	\$0.00
Burke, Williams & Sorensen, LLP	Litigation Support Services	\$100,000.00	\$0.00
Business Training Library, LLC	Cloud-Based Learning Courses	\$14,000.00	\$12,684.00
Cinquini & Passarino, Inc.	Right-of-Way Land Surveying and Related Services	\$22,728.00	\$9,276.00
Civic Edge Consulting	Social Media Outreach Strategy, Consulting	\$138,788.00	\$105,333.00
DeAngelo Contracting Services, LLC	Assignment of OP-SV-21-006 Vegetation Control Services	\$35,000.00	\$0.00
Dikita Enterprises, Inc	NTD Compliant Passenger Counting Services	\$43,537.00	\$8,333.00
Doug Williams	Fire and Life Safety Consultant	\$5,000.00	\$735.00
Dr. Lance O'Connor	Occupational Health Screening Services	\$3,000.00	\$420.00
Dr. Mark Clementi	Pre-Employment Psychological Evaluations	\$25,000.00	\$17,845.00
eLock Technologies, LLC	Station Bike Lockers and Maintenance Services	\$13,130.00	\$5,565.00
Empire Cleaners	Operations Uniform Dry Cleaning, Laundering, and Related Services	\$50,000.00	\$7,013.00
Environmental Logistics, INC.	On-Call Biohazard Remediation Services	\$150,000.00	\$0.00
Gary D. Nelson Associates, Inc.	Temporary Staffing and Placement Services	\$50,000.00	\$20,945.00
George Hills Company, Inc.	Third Party Claims Administration Services	\$45,000.00	\$2,311.00
GHD, Inc.	SWPP Compliance, AutoCAD Management, Traffic and Hydraulic Analysis	\$120,000.00	\$2,644.00
GHD, Inc.	3 Segments MUP Petaluma - Penngrove - Rohnert Park	\$428,323.00	\$213,170.00
Golden Five, LLC	Microsoft 365 Consulting Services	\$31,600.00	\$4,050.00
GP Crane & Hoist Services	Cal/OSHA Inspection Services	\$5,000.00	\$2,640.00
Granicus, Inc.	Media Streaming and Internet Broadcasting Services	\$11,665.00	\$11,665.00
Hanford A.R.C.	Implementation and Monitoring, San Rafael Creek Riparian Enhancement Project	\$175,000.00	\$34,480.00
Hanford A.R.C.	Implementation and Monitoring Las Gallinas Creek Riparian Enhancement Plan	\$33,830.00	\$21,999.00
Hanson Bridgett LLP	Legal Services	\$150,000.00	\$23,449.00
HCI Systems, Inc.	Fire Equipment Inspection and Certification	\$14,500.00	\$1,140.00
Heavy Equipment Transportation, Inc.	Transportation of Heavy Equipment	\$7,330.00	\$0.00
Holland Company	Track Geometry and Measurement Services	\$24,000.00	\$24,000.00
Hunt and Sons, Inc.	Bulk Delivery of Motor Oil (15W40)	\$12,000.00	\$0.00
Innovative Business Solutions	Payroll processing services	\$35,400.00	\$16,306.00

Contractor	Scope	Fiscal Year 21/22 Projected	Fiscal Year 21/22 Actuals-To-Date
Integrative Security Controls, Inc.	CCTV Maintenance and Support	\$30,000.00	\$2,251.00
Intelligent Technology Solutions, LLC	Maximo SaaS Development, Implementation, and Related Services	\$242,000.00	\$123,628.00
JMA Civil, Inc.	On-Call Civil & Rail Engineering Design Services	\$144,663.00	\$51,486.00
Joanne Roessler	On-Call Graphic Design Services	\$10,000.00	\$0.00
Judy D. James	Public Affairs and Dispute Resolution Consultation Services	\$4,500.00	\$1,838.00
Kimberly Dow	On-Call Graphic Design Services	\$8,000.00	\$0.00
KL2 Connects	GM Recruitment Services	\$37,200.00	\$33,750.00
Kristie Doughty-Oxford	Design, Implementation, and Troubleshooting for New Access Contract Database	\$16,250.00	\$0.00
LC Disability Consulting	Disability Access Consulting	\$20,000.00	\$1,700.00
Leete Generators	Generator Inspection and Maintenance Services	\$3,000.00	\$0.00
Leete Generators	Generator Maintenance	\$2,609.00	\$2,609.00
Masabi LLC	SMART Mobile Ticketing Pilot Project	\$57,600.00	\$28,500.00
MaxAccel	Compliance Management Software Design/Implementation/Asset Management	\$20,000.00	\$11,235.00
Maze & Associates	Financial Audit Services	\$43,646.00	\$31,333.00
MGrodiner, LLC	Project Management Services	\$25,000.00	\$0.00
Mike Brown Electric Co.	Remove and Replace In-Pavement Vehicle Detection Loop	\$15,000.00	\$0.00
Mike Brown Electric Co.	On-Call Electrical Maintenance	\$25,000.00	\$0.00
Militus, Inc.	Cybersecurity Assessment Services	\$40,000.00	\$40,000.00
Milton R. Davis dba Davis Sign Co, Inc.	Printing, Installation, and Removal of Holiday Express Window Clings on SMART's DMU for Toy Dr	\$1,167.00	\$0.00
Mission Linen Supply	Employee Uniform Services	\$36,000.00	\$18,353.00
Modern Railway Systems, Inc.	Monitoring and Maintenance SMART's Communications Network and TDX System	\$155,132.00	\$105,044.00
MuniServices, LLC	Sales Tax Recovery Services	\$45,710.00	\$16,631.00
Murphy, Campbell, Alliston & Quinn	Legal Services for Rail Transit Matters	\$100,000.00	\$8,324.00
Netspeed Solutions, Inc.	SMART Phone System Maintenance	\$19,000.00	\$11,867.00
Netwoven Inc.	SharePoint Maintenance, Support, Implementation, and Related Services	\$29,350.00	\$27,702.00
Nextdoor Inc.	Use of Nextdoor Platform for Community Notifications	\$19,447.00	\$11,344.00
North Bay Petroleum	Provision of Fuel for DMUs	\$1,100,000.00	\$411,796.00
North Bay SAP Services	Substance Abuse Professional Services	\$2,600.00	\$0.00
Nossaman LLP	Litigation, Rail Transit Issues, and other related legal services	\$246,481.00	\$132,972.00
Occupational Health Centers of CA	Pre-Employment Evaluation Services	\$20,000.00	\$9,261.00
Oil Stop, LLC	Automotive Repair and Service	\$3,000.00	\$0.00
Oracle	Fusion ERP System	\$60,000.00	\$25,049.00
Pamco Machine Works, Inc.	Railroad Wheel Pressing Services	\$115,770.00	\$115,770.00
Parodi Investigative Solutions	Pre-Employment Background Investigation Services	\$20,000.00	\$9,650.00
Peterson Mechanical, Inc.	HVAC Maintenance Services	\$22,000.00	\$0.00
PFM Financial Advisors, LLC	As-Needed Financial Consultant Services	\$10,000.00	\$0.00
PFM Financial Advisors, LLC	Financial Advisory Services	\$30,000.00	\$0.00
Portola Systems, Inc.	SMART Station Network Maintenance and Configuration Services	\$250,000.00	\$185,602.00
Precision Wireless	Tech Support and Maintenance for Land Mobile Radio	\$38,000.00	\$13,340.00
Precision Wireless	Tech Support and Maintenance for Land Mobile Radio	\$4,952.00	\$4,952.00
Public Financial Mangement, Inc.	Arbitrage Rebate Compliance Services	\$2,000.00	\$2,000.00
RailWorks Track Services, Inc.	Track Maintenance Services	\$143,323.00	\$143,323.00
San Rafael Chamber of Commerce	Marin County Communications Consulting	\$75,000.00	\$37,500.00
Santa Rosa Fire Equipment Service, Inc.	SMART Fire Equipment Maintenance	\$10,000.00	\$0.00
SEFAC USA	Portable Lifting Jack Inspection and Certification Services	\$8,000.00	\$0.00
Sherwood Electromotion, Inc.	Overhaul Services for SMART's Permanent Magnet Alternators	\$40,000.00	\$0.00
Sierra-Cedar, LLC	Oracle Enterprise Resources Planning Software	\$75,000.00	\$8,445.00

Contractor	Scope	Fiscal Year 21/22 Projected	Fiscal Year 21/22 Actuals-To-Date
Sonoma County Fleet Operation Division	Non-Revenue Fleet Maintenance Services	\$23,000.00	\$6,235.00
Sperry Rail Service	Rail Flaw Detection Services	\$13,500.00	\$0.00
SPTJ Consulting	Network Infrastructure, Security, Migration and Setup Services	\$329,400.00	\$65,880.00
Stantec Consulting Services, Inc.	Environmental Permit Management and Construction Compliance Monitoring	\$20,000.00	\$0.00
Stericycle, Inc.	Medical Waste Pick-Up and Disposal Services	\$2,000.00	\$0.00
Sue Evans	Title Investigation Support Services	\$20,000.00	\$10,953.00
Sumitomo Corporation	Manufacture & Delivery of Rail Vehicles	\$1,100,000.00	\$1,100,000.00
Summit Signal, Inc.	Emergency Call-Out Services for Track and Signals	\$56,905.00	\$46,905.00
Survival CPR & First Aid, LLC	First Aid and CPR Training, AED Compliance Program	\$5,000.00	\$2,831.00
Swiftly, Inc.	AVL Mobile Application and Website Interface	\$8,400.00	\$8,400.00
Triliant, LLC	Online Training Program	\$2,222.00	\$373.00
Transportation Analytics	Transit Financial Modeling, Benchmarking, Performance Metrics, Benefit-Cost Analysis, and Strategic	\$11,100.00	\$0.00
Trillium Solutions, Inc.	Transit Feed Mapping Software	\$2,300.00	\$2,300.00
United Mechanical Incorporated	HVAC Service, Maintenance and Related Services	\$2,000.00	\$1,622.00
UTCRA, LLC	Wheel Pressing Services	\$50,000.00	\$0.00
Van Scoyoc Associates	Federal Lobbying Services	\$30,000.00	\$0.00
Van Scoyoc Associates	Federal Lobbying Services	\$30,000.00	\$30,000.00
VenTek Transit Inc.	Fare Vending Machine Operations and Maintenance Services	\$262,176.00	\$121,551.00
VenTek Transit Inc.	Windsor Fare Vending Machine	\$77,138.00	\$0.00
Vista Broadband Networks, Inc.	Broadband Services	\$9,000.00	\$0.00
W.J.C. Electric, Inc. dba Hahn Automotive	Non-Revenue Vehicle Repair and Service	\$20,000.00	\$0.00
West Coast Arborists, Inc.	Tree Trimming and Tree Removal Services	\$30,000.00	\$19,450.00
WRA Environmental Consultants	Environmental Permitting, Management, & Support Services	\$216,328.00	\$71,053.00
Zoon Engineering	Right-of-Way Feasibility Study - San Rafael	\$24,953.00	\$24,953.00
	TOTALS:	\$8,901,160.00	\$4,044,411.00
FREIGHT			
American Rail Engineers Corporation	Railroad Bridge Engineering, Inspection, & Design - Black Point Bridge	\$30,000.00	\$2,905.00
Hogan Lovells LLP	Legal Services - Freight and Passenger Rail Sector	\$25,000.00	\$3,040.00
Holland Company	Track Geometry and Measurement Services	\$4,125.00	\$4,125.00
Project Finance Advisory Limited	Freight Service Option Analysis	\$4,718.00	\$4,718.00
WRA Environmental Consultants	Environmental Permitting, Management, & Support Services - Black Point Bridge	\$9,472.00	\$7,614.00
	TOTALS:	\$73,315.00	\$22,402.00

Actuals-To-Date includes invoices that have been approved as of February 28, 2022, but may not have been processed in SMART's Financial System.



April 6, 2022

David Rabbitt, Chair
Sonoma County Board of Supervisors

Barbara Pahre, Vice Chair
Golden Gate Bridge,
Highway/Transportation District

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Chris Coursey
Sonoma County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Eddy Cumins
General Manager

5401 Old Redwood Highway
Suite 200
Petaluma, CA 94954
Phone: 707-794-3330
Fax: 707-794-3037
www.sonomamarintrain.org

Sonoma- Marin Area Rail Transit Board of Directors
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

SUBJECT: Approve the Masabi, LLC Contract Amendment No. 3

Dear Board Members:

RECOMMENDATIONS:

Approve Contract Amendment No. 3 with Masabi, LLC for the SMART mobile ticketing application through December 31, 2023 and increase the not-to-exceed amount by \$85,000 for a total not-to-exceed of \$444,100.

SUMMARY:

On October 3, 2016, SMART entered into an agreement with Masabi, LLC. The scope required that Masabi design and provide a working, fully functional mobile application that enables a SMART rider to purchase and activate a "ticket" that can be visually inspected by a train host and allow the agency to collect data necessary for federal reporting purposes. This scope was delivered, and SMART customers have been successfully using the application ever since.

The SMART application has provided options that weren't and are not currently available on the Clipper system. However, Clipper is in the process of transitioning from a card-based system to an account-based system. Once that transition is complete, we are anticipating that we will be able to deliver the services provided by the Masabi app through the Clipper system. SMART has committed to Clipper that we will transition once the options are available on new system. Currently it is not clear exactly when the new Clipper system will be available and with what features, we are extending Masabi's contract until the new system is ready. Masabi is aware that we will transition off their app in the future.

FISCAL IMPACT: Since the inception of the app, we have collected \$1,960,101, which accounts for approximately 16% of all ticket sales. The initial set up was \$71,000 and we have paid \$259,920 in fees since inception. The fees for the remainder of Fiscal Year 2022 are already included in the budget.

Very Truly Yours,

/s/
Heather McKillop
Chief Financial Officer

Attachment(s): Masabi, LLC Contract Amendment No. 3

**THIRD AMENDMENT TO THE AGREEMENT FOR CONSULTANT SERVICES
BETWEEN THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
AND MASABI, LLC**

This Third Amendment/Side Letter dated as of April 6, 2022 (the “Third Amendment”), to the Agreement for Consultant Services by and between Masabi, LLC (hereinafter referred to as “CONSULTANT”) and the Sonoma-Marín Area Rail Transit District (hereinafter referred to as “SMART”), dated as of October 3, 2016 (the “Original Agreement,” as amended and supplemented by the First, Second, and now this Third Amendment, the “Agreement”).

RECITALS

WHEREAS, CONSULTANT and SMART previously entered the Original Agreement on October 3, 2016 to develop and maintain SMART’s Mobile Ticketing Application; and

WHEREAS, SMART and CONSULTANT previously entered into various Amendments to the Agreement between January 1, 2018 to June 5, 2019 to increase the not-to-exceed amount, modify the scope of work, and extend the term of the Agreement; and

WHEREAS, SMART desires to amend the Agreement to extend the term of the Agreement to December 31, 2023, increase the not-to-exceed amount by \$85,500 for a total not-to-exceed amount of \$444,100; and add a provision to allow execution of electronic signatures; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. **“ARTICLE 5. PAYMENT”** Article 5 of the Agreement is amended as follows:

In addition to the not-to-exceed amount set forth in the Original Agreement and subsequent Amendments, the contract amount shall be increased by an amount not-to-exceed \$85,500 for a total not-to-exceed amount of \$444,100 for the Agreement.

2. **“ARTICLE 6. TERM OF AGREEMENT”** is hereby deleted and replaced in its entirety with the following:

“ARTICLE 6. TERM OF AGREEMENT. The term of this Agreement shall remain in effect through December 31, 2023, unless terminated earlier in accordance with the provisions of **Article 7.**”

3. **“ARTICLE 16. MISCELLANEOUS PROVISIONS”** is hereby amended to add the following:

Section 16.09. Acceptance of Electronic Signatures and Counterparts. The parties agree that this Contract, Agreements ancillary to this Contract, and related documents to be entered into this Contract will be considered executed when all parties have signed this Agreement. Signatures delivered by scanned image as an attachment to electronic mail or delivered electronically through the use of programs such as DocuSign must be treated in all respects as having the same effect as an original signature. Each party further agrees that this Contract may be executed in two or more counterparts, all of which constitute one and the same instrument.

4. Except to the extent the Agreement is specifically amended or supplemented hereby, the Agreement, together with all supplements, amendments and exhibits thereto is, and shall continue to be, in full force and effect as originally executed, and nothing contained herein shall, or shall be construed to, modify, invalidate, or otherwise affect any provision of the Agreement.

THIS SPACE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment as of the date first set forth above.

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

Dated: _____

By _____
Eddy Cumins, General Manager

MASABI, LLC

Dated: _____

By _____
Sara Poulton, VP Services

APPROVED AS TO FORM:

Dated: _____

By _____
District Counsel



April 6, 2022

David Rabbitt, Chair
Sonoma County Board of Supervisors

Barbara Pahre, Vice Chair
Golden Gate Bridge,
Highway/Transportation District

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
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Sonoma-Marín Area Rail Transit Board of Directors
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

SUBJECT: Authorize the General Manager to Award Contract No. MK-PS-22-001, to Vector Media Holding Corp

Dear Board Members:

RECOMMENDATION:

Authorize the General Manager to award Contract No. MK-PS-22-001 to Vector Media Holding Corp to sell and manage advertising space onboard SMART's trains and at SMART's facilities at no cost to SMART.

SUMMARY:

SMART contracts with a third-party firm to sell advertising and manage all advertising space onboard SMART's trains and at SMART's facilities. The primary objectives of this contract include: increasing ad revenue generation, filling all ad placement spaces, and ensuring advertising reflects SMART's brand whenever possible. SMART's existing contract has been in place since early 2017 and is set to expire. In anticipation of the contract's expiration, SMART issued a Request for Proposal to procure the next multi-year contract under Solicitation No. MK-PS-22-001. SMART received 2 responsive proposals from the following proposers:

1. Topdog Media, LLC
2. Vector Media Holding Corp

SMART's Selection Committee reviewed the proposals using the evaluation criteria identified in the Request for Proposal. The criteria included: service approach and understanding of advertising on transit vehicles and facilities, demonstrated history of performing similar and successful work, firm and key personnel qualifications, pricing and profit distribution, and knowledge of national and local (north bay area) markets.

Following the evaluation of the proposals, the Selection Committee made the determination that Vector Media Holding Corp provides the overall best benefit to SMART and is recommending the firm for the award of this contract.

Vector Media Holding Corp is an experienced transit advertising firm with nearly 30 exclusive transit authority partnerships with over 5,000 transit vehicles, 6,600 street furniture panels and 633 rail vehicles in 50 U.S. markets. They have established extensive relationships with local, regional, and national advertisers and come with fresh ideas for revenue generating opportunities for SMART's Advertising Program.

Staff recommends authorizing the General Manager to award Contract No. MK-PS-22-001 to Vector Media Holding Corp to sell and manage advertising space onboard SMART's trains and at SMART's facilities for the initial three-year term and subsequent optional years.

FISCAL IMPACT: This contract will generate revenue for SMART at no cost to the District.

REVIEWED BY: Finance /s/ Counsel /s/

Very truly yours,

 /s/
Ken Hendricks
Procurement Manager

Attachment(s): Vector Media Holding Corp Contract Agreement No. MK-PS-22-001

AGREEMENT FOR CONSULTANT SERVICES

This agreement (“Agreement”), dated as of April 26, 2022 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and Vector Media Holding Corp. (hereinafter “Consultant”).

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and experienced in the areas of transit advertising services, program management, and related services; and

WHEREAS, in the judgment of the Board of Directors of SMART or District, it is necessary and desirable to employ the services of Consultant to sell and manage advertising for SMART.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

ARTICLE 1. RECITALS.

Section 1.01 The above Recitals are true and correct.

ARTICLE 2. LIST OF EXHIBITS.

Section 2.01 The following exhibits are attached hereto and incorporated herein:

- (a) Exhibit A: Scope of Work & Timeline
- (b) Exhibit B: Schedule of Rates
- (c) Exhibit C: Guidelines Governing Advertising in and Upon SMART Facilities and Vehicles

ARTICLE 3. REQUEST FOR SERVICES.

Section 3.01 Initiation Conference. SMART’s Communications and Marketing Manager or designee (hereinafter “SMART Manager”) will initiate all requests for services through an Initiation Conference, which may be in person, by telephone, or by email.

Section 3.02 Amount of Work. SMART does not guarantee a minimum or maximum amount of work under this Agreement.

ARTICLE 4. SCOPE OF SERVICES.

Section 4.01 Scope of Work. Consultant shall perform services within the timeframe outlined in **Exhibit A** (cumulatively referred to as the “Scope of Work”).

Section 4.02 Cooperation With SMART. Consultant shall cooperate with the SMART Manager in the performance of all work hereunder.

Section 4.03 Performance Standard. Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant’s profession. If SMART determines that any of Consultant’s work is not in accordance with such level of competency and standard of care, SMART, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with SMART to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 7; or (d) pursue any and all other remedies at law or in equity.

Section 4.04 Assigned Personnel.

- (a) Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time SMART, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from SMART.
- (b) Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder on behalf of the Consultant are deemed by SMART to be key personnel whose services were a material inducement to SMART to enter into this Agreement, and without whose services SMART would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of SMART.
- (c) In the event that any of Consultant’s personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant’s control, Consultant shall be responsible for timely provision of adequately qualified replacements.
- (d) Consultant shall assign the following key personnel for the term of this Agreement:

Marc Borzykowski, CEO
Gary Greenstein, Chief Revenue Officer
Jim Maccurtain, Chief Strategy Officer
Dave Peterson, Sr. Director Transit Operations
Dave Daucanski, EVP Public Transit Media
Magnus Acheampong-Quaye, EVP Operations

Kwamena Acheampong-Quaye, Operations Manager
Oliver Berman, Western Regional Manager
Chad Silver, Chief Operating Officer
Lemuel “Bill” White”, Market Manager

ARTICLE 5. REVENUE COMPENSATION.

For all services required hereunder, Consultant shall compensate SMART under the following terms:

Section 5.01 Consultant shall make Net Revenue payments to SMART on a quarterly basis. Such quarterly payments shall be made to SMART by January 31, April 30, July 31, and October 31, thirty (30) days after the end of each payment period in which SMART’s right to receive the corresponding Net Revenue accrued.

Section 5.02 Net Revenue is defined as gross sales from advertising on SMART media, less advertising agency commissions identified in the Exhibit B “Schedule of Rates”. In the event that Consultant receives barter, or trade, or goodwill in lieu of revenue for advertising anywhere on SMART, the values received will be considered revenue, such revenue amount to be calculated based on the amount Consultant would normally receive for such advertisements.

Section 5.03 Consultant shall promptly pay to SMART all charges required pursuant to this Agreement, including but not limited to, reimbursement for costs incurred by SMART for providing monitors to ensure track safety when work is being performed by Consultant or their Subcontractors along SMART’s right-of-way. Consultant will be notified by SMART in advance if the scope of their work will require a monitor and of associated costs.

Section 5.04 Consultant shall provide SMART with a copy of each contract entered into by Consultant for advertising space during the term of this Agreement. Terms and conditions of sales of advertising shall be at the discretion of Consultant, subject to the terms and conditions of this Agreement and the District’s adopted advertising policies.

Section 5.05 An accounting report and reconciliation will be prepared by Consultant once each calendar quarter. The report shall include information detailing the cash and values received monthly from the sales of SMART advertising, commissions, fees, production, and other charges. It shall be due within thirty (30) days of the last day of each quarter. An annual report shall be prepared within thirty (30) days of the last day of the fourth quarter by the Consultant’s Chief Financial Officer, who shall consolidate the prior quarterly reports for each year of the Agreement. Detailed variance explanations shall be provided for any figures that are inconsistent with previously reported figures.

Section 5.06 In the event that payment is overdue by more than ten (10) calendar days, a late charge of two percent (2%) shall be paid by the Consultant.

Section 5.07 All payments shall be made by check, payable to Sonoma-Marín Area Rail Transit District, referencing Contract No. MK-PS-22-001, and mailed or delivered to:

Sonoma-Marín Area Rail Transit District
Attn: Finance Department
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

ARTICLE 6. TERM OF AGREEMENT.

Section 6.01 The term of this Agreement shall remain in effect through April 25, 2025, with two (2) one-year options to extend at SMART's sole discretion unless terminated earlier in accordance with the provisions of **Article 7** below.

ARTICLE 7. TERMINATION.

Section 7.01 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, SMART shall have the right, at their sole discretion, to terminate this Agreement by giving 30 days written notice to the other party.

Section 7.02 Termination for Cause. Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, SMART may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

Section 7.03 Payment Upon Termination. Upon termination of this Agreement by SMART, Consultant shall compensate SMART for any unpaid Net Revenue accrued.

Section 7.04 Authority to Terminate. The Board of Directors has the authority to terminate this Agreement on behalf of SMART. In addition, the General Manager, in consultation with SMART Counsel, shall have the authority to terminate this Agreement on behalf of SMART.

ARTICLE 8. INDEMNIFICATION

Consultant agrees to accept all responsibility for loss or damage to any person or entity, including SMART, and to indemnify, hold harmless, and release SMART, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, to the extent caused by the Consultant's negligence, recklessness or willful misconduct in its performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against SMART based upon a claim relating to Consultant's performance or obligations under this Agreement. Consultant's obligations under this Section 8 apply whether or not there is concurrent negligence on SMART's part, but to the extent required by law, excluding liability due to SMART's conduct. SMART shall have the right to select its

legal counsel at Consultant's expense, subject to Consultant's approval, which 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 Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

ARTICLE 9. INSURANCE.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its Subcontractors, Consultants, and other agents to maintain, insurance as described below. If the Consultant maintains broader coverage and/or higher limits than the minimums shown below, SMART requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SMART"

Section 9.01 Workers' Compensation Insurance. Workers' Compensation as required by the State of California, with Statutory Limits, and Employer's Liability insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

Section 9.02 General Liability Insurance. Commercial General Liability insurance covering products-completed and ongoing operations, property damage, bodily injury and personal injury using an occurrence policy form, in an amount no less than \$2,000,000 per occurrence, and \$4,000,000 aggregate. Said policy shall include a Railroads CG 24 17 endorsement removing the exclusion of coverage, if applicable, for bodily injury or property damage arising out of operations within 50 feet of any railroad property and affecting any railroad bridge, trestle, tracks, roadbeds, tunnel, underpass or crossing, if applicable.

Section 9.03 Automobile Insurance. Automobile Liability insurance covering bodily injury and property damage in an amount no less than \$1,000,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles. Said policy shall also include a CA 20 70 10 13 endorsement removing the exclusion of coverage for bodily injury or property damage arising out of operations within 50 feet of any railroad bridge, trestle, track, roadbeds, tunnel, underpass, or crossing, if applicable.

Section 9.04 Professional Liability Insurance (Errors and Omissions). Professional Liability insurance with a limit of no less than \$2,000,000 per occurrence or claim.

Section 9.05 Endorsements. Prior to commencing work, Consultant shall file Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Said endorsements and Certificate(s) of Insurance shall stipulate:

- (a) SMART, its officers, and employees shall be named as additional insured on all policies listed above, with the exception of the workers compensation insurance policy and the professional services liability policy (if applicable).

- (b) That the policy(ies) is Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which Consultant is liable, up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be effected by the Insureds.
- (c) Inclusion of the Insureds as additional insureds shall not in any way affect its rights either as respects any claim, demand, suit or judgment made, brought or recovered against Consultant. Said policy shall protect Consultant and the Insureds in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.
- (d) Consultant hereby grants to SMART a waiver of any right to subrogation which any insurer of said Consultant may acquire against SMART by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not SMART has received a waiver of subrogation endorsement from the insurer.
- (e) The insurance policy(ies) shall be written by an insurance company or companies acceptable to SMART. Such insurance company shall be authorized to transact business in the state of California.

SMART reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

Section 9.06 Deductibles and Retentions. Consultant shall be responsible for payment of any deductible or retention on Consultant's policies without right of contribution from SMART. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the name insured is not acceptable.

Section 9.07 Claims Made Coverage. If any insurance specified above is written on a claims-made coverage form, Consultant shall:

- (a) Ensure that the retroactive date is shown on the policy, and such date must be before the date of this Agreement or beginning of any work under this Agreement;
- (b) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- (c) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to Agreement effective date, Consultant shall purchase "extending reporting" coverage for a minimum of three (3) years after completion of the work.

Section 9.08 Documentation. The following documentation shall be submitted to SMART:

- (a) Properly executed Certificates of Insurance clearly evidencing all coverages and limits required above. Said Certificates shall be submitted prior to the execution of this Agreement. At SMART's request, Consultant shall provide certified copies of the policies that correspond to the policies listed on the Certificates of Insurance. Consultant agrees to maintain current Certificates of Insurance evidencing the above-required coverages and limits on file with SMART for the duration of this Agreement.
- (b) Copies of properly executed endorsements required above for each policy. Said endorsement copies shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current endorsements evidencing the above-specified requirements on file with SMART for the duration of this Agreement.
- (c) After the Agreement has been signed, signed Certificates of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.

Please email all renewal certificates of insurance and corresponding policy documents to InsuranceRenewals@sonomamarintrain.org.

Section 9.09 Policy Obligations. Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 9.10 Material Breach. If Consultant, for any reason, fails to maintain insurance coverage, which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. SMART, in its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, SMART may purchase such required insurance coverage, and without further notice to Consultant, SMART may deduct from sums due to Consultant any premium costs advanced by SMART for such insurance. These remedies shall be in addition to any other remedies available to SMART.

ARTICLE 10. PROSECUTION OF WORK.

When work is requested of Consultant by SMART, all due diligence shall be exercised and the work accomplished without undue delay, within the performance time specified in this Agreement or by written task order. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, or wildfire, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

ARTICLE 11. EXTRA OR CHANGED WORK.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not

increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the SMART Manager in a form approved by SMART Counsel. The Board of Directors or General Manager must authorize all other extra or changed work. The parties expressly recognize that SMART personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of SMART.

ARTICLE 12. REPRESENTATIONS OF CONSULTANT.

Section 12.01 Standard of Care. SMART has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by SMART shall not operate as a waiver or release.

Section 12.02 Status of Consultant. The parties intend that Consultant, in performing the services specified herein, shall act as an independent Contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of SMART and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits SMART provides its employees. In the event SMART exercises its right to terminate this Agreement pursuant to **Article 7**, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

Section 12.03 Taxes. Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including but not limited to state and federal income and FICA taxes. Consultant agrees to indemnify and hold SMART harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case SMART is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish SMART with proof of payment of taxes on these earnings.

Section 12.04 Records Maintenance. Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to SMART for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder. Consultant and Subconsultants shall permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices

and Housing Commission, or any other agency of the State of California designated by the State, for the purpose of any investigation to ascertain compliance with this document.

Section 12.05 Conflict of Interest. Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by SMART, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a “Statement of Economic Interest” with SMART disclosing Consultant’s or such other person’s financial interests.

Section 12.06 Nondiscrimination. Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, SMART’s Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

Section 12.07 Assignment Of Rights. Consultant assigns to SMART all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to SMART in this Agreement, and to refrain from taking any action which would impair those rights. Consultant’s responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as SMART may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of SMART. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of SMART.

Section 12.08 Ownership And Disclosure Of Work Product. Any and all work product resulting from this Agreement is commissioned by SMART as a work for hire. SMART shall be considered, for all purposes, the author of the work product and shall have all rights of authorship to the work, including, but not limited to, the exclusive right to use, publish, reproduce, copy and make derivative use of, the work product or otherwise grant others limited rights to use the work product. To the extent Consultant incorporates into the work product any pre-existing work product owned by Consultant, Consultant hereby acknowledges and agrees that ownership of such work product shall be transferred to SMART. All reports, original drawings, graphics, plans, studies, and other data or documents (“documents”), in whatever form or format, assembled or prepared by Consultant and other agents in connection with this Agreement shall be the property of SMART. SMART shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to SMART all such documents,

which have not already been provided to SMART in such form or format, as SMART deems appropriate. Such documents shall be and will remain the property of SMART without restriction or limitation. Consultant may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of SMART.

ARTICLE 13. DEMAND FOR ASSURANCE.

Each party to this Agreement undertakes the obligation that the other’s expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. “Commercially reasonable” includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party’s right to demand adequate assurance of future performance. Nothing in this **Article 13** limits SMART’s right to terminate this Agreement pursuant to **Article 7**.

ARTICLE 14. ASSIGNMENT AND DELEGATION.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

ARTICLE 15. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING INVOICES AND MAKING PAYMENTS.

All notices, invoices, and payments shall be made in writing and shall be given by personal delivery, U.S. Mail or email. Notices, invoices, and payments will reference Contract No. MK-PS-22-001 and shall be addressed as follows:

If to SMART Manager:

Sonoma-Marin Area Rail Transit District
Attn: Matt Stevens
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
mstevens@sonomamarintrain.org
707-794-3074

If to SMART Billing:

Sonoma-Marine Area Rail Transit District
Attn: Accounts Payable
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
billing@sonomamarintrain.org
707-794-3330

If to Consultant:

Vector Media Holding Corp
Attn: Marc Borzykowski
560 Lexington Ave, 14th Fl
New York, NY 10022
marcb@vectormedia.com
212-557-9405 ext. 261

When a notice, invoice 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 copy of a notice, invoice or payment is sent by facsimile or email, the notice, invoice or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, invoice or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, invoices 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.

ARTICLE 16. MISCELLANEOUS PROVISIONS.

Section 16.01 No Waiver of Breach. The waiver by SMART of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

Section 16.02 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and SMART acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and SMART acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

Section 16.03 Consent. Wherever in this Agreement the consent or approval of

one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

Section 16.04 No Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

Section 16.05 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Venue for any action to enforce the terms of this Agreement or for the breach thereof shall be in the Superior Court of the State of California in the County of Marin.

Section 16.06 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

Section 16.07 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

Section 16.08 Acceptance of Electronic Signatures and Counterparts. The parties agree that this Contract, Agreements ancillary to this Contract, and related documents to be entered into this Contract will be considered executed when all parties have signed this Agreement. Signatures delivered by scanned image as an attachment to electronic mail or delivered electronically through the use of programs such as DocuSign must be treated in all respects as having the same effect as an original signature. Each party further agrees that this Contract may be executed in two or more counterparts, all of which constitute one and the same instrument.

Section 16.09 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CONSULTANT: VECTOR MEDIA HOLDING CORP

By: _____
Marc Borzykowski, Chief Executive Officer

Date: _____

SONOMA-MARIN AREA RAIL TRANSIT (SMART)

By: _____
Eddy Cumins, General Manager

Date: _____

CERTIFICATES OF INSURANCE ON FILE WITH AND APPROVED AS TO SUBSTANCE FOR SMART:

By: _____
Ken Hendricks, Procurement Manager

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

EXHIBIT A SCOPE OF WORK & TIMELINE

I. Overview

The Sonoma-Marín Area Rail Transit District (SMART) is contracting with Vector Media Holding Corp to sell ads and manage SMART's transit advertising assets and advertising program on SMART's trains, at SMART's facilities, and all other advertising locations proposed and/or accepted by the District to increase revenue at no cost to the District.

SMART's three primary objectives for the Consultant under this Agreement are:

- 1) Increasing ad revenue generation for SMART
- 2) Filling all ad placement spaces
- 3) Ensuring advertising reflects SMART's brand whenever possible

In addition to the primary objectives, Consultant shall also partner with SMART during the performance of work under this agreement to enhance the SMART brand throughout the community to help increase ridership and attract and retain employees.

II. Project Management

All work shall be initiated, scheduled, and reviewed by SMART's Communications and Marketing Manager (hereinafter "SMART Manager"), or designee. Work may be initiated in writing or by teleconference.

III. Scope of Work

The Consultant shall be responsible for marketing SMART's available advertising space and soliciting advertisers to buy advertising in and around SMART's existing and future commuter rail stations, onboard SMART's Diesel Multiple Units ("DMUs"), on SMART's freight locomotives (as approved), and on other District real property (as approved).

Consultant shall ensure a smooth transition of advertisers and advertising services from SMART's existing transit advertising service consultant. Consultant shall be fully transitioned and prepared for an effective start date of April 26, 2022.

Consultant shall provide all labor and labor supervision, tools, equipment, transportation, and supplies necessary to successfully provide a turnkey advertising

revenue program at no cost to the District. The turn-key program shall include managing all add sales, ad placements, advertising graphics production, account management, design, proper installation, maintenance, removal of advertisements, and regular reporting to SMART.

A. Available Ad Space

In establishing this Agreement, the District intends to generate revenue from the available ad space located at:

- a. Twelve (12) existing stations:

1. Santa Rosa Airport	2. Santa Rosa North
3. Santa Rosa Downtown	4. Cotati
5. Rohnert Park	6. Petaluma Downtown
7. Novato San Marin	8. Novato Downtown
9. Novato Hamilton	10. Marin Civic Center
11. San Rafael	12. Larkspur

There are a total of nineteen (19) commuter rail platforms with ad space at these 12 existing stations.

Throughout this contract, SMART may add and incorporate additional stations and platforms into its system. The Consultant shall be responsible for ad generation and management of these additional stations as part of this contract. SMART will notify Consultant in writing at least thirty (30) calendar days prior to the start of ad placements being expected at the new station platforms.

- b. Eighteen (18) Diesel Multiple Units (“DMUs”).

There is existing ad space onboard SMART’s eighteen (18) DMUs. SMART may, upon prior written approval, allow advertising on the outside surfaces of the DMUs.

- c. Freight Locomotives

SMART has freight locomotives that traverse the SMART corridor when carrying freight or performing freight operations. SMART may, upon prior written approval, allow advertising on the outside surfaces of these Freight Locomotives.

d. Other SMART Property

SMART may, upon prior written approval, allow advertising on other SMART property.

e. SMART reservation of ad space for its own use

SMART reserves five (5%) percent of available fixed advertising space at each station for the exclusive use of SMART. The SMART Manager and Consultant shall mutually agree on the exact location of this reserved space.

On rare occasion, the District may require more than five (5%) percent of the advertising space for its own use. The Consultant shall cooperate with the SMART Manager and District when these occasions arise.

If SMART decides to use any such advertising space, Consultant agrees to install the District's advertisements at no charge within ten (10) calendar days after receipt and to remove all advertising within three (3) calendar days of the specified removal date.

B. Scope of Services

Consultant shall perform the following tasks while under agreement:

- a. Market and sell advertising packages. Solicit advertising to achieve SMART's primary objectives. SMART will provide Consultant with a set price list at the beginning of the contract. Any modifications to the price list must be agreed upon by SMART.
- b. Create high-traffic advertising placement and create secure and aesthetically attractive advertisements and points of sale.
- c. Production of banners, floor graphics, vinyl decals, wallscapes and other media as mutually agreed upon.
- d. Graphic design for all advertising programs.
- e. Management services: oversee all necessary personnel, installation, and maintenance activities.
- f. Produce marketing materials promoting the SMART's transit advertising spaces, including but not limited to media kits and price lists.
- g. Portfolio management: Manage all advertiser accounts.

- h. Identify and evaluate new revenue generation concepts, opportunities, and creative partnerships.
- i. Increase SMART's revenue.
- j. Installation Services
 - i. Install media enclosures and fixed signage in mutually agreed locations at no cost to SMART, including but not limited to framed, mounted advertising panels, backlighting, billboards, digital signage, and banners.
 - ii. Each ad placement shall be installed: 1) free from wrinkles, blisters, or similar defects; 2) displayed properly; and 3) present a sharp, clear, and clean appearance. Consultant shall provide SMART with pictures of advertisements upon request.
 - iii. No advertisement/placement shall be allowed to interfere with any safety devices, signs, lights, signals, identification numbers, or distinctive logos. This includes, but is not limited to, reflective materials, side reflectors, and other features. In addition, advertisements cannot interfere with the normal utilization of vents, glazing, ladders, windows, doors, and other equipment that may require regular preventative maintenance.
 - iv. Installation and removal of advertisements shall be performed by Consultant at Consultant's sole expense. Installation and removal at District facilities and onboard DMU's and locomotives shall be performed by Consultant in coordination with SMART's Operations' schedule and at a mutually agreed upon time. Consultant shall be responsible for any repairs required as a result of installation or removal of advertisements. This includes, but is not limited to, any paint damage, resulting from the removal of direct application advertisements.
 - v. Consultant shall ensure its employees or subcontractors performing services onboard SMART's trains and at SMART's facilities have received the required safety training as required by SMART prior to any work being performed.
- k. Maintenance Services
 - i. Consultant shall maintain and repair, at its sole cost and expense all equipment and advertising space provided by or on behalf of Consultant for the term of this Agreement in accordance with the provisions below:

1. Consultant shall maintain an attractive appearance for all of the advertisements onboard SMART's trains and at every station site or other advertising venue. Consultant shall maintain clean and not worn, tattered or defaced advertising displays. Each advertisement shall be free from wrinkles, blisters, or similar defects, and shall present a sharp and clear appearance.
2. If requested in writing by the District, an advertisement, shall be removed by Consultant within forty-eight (48) hours of receipt of written request at no cost to the District.
3. Consultant shall remove date sensitive advertisements within one (1) week after expiration. Failure to remove date sensitive advertisements within one (1) week after expiration may result in the District removing the advertisements and billing the cost for removal to the Consultant.

1. Other tasks as mutually agreed upon.

C. Content Requirements

- a. Consultant shall comply with the Guidelines Governing Advertising in and Upon SMART Facilities and Vehicles ("Exhibit C).
- b. SMART's purpose in allowing advertising is to raise revenue, not to allow public speech. Consultant shall limit advertisements to those advertisements that propose a commercial transaction or for public benefit. Consultant shall refuse political advertisements or issue-oriented advertisements (for example: pro-choice or anti-choice advertisements, religious advertisements, etc.). Additionally, graphic art submitted to Consultant shall strive to reflect SMART's brand standards refraining from violent or fear-based images or art. Advertising requests that do not clearly comply with SMART's standards must be submitted to the SMART Manager for prior approval.

D. Key Performance Indicators (KPIs) and Reporting Requirements

The following KPIs will be used to determine the program's success:

KPI 1: Consultant shall establish an initial list of 300 advertisers prospects that Consultant will work to turn into prospects.

KPI 2: Consultant shall convert 20% of the 300 advertisers prospects into

qualified prospects after outreach with a total estimated revenue spend of \$2M.

KPI 3: Consultant shall close 35% of those prospects.

KPI 4: SMART and Consultant have established a Year 1 minimum sales expectation to exceed \$550,000 with 15% annual growth thereafter. This number will serve as a primary Key Performance Indicator for the SMART Transit Advertising Program.

KPI 5: Consultant shall hold monthly meetings with SMART's marketing, finance, and operations team.

KPI 6: Consultant and SMART shall conduct joint social media outreach.

The following reporting requirements will be in place to assist SMART in tracking and monitoring the overall performance and success of this transit advertising program.

a. Monthly Report

Consultant shall submit a monthly report (at the close of the month) to the SMART Manager that includes the following metrics for the prior month's performance:

- Total Ad Revenue Generated during the Month
- % of Advertising Space Filled
- % of Advertising Space that was left unfilled during the Month
- An Understanding of the Mix of Advertisers
 - Local/Regional Ads vs. National
 - Industry Segment

b. Quarterly Report

Consultant shall submit a quarterly report (at the close of the quarter) to the SMART Manager that includes the following metrics for the prior quarter's performance:

- Total Ad Revenue Generated during the Quarter
- % of Advertising Space Filled during the Quarter
- % of Advertising Space that was left unfilled during the Quarter
- An Understanding of the Mix of Advertisers
 - Local/Regional Ads vs. National
 - Industry Segment
- A narrative that includes recommendations for improving the success of SMART's advertising program.
- Rate per Media Type
- Average Contract Value
- Forward Looking Sales Projections

c. Annual Fiscal Year Report

Consultant shall submit an annual report (at the close of SMART's Fiscal Year) to the SMART Manager that includes the following metrics:

- Total Ad Revenue Generated during the Fiscal Year
- % of Advertising Space Filled during the Fiscal Year
- % of Advertising Space that was left unfilled during the Fiscal Year
- An Understanding of the Mix of Advertisers
 - Local/Regional Ads vs. National
 - Industry Segment
- Rate per Media Type
- Average Contract Value
- Forward Looking Sales Projections
- A narrative that includes recommendations for improving the success of SMART's advertising program for the following Fiscal Year.

E. Acceptance Criteria

All work shall be reviewed by the SMART Manager for conformance with the contract requirements. In the event that defective work is found to have taken place, Consultant shall replace all defective work immediately at the Consultant's sole cost prior to resubmitting for review. Upon successful review of work, the SMART Manager shall provide a notice of acceptance.

**EXHIBIT B
SCHEDULE OF RATES**

Consultant shall make Net Revenue payments to SMART on a quarterly basis. The term “Net Revenue” is defined as gross sales from advertising on District media, less Consultant’s commissions. In the event that the Consultant received barter, or trade, or goodwill in lieu of revenue for advertising anywhere on District property, the values received will be considered revenue, such revenue amount to be calculated based on the amount Proposer would normally receive for such advertisements.

Net Advertising revenue shall be calculated on an accrual basis (i.e. amounts are pro-rated to the time periods which correlate to the time periods during which the advertising is displayed).

The Percentage of Split Gross Revenue identified in the below table will be for the duration of the contract term, including all optional years.

PERCENTAGE OF SPLIT GROSS REVENUE	
SONOMA-MARIN AREA RAIL TRANSIT DISTRICT (SMART)	55%
VECTOR MEDIA HOLDING CORP	45%
TOTAL	100%

INCENTIVE PROGRAM

If Vector Media Holding Corp exceeds \$750,000 in gross sales for the SMART Program in any given Fiscal Year (July 1 – June 30) within the first three years (“initial term”) of the contract, SMART would add the remaining two optional years into the contract.

DIGITAL KIOSK COMMITMENT

If SMART and Vector Media mutually agree that digital kiosks are viable, advantageous to the program, and are successfully installed at two or more SMART stations that are mutually agreed upon, SMART would add the remaining two optional years into the contract.

EXHIBIT C

Guidelines Governing Advertising in and Upon SMART Facilities and Vehicles

1. Purpose:

1.1 Sonoma-Marín Area Rail Transit District (“SMART”) owns and operates a passenger rail system within the Counties of Sonoma and Marin.

1.2 SMART’s rail transit operations are funded by a combination of federal, local and state funds, including grants and taxes, as well as fare revenue. SMART’s purpose in accepting transit advertising is to generate revenue to augment SMART’s operating budget.

1.3 The primary purposes of SMART’s transit system are to provide safe and efficient public rail transportation and a bicycle-pedestrian pathway within its service area. Consistent with these purposes, SMART places great importance on maintaining secure, safe, comfortable and convenient Transit Facilities and Transit Vehicles and pathways in order to, among other things consistent with the provision of effective and reliable public transportation, retain existing riders and attract new users of public transit services. To generate additional revenue while also accomplishing the primary objectives of transit operations, SMART will accept advertising on its Transit Facilities and Transit Vehicles only if such advertising complies with this Advertising Policy.

1.4 It is the express intention of this policy that SMART’s property is designated a non-public forum. SMART’s acceptance of transit advertising will not create or provide a general public forum for expressive activities. Rather, as noted, SMART’s fundamental purposes and intent is to accept advertising as an additional means of generating revenue to support its transit operations. In furtherance of that discreet and limited objective, SMART retains strict control over the nature of the ads accepted for posting on or in its Transit Vehicles and Transit Facilities and maintains its advertising space as a non-public forum.

1.5 SMART finds that certain types of advertisements interfere with SMART’s primary purpose of generating revenue to benefit the transit system. This Advertising Policy advances the advertising program’s revenue-generating objective by prohibiting advertisements that could detract from the goal by creating substantial controversy, interfering with and diverting resources from transit operations, and/or posing significant risks of harm, inconvenience, or annoyance to transit passengers or pathway users, operations and vehicles. Such advertisements create an environment that is not conducive to achieving revenue for the benefit of the transit system or to preserving and enhancing the security, safety, comfort and convenience of its operations. The viewpoint neutral restrictions in this Advertising Policy foster the maintenance of a professional advertising environment that maximizes advertising revenue.

1.6 This policy is intended to provide clear guidance as to the types of advertisements that will allow SMART to generate revenue and enhance transit operations by fulfilling the following goals and objectives:

- Maximizing advertising revenues;
- Preventing the appearance of favoritism by SMART;
- Preventing the risk of imposing demeaning or disparaging views on a captive audience;
- Maintaining a position of neutrality on controversial issues;
- Preserving the marketing potential of the advertising space by avoiding content that the community could view as demeaning, disparaging, objectionable, inappropriate or harmful to member of the public generally or to minor in particular;
- Maximizing ridership and pathway use;
- Avoiding claims of discrimination and maintain a non-discriminator environment for riders;
- Preventing any harm or abuse that may result from running demeaning, disparaging or objectionable advertisements;
- Reducing the diversion of resources from transit operations that is caused by demeaning disparaging, objectionable, inappropriate or harmful advertisements.

1.7 This Advertising Policy applies to the posting of all advertisements on transit facilities and transit vehicles on or after the effective date. SMART's transit facilities and transit vehicles are a non-public forum and, as such, SMART will accept only that advertising that falls within the categories of acceptable advertising specified in this viewpoint neutral policy and that satisfies all other access requirements and restrictions provided herein. This Advertising Policy does not apply to SMART owned property in the possession of another party pursuant to a lease, license or concession agreement.

1.8 SMART's acceptance of an advertisement does not constitute express or implied endorsement of the content or message of the advertisement, including any person, organization, products, services, information or viewpoints contained therein, or of the advertisement sponsor itself. This endorsement disclaimer extends to and includes content that may be found via internet addresses, quick response (QR) codes, and telephone numbers that may appear in posted ads and that direct viewers to external sources of information.

2. Advertising Policy

2.1 ***Permitted Advertising Content*** – The following classes of advertising are authorized on transit facilities and transit vehicles if the advertising does not include any material that qualifies as prohibited advertising under this Advertising Policy:

2.1.1 **Commercial and Promotional Advertising.** Commercial and promotional advertising that promotes or solicits the sale, rental, distribution or availability of goods, services, food, entertainment, events, programs, transactions, donations, products or property (real or personal) for commercial or noncommercial purposes or more generally promotes an entity that engages in such activities.

2.1.2 Governmental Advertising. Governmental entities, meaning public entities specifically created by government action, may purchase advertising space for messages that advance specific government purposes.

2.1.3 Public Service Announcements. SMART recognizes that its advertising program and its overall public transportation mission are promoted by allowing for public service announcements. Such announcements engender goodwill with the public because the transit system is seen as a caring and active participant in the community.

A Public Service Announcement must satisfy the following criteria:

- a. The sponsor of a Public Service Announcement must be a government entity or a nonprofit corporation that is exempt from taxation under Section 501 (c) (3) of the Internal Revenue Code.
- b. The Public Service Announcement must be directed to the general public or a significant segment of the public and relate to:
 - Prevention or treatment of illnesses;
 - Promotion of safety or personal well-being;
 - Education or training;
 - Provision of children and family services;
 - Solicitation by broad-based contribution campaigns which provide funds to multiple charitable organizations; or
 - Provision of services and programs that provide support to low income citizens, senior citizens, and people with disabilities.

2.2 **Prohibited Advertising Content.**

Advertising is prohibited on or in Transit Facilities and Transit Vehicles if it includes any of the following content:

2.2.1 Political Campaign Speech. Advertising that promotes, or opposes a political party, the election of any candidate or group of candidates or federal, state or local government offices or initiatives, referendums or other ballot measures.

2.2.2 Prohibited Products, Services or Activities. Any advertising that (1) promotes or depicts the sale, rental, or use or participation in, or images of the following products, services or activities: or (2) uses brand names or other material that are identifiable with such products, services or activities:

- a. **Tobacco.** Tobacco products, including but not limited to cigarettes, cigars, and smokeless (e.g., chewing) tobacco;

- b. **Firearms.** Firearms, ammunition or other firearms-related products.
 - c. **Adult/Mature Rated Films, Television or Video Games.** Adult films rated “X” or “N-17”, television rated “MA” or video games rated “A” or “M”.
 - d. **Adult Entertainment Facilities.** Adult book stores, adult video stores, nude dance clubs and other adult entertainment establishments.
 - e. **Other Adult Services.** Adult telephone services, adult internet sites and escort services.
- 2.2.3 Sexual and/or Excretory Subject Matter. Any advertising that contains or involves any material that describes, depicts or represents sexual or excretory organs or activities in a way:
- a. That the average adult person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest of minors in sex; or
 - b. which is patently offensive to contemporary standard in the adult community as a whole with respect to what is suitable material for minors to see; or
 - c. that depicts, or reasonably appears to depict, a person under the age of eighteen (18) exhibiting his or her sexual or excretory organs or engaging in sexual or excretory activities.
- 2.2.4 False or Misleading. Any material that is or that the sponsor reasonably should have known is false, fraudulent, misleading. Deceptive or would constitute a tort of defamation or invasion of privacy.
- 2.2.5 Copyright, Trademark or Otherwise Unlawful. Advertising that contains any material that is an infringement of copyright, trademark or service mark, or is otherwise unlawful or illegal.
- 2.2.6 Illegal Activity. Any advertising that promotes any activity or product that is illegal under federal, state or local law.
- 2.2.7 Profanity and Violence. Advertising that contains any profane language, or portrays images or descriptions of graphic violence, including dead, mutilated or disfigured human beings or animals, or intentional infliction of pain or violent action towards or upon a person or animal.

- 2.2.8 Demeaning or Disparaging. Advertising that contains material that demeans or disparages an individual, group of individual or entity. For purposes of determining whether an advertisement contains such material, SMART will determine whether a reasonably prudent person, knowledgeable of the SMART ridership and using prevailing community standards, would believe that the advertisement contains material that ridicules or mocks, is abusive or hostile to, or debases the dignity or stature of any individual, group of individuals or entity.
- 2.2.9 Harmful or Disruptive to Transit System. Advertising that contains material that is so objectionable as to be reasonably foreseeable that it will result in harm to, disruption of or interference with the transportation system. For purposes of determining whether an advertisement contains such material, SMART will determine whether a reasonably prudent person, knowledgeable of SMART's ridership and using prevailing community standards, would believe that the material is so objectionable that it is reasonable foreseeable that it will result in harm to, disruption of or interference with the transportation system.
- 2.2.10 Lights, Noise and Special Effects. Flashing lights, sound makers, mirrors or other special effects that interfere with the safe operation of the train or the safety of train riders, pathway users, drivers of other vehicles or the public at large.
- 2.2.11 Unsafe Transit Behavior. Any advertisement that encourage or depicts unsafe behavior with respect to transit-related activities, such as non-use of normal safety precautions in awaiting, boarding, riding upon or debarking from transit vehicles.
- 2.2.11 Unsafe Transit Behavior. Any advertisement that encourage or depicts unsafe behavior with respect to transit-related activities, such as non-use of normal safety precautions in awaiting, boarding, riding upon or debarking from transit vehicles.
- 2.2.12 Public Issue. Advertisements expressing or advocating an opinion, position or viewpoint on matters about economic, political, religious or social issues.
- 2.2.12 SMART Graphics and References. Advertising that contains SMART graphics, logos or representations without the express written consent of SMART.

2.3 **Additional Requirements**

- 2.3.1 **Sponsor Attribution and Contact Information** Any advertising in which the identity of the sponsor is not readily and unambiguously identifiable must include the following phrase to identify the sponsor in clearly visible letters (no

smaller than 72 point type for exteriors and 24 point type of interiors):

Paid for by _____

“Teaser ads” that do not identify the sponsor will, however, be allowed so long as a similar number of follow up advertisements are posted within eight weeks of the initial tease ads that do identify the sponsor of those initial ads.

3. Procedures

3.1 All proposed transit advertising must be submitted to SMART for initial compliance review. The (position) will perform a preliminary evaluation of the submission to assess its compliance with this policy. The (position) may at any time discuss with the entity proposing the advertisement one or more revisions to an advertisement which, if taken, would bring it into conformity with this Advertising Policy.

3.2 In the event the (position) determines that a proposed advertisement does not comply with this Advertising Policy or is unable to make a compliance determination, the General Counsel will review the proposed advertisement for compliance with the guidelines set forth in this policy and will direct the (position) as to whether the proposed advertisement complies with this policy.

3.3 The (position) shall conduct a final review of the proposed advertising. The decision of the (position), to approve or reject any proposed advertising shall be final.

3.4 The (position) is responsible for the implementation of this Advertising Policy.



April 6, 2022

David Rabbitt, Chair
Sonoma County Board of Supervisors

Barbara Pahre, Vice Chair
Golden Gate Bridge,
Highway/Transportation District

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Chris Coursey
Sonoma County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Eddy Cumins
General Manager

5401 Old Redwood Highway
Suite 200
Petaluma, CA 94954
Phone: 707-794-3330
Fax: 707-794-3037
www.sonomamarintrain.org

Sonoma-Marín Area Rail Transit Board of Directors
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

SUBJECT: Downtown San Rafael Gate Down Timing Study

Dear Board Members:

RECOMMENDATION: Informational Item

SUMMARY:

SMART's General Manager has directed staff to review SMART's operations in Downtown San Rafael, review gate down timing at 2nd and 3rd Street, and evaluate and recommend options for improving gate down times at these locations.

The presentation will provide an overview of the results of the study and will outline potential reductions to the gate down times at 2nd and 3rd Street, along with detailing SMART's plan to achieve these reductions.

REVIEWED BY: Finance /s/ Counsel /s/

Very truly yours,

/s/
Aaron Parkes
Manager of Train Control Systems



April 6, 2022

David Rabbitt, Chair
Sonoma County Board of Supervisors

Barbara Pahre, Vice Chair
Golden Gate Bridge,
Highway/Transportation District

Judy Arnold
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Sonoma- Marin Area Rail Transit Board of Directors
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

SUBJECT: Adopt a Resolution Creating a Non-PERS Medical Group for Freight Division Employees and Annuitants

Dear Board Members:

RECOMMENDATIONS:

Approve Resolution No. 2022-08 Creating a Non-PERS Medical Group and Electing to be subject to the Public Employees Medical and Hospital Care Act at an unequal amount for Freight Division Employees and Annuitants.

SUMMARY:

On January 5, 2022, the Board of Directors of Sonoma-Marin Area Rail Transit approved Resolution No. 2022-03, which amended Resolution No. 2021-11 and Appendix B of the Fiscal Year 2021-2022 Budget to provide for revised expenditure and position authority for costs associated with freight service.

It was determined that six (6) full time equivalent positions were needed to operate and maintain the Freight Division functions. These new Freight Division positions will be subject to Federal Railroad Retirement and will not be a part of the California Public Employees Retirement System (CALPERS).

Currently SMART contracts with CALPERS for medical benefits for our employees. On April 20, 2011, the Board of Directors approved Resolution No. 2011-13 which elected that SMART would be subject to the Public Employees' Medical and Hospital Care Act (PEMCHA) and fixed the employer's contribution for medical benefits for employees and annuitants at different amounts.

Freight Division employees will receive the same health benefits afforded to other SMART employees. However, because the new Freight Division employees will not be participating in the CALPERS retirement system, the District is required by CALPERS to create a separate, "non-PERS" medical group for these employees.

We recommend that the Board of Directors adopt Resolution No. 2022-08 Electing to be Subject to the Public Employees Medical and Hospital Care Act at an unequal amount for Employees and Annuitants and Creating a Non-PERS Health Contract to provide medical benefits for Freight District employees.

FISCAL IMPACT: Funding for the health benefits have been included in the freight budget that the Board adopted in Resolution 2022-03. In addition, these costs will be included in future budgets as they are for all other SMART employees.

Very Truly Yours,

/s/

Heather McKillop
Chief Financial Officer

Attachment(s): Resolution No. 2022-08

RESOLUTION NO. 2022-08
ELECTING TO BE SUBJECT TO THE PUBLIC EMPLOYEES’ MEDICAL AND HOSPITAL CARE ACT
AT AN UNEQUAL AMOUNT FOR EMPLOYEES AND ANNUITANTS
(NON-PERS HEALTH CONTRACT)

WHEREAS, (1) A contracting agency meeting the eligibility requirements set forth in Government Code Section 22920, may obtain health benefit plan(s), as defined under Government Code Section 22777, by submitting a resolution to the Board of Administration of the California Public Employees’ Retirement System (the “Board”), and upon approval of such resolution by the Board, become subject to the Public Employees’ Medical and Hospital Care Act (the “Act”); and

WHEREAS, (2) Sonoma Marin Area Rail Transit District is a contracting agency eligible to be subject to the Act under Government Code Section 22920; and

WHEREAS, (3) Government Code Section 22892(a) provides that a contracting agency subject to the Act shall fix the amount of the employer contribution by resolution; and

WHEREAS, (4) Government Code Section 22892(b) provides that the employer contribution shall be an equal amount for both employees and annuitants, but may not be less than the amount prescribed by Section 22892(b) of the Act; and

WHEREAS, (5) Government Code Section 22892(c) provides that, notwithstanding Section 22892(b), a contracting agency may establish a lesser monthly employer contribution for annuitants than for employees, provided that the monthly employer contribution for annuitants is annually increased to equal an amount not less than the number of years the contracting agency has been subject to this subdivision multiplied by five percent of the current monthly employer contribution for employees, until the time that the employer contribution for annuitants equals the employer contribution paid for employees; and

WHEREAS, (6) Sonoma Marin Area Rail Transit District desires to obtain for its employees and annuitants the benefit of the Act and to accept the liabilities and obligations of an employer under the Act; now, therefore, be it

RESOLVED, (a) Sonoma Marin Area Rail Transit District elects to be subject to the provisions of the Act; and be it further

RESOLVED, (b) That the employer contribution for each employee shall be the amount necessary to pay the full cost of his/her enrollment, including the enrollment of family members, in a health benefits plan up to a maximum of:

Medical Group	Monthly Employer Health Contribution
701 Non-PERS Freight Division	PEMHCA Minimum (\$149.00 for 2022)

plus administrative fees and Contingency Reserve Fund assessments; and be it further

RESOLVED, (c) That the employer contribution for each annuitant shall be the amount necessary to pay the full cost of his/her enrollment, including the enrollment of family members, in a health benefits plan up to a maximum of:

Medical Group	Monthly Employer Health Contribution
701 Non-PERS Freight Division	\$81.95

plus administrative fees and Contingency Reserve Fund assessments; and be it further

- RESOLVED, (d) That the monthly employer contribution for annuitants is annually increased to equal an amount not less than the number of years the contracting agency has been subject to this subdivision multiplied by five percent of the current monthly employer contribution for employees, until the time that the employer contribution for annuitants equals the employer contribution paid for employees; and be it further
- RESOLVED, (e) That this annual adjustment to the minimum monthly employer contribution for annuitants shall not exceed one hundred dollars (\$100.00); and be it further
- RESOLVED, (f) Sonoma Marin Area Rail Transit District has fully complied with any and all applicable provisions of Government Code Section 7507 in electing the benefits set forth above; and be it further
- RESOLVED, (h) That the participation of the employees and annuitants of Sonoma Marin Area Rail Transit District shall be subject to determination of its status as an “agency or instrumentality of the state or political subdivision of a State” that is eligible to participate in a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code, upon publication of final Regulations pursuant to such Section. If it is determined that Sonoma Marin Area Rail Transit District would not qualify as an agency or instrumentality of the state or political subdivision of a State under such final Regulations, CalPERS may be obligated, and reserves the right to terminate the health coverage of all participants of the employer; and be it further
- RESOLVED, (i) That the executive body appoint and direct, and it does hereby appoint and direct, the General Manager to file with the Board a verified copy of this resolution, and to perform on behalf of Sonoma Marin Area Rail Transit District all functions required of it under the Act; and be it further
- RESOLVED, (j) That coverage under the Act be effective on May 1, 2022.

Adopted at a regular meeting of the Board of Directors of the Sonoma-Marin Area Rail Transit District at Petaluma, CA , this 6th day of April , 2022.

Signed: _____
David Rabbitt, Chair, Board of Directors

Attest: _____
Leticia Rosas-Mendoza, Clerk of the Board of Directors, Sonoma-Marin Area Rail Transit District



April 6, 2022

David Rabbitt, Chair
Sonoma County Board of Supervisors

Barbara Pahre, Vice Chair
Golden Gate Bridge,
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Judy Arnold
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SUBJECT: Authorize the General Manager to award a Purchase Order to Aspen Equipment Co. for the purchase of one Hi-Rail Track Inspector Truck in the amount of \$117,247.75.

Dear Board Members:

RECOMMENDATION:

Authorize the General Manager to award a Purchase Order to Aspen Equipment Co. for the purchase of one Hi-Rail Track Inspector Truck in the amount of \$117,247.75.

SUMMARY:

SMART's Maintenance of Way and Signals Department require specialized track inspector vehicles to perform inspection and maintenance work along SMART's Right-of-Way. These vehicles are custom built for railroads to provide the ability to operate on the tracks providing access to areas of SMART's right-of-way that are typically inaccessible using standard road vehicles. It is critical that our operations team has reliable vehicles to perform the required Federal Railroad Administration ("FRA") inspections and maintenance activities to ensure a safe and reliable service to our passengers, and to ensure timely response during emergency response situations when they arise. One of SMART's existing Hi-Rail Track Inspector Trucks is aging and will need to be replaced. Given the current market conditions and long lead times for these vehicles, an Invitation for Bid was issued to procure the replacement vehicle. This solicitation was well-advertised to many firms specializing in hi-rail vehicles and railroad equipment upfitting.

SMART received a total of two bids in response from the following bidders:

1. Aspen Equipment Co
2. Custom Truck One Source

Upon completion of the bid review, SMART determined that Aspen Equipment Co submitted the lowest responsive responsible bid and is being recommended for the award.

The pictures below provide an example of a Hi-Rail Track Inspector Truck similar to that which SMART intends to purchase from Aspen Equipment Co.



The amount of \$117,247.75 that is being requested for approval, includes California sales tax, delivery, California Tire Recycling Fees, and DMV document preparation for Exempt license plates.

Staff recommends authorizing the General Manager to award a Purchase Order to Aspen Equipment Co. for the purchase of one Hi-Rail Track Inspector Truck in the amount of \$117,247.75.

FISCAL IMPACT: Funding is included in the Fiscal Year 2021-22 budget.

REVIEWED BY: [x] Finance /s/ [x] Counsel /s/

Very truly yours,

 /s/
Ken Hendricks
Procurement Manager



April 6, 2022

David Rabbitt, Chair
Sonoma County Board of Supervisors

Barbara Pahre, Vice Chair
Golden Gate Bridge,
Highway/Transportation District

Judy Arnold
Marin County Board of Supervisors

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Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Eddy Cumins
General Manager

5401 Old Redwood Highway
Suite 200
Petaluma, CA 94954
Phone: 707-794-3330
Fax: 707-794-3037
www.sonomamarintrain.org

Sonoma-Marín Area Rail Transit Board of Directors
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

SUBJECT: Authorize the General Manager to Award Contract No. OP-PS-21-005 to Urban Transportation Associates, Inc. in an amount of \$336,684

Dear Board Members:

RECOMMENDATION:

Authorize the General Manager to award Contract No. OP-PS-21-005 to Urban Transportation Associates, Inc. in an amount of \$336,684 to design, furnish, and install an Automatic Passenger Counter System on board SMART's eighteen (18) trains.

SUMMARY:

Counting ridership on SMART is challenging due to its "open system" design, meaning that riders are not required to funnel through turnstiles or other gates for entry. Since SMART's inception, our Engineer-Conductors have been tasked with manually counting passengers on the trains, which have allowed us to count not only passengers, but bicycles and wheelchairs as well. In addition to these manual counts, staff review reports from Clipper and SMART's Mobile Fare application which provide limited data based on riders using these fare medias. Finally, SMART contracts with a third-party consultant to perform the onboard counts required for submittal to the Federal Transit Administration's ("FTA") National Transit Database ("NTD") in accordance with the NTD Sampling Guidelines.

Staff identified that implementing an Automatic Passenger Counter ("APC") system would relieve SMART of the need to contract with a third-party to perform the NTD-required sampling counts, remove the manual counting process being performed by our Engineer-Conductors, and add a systematic and highly accurate method for counting passengers, bicycles, and wheelchairs. SMART secured grant funding through the SB1 Local Partnership Program Funds to pursue implementing this system.

SMART issued a Request for Proposal to procure the Automatic Passenger Counter System under Solicitation No. OP-PS-21-005. This was a very competitive procurement with SMART receiving 8 responsive proposals from the following firms:

1. Advanced Internet Marketing, Inc. dba The GBS Group
2. Clever Devices, Ltd
3. DILAX Systems US, Inc.
4. Glocol, Inc.
5. Icomera US, Inc.
6. Railroad Signal Specialists, Inc.
7. Smart Sensor Solutions LLC
8. Urban Transportation Associates, Inc.

SMART's evaluation committee reviewed the proposals using the evaluation criteria identified in the Request for Proposal. The criteria included: equipment, reporting and software capabilities, project approach and staffing plan, demonstrated history of performing similar work, and price.

Following the evaluation of the technical proposals, the Selection Committee shortlisted the following three firms for further review and evaluation: Advanced Internet Marketing, Inc. dba The GBS Group, DILAX Systems US, Inc. and Urban Transportation Associates, Inc. The Selection Committee conducted reference checks and held interview/presentations with the three firms. Upon completion of the evaluation process, the Selection Committee made the determination that the Proposal submitted by Urban Transportation Associates, Inc. provides the overall best benefit to SMART and is recommending the firm for the award.

This contract includes the design and installation of the Automatic Passenger Counter System on board SMART's eighteen (18) trains, a cloud-based software reporting solution for the reporting of data coming from the APC System, training for SMART staff on the maintenance of the equipment and using the reporting tools, and ongoing maintenance and support for five years. In addition, Urban Transportation Associates, Inc. is tasked with guaranteeing the certification of the APC System with the Federal Transportation Administration ("FTA") so the data from the system can be used in SMART's reporting to the National Transit Database ("NTD").

Urban Transportation Associates, Inc. has over thirty years of experience working with more than 125 transit agencies and Automatic Passenger Counter systems with extensive experience in apply APC technology to rail applications. The Automatic Passenger Counter System proposed for SMART has been in operations on rail cars at: Sacramento Regional Transit (SacRT), Utah Transit Authority (UTA), Niagara Frontier Transportation Authority (NFTA), and Hillsborough Area Rapid Transit (HART). The APC software solution designed by Urban Transportation Associates, Inc. proposed under this Agreement has been processing rail APC data from; Dallas Area Rapid Transit (DART), Capital Metro Transit Authority (CMTD), Kansas City Streetcar (KCATA), and Southwestern Ohio Regional Transit Authority (SORTA) with all of these receiving certifications from the FTA.

Staff recommends authorizing the General Manager to award Contract No. OP-PS-21-005 to Urban Transportation Associates, Inc. in an amount of \$336,684 to design, furnish, and install an Automatic Passenger Counter System on board SMART's eighteen (18) trains.

FISCAL IMPACT: Funding is included in the approved Fiscal Year 2021-22 budget and is supported by SB1 Local Partnership Program Funds.

REVIEWED BY: [x] Finance /s/ [x] Counsel /s/

Very truly yours,

 /s/
Ken Hendricks
Procurement Manager

Attachment(s): Urban Transportation Associates, Inc. Contract No. OP-PS-21-005

AGREEMENT FOR CONSULTANT SERVICES

This agreement (“Agreement”), dated as of April 6, 2022 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and Urban Transportation Associates, Inc. (hereinafter “Consultant”).

RECITALS

WHEREAS, Consultant represents that it is duly qualified and experienced in the areas of furnishing, installing, and supporting onboard automatic passenger counters and related services; and

WHEREAS, in the judgment of the Board of Directors of SMART or District, it is necessary and desirable to employ the services of Consultant to furnish and install an Automatic Passenger Counter (“APC”) system onboard SMART’s railcars and implement a cloud-based reporting software; and

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

ARTICLE 1. RECITALS.

Section 1.01 The above Recitals are true and correct.

ARTICLE 2. LIST OF EXHIBITS.

Section 2.01 The following exhibits are attached hereto and incorporated herein:

- (a) Exhibit A: Scope of Work & Timeline
- (b) Exhibit B: Schedule of Rates

ARTICLE 3. REQUEST FOR SERVICES.

Section 3.01 Initiation Conference. SMART’s Superintendent of Vehicle Maintenance or designee and SMART’s Principal Planner (hereinafter “SMART Manager”) will coordinate all services performed under this Agreement. The Superintendent of Vehicle Maintenance will serve as the primary point of contact for all hardware and train installation services. The Principal Planner will serve as the primary point of contact for all software implementation, reporting requirements, and NTD Certification services. Work may be scheduled and coordinated in person, by telephone, or by email.

Section 3.02 Amount of Work. SMART does not guarantee a minimum or

maximum amount of work under this Agreement.

ARTICLE 4. SCOPE OF SERVICES.

Section 4.01 Scope of Work. Consultant shall perform services within the timeframe outlined in **Exhibit A** (cumulatively referred to as the “Scope of Work”).

Section 4.02 Cooperation With SMART. Consultant shall cooperate with the SMART Manager in the performance of all work hereunder.

Section 4.03 Performance Standard. Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant’s profession. If SMART determines that any of Consultant’s work is not in accordance with such level of competency and standard of care, SMART, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with SMART to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 7; or (d) pursue any and all other remedies at law or in equity.

Section 4.04 Assigned Personnel.

- (a) Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time SMART, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from SMART.
- (b) Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder on behalf of the Consultant are deemed by SMART to be key personnel whose services were a material inducement to SMART to enter into this Agreement, and without whose services SMART would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of SMART.
- (c) In the event that any of Consultant’s personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant’s control, Consultant shall be responsible for timely provision of adequately qualified replacements.
- (d) Consultant shall assign the following key personnel for the term of this Agreement:

Thomas Kowalski, President/CEO – Project Manager
David Bosshammer, Chief Technical Officer
Michael Sousa, Software Engineer
Kevin Moore, Software Engineer

Sandesh Samdaria, Software Engineer
Nick Fisher, Software Engineer
Michael Kowalski, Software Engineer / Maintenance Technician
David Vanderputten, Field Engineering Manager
Chris Cooper, Field Engineer
Jeremy Bosshammer – Field Engineer
Keith Gates, NTD Qualified Statistician

ARTICLE 5. PAYMENT.

For all services required hereunder, Consultant shall be paid in accordance with the following terms:

Section 5.01 Consultant shall invoice SMART on a milestone basis, detailing the tasks performed pursuant to the Scope of Work requested by the SMART Manager and the hours worked. SMART shall pay Consultant within 30 days after submission of the invoices.

Section 5.02 Consultant shall be paid, as full compensation for the satisfactory completion of the work described in the Scope of Work (Exhibit A) on a milestone basis in accordance with the Exhibit B “Schedule of Rates”, for the negotiated amount of \$336,684.00, regardless of whether it takes Consultant more time to complete or costs are more than anticipated. The not-to-exceed (NTE) amount of \$336,684.00 for this Agreement includes labor, supervision, applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, equipment, materials and supplies; in no case shall Consultant be reimbursed for an amount in excess of the NTE amount without a formal written amendment to this Agreement. Consultant must submit all invoices on a timely basis, but no later than thirty (30) days from the date the services/charges were incurred. SMART does not reimburse for travel time.

Section 5.03 Consultant must submit all invoices on a timely basis, but no later than thirty (30) days from the date the services/charges were incurred. District shall not accept invoices submitted by Consultant after the end of such thirty (30) day period without District pre-approval. Time is of the essence with respect to submission of invoices and failure by Consultant to abide by these requirements may delay or prevent payment of invoices or cause such invoices to be returned to the Consultant unpaid.

ARTICLE 6. TERM OF AGREEMENT.

Section 6.01 The term of this Agreement shall remain in effect until September 30, 2027, unless terminated earlier in accordance with the provisions of **Article 7** below.

ARTICLE 7. TERMINATION.

Section 7.01 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, SMART shall have the right, at their sole discretion, to terminate this Agreement by giving 30 days written notice to the other party.

Section 7.02 Termination for Cause. Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, SMART may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

Section 7.03 Delivery of Work Product and Final Payment Upon Termination. In the event of termination by either party, Consultant, within 14 days following the date of termination, shall deliver to SMART all materials and work product subject to **Section 12.08** and shall submit to SMART an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

Section 7.04 Payment Upon Termination. Upon termination of this Agreement by SMART, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services are to be paid on an hourly or daily basis, then Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to termination times the applicable hourly or daily rate; provided further that if SMART terminates the Agreement for cause pursuant to **Section 7.02**, SMART shall deduct from such amount the amount of damage, if any, sustained by SMART by virtue of the breach of the Agreement by Consultant.

Section 7.05 Authority to Terminate. The Board of Directors has the authority to terminate this Agreement on behalf of SMART. In addition, the General Manager, in consultation with SMART Counsel, shall have the authority to terminate this Agreement on behalf of SMART.

ARTICLE 8. INDEMNIFICATION

Consultant agrees to accept all responsibility for loss or damage to any person or entity, including SMART, and to indemnify, hold harmless, and release SMART, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, to the extent caused by the Consultant's negligence, recklessness or willful misconduct in its performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against SMART based upon a claim relating to Consultant's performance or obligations under this Agreement. Consultant's obligations under this Section 8 apply whether or not there is concurrent negligence on SMART's part, but to the extent required by law, excluding liability due to SMART's conduct. SMART shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which 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 Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

ARTICLE 9. INSURANCE.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its Subcontractors, Consultants, and other agents to maintain, insurance as described below. If the Consultant maintains broader coverage and/or higher limits than the minimums shown below, SMART requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SMART”

Section 9.01 Workers’ Compensation Insurance. Workers’ Compensation as required by the State of California, with Statutory Limits, and Employer’s Liability insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

Section 9.02 General Liability Insurance. Commercial General Liability insurance covering products-completed and ongoing operations, property damage, bodily injury and personal injury using an occurrence policy form, in an amount no less than \$1,000,000 per occurrence, and \$2,000,000 aggregate. Said policy shall include a Railroads CG 24 17 endorsement removing the exclusion of coverage, if applicable, for bodily injury or property damage arising out of operations within 50 feet of any railroad property and affecting any railroad bridge, trestle, tracks, roadbeds, tunnel, underpass or crossing.

Section 9.03 Automobile Insurance. Automobile Liability insurance covering bodily injury and property damage in an amount no less than \$1,000,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles. Said policy shall also include a CA 20 70 10 13 endorsement removing the exclusion of coverage for bodily injury or property damage arising out of operations within 50 feet of any railroad bridge, trestle, track, roadbeds, tunnel, underpass or crossing.

Section 9.04 Professional Liability Insurance (Errors and Omissions). Professional Liability insurance with limit no less than \$2,000,000 per occurrence or claim, and \$2,000,000 aggregate.

Section 9.05 Property Installation Floater. Property Installation Floater insurance against all risks of loss to the equipment being installed at full replacement cost.

Section 9.06 Endorsements. Prior to commencing work, Consultant shall file Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Said endorsements and Certificate(s) of Insurance shall stipulate:

- (a) SMART, its officers, and employees shall be named as additional insured on all policies listed above, with the exception of the workers compensation insurance policy and the professional services liability policy (if applicable).
- (b) That the policy(ies) is Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which

Consultant is liable, up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be effected by the Insureds.

- (c) Inclusion of the Insureds as additional insureds shall not in any way affect its rights either as respects any claim, demand, suit or judgment made, brought or recovered against Consultant. Said policy shall protect Consultant and the Insureds in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.
- (d) Consultant hereby grants to SMART a waiver of any right to subrogation which any insurer of said Consultant may acquire against SMART by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not SMART has received a waiver of subrogation endorsement from the insurer.
- (e) The insurance policy(ies) shall be written by an insurance company or companies acceptable to SMART. Such insurance company shall be authorized to transact business in the state of California.

SMART reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

Section 9.07 Deductibles and Retentions. Consultant shall be responsible for payment of any deductible or retention on Consultant's policies without right of contribution from SMART. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the name insured is not acceptable.

Section 9.08 Claims Made Coverage. If any insurance specified above is written on a claims-made coverage form, Consultant shall:

- (a) Ensure that the retroactive date is shown on the policy, and such date must be before the date of this Agreement or beginning of any work under this Agreement;
- (b) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- (c) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to Agreement effective date, Consultant shall purchase "extending reporting" coverage for a minimum of three (3) years after completion of the work.

Section 9.09 Documentation. The following documentation shall be submitted

to SMART:

- (a) Properly executed Certificates of Insurance clearly evidencing all coverages and limits required above. Said Certificates shall be submitted prior to the execution of this Agreement. At SMART's request, Consultant shall provide certified copies of the policies that correspond to the policies listed on the Certificates of Insurance. Consultant agrees to maintain current Certificates of Insurance evidencing the above-required coverages and limits on file with SMART for the duration of this Agreement.
- (b) Copies of properly executed endorsements required above for each policy. Said endorsement copies shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current endorsements evidencing the above-specified requirements on file with SMART for the duration of this Agreement.
- (c) After the Agreement has been signed, signed Certificates of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.

Please email all renewal certificates of insurance and corresponding policy documents to InsuranceRenewals@sonomamarintrain.org.

Section 9.10 Policy Obligations. Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 9.11 Material Breach. If Consultant, for any reason, fails to maintain insurance coverage, which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. SMART, in its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, SMART may purchase such required insurance coverage, and without further notice to Consultant, SMART may deduct from sums due to Consultant any premium costs advanced by SMART for such insurance. These remedies shall be in addition to any other remedies available to SMART.

ARTICLE 10. PROSECUTION OF WORK.

When work is requested of Consultant by SMART, all due diligence shall be exercised and the work accomplished without undue delay, within the performance time specified in the Task Order. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, or wildfire, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

ARTICLE 11. EXTRA OR CHANGED WORK.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope

of work or significantly lengthen time schedules may be executed by the SMART Manager in a form approved by SMART Counsel. The Board of Directors or General Manager must authorize all other extra or changed work. The parties expressly recognize that SMART personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of SMART.

ARTICLE 12. REPRESENTATIONS OF CONSULTANT.

Section 12.01 Standard of Care. SMART has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by SMART shall not operate as a waiver or release.

Section 12.02 Status of Consultant. The parties intend that Consultant, in performing the services specified herein, shall act as an independent Contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of SMART and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits SMART provides its employees. In the event SMART exercises its right to terminate this Agreement pursuant to **Article 7**, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

Section 12.03 Taxes. Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including but not limited to state and federal income and FICA taxes. Consultant agrees to indemnify and hold SMART harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case SMART is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish SMART with proof of payment of taxes on these earnings.

Section 12.04 Records Maintenance. Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to SMART for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder. Consultant and Subconsultants shall permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices

and Housing Commission, or any other agency of the State of California designated by the State, for the purpose of any investigation to ascertain compliance with this document.

Section 12.05 Conflict of Interest. Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by SMART, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a “Statement of Economic Interest” with SMART disclosing Consultant’s or such other person’s financial interests.

Section 12.06 Nondiscrimination. Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, SMART’s Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

Section 12.07 Assignment Of Rights. Consultant assigns to SMART all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to SMART in this Agreement, and to refrain from taking any action which would impair those rights. Consultant’s responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as SMART may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of SMART. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of SMART.

Section 12.08 Ownership And Disclosure Of Work Product. Any and all work product resulting from this Agreement is commissioned by SMART as a work for hire. SMART shall be considered, for all purposes, the author of the work product and shall have all rights of authorship to the work, including, but not limited to, the exclusive right to use, publish, reproduce, copy and make derivative use of, the work product or otherwise grant others limited rights to use the work product. To the extent Consultant incorporates into the work product any pre-existing work product owned by Consultant, Consultant hereby acknowledges and agrees that ownership of such work product shall be transferred to SMART. All reports, original drawings, graphics, plans, studies, and other data or documents (“documents”), in whatever form or format, assembled or prepared by Consultant and other agents in connection with this Agreement shall be the property of SMART. SMART shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to SMART all such documents,

which have not already been provided to SMART in such form or format, as SMART deems appropriate. Such documents shall be and will remain the property of SMART without restriction or limitation. Consultant may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of SMART.

ARTICLE 13. DEMAND FOR ASSURANCE.

Each party to this Agreement undertakes the obligation that the other’s expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. “Commercially reasonable” includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party’s right to demand adequate assurance of future performance. Nothing in this **Article 13** limits SMART’s right to terminate this Agreement pursuant to **Article 7**.

ARTICLE 14. ASSIGNMENT AND DELEGATION.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

ARTICLE 15. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING INVOICES AND MAKING PAYMENTS.

All notices, invoices, and payments shall be made in writing and shall be given by personal delivery, U.S. Mail or email. Notices, invoices, and payments shall be addressed as follows:

If to SMART Manager:

Sonoma-Marín Area Rail Transit District
Attn: Emily Betts
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
ebetts@sonomamarintrain.org
707-794-3330

If to SMART Billing:

Sonoma-Marine Area Rail Transit District
Attn: Accounts Payable
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
billing@sonomamarintrain.org
707-794-3330

If to Consultant:

Urban Transportation Associates, Inc.
Attn: Thomas Kowalski
4240 Airport Road, Suite 212
Cincinnati, OH, 45226
tkowalski@fuse.net
513-961-0099

When a notice, invoice 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 copy of a notice, invoice or payment is sent by facsimile or email, the notice, invoice or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, invoice or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, invoices 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.

ARTICLE 16. MISCELLANEOUS PROVISIONS.

Section 16.01 No Waiver of Breach. The waiver by SMART of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

Section 16.02 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and SMART acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and SMART acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

Section 16.03 Consent. Wherever in this Agreement the consent or approval of

one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

Section 16.04 No Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

Section 16.05 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Venue for any action to enforce the terms of this Agreement or for the breach thereof shall be in the Superior Court of the State of California in the County of Marin.

Section 16.06 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

Section 16.07 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

Section 16.08 Acceptance of Electronic Signatures and Counterparts. The parties agree that this Contract, Agreements ancillary to this Contract, and related documents to be entered into this Contract will be considered executed when all parties have signed this Agreement. Signatures delivered by scanned image as an attachment to electronic mail or delivered electronically through the use of programs such as DocuSign must be treated in all respects as having the same effect as an original signature. Each party further agrees that this Contract may be executed in two or more counterparts, all of which constitute one and the same instrument.

Section 16.09 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CONSULTANT: URBAN TRANSPORTATION ASSOCIATES, INC.

By: _____
Thomas Kowalski, President & CEO

Date: _____

SONOMA-MARIN AREA RAIL TRANSIT (SMART)

By: _____
Eddy Cumins, General Manager

Date: _____

CERTIFICATES OF INSURANCE ON FILE WITH AND APPROVED AS TO SUBSTANCE FOR SMART:

By: _____
Ken Hendricks, Procurement Manager

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

EXHIBIT A
SCOPE OF WORK & TIMELINE

I. Overview

The Sonoma-Marín Area Rail Transit District (SMART) is contracting with Urban Transportation Associates, Inc. to provide a turnkey solution for an Automatic Passenger Counter (“APC”) system. The turnkey solution shall include furnishing and installing Automatic Passenger Counters onboard all of SMART’s eighteen (18) railcars, integrating the APC equipment into a Consultant supplied cloud-based software solution that allows SMART to download reports from the data gathered in real-time, train SMART staff on the use of the hardware and software, and provide APC validation support to ensure SMART receives the required FTA certification of the APC’s.

All equipment, delivery, installation services, testing, onsite-training services, and ongoing maintenance activities will be performed at the following secured operations facility.

SMART Rail Operation Center
3748 Regional Parkway
Santa Rosa, CA 95403

II. Project Management

All work shall be initiated, scheduled, and reviewed by the SMART Manager in coordination with SMART’s Superintendent of Vehicle Maintenance or designee. The SMART Manager will be responsible for coordinating all work activities, providing final equipment specifications and certification approvals, reviewing final installation and functionality of equipment, scheduling coordination of training services, and oversee all communication between SMART and the consultant.

SMART and Consultant shall conduct bi-weekly conference calls to provide status updates, schedule updates, and to discuss any items that need to be addressed. SMART and Consultant shall mutually agree on a regular date and time. Consultant shall be responsible for producing pre-call agendas in advance of the meetings. The bi-weekly conference call schedule can be adjusted as mutually agreed upon by both parties.

III. Scope of Work

Consultant shall furnish and install a turnkey APC System that includes:

A. Automatic Passenger Counter (“APC”) System

a. Hardware Equipment

- i. Consultant shall furnish and install onboard SMART’s eighteen (18) diesel multiple units (“DMUs”), a turnkey Automatic Passenger Counter (“APC”) System which will include industry-leading 3D-video passenger counting overhead APC sensors manufactured by Hella, Inc. These sensors shall be installed and configured to detect and separately report on Adults, Children, Bicycles, Passengers using Wheelchairs, and other non-Human objects at a level of reporting accuracy required to achieve National Transit Database (NTD) validation.
- ii. The APC System must be able to provide data on a real-time basis, in a format that can be used for real-time information on crowding and bicycle capacity for riders.
- iii. All APC doorway sensors will be networked to the APC Controller by means of a central Ethernet switch. Each APC sensor will have a dedicated Ethernet cable connecting it to an Ethernet switch to provide power (PoE) and connectivity to the APC Controller.
- iv. Each APC sensor will be polled by the APC Controller via UDP message every (1) second for passenger count updates. The raw APC data records will provide the basis for all real-time and statistical reporting functions. Each APC data record will include:
 - Record Type:
 - Timestamp (every 30 Seconds)
 - Door Open Event
 - Door Close Event
 - System Initialization Event
 - Diagnostic
 - Current Date/Time
 - Current Latitude / Longitude, Speed, Heading
 - Current Passenger Count values from each door:
 - (continuously incrementing)
 - Car Number

The APC Data Records shall be transmitted to the UTA APC Cloud Server immediately upon generation. The APC Cloud server will store each record in raw form for nightly/statistical reporting, as well as calculates current

passenger load, analyzes for any hardware failures/anomalies, and produces an updated GTFS-RT feed to any third-party systems/subscribers for real-time presentation.

In the event of temporary loss of cellular connectivity (i.e. out of network coverage), each APC controller will have the capability of storing APC data for at least 60 days. The on-car APC CPU is manufactured by CalAmp, Inc. and will be designed and configured to support SMART's real-time applications and receive GPS data (time, location, speed, heading, etc.). In the event of a network failure, the APC CPU Module will be capable of retaining APC data onboard for up to one (1) year. SMART must have access to collect and download the stored APC data from APC CPU Module.

- v. Consultant shall ensure that the SMART Maintenance Team can access the APC Controller with a laptop and web browser to display all of the current APC subsystem statuses for diagnostic purposes. Automatic Reports shall be configured to be sent via email to SMART technicians alerting them of any issues with the APC System hardware.
 - vi. A single tri-mode antenna will be installed to provide LTE/Cellular connectivity, GPS, and Wifi connectivity to the CPU module.
 - vii. Each car will report APC data to UTA's cloud server via an LTE/Cellular connection. The APC Controller shall be capable of operating on AT&T, T-Mobile, or Verizon networks. The APC Controller and other hardware installed shall be capable of changing the connectivity type from LTE/Cellular to WiFi should SMART elect to add passenger WiFi aboard the trains in the future.
 - viii. The final design of the APC System will be modular to allow for easy replacement of the APC components and will ensure all equipment will fit within available spaces onboard SMART's DMUs. All equipment installed on SMART's DMUs shall be comprised of high-quality railway-grade raw material and shall be installed securely and weatherproofed.
- b. Software Solution
- i. Consultant shall furnish, configure, and customize UTA's APC software for data reporting and analytics of SMART's APC System.
 - ii. The software program will be cloud-based and will be hosted by UTA on an APC cloud server. All data stored and transmitted shall be secured.
 - iii. The Software solution must be able to generate a complete audit trail in support of any APC-generated analysis.

- iv. The software site access can be configured with unique user roles and logins for any type of SMART requested user. SMART will be provided unlimited user access for as many staff members as needed.
 - v. The Software solution must be easy to use for SMART's end-users.
 - vi. The Software solution shall be able to produce:
 - Standard Reports for routine analysis
 - Ad-Hoc Reporting for non-routine and situation-based analysis
 - Administrative Control Reports for quality control of APC reference files and APC data in support of APC Analytics/reporting.
 - Global Reporting to produce automated generation of standard reports which can be published or automatically shared with SMART staff as designated.
 - vii. The Software reporting package shall include all of UTA Reporting Software's existing reports, which must include at a minimum, the following reports:
 - Daily boarding and alightings by station and total
 - Monthly boardings and alighting by station and total.
 - Boardings and alightings by railcar door in order to identify hardware failures.
 - Passengers on board by route segment (between stops)
 - Any other report required by the NTD
 - Other reports as mutually agreed upon by Consultant and SMART
- c. Required Documentation
- i. Consultant shall provide SMART with the following technical documentation prior to SMART accepting the equipment:
 - a. Installation Manual
 - b. Operation and Maintenance (O&M) Manual
 - c. Warranty Documentation

B. Installation

- i. Consultant shall perform all installation services at SMART's Rail Operation Center ("ROC") located at 3748 Regional Parkway, Santa Rosa, CA 95403.
- ii. Consultant shall install the APC System in a manner that does not impact SMART's revenue operation schedule. Consultant may perform work on one train set (2 rail cars) at a time during SMART's regular daily business hours or may perform installation services on multiple trainsets afterhours or during the night. The final installation schedule must be approved by the SMART Manager in coordination with SMART's Operations Team.

- iii. Consultant shall install Automatic Passenger Counters (“APCs”) at all passenger door locations on SMART’s eighteen (18) railcars. Each railcar has four passenger doors (two on each side of the train). The DMU’s have 120VAC or 64VDC power supplies available for the installation and integration.
- iv. Consultant shall work with SMART to ensure the APC System and Software has a methodology for accounting for train conductors within the data counts.

C. Testing and Software Configuration Services

- i. Consultant shall perform all required testing services to ensure all APC hardware and software are functioning as required and within the National Transit Database (“NTD”) approved tolerance levels.
- ii. Consultant shall set-up and configure the software solution for SMART’s daily use. This shall include creation of user accounts and configuration of SMART’s required reports. During the configuration, SMART may request additional reports to be created and Consultant shall assist SMART with these reports.
- iii. Consultant shall provide SMART with documentation of all testing activities at the conclusion of the testing services.

D. APC Validation Testing

- i. Upon completion of the testing services, Consultant shall provide written notification to the SMART Manager that the APC System is ready for APC validation by SMART’s Third-Party Consultant.
- ii. SMART will schedule and cover the expenses (one time) for SMART’s third-party consultant to perform the APC passenger counting services using the methodology required by the Federal Transit Administration (“FTA”) for final certification of its APC System. Urban Transportation Associates, Inc. will use these counts to prepare the APC comparison and FTA Certification Report, using their qualified statistician. In the event that the FTA does not accept the APC Certification as a result of defective equipment, configuration issues, or any other issue resulting from the installation or performance of the APC System or software, Urban Transportation Associates, Inc. will be required to pay for SMART’s third-party consultant to re-perform passenger counting services thereafter until APC validation is successful.

E. Training of SMART Staff

- i. Upon completion of the testing and validation services, Consultant shall provide hands-on training services to designated SMART staff to ensure SMART staff is equipped with the knowledge necessary to confidently operate, maintain, and report data from the APC System. The training shall include, but is not limited to:

- APC Software Training

The objective of the APC Software Training is for SMART to achieve a level of competence in understanding and operation of the APC Analytic Software package that SMART becomes totally independent of any Consultant support while realizing the full analytical value of the APC System.

The APC Software Training will begin after all of the APC Analytical Software has been installed/tested and is routinely generating a standard set of APC reports/plots.

- APC Data Processing Training

This session explains the basic steps/procedures that are required to execute both the production and backup methods of processing APC Data Batches. Data Transfer, Diagnostics, Automated Assignments, and File Creation will be explained/demonstrated. Included in the training will be the actual processing of these procedures with actual SMART Transit data.

After this training session, SMART will have primary responsibility for executing these procedures. Consultant will provide backup support by performing parallel processing at Consultant's location. During the three-week interval between this training session and the next, SMART will provide status reports on the degree of success achieved in executing these procedures.

- Reference File Maintenance Training

After SMART staff demonstrates satisfactory proficiency in the execution of the APC Report Generation, this training will address the APC Reference Files that are necessary prerequisites to satisfy APC operation.

Both the software and procedures surrounding the software will be reviewed to allow the user to understand the roles of the APC Reference Files. There are two primary APC Reference Files (Master

Schedule, and Stations/Timepoints). The automated procedures that have been developed for obtaining the Master Schedule File from the scheduling system and the Station/Timepoint File from SMART's GIS database will be presented and practiced.

- APC System Administration Training

Train SMART staff and management of the areas of APC operation that should be closely monitored/reported in order to achieve a continual high level of APC performance. Many of these areas will concentrate on the transfer of information relative to the APC system to other SMART departments. Communication of APC maintenance tasks/corrective actions, APC vehicle deployment, APC data yields, sampling priorities, analytic report requests, etc. The Consultant agrees to provide indefinite APC software support to SMART regardless of whether the term of this Agreement expires. SMART may continuously communicate any problems/issues regarding the APC System to Consultant. Generally, if the response to such questions/problems is within a reasonable range of effort (<\$2,000), Consultant will provide support to SMART at no cost to SMART.

- APC Hardware Training

Onsite APC hardware training with the objective to make SMART completely self-sufficient in the long-term support of the APC System. This training can be scheduled over multiple sessions as SMART deems necessary.

- APC Maintenance Training

- Review On Board Wiring Runs and Terminations
- Review APC Equipment Repair Manual
- Input Power Placement
- Counting Sensor Placement and Adjustment
- GPS Subsystem (Review of UTA APC Diagnostics)
- WLAN/Cellular Data Transfer
- Discrete Inputs (doors)
- Use of Diagnostic Laptop Computer
- Common Problem/Repairs
- Setup of APC Bench Test Area

The Consultant shall provide any video tutorials, online webinars, and any other available resources related to the operation and functionality of the system and software.

- ii. Training services must take place during SMART’s regular business hours (Monday-Friday) with the schedule being mutually agreed upon by both parties.

F. APC Certification Received from the Federal Transit Administration (“FTA”)

- i. Upon the successful completion of the installation, testing, configuration, third-party consultant APC validation, and training of SMART staff, Consultant shall prepare the required application and required supplemental data to SMART for submission to the Federal Transit Administration (“FTA”) for certification of the APC System. SMART will work with Consultant during the preparation of the application to ensure a timely and efficient process.
- ii. Upon the successful certification of SMART’s APC System by the Federal Transit Administration (“FTA”), SMART will issue a Notice of Acceptance for the APC project and instruct the Consultant to submit its final milestone invoice. In the event that the FTA denies the certification request of SMART’s APC System, Consultant shall correct all issues preventing certification at no cost to SMART so that SMART may re-submit its application for certification of the system.

IV. Warranty

a. Effective Date & Term:

There is a five-year warranty for parts and labor provided under this agreement that is effective on the date following the successful implementation and final acceptance of the system by SMART.

b. Coverage:

The five-year warranty provides coverage for materials and labor attributed to defects in the equipment and/or workmanship. The warranty does not include defects caused by vandalism, acts of nature, and/or gross negligence.

V. Timeline for Each Requirement

It is SMART’s objective to install, test, configure, validate, and receive FTA certification for NTD reporting use as soon as possible.

Below is the tentative schedule for the work. The final schedule shall be mutually agreed upon by both parties in writing.

Task #	Task Name	Anticipated Schedule
1	Notice to Proceed	4/11/2022
2	Project Kickoff Meeting	4/15/2022
3	Onsite Engineering Review	5/2/2022
4	Review/Refine Project Schedule	5/9/2022
5	Receipt of Authorization to Begin Pilot Phase	5/10/2022
6	Pilot Phase Installation	5/16/2022
7	SMART Pilot Evaluation	5/23/2022
8	Manual to APC Comparison	5/31/2022
9	Standard Analytical Reports	6/1/2022
10	APC Diagnostic Reports / Data Quality Review	6/1/2022
11	Data Transfer / Reporting	6/7/2022
12	Fleet Installation	6/13/2022
13	SMART Analytic / IT Training	8/18/2022
14	SMART Maintenance Training	9/22/2022

VI. Acceptance Criteria

SMART’s Superintendent of Vehicle Maintenance shall be responsible for reviewing all work performed by Consultant. Upon the successful completion of work performed by Consultant in each milestone, the SMART Manager shall provide a Notice of Acceptance for that milestone. In the event that work is not completed to SMART’s requirements, Consultant shall be required to replace the defective work at no additional cost to SMART prior to being issue a Notice of Acceptance. Upon the issuance of a Notice of Acceptance, Consultant may submit its invoice to SMART.

**EXHIBIT B
SCHEDULE OF RATES**

I. PROJECT IMPLEMENTATION FEES

MILESTONE	DESCRIPTION	FEE
1	Installation of Equipment	\$174,410.40
2	Testing of Equipment	\$72,671.00
3	Training of SMART Staff	\$14,534.20
4	SMART Receives APC Certification from FTA	\$29,068.40
TOTAL:		\$290,684.00

Milestones shall be invoiced at the completion of all work associated with each milestone and upon written notice of acceptance by SMART. Consultant shall include the SMART issued notice of acceptance with each invoice submission.

The fees above include all labor, supervision, insurance, overhead, profit, equipment, materials, supplies, travel costs, and any other direct and indirect costs associated with performing the work.

II. POST IMPLEMENTATION WARRANTY FEES

YEAR	DESCRIPTION	ANNUAL FEE
1	Year 1 Warranty	\$9,200.00
2	Year 2 Warranty	\$9,200.00
3	Year 3 Warranty	\$9,200.00
4	Year 4 Warranty	\$9,200.00
5	Year 5 Warranty	\$9,200.00
TOTAL:		\$46,000.00

Warranty fees shall be invoiced at the start of the warranty period. The invoice will cover each 12-month period.

The fees above include all labor, supervision, insurance, overhead, profit, equipment, materials, supplies, travel costs, and any other direct and indirect costs associated with performing the work.



David Rabbitt, Chair
Sonoma County Board of Supervisors

Barbara Pahre, Vice Chair
Golden Gate Bridge,
Highway/Transportation District

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Chris Coursey
Sonoma County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Eddy Cumins
General Manager

5401 Old Redwood Highway
Suite 200
Petaluma, CA 94954
Phone: 707-794-3330
Fax: 707-794-3037
www.sonomamarintrain.org

April 6, 2022

Sonoma-Marin Area Rail Transit Board of Directors
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

SUBJECT: Authorize the General Manager to Award Contract No. MK-PS-21-003 to Craft & Commerce, LLC to provide as-needed marketing services.

Dear Board Members:

RECOMMENDATION:

Authorize the General Manager to Award Contract No. MK-PS-21-003 to Craft & Commerce, LLC to provide marketing services on an as-needed basis with a not-to-exceed amount of \$40,000 for the remainder of Fiscal Year 2022 and a not-to-exceed amount of \$200,000 each for Fiscal Years 2023, 2024, and 2025.

SUMMARY:

Marketing and brand awareness are critical elements to rebuilding ridership following the COVID-19 pandemic and expanding the community's awareness of the benefits that SMART brings to North Bay communities. Over the next three years, SMART anticipates several marketing challenges that will require a strong strategic marketing and public awareness consulting partner. This strategic partner will be utilized on an as-needed task order basis and may be tasked with producing and executing high quality marketing campaigns, providing top notch graphic art and video elements, and placing and dynamically managing targeted media buys. Each task order that the SMART team will initiate with the awarded consultant will not only include the set deliverables of the project, but also include after-action reports of the Key Performance Indicators ("KPIs") to measure the success and effectiveness of the task. Having a consistent and strategic partner who has the ability to pivot quickly when needed and is able to keep SMART's marketing on-point and reaching SMART's audiences will be essential in the coming years.

SMART issued a Request for Proposal to procure this strategic marketing partner under Solicitation No. MK-PS-21-003.

SMART received 8 responsive proposals from the following vendors:

1. A. Bright Idea, LLC
2. BB&B Business Group
3. Civic Edge Consulting
4. Craft & Commerce, LLC
5. D2 Creative, LLC
6. Pulsar Advertising, Inc.
7. Sartin Denny Productions, LLC dba The Engine is Red
8. The Glue, LLC

SMART's evaluation committee reviewed each proposal using the evaluation criteria identified in the Request for Proposal. The criteria included: the firm and key personnel qualifications, quality of samples of work, demonstrated history of performing similar work, and pricing. Following the review of all eight proposals, the Selection Committee shortlisted three firms to move on to the final stage involving reference checks and interviews. The three shortlisted firms were Civic Edge Consulting, Craft & Commerce, LLC, and Pulsar Advertising, Inc. After completing the reference checks and interviews with the three shortlisted firms, the Selection Committee made the determination that Craft & Commerce, LLC would serve as an excellent strategic partner providing the overall best benefit to SMART and is recommending them for the award.

SMART's Communications and Marketing Department anticipates developing and executing a major marketing campaign beginning in the late spring and running through the summer of 2022. Building on last year's successful Welcome Back campaign promoting reduced fares and the expanded post COVID-19 service schedule, this year's marketing goal is to expand SMART's ridership beyond the commuter market and leverage the recreational and tourism markets in the greater San Francisco Bay Area. This year's marketing campaign will be executed on the basis of a specific task order and will be managed dynamically utilizing ongoing analytics and KPIs.

Staff recommends authorizing the General Manager to Award Contract No. MK-PS-21-003 to Craft & Commerce, LLC to provide marketing services on an as-needed task order basis with a not-to-exceed amount of \$40,000 for the remainder of Fiscal Year 2022 and a not-to-exceed amount of \$200,000 each for Fiscal Year 2023, 2024, and 2025. In addition to the initial three-year term, this contract has two additional one-year options to extend at SMART's discretion.

FISCAL IMPACT: Funding is included in the approved Fiscal Year 2021-22 budget and assumed in subsequent years.

REVIEWED BY: [x] Finance /s/ [x] Counsel /s/

Very truly yours,

/s/

Matt Stevens

Communications & Marketing Manager

Attachment(s): Craft & Commerce, LLC Contract Agreement No. MK-PS-21-003

AGREEMENT FOR CONSULTANT SERVICES

This agreement (Agreement”), dated as of April 6, 2022 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and Craft & Commerce, LLC (hereinafter “Consultant”).

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and experienced in the areas of marketing, community outreach, and related services; and

WHEREAS, in the judgment of the Board of Directors of SMART or District, it is necessary and desirable to employ the services of Consultant to provide task order-based marketing services and support to SMART; and

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

ARTICLE 1. RECITALS.

Section 1.01 The above Recitals are true and correct.

ARTICLE 2. LIST OF EXHIBITS.

Section 2.01 The following exhibits are attached hereto and incorporated herein:

- (a) Exhibit A: Scope of Work & Timeline
- (b) Exhibit B: Schedule of Rates
- (c) Exhibit C: FTA & DOT Requirements

ARTICLE 3. REQUEST FOR SERVICES.

Section 3.01 Initiation Conference. SMART’s Communications and Marketing Manager or designee (herein after “SMART Manager”), will initiate all requests for services through an Initiation Conference, which may be in person, by telephone, or by email. During the Initiation Conference, the SMART Manager and Consultant will establish and agree on a specific task for the project.

Section 3.02 Amount of Work. SMART does not guarantee a minimum or maximum amount of work under this Agreement.

ARTICLE 4. SCOPE OF SERVICES.

Section 4.01 Scope of Work. Consultant shall perform services within the timeframe outlined in **Exhibit A** (cumulatively referred to as the “Scope of Work”).

Section 4.02 Cooperation With SMART. Consultant shall cooperate with the SMART Manager in the performance of all work hereunder.

Section 4.03 Performance Standard. Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant’s profession. If SMART determines that any of Consultant’s work is not in accordance with such level of competency and standard of care, SMART, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with SMART to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 7; or (d) pursue any and all other remedies at law or in equity.

Section 4.04 Assigned Personnel.

- (a) Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time SMART, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from SMART.
- (b) Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder on behalf of the Consultant are deemed by SMART to be key personnel whose services were a material inducement to SMART to enter into this Agreement, and without whose services SMART would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of SMART. Key personnel shall be as listed in the applicable Task Order.
- (c) In the event that any of Consultant’s personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant’s control, Consultant shall be responsible for timely provision of adequately qualified replacements.
- (d) Consultant shall assign the following key personnel for the term of this Agreement:

Jordan Ruden, Principal
Jacob Lepiarz, Vice President Strategy and Insights (SMART’s Day-to-Day Contact)
Karen Stransky-Price, Director of Operations
Nidhi Patel, Account Manager
Samantha La, Campaign Coordinator
Ella Evans-Aguiar, Copywriter and Content Strategist

Kristin Holzer, Graphic Designer and Content Strategist

ARTICLE 5. PAYMENT.

For all services required hereunder, Consultant shall be paid in accordance with the following terms:

Section 5.01 Consultant shall invoice SMART on a monthly basis, detailing the tasks performed pursuant to the Scope of Work requested by the SMART Manager and the hours worked. SMART shall pay Consultant within 30 days after submission of the invoices.

Section 5.02 Consultant shall be paid in accordance with the rates established in **Exhibit B**; provided, however, that total payments to Consultant shall not exceed \$40,000 for Fiscal Year 2022, \$200,000 for Fiscal Year 2023, \$200,000 for Fiscal Year 2024, and \$200,000 for Fiscal Year 2025, without the prior written approval of SMART. Consultant shall submit its invoices in arrears on a monthly basis in a form approved by the Chief Financial Officer. The invoices shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. All reimbursable expenses must comply with SMART's Travel Guidelines and must receive prior approval. Consultant's reimbursement for materials/expenses shall not include items already included in Consultant's overhead as may be billed as a part of its labor rates set forth in **Exhibit B**. SMART does not reimburse Consultant for travel time unless by written approval.

Section 5.03 Consultant must submit all invoices on a timely basis, but no later than thirty (30) days from the date the services/charges were incurred. District shall not accept invoices submitted by Consultant after the end of such thirty (30) day period without District pre-approval. Time is of the essence with respect to submission of invoices and failure by Consultant to abide by these requirements may delay or prevent payment of invoices or cause such invoices to be returned to the Consultant unpaid.

ARTICLE 6. TERM OF AGREEMENT.

Section 6.01 The term of this Agreement shall remain in effect through June 30, 2025, with two (2) additional one-year options to extend at SMART's discretion unless terminated earlier in accordance with the provisions of **Article 7** below.

ARTICLE 7. TERMINATION.

Section 7.01 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, SMART shall have the right, at their sole discretion, to terminate this Agreement by giving 30 days written notice to the other party.

Section 7.02 Termination for Cause. Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement,

SMART may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

Section 7.03 Delivery of Work Product and Final Payment Upon Termination. In the event of termination by either party, Consultant, within 14 days following the date of termination, shall deliver to SMART all materials and work product subject to **Section 12.08** and shall submit to SMART an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

Section 7.04 Payment Upon Termination. Upon termination of this Agreement by SMART, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services are to be paid on an hourly or daily basis, then Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to termination times the applicable hourly or daily rate; provided further that if SMART terminates the Agreement for cause pursuant to **Section 7.02**, SMART shall deduct from such amount the amount of damage, if any, sustained by SMART by virtue of the breach of the Agreement by Consultant.

Section 7.05 Authority to Terminate. The Board of Directors has the authority to terminate this Agreement on behalf of SMART. In addition, the General Manager, in consultation with SMART Counsel, shall have the authority to terminate this Agreement on behalf of SMART.

ARTICLE 8. INDEMNIFICATION

Consultant agrees to accept all responsibility for loss or damage to any person or entity, including SMART, and to indemnify, hold harmless, and release SMART, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, to the extent caused by the Consultant's negligence, recklessness or willful misconduct in its performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against SMART based upon a claim relating to Consultant's performance or obligations under this Agreement. Consultant's obligations under this Section 8 apply whether or not there is concurrent negligence on SMART's part, but to the extent required by law, excluding liability due to SMART's conduct. SMART shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which 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 Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

ARTICLE 9. INSURANCE.

With respect to performance of work under this Agreement, Consultant shall maintain

and shall require all of its Subcontractors, Consultants, and other agents to maintain, insurance as described below. If the Consultant maintains broader coverage and/or higher limits than the minimums shown below, SMART requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SMART”

Section 9.01 Workers’ Compensation Insurance. Workers’ Compensation as required by the State of California, with Statutory Limits, and Employer’s Liability insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

Section 9.02 General Liability Insurance. Commercial General Liability insurance covering products-completed and ongoing operations, property damage, bodily injury and personal injury using an occurrence policy form, in an amount no less than \$1,000,000 per occurrence, and \$2,000,000 aggregate.

Section 9.03 Automobile Insurance. Automobile Liability insurance covering bodily injury and property damage in an amount no less than \$1,000,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles.

Section 9.04 Professional Liability Insurance (Errors and Omissions). Professional Liability insurance with limit no less than \$1,000,000 per occurrence or claim.

Section 9.05 Endorsements. Prior to commencing work, Consultant shall file Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Said endorsements and Certificate(s) of Insurance shall stipulate:

- (a) SMART, its officers, and employees shall be named as additional insured on all policies listed above, with the exception of the workers compensation insurance policy and the professional services liability policy (if applicable).
- (b) That the policy(ies) is Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which Consultant is liable, up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be effected by the Insureds.
- (c) Inclusion of the Insureds as additional insureds shall not in any way affect its rights either as respects any claim, demand, suit or judgment made, brought or recovered against Consultant. Said policy shall protect Consultant and the Insureds in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company’s liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.
- (d) Consultant hereby grants to SMART a waiver of any right to subrogation which any

insurer of said Consultant may acquire against SMART by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not SMART has received a waiver of subrogation endorsement from the insurer.

- (e) The insurance policy(ies) shall be written by an insurance company or companies acceptable to SMART. Such insurance company shall be authorized to transact business in the state of California.

SMART reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

Section 9.06 Deductibles and Retentions. Consultant shall be responsible for payment of any deductible or retention on Consultant's policies without right of contribution from SMART. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the name insured is not acceptable.

Section 9.07 Claims Made Coverage. If any insurance specified above is written on a claims-made coverage form, Consultant shall:

- (a) Ensure that the retroactive date is shown on the policy, and such date must be before the date of this Agreement or beginning of any work under this Agreement;
- (b) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- (c) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to Agreement effective date, Consultant shall purchase "extending reporting" coverage for a minimum of three (3) years after completion of the work.

Section 9.08 Documentation. The following documentation shall be submitted to SMART:

- (a) Properly executed Certificates of Insurance clearly evidencing all coverages and limits required above. Said Certificates shall be submitted prior to the execution of this Agreement. At SMART's request, Consultant shall provide certified copies of the policies that correspond to the policies listed on the Certificates of Insurance. Consultant agrees to maintain current Certificates of Insurance evidencing the above-required coverages and limits on file with SMART for the duration of this Agreement.
- (b) Copies of properly executed endorsements required above for each policy. Said endorsement copies shall be submitted prior to the execution of this Agreement.

Consultant agrees to maintain current endorsements evidencing the above-specified requirements on file with SMART for the duration of this Agreement.

- (c) After the Agreement has been signed, signed Certificates of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.

Please email all renewal certificates of insurance and corresponding policy documents to InsuranceRenewals@sonomamarintrain.org.

Section 9.09 Policy Obligations. Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 9.10 Material Breach. If Consultant, for any reason, fails to maintain insurance coverage, which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. SMART, in its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, SMART may purchase such required insurance coverage, and without further notice to Consultant, SMART may deduct from sums due to Consultant any premium costs advanced by SMART for such insurance. These remedies shall be in addition to any other remedies available to SMART.

ARTICLE 10. PROSECUTION OF WORK.

When work is requested of Consultant by SMART, all due diligence shall be exercised and the work accomplished without undue delay, within the performance time specified in the Task Order. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, or wildfire, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

ARTICLE 11. EXTRA OR CHANGED WORK.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the SMART Manager in a form approved by SMART Counsel. The Board of Directors or General Manager must authorize all other extra or changed work. The parties expressly recognize that SMART personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of SMART.

ARTICLE 12. REPRESENTATIONS OF CONSULTANT.

Section 12.01 Standard of Care. SMART has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by SMART shall not operate as a waiver or release.

Section 12.02 Status of Consultant. The parties intend that Consultant, in performing the services specified herein, shall act as an independent Consultant and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of SMART and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits SMART provides its employees. In the event SMART exercises its right to terminate this Agreement pursuant to **Article 7**, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

Section 12.03 Taxes. Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including but not limited to state and federal income and FICA taxes. Consultant agrees to indemnify and hold SMART harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case SMART is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish SMART with proof of payment of taxes on these earnings.

Section 12.04 Records Maintenance. Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to SMART for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder. Consultant and Subconsultants shall permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by the State, for the purpose of any investigation to ascertain compliance with this document.

Section 12.05 Conflict of Interest. Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by SMART, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with SMART disclosing Consultant's or such other person's financial interests.

Section 12.06 Nondiscrimination. Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, SMART's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference

Section 12.07 Assignment Of Rights. Consultant assigns to SMART all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to SMART in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as SMART may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of SMART. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of SMART.

Section 12.08 Ownership And Disclosure of Work Product. Any and all work product resulting from this Agreement is commissioned by SMART as a work for hire. SMART shall be considered, for all purposes, the author of the work product and shall have all rights of authorship to the work, including, but not limited to, the exclusive right to use, publish, reproduce, copy and make derivative use of, the work product or otherwise grant others limited rights to use the work product. To the extent Consultant incorporates into the work product any pre-existing work product owned by Consultant, Consultant hereby acknowledges and agrees that ownership of such work product shall be transferred to SMART. All reports, original drawings, graphics, plans, studies, photographs, videos, other media, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant and other agents in connection with this Agreement shall be the property of SMART. SMART shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to SMART all such documents, which have not already been provided to SMART in such form or format, as SMART deems appropriate. Such documents shall be and will remain the property of SMART without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of SMART.

ARTICLE 13. DEMAND FOR ASSURANCE.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate

assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. “Commercially reasonable” includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party’s right to demand adequate assurance of future performance. Nothing in this **Article 13** limits SMART’s right to terminate this Agreement pursuant to **Article 7**.

ARTICLE 14. ASSIGNMENT AND DELEGATION.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

ARTICLE 15. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING INVOICES AND MAKING PAYMENTS.

All notices, invoices, and payments shall be made in writing and shall be given by personal delivery, U.S. Mail or email. Notices, invoices, and payments shall be addressed as follows:

If to SMART Project Manager: Sonoma-Marine Area Rail Transit District
Attn: Matt Stevens
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
mstevens@sonomamarintrain.org
707-794-3074

If to SMART Billing: Sonoma-Marine Area Rail Transit District
Attn: Accounts Payable
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
billing@sonomamarintrain.org
707-794-3330

If to Consultant: Craft & Commerce, LLC
Attn: Jordan Ruden
714 North Hyer Ave.
Orlando, FL 32803
jordan@craftand.com
310-463-4719

When a notice, invoice 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 copy of a notice, invoice or payment is sent by facsimile or email, the notice, invoice or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, invoice or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, invoices 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.

ARTICLE 16. MISCELLANEOUS PROVISIONS.

Section 16.01 No Waiver of Breach. The waiver by SMART of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

Section 16.02 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and SMART acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and SMART acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

Section 16.03 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

Section 16.04 No Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

Section 16.05 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Venue for any action to enforce the terms of this Agreement or for the breach thereof shall be in the Superior Court of the State of California in the County of Marin.

Section 16.06 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

Section 16.07 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

Section 16.08 Acceptance of Electronic Signatures and Counterparts. The parties agree that this Contract, Agreements ancillary to this Contract, and related documents to be entered into this Contract will be considered executed when all parties have signed this Agreement. Signatures delivered by scanned image as an attachment to electronic mail or delivered electronically through the use of programs such as DocuSign must be treated in all respects as having the same effect as an original signature. Each party further agrees that this Contract may be executed in two or more counterparts, all of which constitute one and the same instrument.

Section 16.09 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CONSULTANT: CRAFT & COMMERCE, LLC

By: _____
Jordan Ruden, Principal and Co-Founder

Date: _____

SONOMA-MARIN AREA RAIL TRANSIT (SMART)

By: _____
Eddy Cumins, General Manager

Date: _____

CERTIFICATES OF INSURANCE ON FILE WITH AND APPROVED AS TO SUBSTANCE FOR SMART:

By: _____
Ken Hendricks, Procurement Manager

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

EXHIBIT A
SCOPE OF WORK & TIMELINE

I. Overview

The Sonoma-Marín Area Rail Transit District (SMART) is contracting with Craft & Commerce, LLC (hereinafter “Consultant”) to serve as an extension of SMART’s Communications and Marketing Department. The Consultant shall perform various marketing and community outreach services on an as-needed and task-order basis.

II. Project Management

All work shall be initiated, scheduled, and reviewed by the SMART Manager on a task order basis either by written or verbal communication. Each service request will include a timeline for completion, the task objective, the deliverables required, and any other information deemed necessary for Consultant to be able to produce a quote or proposal for task ordered work. Consultant shall submit an estimate to the SMART Manager. The proposal shall include the following:

- A description of the Consultant’s proposed approach to the assignment;
- Proposed staffing, including all subconsultants;
- An estimate of the number of hours to complete the project;
- Delivery date;
- A pricing estimate. Any paid media commissions must be clearly identified in the estimate. The SMART Manager shall determine if pricing shall be either a firm fixed price or on the basis of time and materials.

If pricing is on a time and materials basis, Consultant's rates shall be in accordance with the time and materials rates established in Exhibit B.

The SMART Manager will review the proposal and decide whether to proceed as written, cancel, or modify the requirements. Consultant shall provide a revised proposal as requested.

If SMART decides to proceed with the work, the SMART Manager will issue a written task order detailing the scope of work, timeline for completion, and the agreed upon not-to-exceed amount.

III. Scope of Work

Consultant may be requested to perform the following services on a task order basis while under contract with SMART.

- Development and Execution of Marketing Campaigns
- Social Media Marketing (Strategy, Creative, Social Calendar Creation, etc.)
- Management and Execution of Paid Media Strategies (Creative, Placements, Reporting and Analytics, etc.)
- Assets Development (Ex. Photos, Video, Graphics)
- Production of Press Releases and Press Conferences
- Strategic Marketing:
 - Attention Research and Planning
 - Audience Segmentation
 - Channel Analysis and Strategy
 - Content Strategy
 - Message Development
 - In-Marketing Testing
 - Performance Benchmarking
 - Campaign Budgeting
 - Email Marketing and Automation
- Performance Optimization
 - Multivariant creative testing
 - Active, cross-platform campaign monitoring and hands-on management
 - Dynamic, responsive content iteration, optimization, and scale
 - Actionable, real-time measurement and reporting
 - Landing page and user journey optimization
 - Comprehensive campaign analysis and go-forward recommendations
- Integrated Media Planning and Buying
 - Cross-Platform social
 - Search engine marketing
 - Programmatic native, video, and display
 - Digital audio and podcasts
 - Terrestrial radio
 - Sponsored and custom content integrations
 - Linear and streaming TV
 - Out-of-Home
 - Trade Publications
 - Print
- Growth Support and Capacity-Building
 - Digital content creation
 - Design support and brand enhancement
 - Channel Optimization and best practice implementation
 - Content calendaring and channel management

- Strategic social promotion
- KPI dashboard creation
- Tech stack analysis and implementation
- Tracking pixel implementation
- Team Training
- Other tasks as mutually agreed upon by SMART and Consultant

The SMART Manager must approve all work product prior to final implementation and production.

IV. Timeline for Each Requirement / Task

All deliverables and timelines related to each task shall be provided to Consultant in writing. SMART and Consultant shall mutually agree on the terms of each task order prior to the start of any work being performed.

V. Acceptance Criteria

The SMART Manager shall review the work performed under this Agreement to ensure it meets the requirements of the contract and each task order. In the event that any work is found to be defective, Consultant shall replace the defective work at no additional cost to SMART within 48 hours of notification by the SMART Manager that the work is defective.

**EXHIBIT B
SCHEDULE OF RATES**

KEY PERSONNEL	
NAME	HOURLY RATE
Jordan Ruden, Principal/Campaign Lead	\$215.00
Mark Barker, Principal/Strategy Lead	\$215.00
Jacob Lepiarz, VP Strategy & Insights	\$195.00
Karen Stransky-Price, Director of Operations	\$150.00
Nidhi Patel, Account Manager	\$100.00
Samantha La, Campaign Coordinator	\$75.00
Kristin Holzer, Content Strategist/Designer	\$100.00
Ella Evans-Aguiar, Content Strategist/Copywriter	\$100.00

GENERAL CLASSIFICATIONS	
CLASSIFICATION	HOURLY RATE
Principal	\$215.00
Vice President	\$195.00
Account Director	\$150.00
Digital Ad Specialist	\$150.00
Art Director	\$150.00
Photographer	\$125.00
Content Strategist/Designer	\$100.00
Content Strategist/Copywriter	\$100.00
Account Manager	\$100.00
Designer	\$75.00
Campaign Coordinator	\$75.00

The hourly rates listed above are fully burdened rates and include all labor, overhead, administrative, profit, insurance, fringe benefits, and any other direct or indirect cost to perform work for SMART.

Materials shall be billed at cost and receipts shall be included in all invoices to back up materials charges.

**ATTACHMENT C
FTA & DOT REQUIREMENTS**

**UNITED STATES DEPARTMENT OF TRANSPORTATION (DOT),
FEDERAL TRANSIT ADMINISTRATION (FTA) AND
CALIFORNIA DEPARTMENT OF TRANSPORTATION REQUIREMENTS**

1. General.

In performance of its obligations pursuant to this Agreement or Purchase Order [Hereinafter “Agreement”], the Contractor, Seller, or Consultant [Hereinafter “Contractor”] agrees to comply with all applicable provisions of federal, state and local law, regulations, and FTA directives. The terms of the most recent amendment to any federal, state or local laws, regulations, FTA directives, and amendments to the grant or cooperative agreement providing funding for this Agreement that may be subsequently adopted, are applicable to the Agreement to the maximum extent feasible, unless the FTA provides otherwise in writing. The Federal or State regulations set forth in this Agreement to be observed in the performance of the Agreement are subject to change, and such changed requirements will apply to this Agreement as required. Contractor shall include in its subcontracts, and require its subcontractors of every tier to include in their respective subcontracts, provisions incorporating the requirements of this Attachment. Contractor’s failure to comply with these requirements shall constitute a material breach of this Agreement and may result in the withholding of progress payments to the Contractor, in addition to other remedies.

2. Fly America.

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the U.S. General Services Administration’s regulations at 41 CFR §§301-10.131 – 301-10.143, which provide that recipients and subrecipients of Federal funds and their Contractors are required to use U.S. flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. If a foreign air carrier is used, the Contractor shall submit an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

3. Cargo Preference - Use of United States Flag Vessels.

The Contractor agrees to comply with the requirements of 46 U.S.C. §55305, and U.S. Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” 46 C.F.R. Part 381.

(a) to use privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Agreement to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels;

(b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a subcontractor's bill-of-lading); and

(c) to include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

4. **Energy Conservation.**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §6321 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, subpart C.

5. **Clean Water.**

The Contractor agrees:

(a) to comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 - 1388, *et seq.* The Contractor agrees to report each violation to SMART and understands and agrees that SMART will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office; and

(b) to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

6. **Byrd Anti-Lobbying Amendment, as amended by the Lobbying Disclosure Act of 1995.**

Contractors that apply or bid for an award must file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Byrd Anti-Lobbying Certificate - Certification for Contracts, Grants, Loans, and Cooperative Agreements (to be submitted with each bid or offer exceeding \$100,000)

The undersigned Contractor certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this

certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure.

Date: _____

Company Name: Craft & Commerce, LLC

Print Name: Jordan Ruden

Title: Principal and Co-Founder

Signature: _____

7. **Federal Changes.**

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. Contractor's failure to so comply shall constitute a material breach of this Agreement.

8. **Clean Air.**

The Contractor agrees to:

(a) comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7671q, *et seq.* The Contractor agrees to report each violation to SMART and understands and agrees that SMART will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office; and

(b) include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

9. **Recovered Materials and Solid Wastes.**

The Contractor agrees to comply with all the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Furthermore, Contractor will comply with Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

10. **No Obligation by the Federal Government.**

(a) SMART and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to SMART, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the Agreement.

(b) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

11. **Program Fraud and False or Fraudulent Statements or Related Acts.**

(a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal

Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(c) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

12. Special Termination Provisions. In addition to the Termination provisions contained in the Agreement, the following Termination provisions apply.

(a) Termination for Convenience. SMART may terminate this Agreement, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including Agreement close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to SMART to be paid the Contractor. If the Contractor has any property in its possession belonging to SMART, the Contractor will account for the same, and dispose of it in the manner SMART directs.

(b) Termination for Default. If the Contractor does not deliver supplies in accordance with the Agreement delivery schedule, or, if the Agreement is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, SMART may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the Agreement price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by SMART that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, then SMART, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

(c) Opportunity to Cure. SMART in its sole discretion may, in the case of a termination for breach or default, allow the Contractor up to ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to SMART's satisfaction the breach or default of any of the terms, covenants, or conditions of this Agreement within ten (10) days after receipt by Contractor of written notice from SMART setting forth the nature of said breach or default, SMART shall have the right to terminate the Agreement without any further

obligation to Contractor. Any such termination for default shall not in any way operate to preclude SMART from also pursuing all available remedies against Contractor and its sureties for said breach or default.

(d) Waiver of Remedies for any Breach. In the event that SMART elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Agreement, such waiver by SMART shall not limit SMART's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.

(e) Termination for Convenience or Default (Architect and Engineering Contracts). SMART may terminate this Agreement in whole or in part, for SMART's convenience or because of the failure of the Contractor to fulfill the Agreement obligations. SMART shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to SMART all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement, whether completed or in process.

If the termination is for the convenience of SMART, SMART shall make an equitable adjustment in the Agreement price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the Agreement obligations, SMART may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by SMART.

If, after termination for failure to fulfill Agreement obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of SMART.

13. Suspension and Debarment.

This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractors, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows.

Suspension and Debarment Certificate

The Contractor hereby certifies that neither the Contractor, nor its principals, as defined at 49 CFR 29.995, nor its affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

This certification is a material representation of fact relied upon by SMART. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to SMART, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a similar provision requiring such compliance in its lower tier covered transaction.

Company Name: Craft & Commerce, LLC

By: _____

Print Name: Jordan Ruden

Title: Principal and Co-Founder

Date: _____

14. Civil Rights.

The following requirements apply to the Agreement:

(a) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(b) Equal Employment Opportunity The following equal employment opportunity requirements apply to the Agreement:

(1) Race, Color, Creed, National Origin, Sex In accordance with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department

of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60, *et seq.*, (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, national origin, sex, sexual orientation, gender identity, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(2) Age In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

15. Disputes.

Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by SMART’s General Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the General Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the General Manager shall be binding upon the Contractor and the Contractor shall abide

by the decision.

16. Performance During Dispute.

Unless otherwise directed by SMART, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.

17. Claims for Damages.

Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

18. Remedies.

Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between SMART and the Contractor arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within California.

19. Rights and Remedies.

The duties and obligations imposed by the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by SMART or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

20. Disadvantaged Business Enterprises.

In addition to the requirements set forth in the Notice to Proposers or Bidders regarding Disadvantaged Business Enterprise (DBE) Information the following requirements apply to this Agreement.

(a) This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 0.03%.

(b) The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of

DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

(c) The successful bidder/offer or will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

(d) The contractor shall promptly pay any and all subcontractors by an instrument that guarantees availability of funds immediately upon deposit of said instrument. The contractor shall include, in its monthly invoice submission to SMART, amounts to pay for all subcontractors' acceptable invoices, no later than 30 days after receipt of such invoices. Unless otherwise approved in writing by SMART, the contractor shall, within ten (10) days after receipt of the payment made by SMART, pay to each of its immediate subcontractors for satisfactory performance of its contract, the amounts to which they are entitled, after deducting any prior payments and any amount due and payable to the contractor by those subcontractors. Any delay or postponement of such payment may take place only for good cause and with SMART's prior written approval. If the contractor determines the work of the subcontractors to be unsatisfactory, the contractor must immediately notify in writing SMART (with a separate notice to the Liaison Officer if the subcontractor is a DBE) and state the reasons. Failure by the contractor to comply with this requirement will be construed to be breach of contract and may be subject to sanctions as specified in the contract.

(e) Should SMART make incremental inspections and, upon approval of the contractor's work at various stages of the contract, pay a portion of the retainage, the contractor shall promptly, within 30 days after SMART has made such payment, pay to the subcontractor who has satisfactorily completed all of its work and whose work is covered by SMART's inspection and approval, all retainage owed to the subcontractor. SMART's incremental inspections, approval or release of a portion of the retainage under this section shall not constitute acceptance.

(f) The Contractor must promptly notify SMART whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of SMART. In this situation, the prime contractor shall provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time period specified, SMART will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, SMART may issue a termination for default proceeding.

21. Exclusionary or Discriminatory Specifications.

Apart from inconsistent requirements imposed by Federal statute or regulations, Contractors shall comply with the requirements of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

22. No Federal Government Obligations to Contractor and Third Parties.

Absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to Contractor, or any other third party in connection with the performance of the Agreement. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, contract, or subagreement, the Federal Government continues to have no obligations or liabilities to any party, including the Contractor.

23. Geographic Restrictions.

Contractor shall refrain from using state or local geographic preferences, except those expressly mandated or encouraged by Federal statute, and as permitted by SMART.

24. Access To Records and Reports.

Contractor shall comply with the following requirements:

(a) **Record Retention.** Contractor shall, during the course of the Agreement and for three years after final payment, retain and maintain complete readily accessible records, documents, reports, contracts, and supporting materials relating to the Agreement as SMART may require.

(b) **Access to Records.** Contractor shall permit SMART, the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all project work, materials, payrolls, and other data, and to audit the books, records, and accounts of Contractor and its subcontractors pertaining to the Agreement. In accordance with 49 U.S.C. § 5325(g), Contractor shall require each subcontractor to permit SMART, the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that subcontractor agreement and to audit the books, records, and accounts involving that subcontractor agreement as it affects the Agreement.

(c) **State Audit, Inspection, Access to Records and Retention of Records Requirements.** Contractor and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred costs by line item for the project. Contractor and its subcontractors' accounting systems shall conform to generally accepted accounting principles (GAAP) and all records shall

provide a breakdown of total costs charged to the project, including properly executed payrolls, time records, invoices and vouchers as well as all accounting generated reports. Contractor and its subcontractors shall permit representatives of the State and State Auditor to inspect, examine, make excerpts or transcribe Contractor and its subcontractors' work, documents, papers, materials, payrolls, books, records, accounts, any and all data relevant to this Agreement at any reasonable time and to audit and verify statements, invoices or bills submitted by Contractor and its subcontractors pursuant to this Agreement, and shall provide copies thereof upon request and shall provide such assistance as may be reasonably required in the course of such audit or inspection.

The State, its representatives and the State Auditor further reserve the right to examine, inspect, make copies, or excerpts of all work, documents, papers, materials, payrolls, books and accounts, and data pertaining to this Agreement and to inspect and re-examine said work, documents, papers, materials, payrolls, books, records, accounts and data during the life of the Agreement and for the three (3) year period following the final payment under this Agreement, and Contractor and its subcontractors shall in no event dispose of, destroy, alter or mutilate said work, documents, papers, materials, payrolls, books, records, accounts and data in any manner whatsoever for three (3) years after final payment under this Agreement and all pending matters are closed.

Any costs for which Contractors and its subcontractors have received payment that are determined by subsequent audit to be unallowable under the terms of this agreement may be required to be repaid to SMART by the Contractors and its subcontractors. Should Contractor and its subcontractors fail to reimburse money due SMART within 30 days of demand, or within such other period as may be agreed between the parties hereto, SMART is authorized to withhold future payments due Contractor and its subcontractors from any source.

The Contractor agrees that the Contract Cost Principles and Procedures at least as restrictive as 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 *et seq.*, shall be used to determine the allowability of individual items of costs.

The Contractor agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Any costs for which payments have been made to the Contractor, which are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 *et seq.*, or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, are subject to repayment by Contractor to SMART.

Any subcontract entered into as a result of this Agreement shall contain all the provisions of this section.

25. ADA Access.

Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 *et seq.*; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49, U.S.C. § 5301(d); and the following Federal regulations including any amendments thereto:

- (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37;
- (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. Part 27;
- (c) U.S. DOT regulations “Americans with Disabilities (DA) Accessibility Specifications for Transportation Vehicles,” 49 C.F.R. Part 38;
- (d) U.S. DOT regulations, “Nondiscrimination on the basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35;
- (e) U.S. Department of Justice (DOJ) regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. Part 36;
- (f) U.S. General Services Administration (GSA) regulations, “Accommodations for the Physically Handicapped,” 41 C.F.R. Subpart 101-19;
- (g) U.S. Equal Employment Opportunity Commission, “Regulations to implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630;
- (h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 C.F.R. Part 64, Subpart F;
- (i) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609; and
- (j) Any implementing requirements FTA may issue.

26. Fair Labor Standards Requirements.

Contractor shall comply with the minimum wage and overtime provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 206 and 207, which apply to employees performing work under the Agreement.

27. State Fair Employment Practices.

In the performance of work under this Agreement, Contractor and its subcontractors will not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (including cancer), age (over 40), marital status and denial of family care leave. Contractor and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and

harassment. Contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900 (a-f), set forth in chapters of Division 4 of Title 2 of the California Code of Regulations are incorporated into this agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Contractor and its subcontractors shall include the nondiscrimination and compliance provisions of this clause in all subcontractor agreements to perform work under this agreement.

Contractor and its subcontractors will permit access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by SMART for the purpose of investigation to ascertain compliance with this Fair Employment Practices Section.

28. Metric System.

To the extent required by U.S. DOT or FTA, Contractor shall use the metric system of measurement, as may be required by 49 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage In Federal Government Programs," 15 U.S.C. § 205a note; and other regulations, guidelines, and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, Contractors shall accept products and services with dimensions expressed in the metric system of measurement.

29. Environmental Protection.

Contractor shall comply with the following requirements:

(a) Contractor shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.* consistent with Executive Order. No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; PTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 *et seq.*; and joint FHWA/FTA regulations, "Environmental impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

(b) Contractor shall comply with all Federal transit laws, such as 49 U.S.C. §5323(c)(2) and 23 U.S.C. §139, as applicable.

(c) Contractor shall report and require each subcontractor at any tier to report any violation of these requirements resulting from any Contract activity of Contractor or

subcontractor to FTA and the appropriate U.S. EPA Regional Office.

30. Privacy Act.

Contractor agrees to comply with, and assures the compliance of its employees with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C § 552. Contractor understands that the requirements of the Privacy Act, including civil and criminal penalties for violation of the Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

31. Rights to Inventions Made Under a Contract or Agreement.

Contractor agrees to comply with the requirements of 37 C.F.R. §401.2(a), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements” and any implementing regulations issued by SMART.

32. Rights in Data and Copyrights.

- (a) The Contractor agrees to provide a license to its subject data to SMART and the Federal Government that is royalty-free, non-exclusive, and irrevocable. The license must permit SMART or the Federal Government to reproduce, publish, or otherwise use the subject data or permit other entities or individuals to use the subject data provided those actions are taken for SMART or the Federal Government purposes.
- (b) Definition of “Subject Data.” As used in this section, “subject data” means recorded information, whether or not copyrighted, that is delivered or specified to be delivered as required by the Agreement. Examples of subject data include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Agreement.
- (c) Contractor grants to SMART and U.S. DOT a worldwide, non-exclusive, non-transferable, paid-up, royalty-free copyright license, including all rights under copyright, to any and all Publications and Digital Data Sets as such terms are defined in the U.S. DOT Public Access plan, resulting from scientific research funded either fully or partially by this Agreement. Contractor herein acknowledges that the above copyright license grant is first in time to any and all other grants of copyright license to such Publications and/or Digital Data Sets, and that SMART and the U.S. DOT shall have priority over any other claim of exclusive copyright to the same.

33. Patent Rights.

Contractor agrees that:

- (a) Depending on the nature of the Agreement, SMART and the Federal Government may acquire patent rights when the Contractor produces a patented or patentable invention, improvement, or discovery;
- (b) SMART's and the Federal Government's rights arise when the patent or patentable information is conceived or reduced to practice with federal assistance provided through the Agreement; or
- (c) When a patent is issued or patented information becomes available, the contractor shall notify SMART immediately and provide a detailed report satisfactory to SMART who will then notify the FTA as required.
- (d) Its rights and responsibilities in that federally assisted invention, improvement, or discovery will be determined as provided in applicable federal laws, regulations, requirements, and guidance, including any waiver thereof; and
- (e) Unless SMART or the Federal Government determines otherwise in writing, irrespective of its status or the status of any Contractor as a large business, small business, state government, state instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual, the Contractor will transmit the Federal Government's patent rights to the FTA, as specified in 35 U.S.C. §200 et seq., and the U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

34. Veterans Preference.

As provided in 49 U.S.C. §5325(k), the Contractor, to the extent practicable, agrees and assures that each subcontractor:

- 1. Will give a hiring preference to veterans, as defined in 5 U.S.C. §2108, who have the skills and abilities required to perform construction work required under Agreement in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53; and
- 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

35. Safe Operation of Motor Vehicles.

- (a) Seat Belt Use. Contractor agrees to implement Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. §402 note, (62 Fed Reg. 19217), by:

Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles.

- (b) Distracted Driving, Including Text Messaging While Driving. Contractor agrees to comply with Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” 23 U.S.C. §402, U.S. DOT Order 3902.10, “Text Messaging While Driving,” and U.S. DOT Special Provision pertaining to Distracted Driving:
- a. Safety. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle the company owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Agreement, or when performing any work for or on behalf of SMART.
 - b. Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

36. Alcohol Misuse and Prohibited Drug Use.

Contractor and all Subcontractors shall comply with:

- a. Federal Transit Laws, specifically 49 U.S.C. §5331
- b. FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 C.F.R. Part 655
- c. Applicable provisions of U.S. DOT regulations, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” 49 C.F.R. Part 40

37. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

Contractor certifies and confirms that no services provided or supplies installed or utilized under this contract constitute telecommunications services, equipment or systems prohibited under Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232), and as may be implemented by 2 C.F.R. 200.216. If Contractor later learns that prohibited telecommunications services, equipment or systems have been supplied, installed, or utilized under this Contract, Contractor shall immediately inform SMART in writing. SMART may require the Contractor to promptly replace such prohibited service, equipment and systems at the Contractor's sole cost.

38. Domestic Preferences for Procurements

Contractor shall make every effort to provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). This section must be included in all subcontracts.

For the purposes of this section:

- 1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- 2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

39. Conformance with ITS National Architecture

National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and any subsequent further implementing directives, except to the extent FTA determines otherwise in writing.

40. Incorporation of Federal Transit Administration (FTA) Terms.

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all

FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any SMART requests which would cause SMART to be in violation of the FTA terms and conditions.



April 6, 2022

David Rabbitt, Chair
Sonoma County Board of Supervisors

Barbara Pahre, Vice Chair
Golden Gate Bridge,
Highway/Transportation District

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Chris Coursey
Sonoma County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Eddy Cumins
General Manager

5401 Old Redwood Highway
Suite 200
Petaluma, CA 94954
Phone: 707-794-3330
Fax: 707-794-3037
www.sonomamarintrain.org

Sonoma-Marín Area Rail Transit Board of Directors
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

SUBJECT: Resolutions Authorizing the Annual Filing of Grant Applications for Various State and Federal Fund Programs for a Total of \$18,735,803 in Fiscal Year 2022-2023 Budget Operations Grant Support

Dear Board Members:

RECOMMENDATIONS:

Approve Resolutions Number 2022-09, 2022-10, 2022-11, 2022-12, 2022-13 and 2022-14 authorizing the filing of annual applications for the following funds for SMART operating department expenses:

- \$3,884,548 in annual Federal Transit Administration (FTA) Formula 5307 Program funding for Preventive Maintenance and committing the necessary 20% in local matching funds; and
- \$7,471,416 in one-time FTA discretionary Formula 5307 funds from American Rescue Plan COVID-relief program for Operations; and
- \$2,826,491 in State Transit Assistance (STA) Program funding for Operations; and
- Up to \$3,700,000 in State Rail Assistance (SRA) Program funding for Operations; and
- \$534,762 in State Low Carbon Transit Program (LCTOP) funding to Restart Rail Operations on SMART (Post-Pandemic); and
- \$318,586 in State Transit Assistance – State of Good Repair (STA-SGR) funding for SMART Capital Spare Parts.

SUMMARY:

SMART became eligible for numerous State and Federal fund annual formula grants with the start of operations in 2017. The SMART Board of Directors has approved resolutions of local support for these fund sources each of the past 2-4 years, depending on the fund source. Beginning in 2021, in advance of the adoption of the Fiscal Year 2021-22 SMART Annual Budget, every effort was made to consider authorization of these grant applications within one agenda item. These fund sources are shown with their latest expected revenue amounts to SMART, as estimated by the State Controller’s Office (SCO), California State Transportation Agency (CalSTA) and/or the Metropolitan Transportation Commission (MTC). The funds are a mix of programming years, with some funds programmed in Fiscal Year 2021-22 and some in Fiscal Year 2022-23. Specific fund program years are noted in the attached resolutions. In all cases, these funds are intended for use within the SMART Fiscal Year 2022-23 Annual Budget.

Funds listed are sourced from the following:

- FTA Formula Program comes from a federal excise tax on gasoline.
- STA funds come from sales tax on diesel fuel, with a portion created with the 2017 Senate Bill 1 (SB1) package.
- SRA funds come from sales tax on diesel fuel created with SB1.
- LCTOP funds come from California Cap and Trade proceeds into the Greenhouse Gas Reduction Fund.
- The scope proposed for use of each of the fund sources listed is a continuation of the scope covered by each grant in the Fiscal Year 2021-22 SMART Annual Budget and in SMART's 2021 10-year horizon Short Range Transit Plan and Capital Improvement Program, adopted by the Board in Spring 2021.

Each grant fund source has its own unique applicant eligibility requirements that SMART fulfills within the normal course of business. FTA formula funds are for Direct Grantee agencies who agree to abide by the FTA's requirements in technical, legal and financial areas. As part of the eligibility process, SMART reports service data into the National Transit Database (NTD). Nationally, NTD data is used to determine how FTA funds are distributed across Urbanized Areas. Approximately 95% of SMART's service data is reported into the Santa Rosa Urbanized Area and the FTA formula funds shown here for SMART come from the Santa Rosa Urbanized Area apportionment. Included in the FTA Direct Grantee eligibility requirements are four Civil Rights programs and policies that have been adopted and implemented by SMART, with three of these being updated every three years. These Civil Rights programs include:

- Americans with Disabilities Act compliance;
- Title VI Non-Discrimination Program and Policy, including a Limited English Proficiency and Public Participation Plan;
- Disadvantaged Business Enterprise Program as part of District procurement; and
- Equal Employment Opportunity Program as part of District hiring practices.

In some cases, there are multiple agencies participating in the development or allocation of funds. For example, State Transit Assistance (STA) funds are apportioned based on local revenues collected by an operator and by population of the area served. MTC has asked the County Transportation Agencies (Sonoma County Transportation Authority and Transportation Authority of Marin) to work with transit operators in their areas to determine the apportionment split of STA Population funds. Once decided, these STA funds are combined with the STA Revenue funds that are apportioned directly by the State to SMART based on the amount of Measure Q funds and fares collected. Claims for payments of STA funds are then submitted by operators directly to MTC.

As part of that claim process, SMART is required by MTC to adopt resolutions committing SMART to following MTC's Resolution 3866 (attached) regarding Transit Coordination across the region. That MTC resolution requirement is also true of annual FTA formula funds. For STA-State of Good Repair (SGR) funds, there is an application process directly to Caltrans, followed by a claim submittal to MTC. Two resolutions are attached that include reference to STA-SGR funds, one for the new Authorized Agent and Certification form and one for the claim submittal to MTC.

For each fund source listed, there is a unique set of compliance and certification checklists to follow, grant application forms to submit and post-award reporting requirements to file. Several of the funds require a new Authorized Agent and Certification form be approved by the Board every time there is a change in Authorized Agent. Last year SMART had a new Chief Financial Officer and this year SMART has a new General Manager. Because of these staff changes, the Authorized Agent forms for three fund sources are attached.

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AUTHORIZING THE FILING OF AN APPLICATION FOR FEDERAL TRANSIT ADMINISTRATION FORMULA PROGRAM FUNDING FOR PREVENTIVE MAINTENANCE AND COMMITTING THE NECESSARY LOCAL MATCH FOR THE PROJECT AND STATING THE ASSURANCE OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT TO COMPLETE THE PROJECT

WHEREAS, the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (BIL, Pub. L 117-58) continues and increases funding amounts within Federal Transit Administration formula programs (49 U.S.C. §53); and

WHEREAS, pursuant to BIL/IIJA, and the regulations promulgated thereunder, eligible project sponsors wishing to receive Federal Transit Administration (FTA) Section 5307 Urbanized Area grants (Formula Program Funds) for a project shall submit an application first with the appropriate metropolitan transportation planning organization (MPO), for review and inclusion in the MPO's Transportation Improvement Program (TIP); and

WHEREAS, the Metropolitan Transportation Commission (MTC) is the MPO for the San Francisco Bay region; and

WHEREAS, the Sonoma-Marín Area Rail Transit District (SMART) is an eligible project sponsor for FTA Formula Program Funds for the following project:

SMART Preventive Maintenance

WHEREAS, MTC requires, as part of the application, a resolution stating the following:

1. SMART makes the commitment of necessary local matching funds (20% for FTA Formula Program funds); and
2. SMART understands that the FTA Formula Program funding is fixed at the programming amount, and therefore any cost increase cannot be expected to be funded from FTA Formula Program funds; and
3. SMART provides assurance that the project will be completed as described in the application, and, if approved, as programmed in MTC's TIP; and
4. SMART understands that the FTA Formula Program funds must be obligated within three years of programming in the TIP, or the project may be removed from the program.

NOW, THEREFORE, BE IT RESOLVED that by the Board of Directors that the SMART District is authorized to execute and file an application for funding under the FTA Formula Program in the amount of \$3,884,548 for Preventive Maintenance; and

BE IT FURTHER RESOLVED that the SMART Board of Directors, by adopting this resolution does hereby state that

1. SMART will provide \$971,137 in local, non-federal matching funds; and
2. SMART understands that the FTA Formula Program for the project is fixed at \$3,884,548, and that any cost increases must be funded by SMART from local matching funds, and that SMART does not expect any costs increases to be funded with FTA Formula Program funds; and
3. **SMART Preventive Maintenance** will be completed as described in this resolution and, if approved, for the amount shown in the Metropolitan Transportation Commission (MTC) Transportation Improvement Program (TIP) with obligation occurring within the timeframe established below; and
4. The program funds are expected to be obligated by January 31 within the year the project is programmed for in the TIP; and
5. SMART will comply with FTA requirements and all other applicable Federal and State and Local laws and regulations with respect to the proposed project; and

BE IT FURTHER RESOLVED that SMART is an eligible sponsor of projects in the program for FTA Formula Program funds; and

BE IT FURTHER RESOLVED that SMART is authorized to submit an application for FTA Formula Program funds for Preventive Maintenance; and

BE IT FURTHER RESOLVED that there is no legal impediment to SMART making applications for FTA Formula Program funds; and

BE IT FURTHER RESOLVED that there is no pending or threatened litigation which might in any way adversely affect the proposed project, or the ability of SMART to deliver such a project; and

BE IT FURTHER RESOLVED that SMART agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution 3866; and

BE IT FURTHER RESOLVED that a copy of this resolution will be transmitted to the MTC prior to MTC programming the FTA Formula Program funded projects in the Transportation Improvement Program (TIP); and

BE IT FURTHER RESOLVED that the MTC is requested to support the application for the project described in the resolution and to program the project, if approved, in MTC's TIP.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 6th day of April, 2022, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

David Rabbitt, Chair, Board of Directors
Sonoma-Marín Area Rail Transit District

ATTEST:

Leticia Rosas-Mendoza, Clerk of Board of Directors
Sonoma-Marín Area Rail Transit District

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AUTHORIZING THE FILING OF AN APPLICATION FOR FEDERAL TRANSIT ADMINISTRATION FORMULA PROGRAM FUNDING FOR RAIL OPERATIONS AND STATING THE ASSURANCE OF THE SONOM-MARIN AREA RAIL TRANSIT DISTRICT TO COMPLETE THE PROJECT

WHEREAS, the American Rescue Plan of 2021 (ARP) created one-time emergency COVID pandemic-relief funds within Federal Transit Administration formula programs (49 U.S.C. §53); and

WHEREAS, pursuant to ARP, and the regulations promulgated thereunder, eligible project sponsors wishing to receive Federal Transit Administration (FTA) Section 5307 Discretionary ARP funds for transit systems demonstrating additional pandemic-associated needs shall submit applications directly to the FTA for review and determination of funding; and

WHEREAS, the FTA made determinations of funding and announced awards on March 7, 2022, including an award notification for SMART; and

WHEREAS, the Sonoma-Marín Area Rail Transit District (SMART) is an eligible project sponsor for FTA Formula Program Funds for the following project:

SMART Rail Operations

WHEREAS, SMART wishes to adopt a resolution stating the following:

1. SMART makes the commitment of necessary local matching funds (0% for FTA Formula ARP Act funds for COVID relief); and
2. SMART understands that the FTA Formula Program funding is fixed at the programming amount, and therefore any cost increase cannot be expected to be funded from FTA Formula Program funds; and
3. SMART understands that these one-time ARP FTA Formula Program funds are intended to be expended by the end Fiscal Year 2022-23.

NOW, THEREFORE, BE IT RESOLVED that by the Board of Directors that the SMART District is authorized to execute and file an application for funding under the FTA Formula Program in the amount of \$7,471,416 for Rail Operations; and

BE IT FURTHER RESOLVED that the SMART Board of Directors, by adopting this resolution does hereby state that

1. SMART understands that the FTA Formula Program for the project is fixed at \$7,471,416, and that any cost increases must be funded by SMART from local

matching funds, and that SMART does not expect any costs increases to be funded with FTA Formula Program funds; and

2. SMART Rail Operations will be completed as described in this resolution; and
3. The program funds are expected to be expended and the project completed by the end of Fiscal Year 2022-23; and
4. SMART will comply with FTA requirements and all other applicable Federal and State and Local laws and regulations with respect to the proposed project; and

BE IT FURTHER RESOLVED that SMART is an eligible sponsor of projects in the program for FTA Formula Program funds; and

BE IT FURTHER RESOLVED that SMART is authorized to submit necessary information associated with receiving these FTA ARP funds for Rail Operations; and

BE IT FURTHER RESOLVED that there is no legal impediment to SMART making applications for FTA Formula Program funds; and

BE IT FURTHER RESOLVED that there is no pending or threatened litigation which might in any way adversely affect the proposed project, or the ability of SMART to deliver such a project; and

BE IT FURTHER RESOLVED that SMART agrees to comply with FTA requirements for use of these funds.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 6th day of April, 2022, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

David Rabbitt, Chair, Board of Directors
Sonoma-Marín Area Rail Transit District

ATTEST:

_____)_____
Leticia Rosas-Mendoza, Clerk of Board of Directors
Sonoma-Marín Area Rail Transit District

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AUTHORIZING THE SUBMITTAL OF A CLAIM FOR STATE TRANSIT ASSISTANCE FUNDS AND DESIGNATION OF THE GENERAL MANAGER AND/OR CHIEF FINANCIAL OFFICER AS THE AUTHORIZED AGENTS TO SUBMIT AND EXECUTE ALL REQUIRED DOCUMENTS FOR STATE TRANSIT ASSISTANCE FUNDS ON BEHALF OF THE DISTRICT FOR FISCAL YEARS 2022-2023

WHEREAS, the Sonoma-Marín Area Rail Transit District (SMART) is an eligible project sponsor and may receive funding from State Transit Assistance (STA) Funds, including STA Revenue Funds (PUC 99314), STA Population Funds (PUC 99313), STA Revenue State of Good Repair Funds (PUC 99314), and STA Population State of Good Repair Funds (PUC 99313) for transit projects; and

WHEREAS, the state and regional statutes related to these state transit funds require implementing agencies to abide by various state and regional regulations; and

WHEREAS, the Metropolitan Transportation Commission (MTC) is the regional agency responsible for disbursement of STA funds, including the STA State of Good Repair funds programmed by the State Department of Transportation (Caltrans) and STA Revenue Funds apportioned by the State Controller's Office; and

WHEREAS, MTC has developed guidelines for the purpose of administering and distributing STA funds to eligible project sponsors, described in MTC's Annual Fund Application Manual; and

WHEREAS, the State Controller's Office has apportioned \$2,291,573 in STA Revenue funds available for SMART to claim for Fiscal Year 2022-23; and

WHEREAS, MTC delegates prioritization of STA Population Funds to the County Transportation Agencies and the transit operators within those counties; and

WHEREAS, the Sonoma County Transportation Authority (SCTA) and the Transportation Authority of Marin (TAM) have established procedures to apportion funds to transit operators within each county, including apportionment of STA Population Funds to SMART; and

WHEREAS, SCTA has apportioned \$475,812 available to claim in Fiscal Year 2022-23 and TAM has apportioned \$59,106 available to claim in Fiscal Year 2022-23 by SMART; and

WHEREAS, MTC receives those recommended apportionments of STA Population funds and disburses those funds along with STA Revenue Funds and STA State of Good Repair Funds directly to transit operators; and

Resolution No. 2022-11
Sonoma-Marín Area Rail Transit District
April 6, 2022

WHEREAS, SMART wishes to delegate authorization to submit and execute all required STA claim documents and any amendments thereto to the SMART General Manager and Chief Financial Officer; and

WHEREAS, SMART wishes to utilize STA Revenue and STA Population apportionments to implement the SMART Rail Operations Project for Fiscal Year 2023 and wishes to utilize the STA State of Good Repair funds to implement the SMART Capital Spare Parts Project;

NOW, THEREFORE, BE IT RESOLVED THAT THE Board of Directors of the SMART District hereby

1. Authorizes the submittal of the SMART Rail Operations Project claim for State Transit Assistance Revenue and Population funds in the amount of \$2,826,491, and the SMART Capital Spare Parts Project claim for State Transit Assistance State of Good Repair funds in the amount of \$318,586 to the Metropolitan Transportation Commission for Fiscal Years 2023; and
2. Agrees to comply with all conditions and requirements set for in MTC’s Annual Fund Application Manual and applicable statutes, regulations and guidelines for all State Transit Assistance funded transit projects; and
3. Designates SMART’s General Manager and/or Chief Financial Officer to be authorized to execute all required documents of the State Transit Assistance program and any Amendments thereto with the Metropolitan Transportation Commission which may be necessary for the completion of the aforementioned project.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 6th day of April, 2022, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

David Rabbitt, Chair, Board of Directors
Sonoma-Marín Area Rail Transit District

ATTEST:

Leticia Rosas-Mendoza, Clerk of Board of Directors
Sonoma-Marín Area Rail Transit District

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AUTHORIZING THE EXECUTION OF THE CERTIFICATION AND ASSURANCES AND AUTHORIZED AGENT FORMS FOR STATE RAIL ASSISTANCE FUNDS AND AUTHORIZING THE EXECUTION OF THE STATE RAIL ASSISTANCE PROJECT, SMART COMMUTER RAIL OPERATIONS FOR FISCAL YEARS 2022/23 FOR AN ESTIMATED AMOUNT UP TO \$3,700,000

WHEREAS, the Sonoma-Marín Area Rail Transit District (SMART) is an eligible project sponsor and may receive funding from State Rail Assistance (SRA) for transit projects; and

WHEREAS, the statutes related to state-funded transit project require implementing agencies to abide by various regulations; and

WHEREAS, Senate Bill 1 (2017) named the California State Transportation Agency (CalSTA) as the administering agency for the SRA; and

WHEREAS, CalSTA has developed guidelines for the purpose of administering and distributing SRA funds to eligible project sponsors (Agencies identified as eligible recipients of these funds); and

WHEREAS, SMART wishes to delegate authorization to execute these documents and any amendments thereto to Eddy Cumins, General Manager, and Heather McKillop, Chief Financial Officer; and

WHEREAS, SMART wishes to implement the Fiscal Year 2023 SMART Commuter Rail Operations Project

NOW, THEREFORE, BE IT RESOLVED THAT THE Board of Directors of the SMART District hereby

1. Authorizes the submittal of the SMART Commuter Rail Operations Project for nomination and allocation request to CalSTA for State Rail Assistance funds for up to \$3,700,000 in FY2022/23; and
2. Agrees to comply with all conditions and requirements set for in the Certifications and Assurances and Authorized Agent documents and applicable statutes, regulations and guidelines for all SRA funded transit projects; and
3. Designates Eddy Cumins, General Manager, and Heather McKillop, Chief Financial Officer, to be authorized to execute all required documents of the SRA program and any Amendments thereto with the California Transportation Agency which may be necessary for the completion of the aforementioned project.

Resolution No. 2022-12
Sonoma-Marin Area Rail Transit District
April 6, 2022

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marin Area Rail Transit District held on the 6th day of April, 2022, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

David Rabbitt, Chair, Board of Directors
Sonoma-Marin Area Rail Transit District

ATTEST:

Leticia Rosas-Mendoza, Clerk of Board of Directors
Sonoma-Marin Area Rail Transit District



Authorized Agent Fiscal Year 2022-23

AS THE Chair, Board of Directors
(Chief Executive Officer/Director/President/Secretary)

OF THE Sonoma-Marin Area Rail Transit District (SMART)
(Name of County/City Organization)

I hereby authorize the following individual(s) to execute for and on behalf of the named Regional Entity/Transit Operator, any actions necessary for the purpose of obtaining State Rail Assistance (SRA) funds provided by CalSTA. I understand that if there is a change in the authorized agent, the project sponsor must submit a new form. This form is required even when the authorized agent is the executive authority himself. I understand the Board must provide a resolution approving the Authorized Agent. The Board Resolution appointing the Authorized Agent is attached.

Eddy Cumins, General Manager OR
(Name and Title of Authorized Agent)

Heather McKillop, Chief Financial Officer OR
(Name and Title of Authorized Agent)

(Name and Title of Authorized Agent)

David Rabbitt
(Print Name)

Chair, Board of Directors
(Title)

(Signature)

Approved this 6 day of April, 2021

Only needed if there is a change in the Authorized Agent(s).

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AUTHORIZING THE EXECUTION OF THE CERTIFICATION AND ASSURANCES AND AUTHORIZED AGENT FORMS FOR THE LOW CARBON TRANSIT OPERATIONS PROGRAM (LCTOP) FOR THE FOLLOWING PROJECT: RESTART TRANSIT OPERATIONS ON SMART FOR \$534,762

WHEREAS, the Sonoma-Marín Area Rail Transit District (SMART) is an eligible project sponsor and may receive funding from State Low Carbon Transit Operations Program (LCTOP) funds for transit projects; and

WHEREAS, the statutes related to state-funded transit project require implementing agencies to abide by various regulations; and

WHEREAS, Senate Bill 862 (2014) named the Department of Transportation (Department) as the administering agency for the LCTOP; and

WHEREAS, Department has developed guidelines for the purpose of administering and distributing LCTOP funds to eligible project sponsors (Agencies identified as eligible recipients of these funds); and

WHEREAS, SMART wishes to delegate authorization to execute these documents and any amendments thereto to Eddy Cumins, General Manager and/or Heather McKillop, Chief Financial Officer; and

WHEREAS, SMART wishes to implement the Restart Transit Operations on SMART Project to restore weekday and weekend trips on SMART from the reduced service levels experienced during the COVID-19 pandemic; and

WHEREAS, the LCTOP fund application process asks for identification of State-designated Priority Population Benefits and SMART's service area includes one State Disadvantaged Community census tract and the project is located within the boundaries of low-income community census tracts;

NOW, THEREFORE, BE IT RESOLVED THAT THE Board of Directors of the SMART District hereby

1. Authorizes the submittal of the Restart Transit Operations on SMART Project for project nomination and allocation request to the California Department of Transportation for Low Carbon Transit Operations Program funds for \$534,762; and
2. Agrees to comply with all conditions and requirements set for in the Certifications and Assurances and Authorized Agent documents and applicable statutes, regulations and guidelines for all LCTOP funded transit projects, including identification of Priority Population Benefits; and

3. Designates Eddy Cumins, General Manager, and/or Heather McKillop, Chief Financial Officer, to be authorized to execute all required documents of the LCTOP program and any Amendments thereto with the California Department of Transportation which may be necessary for the completion of the aforementioned project.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 6th day of April, 2022, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

David Rabbitt, Chair, Board of Directors
Sonoma-Marín Area Rail Transit District

ATTEST:

Leticia Rosas-Mendoza, Clerk of Board of Directors
Sonoma-Marín Area Rail Transit District



FY 2021-2022 LCTOP
Authorized Agent

AS THE Chair, Board of Directors
(Chief Executive Officer/Director/President/Secretary)

OF THE Sonoma-Marín Area Rail Transit District (SMART)
(Name of County/City/Transit Organization)

I hereby authorize the following individual(s) to execute for and on behalf of the named Regional Entity/Transit Operator, any actions necessary for the purpose of obtaining Low Carbon Transit Operations Program (LCTOP) funds provided by the California Department of Transportation, Division of Rail and Mass Transportation. I understand that if there is a change in the authorized agent, the project sponsor must submit a new form. This form is required even when the authorized agent is the executive authority himself. I understand the Board must provide a resolution approving the Authorized Agent. The Board Resolution appointing the Authorized Agent is attached.

Eddy Cumins, General Manager OR
(Name and Title of Authorized Agent)

Heather McKillop, Chief Financial Officer OR
(Name and Title of Authorized Agent)

Click here to enter text. OR
(Name and Title of Authorized Agent)

Click here to enter text.
(Name and Title of Authorized Agent)

David Rabbit Chair, Board of Directors
(Print Name) (Title)

(Signature)

Approved this 6 day of April, 2022



FY 2021-2022 LCTOP Certifications and Assurances

Lead Agency: Sonoma-Marin Area Rail Transit District (SMART)

Project Title: Restart Transit Operations on SMART

Prepared by: Joanne Parker, Grants Manager

The California Department of Transportation (Caltrans) has adopted the following Certifications and Assurances for the Low Carbon Transit Operations Program (LCTOP). As a condition of the receipt of LCTOP funds, Lead Agency must comply with these terms and conditions.

A. General

1. The Lead Agency agrees to abide by the current LCTOP Guidelines and applicable legal requirements.
2. The Lead Agency must submit to Caltrans a signed Authorized Agent form designating the representative who can submit documents on behalf of the project sponsor and a copy of the board resolution appointing the Authorized Agent.

B. Project Administration

1. The Lead Agency certifies that required environmental documentation is complete before requesting an allocation of LCTOP funds. The Lead Agency assures that projects approved for LCTOP funding comply with Public Resources Code § 21100 and § 21150.
2. The Lead Agency certifies that a dedicated bank account for LCTOP funds only will be established within 30 days of receipt of LCTOP funds.
3. The Lead Agency certifies that when LCTOP funds are used for a transit capital project, that the project will be completed and remain in operation for its useful life.
4. The Lead Agency certifies that it has the legal, financial, and technical capacity to carry out the project, including the safety and security aspects of that project.
5. The Lead Agency certifies that they will notify Caltrans of pending litigation, dispute, or negative audit findings related to the project, before receiving an allocation of funds.
6. The Lead Agency must maintain satisfactory continuing control over the use of project equipment and facilities and will adequately maintain project equipment and facilities for the useful life of the project.
7. Any interest the Lead Agency earns on LCTOP funds must be used only on approved LCTOP projects.
8. The Lead Agency must notify Caltrans of any changes to the approved project with a Corrective Action Plan (CAP).

9. Under extraordinary circumstances, a Lead Agency may terminate a project prior to completion. In the event the Lead Agency terminates a project prior to completion, the Lead Agency must (1) contact Caltrans in writing and follow-up with a phone call verifying receipt of such notice; (2) pursuant to verification, submit a final report indicating the reason for the termination and demonstrating the expended funds were used on the intended purpose; (3) submit a request to reassign the funds to a new project within 180 days of termination.

C. Reporting**1. The Lead Agency must submit the following LCTOP reports:**

- a. **Annual Project Activity Reports October 28th each year.**
 - b. **A Close Out Report within six months of project completion.**
 - c. **The annual audit required under the Transportation Development Act (TDA), to verify receipt and appropriate expenditure of LCTOP funds. A copy of the audit report must be submitted to Caltrans within six months of the close of the year (December 31) each year in which LCTOP funds have been received or expended.**
 - d. **Project Outcome Reporting as defined by CARB Funding Guidelines.**
 - e. **Jobs Reporting as defined by CARB Funding Guidelines.**
2. Other Reporting Requirements: CARB develops and revises Funding Guidelines that will include reporting requirements for all State agencies that receive appropriations from the Greenhouse Gas Reduction Fund. Caltrans and project sponsors will need to submit reporting information in accordance with CARB's Funding Guidelines, including reporting on greenhouse gas reductions and benefits to disadvantaged communities.

D. Cost Principles

1. The Lead Agency agrees to comply with Title 2 of the Code of Federal Regulations 225 (2 CFR 225), Cost Principles for State and Local Government, and 2 CFR, Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
2. The Lead Agency agrees, and will assure that its contractors and subcontractors will be obligated to agree, that:
 - a. Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allow ability of individual project cost items and
 - b. Those parties shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Every sub-recipient receiving LCTOP funds as a contractor or sub-contractor shall comply with



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Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

3. Any project cost for which the Lead Agency has received funds that are determined by subsequent audit to be unallowable under 2 CFR 225, 48 CFR, Chapter 1, Part 31 or 2 CFR, Part 200, are subject to repayment by the Lead Agency to the State of California (State). All projects must reduce greenhouse gas emissions, as required under Public Resources Code section 75230, and any project that fails to reduce greenhouse gases shall also have its project costs subject to repayment by the Lead Agency to the State. Should the Lead Agency fail to reimburse moneys due to the State within thirty (30) days of demand, or within such other period as may be agreed in writing between the Parties hereto, the State is authorized to intercept and withhold future payments due the Lead Agency from the State or any third-party source, including but not limited to, the State Treasurer and the State Controller.

A. Record Retention

1. The Lead Agency agrees and will assure that its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred project costs and matching funds by line item for the project. The accounting system of the Lead Agency, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP) and enable the determination of incurred costs at interim points of completion. All accounting records and other supporting papers of the Lead Agency, its contractors and subcontractors connected with LCTOP funding shall be maintained for a minimum of three (3) years after the "Project Closeout" report or final Phase 2 report is submitted (per ARB Funding Guidelines, Vol. 3, page 3.A-16), and shall be held open to inspection, copying, and audit by representatives of the State and the California State Auditor. Copies thereof will be furnished by the Lead Agency, its contractors, and subcontractors upon receipt of any request made by the State or its agents. In conducting an audit of the costs claimed, the State will rely to the maximum extent possible on any prior audit of the Lead Agency pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work performed by the Lead Agency's external and internal auditors may be relied upon and used by the State when planning and conducting additional audits.
2. For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with the performance of the Lead Agency's contracts with third parties pursuant to Government Code § 8546.7, the project sponsor, its contractors and subcontractors and the State shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times



FY 2021-2022 LCTOP

during the entire project period and for three (3) years from the date of final payment. The State, the California State Auditor, or any duly authorized representative of the State, shall each have access to any books, records, and documents that are pertinent to a project for audits, examinations, excerpts, and transactions, and the Lead Agency shall furnish copies thereof if requested.

- 3. The Lead Agency, its contractors and subcontractors will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by the State, for the purpose of any investigation to ascertain compliance with this document.

F. Special Situations

Caltrans may perform an audit and/or request detailed project information of the project sponsor’s LCTOP funded projects at Caltrans’ discretion at any time prior to the completion of the LCTOP.

I certify all of these conditions will be met.

Eddy Cumins, General Manager

(Print Authorized Agent)

Heather McKillop, Chief Financial Officer

(Title)

(Signature)

(Date)

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
AUTHORIZING THE SUBMITTAL OF APPLICATIONS, SUPPORTING DOCUMENTS AND EXECUTION OF
FUNDING AGREEMENTS FOR FISCAL YEAR 2022-2023 STATE TRANSIT ASSISTANCE STATE OF GOOD
REPAIR FUNDS FOR THE SMART CAPITAL SPARE PARTS PROJECT**

WHEREAS, the Sonoma-Marín Area Rail Transit District (SMART) is an eligible project sponsor and may receive State Transit Assistance funding from State of Good Repair Account (SGR) now or sometime in the future for transit projects; and

WHEREAS, the statues related to state-funded transit projects require a local or regional implementing agency to abide by various regulations; and

WHEREAS, the State Controller’s Office has released the Fiscal Year 2023 SGR apportionments and SMART is estimated to receive \$318,586 in SGR funds; and

WHEREAS, SMART’s Capital Spare Parts Project is an eligible project per the SGR program guidelines; and

WHEREAS, Senate Bill 1 (2017) named the Department of Transportation (Department) as the administering agency for the SGR; and

WHEREAS, the Department has designated the Metropolitan Transportation Commission (MTC) as the regional entity responsible for coordinating the administration of all SGR projects and distribution of SGR funds to eligible project sponsors (local agencies) within the nine county Bay Area; and

WHEREAS, SMART wishes to delegate the submittal of applications, necessary supporting documents and any amendments thereto to SMART’s General Manager or his designee,

NOW, THEREFORE, BE IT RESOLVED THAT THE Board of Directors of the SMART District hereby designates SMART’s General Manager, Eddy Cumins, and SMART’s Chief Financial Officer, Heather McKillop, be authorized to execute all required documents of the SGR program and any amendments thereto with the Metropolitan Transportation Commission and State of California.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 6th day of April, 2022, by the following vote:

DIRECTORS:
AYES:
NOES:
ABSENT:
ABSTAIN:

David Rabbitt, Chair, Board of Directors
Sonoma-Marín Area Rail Transit District

ATTEST:

Leticia Rosas-Mendoza, Clerk of Board of Directors
Sonoma-Marín Area Rail Transit District

DRAFT State Transit Assistance State of Good Repair Program

Recipient Certifications and Assurances

Recipient: *Sonoma-Marín Area Rail Transit District (SMART)*

Effective Date: *April 6, 2022*.

In order to receive State of Good Repair Program (SGR) funds from the California Department of Transportation (Department), recipients must agree to following terms and conditions:

A. General

- (1) The recipient agrees to abide by the State of Good Repair Guidelines as may be updated from time to time.
- (2) The potential recipient must submit to the Department a State of Good Repair Program Project List annually, listing all projects proposed to be funded by the SGR program. The project list should include the estimated SGR share assigned to each project along with the total estimated cost of each project..
- (3) The recipient must submit a signed Authorized Agent form designating the representative who can submit documents on behalf of the recipient and a copy of the board resolution authorizing the agent.

B. Project Administration

- (1) The recipient certifies that required environmental documentation will be completed prior to expending SGR funds. The recipient assures that each project approved for SGR funding comply with Public Resources Code § 21100 and § 21150.
- (2) The recipient certifies that SGR funds will be used for transit purposes and SGR funded projects will be completed and remain in operation for the estimated useful lives of the assets or improvements.
- (3) The recipient certifies that it has the legal, financial, and technical capacity to deliver the projects, including the safety and security aspects of each project.

- (4) The recipient certifies that there is no pending litigation, dispute, or negative audit findings related to any SGR project at the time an SGR project is submitted in the annual list.
- (5) Recipient agrees to notify the Department immediately if litigation is filed or disputes arise after submission of the annual project list and to notify the Department of any negative audit findings related to any project using SGR funds.
- (6) The recipient must maintain satisfactory continuing control over the use of project equipment and/or facilities and will adequately maintain project equipment and/or facilities for the estimated useful life of each project.
- (7) Any and all interest the recipient earns on SGR funds must be reported to the Department and may only be used on approved SGR projects or returned to the Department.
- (8) The recipient must notify the Department of any proposed changes to an approved project list by submitting an amended project list.
- (9) Funds will be expended in a timely manner.

C. Reporting

- (1) Per Public Utilities Code § 99312.1 (e) and (f), the recipient must submit the following SGR reports:
 - a. Annual Expenditure Reports within six months of the close of the fiscal year (by December 31st) of each year.
 - b. The annual audit required under the Transportation Development Act (TDA), to verify receipt and appropriate expenditure of SGR funds. A copy of the audit report must be submitted to the Department within six months of the close of each fiscal year in which SGR funds have been received or expended.

D. Cost Principles

- (1) The recipient agrees to comply with Title 2 of the Code of Federal Regulations Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- (2) The recipient agrees, and will assure that its contractors and subcontractors will be obligated to agree, that (a) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual project cost items and (b) those parties shall

comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

- (3) Any project cost for which the recipient has received payment that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, are subject to repayment by the recipient to the State of California (State). Should the recipient fail to reimburse moneys due to the State within thirty (30) days of demand, or within such other period as may be agreed in writing between the Parties hereto, the State is authorized to intercept and withhold future payments due the recipient from the State or any third-party source, including but not limited to, the State Treasurer and the State Controller.

E. Record Retention

- (1) The recipient agrees, and will assure that its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred project costs and matching funds by line item for the project. The accounting system of the recipient, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of the recipient, its contractors and subcontractors connected with SGR funding shall be maintained for a minimum of three (3) years from the date of final payment and shall be held open to inspection, copying, and audit by representatives of the State and the California State Auditor. Copies thereof will be furnished by the recipient, its contractors, and subcontractors upon receipt of any request made by the State or its agents. In conducting an audit of the costs claimed, the State will rely to the maximum extent possible on any prior audit of the recipient pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work performed by the recipient's external and internal auditors may be relied upon and used by the State when planning and conducting additional audits.
- (2) For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with the performance of the recipient's contracts with third parties pursuant to Government Code § 8546.7, the recipient, its contractors and subcontractors and the Department shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times during the entire project period and for three (3) years from the date of final payment. The State, the California State Auditor, or any duly authorized representative of the State, shall each have access to any books, records, and documents that are pertinent to a

project for audits, examinations, excerpts, and transactions, and the recipient shall furnish copies thereof if requested.

- (3) The recipient, its contractors and subcontractors will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by the State, for the purpose of any investigation to ascertain compliance with this document.

F. Special Situations

- (1) Recipient acknowledges that if a project list is not submitted timely, the recipient forfeits its apportionment for that fiscal year.
- (2) Recipients with delinquent expenditure reports may risk future eligibility for future SGR funding.
- (3) Recipient acknowledges that the Department shall have the right to perform an audit and/or request detailed project information of the recipient's SGR funded projects at the Department's discretion from SGR award through 3 years after the completion and final billing of any SGR funded project.. Recipient agrees to provide any requested project information.

I certify all of these conditions will be met.

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

BY: _____



Authorized Agent

The following individual(s) are hereby authorized to execute for and on behalf of the named Regional Entity/Transit Operator, and to take any actions necessary for the purpose of obtaining State Transit Assistance State of Good Repair funds provided by the California Department of Transportation, Division of Rail and Mass Transportation. This form is valid at the beginning of Fiscal Year 2022-2023 until the end of the State of Good Repair Program. If there is a change in the authorized agent, the project sponsor must submit a new form. This form is required even when the authorized agent is the executive authority himself.

Eddy Cumins, General Manager OR
(Name and Title of Authorized Agent)

Heather McKillop, Chief Financial Officer OR
(Name and Title of Authorized Agent)

(Name and Title of Authorized Agent)

AS THE Chair, Board of Directors
(Chief Executive Officer / Director / President / Secretary)

OF THE Sonoma-Marin Area Rail Transit District
(Name of County/City Organization)

David Rabbitt
(Print Name)

Chair, Board of Directors
(Title)

(Signature)

Approved this 6 day of April, 2022

Only needed if there is a change in the Authorized Agent(s).

Date: February 24, 2010
W.I.: 1227
Referred By: Operations Committee
Revised: 10/26/11-C
07/22/15-C

ABSTRACT

Resolution No. 3866, Revised

This resolution updates and adopts MTC's Transit Coordination Implementation Plan pursuant to the requirements of California Government Code §§ 66516 (SB 1474) and 66516.5; Public Utilities Code §§ 99282.51 and 99314.7; and Streets and Highways Code § 30914.5.

This resolution supersedes Resolution No. 3055, as amended.

Attachment B to this resolution was revised on July 22, 2015 to update and revise requirements for the 511 transit information program (Appendix B-1), the regional hub signage program (Appendix B-2), and the Clipper[®] program (Appendix B-3), and to add a new Appendix B-5 containing coordination requirements applicable to transit rider surveys.

Date: February 24, 2010
W.I.: 1227
Referred By: Operations Committee

Re: Transit Coordination Implementation Plan

METROPOLITAN TRANSPORTATION COMMISSION

RESOLUTION NO. 3866

WHEREAS, pursuant to Section 66516 of the California Government Code, the Metropolitan Transportation Commission (MTC) is required to adopt rules and regulations to promote the coordination of fares and schedules for all public transit systems within its jurisdiction and to require every system to enter into a joint fare revenue sharing agreement with connecting systems; and

WHEREAS, pursuant to Section 66516.5 of the Government Code, MTC may identify and recommend consolidation of those functions performed by individual public transit systems that could be consolidated to improve the efficiency of regional transit service and;

WHEREAS, pursuant to Section 99282.5 of the California Public Utilities Code (PUC), MTC is required to adopt rules and regulations to provide for governing interoperator transfers so that the public transportation services between public transit operators are coordinated; and

WHEREAS, pursuant to Section 99314.7 of the Public Utilities Code, MTC is required to evaluate an operator's compliance with coordination improvements prior to an operator receiving allocations of State Transit Assistance (STA) funds; and

WHEREAS, pursuant to Section 30914.5 of the Streets and Highways Code, MTC must adopt, as a condition of Regional Measure 2 fund allocation, a regional transit connectivity plan to be incorporated in MTC's Transit Coordination Implementation Plan pursuant to Section 66516.5, requiring operators to comply with the plan, which must include Policies and procedures for improved fare collection; and

WHEREAS, MTC previously adopted Resolution No. 3055 to implement these requirements; and

WHEREAS, in order to ensure progress toward implementing coordination recommendations, MTC wishes to formalize these recommendations by adopting the rules and requirements required pursuant to Government Code Section 66516 and PUC Section 99282.5 as set forth in this MTC Transit Coordination Implementation Plan, which includes a regional Transit Connectivity Plan and Implementation Requirements, attached to this Resolution as Attachments A and B, and incorporated herein as though set forth at length;

WHEREAS, MTC has consulted with the region's transit agencies to develop the regional Transit Connectivity Plan and Implementation Requirements, as required by Government Code §§ 66516 and Streets and Highways Code § 30914.5; now therefore be it

RESOLVED, that MTC adopts the Transit Connectivity Plan ("Plan") as set forth in Attachment A; and be it further

RESOLVED, that MTC adopts the Implementation Requirements, as set forth in Attachment B; and, be it further

RESOLVED, that prior to determining fund programming and allocations for an operator, MTC shall review the efforts made by the operator to implement the requirements identified in Attachments A and B, and if MTC determines that the operator has not made a reasonable effort to implement the requirements of Attachments A and B, MTC may, at its discretion, withhold, restrict or re-program funds and allocations to such operator to the extent allowed by statute, rule, regulation, or MTC policy; and, be it further

RESOLVED, that all funds subject to programming and/or allocation by MTC are covered by this resolution including but not limited to State Transit Assistance, Transportation Development Act, Regional Measure 2, Congestion Mitigation and Air Quality, Surface

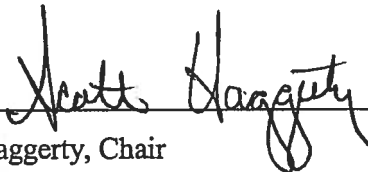
Transportation Program and Transit Capital Priorities funds, to the extent permitted by statute; and, be it further

RESOLVED, that this resolution shall be transmitted to the affected transit operators to guide them in development of their annual budgets and short-range transit plan revisions; and, be it further

RESOLVED, that the Operations Committee is authorized to approve amendments to Attachments A and B, following consultation with the affected transit operators; and be it further

RESOLVED, this resolution supersedes Resolution No. 3055.

METROPOLITAN TRANSPORTATION COMMISSION



Scott Haggerty, Chair

The above resolution was entered into by the Metropolitan Transportation Commission at a regular meeting of the Commission held in Oakland, California, on February 24, 2010

Date: February 24, 2010
W.I.: 1227
Referred By: Operations Committee

Attachment A
Resolution No. 3866
Page 1 of 1

Attachment A MTC Transit Connectivity Plan

This Attachment A incorporates by reference the Transit Connectivity Plan, previously approved by MTC in MTC Resolution No. 3055, which may be downloaded at:
<http://www.mtc.ca.gov/planning/connectivity/index.htm>.

Date: February 24, 2010
W.I.: 1227
Referred By: Operations Committee
Revised: 10/26/11-C
07/22/15-C

Attachment B
Resolution No. 3866, Revised
Page 1 of 28

Attachment B Implementation Requirements

The purpose of these Implementation Requirements is to establish the expectations and requirements for each transit agency with respect to implementing the recommendations of the Commission's Transit Connectivity Plan (2006) and maintaining other transit coordination programs, to outline the process by which MTC will involve transit operators in changes to coordination requirements, and to establish the process for Commission action in the event of transit agency non-compliance with these implementation requirements. A copy of this Resolution 3866 is available for download at <http://www.mtc.ca.gov/planning/tcip/>.

Per the Transit Connectivity Plan, MTC places high priority on improvements that:

- Accomplish tangible improvements for the passenger;
- Benefit the largest number of transit users, including both inter- and intra-system transit riders, to the extent possible;
- Improve system productivity by sharing agency resources; and
- Enhance the ability of transit riders to reach significant destinations in adjoining jurisdictions and along regional corridors by (1) improving the connections between system services and (2) providing through service to adjoining jurisdictions in those cases where the market clearly justifies such service.

In order to manage resources effectively, MTC will focus on a limited number of high priority improvements, transfer project leadership from MTC to one or more transit agencies where possible upon agreement of project partners, and establish priorities for implementing new projects.

The Commission has established specific transit operator requirements to implement a coordinated regional network of transit services and to improve overall service productivity as defined in the Transit Connectivity Plan. Any agency that is an eligible recipient of funds subject to allocation or programming by MTC is subject to these requirements, including, but not limited to the following:

1. Altamont Corridor Express
2. Alameda-Contra Costa Transit District
3. Caltrain
4. Capital Corridor Joint Powers Authority
5. Central Contra Costa Transit Authority
6. Eastern Contra Costa Transit Authority
7. Golden Gate Bridge, Highway and Transportation District
8. Livermore/Amador Valley Transit Authority
9. Marin County Transit District
10. Napa County Transportation Planning Agency
11. San Francisco Bay Area Rapid Transit District
12. San Francisco Municipal Transportation Agency
13. San Mateo County Transit District
14. Santa Clara Valley Transportation Authority
15. Solano County Transit (SolTrans)
16. Solano Transportation Authority
17. Sonoma County Transit
18. Sonoma Marin Area Rail Transit
19. Transbay Joint Powers Authority
20. Union City Transit
21. Water Emergency Transportation Authority
22. Western Contra Costa Transit Authority
23. City of Dixon
24. City of Emeryville
25. City of Fairfield (Fairfield and Suisun Transit)
26. City of Petaluma
27. City of Rio Vista
28. City of Santa Rosa
29. City of Vacaville

Unless a particular action is reserved for the Commission or the Operations Committee in this Attachment B (including any Appendices hereto), where reference is made in this Attachment B to approval, determination, clarification or the development of guidelines or policies by MTC, such action may be taken or made by MTC staff in a manner that is consistent with the principles set forth in Resolution 3866 and this Attachment B.

A. Operator Implementation Requirements

1. Implementation Requirements

The region has a history of implementing projects to improve transit coordination. Early efforts focused on regional programs and policies such as disseminating tax-free transit benefits and making paratransit eligibility determinations. More recent efforts, such as the Transit Connectivity Plan and efforts to increase Transit Sustainability, identified improvements to (1) designated regional transit hubs, including way-finding signage and transit information, real time transit information, schedule coordination, last-mile services and hub amenities, (2) system wide connectivity improvements, including 511 information and Clipper® and (3) coordination of demographic and travel pattern transit rider surveys.

Specific implementation requirements for transit operators are listed in Appendices to this Attachment:

- Appendix B-1, 511 Transit Program Requirements (including real-time transit);
- Appendix B-2, Regional Transit Hub Signage Program Requirements;
- Appendix B-3, Clipper® Implementation Requirements; and
- Appendix B-4, Maintenance of Existing Coordinated Services.
- Appendix B-5, Cooperative Demographic and Travel Pattern Transit Rider Survey Program Requirements

As MTC continues to address recommendations from the Transit Connectivity Plan and other emerging issues such as Transit Sustainability, new implementation requirements may become necessary. The appendices may be modified to reflect changes in implementation responsibilities, following the procedures outlined in this Attachment B, and subject to approval by the Commission.

2. SB 602 Fare and Schedule Coordination Requirements

Currently, each operator certifies its adherence to the provisions of SB 602 (Statutes 1989, Chapter 692, Government Code Section 66516, and as subsequently amended) as part of the annual allocation process for TDA and STA funds when requests for these funds are submitted to MTC. The SB 602 requirements are now incorporated into this Res. 3866, and each operator's compliance will be monitored accordingly. Per the requirements of SB 602, each transit agency in the region has a revenue sharing agreement with every connecting agency. In some cases, this takes the form of a reciprocal agreement to accept each other's passengers free of charge or to honor each other's period passes or single-trip transfers for a discounted fare. The BART/Muni FastPass is an example of a joint fare instrument to address SB602 requirements. Each transit agency in the region is required to maintain these reciprocal agreements as a condition of receiving STA funds (Gov. Code 66516).

3. Preserve Ability to Post and Disseminate Transit Information

MTC expects transit operators to preserve rights for MTC and connecting transit operators to post and disseminate connecting transit information for free within their facilities. This would include but not be limited to route, schedule, fare, real-time transit information and information about regional transit projects (511, Clipper®). For any transit agency that has already entered into a third-party agreement that compromises these rights, MTC expects the transit agency to make good faith efforts to reinstate these rights in their agreement at the earliest opportunity and, at a minimum, to reinstate such rights in future agreements or renewals entered into after adoption of this Resolution. Nothing herein shall be interpreted as requiring transit agencies to display advertising. Rather, the objective is to provide transit customers with pertinent information that improves their transit experience.

B. Cost-Sharing

Implementation activities and other new transit connectivity and coordination efforts added to these Implementation Requirements will be funded with MTC discretionary funds, transit agency funds, and/or in-kind contributions of MTC and transit agency staff resources. If MTC considers

adding new projects or services, MTC would implement the consultation process described in Section C below to vet any expected cost impacts on the operators. Transit agencies are required to waive all agency fees (for permits, etc.) they would otherwise charge to MTC, other transit operators or third-party contractors to implement and maintain regional transit coordination projects detailed in these requirements. Unless otherwise noted, MTC and transit agencies are expected to cover the cost to implement their respective roles and responsibilities as identified in these requirements or in pre-existing agreements. As specific initiatives move to implementation, a lead agency may be designated to coordinate implementation activities on behalf of the other participating transit agencies. Any agency that assumes this lead role and incurs costs that it would otherwise not assume in order to perform this function may be reimbursed, based upon an equitable agreement with the participating agencies, on a marginal cost basis (i.e., the additional cost the transit operator incurs to perform the work).

C. Consultation Process

MTC will consult with transit agencies when defining new coordination requirements for inclusion in Res. 3866 or when updating or revising requirements already in Res. 3866.

MTC will first consult with one or more of its technical advisory committees (TACs) to receive transit agency input on the specific implementation requirements. MTC will notify TAC members of the meetings and provide agendas in advance, and facilitate TAC discussions. Affected transit operators are expected to participate. Transit agencies are responsible for ensuring that the appropriate staff attends TAC meetings, that they participate in discussions in good faith, and that they communicate with other relevant staff within their agency (including those employees whose work may be affected) and executive management so that timely and constructive agency feedback can be provided to MTC. MTC will consider TAC input when formulating draft policy. In cases where there is no relevant TAC to address the issue under consideration, MTC will formulate draft policy and solicit feedback from general advisory groups, such as the Partnership Technical Advisory Committee (PTAC) or the Transit Finance Working Group.

At its discretion, MTC may also solicit input from the Partnership Board, the Partnership Technical Advisory Committee, the Transit Finance Working Group and MTC's Policy Advisory Council prior to Commission action. Following consultation with the TAC(s) and/or other advisory groups, MTC will solicit feedback from the Partnership Transit Coordination Committee. MTC will provide notification of the proposed PTCC meeting and agenda through written communication to transit general managers and transit program coordinators and posting of the meeting materials on MTC's web site.

After consulting with transit agencies, MTC will forward staff's recommendations to the MTC Operations Committee and the Commission.

D. Sanctions

The Commission expects each transit agency to comply with the requirements outlined in this Resolution and its Attachments as a condition of eligibility for STA and TDA funds, Regional Measure 2 funds, transit capital funds (including federal transit formula funds, STP, CMAQ and

STIP funds) and other funds subject to Commission programming and allocation actions. MTC intends that the region's transit agencies will implement these requirements in good faith and cooperation among themselves and with MTC. The sanction of withholding, restricting or re-programming funds to enforce cooperation will be exercised by MTC through an action of the Commission in cases where an agency fails to meet or fails to exhibit good faith in meeting these requirements. In such cases, MTC staff will notify the agency of the possibility that a sanction may be imposed. This notification will also recommend corrective actions that the agency should take to meet the implementation requirements. The notification will be sent no less than sixty (60) days prior to forwarding an MTC staff recommendation to the Commission.

Appendix B-1 511 Transit Information Requirements

MTC provides static transit data through the 511 phone and web service and real-time transit departure information through the 511 phone and web services and the Regional Hub Signage Program. MTC requires the full participation and support of all transit agencies to deliver quality and timely information. MTC and the transit agencies have jointly developed data transfer mechanisms for static and real-time transit data and identified appropriate roles and responsibilities for all parties, as documented in “*511 Transit and Real-Time Transit Program Roles and Responsibilities*.” MTC will review these requirements on an as-needed basis with transit agency partners, and they may be updated from time to time. The document is available at: <http://www.mtc.ca.gov/planning/tcip/>. The key roles and responsibilities to provide transit agency data on 511 services are as follows:

Transit Agencies will:

Generally:

1. Participate in MTC’s 511 Regional Transit Information System (RTIS) and Real-Time Transit Technical Advisory Committee (511 TAC).
2. Support, fund and staff their roles and responsibilities related to the 511 services as described below.
3. Notify transit customers of the availability of 511 information and 511.org on transit agency web sites, in printed materials, at bus stops/rail stations, and on other transit agency information channels.

For Static Transit Information:

4. Provide accurate, complete, and timely information regarding transit routes, stops, schedules, and fares for dissemination on 511 and/or through data feeds to third parties.
5. Transmit and maintain transit schedule data and other transit service information to MTC, through provided tools, protocols and processes as discussed, updated and agreed in 511 TAC meetings, in advance of any schedule changes to allow for MTC’s timely inclusion on 511 and/or data feeds to third parties. MTC will provide a schedule identifying the necessary advance time.
6. Perform quality control review (focusing on data changed for upcoming service revisions) on a representative sample of agency service data prior to transmittal to MTC.

For Real-time Transit Information:

7. Provide prediction data to the Regional System by establishing and maintaining a data connection to the Regional System and operating and maintaining an interface application.
8. Meet requirements, as defined in “*511 Transit and Real-Time Transit Program Roles and Responsibilities*.”
9. Conduct on-going performance monitoring to ensure accurate and timely transfer of data to the Regional System and accurate provision of prediction data to the public, in collaboration with MTC.
10. Ensure that there is no impact to its provision of prediction data to 511 in the event that the transit agency provides its specific prediction data to a third party.

11. Provide service disruption information to 511 where available and logistically feasible through agreed upon formats.

MTC will:

Generally:

1. Organize and facilitate the 511 TAC.
2. Fund, operate, and maintain the 511 traveler information program for regional transit information, including 511.org, 511 phone, regional electronic Transit Information Displays (eTIDs) at transit hubs, and other relevant applications.
3. In collaboration with transit agencies, conduct performance monitoring to ensure accurate and timely transfer of both static and real-time transit data to the Regional 511 System.

For Static Transit Information:

4. Notify transit customers of the availability of transit agency websites at appropriate locations on web site pages of 511.org.

For Real-time Transit Information:

5. Share with third party vendors and the general public the real-time transit data as described in “*511 Transit and Real-Time Transit Program Roles and Responsibilities.*”
6. Provide agencies with contact information for the 511 Traveler Information Center (TIC) to allow for the posting of real-time transit service disruption/emergency information on 511.

Appendix B-2 Regional Transit Hub Signage Program Requirements

MTC and transit agencies have developed the Regional Transit Hub Signage Program Technical Standards and Guidelines (e.g. ‘the Standards’) to ensure consistency across the region as the signage is deployed and maintained. A detailed version of the Standards is available at: <http://www.mtc.ca.gov/planning/tcip/>. The Standards may be periodically updated.

The Standards include:

1. Four main sign types: directional signs, wayfinding kiosks, transit information displays, real-time transit information displays.
2. Guidance to locate signs at key decision points between transit operator services.
3. Design elements to establish a common “look” and “feel” for the signage including:
 - Orange ‘i’ icon on a green background;
 - Standard logos, icons, arrows and messages and an organizing hierarchy;
 - Standard ‘frutiger’ font;
 - Hierarchy for the location of information in each sign;
 - Consistent map orientation and colors;
 - Directional map compass and walking distance/time radius;
 - Transit stop designation through agency logo/mode icon/route number ‘bubbles’; and
 - Prominent 511 logo/message and regional transit program information.

Transit Agencies will:

1. Participate on the Transit Connectivity TAC as needed to raise and consider any further revisions to the Standards or other relevant transit connectivity policies.
2. Comply with the Standards. Where exceptions to the Standards are desired, transit operators must seek prior approval from MTC. Where ambiguity in the Standards exists, transit operators shall request clarification from MTC.
3. Comply with task responsibilities (O&M, replacement and ownership) further detailed in Appendix B-2, Attachment 1. In most cases, the transit agency that owns the property on which the sign has been installed is assigned responsibility. For signs installed on property not owned by a transit agency, the transit agency providing the most service (passenger boardings) in the area of the sign has been assigned responsibility.
4. Facilitate the permitting of signs by waiving all fees that a transit agency would usually charge for sign installation on its property or leased operating areas.
5. As transit agencies plan new facilities or prepare for major remodels of existing facilities, transit agencies will consult with MTC early in the planning process to ensure effective information is provided to transit users and consistency with the Standards is achieved. MTC will determine if a project requires application of the Standards. If yes, the responsible transit agency will implement the appropriate signage throughout the transit facility in accordance with the Standards.

MTC will:

1. In consultation with Transit Connectivity TAC, develop, document and periodically update regional sign Standards.
2. Comply with cost and task responsibilities detailed in Appendix B-2, Attachment 1.

3. Solicit feedback from transit agencies on significant changes to regional policy affecting the 24 hubs through the Transit Connectivity Technical Advisory Committee.
4. As resources permit, provide technical assistance to transit agencies wishing to extend the regional sign Standard to non-regional hubs.
5. Explore opportunities to extend constancy of wayfinding information across modes throughout the region, including through technological and other innovative means.

Appendix B-2, Attachment 1: Hub Signage Program Cost/Task Responsibilities

Hub Signage Operations & Maintenance (O & M)	Task	Cost Responsibility		Task Responsibility	
		Region	Operator	Region	Operator
A. Physical O & M by Sign Type					
1. Directional/Wayfinding Signs (incl. hub identification signs)	a. Annual Operations and Maintenance (O&M) ¹		X		X
	b. Lifecycle Replacement ²		X		X
	c. Ownership ³		X		X
2. Wayfinding Kiosks	a. Annual Operations and Maintenance (O&M) ¹		X		X
	b. Lifecycle Replacement ²		X		X
	c. Ownership ³		X		X
3. Real-Time Transit Signs	a. Annual Operations and Maintenance (O&M) ¹		X		X
	b. Lifecycle Replacement ²	X			X
	c. Ownership ³		X		X
4. Transit Information Displays	a. Annual Operations and Maintenance (O&M) ¹		X		X
	b. Lifecycle Replacement		X		X
	c. Ownership ³		X		X
B. Information Content O & M by Sign Type					
1. Directional/Wayfinding Signs (incl. hub identification signs)	d. Static Information Content		X		X
	d. Printed information content ⁴	X		X	
2. Wayfinding Kiosks	d. Printed information content ⁴	X		X	
	d. Electronic information content	X		X	

¹ Including electricity, cleaning, graffiti removal, and repairs.
² Including planning, procurement, coordination, and installation.
³ Insurance, liability, and warranty claims.
⁴ Including quarterly cleaning of physical sign case.

Appendix B-3 Clipper® Implementation Requirements

This Appendix defines the Commission's expectations of the transit agencies to ensure a successful operation of the Clipper® (formerly TransLink®) system in three sections:

- I. Participation Requirements
- II. Regional Clipper® Communications and Marketing Activities
- III. Fare Media Transition Schedules by Specific Operators

Section I describes general Clipper® implementation requirements for participating operators.

Section II defines expectations for communications and marketing: a program area critical to smooth implementation of a full transition to Clipper® that can only be addressed through a collaborative, regional approach.

Section III establishes the dates by which the transit agencies that are currently operating Clipper® will transition their existing prepaid fare media to Clipper®-only availability.

I. Participation Requirements

The Clipper® fare payment system was procured by MTC and has been implemented, operated and maintained under the Design Build Operate Maintain contract between MTC and Cubic Transportation Systems, Inc. for the Clipper® fare payment system (the current Clipper® Contract). The Clipper® Contract was assigned to Cubic Transportation Systems, Inc. (the current Clipper® Contractor), on July 2, 2009 and has an operating term extending through November 2, 2019. In this role as counterparty to the Clipper® Contract, MTC is sometimes referred to in this Appendix B-3 as the "Contracting Agency." Transit agencies operating Clipper® as their fare payment system are required to enter into the Memorandum of Understanding (MOU) among MTC and the transit agencies operating Clipper®.

The following describes general Clipper® implementation requirements for participating operators. An operator's failure to meet one or more of these requirements may result in non-compliance with Resolution 3866.

1. Implement and operate the Clipper® fare payment system in accordance with the Clipper® Operating Rules, as adopted and amended from time to time in accordance with the MOU. The current Clipper® Operating Rules (updated in June 2012) are incorporated herein by this reference. The Clipper® Operating Rules establish operating parameters and procedures for the consistent and efficient operation of Clipper® throughout the region and are available on MTC's website at <http://www.mtc.ca.gov/planning/tcip/>.
2. Pay its share of costs according to the MOU, including the cost allocation formula set forth in Appendix B to the MOU.
3. Abide by the revenue sharing formula in Appendix B to the MOU.

4. Make its facilities and staff available for implementation and operation of Clipper[®]. Any Operator and the Contracting Agency may agree to an Operator-Specific Implementation Plan, setting forth specific requirements regarding implementation and operation of Clipper[®] for such Operator.
5. Make determinations regarding the placement of Clipper[®] equipment on the Operator's facilities and equipment; perform necessary site preparation; attend Clipper[®] Contractor training on the use of the Clipper[®] equipment; and provide training to employees using the equipment.
6. Implement, operate and promote Clipper[®] as the primary fare payment system for each Operator. Clipper[®]'s primary market is frequent transit riders (i.e., commuters and transit passholders). Operators shall not establish other fare payment systems or fare policies that could deter or discourage these patrons' preference to use Clipper[®]. Operators shall set fares so that fares paid with Clipper[®] are equivalent or lower than fares paid either with cash or other forms of payment.

No new non-Clipper[®] prepaid fare product, other than for promotional, special event or limited-audience—e.g., tourist—fares, shall be created by any transit operator without consulting with and receiving prior approval from MTC.

Nothing in this provision is intended to discourage operators from providing leadership on new technologies or innovations that would offer improvement to fare collection operations or the customer experience. The expectation is that these new initiatives should leverage the attributes and assets of Clipper[®], not compete with Clipper[®] or undermine customers' preference to use Clipper[®].

7. Perform first-line maintenance upon Clipper[®] equipment located on their facilities or vehicles, promptly notify the Clipper[®] Contractor when second-line maintenance of Clipper[®] equipment is needed, promptly notify the Contracting Agency and the Clipper[®] Contractor of any issues affecting daily financial reconciliation or accuracy of system reports, issue all types (including, but not limited to, cards configured as senior or youth) of Clipper[®] cards and add value to existing Clipper[®] cards from all Ticket Office Terminals located at their business facilities, and provide at least the same level of front-line customer service to their patrons using Clipper[®] as to patrons using other forms of fare payment.
8. Sufficiently train and educate agency personnel who have Clipper[®]-related responsibilities so those personnel are able to carry out the requirements placed upon operators in this Resolution.
9. Assist MTC, as necessary, to develop a program for Transit Capital Priorities (TCP) funds for the purpose of procuring and installing end-of-lifecycle Clipper[®] equipment and to submit and administer grants for programmed TCP funds on a "pass-through" basis.

10. Take financial responsibility for replacement of equipment damaged in-service due to vandalism or any other cause not covered by the Clipper® Contract warranty.¹

II. Regional Clipper® Communications and Marketing Activities

1. Effective Date. For operators currently operating the Clipper® system, these Clipper® marketing and communications requirements are effective immediately. For operators not yet operating Clipper®, the requirements are effective two months after MTC's approval of the Clipper® system as Revenue Ready for that operator.
2. General Requirements. Operators shall present Clipper® to customers, employees and media as a fully operational fare payment option. This includes, but is not limited to, identification of Clipper® as a fare payment option in brochures, websites, advertisements, schedules/timetables, email newsletters, internal memos, bulletins and training manuals, and any other materials that describe an operator's fare payment options. Operators shall present Clipper® as an option so that Clipper® has equal or greater prominence than the presentation of other payment options. Each operator shall incorporate and/or modify the presentation of Clipper® in existing brochures, websites, schedules/timetables, etc. whenever the operator next updates the content of these items.

In all cases, operators' marketing and communications about Clipper®, whether in brochures, websites, advertisements or other forms, shall adhere to Clipper® brand guidelines developed by MTC with input from transit operators. The Clipper® Brand Guidelines are available at <https://www.clippercard.com/ClipperWeb/toolbox.do>.

3. Equipment Identification. If not already identified as such, operators shall identify Clipper®-compatible fare payment and Clipper®-compatible vending equipment with a decal or other visual identifier to indicate the equipment's Clipper® compatibility.
4. Operator Training. Operators shall ensure appropriate Clipper®-related training for transit operator staff including, but not limited to, vehicle operators, station agents, conductors, customer service personnel, proof of payment officers, ticket sales staff and any other personnel responsible for interacting with customers concerning payment options.
5. Marketing Coordination. Operators shall participate in the development and implementation of a Clipper® marketing and communications initiative that will begin approximately June 1, 2010. This includes, but is not limited to:
 - Staff participation in the development and implementation of the initiative;
 - Dissemination of Clipper® brochures and/or other information materials on vehicles and/or in stations in a manner consistent with the operator's dissemination of other similar operational information; and
 - Providing information about Clipper® utilizing space available on vehicles and/or in stations that is already used by the operator for dissemination of operational information (space available includes, but is not limited to, car cards, posters, and electronic displays).

¹ During the term of the existing Clipper® Contract, MTC shall procure replacement equipment on an operator's behalf, and operators shall pay for the full cost of the equipment including all installation costs and materials.

6. **Funding.** Funding for the initial phases of the communications and marketing program shall come from the marketing funds already in the Clipper[®] capital budget and previously assigned to individual operators.

III. Fare Media

The tables below set forth *the fare media* that the designated operator shall convert to Clipper[®]-only availability and *the date* by which the operator shall no longer accept such fare media in its existing form. In general, MTC has emphasized with each operator a transition of those fare products which currently represent a significant portion of that operator's boardings.

An operator will be excused from compliance with a transition date requirement for particular fare media, if the Clipper[®] Contractor has not met at least 80% of the cardholder support service level standards set forth in Section B.1.12 of the Clipper[®] Contract for the two calendar months ending one month before the scheduled transition date. The operator's transition date requirement for the affected fare media will be reset to one month after the Clipper[®] Contractor has met at least 80% of the Clipper[®] Contract's cardholder support service level standards for two consecutive calendar months.

AC Transit will transition its existing fare media by the following dates:

Fare Media	Date for Ending Acceptance of Listed Prepaid Fare Media	Comments
EasyPass	Transition complete	
31-Day Transbay Pass – Adult	Transition complete	
Bear Pass (U.C. Berkeley Employee Pass)	Transition complete	
10-Ride Ticket – Youth	Transition complete	
10-Ride Ticket – Adult	Transition complete	
31-Day Local Pass – Youth	Transition complete	
31-Day Local Pass – Adult	Transition complete	
10-Ride Ticket – Senior/Disabled	Transition complete	Product in paper form was effectively eliminated upon transition of Youth 10-Ride Ticket to Clipper®-only.

BART will transition its existing fare media by the following dates:

Fare Media	Date for Ending Sales and/or Acceptance of Listed Prepaid Fare Media	Comments
EZ Rider card as payment for transit	Transition complete	
High Value Discount (HVD) adult magnetic stripe ticket (blue)	12/31/2011	<ul style="list-style-type: none"> • Prior to 12/31/11, BART must discontinue sales of HVD tickets except as noted below; however, BART may continue accepting HVD tickets for fare payment after 12/31/2011. • BART may continue sales of HVD tickets for a limited period of time at seven My Transit Plus locations currently operating in BART stations. This exception shall remain in effect until 60 days after: <ul style="list-style-type: none"> (i) The Clipper® equivalent of HVD tickets becomes available through WageWorks and Edenred USA (parent company of Commuter Check); and (ii) The Clipper® Contractor completes the requirements in Section 2.3 of Clipper® Contract Change Order 122.
Senior magnetic stripe ticket (green)	12/31/2011	<ul style="list-style-type: none"> • Prior to 12/31/11, BART must discontinue sales of green tickets except as noted below; BART may continue accepting green tickets for fare payment after 12/31/2011. • BART may continue sales of green tickets at a limited number of existing sales locations. The number of locations and the length of time sales can continue is subject to mutual agreement by MTC and BART after public comment.
(table continues on following page)		

Fare Media	Date for Ending Sales and/or Acceptance of Listed Prepaid Fare Media	Comments
Youth and disabled magnetic stripe ticket (red)	12/31/2011	<ul style="list-style-type: none"> • Prior to 12/31/11, BART must discontinue sales of red tickets except as noted below; BART may continue accepting red tickets for fare payment after 12/31/2011. • BART may continue sales of red tickets at a limited number of existing sales locations. The number of locations and the length of time sales can continue is subject to mutual agreement by MTC and BART after public comment.
Student magnetic stripe ticket (orange)	Requirement waived	Product not available on Clipper®. Recommend that BART align its definition of youth/student discount with all other operators in region and eliminate this fare product.

Caltrain will transition its existing fare media by the following dates:

Fare Media	Date for Ending Acceptance of Listed Prepaid Fare Media	Comments
Full Fare Monthly Pass	Transition complete	
8-ride Ticket	Transition complete	
Caltrain + Muni Monthly Pass	Transition complete	
Eligible Discount Monthly Pass	Transition complete	
8-ride Eligible Discount Ticket	Transition complete	

Golden Gate Transit and Ferry will transition its existing fare media by the following dates:

Fare Media	Date for Ending Acceptance of Listed Prepaid Fare Media	Comments
\$25 Value Card	Transition complete	
\$50 Value Card	Transition complete	
\$75 Value Card	Transition complete	

San Francisco MTA will transition its existing fare media by the following dates:

Fare Media	Date for Ending Acceptance of Listed Prepaid Fare Media	Comments
Monthly Passes		
Adult BART/Muni Monthly Pass	Transition complete	
Adult Muni Monthly Pass	Transition complete	
Senior Muni Monthly Pass	Transition complete	
RTC/Disabled Monthly Pass	Transition complete	
Youth Monthly Pass	Transition complete	
Visitor/Cable Car		
1 Day Passport	Requirement waived	Product not currently available on Clipper® limited-use (LU) tickets. However, LUs are preferred implementation option.
3 Day Passport	Requirement waived	Product not currently available on Clipper® limited-use (LU) tickets. However, LUs are preferred implementation option.
7 Day Passport	Requirement waived	Product not currently available on Clipper® limited-use (LU) tickets. However, LUs are preferred implementation option.
Ticket Books/Tokens		
Adult Single Ride Ticket Book	Transition complete	
Inter-Agency Transfers		
BART Two-Way Transfer	Transition complete	
BART/Daly City Two-Way Transfer	Transition complete	
Golden Gate Ferry Two-Way Transfer	Transition complete	
Transfers		
Bus Transfers	Requirement waived	MTC and SFMTA are considering alternative strategies that could have a

Fare Media	Date for Ending Acceptance of Listed Prepaid Fare Media	Comments
		similar market share impact, including a fare differential favoring Clipper®
Metro/Subway Transfers	Transition complete	
ADA Transfers	Transition complete	

SamTrans will transition these existing fare media by the following dates:

Fare Media	Date for Ending Acceptance of Listed Prepaid Fare Media	Comments
Local Monthly Pass	Transition complete	SamTrans may continue to distribute paper form of this fare product through the county's social services agencies.
Local SF Monthly Pass	Transition complete	
Express Monthly Pass	Transition complete	
Eligible Discount Monthly Pass—senior/disabled	Transition complete	SamTrans may continue to distribute paper form of this fare product through the county's social services agencies.
Youth Monthly Pass	Transition complete	<ul style="list-style-type: none"> • SamTrans may continue to distribute paper form of this fare product through the county's social services agencies. • "Discount Youth Pass" may continue to be available in paper form through schools for eligible students only.

VTA will transition these existing fare media by the following dates:

Fare Media	Date for Ending Acceptance of Listed Prepaid Fare Media	Comments
Monthly Pass	Transition complete	Paper monthly passes will only be sold to social service agencies and providers, school districts, and nonprofit organizations which distribute the passes free or at a discount.
Monthly Express Pass	Transition complete	Paper monthly express passes will only be sold to social service agencies and providers, school districts, and nonprofit organizations which distribute the passes free or at a discount.
Day Pass Tokens	Transition complete	Day pass tokens will only be sold to social service agencies and providers, school districts, and nonprofit organizations which distribute the passes free or at a discount.

Other Operators

The following are general Clipper® implementation and fare media transition requirements for operators not yet operating Clipper®. Following MTC's approval of the Clipper® system as Revenue Ready for a given operator, MTC will work with the operator to identify more specific fare media transition plans. Unless otherwise approved by MTC, an operator shall (i) begin accepting Clipper® for fare payment by customers no more than two months following MTC's approval of the Clipper® system as Revenue Ready for the operator, and (ii) end acceptance of prepaid non-Clipper® fare media no more than one year following MTC's approval of the Clipper® system as Revenue Ready for the operator.

All of the below-listed operators (the "Phase 3 Operators") are exempt from subsection (ii) of the immediately preceding paragraph for the shorter of (a) the term of the MOU, as it may be extended hereafter, and (b) the term of the existing Clipper® Contract as it may be extended hereafter. For the duration of such exemption, the Phase 3 Operators may continue to accept prepaid non-Clipper® fare media, including passes, tickets and transfers; provided that such Operators continue to comply with Section I.6 and all other applicable provisions of this Appendix B-3.

Phase 3 Operators

Central Contra Costa Transit Authority (County Connection)
City of Fairfield, as the operator of Fairfield and Suisun Transit (FAST)
City of Petaluma, as the operator of Petaluma Transit
City of Santa Rosa, as the operator of Santa Rosa CityBus
City of Vacaville, as the operator of Vacaville City Coach
Eastern Contra Costa Transit Authority (Tri Delta Transit)
Livermore/Amador Valley Transit Authority (LAVTA Wheels)
Marin County Transit District (Marin Transit)
Napa County Transportation and Planning Agency (VINE Transit)
Solano County Transit (SolTrans)
Sonoma County Transit
Union City Transit
Water Emergency Transportation Authority (San Francisco Bay Ferry)
Western Contra Costa Transit Authority (WestCAT)

Appendix B-4 Maintenance of Existing Coordinated Services

The Commission's previously adopted Transit Coordination Implementation Plan (Resolution No. 3055) included a number of coordination programs that were not modified by the Transit Connectivity Plan. Of these, the Commission expects the transit operators to continue to support the following:

1. Regional Transit Connection (RTC) Discount Card Program – Provides identification cards to qualified elderly and disabled individuals for reduced fares on transit. Transit operators and MTC maintain memorandums of understanding about roles and responsibilities for program implementation. The RTC Discount Card is being incorporated into the Clipper® program
2. ADA Paratransit Eligibility Program – Consists of a regional application, a regional eligibility database administered by a transit agency on behalf of the region and universal acceptance across transit systems of all eligibility determinations. Transit operators have flexibility to tailor the application process to screen applicants to facilitate eligibility determinations.
3. Interagency ADA Paratransit Services – Establishes policies to promote a consistent approach to interagency paratransit passenger transfers (see Appendix A-4, Attachment 1).
4. Regional Transportation Emergency Management Plan – The Regional Transportation Emergency Management Plan (formerly know as the Trans Response Plan) is a framework to coordinate transit services during regional emergencies. Transit operators are required to participate in regional exercises to test the implementation of the plan. Transit agencies certify compliance through their annual State Transit Assistance (STA) funding claims process, and also address emergency coordination planning through their Short Range Transit Plans.
5. Regional Links/Express Bus/Feeder Bus Services – Regional Links include bus service across the Bay Bridge, Dumbarton Bridge, the San Mateo Bridge and the Richmond/San Rafael Bridge that has been incorporated into the Express Bus Services program funded with Regional Measure 2 (RM2), and will be monitored per RM2 requirements. Express Bus Services also include Owl Service which operates along the BART rail lines at night when BART is closed. Express feeder bus services to/from BART stations during peak periods are maintained through direct allocation of BART's STA funds to transit agencies as specified in the annual Fund Estimate. If STA is unavailable, BART's General Fund up to \$2.5 million is available to support these services per existing agreement. If additional funding is needed, it will be subject to discussion on an annual basis.

Appendix B-4, Attachment 1 Requirements for Interagency ADA Paratransit Services

Note: Transit operators developed guidelines for interagency ADA paratransit services. MTC adapted these guidelines for the purpose of defining coordination requirements.

Consistent with the Americans with Disabilities Act (ADA) requirement to provide paratransit services that are complementary to fixed-route transit services, Bay Area transit operators have identified a transfer-oriented network of interagency paratransit services. Interagency paratransit trips may require a transfer between connecting paratransit providers at a location specified by the transit operator. The following regional requirements are intended to improve connections between paratransit services for both passengers and paratransit providers. The requirements establish regional protocol for how the system will operate as well as specify the responsibilities of paratransit providers to assure an efficient, user-friendly system.

1. All public transit agencies in the San Francisco Bay Area will honor the regional ADA Eligibility Process [as approved by transit agencies] when certifying an individual for ADA paratransit services.
2. Eligibility for an individual requesting interagency paratransit services will be verified through the ADA Paratransit Regional Eligibility Database.
3. Transit operators will develop and make available customer information on how to access and use interagency paratransit services. This information will be made readily available in accessible formats.
4. Interagency paratransit trips will usually require a transfer between connecting paratransit providers at a location specified by the transit operator. Transit operators will transfer passengers at designated transfer locations that, to the extent possible, are also used as fixed-route transfer sites. For operational efficiency or customer service quality, use of other transfer sites is not precluded. Operators will seek to establish transfer locations that are clean, safe, sheltered and well-lit with accessible telephones and restrooms nearby. Established interagency paratransit transfer locations on transit properties will be clearly marked with a consistent sign designed and adopted at the regional level.
5. For operational efficiency or customer service reasons, transit operators may:
 - transfer passengers to a connecting paratransit provider at a transfer location, including having the passenger wait without assistance until the connecting provider arrives; or
 - provide through-trip service into an adjoining transit agency's service area (not requiring a transfer); or
 - provide transfer assistance to passengers at transfer points (waiting with the passenger until connecting provider arrives); and

- coordinate their schedules and dispatch procedures with connecting provider(s) on the day of service.
6. Coordinating Bay Area interagency paratransit reservations shall be the responsibility of paratransit providers. Subject to availability of rides, a single transit coordinator will be responsible to schedule an interagency paratransit trip (including round-trip service). For trips requiring coordination between only two transit operators, the operator in whose jurisdiction the trip originates will usually perform the function of trip coordinator to schedule the entire trip and to serve as a point of contact for passenger inquiries. For trips involving three or more paratransit providers, a regional trip coordinator may perform these functions.
 7. Transit operators shall accept reservations for interagency paratransit trips according to their local advance reservation policies. When coordinating a trip, the shorter advance reservation period of the connecting agencies will apply. In some cases, the scheduling operator will be unable to determine the availability of a requested interagency paratransit trip until the shortest advance reservation period is open. If, due to differences in advance reservation periods, trip availability cannot be determined at the time the trip is requested, the scheduling operator will inform the passenger of when to call to complete the trip reservation process. In the meantime, the scheduling operator may book available legs of the requested trip according to local advance reservation policies.
 8. Transit operators will charge a fare consistent with each individual operator's fare payment policy. All fares will be communicated to the passenger by the operator scheduling the first leg of the interagency paratransit trip at the time the ride is confirmed. Operators and MTC will work toward a regional fare payment method and/or regional fare policy for paratransit services.

Appendix B-5 Cooperative Demographic and Travel Pattern Transit Rider Survey Program Requirements

This Appendix defines the Commission's expectations of the transit agencies to ensure efficient collection of passenger demographic and travel pattern² information.

The Commission and the transit agencies have a common interest in understanding the demographics and travel patterns of transit riders. Between 2012 and March 2015, Commission staff have carried out transit surveys in partnership with 15 separate transit agencies as part of the Cooperative Demographic and Travel Pattern Transit Rider Survey Program ("Survey Program" henceforth). Collecting this information together is more cost effective than collecting it separately. The resulting consolidated data facilitates across-agency comparisons and analyses.

The key roles and responsibilities of MTC and the transit agencies on the Survey Program are as follows:

Transit agencies will:

1. Participate in the Survey Program when collecting information on transit passenger demographics AND travel patterns together.
2. Contribute to the cost of the agency-specific survey performed as part of the Survey Program. Federally-funded operators not listed below will pay no cost to survey service they provide; the following operators will pay 20 percent of the cost to survey service they provide:
 - Alameda-Contra Costa Transit District;
 - Bay Area Rapid Transit District;
 - Caltrain;
 - Golden Gate Bridge, Highway and Transportation District;
 - San Francisco Municipal Transportation Agency;
 - San Mateo County Transit District; and,
 - Santa Clara Valley Transportation Authority.
3. Contribute a limited number of agency-specific survey questions.
4. Contribute advice and suggestions to the survey procedures including, but not limited to, development of sampling plans, frequency and timing of demographic and travel pattern surveying, instrument design, and recruitment strategies.
5. Share ownership of all work products including raw and processed data.

² Defined here as: (a) the precise location of the trip origin, first transit boarding, last transit alighting, and trip destination; (b) the means of travel between the trip origin and first transit boarding and between the last transit alighting and trip destination; and, (c) the sequence of transit routes used between the first transit boarding and the last transit alighting.

MTC will:

1. Procure consultant resources to carry out the Survey Program.
2. Oversee consultant performance to ensure delivery of high quality products.
3. Contribute to the cost of the Survey Program. MTC will pay 80 percent of the cost to survey service provided by the seven agencies identified in item 2 of the “transit agencies will” list above; MTC will pay 100 percent of the cost to survey service provided by federally-funded transit providers not identified in the above list.
4. Develop a standard set of survey questions (including response options) and update these questions, as needed, in consultation with the transit agencies.
5. Develop and update a set of survey procedures including, but not limited to, development of sampling plans, instrument design, and passenger recruitment strategies.
6. Deliver survey results, including raw data, procedure documentation, and summary reports, to transit agencies in a timely manner.
7. Maintain a database of regional transit rider demographics and travel patterns.
8. Convene a working group to discuss the surveying effort (including the survey procedures) and the timing of surveys relative to capital projects, federal requirements, financial resources, customer service and other agency-led survey efforts, and schedule mark-ups (a.k.a., sign-ups, bid-dates). The group will meet no less than once a year and will develop and maintain a set of Survey Program standard operating procedures that will define operator-specific question allowances, data distribution procedures (including any necessary privacy safeguards), and other details.
9. Share ownership of all work products including raw and processed data.



April 6, 2022

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SUBJECT: State Route 37 Highway Improvements and SMART – Draft White Paper

Dear Board Members:

RECOMMENDATION:

Discuss the enclosed White Paper that establishes a SMART position on the improvements that are being planned for the State Route 37 (SR37):

- 1) Obligations to maintain and not negatively impact the existing Brazos railroad alignment
- 2) Opportunities to integrate the railroad into the SR37 improvements

SUMMARY:

The Metropolitan Transportation Commission (MTC) and the Congestion Management Agencies of Marin, Napa, Solano and Sonoma counties are currently developing plans to address flooding and traffic congestion problems on SR37 between Highway 101 and Highway 80. The planning is intended to address these two major problems and develop SR37 into a more resilient multimodal facility that is prepared for sea level rise and the mobility challenges of the 21st century.

SMART staff have participated in planning meetings and have found that the Brazos railroad alignment that parallels SR37 near Highway 101 and ultimately crosses SR37 at Highway 121 in Sears Point is not fully understood. The Brazos railroad line is the only connection for Marin and Sonoma Counties to the National Railroad network. It is an active line, delivering freight goods to Sonoma County weekly, and a tremendous resource for the two counties. As such, SMART has Federal "common carrier" obligations to ship freight via rail. Overall, improvements to the SR37 present opportunities to expand freight movements, reducing truck traffic on the roads, develop passenger rail, and provide an emergency link that is independent of the highway system.

The State Route 37 Corridor – Freight and Passenger Rail Opportunities White Paper that is included with this staff report provides information on the importance and requirements of maintaining the Brazos railroad line. The White Paper also explores opportunities to develop an integrated multimodal transportation facility that includes the railroad, highway and a multiuse pathway. A facility that could be designed to minimize its environmental footprint while restoring a free-flowing wetlands habitat.

SMART staff is presenting this draft paper today for information and discussion. The next steps would be to finalize the White Paper and distribute it to the fellow SR37 stakeholders for their consideration.

REVIEWED BY: [x] Finance /s/ [x] Counsel /s/

Very truly yours,

/s/
Bill Gamlen, P.E
Chief Engineer

Attachment(s): State Route 37 Corridor – Freight and Passenger Rail Opportunities White Paper

State Route 37 Corridor—Freight and Passenger Rail Opportunities

By: Sonoma Marin Area Rail Transit (SMART)

White Paper

DRAFT 03-31-2022

Executive Summary

The State Route 37 (SR 37) highway corridor is undergoing a multijurisdictional corridor planning effort to address traffic congestion and flooding. A portion of this highway corridor between Highway 101 and State Route 121 (Segment “A” in the planning effort) includes the Brazos Junction Branch railroad adjacent to the roadway. The Brazos Junction Branch, which is owned by Sonoma Marin Area Rail Transit District (SMART), is connected to the SMART mainline north/south railroad in Novato, and to the Union Pacific Railroad Capitol Corridor in Fairfield.

The Brazos Junction Branch is connected to the National Rail Network and therefore must comply with federal common carrier obligations. The common carrier obligation refers to the statutory duty of railroads to provide “transportation or service on reasonable request.” The common carrier obligation requires any changes to SR 37 that affect the railroad must consider the railroad’s duties to provide freight service.

The SR 37 study is an opportunity to include freight and passenger rail as part of the overall transportation corridor improvement. An improved freight and passenger rail system incorporated into the highway reconstruction can improve the highway functionally and environmentally by removing passenger and truck traffic from the roadway, improving air quality through lower train emissions, and removing the railroad embankment that is acting as a wetland barrier.

Possible solutions for the SR 37 Corridor include combining highway and railroad right of ways and constructing elevated railroad and highway structures that would minimize the facilities’ footprint and help restore the natural environment.

1.0 Introduction and Purpose

State Route 37 is undergoing a comprehensive multimodal corridor planning effort, led by the Metropolitan Transportation Commission (MTC), Caltrans, and the transportation authorities of Marin, Sonoma, Napa, and Solano counties (SR 37 Corridor Planning). The purpose of this effort is to determine short-term and long-term design alternatives to address traffic congestion, flooding, and to improve transportation in the corridor while mitigating environmental impacts. The planning effort presents an opportunity to provide freight, passenger rail, transit, vehicular, bicycle, pedestrian, and carpool options for travelers.

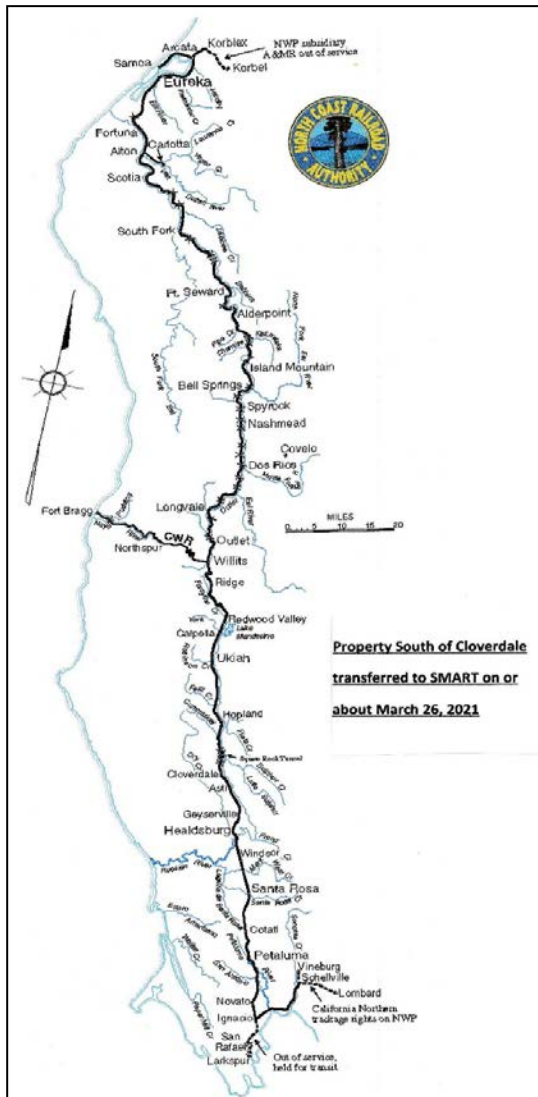
The railroad that runs adjacent to SR 37 between Highway 101 in Marin and Highway 121 in Sonoma County not only provides a vital freight transportation corridor today, it also provides opportunities for passenger rail and even possibilities to restore wetlands and critical habitat as

part of a combined multimodal project. The vision for the SR 37 Corridor must include all modes of transportation including freight and passenger rail.

This White Paper provides information regarding the existing active rail right-of-way in the SR 37 Corridor and explores ways to incorporate rail into SR 37 transportation solutions.

The primary focus of this White Paper is Segment A of the current SR 37 planning effort (Highway 101 to Highway 121) with consideration in Segment B of freight and transit service to Mare Island and Vallejo. See Figure 3. The paper discusses:

- Importance and obligations of maintaining the active railroad
- Existing and future freight needs
- Transit, bicycle, and pedestrian opportunities and connectivity
- Conceptual rail configurations
- Environmental considerations and opportunities
- Opportunities to integrate rail into the current planning and environmental efforts.



2.0 History of the Highway 37 Rail Line

The Northwestern Pacific Railroad (NWP), known as the “Redwood Empire Route,” has been a major contributor to the growth of California’s North Bay region. A contiguous line from the National Rail Network to Eureka, California was established in 1907 by Santa Fe and Southern Pacific railroads through the consolidation of six separate railroad companies.

The line, with its many original railroad companies, has a rich history of providing transportation alternatives for passengers and freight via different rail gauges and modes of propulsion: horse, mules, oxen, steam, electricity, internal combustion engines and recently electric powered locomotives.

Up to 1907 the rail line had consisted of over 42 railroads operating on standard gauge, narrow gauge, ferry steamboats and car floats, electric 3rd rail and overhead trolley interurbans, and connectors such as funiculars and scenic tourist railways. During this phase of the railroad’s history the Southern Pacific (SP) and the Santa Fe (SF) railroads had become the survivors of all the rail lines. In 1907 the SP and SF decided to merge for scale of economy. In 1914 the merged railroads completed the construction of railroad through the Eel River Canyon joining the Northern and Southern Regions. In 1929, SP bought the SF’s equal interest in the line.

Figure 1. NWP Track Ownership in 1996 (from Northwestern Pacific (Railroad Historical Society)

After the construction in 1914 that joined the Northern and Southern Regions, the primary business was passenger service and freight focus mainly on timber products. The rail business slowed down during the Great Depression. World War II

created freight demand, and the 1950's brought more freight demand due to the post war housing boom.

The line suffered severe flooding in 1964 on the northern portion of the railroad from Willits to Arcata. The flooding caused extensive track and structure damage that took about 6 months to regain service. In the 1970's the trucking industry became competitive and was successful in capturing a share of the rail business. The rail line continued to have high maintenance costs and dwindling freight service. In 1969 passenger service was eliminated for a variety of reasons. In 1984, the trackage from Outlet, near Willits, north to Korblex, near Eureka, was sold to a new company, the Eureka Southern RR, later named the North Coast Railroad.

In 1989 the North Coast Railroad Authority (NCRA) was formed by the California Legislation to oversee freight railroad activities between American Canyon and Marin and Sonoma Counties. NCRA eventually became the owner of the Northwestern Pacific Railroad from Healdsburg north and freight rail service obligation from the interchange in American Canyon to Samoa north of Eureka.

In 2004 NCRA received grants to rehabilitate 62 miles of track from American Canyon, where the NCRA has access to the National Rail Network, to Windsor for freight service. On May 5, 2011, the FRA approved the resumption of rail traffic, and freight service was initiated from the interchange to Windsor.

3.0 Current Highway 37 Rail Corridor

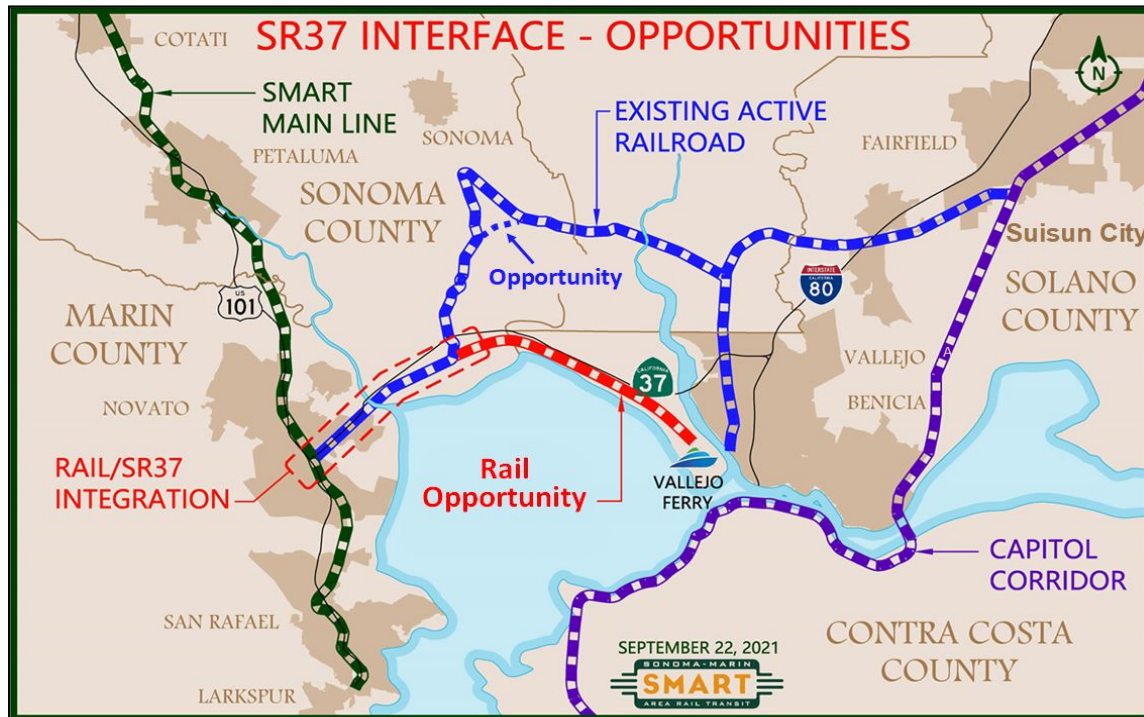
Today, as the result of the passage of SB 1029 in 2018, the freight rights and obligations have been transferred to SMART. Movement of freight by rail is 3 to 4 times as efficient as movement of freight by trucks. Because of the low friction of steel wheels on steel rails and engine technologies, trains can move one ton more than 480 miles per gallon of fuel. Freight service on SMART-owned tracks has been continuous over the last decade. Currently freight trains operate on a weekly basis through Segment A of the SR 37 Corridor and up the 101 corridor to the historic dairy and poultry industries of the North Bay Area. Grain and hops are major commodities that are delivered by rail taking trucks off Highways 37 and 101. Other commodities shipped have included lumber and other construction materials. As the result of Northern California's sustained drought, there has been recent interest in the potential of weekly shipping of potable water to municipalities.

3.1. Alignment and Ownership

The existing railroad between the Ignacio Wye in Novato and Suisun City is owned partly by SMART, Union Pacific Railroad (UPRR), and others. Figure 2 below shows the rail network in and adjacent to the SR 37 Study limits.

In Segment A of the SR 37 Corridor Planning Study, SR 37 closely parallels the Brazos Junction Branch (owned by SMART). From Highway 101 to Black Point the SMART Rail Corridor right of way is south of SR 37. These two corridors share a common right-of-way border through most of this area, are built on embankments, and are subject to the same historic flooding of Novato Creek and its floodplain. Flooding has closed both these modes of transportation at times. East

of the Petaluma River the corridors diverge up to 3/4 of a mile and re-converge at the



intersection of Highway 121, where the rail line crosses SR 37 at grade. Throughout the existing rail right of way from Black Point to Highway 121, the SMART Rail Corridor is adjacent to the San Pablo Bay National Wildlife Refuge. During past flood events both highway and railroad personnel needed coordinated efforts to address flood damage and mitigation measures. At Black Point the two modes of transportation cross the Petaluma River separately on aging bridges. East of the Petaluma River the corridors diverge up to 3/4 of a mile and re-converge at the intersection of Highway 121 where the rail line crosses SR 37 at grade.

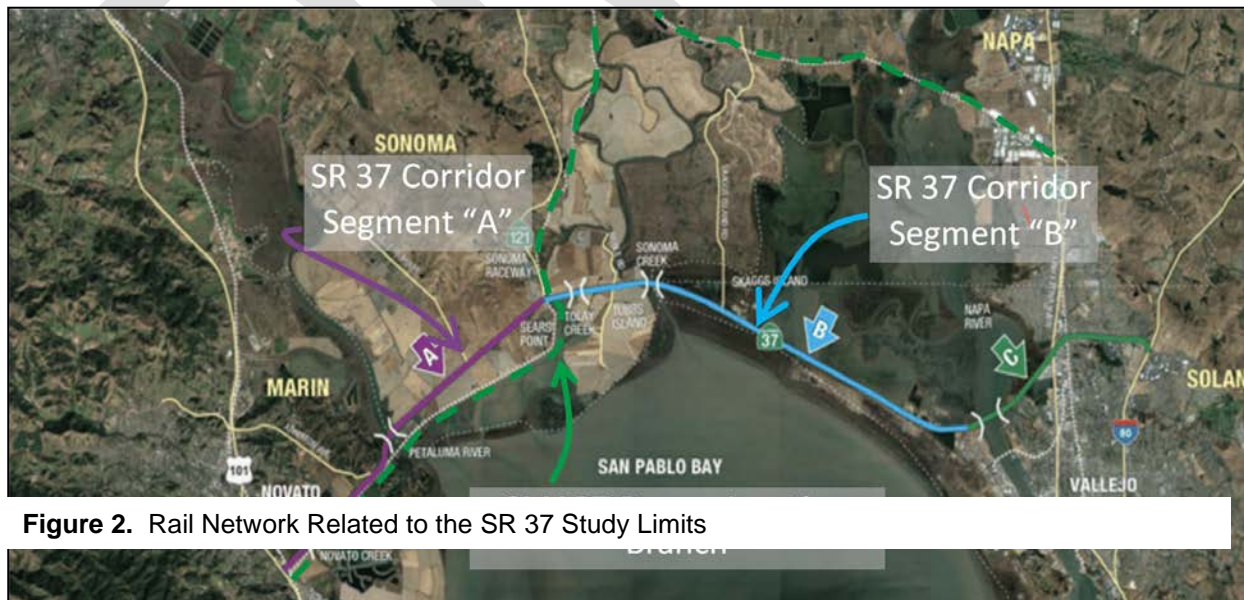


Figure 2. Rail Network Related to the SR 37 Study Limits

Figure 3. SR 37 Highway and Rail Corridors

The existing SR 37 west approach to the railroad crossing at Highway 121 is undesirable. The approach is down grade, in a curve, in a highly congested area during peak hours that is often subject to fog. A grade separation at this location is highly desired.

3.2. Freight Common Carrier Obligations

The SMART Rail Corridor is connected to the National Rail Network. The term **National Rail Network**, sometimes termed "**U.S. rail network**", refers to the entire network of interconnected standard gauge rail lines in North America. See Figures 4 and 5 below showing the corridor's connections to the National Network.

Connection to the national rail network requires compliance with common carrier obligations. The common carrier obligation refers to the **statutory duty of railroads to provide "transportation or service on reasonable request."** 49 U.S.C. 11101(a). A railroad may not refuse to provide service merely because to do so would be inconvenient or unprofitable.

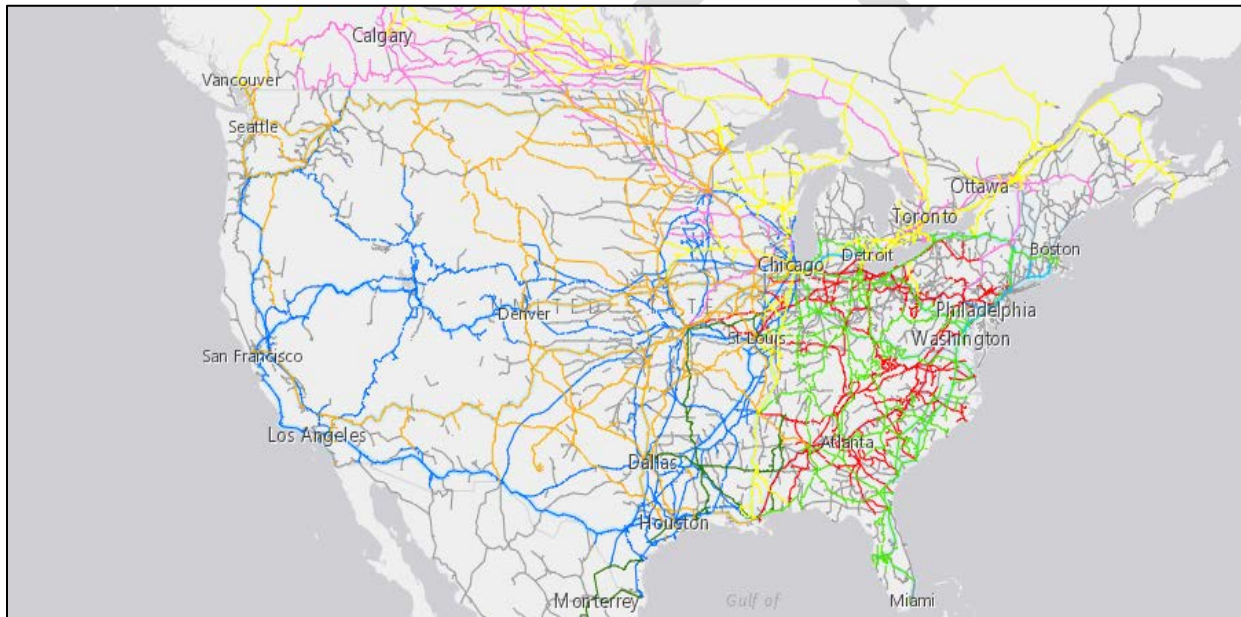


Figure 4. National Rail Network

Since the corridor is connected to the national network, it is jurisdictionally regulated by the Surface Transportation Board (STB). The Surface Transportation Board is an independent federal agency that is charged with the economic regulation of various modes of surface transportation, primarily freight rail. The STB exercises its statutory authority and resolves disputes in support of an efficient, competitive, and economically viable surface transportation network.

Federal law requires SMART, as a Federal Common Carrier, to accommodate freight traffic.

A project or public entity, directly or indirectly, cannot impact the ability to move freight over the line. This means that any direct or indirect impacts on the SMART Rail Corridor from SR 37 improvements must not have adverse impacts to the rail infrastructure nor negatively impact rail service.

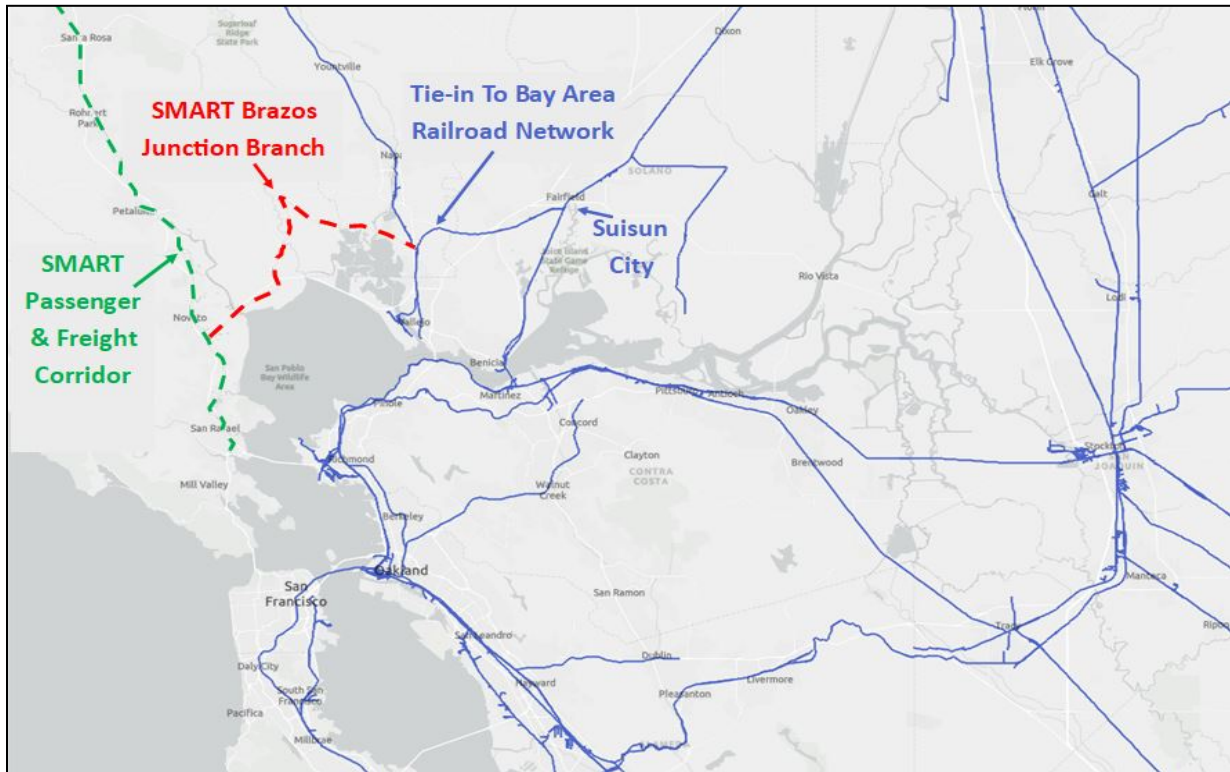


Figure 5. Bay Area Rail Corridors Connected to National Rail Network

4.0 Freight Usage and Opportunities

Industries along the SMART Rail Corridor are currently shipping and receiving freight weekly to Petaluma and periodically as far north as Windsor. Commodities currently include grains and hops. All freight along the SMART north/south corridor must use the existing SR 37 Rail Corridor track from Novato to American Canyon, where it connects to the National Rail Network.

SMART is planning to improve the north/south trackway to Cloverdale. This will open up additional opportunities for freight. Opportunities along the 101 Corridor include:

- Lumber/trusses
- Forest products in Cloverdale
- Plastic pellets for manufacturing
- Beer products
- Wine products.

Due to the ongoing drought, rail could also transport large quantities of water within the rail network. SMART has had high-level discussions with local water agencies about transporting water during the summer and fall of 2021. There are opportunities to stage water trains in critical areas during periods of high fire danger to protect local communities along the line.

Increased opportunities for efficient rail freight traffic reduces truck traffic on SR 37, lowers fuel consumption and emissions, and provides more reliable shipping by avoiding roadway congestion and closures.

In a larger context, the freight and passenger rail opportunities in the highly congested Northern Bay Area are included in the California Rail Plan. The 2018 California State Rail Plan establishes:

“a long-term vision for prioritizing state investment in an efficient, effective passenger and freight rail system, which supports the goals and policies of the California Transportation Plan 2040. The Rail Plan identifies service goals, capital costs, and a phased strategy for achieving the Vision. This ambitious plan identifies a coordinated, statewide passenger rail network that will get Californians where they want to go, when they want to go, and enhance the movement of goods by rail to support California’s industries and the economy.”

Chapter 5 of the Rail Plan is a detailed plan of freight rail investment strategies. It includes a focus on the importance of short lines, like SMART, and the economic benefits they provide to operating seamlessly with the Class 1 railroads. Class 1 Railroads are the long-haul carriers moving goods coast to coast (See Figure 4 above). Short lines are smaller railroads that provide rail service to customers located in areas that are not directly served by the larger railroads and are often called the “First Mile” and “Last Mile” shipping solution.

The connection of the SMART north/south system to the Capitol Corridor national rail network via the SR 37 Corridor is essential to California’s overall freight and transit goals.

6.0 Transit

6.1 Existing Transit

101 Corridor

The transit modes along the 101 Corridor from Larkspur to Windsor include:

Passenger Rail: Sonoma Marin Area Rail Transit (SMART). The SMART system currently operates daily Diesel Multiple Unit (DMU) trains from the Larkspur Ferry Terminal to Airport Boulevard in Santa Rosa, with a planned extension to Windsor. Future extensions are planned to Healdsburg and Cloverdale.

Buses: Marin Transit operates a bus system within Marin County with connections and transfers to SMART stations, and transfers to Golden Gate Transit (GGT) buses at San Rafael Transit Center. GGT provides bus and ferry service to Marin, Sonoma, San Francisco, and Contra Costa counties.

Sonoma County Transit operates a bus system with connections and transfers to SMART trains at stations within Sonoma County. Local Sonoma County bus transit providers include Petaluma Transit and Santa Rosa CityBus.

East Bay Corridor

Capitol Corridor Rail: The Capitol Corridor is an intercity passenger train system that provides service along the congested I-80, I-680 and I-880 freeways. It serves 18 stations in 8 Northern California counties: Placer, Sacramento, Yolo, Solano, Contra Costa, Alameda, San Francisco, and Santa Clara, a 170-mile rail corridor. An extensive, dedicated motorcoach network provides bus connections to serve the second-largest urban service area in the western United States.

6.2 Transit Connectivity

The travel market in the Bay Area is enormous. The California State Rail Plan projects the 2040 movements through the state's major regions as shown in Figure 6. The SR 37 Corridor improvements provide an opportunity to integrate transit modes into the design to connect the North Bay to the East Bay counties.

The State Rail Plan also envisions higher speed rail corridors (up to 125 MPH) between Marin and Solano counties. See Figure 7. The SR 37 Corridor can be part of this vision.

Train Connection: Since freight rail must be included in any SR 37 reconstruction, the same track can be utilized for passenger rail. The SMART station at Novato can be connected to the Capitol Corridor Suisun-Fairfield station. This will provide reliable high-capacity train service across the North Bay area.

Bus Connection: The reconfigured highway can also provide more reliable bus service on a dedicated lane between Marin/Sonoma counties and the East Bay.



Figure 6. Personal Travel Between Regions (From California State Rail Plan)

Figure 7 below shows the passenger rail network in the vicinity of the SR 37 Corridor as outlined in the California State Rail Plan.

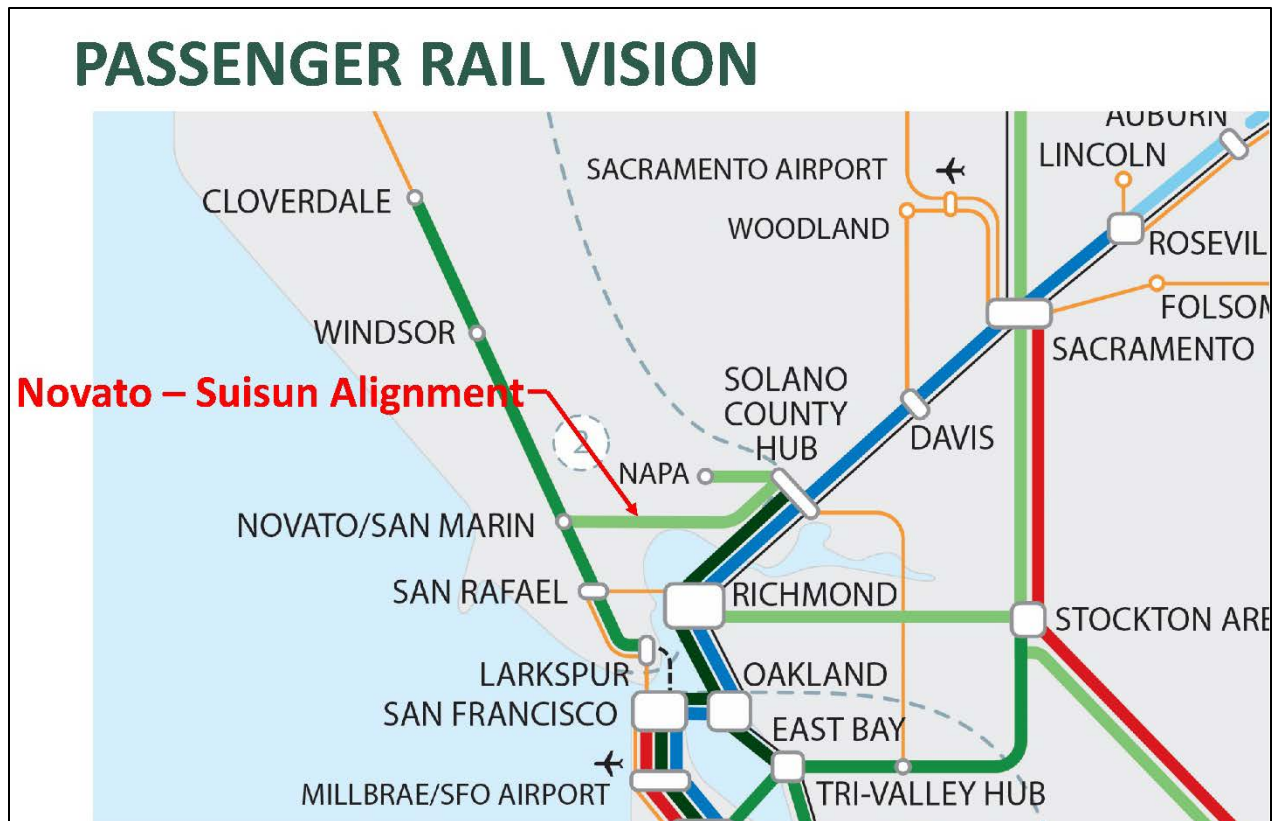


Figure 7. 2040 Vision of Passenger Rail Service from California State Rail Plan

7.0 Potential Joint Highway and Rail Alignments

7.1 Segment A – Combining Existing Highway and Rail Facilities

This section explores the opportunity to combine the highway and railroad transportation corridors into one project within the existing SR 37 Study Segment A right of way. This concept opens the possibility to provide extensive environmental benefits and, from an alignment perspective, great potential for transit opportunities.

In the SR 37 Segment A from Novato to Black Point, flooding in this environmentally sensitive area impacts both the highway and rail facilities. The current footprint of these two facilities from the north drainage ditch of the highway to the south ditch of the rail embankment is roughly 250 feet see Figures 8. In the flood plan area both transportation facilities are built on fill and have low level bridges that restrict flood plain drainage.



Figure 8. Segment A Novato Creek and Simmons Slough Floodplain

There is a tremendous opportunity to minimize the total footprint of these facilities by combining their right of ways. This can be accomplished by eliminating the rail embankment, placing the rail within SR 37 right of way, and elevating both facilities to span the entire floodplain. Combining the facilities could reduce the footprint by 100 feet. This solution has significant environmental and cost benefits. By removing the railroad embankment, the area would restore to its natural state as a wetlands floodplain. And from a project cost perspective, removing the railroad embankment and freeing up space would provide considerable on-site restoration opportunities to mitigate project impacts.

As SR 37 and the SMART Rail Corridor continue east of the Novato and Simmons Slough flood plain area, they diverge and separately span the Petaluma River. These bridges are within approximately 1,500 feet of each other with the highway bridge located upstream of the rail bridge. Due to the river morphology and alignment of each of their respective navigation channels, barge traffic maneuvering upriver is difficult. Both these bridges will likely need replacement to accommodate future needs and to meet current standards. Combining the highway and rail right of ways in this section, would allow the rail to align with the highway and cross the Petaluma River at the same location, allowing a joint navigation channel.

The existing rail track, rail embankment and river bridge could be removed. **This would have significant environment benefits, project mitigation opportunities, and greatly improve the present navigation through this 1,500-foot segment of the Petaluma River.** See Figure 9 below.

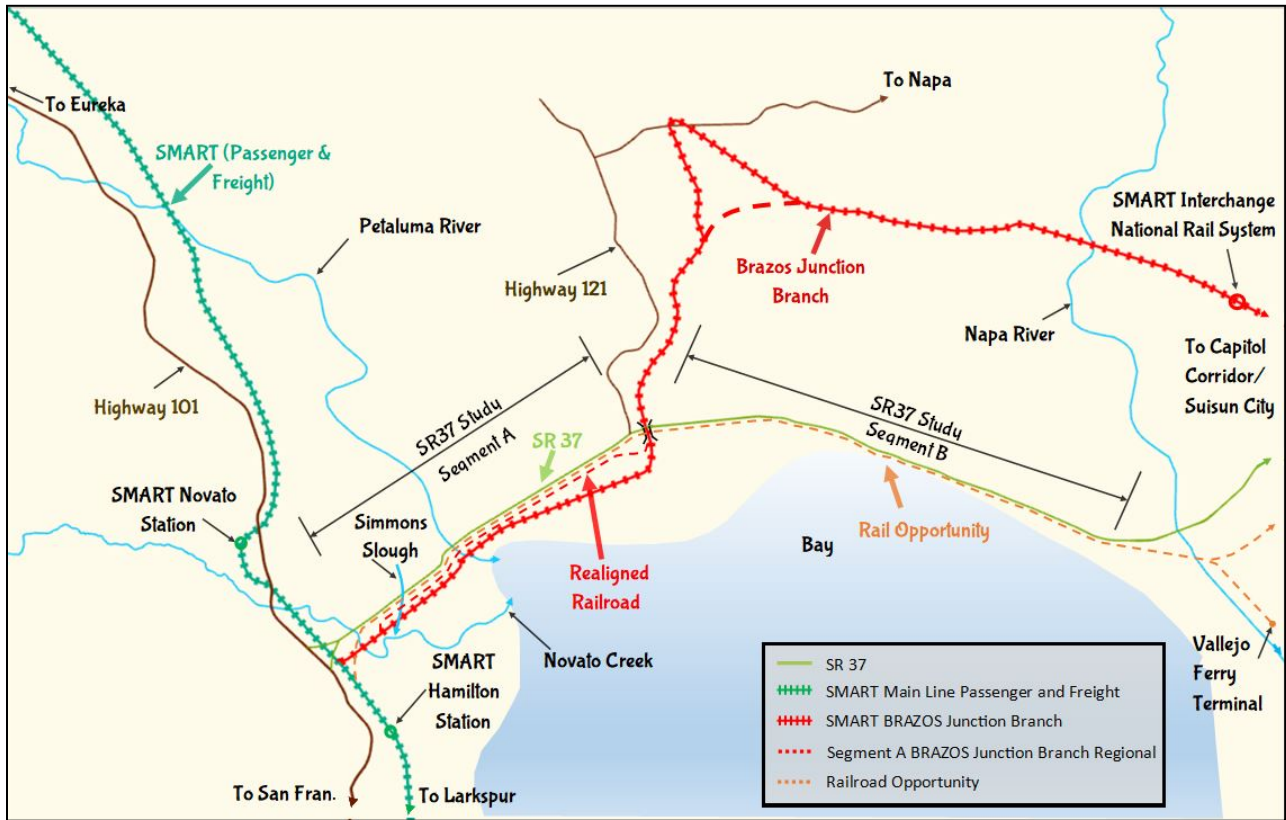


Figure 9. Layout of Segment A and B Incorporating Rail Facilities

For the remainder of Segment A from the Petaluma River to Highway 121, the highway and rail would continue to share the same right of way. As the rail approaches Highway 121, the rail profile would descend and cross under SR 37 and resume the existing Brazos Junction Branch alignment to connect to the Capitol Corridor through American Canyon. This would provide the opportunity to remove the rail line from the Sears Point Tailhead leading into the San Pablo Bay National Wildlife Refuge area. See Figure 10 showing both facilities jointly elevated in a minimized right of way.

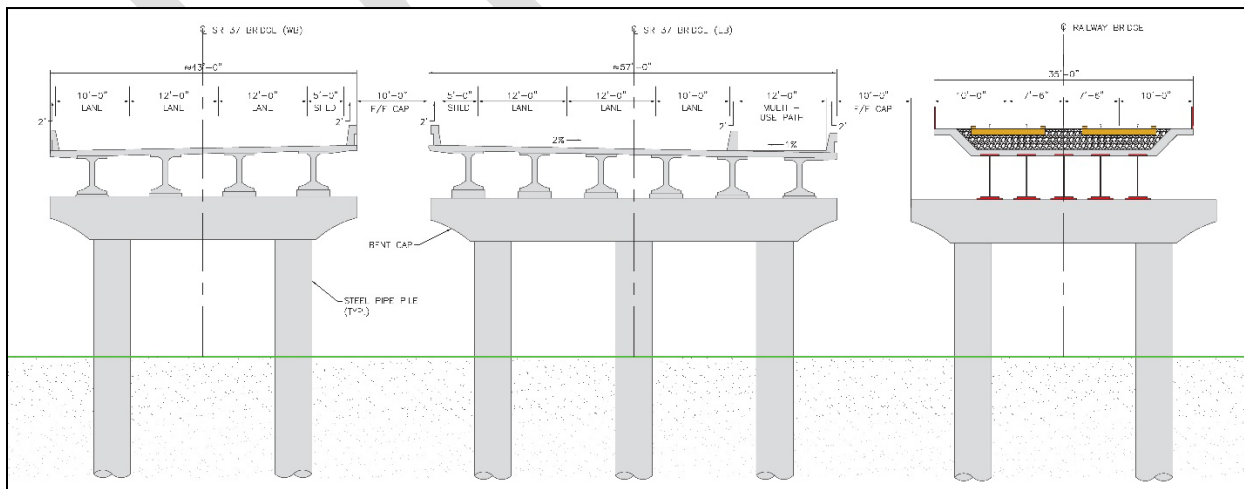


Figure 10. SR 37 Segment A Combined Highway and Rail Elevated Section Looking East



Figure 11. SR 37 Segment A View with Freight Looking Northeast

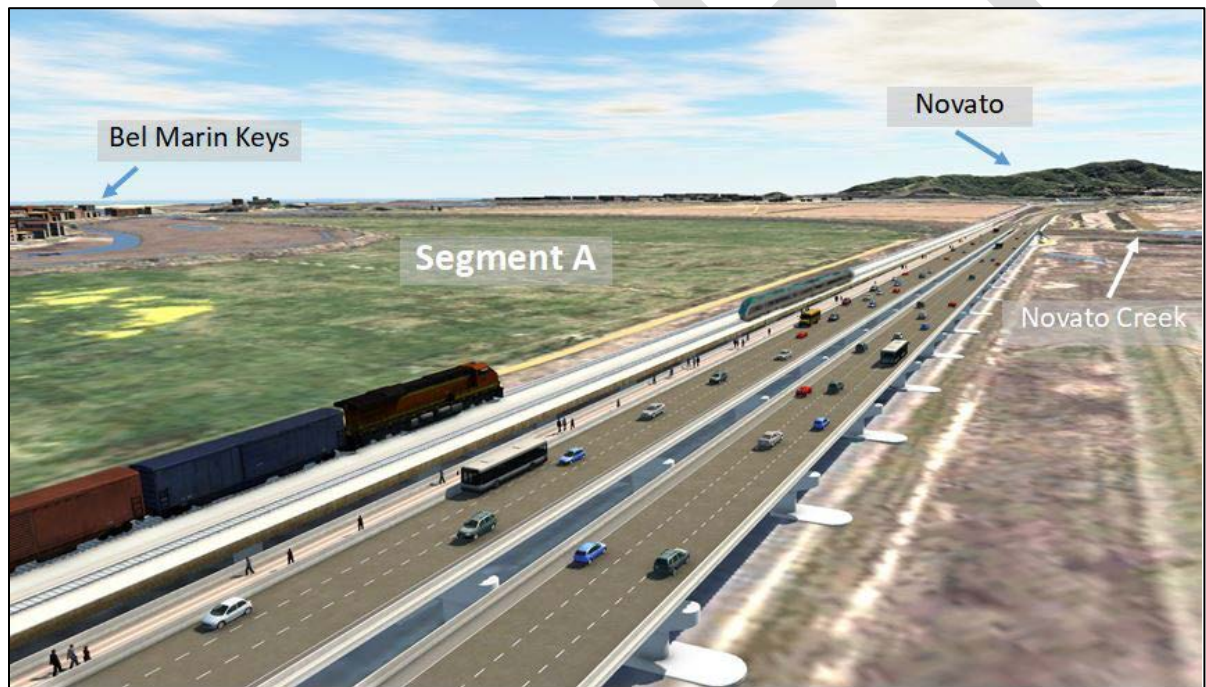


Figure 12. SR 37 Segment A View with Freight Looking West in Novato

7.2 Segment B – Incorporating Transit

There is a tremendous opportunity to develop Hwy 37 as a fully integrated multi-modal corridor that encompasses vehicular, freight, passenger rail, bicycles and pedestrians. Passenger integration could be achieved through a combined highway and rail solution that would allow a connection between SMART and the Vallejo Ferry Terminal. Figure 13 depicts the vision of a fully multi-modal SR 37 facility in Segment B.



Figure 13. Multi-modal SR 37 Facility Looking East

8.0 Environmental Considerations

The 2018 California State Rail Plan says the following under Section 1.2, State Rail Plan Purpose:

“The planned rail system envisioned in the Rail Plan will improve Californians’ quality of life by mitigating roadway congestion; reducing vehicle emissions; supporting compact land use; and offering convenient, reliable, and automobile-competitive alternative travel and goods movement.”

The SR 37 Corridor is an opportunity to advance the State Rail Plan’s vision.

8.1 Roadway Congestion

Freight railroad capabilities in the SR 37 Corridor can reduce roadway congestion by shifting freight from trucks to trains and provides shippers with a freight transportation alternative as shown in Figure 14 which is Exhibit 1.1 Spatial Efficiency Across Modes from the California State Rail Plan.

A single freight car carries the equivalent of four highway trucks. Depending on train length, a single freight train can replace several hundred trucks from the roadway.

Passenger trains have the capacity to remove many cars from the roadway network. Each 2-car train in the SMART fleet can carry 300 passengers that would otherwise travel by automobile or bus.

SMART is engaged with Caltrans in future planning for the Highway 37 Corridor improvements and the possibility of combining projects to maximize a reduction on roadway congestion along this existing transportation corridor.

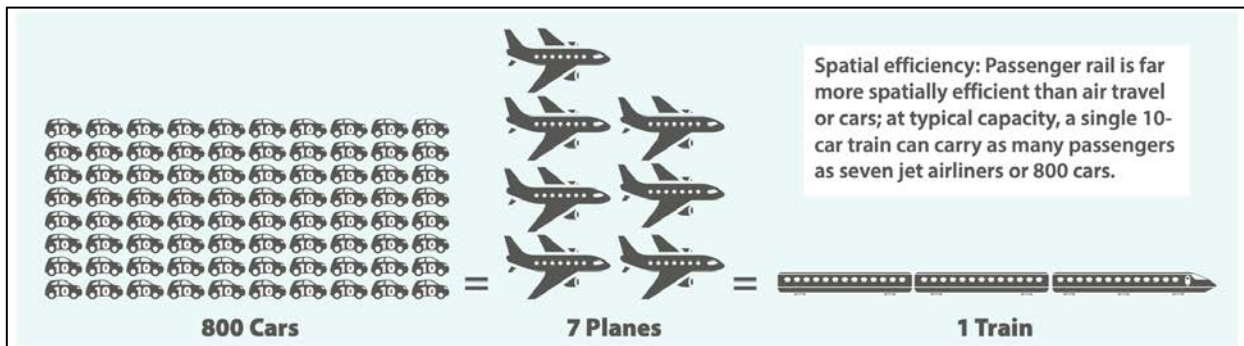


Figure 14. Exhibit 1.1 Spatial Efficiency Across Modes (from California State Rail Plan)

8.2. Fuel-efficiency, Vehicle Emissions and Climate Change

Freight railroads account for roughly 40% of U.S. long-distance freight volume (measured by ton-miles) — more than any other mode of transportation. However, they account for just 0.5% of total U.S. greenhouse gas emissions according to EPA data, and just 1.9% of transportation-related greenhouse gas emissions (from Association of American Railroads, <https://www.aar.org/facts-figures>).

Freight railroads are three to four times more fuel-efficient than trucks. Greenhouse gas emissions are directly related to fuel consumption. That means moving freight by rail instead of truck lowers greenhouse gas emissions by up to 75%, on average.

Additionally, public transit by commuter rail train has reduced emissions compared to bus and passenger vehicles. See Figure 15 below from the USDOT/FTA.

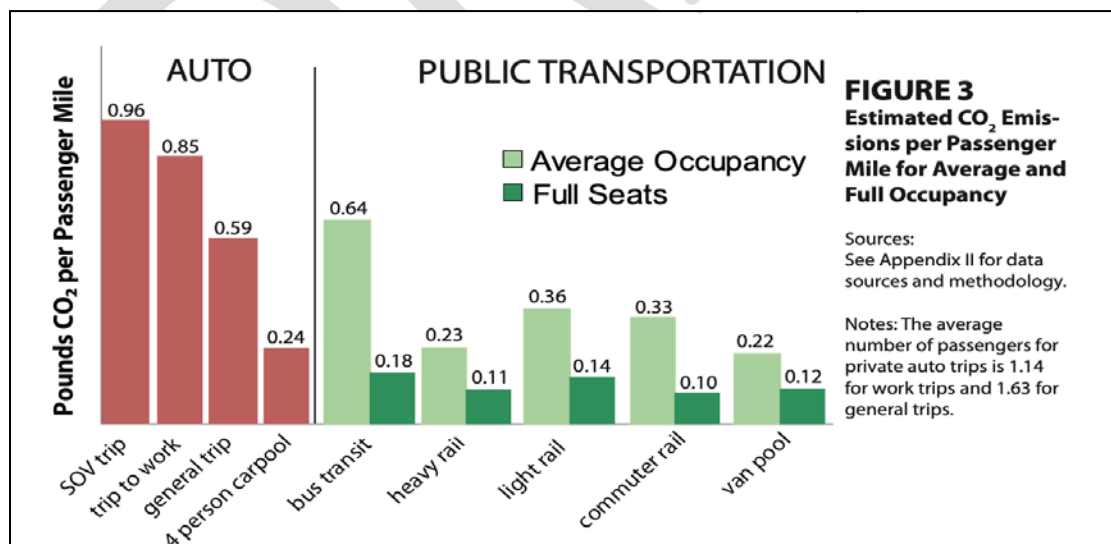


Figure 15. Estimated CO₂ Emissions: Auto versus Public Transit, Public Transportation’s Role in Responding to Climate Change, January 2010

8.3. Sensitive habitats

The County of Marin Highway 37 Adaption Study (Policy Committee Meeting December 5, 2019) finds that Segment A-1 has the lowest roadway elevations in the entire corridor. It also finds that Caltrans High Risk Design standards require raising the roadway in Segment A by 18 to 22 feet to mitigate future sea level rise. See Figure 16.

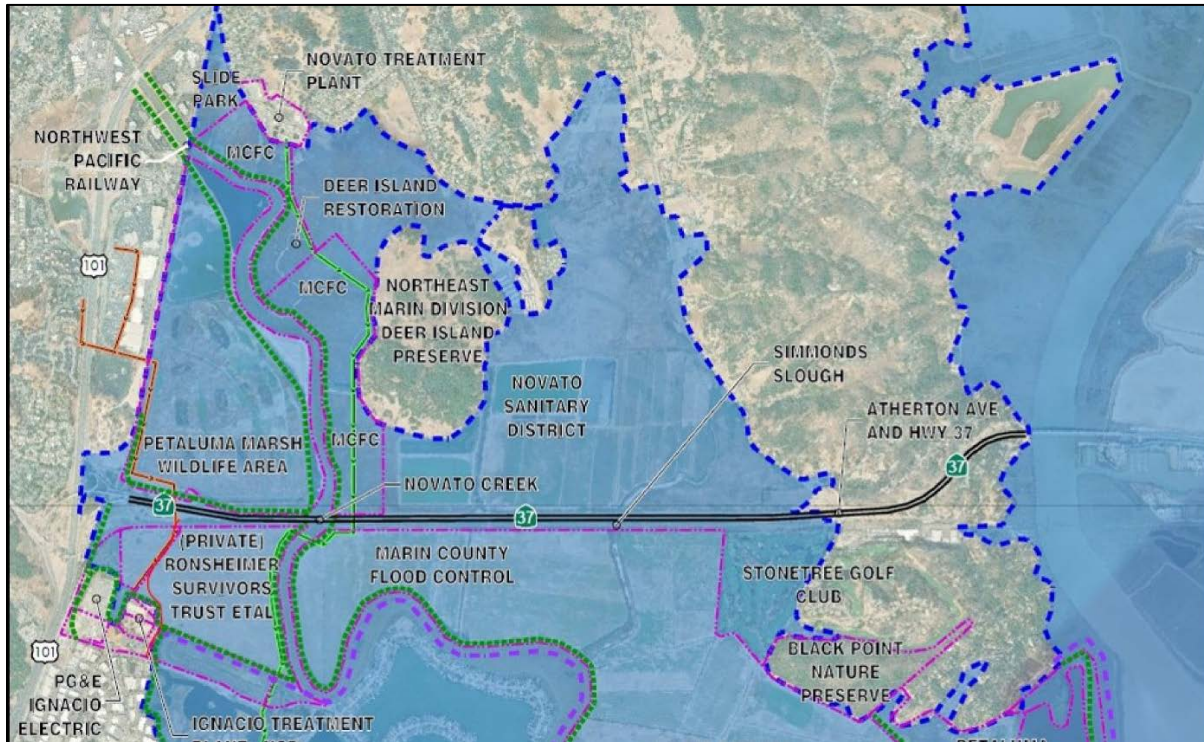


Figure 16. Future Sea Level Rise Inundation – Extent of Flooding if Improvements to Levees are not made (Figure 1.B from County of Marin, Highway 37 Corridor Adaption Study, Policy Committee Meeting December 5, 2019)

The Baylands in this segment are a priority for restoration and expanded watershed connectivity. Raising the railroad in concert with the highway will allow bay waters unimpeded access. The railroad corridor is approximately 30-feet wide for a distance of 16,000 feet between Highway 101 and Highway 121. Removing the railroad embankment in this segment will provide approximately 11 acres of land to be restored as wetlands.



Figure 17. Track and Embankment Removal Area to Allow Bay Restoration

9.0 Recommendations

This paper shows the need to include and integrate passenger and freight rail transportation infrastructure into the planning efforts currently underway by Caltrans, MTC and other agencies.

Recommendations include:

1. At a minimum, ensure that SR 37 improvements maintain and do not negatively impact freight rail service, in order to meet Federal Common Carrier obligations.
2. Include California State Rail Plan recommendations and objectives in advancing freight and passenger rail improvements in the SR 37 Corridor.
3. Take advantage of the proximity of an existing rail line to develop an innovative multi-modal facility that integrates vehicles, freight, passenger rail, bicycles and pedestrians.
4. Leverage the opportunities of a combined SR 37 and SMART Rail Corridor to restore wetlands and preserve critical habitats.