



**BOARD OF DIRECTORS
MEETING AGENDA
February 3, 2021 – 1:30 PM**

**IN ACCORDANCE WITH GOVERNOR’S EXECUTIVE ORDERS N-25-20 AND N-29-20
THE SMART BOARD OF DIRECTORS MEETING WILL BE HELD VIRTUALLY**

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, February 2, 2021 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 periods 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 January 20, 2021 Board Minutes
3. Board Member Announcements
4. General Manager’s Report
5. Public Comment on Non-Agenda Items
6. Consent Calendar
 - a. Approval of Monthly Financial Reports

Regular Calendar

7. Authorize the General Manager to Execute Contract No. OP-SV-20-007 with Nick Barbieri Trucking, LLC DBA Redwood Coast Fuels - North Bay Petroleum for fuel delivery services to for the base term of two years with a maximum not-to-exceed amount of \$2,800,000
8. Authorize the General Manager to Award the Purchase and Sale Agreement No. OP-EQ-20-004 to Herzog Contracting Corp for the design and delivery of a custom-built Hi-Rail Scrubber Brush Truck in the amount of \$458,410
9. Approve a Resolution to Amend Budget for Fiscal Year 2020-21
10. Review of 2020 Activities and 2021 Goals and Challenges Presentations (*Discussion/Provide Feedback*)
11. Next Regular Meeting of the Board of Directors, February 17, 2021 – 1:30 PM
12. 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-mendoza@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
January 20, 2021 - 1:30 PM**

**IN ACCORDANCE WITH GOVERNOR'S EXECUTIVE ORDERS N-25-20 AND N-29-20
THE SMART BOARD OF DIRECTORS MEETING WILL BE HELD VIRTUALLY**

MEMBERS OF THE PUBLIC MAY NOT ATTEND THIS MEETING IN PERSON

1. Call to Order

Chair Lucan called the meeting to order at 1:30pm. Directors Arnold, Connolly, Fudge, Garbarino, Gorin, Pahre, Rabbitt and Rogers were present; Director Hillmer absent.

Chair Lucan stated that is our first meeting of the New Year and he is happy that it is Inauguration Day as well.

Chair Lucan officially welcomed Supervisor Susan Gorin to the SMART Board of Directors. Director Gorin said that she is very delighted to join the SMART Board. My predecessor Supervisor Valarie Brown helped start SMART and worked with some of the Board Directors, it's appropriate that it returns to the 1st District she added. Chair Lucan stated that it is official, and he is excited to have Director Gorin, the Board will be having a few new Directors on the Board in the next few months.

2. Elections of Chair and Vice Chair

Chair Lucan thanked all his colleagues for the opportunity to serve as Chair this past year, 2020 was a very interesting year, looking back it started remarkably well; the Larkspur Station and Downtown Novato Station opened, the average weekly ridership was setting thresholds for SMART and the 49'ers were in the Super Bowl. Things certainly changed in March and he was very encouraged about how Staff and the Board responded to the challenges. The fact that SMART have been able to keep trains running through the pandemic, so that essential workers are able to get to their job has been incredible. Following a difficult campaign, the Board has held 10 Listening Sessions across Marin and Sonoma County using Zoom to engage with the community and organizations. SMART is a

stronger organization and he is definitely looking forward to the years ahead, once again he thanked everyone for the opportunity to serve this past year.

Chair Lucan asked for nominations for Chair. Vice-Chair Pahre thanked Chair Lucan for his incredible leadership this past year and proceeded to nominate Director Rabbitt for Chair. Director Arnold second the nomination.

MOTION: Vice Chair Pahre nominated Director Rabbitt for Chair. Director Arnold second nomination. The motion carried 9-0 (Director Hillmer absent; 2 vacant)

Chair Elect Rabbitt thanked everyone for the nomination. He stated that the Board has a huge debt of gratitude for an outstanding outgoing Chair. Chair Lucan did a stellar job this past year in really tough times. He worked beyond diligently on the Campaign Measure spite many obstacles and he moderated very successful Listening Sessions and would like to continue to moderate and facilitate meetings the same way, he added.

It is ironic that we're meeting today, which is Inauguration Day with the sense of like new year's all over again. There is optimism in the air, that we continue especially for this organization. Things will be brighter, not just in Washington DC, but as we hopefully soon turn the corner with COVID and we actually get back to meeting in person and our ridership returns in flourishes. He was really impressed to see the video regarding the air purifiers on each of the trains, making sure that we're on the forefront of those things and is a testament to the great staff that we have working for us.

Outgoing Chair Lucan thanked Chair Elect Rabbitt and stated that he looks forward in continuing to work with everyone serving on the Board this next year under your leadership.

Chair Lucan asked for nominations for Vice-Chair. Director Arnold nominated to re-elect Vice-Chair Pahre. Director Garbarino second.

MOTION: Director Arnold nominated to re-elect Vice-Chair Pahre. Director Garbarino second nomination. The motion carried 9-0 (Director Hillmer absent; 2 vacant)

Chair Lucan said that it was an honor to serve with you this past year, thank you for continuing in the role again this year.

Vice-Chair Pahre stated that she has been Vice Chair before and brings the following skills; 1) she is not in Sonoma or Marin County, a good listener and appreciates that she gets good advice. She is very proud to have her name associated with SMART, she has been on the SMART Board for a very long time. She said that we all should be proud in continue to follow the mission of SMART, despite many detractors over the years. The leadership of this group and staff is incredible, regardless of the turnover that has happen over the years, the staff rises to the top and she is very proud to be part of this and thanked everyone.

Chair Lucan stated that it has been standard practice at SMART that Chair and Vice Chair will assume responsibility at the following Board Meeting in February.

3. Approval of the December 16, 2020 Board Minutes

MOTION: Director Rabbitt moved approval of the December 16, 2020 Board Minutes. Director Arnold second. The motion carried 8-0 (Director Gorin abstain; Director Hillmer absent; 2 vacant)

4. Board Members Announcements

Vice-Chair Pahre stated that she received a memorandum on January 16th and thanked the Golden Gate Bridge, Marin Transit and SMART for providing safe transportation to people to get COVID vaccination. Directors Arnold, Connolly, and Lucan are all on the Marin Transit Board and it was an amazing team effort.

Director Fudge stated that two weeks ago, the Town of Windsor Council approved an exciting art project, which will be in the roundabout in Downtown Windsor as the train enters the station. It's horizontal so there's nothing that will get in the way, SMART approved the design. It consists of natural rock from Sonoma County with LED lights in a pattern formation that will light up and change colors during the seasons and honors Windsor's Pomo Indian Heritage. It will change colors as the train enters the station at night, it was funded with the roundabout project. This will be a really nice entry into Windsor when the train arrives.

5. General Manager's Report

General Manager Mansourian reported that since the start of passenger service in August 2017, SMART has carried 1,938,000 passengers, 199,000 bicycles, and over 7,200 wheelchairs. He continues to provide weekly ridership data that is also available on SMART's website.

He recognized Superintendent of Vehicle Maintenance, Husani Longstreet and his team for the tremendous job on dealing with COVID-19 cleaning of the train and being so far ahead of the curve that we are receiving a lot of phone calls from other agencies throughout the Nation inquiring about the UV light cleaning process. While working and finding solutions to deal with COVID-19 he earned a Master's Degree in December in Management with emphasis in Leadership. To congratulate him staff gave him a Silver Oak Wine bottle.

General Manager Mansourian announced that SMART has been recommended to receive \$1.4M in a statewide competition for a number of freight related projects. We are very proud that we were able to be competitive and demonstrate that SMART is committed to freight service. The State is recommending the amount to be should be approved at the end of January.

Lastly, our cooperation and collaboration is a big part of SMART culture. In Marin County, we have been working with the Health Officials to coordinate how SMART can help along with Marin County Transit and Golden Gate Bus, not only in providing transportation for people who are going to vaccinations sites, but also considering the use some of SMART and Golden Gate facilities in terms of parking lots for drive thru vaccinations. He wished everyone a happy new year, there are a lot of good and challenging items before you in 2021.

6. Public Comment on Non-Agenda Items

Steve Birdlebough congratulated Chair Elect Rabbitt. He said that he spent some time listening to the Solano Transportation Authority Board, which reviewed the Fairfield-Suisun transit hub report. They are moving forward with the Plan to connect to the SMART Corridor with the Capitol Corridor.

Dani Sheehan welcomed Director Gorin and incoming Chair Rabbitt. She thanked Chair Lucan for his leadership particularly for the work on the Measure I campaign. She suggested that the next campaign get started this year. She appreciates the listening sessions and knows that the pandemic will be over and people will start to ride the train again.

Duane Bellinger stated that he would like the transit-oriented development enthusiasts to have an opportunity to discuss the methods of increasing ridership in result from the growth around stations. He noticed that fares and parking are combined in the financial reports and suggested separating the parking income in the financial reports.

Mike Pechner asked how will the funds from the State mentioned earlier be distributed.

General Manager Mansourian responded to Mr. Pechner comments by stating that when the State makes its final approval, they typically direct to the Department of Transportation to provide a funding agreement with SMART. The funding agreement will specify the project and the invoicing process.

7. Consent

- a. Approval of Monthly Financial Report
- b. Accept Ridership Report – October 2020

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

MOTION: Director Rabbit moved approval of the Consent Agenda as presented. Director Rogers second. The motion carried 9-0 (Director Hillmer absent; 2 vacant).

8. Authorize the General Manager to Award Contract No. FN-PS-20-003 with Alliant Insurance Services, Inc. for Insurance Brokerage and Risk Management Consultation Services for a total contract amount of \$440,000 up to six years

Chief Financial Officer, Heather McKillop provided a brief overview and asked for approval of Alliant Insurance Contract is a four-year contract with two optional years.

We requested proposals and SMART received three proposals which were evaluated based on the firm's experience. The firms went through an oral presentation remotely and the selection committee, which I am a member of made an unanimous decision and selected Alliant Insurance.

Alliant Insurance will be the provider of all of SMART's insurance including railroad liability, general liability and other insurance that we procured. Current insurance will be expiring over the next couple of months, therefore staff is requesting your approval.

Chair Lucan stated it's always good when approving contracts that save SMART money over what is currently paying.

MOTION: Director Garbarino moved to Authorize the General Manager to Award Contract No. FN-PS-20-003 with Alliant Insurance Services, Inc. for Insurance Brokerage and Risk Management Consultation Services for a total contract amount of \$440,000 up to six years as presented. Director Rabbitt second. The motion carried 9-0 (Director Hillmer absent; 2 vacant)

9. Review of 2020 Activities and 2021 Goals and Challenges (*Discussion/Provide Feedback*)

General Manager Mansourian provided a presentation which outlines to the Board upcoming recommendations and considerations in the next six months in addition to normal business that your Board will consider. Highlights of presentation as follows:

- Review February - June 2021 Board Work Plan and Public Discussion Schedule
 - Budget
 - 2020 Performance Report
 - 2021 Goals and Challenges
 - Capital Plan
 - Listening Session
 - Welcome Back Campaign
 - Freight
- February 3, 2021 – Board Meeting – Department Presentations
 - Legal
 - Finance
 - Human Resource
 - Procurement
 - Information Technology
- February 17, 2021 - Board Meeting – Department Presentations
 - Real Estate
 - Operations

- Train Control and Systems
 - Safety and Security
- March 3, 2021 - Board Meeting – Department Presentations
 - Capital Projects
 - Grant and Legislation
 - Planning
 - Customer Outreach
- March 17, 2021 - Board Meeting – Listening Sessions
 - Review comments received
 - Review process for discussion and implementation
 - Listening Session Implementation Report
 - Short-term, Long-term and Required resources
- April 7, 2021 - Board Meeting
 - Transit Operating Services
 - Discuss Post COVID-19 Recovery and Growth Plans
 - Review existing Fare Policies and Discuss Options
 - Review Weekday and Weekend Schedules
 - Review Service Performance Measures
 - Capital Plan
 - Review Adopted Principles
 - Review Pending Projects
 - Review New Projects
 - Financing Options
 - Begin 2021-22 Budget Process Incorporating decisions made in the previous sessions
- April 21, 2021 - Board Meeting – Review Welcome Back Campaign
 - Strategies
 - Marketing
 - Incentives
 - Partnerships
- May 5, 2021 - Board Meeting – Freight Update
 - Legislation Status
 - Federal Approval Status
 - Review Potential New Policies
 - Review Potential New Marketing Strategy
 - Review Options for Providing Freight Service
 - In-House
 - Contract Out
- May 19, 2021 - Board Meeting
 - Present Draft Fiscal Year 2021-22 Annual Budget
 - Release Draft Short-Range Transit Plan and Capital Improvement Program
 - Public and Board Comments and Discussions
- June 2, 2021 - Board Meeting
 - Adoption of Fiscal Year 2021-22 Budget

- June 16, 2021 - Board Meeting
 - Adoption of Fiscal Year 2022-2023 Short-Range Transit Plan and Capital Improvement Program

Staff has been working and getting organized for the next six months, these are in addition to what comes in SMART's way and adjustments that we need to make. These are scenarios and are subject to change. We are very much looking forward to the next six months and receiving Board direction and advice from members of the public.

Chair Lucan thanked General Manager Mansourian for the presentation, this will be very helpful to the Board and the Community to know what is coming down the tracks.

Comments

Director Fudge stated she is looking forward to the "Welcome Back Campaign". She suggested that SMART considers attracting people in riding the train sooner than April. Maybe playing with some welcome back ideas as soon as the current shutdown is over to try to get the people back that even though we wouldn't all be vaccinated, she thinks SMART could probably get at least 150 people a day back. SMART had about 500 people riding the train prior to the pandemic shut down. Enticing people in creative ways to bring them back, this is beyond just explaining how great we're doing with disinfecting the trains and the UV lights and all that. There are still people saying they didn't know they could currently ride the train, as much as we've been doing, there are still people that we're not reaching. Perhaps starting in mid-February to see what works and play with some ideas and then the Board could have a more in-depth discussion in April.

Director Rogers stated that he appreciates the overview. He was thinking the opposite of Director Fudge and asked how the campaign timeline was chosen. He is feeling a little bit less optimistic about the rollout of vaccines, so far. He suggested we start to do that campaign and roll that out that there might be some joint messaging opportunities. Perhaps start with a message: ride the train for free with proof of the vaccination to get people excited again and to also enhance our public health goals. Things of that nature can really reach out to our partners in our Community and see what their needs are and how we can help.

Director Rabbitt thanked staff for the presentation and appreciate all the comments made. He said that we need to be fluid upon when we're going to release this not knowing exactly what the timeframe is going to be, he also thinks that SMART needs to leverage every dollar that we can and every plan that's out there at the Regional level. There are various opportunities that are going to be presented to this Board at some point and in the future. SMART Staff is working with Metropolitan Transportation Commission, for instance about what that will look like, however we are going to have to be little flexible when that goes into effect, but we obviously have to be prepared for it, when it does happen, so I appreciate the advanced work going forward.

Vice-Chair Pahre stated that Metropolitan Transportation Committee has a Blue Ribbon Committee that Director Rabbitt sits on. The Committee has spent a lot of time and energy taking into account the vaccines and people's psychological interest in being in crowds again. Her only concern about going out early is setting up expectations that we can't deliver, and it comes back and hits us in the face. However, going to the public with something exciting two months prior to ever happening, puts us in a bad spot.

Director Garbarino stated that she was pleased and heart lifted to see the video and thanked staff for putting it together. The video provided assurance for the cleanliness and the sanitation, of the train. That confidence is what is going to get people out there again, many people may want to but they're just not sure, and if they get something as well done as that piece was, I think that will help a great deal.

Director Connolly stated that he really appreciates that the Board will be undertaking a very systematic look at all aspects of SMART, as has been outlined by staff. The listening sessions were very worthwhile, and we have to carefully digest what we heard and follow up with actions consistent with what we heard. The following quick priorities that he offered: 1) maintaining reliability of operations is really going to make us being able to tap into Federal, State and Regional resources with our partners; 2) reviewing the fare policy, affordability affairs tying into discount programs, as we have begun; 3) looking at the seamless transit movement that's happening regionally, as to how we can make sure that riders have a convenient and reliable transit experience, including using SMART; 4) the bicycle and pedestrian component of what we do will be the backbone of any future success in enhancing interconnectedness tying into their mobility visions of our communities and enhancing efforts at the ballot box, he recommends considering the importance of this issue, perhaps forming a subcommittee to work with stakeholders; 5) evaluating best options for expansion, exploring freight operations and what value that may bring to the system. He thanked staff for the work and is looking forward for a robust year.

Director Gorin agreed with Directors Connolly's comment regarding reaching out and embracing the bicycle community. We have discovered many things working virtually, there is the need to get out and use bicycles as transportation, exercise and gatherings. She understands the financial challenges all too well, and as former Mayor of Santa Rosa, the design challenges and location challenges of where you place the bicycle path, alongside the track, especially retrofitting it into existing Community, but we have to come together. Especially on this day of all days, we have to recognize that unity is the message going forward. She would love to be able to work with people to really bring the bicycle community back and appreciate the perspectives that they provide.

Vice-Chair Pahre stated that the public is going to have to be really patient, it is going to take six months before we can ever put a real dollar toward anything. We have a lot of irons in the fire, low ridership, and the budget is sound, however to throw money for the great ideas that were given in the listening sessions, she think, patience is going to be a virtue, for all of us. Over the next four or five months each of the SMART's departments will have some kind of a

sense of what the Community said during the listening sessions. She doesn't want those to be lost, or want them to take over, however we are going to be reviewing those and will be incorporated into a plan. The Board's first look at the budget is in May and this is the time when everything is taken into consideration and is appropriate for SMART. It's going to take patience that doesn't mean we aren't going to work hard, but there won't be fixes tomorrow and the next day for things that people have told us, even though we heard and may agree.

Chair Lucan thanked everyone for their comments. We have heard a lot of different things, there's nothing that you have necessarily left out of the plan, maybe just some desires to dive in a little deeper on certain areas or remain flexible and agile to move something up or move something back.

General Manager Mansourian stated that staff can accommodate everything that was said, even if they competing with each other, that's why we will have these sessions that cover a wide range with open discussion, that way it can provide SMART a timeline of what can be done. We will begin to discuss the Welcome Back Campaign in February, and might not have a lot of information, but we can certainly begin to explore ideas. We begin our session with a budget update on February 3 and finish all these sessions, with the start of preparation of the new fiscal year budget. Based on the Federal and State Government assistance with COVID the budget becomes part of the control. President Biden has consistently been talking about infrastructure, so we know that is going to be high, and so we're going to be discussing during the development of the Capital Plan Program, with all the various needs and options. Director Rabbitt stated it best that SMART continues to leverage money. We really appreciate all the comments and are looking forward to hearing from members who public.

Public Comments

Steve Birdleough stated that he would like to talk about two things: 1) transit-oriented development; and 2) freight. The advantage of passenger rail is that it builds communities that are compact and transit oriented and the value of those communities is substantial. He suggested that SMART considers when discussing SMART's accomplishments. With respect to freight, it is different than getting people to ride the train. SMART should keep track of those relationships and make sure that the people that have built them can continue to exert influence. Passenger rail service and freight is a very different thing and we shouldn't expect that we can apply what works for passengers to what works for people that want to ship goods on the on the train.

Sheila Baker stated that she attended all listening sessions and was very impressed with the last session that dealt with bicycle and pedestrians. What matters is that if SMART does not get it right it could really influence the next Measure. In Petaluma there are a couple of areas that need to be addressed, and especially on McDowell the pathway from Southpoint to Penngrove looks like it could have some problems. She suggested that is important to listen to the public during meetings and SMART needs to honor what is promised in order to get approval on the next Measure.

Jack Swearingen congratulated Director Gorin on her appointment to the SMART Board and Chair Elect Rabbitt. The public is frightened to take public transportation, SMART has done an excellent job by installing air purifiers in their filtration system in the trains. The new Administration in Washington DC is going to help because they are more unified message about COVID. He suggested assessing the performance and informing the public. He thanked staff for installing the technology on the trains to keep passengers safe.

Eric Weaver said “Happy Inauguration Day to all”, also in the spirit of unity as Director Gorin mentioned, she invited everyone to go for a bike ride with her and experience the bike path including some of the gaps. This will provide an opportunity to see the people who are using the path who are because many of the people who attended the listening session are not representative of all of the people, she sees on the path. Perhaps conducting user counts, the dog walkers, walkers and kids learning how to ride their bike on the path might be a useful thing. She has been recording videos of her bike rides along the path and agrees with Ms. Baker comment regarding her concern of the gaps in Petaluma and hope the issue is resolved. She stated that if SMART adds freight service, passenger service to the East and other things that were not part of the original Measure, prior to the path being completed, there are going to be a lot of upset people.

Kevin Carroll stated that the Transportation Authority of Marin issued three reports last week regarding e-bikes. The reports include a general overview of bicycles in Marin County, parking lots and ev-charging stations. He has seen a dramatic increase in the last three months in the use of bikes going Sausalito particularly among some of our local residents who had difficulties getting up and down the hills and this is an obvious tie into the last mile to connecting to SMART. The reports don’t mention integration with SMART or any of the SMART parking lots or setting up charging stations at the parking lots. The SMART website itself, does not state if e-bikes are allowed on the trains. He suggested that staff should studying and report back to the Board and the public.

Rick Coates encouraged everyone to take a bike ride on the path, there is no substitution for personal experience. It’s an eye opener, wonderful trails but not yet connected, and that makes them less useful especial to cities and counties.

Chair Lucan thanked everyone for their thoughts and comments. There were questions about e-,bikes, bike share and first mile last mile and the pilot Program that has been in the works for a little while.

Mr. Mansourian responded that the Transportation Authority of Marin and Sonoma County Transportation Authority, are the two agencies leading the bike project at SMART’s stations. Both agencies received a grant from the Metropolitan Transportation Commission, we will request an update and bring back to the Board. On the e-bike the reason most transit agencies, including SMART are not allowing e-bikes is they are very large. So if it's an e-bike and it's a regular size they're more than welcome, but if they're very large and there is nowhere for them to be and fire codes and safety codes does not allow them to be in the

aisle so that's one of the challenges, maybe the e-Bike industry at some point in the future be able to do them in a smaller size, where they can fit in places right now that's the only issue that that I am aware of.

10. Next Regular Meeting of the Board of Directors, February 3, 2021 – 1:30pm
11. Adjournment – Meeting adjourned at 2:44pm

Respectfully submitted,

Leticia Rosas-Mendoza
Clerk of the Board

Approved on: _____



February 3, 2021

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

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Susan Gorin
Sonoma County Board of Supervisors

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Farhad Mansourian
General Manager

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

SUBJECT: Monthly Finance Reports

Dear Board Members:

RECOMMENDATION: Information Item

SUMMARY:

We are presenting the monthly reports for activity through the month of December which includes transactions for the six months of Fiscal Year 2020-21. All revenues and expenses are currently within budgeted amounts.

Fare and parking revenues through December are \$330,183. Sales tax, which lags at least two months behind other revenues, are \$14,507,011. We prepared a mid-year amended budget reconciliation and update review for Board consideration this month. The attached Monthly Finance report does not yet reflect proposed changes as the Board has not approved the changes. The investment report which shows our bond reserves through December reflects pre-refinancing balances and totaled \$26,724,042 while other cash and investments equaled \$56,707,620.

Very truly yours,

/s/
Heather McKillop
Chief Financial Officer

Attachment(s): 1) Monthly Finance Report
2) Contract Summary Report

Sonoma-Marin Area Rail Transit District

Monthly Finance Reports

Through December 2020

	FY2020-21 Revised Budget	Actual	Remaining Budget
Revenues			
Administration			
Sales/Use Taxes	\$ 26,531,856	\$ 11,638,190	\$ 14,893,666
Interest Earnings	436,583	161,182	275,401
Rent - Real Estate	313,700	175,728	137,972
Advertising Revenue	225,000	2,735	222,265
Miscellaneous Revenue	58,824	4,154,073	-
Administration Subtotal	27,565,963	16,131,908	15,529,304
Operations			
Fund Balance	2,394,994	2,394,994	-
Sales/Use Tax	6,488,898	2,868,821	3,620,077
Fare & Parking Revenue	2,658,366	330,183	2,328,183
Federal Funds	9,500,000	6,894,349	2,605,651
State Grants	6,065,711	881,414	5,184,297
Other Charges	65,000	35,804	29,196
Operations Subtotal	27,172,969	13,405,565	13,767,404
Capital			
Fund Balance	5,174,052	5,174,052	-
Federal Funds	4,494,025	-	4,494,025
State Grants	12,626,250	-	12,626,250
Other Governments/Misc	4,956,500	1,798,602	3,157,898
Measure M	157,348	53,091	104,257
Capital Subtotal	27,408,175	7,025,745	20,382,430
Revenue Total	82,147,107	36,563,219	49,679,138
Salaries & Benefits	4,973,854	2,117,476	2,856,378
Services & Supplies	6,183,260	1,807,443	4,375,817
Debt Service/Other Charges	16,405,850	3,420,425	12,985,425
Machinery & Equipment	3,000	2,416	584
Administration Subtotal	27,565,964	7,347,760	20,218,204
Salaries & Benefits	15,510,578	5,613,270	9,897,307
Services & Supplies	9,232,613	2,046,338	7,186,274
Buildings & Capital Improvements	2,429,778	94,162	2,335,617
Operations Subtotal	27,172,969	7,753,770	19,419,198
Salaries & Benefits	1,417,761	575,835	841,926
Services & Supplies	852,736	119,271	733,465
Other Charges	3,786,500	2,023,221	1,763,279
Machinery & Equipment	3,177,138	-	3,177,138
Infrastructure	18,174,041	10,190,656	7,983,385
Capital Subtotal	\$ 27,408,176	\$ 12,908,983	\$ 14,499,193
Expenditure Total	\$ 82,147,109	\$ 28,019,256	\$ 54,127,852

Investment Report	
	Amount
Sonoma County Treasury Pool	
Bond Reserve Fund	\$ 17,121,706
Interest Fund	1,262,511
Principal Fund	8,339,825
Project Fund	-
SMART Operating Accounts Subtotal	\$ 26,724,042
SMART Operating Accounts	
Bank of Marin	19,907,612
Sonoma County Treasury Pool	36,800,008
Sonoma County Treasury Pool Subtotal	\$ 56,707,620

Captial Project Report			
	Budget	Actual	Remaining
Additional Railcar Purchase			
Revenues	\$ 11,000,000	\$ 8,250,000	\$ 2,750,000
Expenditures	\$ 11,000,000	\$ 8,250,000	\$ 2,750,000
Windsor Extension			
Revenues	\$ 65,000,000	\$ 12,253,326	\$ 52,746,674
Expenditures	\$ 65,000,000	\$ 22,620,726	\$ 42,379,274
Sonoma County Pathway Connector Project			
Revenues	\$ 13,573,526	\$ 111,430	\$ 13,462,096
Expenditures	\$ 13,573,526	\$ 450,980	\$ 13,122,546



Contract Summary

Active Contracts as of January 1, 2021

Contractor	Scope	Fiscal Year 20/21 Projected	Fiscal Year 20/21 Actuals-To-Date
A.J. Janitorial Service	Janitorial Services for all Stations, Roblar, ROC, and Fulton	\$109,500.00	\$51,240.00
Ai-Media, Inc.	As Needed Live Captioning Services for Public Meetings	\$7,500.00	\$2,295.00
Air Technology West	Maintenance and On-Call Repair for Air Compressors	\$7,856.00	\$2,995.00
Alcohol & Drug Testing Services, LLC	DOT Drug and Alcohol Testing	\$25,000.00	\$3,475.00
Alliant Insurance Services	Insurance Brokerage & Risk Management Services	\$80,250.00	\$0.00
American Integrated Services, INC.	On-Call Biohazard Remediation Services	\$50,000.00	\$0.00
American Rail Consultants, Inc.	Railroad Bridge Engineering, Inspection, & Design	\$40,000.00	\$6,035.00
Aramark Uniform Services	Employee Uniform Provider and Cleaning Service	\$18,000.00	\$10,721.00
Asbury Environmental Services (AES)	Recycling & Disposal Service for Used Oil, Fuel Filters, Rags, and Related Equipment	\$20,253.00	\$515.00
Barbier Security Group	Security Patrol Services along Right-of-Way	\$74,825.00	\$0.00
Barnes & Company, LLC	Safety Outreach Services	\$15,000.00	\$0.00
Becoming Independent	Emergency Bus Bridge Services	\$50,000.00	\$5,000.00
Bettin Investigations	Background Investigations	\$8,000.00	\$1,805.00
Bright Star Security, Inc.	Security Patrol Services at SMART's Cal Park Tunnel	\$10,440.00	\$4,350.00
Burke, Williams & Sorensen, LLP	Litigation Support Services	\$100,000.00	\$0.00
Business Training Library, LLC	Cloud-Based Learning Courses	\$12,605.00	\$12,605.00
Certified Employment Group	Temporary Staffing Services	\$35,000.00	\$0.00
Cinquini & Passarino, Inc.	Right-of-Way Land Surveying and Related Services	\$36,000.00	\$4,128.00
Civic Edge Consulting	Social Media Outreach Strategy Consulting	\$99,975.00	\$0.00
CMC Traffic Control Specialists	Flagging and Traffic Control Services for SMART's Maintenance of Way Projects	\$10,000.00	\$0.00
Corey, Canapary & Galanis	NTD Compliant Passenger Counting Services	\$26,282.00	\$4,200.00
DeAngelo Brothers, LLC (DBI Services)	Vegetation Control Services	\$38,000.00	\$0.00
Delta Wheel Truing Solutions	Modifications to the Wheel Truing Machine	\$34,911.00	\$34,911.00
Doug Williams	Fire and Life Safety Consultant	\$8,000.00	\$480.00
Dr. Lance O'Connor	Occupational Health Screening Services	\$3,000.00	\$0.00
Dr. Mark Clementi	Pre-Employment Psychological Evaluations	\$25,000.00	\$8,577.00
eLock Technologies, LLC	Station Bike Lockers and Maintenance Services	\$13,130.00	\$2,783.00
Emily Betts	Transit Planning & Related Services	\$50,000.00	\$4,850.00
Empire Cleaners	Uniform Dry-Cleaning, Laundering, and Related Services	\$40,000.00	\$5,810.00
Emtec Consulting Services, LLC	Oracle Accounting System Support Services	\$15,000.00	\$0.00
Environmental Logistics, INC.	On-Call Biohazard Remediation Services	\$150,000.00	\$0.00
Federated Indians of Graton Rancheria	Tribal Monitoring for Ground-Disturbing Activities - Windsor	\$13,500.00	\$619.00
George Hills Company, Inc.	Third Party Claims Administration Services	\$25,000.00	\$2,122.00
GHD, Inc.	SWPP Compliance, AutoCAD Management, Traffic and Hydraulic Analysis	\$52,371.00	\$27,533.00
GHD, Inc.	3 Segments MUP Petaluma - Penngrove - Rohnert Park	\$949,101.00	\$444,834.00
Golden Gate Bridge, Highway and Transportation District	Customer Service Support Services	\$30,971.00	\$30,971.00
GP Crane & Hoist Services	Cal/OSHA Crane Inspection Services	\$15,000.00	\$450.00
Granicus, Inc.	Media Streaming & Internet Broadcasting Services	\$2,986.00	\$0.00
Hanford A.R.C.	Implementation and Monitoring Las Gallinas Creek Riparian Enhancement Plan	\$16,600.00	\$7,970.00
Hanson Bridgett LLP	Legal Services	\$100,000.00	\$18,529.00
Hogan Lovells LLP	Legal Services - Freight and Passenger Rail Sector	\$25,000.00	\$4,979.00
Holland Company	Track Geometry and Measurement Services	\$24,000.00	\$24,000.00
Hulcher Services, Inc.	On-Call Derailment Services	\$100,000.00	\$0.00
Innovative Business Solution	Payroll Processing Services	\$35,400.00	\$12,015.00
Intelligent Technology Solutions, Inc.	Maximo MMS Implementation and Support Services	\$228,000.00	\$51,247.00
JMA Civil, Inc.	On-Call Civil & Rail Engineering Design Services	\$96,000.00	\$0.00
Leete Generators	Generator Maintenance	\$4,392.00	\$3,236.00

Contractor	Scope	Fiscal Year 20/21 Projected	Fiscal Year 20/21 Actuals-To-Date
LM Disability Consulting	Disability Access Consulting	\$12,000.00	\$2,556.00
Masabi LLC	SMART Mobile Ticketing Pilot Project	\$570,000.00	\$23,750.00
MaxAccel	Compliance Management Software Design/Implementation/Asset Management	\$9,966.00	\$6,796.00
Maze & Associates	Financial Audit Services	\$53,116.00	\$29,667.00
MGrodnier, LLC	Project Management Services	\$30,000.00	\$1,853.00
Mike Brown Electric Co.	On-Call Electrical Maintenance	\$25,000.00	\$0.00
Militus, Inc.	Cyber Security Services	\$40,000.00	\$40,000.00
Modern Railway Systems, Inc.	Design and Construction of Systems Improvements for the Windsor Extension Project	\$5,000,000.00	\$2,737,956.00
Netspeed Solutions, Inc.	SMART Phone System Maintenance	\$16,118.00	\$11,867.00
Netwoven Inc.	SharePoint Maintenance, Support, Implementation, and Related Services	\$113,000.00	\$25,280.00
Nextdoor Inc.	Use of Nextdoor Platform for Community Notifications	\$10,529.00	\$9,025.00
Nixon Peabody LLP	Bond Counsel Services	\$100,000.00	\$80,000.00
North Bay SAP Services	Substance Abuse Professional Services	\$3,800.00	\$0.00
Occupational Health Centers of CA	Pre-Employment Evaluation Services	\$19,888.00	\$1,033.00
Oracle	Fusion ERP System	\$47,712.00	\$23,856.00
Pamco Machine Works, Inc.	Railroad Wheel Pressing Services	\$174,920.00	\$72,219.00
Parodi Investigative Solutions	Pre-Employment Background Investigation Services	\$18,000.00	\$3,000.00
PFM Financial Advisors, LLC	Bond Refinancing Financial Advising Services	\$150,000.00	\$150,000.00
Portola Systems, Inc.	SMART Station Network Configuration Services	\$220,545.00	\$162,981.00
Precision Wireless	Tech Support and Maintenance for Land Mobile Radio	\$30,000.00	\$2,575.00
Premier Fall Protection, Inc.	Inspection and Certification Services for SMART's Fall Protection Equipment	\$8,000.00	\$0.00
Railquip, INC.	Providing Portable Hydraulic Rerailing Equipment, Training, and Related Services	\$147,721.00	\$0.00
Santa Rosa Fire Equipment Service, Inc.	SMART Fire Equipment Maintenance	\$10,000.00	\$137.00
SEFAC USA	Portable Lifting Jack Inspection and Certification Services	\$8,000.00	\$1,270.00
Sonoma County Fleet Operation Division	Non-Revenue Fleet Maintenance Services	\$50,000.00	\$4,483.00
Sperry Rail Service	Rail Flaw Detection Services	\$13,500.00	\$0.00
SPTJ Consulting	Network Infrastructure, Security, Migration and Setup Services	\$340,470.00	\$47,447.00
Stacy and Witbeck, Inc.	Design/Build Construction of Civil, Track & Structures of Windsor Extension	\$9,946,500.00	\$8,544,550.00
Stacy and Witbeck/Herzog, JV	Design/Build Construction of Civil, Track & Structures Improvements of Larkspur Extension	\$443,166.00	\$443,166.00
Stantec Consulting Services, Inc.	Environmental Permit Management and Construction Compliance Monitoring	\$30,830.00	\$6,439.00
Stericycle, Inc.	Medical Waste Pick-Up and Disposal Services	\$1,836.00	\$0.00
Sue Evans	Real Estate Acquisition, Relocation Services, Appraisal Support, Title Investigation Services	\$10,000.00	\$1,820.00
Sumitomo Corporation	Manufacture & Delivery of Rail Vehicles	\$2,750,000.00	\$0.00
Summit Signal, Inc.	Emergency Call-Out Services for Track and Signals	\$11,056.00	\$10,598.00
Survival CPR & First Aid, LLC	First Aid and CPR Training, AED Compliance Program	\$5,000.00	\$572.00
Swiftly, Inc.	AVL Mobile Application and Website Interface	\$8,400.00	\$0.00
Testing Engineers, Inc.	Material Failure Analysis on cracked flywheel from DMU	\$4,500.00	\$4,500.00
Trailant, LLC	Online Training Program	\$444.00	\$0.00
Transportation Analytics	Transit Financial Modeling, Benchmarking, Performance Metrics, Benefit-Cost Analysis, and Strategic	\$25,000.00	\$10,890.00
Trillium Solutions, Inc.	Transit Feed Mapping Software	\$1,000.00	\$1,000.00
United Mechanical Incorporated	HVAC Service, Maintenance and Related Services	\$10,513.00	\$1,532.00
United Mechanical Incorporated	Repair Air Dryer located at ROC	\$3,317.00	\$3,317.00
United Mechanical Incorporated	HVAC Maintenance Services at SMART Facilities	\$8,709.00	\$6,487.00
Van Scoyoc Associates	Federal Lobbying Services	\$60,000.00	\$20,000.00
VenTek Transit Inc.	Clipper Vending Machine Operations and Maintenance Services	\$45,746.00	\$42,796.00
VenTek Transit Inc.	Fare Vending Machine Operations and Maintenance Services	\$210,414.00	\$0.00
VenTek Transit Inc.	Clipper Card Vending Machine Contract Assigned to SMART	\$77,138.00	\$0.00

Contractor	Scope	Fiscal Year 20/21 Projected	Fiscal Year 20/21 Actuals-To-Date
WBE	Existing CCTV System On-Call Maintenance	\$25,000.00	\$4,707.00
West Coast Arborists, Inc.	Tree Trimming and Tree Removal Services	\$30,000.00	\$0.00
WRA Environmental Consultants	Environmental Permitting, Management, & Support Services	\$204,000.00	\$64,297.00
Ziebarth and Associates, Inc.	Freight Service Consulting Services	\$20,000.00	\$6,469.00
	TOTALS:	\$24,000,702.00	\$13,406,171.00

Actuals-To-Date includes invoices that have been approved as of December 31, 2020, but may not have been processed in SMART's Financial System



February 3, 2021

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

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Susan Gorin
Sonoma County Board of Supervisors

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Farhad Mansourian
General Manager

5401 Old Redwood Highway
Suite 200
Petaluma, CA 94954
Phone: 707-794-3330
Fax: 707-794-3037
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Sonoma-Marin Area Rail Transit Board of Directors
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

SUBJECT: Approval of Contract No. OP-SV-20-007 to Nick Barbieri Trucking, LLC DBA Redwood Coast Fuels - North Bay Petroleum for Fuel Delivery Services

Dear Board Members:

RECOMMENDATION:

Authorize the General Manager to Execute Contract No. OP-SV-20-007 with Nick Barbieri Trucking, LLC DBA Redwood Coast Fuels - North Bay Petroleum for fuel delivery services to for the base term of two years with a maximum not-to-exceed amount of \$2,800,000.

SUMMARY:

SMART owns and operates a fleet of (18) Diesel Multiple Units ("DMU's") to provide passenger rail service in Sonoma and Marin Counties. These DMUs require Red-Dyed Diesel Fuel and Diesel Exhaust Fluid in order to operate. SMART relies on nightly deliveries of Red-Dyed Diesel Fuel since the Rail Operation Center does not currently have fuel storage tanks onsite. The vendor performs mobile fueling service directly into each DMU so that they are ready for service the following morning.

A formal Invitation for Bid was issued to procure the Fuel Delivery Services for SMART's Vehicle Maintenance Department. The Invitation for Bid scope of work included mobile fueling of Red-Dyed Diesel directly into the DMUs, the refilling of Diesel Exhaust Fluid tanks at the Rail Operation Center, the addition of the Schellville facility in preparation for freight fueling needs, and an option for SMART to launch a pilot program to test renewable diesel performance once authorization from the engine manufacturer is obtained.

SMART received a total of 2 bids of from the following vendors:

1. Nick Barbieri Trucking, LLC DBA Redwood Coast Fuels – North Bay Petroleum
2. Western States Oil

An Invitation for Bid is awarded to the lowest responsive responsible bidder. Out of the two bids received, Nick Barbieri Trucking, LLC was the lowest responsive responsible bidder. Nick Barbieri Trucking, LLC has provided SMART with reliable and quality service to-date over the past six years, including the proven ability to fuel SMART's trains during all the emergency events these past few years. SMART expects this level of service to continue with the award of this Agreement.

The not-to-exceed amount of \$2,800,000 for the base term of two years (\$1,400,000 per year) provides contract capacity for when your board approves the return of the full operating schedule. There is no minimum or maximum guarantee of work provided under this Agreement and SMART would only be invoiced for actual fuel amounts and fueling time needed. This Agreement locks in the margin rate for the fuel, the diesel exhaust fluid price-per-gallon, and the hourly labor rate to perform mobile fueling for the duration of the contract term. The rates included in this Agreement result in a slight annual increase of 3.8% over what SMART is currently paying and has been determined fair and reasonable.

Staff recommends authorizing the General Manager to execute Contract No. OP-SV-20-007 for fuel delivery services to Nick Barbieri Trucking, LLC DBA Redwood Coast Fuels - North Bay Petroleum for the base term of two years with a maximum not-to-exceed amount of \$2,800,000. This Agreement contains three additional one-year options to extend following the base term. These options would be brought before your Board to approve at that time.

FISCAL IMPACT: Funds for this Agreement are included in the Fiscal Year 2020-21 operations budget and assumed in the subsequent year.

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

Very truly yours,

/s/

Ken Hendricks

Procurement Coordinator

Attachment(s): North Bay Petroleum Contract No. OP-SV-20-007

AGREEMENT FOR SERVICES

This agreement (“Agreement”), dated as of March 1, 2021 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and Nick Barbieri Trucking, LLC dba Redwood Coast Fuels – North Bay Petroleum (hereinafter “Service Provider”).

RECITALS

WHEREAS, Service Provider represents that it is duly qualified and experienced in the areas of diesel fuel supply, mobile fueling, 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 Service Provider to supply diesel fuel and diesel exhaust fluid and to deliver those materials in the manner described herein.

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: United States Department of Transportation (DOT), Federal Transit Administration (FTA), and California Department of Transportation Requirements

ARTICLE 3. REQUEST FOR SERVICES.

Section 3.01 Initiation Conference. SMART’s Superintendent of Vehicle Maintenance or designee (“Superintendent”) 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 Superintendent and Service Provider 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. Service Provider shall perform services within the timeframe outlined in **Exhibit A** (cumulatively referred to as the “Scope of Work”).

Section 4.02 Cooperation With SMART. Service Provider shall cooperate with the Superintendent of Vehicle Maintenance in the performance of all work hereunder.

Section 4.03 Performance Standard. Service Provider 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 Service Provider’s profession. If SMART determines that any of Service Provider’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 Service Provider to meet with SMART to review the quality of the work and resolve matters of concern; (b) require Service Provider 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) Service Provider 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 Service Provider to perform work hereunder, Service Provider 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 Service Provider 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. Service Provider 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 Service Provider’s personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Service Provider’s control, Service Provider shall be responsible for timely provision of adequately qualified replacements.
- (d) Service Provider shall assign the following key personnel for the term of this Agreement:
Randy Parker, Operations Manager
Ken Anderson, Bobtail Manager
Nina Freitag, Billing Specialist
Walt Turner, Account Rep

ARTICLE 5. PAYMENT.

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

Section 5.01 Service Provider shall invoice SMART on a monthly basis, detailing the tasks performed pursuant to the Scope of Work. SMART shall pay Service Provider within 30 days after submission of the invoices.

Section 5.02 Service Provider shall be paid in accordance with the rates established in **Exhibit B**; provided, however, that total payments to Service Provider shall not exceed \$2,800,000.00 without the prior written approval of SMART. Service Provider shall submit its invoices in arrears on a monthly basis in a form approved by the Chief Financial Officer. Each invoice shall provide the following itemized information for each fueling service that took place in the previous month for each location: (i) the fuel type provided; (ii) the number of gallons delivered, (iii) the daily OPIS rate (iv) the contract overhead & margin rate (fixed-fee markup), (v) the total fuel product cost, (vi) the name and location of the supplier (vii) the time in quarter hours to perform the wet-hose fueling service and corresponding labor rate, and (viii) all applicable taxes and fees. SMART is exempt from the payment of Federal and State Excise and Transportation taxes. SMART does not reimburse Service Provider for travel time.

Section 5.03 Service Provider 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 Service Provider 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 Service Provider to abide by these requirements may delay or prevent payment of invoices or cause such invoices to be returned to the Service Provider unpaid.

ARTICLE 6. TERM OF AGREEMENT.

Section 6.01 The term of this Agreement shall remain in effect for two years with three, one-year options to renew thereafter 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, both parties 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 Service Provider 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 Service Provider written notice of such termination, stating the reason for termination.

Section 7.03 Payment Upon Termination. Upon termination of this Agreement by SMART, Service Provider 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 Service Provider 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 Service Provider 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 Service Provider.

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

Service Provider 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 Service Provider, to the extent caused by the Service Provider's negligence, recklessness or willful misconduct in its performance or obligations under this Agreement. Service Provider agrees to provide a complete defense for any claim or action brought against SMART based upon a claim relating to Service Provider's performance or obligations under this Agreement. Service Provider'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 Service Provider's expense, subject to Service Provider'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 Service Provider 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, Service Provider shall maintain and shall require all of its Subcontractors, Service Providers, and other agents to maintain insurance as described below. If the Service Provider 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 Service Provider. 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 \$5,000,000 per occurrence, and \$10,000,000 aggregate.

Section 9.03 Automobile Insurance. Automobile Liability insurance covering bodily injury and property damage in an amount no less than \$5,000,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles.

Section 9.04 Pollution Liability. Contractors Pollution Liability insurance in an amount no less than \$2,000,000 per incident. The Contractor's Pollution Liability policy shall be written on an occurrence basis with coverage for bodily injury, property damage and environmental damage, including cleanup costs arising out of third-party claims, for pollution conditions, and including claims of environmental authorities, for the release of pollutants caused by activities related to the Contract. Coverage shall include the Service Provider as the named insured and shall include coverage for acts by others for whom the Service Provider is legally responsible. Coverage to be provided for bodily injury to or destruction of tangible property, including the resulting loss of use thereof, loss of use of tangible property that has been physically injured, and natural resource damage. There shall be no exclusions or limitations regarding damages or injury from existence, removal or abatement of lead paint. There shall be no insured vs. insured exclusion in the policy.

Section 9.05 Railroad Protective Liability. Prior to commencement of any construction-related activities, Service Provider shall procure and maintain Railroad Protective Liability insurance, in SMART's name, with limits of liability of no less than \$5,000,000 per occurrence, for losses arising out of injury to or death of all persons, and for physical loss or damage to or destruction of property, including the loss of use thereof. The additional named insureds shall be the Sonoma-Marín Area Rail District and the North Coast Railroad Authority and shall cover all other railroads operating on the right-of-way.

Section 9.06 Endorsements. Prior to commencing work, Service Provider 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, except for Worker's Compensation.

- (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 Service Provider 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 Service Provider. Said policy shall protect Service Provider 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) Service Provider hereby grants to SMART a waiver of any right to subrogation which any insurer of said Service Provider may acquire against SMART by virtue of the payment of any loss under such insurance. Service Provider 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.
- (f) The Automobile Liability policy shall be endorsed to include Transportation Pollution Liability insurance, covering materials to be transported by Service Provider pursuant to the contract. This coverage may also be provided on the Contractors Pollution Liability policy.

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. Service Provider shall be responsible for payment of any deductible or retention on Service Provider'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, Service Provider 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 five (5) years following completion of contract work, 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, Service Provider shall purchase extended period coverage for a minimum of five (5) years after completion of the work.
- (d) A copy of the claims reporting requirements must be submitted to SMART for review.

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. Service Provider 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. Service Provider agrees to maintain current endorsements evidencing the above-specified requirements on file with SMART for the duration of this Agreement.
- (c) Upon SMART's written request, Service Provider shall provide certified copies of the insurance policies to SMART. Said policy copies shall be submitted within thirty (30) days of SMART's request. 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.

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

Section 9.11 Material Breach. If Service Provider, 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 Service Provider resulting from said breach. Alternatively, SMART may purchase such required insurance coverage, and without further notice to Service Provider, SMART may deduct from sums due to Service Provider 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.

Service Provider shall perform all work without delay and in strict compliance with the delivery requirements and schedule specified herein. SMART is considered an essential service and first response resource during emergency events. SMART must be available to assist in providing mutual aid to other jurisdictions (for example, by providing transportation of supplies and assisting with evacuations of people in emergency situations). Given this critical role, business continuity is essential, and Service Provider shall be expected to provide fuel and

fueling services during emergency events. Business continuity is critical. Failure to supply and deliver fuel will result in financial loss to SMART and will be considered a breach of contract.

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 General Manager in a form approved by SMART Counsel. The Board of Directors, General Manager or Superintendent 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 Service Provider 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 Service Provider shall be entitled to no compensation whatsoever for the performance of such work. Service Provider 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 SERVICE PROVIDER.

Section 12.01 Standard of Care. SMART has relied upon the professional ability and training of Service Provider as a material inducement to enter into this Agreement. Service Provider 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 Service Provider's work by SMART shall not operate as a waiver or release.

Section 12.02 Status of Service Provider. The parties intend that Service Provider, 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. Service Provider 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, Service Provider 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. Service Provider 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. Service Provider 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 Service Provider'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, Service Provider agrees to furnish SMART with proof of payment of taxes on these earnings.

Section 12.04 Records Maintenance. Service Provider 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. Service Provider shall maintain such records for a period of four (4) years following completion of work hereunder. Service Provider and Subcontractors 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. Service Provider 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. Service Provider 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, Service Provider 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 Service Provider's or such other person's financial interests.

Section 12.06 Nondiscrimination. Service Provider 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. Service Provider 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 Service Provider in connection with this Agreement. Service Provider 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. Service Provider'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. Service Provider 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. All reports, original drawings, graphics, plans, studies, and other data or documents (“documents”), in whatever form or format, assembled or prepared by Service Provider 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, Service Provider 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. Service Provider 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: Husani Longstreet,
Superintendent of Vehicle Maintenance
Rail Operations Center
3748 Regional Parkway
Santa Rosa, CA 95403
hlongstreet@sonomamarintrain.org
707-790-3938 (cell)
707-894-8614 (office)

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 Service Provider: Walt Turner
Account Representative
North Bay Petroleum
365 Todd Rd.
Santa Rosa, CA 95407
walt.turner@reladyne.com
707-529-4323 (cell)

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 Default. The work performed under this Agreement is critical to the District and the District reserves the right to immediately cancel or annul either in whole or in part any portion of this Agreement due to failure of the Service Provider to carry out any

obligation, term, or condition of the Agreement. The District will issue a written notice of default effective immediately and not deferred by any interval of time. Default shall be considered to be any act or failure to act on the part of the Service Provider including, but not limited to, any of the following:

- a. The Service Provider provides material that does not meet the specifications of the Agreement
- b. The Service Provider fails to adequately perform the services set forth in the specifications of the Agreement.
- c. The Service Provider fails to complete the work required or furnish the materials required within the time stipulated in the Agreement, and
- d. The Service Provider fails to make progress in the performance of the Agreement and/or gives the District reason to believe that the Service Provider will not or cannot perform to the requirements of the Agreement.

Section 16.03 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. Service Provider 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. Service Provider and SMART acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

Section 16.04 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 16.05 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 16.06 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 16.07 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 16.08 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 16.09 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.

Section 16.10 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.

**NICK BARBIERI TRUCKING, LLC
DBA REDWOOD COAST FUELS – NORTH BAY PETROLEUM**

By: _____

Its: _____

Date: _____

SONOMA-MARIN AREA RAIL TRANSIT (SMART)

By: _____
Farhad Mansourian, General Manager

Date: _____

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

By: _____
Ken Hendricks, Procurement Coordinator

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

EXHIBIT A

SCOPE OF WORK & TIMELINE

I. Overview

Sonoma-Marin Area Rail Transit District (“SMART”), a public agency, currently owns and operates a fleet of eighteen (18) Diesel Multiple Units (“DMUs”). The DMU is a multiple unit train powered by on-board diesel engines using Red Dyed No. 2 diesel fuel. SMART’s DMUs are used for passenger rail service between North Santa Rosa in Sonoma County, California and Larkspur in Marin County, California.

SMART’s DMUs are housed in North Santa Rosa at its Rail Operations Center (“ROC”). Fuel is delivered to the individual DMUs located at the ROC via the “wet hose” method.

SMART’s trains require Diesel Exhaust Fluid (DEF) to operate the DMU catalytic converters. SMART has two, 275-gallon totes located at the ROC. SMART requires that the Service Provider awarded the Agreement utilize a “keep-full” program by installing an automatic sensor device in each tank to monitor tank levels remotely and ensure the tanks do not fall below 30%, or other threshold as directed by SMART’s Project Manager in writing, at any time.

At a future date to be determined, SMART expects to require diesel fuel delivery via the wet hose method directly to several locomotives located at its Schellville site.

II. Project Manager

All work will be initiated, coordinated, and approved by SMART’s Superintendent or designee.

III. Service Provider Contacts

Service Providers primary contacts for service, including emergency services are as follows:

- | | | |
|----------------|--------------------|--------------|
| • Ken Anderson | Bobtail Manager | 707-974-2234 |
| • Randy Parker | Operations Manager | 707-391-1040 |
| • Walt Turner | Account Rep | 707-529-2323 |

IV. Scope of Work

Quality fuel and reliable fueling services are critical elements to SMART’s ability to provide safe and reliable transportation to the North Bay community. The absence of onsite storage tanks at SMART’s facilities and the necessity for nightly wet-hosing fueling services in order to run trains the following day require a strong Service Provider who is committed to SMART’s mission and can guarantee performance that is in strict compliance with the terms and conditions of this Agreement.

The Service Provider shall supply, deliver, and provide fueling services to SMART for the following fuel products:

1. Diesel Fuel, Type 2-D (Red Dyed No.2) - Specifications of Delivered Fuel

The Service Provider shall supply, deliver, and fuel directly into SMART's Diesel Multiple Units via the wet-hose method the following fuel type Diesel Fuel, Type 2-D (Red Dyed No. 2):

The fuel shall conform to California Code of Regulations (CCR) Title 4, Division 9, Chapter 6, Article 5, Section 4144. Diesel fuel shall also meet the requirements of the California Code of Regulation, Title 13, Division 3, Chapter 5, Article 2, Section 2281 (sulfur content) and section 2282 (aromatic hydrocarbon). Alternative diesel formulations must be certified by CARB. Evidence of such fact shall be available to SMART in the form of a letter certifying such compliance and signed by a responsible official of the Service Provider.

The fuel shall meet the requirements of Low Carbon Fuel Standard (LCFS), Title 17, Division 3, Chapter 1, Subchapter 10, Article 4, Subarticle 7, of California Code of regulations (CCR), Sections 95480 through 95490 (collectively referred to as "LCFS") applies to any transportation fuel, as defined in section 95481, that is sold, supplied, or offered for sale in California, and to any person who, as a "regulated party" defined in section 95481 and specified in section 95484(a), is responsible for a transportation fuel. LCFS regulation became effective on January 12, 2010.

2. Diesel Exhaust Fluid (DEF)

Service Provider shall utilize a "keep-full" program by installing an automatic sensor device in each of SMART's 275-gallon totes to monitor tank levels remotely and ensure that tanks do not fall below 30%, or other designated threshold as provided in writing by SMART's project manager, at any time. These above-ground totes are located at the ROC in Santa Rosa, CA. These automatic sensor devices would become SMART's property at the end of the Agreement. Service Provider will provide written notice to SMART's Project Manager at least 24 hours prior to the delivery of the Diesel Exhaust Fluid.

Diesel Exhaust Fluid (DEF) Specification Requirements:

Specification	Limits	Units
Urea	31.8 – 33.2	% by weight
Density/Specific Gravity (at 25°C / 77°F)	1.094 (approx. 9.2 lbs./gal.)	
Refractive Index (at 20°C / 68°F)	1.3814 – 1.3843	
Alkalinity as NH3	0.2 max.	% by weight
Biuret	0.3 max.	% by weight
Aldehyde	0.0005 max.	% by weight
Insolubles	0.002 max.	% by weight
Phosphate (PO4)	0.00005 max.	% by weight
Calcium	0.00005 max.	% by weight
Iron	0.00005 max.	% by weight

Copper	0.00002 max.	% by weight
Zinc	0.00002 max.	% by weight
Chromium	0.00002 max.	% by weight
Nickel	0.00002 max.	% by weight
Aluminum	0.00005 max.	% by weight
Magnesium	0.00005 max.	% by weight
Sodium	0.00005 max.	% by weight
Potassium	0.00005 max.	% by weight
Appearance	Colorless Clear Liquid	

3. Renewable Diesel (RD 99) - (Optional Pilot Program)

During the term of this Agreement, SMART may launch a short-term pilot program to test the performance results of Renewable Diesel (RD 99) on a small subset of SMART's DMUs. This pilot program will be at SMART's sole discretion. If SMART elects to launch this pilot program, Service Provider shall be given written notification at least 72 hours in advance of requiring this fuel and fueling service to begin. The Renewable Diesel (RD 99) will be required to be delivered to the ROC and fueled via the wet hose method directly into the "test" DMUs for the duration of the pilot program.

The renewable diesel fuel shall conform to California Code of Regulations (CCR) Title 4, Division 9, Chapter 6, Article 5, Section 4149.

The renewable diesel fuel shall also meet the requirements of the California Code of Regulation, Title 13, Division 3, Chapter 5, Article 2, Section 2281 (sulfur content) and section 2282 (aromatic hydrocarbon). Renewable diesel formulations must be certified by California Air Resources Board. This evidence shall be made available to SMART in the form of a letter certifying such compliance and signed by a responsible official of the Service Provider.

The renewable diesel fuel shall meet the requirements of Low Carbon Fuel Standard (LCFS), Title 17, Division 3, Chapter 1, Subchapter 10, Article 4, Subarticle 7, of California Code of regulations (CCR). Sections 95480 through 95490 (collectively referred to as "LCFS") apply to any transportation fuel, as defined in section 95481, that is sold, supplied, or offered for sale in California, and to any person who, as a "regulated party" defined in section 95481 and specified in section 95484(a), is responsible for a transportation fuel. LCFS regulation became effective on January 12, 2010.

The carbon intensity of the fuel shall be no more than 50 gCO₂e/MJ as determined by the Low Carbon Fuel Standard (LCFS), Title 17, Division 3, Chapter 1, Subchapter 10, Article 4, Subarticle 7, of California Code of Regulations (CCR), Section 95486.

V. **Delivery and Fuel Service Requirements**

- a. Service Provider's delivery vehicles shall be capable of navigating within the Delivery Locations while delivering the quantity of fuel required.
- b. Service Provider's personnel shall wear the following personal protective

equipment (Hard Hat, Safety Vest, Boots) while on SMART's property always. Service Provider's personnel shall be expected to comply with all directions given by SMART staff given that the work being performed occurs around an active railroad and safety is of utmost importance.

- c. Service Provider shall ensure that all trucks, railcars, and vessels used to transport the fuel products are drained, cleaned, and inspected prior to loading if the previous load contained other petroleum product(s) that would contaminate the diesel fuel.
- d. Service Provider's delivery vehicles shall be equipped with vapor recovery devices that are in compliance with all Federal, State, and Local regulations and requirements. These devices shall be utilized during the delivery of fuel as required.
- e. SMART shall provide the hose nozzles for all direct-to-DMU or direct-to-locomotive, wet hose delivery. Service Provider shall supply all hoses used for such delivery.
- f. Spills and Damage to Delivery Site:

Service Provider shall be responsible for all costs and remediation services resulting from any damage, contamination, or citations, which may be incurred as a result of any fuel spill during the delivery or fueling process. Drivers are to immediately report any spill on SMART's property to SMART's onsite personnel, SMART's Project Manager, and all local authorities as required by local, state, and federal law.

- g. Bill of Lading Requirement: A Bill of Lading will be provided to SMART's onsite personnel at each delivery. The Bill of Lading shall identify the supplier origin, the fuel type delivered, the number of gallons delivered, and the number of fueling labor hours in quarter hour increments.
- h. Delivery Locations:

- 1) Rail Operations Center
3748 Regional Parkway
Santa Rosa, CA 95403

Fuel Products Delivered to this Location:

- Diesel Fuel (Red Dye No.2) by wet hose delivery to DMUs.
- DEF shall be delivered to onsite 275-gallon totes.
- Renewable Diesel (RD 99) – Only if SMART launches the Pilot Program.

Required Delivery/Fueling Hours:

- Fuel deliveries will be made Sunday through Thursday, between 8 p.m. and 10 p.m. (Pacific).

- Diesel Exhaust Fluid (DEF) deliveries will be made Monday through Friday between 11 a.m. and 1 p.m. (Pacific).
- Weekend deliveries may be required on an as-needed basis.
 - SMART will provide written notice at least 24 hours in advance that contains the required fueling window.
- The delivery schedule listed above is subject to change. SMART will provide written notice to Service Provider of a change in the delivery schedule.
- The Rail Operation Center is a gated and secured facility.
- Service Provider will call the on-duty supervisor each night when en route to the Rail Operations Center. SMART's Project Manager shall provide the contact number(s) for the on-duty supervisor in writing.

2) Schellville Maintenance Facility
 1480 Highway 121
 Sonoma, CA 95476

Service Request Process:

- Delivery is arranged on an as needed or emergency basis. Service Provider will call the on-duty supervisor each night when en route to the facility. SMART's Project Manager shall provide the contact number(s) for the on-duty supervisor in writing.
- SMART will provide written or verbal notice at least 24 hours in advance of fuel being required at this location.
- The Schellville Maintenance Facility is a gated and secured facility.

Fuel Products Delivered to this Location:

- Diesel Fuel (Red Dye No. 2) by wet hose delivery to locomotives.

Required Delivery/Fueling Hours:

- SMART's Project Manager shall provide the delivery/fueling hours in writing at least 24 hours in advance of service need.

VI. Quality Control Requirements

- a. The Service Provider shall inspect and test fueling products according to the methods specified in active standards, ASTM D5453 for sulfur, D5186 for aromatics and other test methods specified in ASTM D975 prior to delivery.
- b. Fuel shall not deteriorate in ordinary storage and shall not form excessive gum, resin, or deposits. Fuel shall be visually free of undissolved water, sediment, and suspended matter.
- c. Service Provider shall provide traceability on all shipments back to refinery within five business days upon request from SMART.
- d. SMART may, at any time, take a sample of the delivered fuel and conduct an independent test to determine quality of fuel. This sampling will be taken by SMART personnel or SMART consultants with the cooperation of the Service Provider's delivery personnel. The sample will be tested by an independent third-party laboratory. If the test analysis shows that the fuel does not comply with this specification, the Service Provider shall be notified immediately, provided the lab report, and responsible for all cost related to the test analysis, including shipping and lab test(s).
- e. For each occurrence that the fuel testing reveals that non-compliant fuel was delivered to SMART, Service Provider shall, at its sole cost and expense, immediately replace the non-compliant fuel with fuel meeting the specifications stated in this Agreement and pay for subsequent independent testing to ensure the quality of the fuel. If SMART incurs a fine or any other cost or expense relating to the Service Provider's delivery of non-compliant fuel, Service Provider will reimburse SMART for the payment of the fine or other costs and expenses, including, but not limited to, costs associated with damage to the DMUs or equipment related to delivery of non-compliant fuel.

VII. Emergency Fueling Service

SMART is considered an essential service and first response resource during emergency events. SMART must be available to assist in providing mutual aid to other jurisdictions (for example, by providing transportation of supplies and assisting with evacuations of people in emergency situations). Given this critical role, business continuity is essential, and Service Provider shall be expected to provide fuel and fueling services during emergency events.

VIII. Acceptance Criteria

SMART's Superintendent or designee will inspect each fuel delivery to ensure that all work has been completed in conformance with Superintendent's directions and the requirements of this Agreement.

EXHIBIT B SCHEDULE OF RATES

DIESEL FUEL: TYPE 2-D (RED DYED # 2)

Delivery Location	*Cents per-gallon firm fixed fee markup over the OPIS daily rack average rate
Rail Operation Center	\$.2571
Schellville	\$.2571

*The Oil Price Information Service (OPIS) rack average rate is based on the San Francisco, California area, specifically the Gross Carb Ultra Low Sulfur Distillate Prices with CAR Cost for RD No. 2 as published at 10:00 a.m. (Eastern).

DIESEL EXHAUST FLUID (DEF)

Delivery Location	Per gallon
Rail Operation Center	\$1.75

FUELING LABOR COST

Description	Hourly Rate
Wet Hosing Fee	\$125.00

RENEWABLE DIESEL (RD 99)

Delivery Location	*Cents per-gallon firm fixed fee markup over the OPIS daily rack average rate
Rail Operation Center	\$.2571

*The Oil Price Information Service (OPIS) rack average rate is based on the San Francisco, California area, specifically the Gross Carb Ultra Low Sulfur Distillate Prices with CAR Cost for No. 2 as published at 10:00 a.m. (Eastern).

EXHIBIT C

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 leading 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: _____

Print Name: _____

Title: _____

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: _____

By: _____

Print Name: _____

Title: _____

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 or 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 4.4%.

(b) The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as SMART deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

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

(c) The Contractor is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from SMART. In addition, Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this Agreement is satisfactorily completed.

(d) 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.

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. Contract Work Hours and Safety Standards Act.

(40 U.S.C. §§ 3701 – 3708) Contractor shall comply with 40 U.S.C. § 3702 and § 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

Contractor shall comply with the determinations pertaining to these requirements that may be made in accordance with applicable U.S. Department of Labor (DOL) regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5.

Contractor shall comply with U.S. DOL regulations, “Recording and Reporting Occupational Injuries and Illnesses,” 29 C.F.R. Part 1904; “Occupational Safety and Health Standards,” 29 C.F.R. Part 1910, and “Safety and Health Regulations for Construction,” 29 C.F.R. Part 1926.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.



February 3, 2021

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

Kate Colin
Transportation Authority of Marin

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Sonoma County Board of Supervisors

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
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Councilmembers Association

Farhad Mansourian
General Manager

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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: Authorize the General Manager to Award the Purchase and Sale Agreement No. OP-EQ-20-00 to Herzog Contracting Corp for the design and delivery of a custom-built Hi-Rail Scrubber Brush Truck in the amount of \$458,410

Dear Board Members:

RECOMMENDATION:

Authorize the General Manager to Award the Purchase and Sale Agreement No. OP-EQ-20-004 to Herzog Contracting Corp for the design and delivery of a custom-built Hi-Rail Scrubber Brush Truck in the amount of \$458,410 and to approve the use of the Request for Proposal procurement method used with a finding of two-thirds of all members.

SUMMARY:

SMART owns and maintains 45 miles of active track on its mainline where passenger service takes place. The issue of adequate rail shunting arose during pre-revenue service. Shunting is the ability of the train control and grade crossing warning systems to detect the presence of a train. The combination of our light weight DMU's, new rail, and contaminates on the rail were at times effecting these shunting. SMART has been leasing a custom built Hi-Rail Scrubber brush truck since December 2016 at annual cost of \$129,900 to solve for this issue. This vehicle has wire wheel brushes that remove rust and contaminates from the top of the rail. The poor shunting issue decreased when we were running 38 trains per day but did not go away entirely. The nature of our climate and DMU's will require weekly rail scrubbing for the foreseeable future.

Pursuant to Public Contracts Code §20355.7, SMART elected to use a best value method of procurement instead of a low-bid method for this specialized rail transit equipment. This procurement method was selected due to the highly technical nature of the equipment and the need to review technical characteristics, in addition to price. The technical characteristics that were reviewed included the hi-rail truck specifications and capabilities, the experience and qualifications of the firm that would build the vehicle, the delivery and lead time schedule, and customer references.

A formal Request for Proposal was issued and well-advertised to many firms specializing in railroad gear upfitting. Although, this solicitation was well advertised, SMART only received 1 Proposal in response from Herzog Contracting Corp due to the unique and technical equipment need that cannot be solved using readily available off-the-shelf products.

SMART's evaluation committee reviewed and evaluated the proposal submitted by Herzog Contracting Corp based on the criteria included in the Request for Proposal. Herzog Contracting Corp proposed to use proprietary equipment that was designed and proven in-house. The evaluation committee determined that the vehicle proposed would meet the technical needs and specific requirements of SMART.

SMART evaluated the cost of the vehicle proposed and determined that purchasing the vehicle was in the best interest of the District resulting in a break-even point of 3.6 years compared to the alternative of continuing the existing lease indefinitely. This custom-built hi-rail scrubber brush truck is expected to have a ten-year useful life or more, which will result in cost savings to the District following the break-even point.

Below are a few images of the custom-built Hi-Rail Scrubber Brush Truck that SMART intends to purchase from Herzog Contracting Corp.



Staff recommends authorizing the General Manager to award the Purchase and Sale Agreement No. OP-EQ-20-004 to Herzog Contracting Corp for the design, delivery, and hands-on training of a custom-built Hi-Rail Scrubber Brush Truck in the amount of \$458,410 and to approve the use of the best value procurement method used with a finding of two-thirds of all members.

FISCAL IMPACT: Funding is included in the Fiscal Year 2020-21 operations budget and is supported by Senate Bill 1 funding from the State of California.

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

Very truly yours,

/s/
Marc Bader
Operations Manager

Attachment(s): Purchase and Sale Agreement No. OP-EQ-20-004 with Herzog Contracting Corp.

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT ("**Agreement**") is made this _____ day of February, 2021, by and between HERZOG CONTRACTING CORP, (hereinafter "**HERZOG**" or the "**Seller**") and SONOMA-MARIN AREA RAIL TRANSIT DISTRICT., (hereinafter "**SMART**" or the "**Buyer**"). Buyer and Seller may individually be referred to as a "**Party**" and collectively as the "**Parties**". For and in consideration of the promises and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller hereby sells, and Buyer hereby purchases certain equipment subject to the following terms and conditions:

1. DESCRIPTION OF EQUIPMENT

One (1) Chevrolet 3500HD Silverado Hi-Rail Scrubber Brush Truck per the specifications listed in SMART's Request for Proposal (Solicitation No. OP-EQ-20-004), including all addenda issued, and final clarifications made to specifications during the evaluation and negotiation phase (the "**Equipment**").

2. PURCHASE PRICE

At the Closing, and upon the terms and subject to the conditions of this Agreement, HERZOG shall sell, assign and transfer to SMART and SMART shall purchase from HERZOG, free and clear of all liens, good and valid title to the Equipment. In exchange for the Equipment, SMART at the Closing shall pay to HERZOG an amount in cash equal to Four Hundred Fifty-Eight Thousand and Four Hundred and Ten U.S. Dollars (U.S.\$458,410.00) (the "**Closing Payment**"). The Closing Payment is comprised of \$420,000.00 for the Equipment, \$34,650.00 sales taxes. \$2,480.00 in delivery costs and \$1,280 for 2 days of on-site training.

The Closing Payment shall be made by wire transfer of immediately available funds in accordance with Seller's bank wire transfer instructions shown on Exhibit A.

3. CLOSING

3.1 Subject to the satisfaction or waiver of the conditions specified herein, the closing of the sale and purchase of the Equipment (the "**Closing**") shall take place at the Seller's offices, located at 600 S. Riverside Road, St. Joseph, Missouri or via tele-conference, facsimile and e-mail, on February, 26, 2021, or such other date or place as the Parties agree.

3.2 The obligations of SMART under this Agreement with respect to the Equipment is subject to the fulfillment, prior to or at the Closing, of the following conditions (any one or more of which may be waived in writing in whole or in part by HERZOG at its sole option): (a) confirmation of a wire transfer of the Closing Payment from SMART to HERZOG pursuant to the wire instructions provided in Exhibit A; and (b) SMART shall be satisfied with the quality Equipment, and by undertaking the Closing, will be deemed to have accepted the Equipment as being of satisfactory condition and quality.

3.3 The obligations of HERZOG under this Agreement with respect to the Equipment are subject to fulfillment, prior to or at the Closing, of each of the following conditions (any one or more of which may be waived in writing in whole or in part by SMART at its sole option: (a) the issuance by HERZOG of a Bill of Sale, substantially in the forms of Exhibit B, evidencing the transfer of the Equipment to SMART (the "**Closing Bill of Sale**"); (b) the issuance of any other documents, including but not limited to the Equipment title necessary to effectuate the transfer of the Equipment to SMART; (c) providing 2 days of on-site training to SMART concerning the operation of the Equipment as arranged by the parties; and (d)

delivery of the Equipment to SMART's Maintenance of Way Facility located at 1200 River Rd, Fulton, CA 95439 ("SMART's Final Destination"). This is a secure facility and delivery is by appointment only.

4. **RISK OF LOSS/DELIVERY OF EQUIPMENT**

HERZOG shall be responsible for all loss or risk associated with the Equipment arising prior to or on the Closing and prior to delivery of the Equipment to SMART's Final Destination. HERZOG agrees to bear the costs associated with the delivery of the Equipment to SMART over and above those listed in Section 2 above. SMART shall be responsible for all loss or risk associated with the Equipment arising after the Closing and delivery of the Equipment.

5. **BILL OF SALE**

Upon receipt of the Closing Payment, HERZOG will issue to SMART the Closing Bill of Sale. HERZOG has, and will transfer to SMART, legal, good and marketable title to the Equipment and shall transfer such title to SMART free and clear of any security interest, lien, lease, claim or encumbrance (each a "***Lien***" and collectively the "***Liens***") on the Equipment.

6. **CONDITION OF EQUIPMENT AND INVENTORY**

(A) EXCEPT AS CONTAINED HEREIN TO THE CONTRARY, SMART AGREES THE EQUIPMENT SHALL BE SOLD TO SMART BY HERZOG IN "NEW CONDITION", WITH HERZOG ASSIGNING ALL MANUFACTURER WARRANTIES FOR THE TRUCK TO SMART, AND PROVIDING SMART WITH A TWELVE (12) MONTH PARTS AND LABOR WARRANTY FOR MANUFACTURER DEFECTS ON THE UPFITTED SCRUBBER COMPONENTS. TIME IS OF THE ESSENCE FOR COMPLETING WARRANTY REPAIRS TO THE UPFITTED SCRUBBER COMPONENTS AND SHALL BE COMPLETED WITHIN TWO (2) WEEKS OF SMART'S NOTIFICATION TO HERZOG OF THE DEFECT(S), SUBJECT TO AVAILABILITY OF NECESSARY PARTS. HERZOG SHALL NOT, BY VIRTUE OF HAVING SOLD THE EQUIPMENT, BE DEEMED TO HAVE MADE ANY WARRANTY OR REPRESENTATION AS TO THE EQUIPMENT'S DESIGN, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE, AS TO THE QUALITY OF MATERIAL OR WORKMANSHIP OR CONFORMITY TO SPECIFICATIONS, AS TO THE ABSENCE OF ANY LATENT OR OTHER DEFECTS WHETHER OR NOT DISCOVERABLE, OR AS TO ANY OTHER MATTER WHATSOEVER RELATING TO THE EQUIPMENT OR INVENTORY.

(B) HERZOG hereby warrants that: (i) it is the lawful owner of the Equipment and has full right and authority to sell the Equipment to SMART; (ii) it is hereby transferring to SMART legal, good and marketable title to the Equipment; and (iii) it is assigning to SMART any and all manufacturers warranties for the truck; and (iv) it warrants the upfitted scrubber implement comes with a twelve (12) month parts and labor warranty for manufacturer defect.

7. **INSURANCE REQUIREMENTS**

With respect to the onsite training under this Agreement, HERZOG shall maintain and shall require all of its Subcontractors, Consultants, and other agents to maintain, insurance as described below.

7.1 Workers' Compensation. Worker's Compensation insurance with statutory limits as required by the Labor Code of the State of California and Employers' Liability with limits of 1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy;

7.2 General Liability. 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.

7.3 Automotive Liability. Automotive Insurance with minimum limits of \$1,000,000 combined single limit per accident. Coverage shall apply to all 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.

7.4 Endorsements. Prior to commencing the Onsite Training, HERZOG 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 Worker's Compensation.
- (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 HERZOG 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 HERZOG. Said policy shall protect HERZOG 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) HERZOG hereby grants to SMART a waiver of any right to subrogation which any insurer of HERZOG may acquire against SMART by virtue of the payment of any loss under such insurance. HERZOG 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.

8. **TAXES**

Excluding the sales taxes which are included within the Closing Payment, SMART is responsible for the payment of all stamp duties, sales, transfer, and other similar taxes or duties, if any, related to the sale and purchase of the Equipment.

9. TERMINATION

This Agreement may be terminated (a) by mutual written consent of SMART and HERZOG; (b) by either party, by written notice to the other party prior to Closing or if the Closing has not occurred by February 26, 2021.

10. NOTICE

All notices, and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed to have been duly given or made (a) when received, if sent by registered or certified mail, return receipt requested, (b) upon delivery, if sent by hand delivery, (c) when delivered, if sent by prepaid overnight carrier, with a record of receipt, or (d) the date of electronic transmission, if sent by email (with a copy simultaneously sent by prepaid overnight carrier as described above), to the party at the party's address set forth below its signature, or such other address as the party may designate by notice to all other parties as herein provided.

11. ENTIRE AGREEMENT

This Agreement and the exhibits attached hereto set forth all of the promises, covenants, agreements, conditions and undertakings of the parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, negotiations, inducements or conditions, express or implied, oral or written. This Agreement is not intended to confer upon any person other than the parties hereto any rights or remedies hereunder.

12. SEVERABILITY

Any term or provision of this Agreement which is invalid or unenforceable in any situation in any jurisdiction under applicable law shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or any other jurisdiction. If the final judgment of a court of competent jurisdiction or arbitrator declares that any term or provision hereof is invalid or unenforceable, such court or arbitrator shall have the power, and is hereby requested under such circumstances, to modify the term or provision, to delete specific words or phrases, and/or to replace any invalid or unenforceable term or provision with a term or provision which is valid and enforceable and which comes closest to expressing the intention of the invalid or unenforceable provision, and this Agreement shall be enforceable as so modified, effective retroactively, as of the date of this Agreement. Under such circumstances, the court or arbitrator may request the parties to each submit their respective proposal to the court or arbitrator and the court or arbitrator, in such event, shall select the most reasonable proposed replacement language for this Agreement.

13. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument. 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.

14. APPLICABLE LAW AND FORUM

This Agreement and the Bills of Sale 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 and the Bill of Sale or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

15. RIGHT OF BUY-BACK

15.1 SMART acknowledges and agrees not to sell or otherwise transfer the upfitted scrubber components during the Equipment's useful life. The useful life for the proprietary upfitted scrubber components is ten (10) years. Further, the parties agree Herzog retains the sole option to exercise its right to buy the upfitted scrubber components back from SMART in the event of any of the following: (a) at the expiration of the Equipment's useful life; (b) in the event of a casualty loss of the Equipment where SMART's insurance determines the equipment is "totaled" during SMART's ownership. Herzog shall be responsible for all costs and activities associated with removing the proprietary scrubber components from the vehicle. The removal of the proprietary scrubber components shall take place at SMART's facility. In the event the useful life of the truck is shorter than the useful life of the upfitted scrubber components, this paragraph does not prevent SMART from transferring the upfitted scrubber components to a newer truck to remain under SMART's ownership. SMART will consult with Herzog and Herzog will assist in the transfer of the upfitted scrubber components.

15.2 Herzog's right of buy-back option is valid during the duration of SMART's ownership of the Equipment. At the end of the Equipment's useful life, the parties agree to enter into an Agreement for the sale of the upfitted scrubber components to Herzog for \$100.00 USD.

16. SIGNATURES

In witness hereof, HERZOG and SMART have executed this Agreement effective as of the date first shown above.

SELLER: HERZOG CONTRACTING CORP.

By: _____

Name: _____

Title: _____

Date: _____

BUYER: SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

Seller's Wire Transfer Instructions

Credit Account Information:

Bank Name:

Company Name: Herzog Contracting Corp

Account Number: _____

EXHIBIT B
BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS that HERZOG CONTRACTING CORP, (“***Seller***”), in consideration of the receipt of Four Hundred Fifty-Eight Thousand and Four Hundred and Ten U.S. Dollars (\$458,410.00), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, paid by SONOMA MARIN AREA RAIL TRANSIT DISTRICT (“***Buyer***”), does hereby grant, bargain, sell, assign, convey, transfer and deliver unto Buyer and its successors and assigns, to have and to hold for their use and benefit, all of Seller’s right, title and interests in and to the following:

One (1) Chevrolet 3500HD Silverado Hi-Rail Scrubber Brush Truck per the specifications listed in SMART’s Request for Proposal (Solicitation No. OP-EQ-20-004), including all addenda issued, and final clarifications made to specifications during the evaluation phase (the “***Equipment***”).

This Bill of Sale is being given pursuant to that certain Purchase and Sale Agreement dated _____, __, 2021, between Seller and Buyer (the “***Purchase Agreement***”).

EXCEPT AS CONTAINED IN THE PURCHASE AGREEMENT TO THE CONTRARY, THE EQUIPMENT IS BEING SOLD TO BUYER IN “NEW CONDITION”, WITH HERZOG ASSIGNING ALL MANUFACTURER WARRANTIES FOR THE TRUCK TO SMART, AND PROVIDING SMART WITH A TWELVE (12) MONTH PARTS AND LABOR WARRANTY FOR MANUFACTURER DEFECTS ON THE UPFITTED SCRUBBER COMPONENTS. TIME IS OF THE ESSENCE FOR COMPLETING WARRANTY REPAIRS TO THE UPFITTED SCRUBBER COMPONENTS AND SHALL BE COMPLETED WITHIN TWO (2) WEEKS OF SMART’S NOTIFICATION TO HERZOG OF THE DEFECT(S), SUBJECT TO AVAILABILITY OF NECESSARY PARTS. , HERZOG SHALL NOT, BY VIRTUE OF HAVING SOLD THE EQUIPMENT, BE DEEMED TO HAVE MADE ANY WARRANTY OR REPRESENTATION AS TO THE DESIGN, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, AS TO THE QUALITY OF MATERIAL OR WORKMANSHIP OR CONFORMITY TO SPECIFICATIONS, AS TO THE ABSENCE OF ANY LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, OR AS TO ANY OTHER MATTER WHATSOEVER RELATING TO THE EQUIPMENT (EXCEPT AS SET FORTH IN THIS BILL OF SALE).

Seller warrants that: (i) it is the lawful owner of the Equipment and has full right and authority to sell the Equipment to SMART; (ii) it is hereby transferring to SMART legal, good and marketable title to the Equipment; and (iii) it is assigning to SMART any and all manufacturers warranties for the truck; and (iv) it warrants the upfitted scrubber implement comes with a twelve (12) month parts and labor warranty for manufacturer defect.

Dated this ____ day of _____, 2021.

SELLER: HERZOG CONTRACTING CORP

By: _____

Name: _____

Title: _____



February 3, 2021

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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Transportation Authority of Marin

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General Manager

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

SUBJECT: Approval of the Fiscal Year (FY) 2020/2021 Amended Budget

Dear Board Members:

RECOMMENDATION:

Approve the Amended Budget for Fiscal Year 2020/2021 as presented in Resolution No. 2021-01.

SUMMARY:

In June 2020, your Board adopted the FY 2020/2021 budget. In September 2020, the Chief Financial Officer, Erin McGrath, provided the Board with an update on how FY 2019/2020 year ended and provided information on additional savings that had been identified. We are now over halfway through FY 2020/2021 and are providing you with an update and amended budget for consideration. FY 2020/2021 has been a volatile year and it seemed appropriate to bring the latest information to the Board in the form of an amended budget request.

In summary, revenues increased by \$14.4 million, expenditures only increased by \$2.7 million, we were able to transfer an additional \$13.1 million to reserves, and we are projecting to end the fiscal year with a \$37.5 million unrestricted fund balance which is \$20.4 million more than anticipated.

Over the course of calendar year 2020, more than 6 meetings/workshops were held with the Board to discuss revenues and expenditure levels. The Board agreed to reductions in expenditures early on for the FY 2020/21 budget. The reductions totaled 20% of the operating budget or 10% of the total budget at the time. This action put SMART in a much more positive financial situation than perhaps other transit agencies are experiencing. Those previous actions taken along with other proposed reductions being presented today, will put SMART in a more positive cash position moving forward.

In the attached Board Resolution, we have included Table 1. Table 1 has been updated from the Board approved FY 2020-21 budget. Table 1 now includes four (4) columns. Column A is the current Board adopted budget, Column B contains revenues and expenditures rolled forward from FY 2019/2020, Column C is additional adjustments since the budget was adopted in June 2020, and Column D is the proposed Amended Budget that we are asking you to adopt. In addition, each line is numbered for ease of identification.

Rollforward from FY 2019/2020 Budget (Table 1, Column B)

Each year, there are certain activities are not able to be completed within the fiscal year. This may be planned, a multi-year projects such as the Windsor project, or unplanned such as delayed payment of equipment where we are waiting on warranty issues to be resolved. Those activities and their associated revenues are then “rolled forward” from one fiscal year to the next. For FY 2019/ 2020, **\$3,377,372** in revenues (Column B, Line 12) and **\$3,373,979** in expenditures (Column B, Line 24) are being rolled forward into FY 2020/2021. Of the \$3,373,979, \$2,200,000 is for payment of rail vehicles, the remaining is related to work on the Windsor project that will be completed in FY 2020/2021 and beyond.

Revenues

Several changes have been made to revenues. Those changes are delineated below.

Sales and Use Taxes (Columns C & D, Line 1)

When the FY 2020/21 budget was prepared in May of 2020, there was limited information on how sales and use tax would perform considering the pandemic. Three forecasts were considered: Avenue, HDL, and Management Partners (Santa Rosa). At that time, they were projecting a decrease in sales and use tax revenues between 15% and 22%. Based on that information, the sales and use tax forecast for SMART was determined to be \$33,020,754. Since that time, we have received nine months of actual revenues and an updated forecast from Muni Services, we have adjusted sales and use tax revenue up by \$6,112,246 to **\$39,133,000** which is the new forecast.

Interest and Lease Earnings (Columns C & D, Line 2)

This line item contains interest, lease and rental income, and advertising income. We are anticipating lower interest earnings and lower revenues from advertising. This is a reduction of \$236,583 for a total amount of **\$738,700**.

Miscellaneous Revenues (Columns C & D, Line 3)

We are increasing miscellaneous revenues by \$76,176 to **\$105,000**. Included in this line item are revenues such as insurance claim reimbursements, application/permit fees, and sale of used equipment.

Fare & Parking Revenues (Columns C & D, Line 4)

The original forecast for fare revenue was \$4.1 million and was decreased to \$2.6 million in the final FY 2020/21 budget it is now being further reduced to \$655,525. This is an 84% reduction in fare revenue. The original estimate for parking was originally \$50,000 and has now been reduced to \$25,000. The new estimated for fare and parking revenue is **\$680,525** (\$655,525 fares + \$25,000 parking).

State Grants (Columns B,C,& D, Line 5)

Have been increase by both the roll forward from FY 2019/2020 and higher than anticipated revenue allocation. The new forecasted amount for FY 2020/2021 is **\$18,801,631**. This includes revenues for Windsor, the bike path, and operating grants.

State Grants – Freight (Columns C & D, Line 6)

We were recently awarded \$4 million from the State of California for the transfer of freight rights and equipment from Northwestern Pacific Railroad Company and \$2 million for freight safety and maintenance for a total of **\$6,000,000**. These funds have not yet been received by SMART. These funds are restricted and can only be used to purchase freight rights and to pay for allowable maintenance activities. We have created a separate fund, Fund 40, to be able to more easily track revenues and expenditures related to freight activities.

Federal Funds - Non-Cares Act (Columns B & D, Line 8)

Federal Railroad Funds (FRA) in the amount of \$494,025 were rolled forward from FY 2019/2020 to FY 2020/2021 for a total of **\$7,394,025**.

Federal Funds - CARES Act Funding (Column C & D, Line 9)

This was increase by \$294,348 for a total of **\$6,894,348**. This was due to the timing of revenues. At this time, we have not assumed any additional funds.

Other Governments/ Misc. (Columns C & D, Line 10)

Revenues captured in this line item include revenues from other jurisdictions for projects performed by SMART and other miscellaneous revenues such as sale of property/ land. We received a net amount of \$3,985,693 for the sale of the Railroad Square property. These funds, combined with other revenues from local governments for other projects, total **\$8,957,193**.

There were no changes to the following revenue line items: Charges for Services (Column D, Line 7) and Measure M (Column D, Line 11).

The new updated revenue forecast for FY 2020-2021 is **\$88,941,770** (Column D, Line 12)

Beginning Fund Balance (Column A, B & D, Line 13)

The beginning fund balance is the amount of funds available from the end of the previous fiscal year that is available to be used in the current fiscal year. It is not restricted for other uses and can be spent or allocated by the Board. When the FY 2020/21 budget was adopted in June it was projected to be \$22,571,008. The final audited balance was **\$46,360,003**. In a September 16, 2020 memo, former CFO, Erin McGrath presented information that showed that we were estimating to end the FY 2019/20 with more in fund balance than anticipated. This was due to lower than anticipated expenditures, higher than anticipated revenues (mainly in sales & use tax) and less funds allocated to the operating reserve.

Debt Service (Columns C & D, Line 15)

SMART recently refinanced its 2011A Bonds. Based on that refinancing, we are expecting the debt service for FY 2021 to be \$2.1 million lower than what was originally budgeted. The new anticipated debt service for FY 2021 is **\$14,284,259**.

Budgeted Expenditures

Salaries and Benefits (Columns C & D, Line 17)

In September 2020, the Board approved the elimination of two (2) vacancies. This resulted in savings of \$310,078 of savings. We are requesting as part of this amended budget a new position, titled "Principal Planner". This position will direct, plan, and organize staff and other resources needed to manage functions that provide direction for future transportation planning, services, and capital improvements. The annual fully loaded cost is expected to be \$163,480, however there is only 5 months remaining in the year. That cost is expected to be \$68,118. The net amount of \$241,962 is being reduced (\$310,078 - \$68,118). The total salaries and benefits cost for FY 2020/21 is now estimated at **\$21,970,309**.

Services and Supplies (Columns C & D, Line 18)

Reduction of \$972,997 due to lower than anticipated expenditures and roughly half of the savings related to reductions in vehicle maintenance related to mid-life overhauls and roughly half of the savings related to fuel. New estimated expenditures are **\$14,421,029**.

Capital Projects (Columns B, C, & D, Line 20)

Capital projects has been increased by \$3,144,379 for the cost of rail cars that not paid in FY 2019/20 due to warranty issues, the Windsor project, and \$30,000 of anticipated expenditures has been moved to Other Governments line item. This results in anticipated expenditures of **\$22,211,179**.

Other Governments (Columns B, C, & D, Line 21)

This line item is to capture work that SMART perform for other jurisdictions and are paid for entirely by other jurisdictions. This line item was increase by \$259,600 of which \$229,600 is a rollforward from FY 2019/2020 and \$30,000 was a line item adjustment between Capital Projects. The updated estimate for FY 2020/2021 is **\$3,786,500**.

Freight (Columns C & D, Line 22)

State funds were approved and are expected to be received this fiscal year for the purchase of freight rights, equipment, and maintenance. These funds can only be used for designated and authorized activities. Revenues and expenditures will be tracked in a new fund 40 which was established for this purpose. The amount is **\$6,000,000**. The revenue is listed on line 6.

There were no changes to the following expenditure line items: Equipment, Buildings, & Improvements (Column D, Line 19) and Account and Fund Transfers (Column D, Line 23).

Total expenditures are estimated at **\$70,471,928** (Column D, Line 24)

Budget expenditures do include funds for weekend service. If service is not restored, there will be additional savings in FY 2020/2021.

Additional Adjustments

Pension Liability (Columns B & D, Line 26)

At the end of each year, the amount of pension liability is calculated and transferred to the Pension Liability Fund for future use. The amount from the FY 2019/20 financial audit is **\$1,079,380**.

Equipment Sinking Fund (Columns A & D, Line 27)

This fund is used to accumulate funds for future equipment needs such as Diesel Multiple Units (DMUs). The original contribution in the FY 2020/21 budget was **\$5,000,000**. We are continuing that contribution in the amended budget.

Adjustment to match Board approved minimum reserve (Columns A, B, & D, Line 28)

Originally \$17 million had been deducted from the beginning fund balance for the operations reserve. In the FY 2020/21 budget, the Board approved \$10 million for the reserve. This resulted in \$7 million going back to the unrestricted reserve. This amount has already been accounted for in the Beginning Fund balance (Column B, Line 13), so we took it to \$0, so it wouldn't be duplicated.

Corridor Completions Fund Reserve (Columns C & D, Line 29)

We are recommending to the Board that they set aside \$7,000,000 (see line 28) for corridor completion activities. These funds could be used by the Board to leverage other funding for projects, or activities such as completing National Environmental Protection Agency (NEPA) work or preliminary design.

Remaining Unrestricted Year End Fund Balance (Estimated)

The remaining unrestricted fund balance is the portion of the fund balance that is not currently restricted for other uses and can be spent or allocated by the Board. The unrestricted fund balance is calculated by SMART using audited numbers in the following way:

Plus (+)	Forecasted Revenues
Plus (+)	Beginning Fund Balance
	Debt Service
Less (-)	Forecasted Expenditures
Plus (+) or Less (-)	Other Adjustments
Equals (=)	Remaining Unrestricted Fund Balance

The unrestricted fund balance for FY 2020/2021 year-end is estimated at **\$37,466,206** (Column D, Line 31). This is attributable to a higher beginning fund balance, higher revenues, and savings related debt service, vehicle maintenance, and fuel.

Restricted Fund Balance – Reserves (Lines 32-36)

SMART currently has four (4) reserve funds. We are recommending the addition of a Corridor Completion Reserve. It would require a 2/3rds vote to utilize as does the other reserves. These restricted reserve balances are in addition to the forecasted unrestricted fund balance above.

Reserve	Amount
Self-Insured Fund	\$1,876,019
Capital Sinking Fund	\$7,625,000
Future Other Post-Employment Benefits (OPEB)/ CalPers Liability Fund	\$3,074,676
Operating Reserve (Equivalent to 25% operations or 3 months)	\$10,000,000
Corridor Completion Fund (New)	\$7,000,000

Very truly yours,

/s/

Heather McKillop
Chief Financial Officer

Attachment: Resolution No. 2021-01

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
AMENDING RESOLUTION NO. 2020-10 TO REVISE THE ANNUAL BUDGET FOR FISCAL YEAR 2020-21 TO
PROVIDE FOR REVISED EXPENDITURE AUTHORITY AND INCREASED POSITION AUTHORITY**

WHEREAS, as part of its approval of the Annual Budget for Fiscal Year 2020-21, the Board duly considered the annual expenditures necessary for the Sonoma-Marín Area Rail Transit District; and

WHEREAS, on June 17, 2020, the Board adopted Resolution No. 2020-10 approving the annual budget for Fiscal Year 2020-21; and

WHEREAS, Resolution No. 2020-10 considered the appropriation of funds for Operating expenses as part of the Annual Budget; and

WHEREAS, the Board desires to Amend the Annual Budget to provide increased appropriation authority for short line railroad related expenditures and revised position authority; and

WHEREAS, Resolution No. 2020-10 considered the creation of employee positions and fixed the compensation and salary for those positions; and

NOW, THEREFORE, BE IT RESOLVED THAT Resolution No. 2020-10, FY 2020-21 Annual Budget, Exhibit A, Table 1, is hereby amended to increase expenditure authority.

NOW THEREFORE, BE IT ALSO RESOLVED that Resolution No. 2020-10, Exhibit A, Table 5 (SMART Position Authorizations), is hereby revised to add one new position, Principal Planner, as shown below, and;

Position	Authorized FTE	Salary Range: Annual		Salary Range: Hourly	
		Low	High	Low	High
Principal Planner	1	\$122,096	\$148,408	\$58.70	\$71.35

BE IT FURTHER RESOLVED except as specifically amended or supplemented by this Resolution, Resolution No. 2020-10, together with all supplements, amendments and exhibits thereto is, and shall continue to be, in full force and effect as originally adopted, and nothing contained herein shall, or shall be construed to, modify, invalidate or otherwise affect any provision of Resolution No. 2020-21.

Resolution No. 2021-01
Sonoma-Marin Area Rail Transit District
February 3, 2021

TABLE 1:					
BUDGET REPORT: OVERVIEW OF ALL SOURCES AND USES					
		Column			
		A	B	C	D
		FY 2020-21 ADOPTED BUDGET	Rollover From FY19-20 Budget	Adjustments Since Budget Adopted	FY 2020-21 PROPOSED AMENDED BUDGET
Forecasted Revenue					
1	Sales/Use Taxes	\$ 33,020,754	\$ -	\$ 6,112,246	\$ 39,133,000
2	Interest and Lease Earnings	\$ 975,283	\$ -	\$ (236,583)	\$ 738,700
3	Miscellaneous Revenues	\$ 28,824	\$ -	\$ 76,176	\$ 105,000
4	Fare & Parking Revenue	\$ 2,658,366	\$ -	\$ (1,977,841)	\$ 680,525
5	State Grants	\$ 16,038,215	\$ 2,653,746	\$ 109,669	\$ 18,801,631
6	State Grants - Freight (Fund 40)	\$ -	\$ -	\$ 6,000,000	\$ 6,000,000
7	Charges For Services	\$ 80,000	\$ -	\$ -	\$ 80,000
8	Federal Funds (non-CARES)	\$ 6,900,000	\$ 494,025	\$ -	\$ 7,394,025
9	Federal Funds CARES	\$ 6,600,000	\$ -	\$ 294,348	\$ 6,894,348
10	Other Governments/ Misc.	\$ 4,741,900	\$ 229,600	\$ 3,985,693	\$ 8,957,193
11	Measure M	\$ 157,348	\$ -	\$ -	\$ 157,348
12	Total All Revenues	\$ 71,200,690	\$ 3,377,372	\$ 14,363,708	\$ 88,941,770
13	Beginning Fund Balance	\$ 22,571,008	\$ 23,788,995	\$ -	\$ 46,360,003
14	Total Revenues + Beginning Fund Balance	\$ 93,771,698	\$ 27,166,367	\$ 14,363,708	\$135,301,773
Debt Service					
15	Debt Service	\$ 16,405,850	\$ -	\$ (2,121,591)	\$ 14,284,259
16	Total Revenues Less Debt Service	\$ 77,365,848	\$ 27,166,367	\$ 16,485,299	\$121,017,514
Budgeted Expenditures					
17	Salaries & Benefits	\$ 22,212,271	\$ -	\$ (241,962)	\$ 21,970,309
18	Services & Supplies	\$ 15,394,026	\$ -	\$ (972,997)	\$ 14,421,029
19	Equipment, Buildings & Improvements	\$ 2,417,911	\$ -	\$ -	\$ 2,417,911
20	Capital Projects	\$ 19,096,800	\$ 3,144,379	\$ (30,000)	\$ 22,211,179
21	Other Governments	\$ 3,526,900	\$ 229,600	\$ 30,000	\$ 3,786,500
22	Freight (Fund 40)	\$ -	\$ -	\$ 6,000,000	\$ 6,000,000
23	Account and Fund Transfers	\$ (335,000)	\$ -	\$ -	\$ (335,000)
24	Total Budgeted Expenditures	\$ 62,312,908	\$ 3,373,979	\$ 4,785,041	\$ 70,471,928
25	Total Revenues Less Debt Service and Budgeted Expenditures	\$ 15,052,940	\$ 23,792,388	\$ 11,700,259	\$ 50,545,586
26	Transfer to Future OPEB/CalPERS Liability Fund	\$ -	\$ (1,079,380)		\$ (1,079,380)
27	Transfer to Equipment Sinking Funds	\$ (5,000,000)	\$ -	\$ -	\$ (5,000,000)
28	Adjustment to match Board approved minimum agency reserve	\$ 7,000,000	\$ (7,000,000)	\$ -	\$ -
29	Transfer Fund Balance to New Corridor Completion Reserve	\$ -	\$ -	\$ (7,000,000)	\$ (7,000,000)
30	Total Additional Adjustments	\$ 2,000,000	\$ (8,079,380)	\$ (7,000,000)	\$ (13,079,380)
31	Estimated FY 2020/21 Ending Fund Balance	\$ 17,052,940	\$ 15,713,008	\$ 4,700,259	\$ 37,466,206
Restricted Fund Balances (Reserves)					
32	Self Insured	\$ 1,876,019			
33	Equipment Sinking Fund	\$ 7,625,000			
34	Future OPEB/ CalPERS Liability Fund	\$ 3,074,676			
35	Corridor Completion Reserve (New)	\$ 7,000,000			
36	Operating Reserve (25% or 3 months operating)	\$ 10,000,000			

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 3rd day of February 2021, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

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

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



David Rabbitt, Chair
Sonoma County Board of Supervisors

February 3, 2021

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

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

Judy Arnold
Marin County Board of Supervisors

Kate Colin
Transportation Authority of Marin

SUBJECT: Review of 2020 Activities and 2021 Goals and Challenges

Damon Connolly
Marin County Board of Supervisors

Dear Board Members:

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

RECOMMENDATIONS: Discussion and Provide Feedback

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

SUMMARY:

At your January 20th Board meeting; you reviewed the suggested discussions for the next several months. Starting with this board meeting we will provide you with reports from each department on their 2020 activities and their 2021 goals and challenges. After receiving public comment and Board directions, we will adjust the goals for each department and thus the Agency for 2021.

Susan Gorin
Sonoma County Board of Supervisors

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Today you will receive budget updates and departmental presentations from Legal, Finance, Human Resources, Procurement and Information Technology.

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Upon the completion of these departmental presentations in the coming weeks, we will review the results of our Listening Tour discussions thus far. We will provide you with list of topics that were brought up and will seek your direction on how and which topic should be considered for further discussions and implementation.

Farhad Mansourian
General Manager

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

In later months, we will provide information on capital projects and financing options. This will be a critical discussion in preparation for upcoming Federal infrastructure investment discussions that undoubtedly will take place.

In anticipation of the Annual Budget and Short-Range Transit Plan coming to the Board in May and June, we will continue our presentations in the Spring of 2021 covering our system service schedules and fare policies, requesting public and Board input on both topics, including implementation of possible modifications.

As part of these springtime presentations, we will discuss for you options for developing a set of performance measures that we will use in going forward to gauge how we are doing and how we are doing in comparison to other transit agencies. These measures then become a tool to be available and updated periodically, will be used for all of us to easily determine areas where we may need to make operational or policy adjustments. These measures can be incorporated into the Short-Range Transit Plan and monitored annually as part of the Annual Budget process.

All of this is in the context of SMART's evolution during the post-COVID pandemic recovery period. Starting February 17; we seek to receive Board and public input on strategies for creating a robust rider growth plan. Our first step will be creating a *Welcome Back* marketing and outreach plan targeting both our previous riders and new riders from unexplored or new markets.

Finally, in May, we will discuss rail freight operations and services. Assuming the Federal process is successful, we will discuss personnel, levels of service, types of service and discuss policies and guidelines that need to be developed to address these services.

We would appreciate receiving any directions and feedback that you or members of public might have for us. The Power point we provided at our last board meeting showing the next several months activities are attached here as a reference.

FISCAL IMPACT: None

Very truly yours,

/s/

Farhad Mansourian
General Manager

Attachment(s): Board of Directors' Presentation - January 20, 2021

SMART BOARD OF DIRECTORS

Review of 2020 Activities and 2021 Goals and Challenges



January 20, 2021

January 20, 2021 Board of Directors Public Meeting

- Review February – June 2021 Board Work Plan & Public Discussion Schedule
 - Budget
 - 2020 Performance Report
 - 2021 Goals and Challenges
 - Capital Plan
 - Listening Sessions
 - Welcome Back Campaign
 - Freight
- Receive Feedback and Directions



February 3, 2021 Board of Directors Public Meeting

2020 Department Activities Report and 2021 Goals and Challenges

Department Presentations:

- Legal
- Finance
- Human Resource
- Procurement
- Information Technology



February 17, 2021 Board of Directors Public Meeting

2020 Department Activities Report and 2021 Goals and Challenges

Department Presentations:

- Real Estate
- Operations
- Train Control and Systems
- Safety and Security



March 3, 2021 Board of Directors Public Meeting

2020 Department Activities Report and 2021 Goals and Challenges

Department Presentations:

- Capital Projects
- Grants and Legislation
- Planning
- Customer Outreach



March 17, 2021 Board of Directors Public Meeting

Listening Sessions

- Review comments received during these sessions thus far
- Review process for discussion and implementation
- Listening Sessions Implementation Report
 - Short term
 - Long term
 - Required Resources, if any.



April 7, 2021 Board of Directors Public Meeting

Transit Operating Services & Capital Plan





Transit Operating Services

- Discuss Post COVID-19 Recovery and Growth Plans
- Review Existing Fare Policies and Discuss Options
- Review Weekday and Weekend Schedules
- Review Service Performance Measures

Capital Plan

- Review Adopted Principles
- Review Pending Projects
- Review New Projects
- Financing Options

Begin **2021-22 Budget Process** Incorporating decisions made in the previous sessions

April 21, 2021 Board Of Directors Public Meeting

- Review Welcome Back Campaign
 - Strategies
 - Marketing
 - Incentives
 - Partnerships



May 5, 2021 Board of Directors Public Meeting

■ Freight Update

- Legislation Status
- Federal Approval Status
- Review Potential New Policies
- Review Potential New Marketing Strategy
- Review Options for Providing Freight Services
 - In House
 - Contract out



May 19, 2021 Board of Directors Public Meeting

- Present Draft Fiscal Year 2021-2022 Annual Budget
- Release Draft Short-Range Transit Plan & Capital Improvement Program
- Public and Board Comments & Discussions



June 2, 2021 Board of Directors Public Meeting

- Adoption of Fiscal Year 2021-2022 Budget

June 16, 2021 Board of Directors Public Meeting

- Adoption of 2022-2032 Short-Range Transit Plan & Capital Improvement Program



Connect with us:

www.SonomaMarinTrain.org



Customer Service:

CustomerService@SonomaMarinTrain.org

(707) 794-3330

